

OUR REF: M:\WP\SB\WINE INDUSTRY AWARD\LETFWC9.DOC

22 December 2016

Associate to Deputy President Clancy
Fair Work Commission
By Email: chambers.clancy.dp@fwc.gov.au
CC: amod@fwc.gov.au

Dear Associate

The Wine Industry Award

We refer to the directions issued by the Commission in this matter on 14 December 2016. In response to those directions, United Voice submits as follows:

1. United Voice accepts the accuracy of the further revised summary of submissions published on 26 July 2016, except insofar as the summary is modified by the Commission's report issued on 25 August 2016.

United Voice still pursues the following claims:

- 1.1 Item 35, dealing with the wording of clause 9.4 of the exposure draft;
- 1.2 Item 49, dealing with the wording of sub-clause 16.2(d) of the exposure draft;
- 1.3 Item 62, dealing with the wording of sub-clause 24.3(a)(i) of the exposure draft.

In addition, United Voice supports the AWU in its claim identified at item 53, relating to the wording of sub-clause 19.1(b) of the exposure draft, noting, however, that this is more in the nature of a substantive claim rather than a technical and drafting claim.

United Voice contends that the clauses identified in items 35, 49 and 62 of the exposure draft have a different legal effect to the corresponding clauses in the modern award.

2. In respect of the clauses in the revised exposure draft which we maintain have a different legal effect to the corresponding clause in the modern award, United Voice says as follows:
 - 2.1 As to item 35, clause 9.4 of the exposure draft provides that an employee not given a meal break is to be paid **an additional**

loading of 50% of the minimum hourly rate until the meal break is given. The "minimum hourly rate" is identified in clause 10.1 of the exposure draft. It is clear that the minimum hourly rate is the hourly rate for day workers performing work in the span of ordinary hours (between 6.00 am and 6.00 pm Monday to Friday).

Therefore, the legal effect of clause 9.4 is to provide an additional loading of 50% of that day worker ordinary hourly rate.

The equivalent clause in the modern award is clause 29.4. Relevantly, clause 29.4 provides that where an employee is **not** given a meal break in relevant circumstances then the employee must be paid from then on a **loading of 50%** until the meal break is given. United Voice contends that when read in context, the loading of 50% is not applied to some notional minimum hourly rate of a day worker in ordinary hours, but is applied to the hourly rate applying to the employee in the circumstances of the meal not being provided. That is, where the employee not provided a meal is a day worker working on Saturdays or Sundays, or a shift worker, or a casual worker, the loading is to be applied to the rate applying to the employee at the time that the meal is not taken.

- 2.2 In respect of item 49, clause 16.2(d) of the exposure draft provides that an employee engaged in washing out and chipping boilers or in cleaning flues must be paid **150% of the minimum hourly rate** while they are engaged in such work. As set out above, the minimum hourly rate is the hourly rate of a day worker working within the span of ordinary hours. Therefore, the additional entitlement for such work under the exposure draft is 50% of that minimum hourly rate.

The corresponding clause in the modern award is clause 24.6(a) which provides that an employee engaged in the relevant work **must be paid 50% extra** while engaged in that work. United Voice contends that the legal effect of this clause is that an employee performing the relevant work is entitled to an additional 50% of the rate then applying to the employee in the circumstances of the work. Therefore, where the employee is a day worker working Saturday or Sunday, or a shift worker, or a casual employee, the employee is entitled to an additional 50% of the rate then applying to the employee.

- 2.3 In respect of item 62, clause 24.3(a)(i) of the exposure draft provides that where a full time employee's rostered day off falls on a public holiday, then the employee is entitled to 7.6 hours of pay **at the minimum hourly rate**. For the reasons set out above, the legal effect of this provision is that the employee is entitled to 7.6 hours of pay at the rate for a day worker working ordinary hours during the span of ordinary hours.

The corresponding clause in the modern award is clause 34.3(a)(i). It provides that in the same circumstances, an employee is entitled to 7.6 hours of pay **at the ordinary time rate**. United Voice contends that the phrase "ordinary time rate" means the ordinary time rate for

that employee. That is, where the employee is a shift worker, the ordinary time rate is the rate inclusive of the shift penalty.

In accordance with the Commission's directions, United Voice will file its written submissions and any evidence in support of its claims, on or before Friday 20 January 2017.

If you have any queries please contact Industrial Officer, Simon Blewett on 8352 9341. Any correspondence to our office regarding this matter should be marked for the attention of Simon Blewett.

Yours faithfully

A handwritten signature in black ink, appearing to read 'SBWA', written in a cursive style.

SIMON BLEWETT
Senior Legal Officer