

IN THE FAIR WORK COMMISSION

Matter No: AM2016/15

s.156 4 yearly review of modern awards

Plain language re-drafting – annual leave loading and shutdown provisions

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia Submissions in respect of Annual Leave Loading and Shutdown Provisions

Introduction

1. On 28 February 2018 the Full Bench of the Fair Work Commission (**FWC**) issued a Statement (**Statement**)¹ inviting parties to file submissions on a range of issues before the Plain Language Full Bench. This submission is in response to paragraphs [71] and [84] in respect of the proposed re-drafting of the annual leave loading provision and the shutdown provision, respectively.
2. The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (**CEPU**) supports the following submissions in response to the Statement:
 - a. CFMMEU submissions dated 22 March 2019;²
 - b. AWU submissions dated 25 March 2019;³ and
 - c. AMWU submissions dated 27 March 2019.⁴

Annual Leave Loading

3. The CEPU has an interest in several modern awards listed in Attachment B. Attachment B concerns, *inter alia*, the following modern awards:
 - *Electrical Power Industry Award 2010; and*

¹ [2019] FWCFB 1255.

² <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201615-sub-cfmmeu-220319.pdf>.

³ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201615-sub-awu-250319.pdf>.

⁴ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201815-17-sub-draftsch-amwu-270319.pdf>

- *Electrical, Electronic and Communications Contracting Award 2010.*

(collectively, ***the Awards***)

4. The CEPU opposes the proposed annual leave loading model clause, as outlined in paragraph [67] of the Statement, for the similar reasons outlined in submissions listed in paragraph 2 above.
5. As identified in paragraph [68] of the Statement, the CEPU agrees that the proposed model annual leave loading clause is confusing and may have undesirable implications on users understanding and applying the provision.

Shutdown Provisions

6. The CEPU has an interest in several modern awards listed in Attachment C. Attachment C concerns, *inter alia*, the following modern awards:
 - *Electrical Power Industry Award 2010; and*
 - *Electrical, Electronic and Communications Contracting Award 2010;*

(collectively, ***the Awards***)

7. The CEPU does not oppose the insertion of the model shutdown clause provided in Attachment D into the *Electrical Power Industry Award*. The current *Electrical Power Industry Award* does not make sufficient provision for shutdown.⁵
8. However, CEPU expresses a concern with the model shutdown clause being inserted into the *Electrical, Electronic and Communications Contracting Award*. Clause 28.5 of the *Electrical, Electronic and Communications Contracting Award* currently provides to the following effect in respect of shutdown:
 - a. the employer is to provide 2 months' notice in writing to the employee;⁶
 - b. that such shutdown would coincide with the Christmas - New Year period;⁷
 - c. that unpaid leave taken does not break service of an employee;⁸ and

⁵ See cl27.8 of the *Electrical Power Industry Award 2010*.

⁶ See cl28.5(a) of the *Electrical, Electronic and Communications Contracting Award 2010*.

⁷ See cl28.5(a) of the *Electrical, Electronic and Communications Contracting Award 2010*.

⁸ See cl28.5(c) of the *Electrical, Electronic and Communications Contracting Award 2010*.

- d. that shutdown is defined as a period of “not less than two consecutive weeks and not more than four consecutive weeks, inclusive of public holidays”.⁹
9. The model shutdown clause, when compared to the shutdown provision under the current *Electrical, Electronic and Communications Contracting Award*, would leave those covered by this Award worse off. The model shutdown clause provides:
 - a. a shorter notice period of 28 days written notice by the employer;
 - b. a broad spectrum when the shutdown can occur (i.e. not specific to Christmas-New Year Period);
 - c. no provision for identifying that unpaid leave taken during shut down does not break service of an employee; and
 - d. no definition of a shutdown to cap the duration of shutdown period.
10. Therefore, the CEPU opposes the variation of the *Electrical, Electronic and Communications Contracting Award* to include the model shutdown clause.

END

28 March 2019

⁹ See cl28.5(e) of the *Electrical, Electronic and Communications Contracting Award 2010*.