

IN THE FAIR WORK COMMISSION

FWC Matter No. AM2014/305

REGISTERED AND LICENSED CLUBS AWARD 2010

s.156 – FOUR YEARLY REVIEW OF MODERN AWARDS

OUTLINE OF FINAL SUBMISSIONS

ON BEHALF OF CLUBS AUSTRALIA INDUSTRIAL

1. Clubs Australia Industrial (CAI) has applied to the Fair Work Commission (the Commission), on behalf of Australia’s 4,000 licensed and registered Clubs, for a review of the Penalty Rates payable under the Registered & Licensed Clubs Award, 2010 (the Award).
2. CAI relies upon the evidence in 5 affidavits filed on its behalf¹.
3. CAI seeks to amend clause 17 of the Award to be expressed in the following terms:

Clause 17 – Minimum Wages for the relevant classification.

| | Monday to Friday | Saturday | Sunday | Public holiday |
|--|---------------------------------|---|---|---|
| | % | % | % | % |
| Full-time and part-time | 100 | 125 (a reduction of 25% percentage points) | 150 (a reduction of 25% percentage points) | 200 (a reduction of 50% percentage points) |
| Casual (inclusive of the 25% casual loading) | 125 | 150 | 150 (a reduction of 25% percentage points) | 200 (a reduction of 50% percentage points) |

¹ Marked as exhibits CAI 1, 2, 3, 4 and 5

4. Richard Tait, the Executive Director for CAI and the Executive Manager – Workplace Relations for the Registered Clubs Association of New South Wales, gave evidence by way of affidavit², and was cross examined on his affidavit on 10th September, 2015³. Mr Tait’s evidence in exhibit CAI 1 can be summarised as follows:

- (a). CAI is the national peak body which represents the industrial interests of Australia’s 4000 licensed clubs.
- (b). Clubs are distinguished from other hospitality employers, such as hotels, in that a club is run on a not for profit basis, is generally community based with a central purpose to provide infrastructure and services both for its members and the larger community in which it operates.
- (c). In New South Wales a census of the club industry was conducted in 2011, which indicated that over 90% of clubs in New South Wales were of small to medium sized organisations and that indeed the number of clubs functioning was reducing.
- (d). It is the position of the various clubs throughout Australia that there should be no differential between the penalty rates payable for ordinary hours worked by casual employees on Saturdays to those worked on Sundays. Indeed it is noted that with respect to community activities and expectations of social needs related to Sundays, that indeed recent studies indicate that only 9% of Australians now attend church on Sundays. Whilst this in itself, would not be a sole determining factor, it is illustrative of the changing social moors in Australian society and the movement away from the special status that Sunday held in years past.
- (e). A reduction in public holiday penalty rates from 250% to 200% would have a positive effect on clubs utilising additional available opening areas of their premises currently closed on public holidays, because of the high wage penalty payable. This could be with little or no adverse effect on the capacity of clubs to attract staff to work on these days. Clubs are in a unique position

² Exhibit CAI 1.

³ From PN2678 - PN2798

within the hospitality industry in that there is an expectation from members, and the community, that clubs would be open on public holidays, indeed such as Anzac Day, which expectation takes away the capacity of clubs to decide, as a restaurant proprietor may decide, that it would not open on public holidays due to severe financial constraints.

5. John Dellar gave evidence by way of affidavit to the Commission.⁴ Mr Dellar was cross examined on his affidavit.⁵ Further questions were put to Mr Dellar by the Commission with respect to the effect of the current penalty rates structure on Sunday trading and staffing.⁶
6. Mr Dellar is the Club Manager of Club Hawthorn, a club in Victoria, which principally provides sporting facilities such as squash and snooker for its members. Mr Dellar's evidence advised the Commission that:
 - (a). That the Hawthorn Club is a small club with 10 employees, both permanent and casual, which opens 7 days a week, except on public holidays, on which days the club does not generally open due to excessive wages payable to employees working on such days.
 - (b). Sundays are by far the slowest trading days in the Hawthorn Club yet it is the day upon which the club is obliged to pay, with the exception of public holidays, the highest penalty rate for the week.
 - (c). The club relies heavily on university students to work the casual shifts available and the club works in a cooperative manner with these students to suit their various study commitments and timetables.
 - (d). Mr Dellar gave evidence that the club generally loses money or at best breaks even if it trades on a public holiday but it is obliged to open on some public holidays, such as some days over Easter, to permit members access to the club's facilities.
 - (e). If the penalty rates payable on a Sunday were reduced, the club would trade for longer hours than currently and would open for trade on most public

⁴ Exhibit CAI 2

⁵ PN2847 - PN2930

⁶ PN2931 - PN 2935

holidays. This being the case, and with the savings thus made, the club would employ not only more employees, or those working extended hours, on Sundays, but also be in a position to provide better service to its members during week days and thus be in a position to employ more persons.

(f). Mr Dellar evidenced a staffing issue at the club where employees who work on Saturday, the busiest day of the week, receive less pay than those who work on Sundays which is the quietest day of the week. This evidence emphasised a factor in favour of a reduction in the Sunday penalty rates to provide equal penalty payments for work on Saturdays and Sundays for all employees working in the club.

7. During cross examination Mr Dellar explained to the Commission that it was a direct result of the high penalty rates payable on public holidays that the club was obliged to close on most public holidays.⁷ Furthermore, Mr Dellar emphasised that the “reason for our being” was to provide members with access to the club’s sporting facilities⁸. Furthermore, Mr Dellar emphasised the way in which his club would better utilise its facilities, give better service to its members and employ more persons with a reduction in penalty rates on Sundays and public holidays.⁹

8. Jeffrey Cox gave evidence by way of affidavit¹⁰ and was cross examined on that affidavit. Principal parts of Mr Cox’s evidence is:

(a). The Coffs Ex Services Club operates 3 clubs in the Coffs Harbour area. The first and largest being the Coffs Ex Services and Sports Club with 2 other small community clubs being owned by that entity, being clubs at Urunga and Woolgoolga. The principal business of the clubs is to provide lawn bowls, golf, squash and croquet facilities with free entertainment being provided to senior members of the community.

⁷ PN2858 - PN2861

⁸ PN2907 - PN2908

⁹ PN2911; PN2917-2918; PN2923 – 2924 and PN2934.

¹⁰ Exhibit CA 5

- (b). Whilst the principal club at Coffs Harbour trades every day of the year except Christmas Day, the smallest club at Urunga is closed on some public holidays because it is uneconomic to open due to high wage costs.
 - (c). Public Holidays and Sundays are generally the lowest income days of the week for the clubs, yet are the highest wage expense days of the week. The exception to this is Anzac Day which is a good trading day in all clubs.
 - (d). A reduction in penalty rates on weekends and public holidays would potentially lead to an extension of the club's operating hours with consequent additional hours of work being offered to part-time and casual employees. Longer trading hours translating to the provision of better services to the clubs members and guests, which service is a core reason for the clubs existence.
9. In cross examination, Mr Cox agreed with the proposition put to him that the clubs are unable to trade profitably on Sundays and public holidays because they are on their own the lowest income trading days for the club.¹¹ The effect of Mr Cox's evidence is that although Sundays and public holidays are the club's lowest income days, they correlate with the club's highest wages expense days. This unfortunate formula leads to a situation where the club provides less facilities on high expense, low income days which could be significantly altered in favour of higher facilities with more employees, or their hours extended, if penalty rates were reduced in accordance with the CAI claim.
10. Anthony Casu gave evidence by way of affidavit¹² and was cross examined on that affidavit.¹³ Mr Casu is the General Manager of the Narooma Sporting and Services Club Limited, which club comprises two clubs, one styled Club Narooma and the other Club Dalmeny. The Club's principal function is to provide sporting facilities both bowls and croquet. Mr Casu gave evidence that:

¹¹ PN3018

¹² Exhibit CAI 7

¹³ PN3063 – PN3138

- (a). The club's best trading days are Fridays and Saturdays with a 20% drop in trading terms on Sundays.
 - (b). Although many public holidays fall on a Monday the club loses money on these days as Monday remains a quiet trading day.
 - (c). The bistro at Club Dalmeny is currently closed on Sundays as a result of the high penalty rate cost in employing persons on that day.
 - (d). If the award penalty rates were reduced, in terms of the CAI claim, the club would increase its services to members and guests and employ more employees on additional shifts. The increase in services and anticipated revenue and hours of employment would increase generally on all days of the week.
11. Mr Casu was tested closely on his evidence that the club would increase member services and increase employment opportunities, and gave clear and concise evidence that such potential was not a mere possibility, but would positively lead to broader services to members and more employment to the club's casual workforce pool.¹⁴

¹⁴ PN3114; PN3119; PN3124-3125.

12. The United Voice called 3 witnesses to give evidence in response to the CAI claim for reduced penalty rates on weekends and public holidays. A witness statement of Mary Quirk was tendered in the proceedings¹⁵, and Ms Quirk was cross examined on her statement¹⁶. Ms Quirk is a full time employee at the Coledale RSL in New South Wales.
13. Ms Quirk agreed, that in return for working part of her ordinary hours every Sunday she received an additional week's annual leave¹⁷. Ms Quirk has never sought to change her roster to have Sunday's off¹⁸. Whilst it is put by Ms Quirk that her working on Sundays prevents her from attending Mass at her local church she agreed in cross examination that she could attend an alternate church in the near vicinity which had a service at 7.00am and still enable her to get to work by 9.30am every Sunday.¹⁹
14. With respect to Ms Quirk it is clear that her working on Sundays suits her lifestyle, she has never sought to change from Sunday work and if her church attendance was considered of significant importance, she could still attend to that activity and work her apparent desired Sunday hours.
15. Wayne Jones gave evidence on behalf of the United Voice²⁰, and was cross examined on his statement.²¹ Mr Jones is in charge of purchasing and is the head Cellarman at the Bribie Island Bowls Club in Queensland.
16. Mr Jones gave evidence that the Club is open every day of the week whether bowls are played or not.²² Mr Jones understood that it was an expectation that he would work at the Club on weekends and public holidays. His evidence in cross examination on this point was as follows:

¹⁵ UV 5

¹⁶ PN3585 - PN3638

¹⁷ PN3603 – 3607.

¹⁸ PN3608 and PN3620

¹⁹ PN3621 - 3627

²⁰ Exhibit UV 6

²¹ PN3705 - 3738

²² PN3724 - 3728

“Q. So that is your understanding, that it is an expectation when you work for the Bribie Island Bowls Club that you have to be in a position to work on weekends and public holidays?”

A. That’s in most hospitality industries they ask you to do that.

Q. It’s the rub of the green for hospitality industry isn’t it.

A. Yes, it is.”²³

17. Mr Jones is, it is put, typical of persons who work in the hospitality industry, in this case, the club industry, where those persons know there is an expectation, and it is an accepted expectation, that they need to make themselves available for weekend work to service the needs of the membership of their various clubs.

18. Damien Cooper was the third person called by United Voice to give evidence in these proceedings. Mr Cooper is employed at the Goodna Services Club in Queensland, principally as a courtesy bus driver. His statement was admitted into evidence²⁴ and he was cross examined on his statement.²⁵ In similar terms to that evidence given by Mr Jones, Mr Cooper accepted that when he chose to move his employment into the hospitality industry, and in particular the Club Industry, that he would be required to work on both weekends and public holidays.²⁶ The Goodna Services Club operates 7 days per week, including public holidays. However, the club is not open on Christmas Day. Indeed Mr Cooper regularly works on public holidays and has never made himself unavailable to work on a public holiday.²⁷

19. The following exchange occurred between Counsel for the Union and Mr Cooper in re-examination:

²³ PN3733 – 3734.

²⁴ Exhibit UV 7

²⁵ PN3776 – 3813.

²⁶ PN3779 – 3784.

²⁷ PN3804

“Q.Can you explain to the Commission how that process works in terms of how you’re rostered or how it comes to be that you are to work on a public holiday.

A. It depends on whether a public holiday falls on a Friday or a Wednesday or a Tuesday, they are days that I normally work so I will – whether it’s a public holiday or not they will put me on the roster. If it’s a weekend or a Boxing Day where they know its going to be extra busy they will ask me if I wish to work, and I will accept and they will put me on the roster. Its all – its part of hospitality, working public holidays.”²⁸

Conclusion

20. The Club Industry is a particular, and distinct, part of the hospitality industry. Clubs are distinguished from hotels and restaurants in that they are established on a not for profit basis and provide services and benefits to their members and the community. The expectation for those services is at a time when the club members are available to engage in recreational activities. These are invariably after normal daylight hours or on weekends and public holidays. As a general rule clubs do not have the option of deciding not to open on weekends or public holidays if that is when their members seek to participate in the club’s activities. These hours are invariably at times when it is the most expensive to employ staff to work in the clubs.
21. CAI seeks this Commission to reduce penalty rates for full time and part time employees who work on Saturdays and Sundays by 25 percentage points and on public holidays by 50 percentage points. Furthermore, with respect to casual employees, CAI seeks a similar reduction for public holiday work and that there be a reduction of 25 percentage points for work on Sundays to align it to the current rate for casual employees who work on Saturdays.
22. CAI does not contend that there should be no penalty rates for employees working on Saturdays, Sundays or public holidays. It does contend that for casual employees, which employees constitute a substantial part of the club industry’s employment structure on weekends, that there should be no penalty differential for working on

²⁸ PN3815.

Saturdays from those who work on Sundays. The evidence is clear that Sunday trading is in many cases less than Saturday trading, it is understood by employers and their employees as necessary trading, and in many cases it is less arduous to work on Sundays than on Saturdays.

23. It is the position of CAI that its claim for appropriate penalty rates on Saturdays, Sundays and public holidays, would afford club employees a fair and equitable return for their work on those days and would enable the club industry to better serve the needs of its members.
24. The claim for penalty rate reduction, as pressed by the CAI, meets many of the core objectives as contained in s.134 of the Act, in that the claim takes into account;
 - (a). The promotion of social inclusion through increased workforce participation.
 - (b). The need to promote flexible modern work practices and the efficient and productive performance of work.
 - (c). Provides additional remuneration for employees working on weekends or public holidays.
 - (d). The principle of equal remuneration for work of equal or comparable value.
 - (e). The likely impact of any exercise of Modern Award powers on the Club Industry including its productivity and employment costs.
 - (f). The need to ensure a simple and easy to understand Modern Award system for clubs.
 - (g). The likely impact, which would be significant and positive, on employment growth and the sustainability and performance and competitiveness of the licensed club industry.
25. The current high penalty rates payable to employees who work principally on Sundays and public holidays is adversely affecting the capacity of clubs to provide, in an efficient and sustainable manner, services to its members and the community. The grant of the CAI claim would lead to a more efficient licensed club industry providing better services to its members, at more sustainable wage costs which would in turn

lead to a growth in employment in an industry which has the capacity to provide sustainable employment to those working full time and the opportunity to obtain financially rewarding work to students and others in the community who require less than full time employment yet need the capacity to obtain additional work to sustain their current life commitments.

26. CAI also relies on its submissions filed on 4 September 2015 with respect to the findings sought on the expert evidence.
27. The Commission should grant a reduction in penalty rates for employees working on weekends and public holidays as pressed by the CAI.

R.S. WARREN

Counsel for Clubs Australia Industrial

Frederick Jordan Chambers

14th October, 2015.

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