

## IN THE FAIR WORK COMMISSION

### FOUR YEARLY REVIEW OF MODERN AWARDS

**Restaurant Industry Award 2010**  
**Matter No. AM2017/57**

**Hospitality Industry (General) Award 2010**  
**Matter No. AM2017/59**

### RESTAURANT AND CATERING INDUSTRIAL'S (RCI) RESPONSE TO UNITED VOICE SUBMISSIONS

1. These submissions are made in response to submissions filed by United Voice on 24 July 2018 in relation to any outstanding substantive claims relating to the four-yearly review of the *Hospitality Industry (General) Award 2010* ('**the Hospitality Award**') and the *Restaurant Industry Award 2010* ('**the Restaurant Award**').
2. We respond to each of the substantive claims in order of which they are made by United Voice as follows.

#### **Clause 21.1(h) working away from usual place of work – Hospitality Award**

3. RCI disagrees with a number of United Voice's submissions in respect of clause 21.1(h) (or clause 24.10(c) of the Plain Language Exposure Draft of the Hospitality Award).
4. Clause 21.1(h) of the Hospitality Award requires an employer to pay the employee an amount equal to the cost of fares incurred by the employee in travelling from the employee's usual place of work to the new place of work. However, the provision permits an employer to recover an amount paid to the employee if the employee leaves their employment or is dismissed for misconduct within three months of receiving the payment.
5. The provision does not explicitly stipulate that the employer is entitled to deduct this amount from an amount payable to the employee, simply that the employer may recover that amount.
6. United Voice make a number of submissions challenging the operation of clause 21.1(h) on the basis that the clause permits deductions from amounts payable to employees. Whilst RCI does not agree with all of these submissions (see further below), RCI notes that United Voice have made no submissions which challenge the validity of the clause in so far as it allows an employer to recover an amount paid to the employee generally.

7. RCI therefore submits that even if the Commission agrees with United Voice's submissions in respect of the operation of the law regarding deductions from amounts payable to employees, this should not affect the validity of clause 21.1(h).
8. Turning to United Voice's specific submissions in respect of deductions from amounts payable to employees, United Voice submit that clause 21.1(h) is problematic because of the operation of section 326 of the *Fair Work Act 2009* (Cth) ('**the Act**').
9. RCI notes that section 326(1) of the Act provides that a modern award has no effect to the extent that it provides for a deduction from an amount that is payable to an employee in relation to the performance of work, if the deduction is: (a) directly or indirectly for the benefit of the employer or a party related to the employer; and (b) unreasonable in the circumstances.
10. Section 326(2) of the Act provides that the regulations may prescribe circumstances in which a deduction or payment referred to in subsection (1) is or is not reasonable. RCI notes that the circumstances outlined in Regulation 2.12 of the *Fair Work Regulations 2009* (Cth) ('**the Regulations**') are non-exhaustive.
11. On the question of reasonableness, RCI's view is that it is not reasonable or expected that employers cover the cost of travel to and from work for its employees. Clause 21.1(h) (or clause 24.10(c) of the Plain Language Exposure Draft of the Hospitality Award) provides an employee a benefit of being reimbursed for travel costs where employees work more than 80km away from their usual place of work. RCI submits that it is not unreasonable for an employer to be entitled to recover these costs if the employee subsequently leaves employment within a short time of receiving such a benefit.
12. RCI also disagrees with United Voice's submission that clause 21.1(h) is problematic in light of section 139 of the Act. Section 139(g) states that modern awards may include terms about matters including "(g) allowances, including for any of the following: (i) expenses incurred in the course of employment;". RCI considers it is implicit that this means modern awards can include terms that deal with all matters relating to allowances, including when they may be recovered (or deducted) from amounts paid to an employee.
13. This view is supported by the operation of section 326 of the Act which deals with when deductions from amounts payable to employees have no effect. Clearly then, the Act envisages that modern awards may, in some circumstances, include terms dealing with deductions from amounts payable to employees.

#### **Increase in Tool Allowance – Hospitality Award and Restaurant Award**

14. RCI opposes the claim to increase the amount of the tool allowance in clause 21.1(b)(i) of the Hospitality Award and clause 24.3(a) of the Restaurant Award. United Voice have not advanced any evidence to demonstrate that employees are being disadvantaged by the current amount of the tool allowance.

15. It is also relevant that clause 21.1(b)(x) of the Hospitality Award and clause 24.3(i) of the Restaurant Award stipulate that where the employer requires an employee to provide and use certain tools, the employer must reimburse the employee for the costs of purchasing such equipment. Employees are therefore reimbursed in full for any costs related to purchasing the tools and also receive a separate tool allowance for having to use these tools in the course of their employment.
16. RCI submits that the clause confers a separate benefit to the employee in addition to receiving a tool allowance and this should be taken into consideration by the Commission when determining the claim to increase the tool allowance.

#### **CPI Factor – Hospitality Award**

17. RCI does not object to the CPI factor for tool allowances in the Hospitality Award being amended so that it is consistent with the Restaurant Award, and the tool allowance is indexed by reference to the CPI for *“tools and equipment for house and garden component of the household appliance, utensils and tools sub-group”*.

#### **Inclusion of apprentices in the Hospitality Award tool allowance**

18. RCI opposes the claim to vary the Hospitality Award tool allowance at clause 21.1(b) to include provision for “apprentices” in addition to cooks. United Voice have not advanced any evidence to justify this proposed variation and have not demonstrated any disadvantage currently arising to apprentices.

#### **Inclusion of cooks in the Restaurant Award tool allowance**

19. RCI opposes the claim to vary the Restaurant Award tool allowance at clause 24.3(a) to include provision for “cooks” in addition to apprentices. United Voice have not advanced any evidence to justify this proposed variation and have not demonstrated any disadvantage currently arising to cooks.

#### **Restaurant and Catering Industrial**

18 September 2018