

Fair Work Commission
Level 4, 11 Exhibition Street
Melbourne, Vic, 3000
Via email: AMOD@fwc.gov.au
Cc: chambers.clancy.dp@fwc.gov.au

9 February 2017

Re: AM2014/244 *Silviculture Award 2010 – additional submission in support of outstanding claims*

1. This submission is made pursuant to the Directions of 14 December 2016 and in particular Direction 3 – interested parties are to file written submissions and any evidence in support of the outstanding claims identified in their submissions filed in accordance with Direction 1 by 20 January 2017.
2. The AWU seeks leave to supplement two of our submissions identified in accordance with Direction 1. These submissions are set out below.
3. **Clause 11.3(b): Leading Hand Allowance**
 - 3.1. We have previously submitted that an allowance is payable to any employee who is appointed a leading hand, regardless of their pay rate.¹
 - 3.2. In addition to our initial submissions on this clause, we note that the relevant clause of the pre-modern award, the *Silviculture and Afforestation Award 2006 (TAS)*, states:

*“A person specifically appointed to be a leading hand (as defined) shall be paid at the rate of the undermentioned amounts **above the rates** of the highest classification supervised, or his own rate,*

¹ AWU 17 April 2016 Submission in AM2014/244 at 15.

*whichever is the highest in accordance with the number of persons in his charge.*² (our emphasis at underlined)

3.3. We submit that the wording of Clause 11.3(b) in the Exposure Draft is unclear as it places “the employee’s own rate” into a sub-paragraph separate from the table that stipulates the weekly amount the employee appointed as a leading hand would receive.

3.4. The wording of the clause should be amended to clarify what allowance an employee appointed as a leading hand is entitled to.

3.5. Based on the plain reading of the pre-modern award the leading hand allowance operates as follows:

3.5.1. An employee appointed as a leading hand is entitled to:

3.5.1.1. The weekly wage rate of the highest classification of the employees the employee supervises, plus the allowance outlined in the table; or

3.5.1.2. If the employee’s own weekly wage rate exceeds the weekly wage rate of the highest classification of the employees the employee supervises, the employee’s own weekly wage rate plus the allowance outlined in the table.

4. Schedules A.2.3 & A.3.2: Sunday Rates for Shiftworkers

1.1. The AWU have proposed to insert a column at:

1.1.1. **Schedule A.2.3** that outlines the applicable penalty rate for full-time and part-time shiftworkers; and

1.1.2. **Schedule A.3.2** that outlines the applicable penalty rate for casual shiftworkers.

² *Silviculture and Afforestation Award 2006 (TAS)*, Part IV, s3.

1.2. It is our position that shiftworkers under this Award are entitled to a penalty rate for working on Sundays. This is reflected in our previous submission and at clauses 14.12(b) to (d).³.

1.3. We note that Clause **13.5(b)(i)** makes no distinction between types of employees to which it applies. It is therefore applicable to all employees.

1.4. Further, Clause **14.10** provides that a shiftworker is paid at the rate of 115% (other than on a Saturday, Sunday or holiday). These days are excluded because the applicable penalty rate otherwise applies for shiftworkers. Clause 14.10 appears as follows:

14.10 Shift allowances

A shiftworker whilst on afternoon or night shift (other than on a Saturday, Sunday or holiday) must be paid at 115% of the ordinary hourly rate for the shift.

Yours faithfully,



Zachary Duncalfe
NATIONAL LEGAL OFFICER
The Australian Workers' Union

³ AWU 17 April 2016 Submission in AM2014/244 at [28] to [30].