

MODERN AWARD REVIEW

AM2015/220

COAL EXPORT TERMINALS AWARD 2010

FOUR YEARLY REVIEW OF MODERN AWARDS

SUBMISSION BY THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION, MINING AND ENERGY DIVISION

DRAFTING AND TECHNICAL ISSUES

Sub Clause 6.4 (f) – Loading for casual employment

1. A drafting and technical issue concerning the expression of the casual loading and in particular the insertion of the term “entitlements” in the place of “attributes” in the exposure draft has been the subject of a separate submission to the FWC.

Clause 5 – Facilitative provisions

2. This is a new award provision.
3. For purposes of clarification, the CFMEU submits that the adjective “affected” should be added before noun “employee’s or the noun “individual’ where they appear in sub clause 5.2 of the exposure draft. This is in order to make it clear that the particular provision is applicable to a specific employee or group of employees.
4. With respect to this amendment we refer to PN [43] of the Full Bench decision in [2014] FWCFB 9412 (dated) 23 December 2014).

Interaction between sub clause 8.3(b) and 13.1 in Exposure Draft

5. In a box under sub clause 8.3, the FWC asks the parties to clarify how the penalty rates on a Saturday in clause 8.3(b) interact with overtime rates in clause 13.1.
6. As we read it, each clause provides for penalty rates to apply to a different type of hours of work, either ordinary hours or overtime.
7. As such each sub clause applies separately.

8. If an employee works 8 ordinary hours on a Saturday, the employer is paid at 150% of the minimum rate for the first 4 hours and 200% of the minimum rate for the next 4 hours.
9. If the employee then works 4 hours overtime, the first 3 hours are paid at 150% of the minimum rate and the 4th hour at 200% of the minimum rate.

Saturday, Sunday and Public Holiday rates for Shift workers

10. In a box under sub clause 8.4(b) the FWC seeks submissions on whether shift workers should be entitled to the appropriate rates for Saturday, Sunday and public holidays.
11. It should also be noted that in an earlier submission the CFMEU also raised this point (see submission dated 2 March 2015).
12. The CFMEU submits that as the CET Award provides for shift workers and that there are employees covered by the CET Award who work shift work on weekends and public holidays, the CET Award should provide for shift workers to be entitled to Saturday, Sunday and public holiday penalty rates.
13. As the provision of weekend and public holiday penalties is a common feature in modern awards and as pre-reform awards provided for weekend and public holiday penalties, the CET Award should provide for such penalties.
14. As such the weekend rates provided in sub clause 8.3(b) of the exposure draft should apply equally to shift workers or day workers when working ordinary hours on Saturday or a Sunday.
15. There is also the position of the appropriate penalty rate for public holidays, whether ordinary hours or overtime. Sub clause 18.2 provides that payment for working a public holiday by a day worker is "in accordance with clause 13.1". Sub clause 18.2 does not make any distinction between working ordinary time or overtime for day workers. Sub clause 13.1 provides that payment for working overtime on a public holiday is 250% of the minimum hourly rate. As such the rate for working ordinary time on a public holiday by a shift worker should be 250% of the minimum rate.
16. It is noted that sub clause 13.3 provides that overtime for a continuous shift worker is 200% of the minimum hourly rate. Given the payment of overtime on a public holiday, provision should, for fairness, equity and consistency be made for continuous shift workers to be paid 250% of the minimum hourly rate when working overtime on a public holiday. It is also noted in regard to the payment of annual leave is sub clause 14.4(b)

it refers to payment for “rostered public holidays at 200% of the minimum hourly rate. Again, as the rate for working on a public holiday – ordinary hours or overtime is 250 % of the minimum rate for day or shift workers, the rate for rostered shifts on public holidays that fall whilst on annual leave should, for fairness, consistency and equity, also be 250% of the minimum hourly rate.

17. As this issue raised by the FWC during the drafting and technical issues stage involves a substantive change to the Award, and as the CFMEU has raised it in an earlier submission the CFMEU would seek to put additional submissions on this issue e.g. s134 issues and any other relevant issues going to public holiday payments.

The “applicable adult weekly wage” for the purpose of clause 10.2(b)

18. In a box under sub clause 10.2(b), the FWC asks the parties to clarify what is the “applicable adult weekly rate” for the purpose of sub clause 10.2(b).
19. The CFMEU submits that, similar to sub clause 10.2(c) the applicable adult weekly rate should be the “Maintenance Trades – Competent Rate”.
20. In our submission there is no reason why there should be a difference between the two rates.

Should the term “lowest adult classification” in clauses 10.3(c) and (e) be more specific

21. The CFMEU agrees that that actual classification should be used rather than the current expression.

Construction, Forestry, Mining and Energy Union
Mining and Energy Division
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