

20 February 2015

Associate to Justice Ross President
Fair Work Commission
GPO Box 1994
MELBOURNE VIC 3001

By email: amod@fwc.gov.au

Dear Associate

Re: AM2014/212 – Alleged Inconsistencies with the NES – Road Transport Distribution Award 2010

Introduction

The Transport Workers Union (TWU) has proposed the deletion of Clause 14.2 – Transfer to lower paid duties, of the Road Transport and Distribution Award 2010 [MA000038]. The submissions by the TWU states Clause 14.2 allows the employer to bypass s.120 of the Fair Work Act (the Act) and is therefore in conflict with the NES redundancy provisions.

Clause 14.8 states:

Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may, at the employer's option, make payment instead of an amount equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing.

Business SA does not agree with the submissions of the TWU and objects to the removal of Clause 14.2

Background

Clause 14.2 of the Road Transport and Distribution Award 2010 [MA000038] deals only with the notice period and payment to employees during the notice period, when the employee is transferred to lower paid duties within the company due to redundancy. Notice of

termination or payment of lieu is dealt with in the Fair Work Act at s 117 (the Act). In our opinion, the existing clause does not provide less than that provided in the NES nor is it ambiguous or inconsistent with the provisions of the NES.

Clause 14.2 of the Award does not address the payment of, or amount of, redundancy pay provided under s 119. This clause does not, as claimed by the TWU, enable an employer to 'bypass s 120' which enables an employer to make application to the FWC to determine an alternative redundancy payment in recognition of the alternative employment found.

Clause 14.2 does not deal with alternative employment but with employment within the existing company. Section 120 of the Act allows for an employer to apply to the Fair Work Commission for a reduction in redundancy pay because the employer obtains other acceptable employment for the employee.

A review of the origins of this clause (AN120611 – Transport Industry - Redundancy (State) Award) clarifies that the context of the provisions have not changed.

Who we are

As South Australia's peak Chamber of Commerce and Industry, Business SA is South Australia's leading business membership organisation. We represent thousands of businesses through direct membership and affiliated industry associations. These businesses come from all industry sectors, ranging in size from micro-business to multi-national companies. Business SA advocates on behalf of business to propose legislative, regulatory and policy reforms and programs for sustainable economic growth in South Australia.