



FAIR WORK
AUSTRALIA

DECISION

Fair Work Act 2009

s.158 - Application to vary or revoke a modern award

Victorian Automobile Chamber of Commerce

(AM2010/24)

Vehicle industry

COMMISSIONER GAY

MELBOURNE, 13 MAY 2010

[1] This decision concerns an application by the Victorian Automobile Chamber of Commerce (VACC) to vary the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* [MA000089] (the award or the modern award). The application was made on 1 March 2010 pursuant to s.158 of the *Fair Work Act 2009* (the Act).

[2] Section 157(3) provides that Fair Work Australia (FWA) may make a determination varying an award either on its own motion or on application pursuant to s.158 of the Act. Section 158 of the Act provides that an application may be made by:

- an employer, employee or organisation covered by the modern award; or
- an organisation that is entitled to represent the industrial interests of one or more employers or employees that are covered by the modern award.

[3] The VACC submitted that “*as it is an organisation that is entitled to represent the industrial interests of employers covered by the Award*”, and further, “*...one of the employer organisations involved in the modernisation of the Federal Vehicle Industry Repair, Services and Retail Award 2002 (RS&R) and the Federal Vehicle Industry Award 2000 (VIA) during Stage 3 of the award modernisation process*” it has standing, under s.158, Item 1, to make its application.

[4] Directions were issued on 5 March 2010 for parties in support of the application to file submissions by 19 March 2010 and any party in opposition to the application to file submissions by 6 April 2010. The Directions were made available on the Award Modernisation section of the Fair Work Australia web-site. On 19 March 2010 the VACC filed an ‘Outline of Submissions’ in addition to their original F46 application. No other submissions were received.

The Application

[5] The application seeks to clarify the position as to the reimbursement of fees where an apprentice covered under the award satisfactorily completes off the job training conducted by

a registered training organisation. The application also seeks to rectify a drafting inconsistency in relation to clause 33.7—Vehicle industry RS&R - unapprenticed juniors.

Reimbursement of Apprentice Training Fees

[6] The clause proposed by the VACC in relation to reimbursement of fees for apprentices is in the following terms:

“15.3 Training fees

An apprentice taking classes at a technical college or school for the purpose of his or her apprenticeship shall, subject to presenting reports of satisfactory conduct, be reimbursed by the employer for all fees paid by the apprentice.”

[7] In relation to the proposed clause 15.3, the VACC put that:

- on 21 April 2009, during Stage 3 of the award modernisation process, a Draft Exposure Award was filed containing a provision requiring employers to reimburse training fees in the form sought in this application;
- both the previous Federal vehicle industry awards, RS&R [clause 14C(d)] and VIA [clause 4.1.6(o)] contained identical clauses providing for the reimbursement of fees, the RS&R since 1970 and the VIA since 1971;
- both clauses in the primary vehicle industry awards provided for an employer to reimburse fees;
- the majority of employers regard the reimbursement of school fees as a financial obligation they want to meet, as a matter of custom and practice;
- it has previously been clear that it is an award obligation;
- the deletion of the clause in the award has created uncertainty from employers as to the requirement to reimburse fees; and
- reimbursement of school fees is not covered in either the contract of training or State training legislation.

Unapprenticed Juniors

[8] In relation to clause 33.7 of the award ‘*Vehicle industry RS&R—unapprenticed juniors*’, the variations sought reflect the fact that at clause 33.7(d) both the vehicle salesperson and/or agricultural vehicle salesperson with **less than** six months’ experience and **more than** six months’ experience are included, where only the latter provision, the vehicle salesperson and/or agricultural vehicle salespersons after six months’ experience should appear. These classifications appeared separately in the RS&R award at clauses 13(a)(i)(2) and (4). The variations sought remedy this position:

- by deleting from clause 33.7(b) the words “Vehicle salesperson and/or agricultural vehicle” and inserting the words “Vehicle salesperson and/or agricultural vehicle salesperson—less than six months’ experience”; and
- by deleting from clause 33.7(d) the words “Vehicle salesperson and/or agricultural vehicle salesperson—less than six months’ experience” .

The Variations

[9] Pursuant to s.160 of the Act I am satisfied these are matters which should be remedied in the fashion sought. There is a demonstrable value in doing so.

[10] As to clause 15.3 the value is one of equity to apprentices undergoing training and incurring legitimate costs. As to clause 33 the value is in greater clarity. No other organisation or person has objected to the application made by the VACC. I will accordingly vary the award as sought by the application. The variations come into effect from the date of the order [PR996631], that is, 13 May 2010.

COMMISSIONER

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<Price code A, MA000089 PR996629 >