

FAIR WORK COMMISSION

Matter No. AM2017/42

**FOUR YEARLY REVIEW OF MODERN AWARDS – PENALTY RATES –
APPLICATION BY RESTAURANT AND CATERING INDUSTRIAL**

**SUBMISSION OF UNITED VOICE ON THE MENTION OF
THE REHEARING OF THE RESTAURANT INDUSTRY AWARD APPLICATION**

1. On 23 February 2017, the Fair Work Commission (**FWC**) handed down in its decision in *Four Yearly Review of Modern Awards – Penalty Rates* [2017] FWCFB 1001 (***Penalty Rates Decision***). The FWC found that Restaurant and Catering Industrial (**RCI**) had failed to make out a merit case in support of its application that Sunday penalty rates should be reduced for workers employed under the *Restaurant Industry Award 2010* (the ***Restaurant Award***). The FWC then proposed, relevantly, that RCI consider whether it wished to re-litigate its application.
2. In submissions dated 24 March 2017 to the Penalty Rates Full Bench, United Voice raised a preliminary objection to the prospect of RCI re-litigating its case before the FWC (**the threshold issue**).
3. On 28 July 2017, RCI filed an application (Form F1) to vary the *Restaurant Award* to reduce weekend penalty rates by 25 per cent on Sundays for permanent employees and for casual employees at Levels 3 to 6.
4. In a Statement dated 4 August 2017 ([2017] FWC 4109), Ross J stated that it would be a matter for the Full Bench in AM2017/42 to determine whether RCI is to be provided with a further opportunity to litigate its claim.
5. In its application, RCI proposed that the matter be listed for directions regarding the threshold issue, and that the directions include a timetable for filing and serving of submissions by RCI, and listed for hearing on one day's estimate.
6. United Voice agrees that directions should be made dealing with the threshold issue. United Voice propose that the directions be made in anticipation of a hearing on the threshold issue as follows:

1. United Voice to file submissions on the threshold issue by Friday 22 September 2017.
 2. RCI to file submissions on the threshold issue by Friday 20 October 2017.
 3. United Voice to file submissions in reply by Friday 3 November 2017.
 4. The matter be set down for hearing on an estimate of two days (subject to the number of parties wishing to be heard) on a date in November 2017 after 3 November 2017.
7. Apart from the hearing and determination of the threshold issue, the application by RCI should otherwise be stayed pending the hearing and determination of the judicial review proceeding. A decision to vary the *Restaurant Award* should not be made whilst its terms are currently under judicial review (which is to be heard 26 – 28 September 2017). Further, the judicial review proceedings will inform the proper approach to be taken by this Full Bench

24 August 2017

C W Dowling
K Burke
Counsel for United Voice