



**MASTER BUILDERS  
AUSTRALIA**

24 April 2018

Justice IJK Ross AO  
President  
Fair Work Commission  
Level 4, 11 Exhibition Street  
**MELBOURNE VIC 3000**

via: [chambers.ross.j@fwc.gov.au](mailto:chambers.ross.j@fwc.gov.au)  
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Dear President,

**RE: AM2016/15 - 4 YEARLY AWARD REVIEW – PLAIN LANGUAGE RE-DRAFTING**

This correspondence is filed with reference to the Commission's Statement of 28 February 2019<sup>1</sup> ('the Statement') and deals both with matters raised therein and in reply to the submissions of the CFMMEU<sup>2</sup> with respect to same.

**Shutdown provisions**

Master Builders submit that the existing provisions within the On-Site Award (at clause 38.3) do not require alteration and should remain undisturbed. The basis for this position is that the provisions have existed for many years, are well understood by the building and construction industry, and there is no evidence of confusion or problems in terms of application.

The question of whether or not unpaid leave taken due to a shutdown counts as service is determined by reference to clause 3 of the On-Site Award which states:

*'continuous service means the period of service of an employee notwithstanding the employee's absence from work for any of the following reasons:*

- *annual leave, personal leave or parental leave;*
- *illness or accident up to a maximum of four weeks after the expiration of paid sick leave;*
- *jury service;*
- *injury received during the course of employment and up to a maximum of 26 weeks for which the employee received worker's compensation;*
- *where called up for military service for up to three months in any qualifying period;*
- *long service leave; and*
- *any reason satisfactory to the employer, provided the employee has informed the employer within 24 hours of the time when the employee was due to attend for work, or as soon as practicable thereafter, of the reason for the absence and probable duration'*

<sup>1</sup> [2019] FWCFB 1255

<sup>2</sup> Submission of the Construction, Forestry, Maritime, Mining and Energy Union (Construction & General Division) on matters arising from the Statement [2019] FWCFB 1255

We submit this provision denotes circumstances in which authorised absences are to be included as an employee's service with the employer and this would include unpaid leave taken in shutdown circumstances.

We further submit that the CFMMEU's position that unpaid leave taken during a shutdown period counts as service is based on a flawed assumption and that this rationale should be rejected. The assumption that this entitlement is expressly provided for within the Mobile Crane and Joinery Award and therefore all other awards which contain annual close down provisions (including the On-site Award) should be treated the same even if they are silent on the matter is simply incorrect.<sup>3</sup>

The above position has been advanced despite the CFMMEU having stated in its own submission that the shutdown provisions contained within the Construction Awards have been in existence for many years, are well understood and should not be disturbed without any evidence they are not working.<sup>4</sup>

#### Other Matters within the Statement

We draw to the Commission's attention the subsequent Statement in AM2014/1<sup>5</sup> wherein Your Honour noted that the Construction Awards contain a significant number of references to matters which remain under consideration by both the Construction Awards Full Bench and others dealing with common issue matters.<sup>6</sup>

As a consequence, the Commission stated that separate directions regarding the filing of submissions on the exposure drafts for the Construction Awards would be issued when AM2016/23 has been finalised.<sup>7</sup>

Master Builders would also seek that, with respect to the Construction Awards, Master Builders be given the opportunity to make comment until after the finalisation of AM2016/23.

Should there be any further information required, or if the Commission requires any additional material, please do not hesitate to contact the undersigned on 02 6202 8888.

Yours sincerely,



**MASTER BUILDERS AUSTRALIA**

Rebecca Sostarko

Senior Adviser Safety, Contracts, Workplace Relations

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<sup>3</sup> *Ibid at para [17]*

<sup>4</sup> *Ibid at para [16]*

<sup>5</sup> [2019] FWC 2271

<sup>6</sup> *Ibid at para [13]*

<sup>7</sup> *Ibid at para [14]*