

BEFORE THE FAIR WORK COMMISSION

Fair Work Act 2009

Title of Matter: 4 Yearly Review of Modern Awards
Electrical, Electronic and Communications Contracting Award 2010

Section: 156 – Variation of a modern award to achieve the modern award objective

Matter Number: AM2019/17

Member DP Clancy

NATIONAL ELECTRICAL AND COMMUNICATIONS ASSOCIATION SUBMISSIONS IN RESPONSE TO REPORT TO FULL BENCH OF 1 JUNE 2020.

Background

1. The National Electrical & Communications Association (NECA) is a registered organisation under the Fair Work (Registered Organisations) Act 2009 (as the ‘National Electrical Contractors Association’) and also maintains registration under various state jurisdictions.
2. On 4 June 2020, the Full Bench (Justice Ross, Deputy President Clancy and Commissioner Bissett) issued a statement (the Statement) which, after referring to a Report issued by DP Clancy on 1 June 2020 (the Report) on the outcome of a conference held by telephone on 25 May 2020 attended by the AIG, ABI and the CEPU, stated at paragraph [2]:
“It is our provisional view that the Electrical Award should be varied as set out at paragraphs [9], [14], [15], [18], [27], [29], and [32] of the Report.
3. NECA did not participate in the conference.
4. At paragraph [3] of the Statement the Full Bench said:
“We invite submissions in response to our provisional view. Submissions are to be filed by 4pm, Thursday, 18 June 2020.”
5. NECA’s Submissions are set out below.

Definition of Ordinary Hourly Rate

6. In its initial submission to the Commission, ABI noted *“(a) the definition for ‘ordinary hourly rate’ in clause B.1.1 is different to the definition for ‘ordinary hourly rate’ in clause 2 of the Exposure Draft.”*¹

¹ [2020]FWCFB 2124; S.156 4 Yearly Review of Modern Awards (AM2019/17) Decision of 27 April 2020 at [65]

7. Clause 2 of the Exposure Draft² defines “Ordinary Hourly Rate” as:
“ordinary hourly rate means the hourly rate for an employee’s classification specified in clause 16.2, plus the industry allowance. Where an employee is entitled to additional all-purpose allowances, these allowances form part of that employee’s ordinary hourly rate.”
8. Clause 2 also defines “all purpose” as
“all purposes means the payment will be included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings including payments for overtime, payments while they are on all forms of paid leave, public holidays and pro rata payments on termination.”
9. Clause 16.3 of the Exposure Draft says:
16.3 Addition of other all-purpose allowances
(a) The all-purpose rate to be paid to an employee, other than an apprentice, will be the sum of the minimum rate in the table in clause 16.2, the industry allowance in clause 18.3(a), and, where applicable, the tool allowance in clause 18.3(g), the electrician’s licence allowance in clause 18.3(b), the leading hand allowance in clause 18.3(c), the nominee allowance in clause 18.3(d), the electrical distribution line maintenance and tree clearing allowance in clause 18.3(e) and the rate for ordering materials in clause 18.3(f).
(b) The weekly all-purpose rate of pay is payable for all purposes of the award and will be included as appropriate when calculating payments for overtime, all forms of paid leave, annual leave loading, public holidays and pro rata payments on termination.
10. Paragraph [9] of the Report states that the parties agreed that the definition of ordinary hourly rate in clause B.1.1 is to be amended as follows:
“Ordinary Hourly Rate for the purposes of Schedule B includes the industry allowance (clause 18.3(a)) and tool allowance as applicable (clause 18.3(g)) which are payable for all purposes.”
11. NECA observes that although the leading hand allowance, the nominee allowance, the electrical distribution line maintenance and tree clearing allowance, and the rate for ordering materials are not commonly applied, the same cannot be said for the electrician’s licence allowance at clause 18.3(b). That allowance applies to Grade 5 tradespersons who have obtained an electrician’s licence and all other higher classifications as defined at Schedule A of the Exposure Draft.
12. NECA submits that the definition of ordinary hourly rate at clause B.1.1 should be amended to read:

² Exposure draft – Electrical, Electronic and Communications Contracting Award – changes tracked – 14 May 2020

“Ordinary Hourly Rate for the purposes of Schedule B includes the industry allowance, (clause 18.3(a)), and where applicable, electricians licence allowance (clause 18.3(b)), tool allowance (clause 18.3(g)) and other all purpose allowance set out in clause 18.3 which are payable for all purposes.”

13. The CEPU has stated in an earlier submission that it is not opposed to inclusion of the licence allowance in the ordinary hourly rate definition *“as long as the rates provided in the table is adjusted to include the electricians licence allowance.”*³
14. This amendment will ensure that that the definition at clause B.1.1 is consistent with clause 16.3. The potential for users of the Award to fall into error by only referring to clause B.1.1 to calculate rates of pay will be reduced.

Public Holiday Penalties for Shiftworkers

15. Paragraph [14] of the Report states:

“Following discussion, the parties agreed with a suggestion of the CEPU that this issue [differing public holiday penalty rates for continuous and non continuous shift workers] could be addressed by deleting the current public holiday column in Table B.2.4 and replacing it with the two public holiday sub-columns for continuous shift workers and other than continuous shift workers, from Table B.2.3.”

16. NECA also agrees with the suggestion made by the CEPU.

17. Paragraph [15] of the Report states:

The CEPU raised an additional matter in relation to the column for Sunday work in Table B.2.3, submitting that it could be clarified for non-continuous shiftworkers with the insertion of a Note in relation to the heading of the ‘Sunday’ column (to become Note 5) that would state “This is the rate at which shiftworkers on other than continuous work are to be paid for all time worked on a Sunday (see clause 13.15(b)(i)).”

18. NECA does not oppose the insertion of Note 5 as suggested.

19. In passing, NECA notes that paragraphs 13.15(a) and 13.15(b) as they apply to Sundays and public holidays are inconsistent. Paragraph (a), in referring to continuous shift workers, applies a loading to “a shift the major portion of which falls on a Sunday or Public Holiday.” Paragraph (b), in referring to non continuous shift workers, applies a loading to “all time worked on a Sunday or Public Holiday.”

20. Paragraphs (c) and (d) appear to be in reference to paragraph (a) and not (b) although there is no statement to that effect in sub clause 13.15.

Casual Shiftworkers

21. Paragraph [18] of the Report states:

³ CEPU Submission in Reply filed 20 September 2019

“The parties agree that the ‘Day’ column from table B.3.2 be removed on the basis that it is unnecessary.”

22. NECA does not agree that the ‘Day’ column should be removed. Casual and permanent employees who work on a day shift as part of a shift system are shift workers and not “other than shift workers” or day workers.⁴
23. Further the ‘Day’ column acts as a guide to how shift penalties for casual workers are calculated.

All Purpose Rates for Apprentices – Fare and Travel Time Allowances.

24. Paragraph [27] of the Report says that the parties agreed that the fares and travel allowances in clauses 18.6 (c) and 18.6(d) should not be included in the all purpose rate. NECA also agrees and supports the submissions made by the AIG and ABI.⁵
25. The CEPU has proposed an altered clause 16.4(a)(iii) and new clause 16.4(a)(iv) be inserted in the Exposure Draft. NECA agrees that these amendments clarify that fares and travel allowances are not included in the all purpose rate for apprentices.
26. NECA agrees with the suggestion made at paragraph [32] of the Report that the sentence *“Any additional all-purpose allowances applicable need to be added to these rates”* be deleted and notes that other than the industry, tool and licence allowances, no other all purpose allowance that applies to adults is likely to apply to apprentices.

NECA

⁴ See definition of ‘Continuous Shiftworker’ in clause 2 Definitions of the Exposure Draft.

⁵ See [2020] FWCFB 2124 (Decision of the Full Bench, 4 Yearly review of Modern Awards of 27 April 2020) at [72] and [73].