

15 October 2014



The Hon. Justice Ross
President,
Fair Work Australia
Level 4, 11 Exhibition Street
Melbourne, Victoria 3000

By email: amod@fwc.gov.au;

Your Honour,

RE: AM2014/1; AM2014/92 – Timber Industry Award 2010 Four Yearly Review of Modern Awards – interaction with National Employment Standards

We refer to the direction included in the Statement of 13 August 2014 ([2014] FWCFB 5537), that parties wishing to make submissions in relation to potential inconsistencies with the NES including those raised by the Fair Work Ombudsman should file those submissions by 26 September 2014. Unfortunately, the Union was not able to file a submission by that date. However, as there are a small number of matters which we wish to raise, affecting the Timber Industry Award 2010, we seek the indulgence of the Commission to file a late submission.

Accrual of Annual Leave for Shift Workers

The FWO have raised the issue of accrual of annual leave for shift workers. In relation to the matter of accrual of annual leave for shiftworkers who are entitled to the additional week of annual leave under s.87 of the Act. We note that clause 33.3(b) of the Award deals with this matter in the following terms:

“33.3(b) Where an employee with 12 months’ continuous service is engaged for part of the 12 month period as a seven day shiftworker, that employee must have their annual leave increased by half a day for each month the employee is continuously engaged as a seven day shiftworker.”

In light of the FWO correspondence it now appears to us that clause 33.3(b) of the Award may be inconsistent with the NES in that the NES states that annual leave is to accrue on a pro-rata basis, whereas clause 33.3(b) purports to limit accrual to those employees who have 12 months continuous service, the Union submits that the clause should be amended as follows:

“33.3 Definition of shiftworker

(a) For the purpose of the additional week of annual leave provided for in s.87(1)(b) of the Act, a shiftworker is a seven day shiftworker who is regularly rostered to work on Sundays and public holidays.

(b) Where an employee ~~with 12 months continuous service~~ is engaged for part of ~~the a~~ 12 month period as a seven day shiftworker, that employee must have their annual leave increased by half a day for each complete month the employee is continuously engaged as a seven day shiftworker.

(c) An employee engaged for only part of a month as a seven day shiftworker will accrue leave for the part month proportionate to the leave prescribed in (b) above.

We note that this proposed clause is consistent with the position put by the AMWU and TCFUA in relation to a number of other awards. We indicate that we support and adopt the submissions of the AMWU and the TCFUA to the extent that they are of more general application and therefore relevant to the Timber Industry Award.

We note that the AIG have submitted that clauses like 33(b) should be deleted where they appear in modern awards on the basis that they could be detrimental to an employee when compared to the NES. The CFMEU rejects this submission. We note that any detriment can be rectified by amendment of the clause in the terms proposed above. We submit that it is more consistent with the modern awards objective to retain the clause in an amended form than to delete it as deletion would have the effect of reducing the safety net that applies to seven day shift workers.

Payment of Annual Leave Loading on Termination

The FWO have also raised the issue of payment of annual leave loading on termination of employment which is dealt with in clause 33.5(c) of the Award. We advise not agree with the particular interpretation of clause 33.5(c) set out by the FWC and note that we indicated our position in relation to this matter in correspondence to the Commission dated 9 May 2014. We also note that the matter of payment of annual leave loading on termination of employment is before the Annual Leave Full Bench. We have made submissions in relation to that matter and have filed a draft determination. We support the Submissions of the ACTU more generally in relation to the issue of payment of annual leave loading on termination. In the circumstances the Union does not wish to make further submissions in relation to this aspect of the FWO correspondence and relies on its previous submissions and those of the ACTU.

Payment of accrued Personal Leave

We also note that the AIG have raised the matter of clause 34.4 of the Timber Industry Award which deals with Payment for excess accrued personal leave. The AIG have also raised that matter and made submissions in relation to it in the Award Stage before Deputy President Gooley in AM2014/92. We say that this is a matter which is award specific, and which is not common between the Timber Industry Award and any other award. In the circumstances we say that this matter should be dealt with in the Award stage by Gooley DP.

Yours sincerely,



Rosalind Read
Senior National Legal Officer
CFMEU – FFPD