



FAIR WORK
AUSTRALIA

DECISION

Fair Work Act 2009

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

Central Australian Aboriginal Media Association (AM2010/4)

Broadcasting and recorded entertainment industry

SENIOR DEPUTY PRESIDENT HAMBERGER

SYDNEY, 28 MAY 2010

Application to vary the Broadcasting and Recorded Entertainment Award 2010.

[1] This decision concerns an application by the Central Australian Aboriginal Media Association (CAAMA) pursuant to s.158 of the *Fair Work Act 2009* (the Act) to vary the Broadcasting and Recorded Entertainment Award 2010 (the award) to provide for a language allowance for recognised proficiency in a traditional Aboriginal and Torres Strait Islander language, and the insertion of a cross-function classification of Broadcaster/Journalist to apply to employers who hold a community radio broadcasting licence to represent the community interests of Aboriginal and Torres Strait Islanders.

[2] Directions were issued for the filing of written submissions in advance of the hearing of the matter. The only written submissions received were from the Australian Indigenous Communications Association Incorporated (AICA). At the hearing of this matter on 4 May 2010 CAAMA and AICA (which intervened in support of the application) were represented by Mr Steven Amendola, and the Media, Entertainment and Arts Alliance (MEAA) by Ms Claire Montgomery. MEAA supported the submissions made by CAAMA and AICA. No other parties sought to be heard.

The relevant legislation

[3] Section 157(1) states:

‘(1) FWA may:

- (a) make a determination varying a modern award, otherwise than to vary modern award minimum wages; or
- (b) make a modern award; or
- (c) make a determination revoking a modern award;

if FWA is satisfied that making the determination or modern award outside the system of 4 yearly reviews of modern awards is necessary to achieve the modern awards objective.’

[4] The modern awards objective is set out in s.134 of the Act:

‘(1) FWA must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:

- (a) relative living standards and the needs of the low paid; and
- (b) the need to encourage collective bargaining; and
- (c) the need to promote social inclusion through increased workforce participation; and
- (d) the need to promote flexible modern work practices and the efficient and productive performance of work; and
- (e) the principle of equal remuneration for work of equal or comparable value; and
- (f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and
- (g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and
- (h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.’

Background

[5] During the 1980s and 1990s Aboriginal and Torres Strait islander communities in many parts of Australia established community based radio and television stations. Aboriginal and Torres Strait Islander broadcasting organizations exist to provide support and advice to their communities. Members of the indigenous media and communications industry are represented by AICA.

[6] Prior to award modernization, AICA and its member organizations were covered by the *Indigenous Media Organisations (Minimum Rates) Award* (IMO Award).

The Broadcaster/Journalist Classification

[7] The classification of ‘Broadcaster/Journalist’ was included in the IMO Award. According to Mr Amendola, multi-functional work is a common feature of the Aboriginal and

Torres Strait Islander community. Employing individuals to perform a range of work assists government funded organizations such as AICA's member organizations provide a broader range of services at a lower cost. In the context of limited resources, having individuals do multi-functional work assists indigenous media organisations with the provision of services to their community. In support of this submission Mr Amendola presented the results of a survey of AICA member organizations. This indicated that for a number of organisations, the loss of the ability to employ people who could perform both broadcasting and journalist roles would significantly increase costs and reduce the quality of the services provided to the community.

[8] Mr Amendola explained that during the making of stage 2 awards the Full Bench indicated that it would deal with indigenous organisations and indigenous businesses in stage 4 of the process. On 24 July 2009 AICA made a written submission supporting the inclusion of the cross functional classification (as well as the language allowance). When the matter was discussed during the subsequent hearings the ACTU indicated that it supported the inclusion of the allowance but wished to have further discussions with regard to the classification issue. Further discussions were then held during August 2009 but agreement had not yet been reached on the issue by the time the Broadcasting and Recorded Entertainment Award was made on 4 September 2009. Further discussions were held right through to 14 December 2009 which ultimately resulted in the MEAA indicating they would consent to an application to vary the award to insert the cross functional classification.

[9] Mr Amendola submitted that the insertion of the cross functional classification was necessary to achieve the modern award objective, especially that part that relates to:

‘the need to promote flexible modern work practices and the efficient and productive performance of work’; and ...

the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden’.

The Language Allowance

[10] The IMO Award provided for a bilingual language allowance for recognised proficiency in a traditional Aboriginal and Torres Strait Islander language as well as English. A key feature of the national Aboriginal and Torres Strait Islander media and communications industry is the required knowledge of indigenous culture and tradition. Mr Amendola submitted that the terms and conditions of employment in the industry, such as the language allowance, have historically promoted, encouraged and supported knowledge of and involvement in Aboriginal and Torres Strait Islander culture and tradition.

[11] Mr Amendola submitted that the proposed allowance was necessary to achieve that part of the modern award objective that dealt with ‘the need to promote social inclusion through increased workforce participation.’ He drew the tribunal’s attention to the inclusion of an allowance in very similar terms in the Aboriginal Community Controlled Health Services Award 2010. He submitted that in the only instrument that was made by the Commission in respect of indigenous organisations it was in effect accepted that such an allowance was appropriate. It appears that the allowance issue, while not opposed, also got caught up in the discussions around the cross functional classification.

Decision

[12] I am satisfied that the inclusion of the proposed language allowance and the cross functional classification of broadcaster/journalist is necessary to achieve the modern award objective. It appears that both provisions effectively ‘slipped through the net’ when the modern awards were being made. I also note that the inclusion of the provisions is supported by both the relevant employer and employee representatives. The application is granted. An order will be issued at a later date.

SENIOR DEPUTY PRESIDENT

Appearances:

Mr Steven Amendola for Central Australian Aboriginal Media Association (CAAMA) and the Australian Indigenous Communications Association Incorporated (AICA).

Ms Claire Montgomery for the Media, Entertainment and Arts Alliance (MEAA).

Hearing details:

SYDNEY

2010

4 May

Printed by authority of the Commonwealth Government Printer

<Price code B, MA000091 PR996765 >