

From: Richard Calver
Sent: Monday, 30 January 2017 12:28 PM
To: Chambers - Hamberger SDP
Cc: AMOD
Subject: AM2016/32 - 4 yearly review of modern awards - Transport Industry Awards

Dear Associate

We refer to the email correspondence dated 21 January 2017 from Ms Carr. In that email Ms Carr indicates the TWU view that:

“We do not agree with the claims by NatRoad and AIG that they would suffer prejudice from the admission of the above statements. The TWU initially sought to make 8 variations to the two Road Transport Awards. We now only press 5 of the 8 variations as just advised to the FWC.”

In fact NatRoad has been prejudiced in relation to the change in the case to be answered. In compiling a case against the foreshadowed TWU claims, we commissioned a quantitative survey. This was done at considerable expense. The quantitative survey was already designed and at a point where amendments to reflect the actual case to be answered could not be made at the time the final submissions and draft determinations were received on 19 January 2017. The principal survey proceeded on the basis that the case to answer was reflected in the draft determinations ultimately lodged on 21 December 2016. We have been prejudiced in respect of the costs for the survey covering additional matters that now appear irrelevant (two up driving and passenger costs and the manner in which the pick-up and drop off allowance is expressed) and also in the timing of the design of qualitative research commissioned for these proceedings. The delay associated with the preparation of materials and the additional costs of modifying the original materials was a cost incurred through the TWU’s delays. Accordingly, the assertions of the TWU about prejudice are not correct and the survey material before the Commission will, unfortunately, contain material that is not confined to the variations ultimately pursued.

We ask that these matters be considered when the Full Bench assesses whether to allow the TWU to rely on witness statements that were lodged beyond the date established by the Amended Directions.

Regards

Richard Calver
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