

IN THE FAIR WORK COMMISSION

AM2015/2 Family Friendly Work Arrangements

WITNESS STATEMENT OF PETER ROSS

I, Peter Ross of 1 Alan Street, Rydalmere NSW, do solemnly and sincerely declare and state the following:

Employment History

1. I am employed as the General Manager – Human Resources of Rheem Australia Pty Ltd (**Rheem**). I have been employed in this role for 19 years.
2. In this role, I am responsible for HR policies; employee relations; learning and development; and remuneration and benefit administration.

Rheem's Operations

3. Rheem manufactures gas and electric storage, heat pump and solar water heaters for domestic, commercial and large scale project applications in Australia. It is headquartered in Rydalmere and has manufacturing operations in Sydney and Melbourne.
4. Rheem's customers are primarily plumbing merchants and distributors. Rheem also sells its products directly to consumers.
5. Rheem's workforce includes:
 - Production employees who work in a factory environment;
 - Field based employees undertaking installation and repair work in domestic and commercial premises; and
 - Employees engaged in a call centre, who take calls from customers wanting to place orders or seeking the services of installation/repair personnel.

6. In its high-volume manufacturing operations, Rheem derives its demand for labour by determining the number of units that need to be manufactured in a day and in light of its understanding of how fast the production line can work.
7. The number of units to be manufactured each day is based on customer demand. Rheem's sales forecast system is used for the purposes of projecting customer demand.
8. There is some seasonality to customer demand, which is typically higher in the winter months. If there is a spike in production volumes, Rheem will utilise casual labour (either its own employees or through a labour hire agency) to deliver the additional output that is temporarily necessary.
9. For instance, Rheem may assess that it needs to manufacture 1000 water heaters a day and that it has a cycle time of 30 seconds (that is, one product comes down the production line approximately every 30 seconds). It then determines the number of employees necessary to perform each of the tasks that are undertaken down the production line. All of these employees must be on deck at the same time in order for the production line to continue efficiently. In this way, Rheem's production line is set up for optimum speed and efficiency.
10. Line balancing ensures that the production quota can be met each day and that Rheem's productive capacity is fully utilised. If the line is not balanced (for instance, because one employee on the production line is absent), Rheem has to make a change to the production process including reallocating the task that would have been undertaken by the absent employee. This slows the line down such that, for instance, the cycle time increases to 35 seconds. This affects Rheem's productivity.
11. In a lean manufacturing environment, like that one that Rheem operates in, excess labour can also disrupt the line balance and create inefficiencies. Excess labour does not necessarily lead to increased production.
12. The problems flowing from imbalances on a production line, which I have described above, also arise if an employee starts/finishes work halfway through a shift or works hours that straddle two shifts.

13. Increases to Rheem's cycle time can have a significant impact on the business. Manufacturing businesses such as Rheem are evaluated by reference to various KPIs including the ratio of man hours per unit (i.e. the input of labour directly relative to output). This is considered the chief measure of productivity and labour efficiency.
14. This KPI is consistently used by Rheem to compare its Australian manufacturing facilities to those overseas and assess whether it is viable to continue its Australian operations or whether it is more economical to manufacture overseas. I am aware that when compared to manufacturing facilities in other countries, Rheem's Australian manufacturing processes are considered less efficient.
15. If a decision is made to wholly or partly offshore Rheem's manufacturing operations, this will have an obvious impact on its ability to employ employees in Australia.
16. At the manufacturing facility in Rydalmere, production occurs during a day shift (7am – 3.30pm) and an afternoon shift (3.30pm – midnight). There is also a night shift, during which employees perform maintenance and repair work on Rheem's equipment whilst the production line is idle. This includes breakdown maintenance and preventative maintenance.
17. Rheem structures its working arrangements to maximise production during the day shift. The afternoon shift is considered the flexible shift. The number of employees engaged on that shift and the work performed varies over time, depending on production targets.
18. Rheem continually assesses its demand for labour on the day shift and afternoon shift and from time to time, identifies a need to move employees between the two shifts. For instance, in recent times, the number of employees engaged on the afternoon shift at the Rydalmere facility has been reduced and they have been redeployed to the day shift due to a fall in production volumes.
19. It is my understanding that if an employee is required to work on an afternoon shift in Rheem's manufacturing facilities, it must pay the employee a shift premium. In addition to the inefficiencies that can arise from an imbalance in the

production process (which I have previously described), Rheem incurs an additional employment cost in the form of a shift penalty for employees working an afternoon shift and therefore, it is particularly inefficient to have excess labour working on that shift.

20. Some of Rheem's employees seek to work on the afternoon shift because they are paid for such work at a higher rate. I have received requests from employees to work on the afternoon shift on that basis. However, because of the flexibility that Rheem requires on the afternoon shift, it is unable to guarantee an employee work on that shift.
21. Rheem will also evaluate from time to time whether it can reach its production target by requiring employees on the day shift to work some overtime and reducing the afternoon shift further. However, if production levels need to be higher than what can be attained through the performance of overtime, Rheem will expand the afternoon shift. This flexibility is essential as production volumes vary over time.
22. Rheem employs almost 50 employees in its call centre, who take calls from customers for two purposes: sales and after-sales. In each instance, the employee must possess a detailed and thorough understanding and knowledge of Rheem's products and how they operate.
23. In the case of sales, the employee must be able to assist the customer to identify the product they require having regard to their needs and provide information about its specifications etc.
24. In the case of after-sales, the employee may be required to perform some remote diagnosis. If it is necessary to have one of Rheem's field technicians sent out to the customer, the employee will also make the necessary arrangements to ensure that that occurs in a timely manner.
25. The call centre takes calls from 8am – 5pm on weekdays and on Saturday between 8am – 2pm. In winter, the call centre may be open for slightly extended hours because it is the busiest time of the year.

26. Typically, the largest volume of calls for after sales services is received at the very start of operating hours and towards the end of operating hours. This is because, for example, consumers will discover a potential fault in their water heater in the morning when they have a shower.
27. Rheem rosters its employees in accordance with expected call volumes. As a result, it requires a certain number of employees to be available to answer the phones in the morning and late afternoon, when customers typically require assistance. An insufficient number of employees working at this time creates excessive waiting times on the phone for customers trying to reach Rheem and it undermines Rheem's quality of customer service and Rheem's brand.
28. Rheem also employs some employees in after sales service who take escalated calls where the query is particularly complex or requires a more detailed knowledge of Rheem's products. I consider that the provision of these services is one of Rheem's competitive advantages because some companies like Rheem contract such services out to other providers.
29. If the employees referred to in the above paragraph are absent, Rheem is not able to provide this specialised level of assistance to its customers.
30. Rheem also endeavours to respond promptly to requests for repair or maintenance work by its field technicians in order to assist customers who, for instance, do not have access to hot water because of a faulty hot water system. In my experience, customers expect timely service delivery because of the inconvenience caused to them without it. In order to ensure that Rheem can provide such service, it must have the requisite number of field technicians ready, willing and able to perform work in response to requests as they come in.
31. If field technicians are not available when needed by customers, this directly affects Rheem's revenue generation. This is because customers are charged for some services provided by our field technicians. In my experience if Rheem's field technicians are not available, customers will instead contact someone else such as their local plumber.

Rheem's Employees

32. As at August 2017, Rheem employs 764 employees, as follows:

	Male	Female	Total
Full-time	636	98	734
Part-time	3	20	23
Casual	5	2	7
Total	644	120	764

33. Overall, the average length of service of Rheem's employees is 13 years and the average age is 50.
34. Within the manufacturing operations, the average length of service of Rheem's employees is 18 years and the average age is 51.
35. Within the field service teams, the average length of service of Rheem's employees is 18 years and the average age is 47.
36. Within the call centre, the average length of service of Rheem's employees is 6 years and the average age is 45.
37. Given this employee age profile, it is my understanding that many of Rheem's employees have elderly parents who require care and support.
38. My understanding of the industrial instruments that Rheem applies to its employees is set out below.
39. The *Rheem Rydalmere Manufacturing Enterprise Agreement 2016* applies to employees engaged at the manufacturing facility in Rydalmere who would otherwise be covered by the *Manufacturing and Associated Industries and Occupations Award 2010* (**Manufacturing Award**). It is my understanding that the enterprise agreement incorporates the Manufacturing Award.
40. The *Accent Air Liverpool Manufacturing Enterprise Bargaining Agreement 2016* applies to employees engaged at the Accent Air manufacturing facility in Liverpool who would otherwise be covered by the Manufacturing Award. It is my understanding that the enterprise agreement incorporates the Manufacturing Award.

41. The *Moorabbin Manufacturing Enterprise Agreement 2014* applies to employees engaged at the manufacturing facility in Moorabbin who would otherwise be covered by the Manufacturing Award. It is my understanding that the enterprise agreement incorporates the Manufacturing Award.
42. The *Rheem, Sydney Service Collective Agreement 2016* applies to field technicians and trades assistants engaged in New South Wales. It is my understanding that the enterprise agreement incorporates the Manufacturing Award and the *Plumbing and Fire Sprinklers Award 2010 (Plumbing Award)* as at the date when the agreement came into effect.
43. The *Rheem, Brisbane Service Enterprise Agreement, 2013* applies to field technicians and trades assistants engaged in Queensland. It is my understanding that the enterprise agreement incorporates the Manufacturing Award and the Plumbing Award as at the date when the agreement came into effect.
44. The *Rheem Australia Pty Ltd, Rheem Service, Victoria and CEPU Plumbing Division Enterprise Agreement 2017* applies to field technicians and trades assistants engaged in Victoria. It is my understanding that the enterprise agreement wholly replaces the Plumbing Award.
45. There is no enterprise agreement applying to Rheem's employees who are engaged in its call centre.

The ACTU's Claim

46. I understand that the ACTU is seeking a new clause in virtually all modern awards that would enable some employees with parenting and/or caring responsibilities a right to decide their days of work and starting/finishing times, without any ability for Rheem to refuse or modify their decision. The employee's position, status, location and remuneration would have to remain the same as what it was before their working hours were changed.
47. I also understand that the proposed clause would also give such employees the right to revert back to their former working hours within certain timeframes.

Rheem's Approach to Flexible Working Arrangements

48. Rheem takes a flexible approach to determining its employees working arrangements and does its level best to accommodate requests for flexibility wherever possible. The nature of the requests vary and include returning from parental leave, managing illnesses & reduced capacity, religious grounds, caring for young and old family members, travel time, transitioning to retirement etc.
49. For example, I am aware that Rheem has made alterations to the working arrangements of certain employees on Fridays in order to allow them to participate in religious activities.
50. Where Rheem decides that it wants to move employees from, for example, the afternoon shift to the day shift (for reasons set out earlier in my statement), Rheem first asks the relevant group of employees for any special requests to stay on the afternoon shift. Those employees are interviewed for the purposes of understanding the hardship they would face if they were moved to the day shift. I am directly involved in those interviews. Rheem has regard to the hardship that would be suffered by the relevant employees before finally determining which of its employees will be moved to the day shift. Rheem has typically given preference to employees with family responsibilities so that their caring arrangements for family members are not disrupted.
51. Notwithstanding this process, Rheem has transferred some employees from afternoon shift to day shift despite their preference to remain on the afternoon shift due to operational reasons. I am aware of only one instance in which this has caused an employee to resign. The employee was 72 years of age and decided to retire.
52. In some cases, transitional arrangements were implemented to allow the relevant employees time to adjust to their new working hours.
53. Where requests for flexible working arrangements are accommodated by Rheem, this is not without consequence for Rheem, as it needs to implement one or more of a range of measures to accommodate the request and, in addition, it can nonetheless suffer from a drop in efficiency.

54. Where multiple employees are granted flexible working arrangements, a cumulative impact is felt by Rheem due to the changes made to the structure of the production process in order to accommodate them. I do not consider that Rheem has an unlimited ability to grant flexibility to its employees and that at some point, Rheem may not be able to tolerate any further impact on the business.
55. I provide the following example as an analogy. Rheem takes its operational requirements into consideration when determining whether to grant requests for leave. This means that Rheem cannot grant leave to more than a certain number of employees in a particular section of its production facilities. If it did, such absences would have a significant impact on production. Further, during the winter months, field technicians and call centre staff may not be able to take leave due to the high demand for their labour. There are of course exceptions to this and when deciding whether to grant the request, Rheem will have regard to the reason for which the employee requires the leave and Rheem's operational requirements at the relevant time.
56. From time to time, Rheem receives requests for flexibility that it is unable to accommodate.
57. I have previously described the call centre environment in which some of Rheem's employees work. The busiest times of the day in that part of the business coincide with the times at which employees with young children want to drop their children at school or pick them up from school. Rheem's operational requirement for a certain minimum number of employees at those times, however, places a limitation on its ability to grant such requests for flexible working arrangements.
58. Rheem regularly receives requests for changed hours from employees returning from parental leave. Whilst we accommodate most, I recall two instances where the requests conflicted with the operational needs of the call centre where they worked. Both employees were planning to return around the same time and both wanted to work the same three days each week.

59. Rheem formed the view that this could not be accommodated because it would result in too many employees being rostered to work on those three days and insufficient labour on the other three days. It therefore had discussions with both employees and explained its concerns. Both employees gave further consideration to their requests. As a product of those discussions it was ultimately agreed that one employee will work on Saturday, Monday and Tuesday; whilst the other employee will work on Wednesday, Thursday and Friday.
60. In July 2015, the Fair Work Commission (**Commission**) issued a decision regarding a dispute between the Australian Manufacturing Workers' Union (**AMWU**) and Rheem in relation to its employee by the name of Shane O'Neill, who had requested flexible working arrangements. A copy of the decision is at **Attachment A** to my statement.
61. Mr O'Neill was employed as a full-time process worker at Rydalmere's production facility.
62. In 2010, Mr O'Neill requested a change to his hours of work on the basis that he had a son at high school and Mr O'Neill wanted to ensure that he did not have to catch public transport home after school. His son was 12 – 13 years old at the time.
63. Mr O'Neill's request was granted by Rheem, with effect from 29 June 2010.
64. Mr O'Neill was transferred from the afternoon shift (3.30pm – midnight) to the day shift, however instead of working the ordinary day shift hours of 7am – 3.30pm, he worked 6am – 2.30pm to ensure that he could leave the workplace in time to pick up his son from school.
65. In order to grant his request, Rheem had to find a way to gainfully employ him offline between 6am – 7am when the production line was not operating and to replace him between 2.30pm to 3.30pm when his absence caused the team to be short staffed. As a result:
- Between 6am and 7am he worked in the terminal box area.

- Between 7am and 2.30pm he worked in the Handmade Jacket Team or the main assembly line in the manufacture of Stella gas heater units.
 - Between 2.30pm and 3.30pm, his absence from the line had to be covered by another employee (explained below).
66. The employee was informed that Rheem was prepared to put in place the above arrangement for a period of 12 months, at which point it would be reviewed. Rheem includes review periods when granting some requests for flexible working arrangements because its demand for labour changes over time. A review allows Rheem an opportunity to consider whether it is feasible to continue the arrangement in light of any change in circumstances.
67. Rheem extended Mr O'Neill's flexible working arrangement multiple times until January 2015, when Rheem determined that, for operational reasons, the arrangement was no longer viable from Rheem's perspective. This was because there had been a drop in production volumes and as a result:
- Rheem no longer required Mr O'Neill to perform the work he had been performing between 6am – 7am; and
 - Rheem did not have any other alternate work to offer him.
68. By written correspondence on 20 January 2015, Mr O'Neill was informed that he would be required to work ordinary day shift hours from 7am – 3.30pm. Mr O'Neill subsequently put the matter into dispute.
69. On 18 February 2015, I wrote to Mr O'Neill, explaining the reasons for Rheem's decision. A copy of that letter is at **Attachment B** to my statement.
70. On 13 July 2015, the Commission issued its decision in relation to the dispute. Consistent with the Commission's decision, Mr O'Neill continued to work at 6am – 2.30pm until the conclusion of his child's schooling in December 2016. Mr O'Neill then returned to normal day shift hours and, at the time of drafting this statement, continues to work those hours.

71. Throughout the period during which Mr O'Neill's flexible arrangement was in place, between 2.30pm – 3.30pm (the final hour of the day shift), Rheem either:
- Reallocated an employee working in another part of the manufacturing facility to replace Mr O'Neill; however this depleted that part of the operation; or
 - Required an employee working on the afternoon shift to commence one hour earlier (and, consequently, finish one hour earlier); however this caused some disruption to the balance struck at end of the afternoon shift.
72. In either case, the outcome was less than optimum from a production perspective and did not reflect the manner in which Rheem would otherwise choose to allocate its resources. It resulted in an inefficient allocation of labour. Rheem nonetheless did so for six years because, initially, it was prepared to grant the employee's request for flexibility and afterward, because it considered that it was required to continue the arrangement in light of the Commission's decision.

The Impact of the ACTU's Claim

73. Rheem finds it particularly difficult to cover absences for part-days or part-shifts. This is because it is difficult to find skilled employees who are willing to work for only part of a day/shift. It has been my experience that even if such an employee is recruited, typically they will subsequently ask for additional hours of work and if they cannot be provided by Rheem, the employee will resign.
74. In addition, it has been my experience that there are difficulties associated with hiring highly skilled employees to work in a production environment. Almost all such employees have been employed by Rheem for some time and have grown into the role by moving up the classification structure in the enterprise agreement as they have acquired additional skills over time. As a result, not all such positions can readily be covered by new employees, including labour hire employees. If the work is performed by insufficiently trained and skilled employees, the work is often of a lesser quality, throughput is often less efficient, and the need for re-work can arise due to, for instance, poor presentation.

75. Rheem devotes significant time and resources to providing new employees with workplace health and safety training. It also provides considerable training to new employees in its call centre, to ensure that they possess the necessary skills and knowledge to assist its customers.

A handwritten signature in black ink, appearing to read 'P. Ross', is enclosed within a red rectangular border. The signature is stylized with large, sweeping letters.

Peter Ross

Date: 24/10/17

[2015] FWC 4408
FAIR WORK COMMISSION

DECISION

Fair Work Act 2009

s.739 - Application to deal with a dispute

"Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)

v

Rheem Australia Pty Ltd
(C2015/734)

SENIOR DEPUTY PRESIDENT DRAKE

SYDNEY, 13 JULY 2015

Application to deal with a dispute.

[1] This decision arises from a dispute notification pursuant to clause 22 of the Rheem Rydalmere Manufacturing Enterprise Agreement 2013 (the Agreement) lodged by the Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union (AMWU) against Rheem Australia Pty Ltd (Rheem) concerning the application of Clause 12 of the Agreement.

[2] This dispute was listed for arbitration before me on 8 May 2015. Ms Lucy Saunders appeared for the AMWU. Mr Mead of the Ai Group (AiG) with the assistance of Ms van Bronswijk, appeared for Rheem. Final submissions were received on 26 May 2015.

[3] The AMWU's member, Mr Shane O'Neill, provided a statement [1](#) and gave oral evidence. The Production Manager-Heater Assembly from Rheem at Rydalmere, Mr Roy Reardan, provided a statement [2](#) and gave oral evidence.

[4] Sub clauses 22(v) and 22(vi) of the Agreement are set out below.

“v. Emphasis shall be placed on a negotiated settlement. However, if the negotiation process is exhausted without the dispute being resolved, the parties shall jointly or individually refer the matter to FWA for assistance in resolving the dispute through conciliation and arbitration.

Up to fourteen (14) days shall be allowed for all stages up to and including StaGe (iv)(v) to be finalised.

If conciliation fails to resolve the dispute, FWA is empowered to arbitrate on the matter provided that the arbitration is limited to the interpretation, application or process of implementation of a term or terms of this Agreement, and the NES.

vi. In order to allow for the peaceful resolution of grievances during the operation of this procedure, work will proceed in accordance with safe working practices, this EBA and the contract of employment and the pre-dispute situation.”

[5] Clause 12 of the Agreement is set out below:

“12. Flexibility Term

12.1 An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:

a. The agreement deals with 1 or more of the following matters:

i. Start and finish times

ii. Carer's responsibilities, and

b. The arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and

c. The arrangement is genuinely agreed to by the employer and the employee

12.2 The employer must ensure that the terms of the individual flexibility arrangement:

a. Are about permitted matters under section 172 of the Fair Work Act 2009; and

b. Are not unlawful terms under section 194 of the Fair Work Act 2009;

c. Result in the employee being better off overall than the employee would be if no arrangement was made.

12.3 The employer must ensure that the individual flexibility arrangement:

a. Is in writing; and

b. Includes the name of the employer and employee; and

c. Is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and

d. Includes details of:

i the terms of the enterprise agreement that will be varied by the arrangement; and

ii how the arrangement will vary the effect of the terms; and

iii how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and

e. States the day on which the arrangement commences.

12.4 The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

12.5 The employer or employee may terminate the individual flexibility arrangement:

a. If the employer and employee agree in writing – at any time.”

[6] To resolve this dispute it is necessary to review the interactions of Rheem, the AMWU, and its member Mr O'Neill. The most convenient method of doing that is to examine the Agreed Statement of Facts and its annexures which are set out below:

“AGREED STATEMENT OF FACTS

1. Rheem Australia Pty Ltd (Rheem) manufactures water heater units and components at its Rydalmere site.

2. Rheem operates two shifts at its Rydalmere site:

- a. Day shift: 7.00am – 3.30pm; and
 - b. Afternoon shift: 3.30pm – 12.00am.
3. Currently 182 production operators work on day shift, and 55 production operators work on afternoon shift.
 4. The majority of production operators, work in groups to either hand build water heater units or to assemble components which are incorporated into the water heater units.
 5. The Rydalmere water heater plant operates two areas of production: a Heater Assembly Line and a Cylinder Assembly Line.
 6. Approximately 135 production operators work the Heater Assembly, and 102 production operators work the Cylinder Assembly.
 7. Mr O'Neill commenced employment at Rheem in 2001 as a full-time process worker at the Rydalmere site. He indirectly reports to Roy Reardon, Production Manager Heater Assembly.
 8. Mr O'Neill lives in Oakhurst. He has a 16-year old son, who is in year 11 at Mamre Anglican School in Kemps Creek.
 9. From 2001 to 2010, Mr O'Neill worked on afternoon shift, aside from a temporary period on night shift from 13 July 2009 to 3 May 2010.
 10. On 29 June 2010, Mr O'Neill moved from afternoon shift to day shift. His hours of work were, and remain, 6.00am – 2.30pm.
 11. The variation to Mr O'Neill's hours of work was not recorded in writing.
 12. In 2010 the *Rheem Rydalmere Manufacturing Enterprise Agreement 2009* [AE873577] (the old Agreement) applied. The old Agreement incorporated the *Manufacturing and Associated Industries and Occupations Award 2010* (Award).
 13. Currently, from 6.00am to 7.00am, Mr O'Neill works in the terminal box area, hand-assembling terminal boxes from pre-made components.
 14. From 7.00am to 2.30pm, Mr O'Neill works in the Handmade Jacket Team, which manufactures the 'Jacket' component; the outer skin of the water heater. From time to time, Mr O'Neill also works on the main assembly line in the manufacture of Stella gas water heater units.
 15. On 19 March 2012, Mr Reardon wrote to Mr O'Neill. A copy of this correspondence is annexed hereto and marked 'A'.

'Shane O'Neill
Variations to Hours of work.
6.00 to 2.30pm

This extension to the previous variation to the hours of work has been granted after reviewing the request from Shane and the ability for the business to support the request.

This extension is based on the conditions that Shane has presented.

His son is 13 years old.

That the school his son attends Mamre Anglican, located at Kemp's Creek.

That it is an approx. 30 minute drive from his place of residence.

That Shane's residence is at Oakhurst.

This extension will be reviewed in January 2013. Should the conditions of this variation change during this period either party may request a review.'

16. At some time in 2013, Mr O'Neill provided a document to Rheem at Rheem's request. A copy of this document is annexed hereto and marked 'B'.

'Still need early start: Pick up son from out of zone school @3.00 to 3.15pm depending on traffic.

Mamre Anglican School

Kemps Creek

Currently in Year 9 (Jan 2013 to December 2013)'

17. On 9 October 2013, the *Rheem Rydalmere Manufacturing Enterprise Agreement 2013* [AE404477] (the current Agreement) came into operation. The current agreement incorporates the Award.

18. On 18 December 2014, Mr Reardon wrote to Mr O'Neill. A copy of this correspondence is annexed hereto and marked 'C'.

'Flexible hours – 6 am Start 2.30pm Finish

Shane O'Neill

18th of December 2014

Dear Shane

Our agreement under the flexible terms of the EBA has expired and will need to be reviewed in January 2015.

Your last review and agreement was dated 2012 and was due for review last year, unfortunately I missed the review in my calendar.

Your claim for starting early was based on the need to pick your son up from an out of zone school and due to his age you were reluctant for him to travel on public transport, at the time you stated he was 12 years old.

That the school was in Kemps Creek (Mamre Anglican School) and you live in Oakhurst approx.27 kilometres travel.

I accepted your requested (sic) based on the age of your son at the time and the fact that I had a production supervisor and sufficient work available to support your request.

Two years on your son would be close to 15 years old and in year 11 this year.

Please advise whether you wish (sic) me to reconsider your original request and if so on what grounds.

Please advise by (sic) the 16th of January 2015."

19. On 19 December 2014, Mr O'Neill responded to Mr Reardon. A copy of this response is annexed hereto and marked 'D'.

'Shane O'Neill

Bundy (122)

Heater Day Shift

Request for continuation of early start for 2015 to extend for another year.

S O'Neill
19.12.2014
16 years of age
Year 11'

20. On 12 January 2015, Mr Reardon wrote to Mr O'Neill. A copy of this correspondence is annexed hereto and marked 'E'.

'Flexible hours – 6am Start 2.30pm Finish

Shane O'Neill
12th January 2015

Dear Shane

With regards (sic) my letter 18th of December 2014 and response dated 19th December 2014.

Your response is a little short on details I asked that you confirm that your son is still attending Mamre Anglican School and the age of your son.

Please confirmation (sic) that your son still attends Mamre Anglican School.

You have confirmed that your son is now 16 years of age.

Prior arrangements were agreed based on these two condictions (sic) and there was suitable work available for you and supervision was available.

The working conditions and supervision have changed and it is unlikely that alternative hours of work are available unless you can satisfy me of the need to extend our arrangement.

Please advise be (sic) the 16th of January 2015.'

21. On 20 January 2015, Mr Reardon wrote to Mr O'Neill. A copy of this correspondence is annexed hereto and marked 'F'.

'3 – Flexible hours – 6am start 2.30pm finish

Shane O'Neill
20th January 2015

Dear Shane

With regards (sic) the previous agreement to allow you to commence work at 6.00am and finish at 2.30pm under the Flexibility Term of the Rheem EBA.

Shane I have considered the two elements that made up the original request, your personal situation and the requirement to support additional production.

The volumes have dropped significantly since the original agreement, the additional hour is no longer required or is there any other alternative meaningful work I can offer you.

I have also consider (sic) your grounds for the original request four years ago, at that stage your son was 11 years old and we agreed with you that he was quite young to be catching public transport to an out of zone school, as your son is 16 years of age and in 11 year it is not unreasonable for him to either catch public transport or wait for you to pick him up after school.

Therefore I will not be able to extend our agreement beyond the end of January 2015, you will be required to resume normal day shift hours of 7.00am to 3.20pm, Monday the 2nd of

February 2015.'

22. In February 2015, Mr O'Neill put the matter into dispute in accordance with the disputes settlement procedure contained in clause 22 of the current Agreement.

23. On 15 February 2015, Rheem General Manager – Human Resources Peter Ross wrote to Mr O'Neill. A copy of this correspondence is annexed hereto and marked 'G'.

'18th February 2015

Dear Shane,

Re: Request for early start & finish times

Following our discussions on Friday, 12th February 2015, I confirm the Company's position.

In 2010, when we reduced the size of the afternoon shift, it was agreed between you and Roy Reardon that you would start and finish day shift 1 hour earlier. The primary purpose of this arrangement was so that you could pick up your son from school as he attended school outside "the zone". At the time, your son was 13 years of age.

As discussed with you and as communicated in writing on 19 March 2012, this arrangement would be reviewed annually according to the production requirements and your individual needs. Roy conducted a review of the viability of this arrangement in 2013 and 2014 and each year concluded that the arrangement could continue as it did not substantially disrupt production requirements.

This year, Roy has conducted the annual review of the viability of this arrangement against the needs of production requirements. As you acknowledged, the volume of terminal boxes has halved over the past 4 years since it was arranged for you to supplement production by 1 hour (by starting at 6.00am). Roy concluded that at current volumes, he doesn't need any extra production before the normal Operator arrives at 7.00am. Given this situation, Roy advised you that a further extension would now disrupt production and hence should not continue.

You appealed this decision and I met with you to assess the personal impact. We have considered your request that this arrangement continue, so that you can pick up your son from school. We have considered the personal impacts of this decision against the production requirements of the Rydalmere Factory. We have formed the view that because your son is now 16, utilising public transport to and from school is a viable option and that to continue this arrangement would cause unjustifiable hardship on the business.

I acknowledge that whilst you initially volunteered to transfer to day shift based on being able to have different hours, a 'forced' transfer was inevitable given that over 50 employees have been instructed to do so since then.

I considered your claim that under the Flexibility Clause in the EBA that the arrangement can only be terminated if both parties agree in writing. The agreement between you and Roy, was not an individual Flexibility arrangement as defined in clause 12 of the EBA, as such Rheem can require you to return to normal start and finish days of the day shift of the Rydalmere Factory.

We gave you 1 week's notice to revert to standard hours and can extend this to allow you to progress the dispute with the Union Organiser.

Peter Ross
GM – HR'

24. On 13 March 2015, the AMWU wrote to Rheem on Mr O'Neill's behalf. A copy of this correspondence is annexed hereto and marked 'H'.

'Dear Peter

Re: Shane O'Neill – flexibility arrangement

I write in relation to your correspondence to Mr O'Neill of 18 February 2015. The AMWU understands that Rheem wishes to terminate the arrangement and change Mr O'Neill's hours to 7am – 3.30pm.

As you are aware, cl.13 of the Rheem Rydalmere Manufacturing Enterprise Agreement 2013 provides for individual flexibility arrangements to be made relating to hours of work and carer's responsibilities. These arrangements, once made, can only be terminated by agreement. The previous agreement contained a similar clause.

The AMWU is of the view that the agreement about Mr O'Neill's start and finish times is a flexibility arrangement under cl.13 of the agreement. It was expressly discussed as a flexibility arrangement when made, and this clause is the only mechanism under which arrangements of this nature can be facilitated under the agreement.

In any event, it is unreasonable for Rheem to require Mr O'Neill to change his start and finish times. It will mean that Mr O'Neill's son will be required to catch two buses each way to and from school, leaving home at 5.00am and returning at approximately 5.30pm. Mr O'Neill is, reasonably, concerned about his son's safety, general well-being and the detrimental impact this additional travel time will have on his studies in his final two years of school.

Accordingly, the AMWU requests that Rheem withdraw its request for Mr O'Neill to change his start and finish times. If this does not occur, the AMWU will escalate the dispute in accordance with the dispute resolution clause in the Agreement.

Should you wish to discuss this matter further, please note my contact details below.'

25. On 24 March 2015, Mr Ross wrote to the AMWU. A copy of this correspondence is annexed hereto and marked 'I'.

'In response to your letter dated 13th March 2015, we write to advise that unfortunately we cannot withdraw our requirement that Shane O'Neill return to standard hours of 7.00am to 3.30pm.

In 2010, it was agreed between Shane and Rheem that his working hours would be varied to 6.00am to 2.30pm, to enable Shane to pick up his son from school. This arrangement was informal and not documented. However, there was a discussion with Shane that Rheem would review the arrangement on an annual basis. Annually, we have been able to accommodate this arrangement as there has been work for Shane to do from 6.00am to 7.00am before production commences for the day. However, due (sic) a recent drop in volumes, there is minimal work for Shane to do from 6.00am to 7.00am. Shane is aware of this.

Given the nature of the production line, having an Operator's hours of work "out of synch" with all the others is disruptive to productivity.

Whilst we have taken into account Shane's comments regarding the personal impact this decision will have on him and his family, unfortunately we cannot continue this arrangement due to the impact it has on production.

We disagree that this arrangement was an individual flexibility arrangement as contemplated by clause 12 of the enterprise agreement. It was an informal arrangement between Shane and

Rheem, with the intention that it would be reviewed on an annual basis subject to the needs of the business. It was never agreed that such an arrangement would continue until Shane's son finished high school.'

[7] I have considered the obligations arising pursuant to clause 12 Flexibility Term. In relation to the alleged agreement between the parties I make the following findings.

- Clause 12.1 is complied with. The agreement deals with start and finish times and Carer's responsibilities, meets the genuine needs of the employer and employee in relation to those issues and was genuinely agreed to by the parties.
- Clause 12.2 is complied with. The terms of the agreement involve permitted matters and are not unlawful. The employee is better off overall than he would have been had the agreement not been made.
- There is no single document that represents the individual flexibility arrangement under consideration. As an examination of the Agreed Facts demonstrates, the arrangement was the subject of correspondence between the parties which settled the terms of the arrangement. I am satisfied that the arrangement is in writing in terms that comply with the obligations pursuant to Clause 12.3 of the Agreement.
- Clause 12.4 is complied with since the correspondence between the parties satisfies the obligation.
- Clause 12.5 sets out the basis on which the arrangement may be terminated. It can be terminated at any time in writing by agreement. In these circumstances there is no agreement.

Conclusion

[8] Pursuant to clause 12.5 this arrangement can only come to an end by agreement in writing. This has not taken place. The arrangement can therefore only come to an end at the expiration of its term. The arrangement is limited to the period of Mr O'Neill's son's attendance at the out of area school where he is currently in Year 11. It will cease on its own terms at the conclusion of his schooling in Year 12.



SENIOR DEPUTY PRESIDENT

[1](#) Exhibit AMWU 2

[2](#) Exhibit Rheem 1

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<Price code D, PR568906>



Rheem Australia Pty Ltd

ABN 21 098 823 511

Shane O'Neill

18th February 2015

Dear Shane,

Re: Request for early start & finish times

Following our discussions on Friday, 12th February 2015, I confirm the Company's position.

In 2010, when we reduced the size of the afternoon shift, it was agreed between you and Roy Reardon that you would start and finish day shift 1 hour earlier. The primary purpose of this arrangement was so that you could pick up your son from school as he attended school outside "the zone". At the time, your son was 13 years of age.

As discussed with you and as communicated in writing on 19 March 2012, this arrangement would be reviewed annually according to the production requirements and your individual needs. Roy conducted a review of the viability of this arrangement in 2013 and 2014 and each year concluded that the arrangement could continue as it did not substantially disrupt production requirements.

This year, Roy has conducted the annual review of the viability of this arrangement against the needs of production requirements. As you acknowledged, the volume of terminal boxes has halved over the past 4 years since it was arranged for you to supplement production by 1 hour (by starting at 6.00 am). Roy concluded that at current volumes, he doesn't need any extra production before the normal Operator arrives at 7.00 am. Given this situation, Roy advised you that a further extension would now disrupt production and hence should not continue.

You appealed this decision and I met with you to assess the personal impact. We have considered your request that this arrangement continue, so that you can pick up your son from school. We have considered the personal impacts of this decision against the production requirements of the Rydalmere Factory. We have formed the view that because your son is now 16, utilising public transport to and from school is a viable option and that to continue this arrangement would cause unjustifiable hardship on the business.

I acknowledge that whilst you initially volunteered to transfer to day shift based on being able to have different hours, a 'forced' transfer was inevitable given that over 50 employees have been instructed to do so since then.

I considered your claim that under the Flexibility Clause in the EBA that the arrangement can only be terminated if both parties agree in writing. The agreement between you and Roy, was not an Individual Flexibility arrangement as defined in clause 12 of the EBA, as such Rheem can require you to return to normal start and finish days of the day shift of the Rydalmere Factory.

We gave you 1 week's notice to revert to standard hours and can extend this to allow you to progress the dispute with the Union Organiser.

Peter Ross
GM - HR



Solahart

SOLAHART SPECIALIST

Raypak

VULCAN

ACCENT

Paloma

EVERHOT

AquaMAX