

Tony Sheldon National Secretary

25 November 2014

BY EMAIL: amod@fwc.gov.au

David Mitchell
Associate to the Hon. Justice Ian Ross AO
11 Exhibition Street
Melbourne VICTORIA 3000

Dear Associate

AM2014/216: 4 yearly review of modern awards – Waste Management Award 2010 (MA000043)

We refer to the above named matter and make the following written submission on behalf of the Transport Workers' Union of Australia (**TWU**) further to the Commission's Statement made 30 October 2014.¹

The TWU refers to the *Waste Management Award 2010* (MA000043) (**Waste Award**) and proposes variations to the Waste Award as set out in Schedule "A" (**attached**).

The TWU's proposed variations address key issues and inconsistencies with the Waste Award as well as historical practices in the waste sector of the road transport industry.

Should you have any queries or require any additional information in relation to this submission, please contact Sandra Kaltoum on 02 8114 6500 to discuss.

Yours faithfully

A handwritten signature in black ink that reads 'Wendy Carr'.

Wendy Carr
National Head of Legal
Transport Workers' Union of Australia

¹ [2014] FWC 7743.

Schedule "A"

FAIR WORK COMMISSION

Fair Work Act 2009

s.156 – 4 yearly review of modern awards

(AM2014/216)

Waste Management Award 2010

VARIATIONS PROPOSED BY THE TRANSPORT WORKERS' UNION OF AUSTRALIA

The following variations are sought to the *Waste Management Award 2010*:

1. Clause 11.2 – Types of employment

Amend the current clause 11.2 to include the words "including their classification" as follows:

"At the time of engagement, an employer will inform each employee in writing of the terms of their engagement, including their classification, and in particular, whether they are to be full-time, part-time or casual. Such decision will then be recorded in the time and wages record."

This clause has been amended to ensure certainty for waste workers in their employment. Further, in order for the National Employment Standards (NES) and the Waste Award to operate effectively, employees must be classified at the commencement of their employment to establish related conditions such as remuneration.

2. Clause 17.2 – Transfer to lower paid duties

Delete the entirety of existing clause 17.2 as follows:

~~*"Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may, at the employer's option, make payment instead of an amount equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing."*~~

This existing clause 13.2 undermines both the National Employment Standards and the "suitable alternative employment test" found at section 120 of the *Fair Work Act 2009* (Cth) (Act).

3. Clause 22 – Accident pay

Delete existing clause 22 and replace as follows:

“An employee in receipt of weekly payments under the provisions of the applicable workers compensation legislation will be entitled to receive accident pay from the employer subject to the following conditions and limitations:

(a) Payment to be made during incapacity

An employer must pay, or cause to be paid, accident pay during the incapacity of the employee, within the meaning of the applicable workers compensation legislation:

- (i) until such incapacity ceases; or*
- (ii) until the expiration of a period of 52 weeks from the date of injury*

whichever event will first occur, even if the employer terminates the employee’s employment within the period.

(b) Meaning of accident pay

For the purpose of this clause accident pay means:

- (i) For the period of 52 weeks from the date of injury, a weekly payment representing the difference between the weekly amount of compensation paid to the employee under the applicable workers compensation legislation and the weekly amount that would have been received by virtue of this award had the employee been on paid personal leave at the date of injury (provided that the latter amount is greater than the former amount).*

(c) Pro rata payments

In respect of incapacity for part of a week the amount payable to the employee as accident pay will be a direct pro rate payment.

(d) When not entitled to payment

An employee will not be entitled to any payment under this clause in respect of any period of paid annual leave or long service leave, or for any public holiday.

(e) *Redemptions*

In the event that an employee receives a lump sum in redemption of weekly payments under the applicable workers compensation legislation, the liability of the employer to pay accident pay as herein provided will cease from the date of such redemption.

(f) *Damages independent of the Acts*

Where the employee recovers damages from the employer or from a third party in respect of the said injury independently of the applicable workers compensation legislation, such employee will be liable to repay the employer the amount of accident pay which the employer has paid under this clause and the employee will not be entitled to any further accident pay thereafter.

(g) *Calculation of period*

The 52-week period commences from the first day of incapacity for work, which may be subsequent to the date of injury. Intermittent absences arising from the one injury are to be cumulative in the assessments of the 52-week limitation.

The provisions of this clause will operate from 1 January 2015."

Maintenance of this existing transitional provision in recognition of the heightened risk of injury for employees in the waste sector, to provide support to employees who suffer a work related injury and to assist those employees through their treatment and rehabilitation towards a return to pre-injury duties.

4. Clause 23 – Higher Duties

Amend existing clause 23 by deleting clause 23.2 and further inserting new clauses 23.2 and 23.3 as follows:

"23.1 Where an employee is required to perform work at more than one classification level on any one day the employee is to be paid the minimum wage for the highest level, calculated hourly, for the whole day.

23.2 Where an employee is required to perform two or more classes of work on a regular occasion then the employee's classification will be reviewed by the employer.

23.3 Any disputes arising from this clause will be dealt with in accordance with clause 9 of this Award."

This amendment is sought to ensure appropriate remuneration for and recognition of, the work ordinarily performed by waste employees.

5. New clause 28.9 – Crib time

Insert new clause 28.9 as follows:

“28.9 Crib time

(a) All shift workers whilst on afternoon or night shift shall be entitled to a paid crib time of twenty minutes. Crib time on any shift shall be at the time fixed in accordance with this award by the employer and shall not be varied except in an emergency and with the consent of the employee however, an employee shall not be required to work more than 5.5 hours without a crib break.

(b) An employee performing shift work who works overtime shall be allowed crib time of twenty minutes without deduction of pay after each four hours of overtime worked if the employee continues to work after such crib time. Unless the period of overtime is less than two hours, an employee before starting overtime after ordinary hours shall be allowed a meal break of twenty minutes which shall be paid for at ordinary rates.”

This proposed variations seek to reinstate the terms of the *Transport Workers (Refuse, Recycling and Waste Management) Award 2001*.

6. Clause 29.2(a) – Overtime meal breaks

Amend clause 29.2(a) to provide for paid meal breaks to be read as follows:

“An employee must be allowed a paid meal break of not less than 15 minutes and not more than 30 minutes after two hours of overtime.”

Amendment of the provision as per the *Transport Workers (Refuse, Recycling and Waste Management) Award 2001* for paid meal breaks when an employee is working overtime.

7. Clause 33.1 – Annual leave

Insert new clause 33.1(a) and 33.1(b) as follows:

“33.1 Annual leave is provided for in the NES. This clause provides additional provisions.

(a) For the purposes of the additional week of the annual leave provided for in the NES a shiftworker is a seven-day shiftworker who is regularly rostered to work on Sundays and public holidays.

(b) In addition to the leave entitlement in Division 5 of the NES, where an employee is engaged for part of the twelve month period as a shiftworker, that employee must have their annual leave increased by half a day for each month the employee is continuously engaged as a seven day shiftworker."

The Waste Award does not provide for an extra week of annual leave for shiftworkers. The NES (clause 87 of the Act) provides that shiftworkers are entitled to 5 weeks of annual leave if "...a modern award applies to the employee and defines or describes the employee as a shiftworker for the purposes of the National Employment Standards." The Waste Award contains shiftwork provisions (clause 28). Therefore, we submit that the Waste Award should provide for an extra week of annual leave for shiftworkers.