



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)
(AM2010/217)

AMUSEMENT, EVENTS AND RECREATION AWARD 2010

[MA000080]

Amusement, events and recreation industry

DEPUTY PRESIDENT IVES

MELBOURNE, 4 NOVEMBER 2010

Variation to clause 20.4 - Superannuation

[1] This decision relates to an application made on 14 September 2010 by the “Automotive, Foods, Metals, Engineering, Printing and Kindred Industries Union” (AMWU) pursuant to s.160 of the *Fair Work Act 2009* (the Act) to vary clause 20.4 of the *Amusement, Events and Recreation Award 2010*¹ (the Award) to remove ambiguity or uncertainty or correct error.

[2] The application was listed for hearing on 4 November 2010. Mr A Sachinidis appeared for the AMWU. The application was not opposed.

[3] The AMWU seeks to insert the MTAA Superannuation Fund as a default fund to clause 20.4 of the Award. The AMWU 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 be included in a modern award.

[4] In its decision issued on 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 that representatives of the main parties subject to the modern award’s coverage provided consent, the fund should be named as a default fund in the award.²

[5] The AMWU submitted that the MTAA Superannuation Fund was a default fund in the *Theatrical Employees Recreation and Leisure Industry—(State) Award 2000*³ and that this award-based transitional instrument was relevant to the Award’s coverage.

[6] I am satisfied that some employees subject to the coverage of the 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 the award modernisation Full Bench had been made aware of this circumstance, the fund would have been listed as a default fund.

[7] I am satisfied that the error should be corrected by making the variation sought. A determination to this effect will be issued with an operative date of 1 January 2010.

DEPUTY PRESIDENT

Appearances:

A Sachinidis for the Australian Manufacturing Workers' Union

Hearing details:

2010.

Melbourne.

November 4.

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¹ MA000080

² [2009] AIRCFB 800 at 67

³ AN120573