

**Tony Sheldon National Secretary**

### 4 Yearly Review of Modern Awards

**Matter No: AM2014/216**

### *Waste Management Award (2010)*

**Submissions on the technical and drafting issues related to the exposure draft and outline of submissions in relation to substantive variations.**

### Introduction

1. The Transport Workers' Union of Australia (TWU) refers to the Amended Directions issued by the Fair Work Commission on 6 May 2015 in relation to Group 2 Awards. The TWU makes the following submissions in relation to the technical and drafting issues related to the exposure draft of the *Waste Management Award* (the *Waste Award*) and provides an outline of submissions in relation to substantive claims sought by the TWU.

### **EXPOSURE DRAFT**

2. We refer to our submissions on the exposure draft dated 4 February 2015. We rely on those submissions but depart from them or comment further as set out below.

### **Clause 9.2(c) – Overtime meal breaks:**

3. The TWU has no objections to the drafting of the subclause as drafted in the exposure draft.

### **Clause 13.4 – Payment of wages**

4. The words “at its discretion” have been omitted. The current wording is grammatically incorrect.

### **Clause 16.6 – Sunday Work and 16.8 – Call back on a Saturday or Sunday**

5. Parties have been asked to clarify whether the provisions under 16.6 and 16.8 are limited to weekend work, or whether they have more general application. The TWU submits that both provisions have more general application and are not limited to weekend work.

6. There are no alternate provisions found within the current award that appropriately address payment and associated conditions for employees when they are required to remain on call for call back purposes. There are also no further provisions accounting for travel where reasonable means of public transport are not available.
7. On that basis, we submit that these provisions must have general application to all employees. Such matters are likely to have a significant impact upon all employees, regardless of when they are on call or have to make their way home when there are no reasonable means of transport.
8. The times at which there are no reasonable means of transport is not limited to weekends, indeed there may be less reasonable means of transport late at night. Furthermore, the provisions talk about overtime generally, it is not limited to overtime on the weekend.
9. The reference to 'relevant ordinary hourly rate' in clause 16.8 is a reference to the applicable rate of pay that would apply to the time/day a person is required to be on call. The rates of pay are the applicable rates for work performed outside the span of hours as provided in the current clause 27 – Hours of work or the rate payable on a Saturday or Sunday.

### **Clause 20.6(b) – Payment for work on public holidays**

10. As indicated in our submission of 4 February 2015, there is no clause 32.5 of the exposure draft. The parties have been asked to make submissions about whether the rates in the table are correct. The TWU submits they are correct but that the corresponding rates in Schedule A.2.3 are incorrect. The rates in A.2.3 are the same as those in A.2.1 for a Public Holiday, Good Friday and Christmas Day.
11. The rates prescribed under clauses 32.3 and 32.5 of the current award are in addition to any amount payable in respect of the weekly wage pursuant to 32.4 of the current award. To read the provisions otherwise would mean that the rates payable on the nominated days would be the same irrespective of the time they were worked.
12. The current provisions were contained in the pre-reform *Federal Transport Workers' (Refuse, Recycling and Waste Management) Award 2001*. Unlike the current award, the provisions were not separated into sub-clauses and provided as follows:

*“38.5 Payment for work on a holiday shall be in addition to any amount payable in respect of the weekly wage. Provided that, if an employee is required to work on a holiday other than Good Friday and Christmas Day during hours which, if the day were not a holiday, would be outside the range of ordinary working time as mentioned in clause 35 - Overtime of this award, he/she shall be paid for such hours at double time and a half instead of the ordinary time and a half as herein before provided in this subclause.*”

*Provided further that he/she shall be paid treble time for all overtime worked on Good Friday and Christmas Day”.*

The reference to “as herein” is a reference to provisions for overtime for work that is within ordinary hours and are the same as those contained in clause 32.3 of the current award.

In response to the question raised by the FWC it is clear that the rates are correct in the table in 20.6(d) but this is not reflected in the schedule in A.2.3. The rates in the column headed Public Holiday should be 350% and the rates in the column headed Good Friday & Christmas Day should be 400%.

### **SUBSTANTIVE CLAIMS**

13. We refer to our submissions dated 24 November 2014. The TWU does not intend to pursue all claims referred to in those submissions. The variations the TWU now wish to pursue are set out below.

#### **Clause 11.2 – Types of employment**

14. The TWU proposes to insert a requirement for an employer to inform all employees of their classification at the time of engagement. There is an anomaly in the award where an employer is required to inform both a part-time employee and a casual employee of their classification upon engagement, but not a full-time employee. The TWU seeks to vary the clause as set out below.

**“11.2** 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.”

15. Should the application be granted it would be necessary to delete subclause 13.3(b) and remove the reference to informing a casual or their classification in subclause 14.2.
15. There has been no indication that there will be opposition to this claim. Should a consent position be reached the TWU submits that the variation does not require a specially constituted Full Bench and can be dealt with before the Full Bench Hearing for the Group 2 Awards listed on 7 and 8 October 2015.

#### **New Clause 28.9 – Meal Break**

16. The TWU seeks to insert a new subclause dealing with paid meal breaks for shift workers. In the pre-reform Federal *Transport Workers' (Refuse, Recycling and Waste Management) Award 2001* provision was made for a paid meal break of 20 minutes for all shift workers on afternoon or night

shift. The TWU submits the provision should be reinstated. The TWU seeks to vary the existing provision as set out below.

Insert new subclause 28.9 as follows:

### **“28.9 Meal Breaks**

- (a) All shift workers while working on afternoon or night shift will be entitled to a paid meal break of 20 minutes. An employee must not be allowed to work more than five and quarter hours without a meal break.”

17. The TWU expects some employer parties will oppose the change. Comparative analysis will be presented and witness evidence may be submitted. The TWU is of the view that this is a claim that should be referred to a specially constituted Full Bench.

### **Clause 29.2 – Overtime meal breaks**

18. The TWU seeks to vary the existing subclause to provide for a paid meal break in certain circumstances when performing overtime. In the pre-reform *Federal Transport Workers' (Refuse, Recycling and Waste Management) Award 2001* provision was made for employees who were required to work overtime for two hours or more.

19. The entitlement was for a paid meal break of 20 minutes before commencing overtime, and thereafter, upon completing each four-hour work period. The TWU submits the provisions should be reinstated. The TWU seeks to vary the existing provision as set out below.

Delete existing subclause 29.2(a) and replace as follows:

### **“29.2 Overtime meal breaks**

- (a) An employee required to work overtime for two hours or more after working ordinary hours must be allowed a paid break of twenty minutes before commencing overtime work or as soon as practicable thereafter. A further rest break must be allowed upon completing each four-hour period until the overtime work is finished. Any rest breaks shall be paid for at the ordinary time rate.”

20. The TWU expects some employer parties may oppose the claim. Comparative analysis will be presented and witness evidence may be submitted. The TWU is of the view that this is a claim that should be referred to a specially constituted Full Bench.

### **Clause 33 – Annual Leave**

21. The TWU seeks to insert a new subclause into the annual leave provisions to describe a shift worker for the purposes of the NES entitlement to annual

leave. The Waste Award contains provision for shift work however, there is no reference to the NES for the additional week of annual leave for a seven-day shift worker

22. The TWU submits that, as is the case in many awards, employees who work as a seven-day shift worker should be compensated for by an additional week of annual leave.

Delete existing subclause 33.1 and replace as follows:

**“33.1 (a)** Annual leave is provided for in the NES. This clause contains additional provisions.

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

23. The TWU is not aware of any employer opposition at this stage. Should a consent position be reached the TWU submits that the variation does not require a specially constituted Full Bench and can be dealt with before the Full Bench Hearing for the Group 2 Awards listed on 7 and 8 October 2015. However if the claim is opposed comparative analysis will be presented and witness evidence may be submitted. In those circumstances the claim should be referred to a specially constituted Full Bench.



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