

IN THE FAIR WORK COMMISSION

Matter: AM2016/8

4 yearly review of modern awards – Payment of wages



Submissions of the AMWU

AM2016/8

4 Yearly Review of Modern Awards

Payment of Wages

About the Australian Manufacturing Workers' Union

The Australian Manufacturing Workers' Union (AMWU) is registered as the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union". The AMWU represents members working across major sectors of the Australian economy, including in the manufacturing sectors of vehicle building and parts supply, engineering, printing and paper products and food manufacture. Our members are engaged in maintenance services work across all industry sectors. We cover many employees throughout the resources sector, mining, aviation, aerospace and building and construction industries. We also cover members in the technical and supervisory occupations across diverse industries including food technology and construction. The AMWU has members at all skills and classifications from entry level to Professionals holding degrees.

The AMWU's purpose is to improve member's entitlements and conditions at work, including supporting wage increases, reasonable and social hours of work and protecting minimum award standards. In its history the union has campaigned for many employee entitlements that are now a feature of Australian workplaces, including occupational health and safety protections, annual leave, long service leave, paid public holidays, parental leave, penalty and overtime rates and loadings, and superannuation.

Lodged by:

Paris Lettau
National Industrial Officer

Phone: 0419 286 145

Address for service:

Level 3, 251 Queensberry
Street
Carlton VIC 3053

Email: paris.lettau@amwu.org.au

25 September 2019

The Hon. Justice Ross
President
Fair Work Commission
level 4/11 Exhibition St
Melbourne VIC 3000

**4 Yearly Review of Modern Awards
AM2016/8 – Payment of Wages**

- [1] The Australian Manufacturing Workers' Union (AMWU) makes the following submissions pursuant to the recent Full Bench decisions of the Fair Work Commission (FWC) on 26 July 2019 ([2019] FWCFB5146 and 23 August 2019 [2019] FWCFB 5868 in relation to the above matter.
- [2] We also refer to earlier written submissions filed by the AMWU [7 September 2018](#) and [21 September 2018](#) on this matter in relation to the *Vehicle Manufacturing, Repair Services and Retail Award 2010, (the Vehicle Award)* that these submissions reiterate.
- [3] The Full Bench decision of 26 July 2019 set out the model term for payment of wages on termination of employment. Paragraph [6] of this decision identified a total of 33 modern awards that remained outstanding and were yet to be dealt with. **Attachment A** of this decision identified the Vehicle Award as one of those 33 awards.
- [4] Paragraph [7] of the 26 July 2019 Full Bench decision confirmed that submissions were received from the AMWU amongst other submissions. Paragraph [8] identified the Vehicle Award as one of nine modern awards with award specific issues.
- [5] The Full Bench decision of 23 August 2019 confirmed in paragraph [24] that the Vehicle Award was one of nine awards that contained award specific issues that required further consideration by the Full Bench. The Full Bench went on to provide directions to interested parties in dealing with eight of the nine awards. There were no directions issued in relation to the Vehicle Award.
- [6] At paragraph [23], it is provided that submissions an evidence in reply are to be filed by 4pm on 25 September 2019. The AMWU files this submission in relation to the Vehicle Award, following discussions with the Motor Trades Organisations (MTO).

THE VEHICLE AWARD

- [7] The current Payment of Wages on Termination clause is contained in clause 24.4 of the Vehicle Award.

[8] In a Full Bench decision dated 17 July 2018,¹ the Full Bench provided a model Payment of Wages on Termination clause. It was proposed that the model term be inserted into all awards, save for a number of awards which were to be reviewed on a case by case basis.² The Vehicle Award was identified as one of the awards that would be reviewed on a case by case basis.

THE AMWU POSITION – SUMMARY

[9] It is the AMWU's view that it would be appropriate to make a number of amendments to the model term to keep the provision in line with the current conditions contained in clause 24.4 of the Vehicle Award, which are consistent with common practice within the automotive industry.

AMWU PROPOSED AMENDMENTS TO THE MODEL TERM

[10] Consistent with its 7 September 2018 submission, the AMWU's proposed amendment to the model terms is as follows:

X. Payment on termination of employment

- (a) The employer must pay an employee no later than **2** business days after the day on which the employee's employment terminates:
 - (i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of the termination; and
 - (ii) all other amounts that are due to the employee under this award and the NES.
- (b) Where a person principally employed to perform vehicle sales related duties is entitled to commission payments at a later date than the date of termination, those payments will be payable within 7 days of becoming applicable.
- (c) Where an employee abandons his or her employment or the employee's employment is terminated without notice for serious and wilful misconduct the employer may pay the employee the wages and other amounts due set out in paragraph (a) within 7 business days of the termination.
- (d) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.
- (e) An employer may deduct from monies due to an employee such amount as is authorised in writing by the employee for a lawful purpose specified in the authority.

Note 1: (insert as per model term)

Note 2: (insert as per model term)

¹ [2018]FWCFB 3566

² [2018]FWCFB 3566 , [156]

Note 3: (insert as per model term).

THE AMWU'S REASONS FOR THE PROPOSED AMENDMENTS TO THE MODEL TERM

Clause X(a)

- [11] The amendment to clause X(a) changes the model term from 'the employer must pay an employee no later than 7 days after the day on which the employee's employment terminates', to a requirement that the employer pay the employee **within 2 days** of termination.
- [12] This amendment is consistent with the current Payment of Wages on Termination clause within the Vehicle Award (see clause 24.4(a)). The AMWU submits that they are reflective of current practice and therefore justifiable. The AMWU is not aware of any evidence presented to the contrary.
- [13] The AMWU is of the view that the current practice of payment within 2 business days has caused no issues for employers, and is suitably qualified by the exceptions set out in clause X(c) which grants employers up to 7 days in circumstances where they may not be prepared to pay employees within the 2 business day time frame.
- [14] Further, the current conditions under the Vehicle Award is more advantageous than the model term, particularly for employees whose employment is terminated and who may face the adverse consequences of unemployment. These employees currently have the benefit of being paid expeditiously. Without a cogent and evidence-based reason for departing from the well-functioning status quo arrangements under the Vehicle Award, these employees should not suffer a detriment.

Clause X(b)

- [15] The AMWU supports the MTO's general position to amend the Model Clause to address the issue of commission payments for persons engaged in vehicle sales related duties, which may become payable after termination under clause 44.9(vi) of the Vehicle Award.
- [16] However, the AMWU submits that this amendment should be made in different terms to those proposed by the MTO.
- [17] Clauses 44.9(vi) and (vii) of the Vehicle Award provides that:

[...]

(vi) where the employment of a vehicle salesperson terminates prior to the delivery of a vehicle for which they would otherwise be entitled to commission, provided the vehicle is delivered within three months of the termination they will be paid two thirds of the commission they would otherwise have received;

(vii) where the employment of a vehicle salesperson terminates, the commission to which the vehicle salesperson is entitled in respect of vehicles which have already been delivered will be paid to them within 14 days of such termination;
and

[...]

- [18] Under clause 44.9(vi), commission payments may not become due until up to 3-months after terminations.
- [19] As is to be submitted by the MTO, the requirement to pay accrued wages and all other amounts due to the employee within 2 days of termination will present difficulties in relation to the payment of commission payments for persons engaged in vehicle sales related duties under the Vehicle award.
- [20] Accordingly, the AMWU submits that commission payments due under clause 44.9(vi) should be excepted from the rule that payment is to be made within 2 days of termination.
- [21] However, the AMWU's also submits that any clause that deals with an exception for commission payments for a vehicle salesperson whose employment is terminated prior to the delivery of a vehicle, should still specify a timeframe within which such a commission must be paid once it is applicable (i.e., from the date of delivery of the vehicle, where it is delivered within three months of the termination).
- [22] The AMWU's position is that the timeframe should reflect the 7-day timeframe provided for in all other exceptions, and which is also consistent with the model term.
- [23] The AMWU submits that while clause 44.9(vi) provides that commissions are payable within 14 days **of termination** for vehicles already delivered at the time of termination, the 14-day timeframe is inappropriate in the context of a commission payment that becomes due within 3-months **after termination**. A 14-day timeframe is inappropriate because the vehicle for which a commission is payable may not be delivered for a period of up to 3-months after termination, well beyond the period of 14-days after termination that is contemplated by clause 44.9(vi).
- [24] For this reason, and for the added reason of consistency throughout the payment of wages clause, the AMWU submits that commission payments, once they become due after the date of termination, should be payable within a 7-day period.

Clause X(c)

- [25] The inclusion of clause X(c) provides for an exception to the requirement to pay wages within 2 days of termination. This exception provides that where an employee abandons his or her employment or the employee's employment is terminated without notice for serious and wilful misconduct, the employer has up to 7 days to pay the employee their entitlements.

Amendments to clause X(e)

- [26] Clause X(e) reflects the AMWU's supports the MTO's position to retain the current provision at clause 24.4(b) of the Vehicle Award regarding authorised deductions.

END.