

IN THE FAIR WORK COMMISSION

AM 2014/ 220 - 4 YEARLY REVIEW OF MODERN AWARDS - COAL EXPORT TERMINALS AWARD 2010

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

REVISED EXPOSURE DRAFT - JULY 2017

The CFMEU - Mining and Energy Division, makes the following comments on the revised exposure draft Coal Export Terminals Award 2016, as released by the Fair Work Commission on 14 July 2017

Clause 1 - Title and Commencement

1. In its submission dated 28 July 2017, the Coal Terminals Group (CTG) state that *the relevant year of the CET Award referred to in this clause (clause 1.1) should reflect the year that the CET Award is to be made*¹. To our knowledge the FWC is not going to "make" new awards from the existing awards as part of the 4 yearly review process.
2. In a decision in December 2014, the FWC addressed the issue of a "supersession clause".² After outlining the submission of the AiGroup and the ACTU, the FWC determined: *We propose to adopt the course of making variations to existing modern awards during the Review, rather than*

¹ Submission on behalf of the Coal Terminals Group, 28 July 2017, paragraph 3 (a) (i)

² [2014] FWCFB 9412

'superseding' awards.³ This led to the insertion of clause 1.3 in the exposure draft.⁴

3. As we understand that position, any changes to Awards as part of the 4 yearly review, will be formalised as a variation to the existing award and not by the making of a new award. In that event there is no change to the date of the making of the award, and it should remain as 2010, as can be found in clause 1.2 of the exposure draft.

Clause 8.3 and 8.6 - Penalty rates

4. In the box under the heading to clause 8.3, the FWC refers to the Report to the Full Bench of 10 August 2016.
5. The report to the Full Bench incorporated a schedule being an agreed variation to clause 16 of the current award, which is clause 8 of the exposure draft.
6. Clause 16.2 in the schedule is titled *Employees other than shift workers*. Further the applicable rates for week days and week ends were deleted and transferred to clause 16.5 *Weekend and Public Holiday Rates - All Employees*.
7. Consistent with that variation, the title of clause 8.3 in the exposure draft should read *Employees other than shift workers*. Clause 8.3 (a) is the only subclause in the clause and it only applies to employees other than shiftworkers. Further, for consistency's sake, the reference to *Dayworkers* in clause 8.3 (a) should be amended to *Employees other than shift workers*.
8. In its submission, the CTG also notes that the words *other than shiftworker* in clause 8.6 should be deleted. We agree.

³ [2014] FWCFB 9412 @ PN [9]

⁴ [2014] FWCFB 9412 @ PN [10]

9. The variations as sought in paragraphs 7 and 8 above are consistent and necessary to meet the agreed objective of providing the same entitlement to all employees when ordinary hours are worked on a week day (save for shift rates dealt with in clause 8.4), Saturday, Sunday or public holidays.

Clause 8.5 - Rostering

10. The CFMEU agrees with the variations proposed by the CTG in clause 8.5. The provisions in clauses 8.5(a)(ii) and (b)(ii) are taken from clause 16.4 (a) and (b) and are designed to establish certain rostering parameters as well as referring to the disputes resolution procedure in the event of a dispute. There is no reference in the current award to the consultative provision. In clause 8.5 (c) (i) we agree to the deletion as sought by the CTG because it is already covered in clause 8.5(c) (iii).

Clause 13.3 Overtime - continuous shiftworkers and 14.1 Payment of Annual Leave

11. The CFMEU agrees with the CTG's proposed variations to these clauses.

Clause 10 - Apprentices

11. With respect to the term "applicable adult weekly wage" the CFMEU refers to its submission of 14 April 2016 at paragraph [18]-[20].

Construction, Forestry, Mining and Energy Union

Mining and Energy Division

25 August 2017