



DECISION

Fair Work Act 2009

s.160 - Application to vary a modern award to remove ambiguity or uncertainty or correct error

"Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)
(AM2010/85)

GENERAL RETAIL INDUSTRY AWARD 2010

[MA000004]

Retail industry

VICE PRESIDENT WATSON

SYDNEY, 20 AUGUST 2010

Application to vary clause 22 - Superannuation.

[1] This decision concerns an application by “Automotive, Foods, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU) pursuant to s 160 of the *Fair Work Act 2009* (the Act) to vary clause 22 of the *General Retail Industry Award 2010*¹ (the Modern Award) to remove ambiguity or uncertainty or correct error.

[2] The matter was listed for hearing on 19 July 2010. Mr A Sachinidis represented the AMWU and Ms S Burnley represented the Shop, Distributive & Allied Employees’ Association (SDA).

The application

[3] The AMWU seeks to insert the MTAA Superannuation Fund as a default fund to clause 22 of the Modern Award. It submitted that the variation sought satisfies the approach adopted by the Full Bench of the Australian Industrial Relations Commission (AIRC) as to when a default fund should or should not be included in a modern award.

[4] In its decision 2 September 2009 the Full Bench of the AIRC said that if a superannuation fund had either been named as a default fund in an award-based transitional instrument relevant to the modern award’s coverage or the representatives of the main parties subject to the modern award’s coverage consented, the fund should be named as a default fund in the award.²

[5] The AWMU listed several award-based transitional instruments as relevant to the Modern Award's coverage. These included the *Retail, Wholesale and Distributive Employees (NT) Award 2000*,³ the *Van Salespersons' Award Southern Division 2003*,⁴ and *The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977*.⁵

[6] The SDA contested the relevance of these awards and others bases relied on by the AMWU. It is not necessary to deal with all matters raised by the parties.

[7] I am satisfied that some employees subject to the coverage of this Modern Award were previously covered by an award-based transitional instrument that recognised or permitted contributions to be made to the MTAA Superannuation Fund. In my view, if this fact had been pointed out to the award modernisation Full Bench, the fund would have been listed as a default fund. I am satisfied that the error should be remedied by making the variation sought. A determination to this effect will be issued with this decision with an operative date of 1 January 2010.

VICE PRESIDENT WATSON

Appearances:

A Sachinidis for the Australian Manufacturing Workers' Union

S Burnley for the Shop, Distributive & Allied Employees' Association

Hearing details:

2010

Melbourne

July 19

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¹ MA000004

² [2009] AIRCFB 800 at [67]

³ AP794741

⁴ AN140312

⁵ AN160292