

FAIR WORK COMMISSION

Fair Work Act 2009

s.156 – 4 yearly review of modern awards

4 Yearly Review of Modern Awards – Seagoing Industry Award 2010 –

Alleged NES inconsistencies

(AM2014/243)

SUBMISSIONS OF THE MARITIME UNION OF AUSTRALIA IN REPLY

Introduction

1. The directions of the Full Bench made on 17 January 2017 provided that any interested party was to file submissions by 13 February 2017. The only parties that filed submissions were the Maritime Union of Australia (**MUA**) and Maritime Industry Australia Limited (**MIAL**).
2. These submissions are in response to the submissions of MIAL.

Submissions of MIAL

3. The MUA maintains that clause 27 of the *Seagoing Industry Award 2010* (**Seagoing Award**) is inconsistent with the National Employment Standards (**NES**) and requires amendment.
4. The submissions of MIAL assert that the requirement that an employee work more than 38 hours in a week is not inconsistent with the NES as the additional two hours a week are reasonable. (MIAL Submissions paragraphs 5 to 10). The difficulties with this submission are:
 - (a) Unlike the NES (s 62(2)) clause 27 of the Seagoing Award does not enable an employee to refuse to work the additional two hours because they are unreasonable; and
 - (b) Even if it was permissible to weigh all of the factors in s 62(3) in relation to an entire industry (and we submit that it is not) no evidence or submissions are made by MIAL to address each of the factors in s 62(3).
5. The submissions of MIAL asserts that reliance can be placed on clause 18.4 of the Seagoing Award that enables the averaging of hours over a period of 52 weeks. (MIAL Submissions paragraphs 11 to 14). The difficulty with this submission is that clause 18.4 only applies to employers and employees

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covered by Part A of the Seagoing Award. Clause 27, however, is not in Part A but in Part B. There is no equivalent provision to clause 18.4 in Part B of the Seagoing Award.

6. No evidence is called by MIAL to support their submissions as to the patterns of work of employees within Part B of the Seagoing Award.
7. The submissions of MIAL assert that there is a "level of industry understanding of the application of Part B ... varying the clause has the potential to undermine this." (MIAL Submissions paragraph 16) The difficulties with this submission are:
 - (a) The clause is either inconsistent with the NES or not, regardless of the understanding of industry; and
 - (b) There is no evidence of the "industry understanding."

Conclusion

8. The submissions of MIAL that clause 27 is not inconsistent with the NES should be rejected.
9. For the reasons articulated in our submissions dated 13 February 2017 the FWC should find that clause 27 of the Seagoing Award is inconsistent with the NES and amend it in the manner proposed in paragraph 16 of those submissions.

Dated 27 February 2017



Nathan Keats
Solicitor for the Maritime Union of Australia