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Monday, 25 July 2016

The Hon Justice Ross
President
Fair Work Commission
11 Exhibition Street
Melbourne VIC 3000

Email: Chambers.Ross.j@fwc.gov.au
Cc.: AMOD@fwc.gov.au

**Australian
Services
Union**

**National Office
Melbourne & Sydney**

All correspondence to:

Ground Floor
116 Queensberry St
Carlton South VIC 3053

T: (03) 9342 1400
F: (03) 9342 1499
E: info@asu.asn.au
W: www.asu.asn.au

National Secretary
David Smith

Assistant National Secretaries
Greg McLean
Linda White

Dear Justice Ross

Re: Labour Market Assistance Modern Award 2010 – parties' report back

We refer to the abovementioned matter and the Report issued by Your Honour on 6 July 2016 (PR582497). For the purposes of facilitating discussion, the Australian Municipal, Administrative, Clerical and Services Union (ASU) convened a teleconference of the available parties to give further consideration to items that remained unresolved on 30 June; namely items 8 & 10; 11 & 12; and 14.

This letter serves as the report back due by 22 July 2016, as directed. Prior to 4 p.m. on 22 July, an extension of time to 4 p.m. Monday, 25 July 2016 to file the parties' Report was requested by email and acknowledged in Your Honour's absence.

Items 8 & 10 (clause 11.2(b) (ii))

- The parties concur with Your Honour's position that the clause reflects the current award and on its face a provision for overtime applies.
- In respect of the secondary issue of the circumstances in which overtime is to be paid, the parties discussed the provision for an 8 hour payment, facilitation of the maximum of up to 10 ordinary hours for excursion activities and the overtime obligation for work in excess of ordinary hours.
- To express the overtime provisions the parties propose that the following words be inserted at 11.2(b) at (ii), as follows:

'Except where an agreement has been made in accordance with clause 14.3, where an employee is required to work in excess of 10 ordinary hours per day during excursion activities, the employee is entitled to the overtime rates at clause 14.2.'

Items 11 & 12 (clause 14.2(c))

- The parties concur on Your Honour's position that clause 20.2 of the Exposure Draft should be amended to be consistent with clause 14.2(c) and have no further concern to raise in response to the words proposed for clause 20.2.
- In respect of the second issue concerning clause 14.2(c), the parties also concur on the proposition that clause 14.2(c) of the Exposure Draft reflects the position under the current award.
- Turning to the issue of when the 350% rate will be payable, the parties discussed when the usual spread of hours occurs. To ensure the application

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of clause 14.2(c) is clear about payment of the 250% overtime rate on public holidays, the parties propose that clause 14.2(c)(i) read, as follows:

‘250% of the minimum hourly rate for work performed during the span of hours worked between 6.00 am and 8.00 pm, and not exceeding 10 hours in one day; and/or’

- The parties also propose that the clause 14.2(c)(ii) read, as follows:

‘350% of the minimum hourly rate for work performed outside the span of hours worked between 6.00 am and 8.00 pm, or in excess of 10 hours in one day.’

Item 14 Jobs Australia’s proposed changes to the classification definitions

The ASU has a relevant interest in the Jobs Australia (JA) claim regarding proposed changes to the classification definitions. The parties discussed the proposals.

Following discussions, JA provided the ASU with an amended proposal regarding variations to the Classification Definitions at Schedule A of the Exposure Draft.

In respect of JA submission dated 29 June 2016, the proposal at paragraph 8 has been withdrawn so that the reference to the certificate 3 entry pay point at A.1.2 (e) is no longer proposed and the exposure draft wording is retained. In respect of their submission at paragraph 9, the proposal to replace “instruction” with “training” has been amended and JA propose to replace “instruction” with “employment services”; which would be consistent with the wording (including proposed amendments to wording) throughout the rest of the Classification Schedules.

The ASU submits that the amended submission poses no further concern to us.

Item 13 ASU claim to clarify payment of leave loading on termination

In respect of the 23 May 2016 Decision in the matter AM2014/47 - Common Issues - Annual Leave ([2016] FWCFB 3177); which Your Honour prefaced at the last Conference. The ASU also reports that we are continuing discussions with the ACTU regarding next steps for dealing with the Common issue.

Yours faithfully



Joanne Knight
NATIONAL INDUSTRIAL OFFICER

Tel: +61 3 9342 1400
Mobile: 0419 593 396
E-mail: jknight@asu.asn.au