



DECISION

Fair Work Act 2009

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

Australian Business Industrial

(AM2010/80)

JOINERY AND BUILDING TRADES AWARD 2010

[MA000029]

SENIOR DEPUTY PRESIDENT ACTON

MELBOURNE, 12 NOVEMBER 2010

Application to vary a modern award.

Introduction

[1] This decision concerns an application by Australian Business Industrial (ABI) to vary the *Joinery and Building Trades Award 2010*¹ (JBT Modern Award).

[2] The variations sought cover the following matters:

- Definition of “glass and glazing work”.
- Junior employee wage rates.
- Shift rates for glass or glazing work.
- Recall for glass or glazing work.
- Classification definitions.

[3] I will deal with each of the subject matters of the variations sought.

Glass and glazing work definition

[4] ABI seeks that the following definition of “glass and glazing work” in clause 3.1 of the JBT Modern Award:

- “(b) the fitting and/or fixing in position of all types of glass used in the trade, as well as louvers, spandrel panels, glazing bars, clear plastic, or glass lenses or prisms in domestic on site situations”.

be varied to:

- “(b) the fitting and/or fixing in position of all types of glass used in the trade, as well as louvers, spandrel panels, glazing bars, clear plastic, or glass lenses or prisms in domestic or on site situations”.

[5] ABI submits the insertion of the word “or” between the words “domestic” and “on-site” clarifies the coverage of the JBT Modern Award in respect of the downstream glass industry and removes the possibility that the JBT Modern Award’s coverage may be interpreted as being confined to “domestic on-site situations”.

[6] The variation is supported by Master Builders Australia Limited (MBA) for reasons of clarity and bearing in mind that it would not exclude employees covered by the *Building and Construction General On-Site Award 2010*² (Building and Construction Modern Award) as clause 4.1(d) of the JBT Modern Award provides that the JBT Modern Award excludes from its coverage employers or employees covered by the Building and Construction Modern Award.

[7] The variation is opposed by the Construction, Forestry, Mining and Energy Union (CFMEU).

[8] I am not persuaded the variation should be made. The issue of the coverage of downstream glass work was specifically considered by a Full Bench of the Australian Industrial Relations Commission (Commission) on 30 December 2009 as a result of applications³ by the CFMEU to vary the JBT Modern Award and the *Manufacturing and Associated Industries and Occupations Award 2010*⁴ (Manufacturing Modern Award). The Full Bench decided that the “downstream glass industry as ultimately defined by the CFMEU should be covered by the JBT Modern Award rather than the Manufacturing Modern Award.”⁵ As a result, the existing definition of “glass and glazing work” was included in the JBT Modern Award. The JBT Modern Award already excluded from its coverage employers and employees covered by the Building and Construction Modern Award and the Building and Construction Modern Award covered glaziers. In the circumstances, I am not persuaded the addition of the word “or” between the words “domestic” and “on-site” will clarify the coverage of the JBT Modern Award. Indeed, I consider the variation is likely to create confusion, ambiguity and uncertainty about the coverage of the JBT Modern Award. The variation is not necessary to achieve the modern awards objective.

Junior employee wage rates

[9] ABI seeks that minimum wage rates for non-apprenticed, non-trainee junior employees be added as a clause 19.1(c) of the JBT Modern Award, with associated variations to the other parts of clause 19. The clause sought is as follows:

“(c) Junior Workers

Age	Percentage of ordinary weekly wage for adults in level 1
Under 17 years of age	31
17 and under 18 years of age	43
18 and under 19 years of age	61
19 and under 20 years of age	83
20 and under 21 years of age	100”

[10] In support of this variation, ABI, MBA and the Housing Industry Association (HIA) submit that non-apprenticed, non-trainee junior employee wage rates are contained in a number of transitional minimum wage instruments that covered the employees covered by the JBT Modern Award, such as those derived from the following:

- *Glass Industry - Glass Merchants and Glazing Contractors - South Australia Award 1998*⁶
- *Glass Industry - Glass Merchants and Glazing Contractors (Tasmania) Award 1997*⁷
- *Glass Industry - Glass Production - Award 1998*⁸
- *Glass Industry Award (Qld) 1998*⁹
- *Glass Merchants and Glazing Contractors General (Victoria) Award 1997*¹⁰
- *Glass Workers (State) Award (NSW)*¹¹
- *Glass Workers and Glazing (South Australia) Award.*¹²

[11] Further ABI, MBA and the HIA suggest that employment opportunities for young persons in the downstream glass industry will be reduced and skill shortages exacerbated if the JBT Modern Award is not varied to include such wage rates. In this regard they refer to the evidence given by the witnesses for them, a report of the Productivity Commission¹³ and other papers.¹⁴ In addition, they say ss.139(1), 153(3) and 284 of the *Fair Work Act 2009* (Cth) (FW Act) refer to fair minimum wages for junior employees.

[12] HIA also submits:

- the inclusion of such junior employee wage rates would be consistent with the Award Modernisation Request issued by the Minister for Employment and Workplace Relations;
- junior employees have a considerably lower work value than adult employees because of lower levels of maturity, experience and productivity;
- the inclusion of junior employee wage rates is necessary to achieve the modern awards objective, particularly that contained in s.134(c) and (f) of the FW Act, and the minimum wages objective, particularly that at s.284(b) and (e).

[13] In opposing the inclusion of non-apprenticed, non-trainee junior employee wage rates in the JBT Modern Award, the CFMEU submits that no substantive submissions or evidence have been provided to justify the JBT Modern Award being varied to include such wage rates on work value grounds, as required by s.157(2) of the FW Act.

[14] I am not persuaded that I should vary the JBT Modern Award to include non-apprenticed, non-trainee junior employee wage rates as sought by ABI.

[15] The variation is not limited to non-apprenticed, non-trainee junior employees performing glass and glazing work. The witness evidence given in support of the variation was confined to glass and glazing work. The witness evidence from the employers who undertake glass and glazing work was to the effect that they would be less inclined to employ junior employees who are not apprentices or trainees if they have to pay them adult employee wage rates. However, the evidence also revealed that notwithstanding the availability of non-apprenticed, non-trainee junior employee wage rates in the transitional minimum wage instruments that covered employees who perform glass and glazing work and who are now

covered by the JBT Modern Award, the number of non-apprenticed, non-trainee junior employees employed on glass and glazing work is extremely small.¹⁵ The evidence about whether this extremely small number of junior employees were or are actually employed on non-apprenticed, non-trainee junior wage rates was even more limited.

[16] Further, ABI accepts that the non-apprenticed, non-trainee junior wage rates they are seeking may not be properly fixed rates.¹⁶

[17] In these circumstances, I am not satisfied the variation sought by ABI in respect of junior wage rates is necessary to achieve the modern awards objective or the minimum wages objective.

Shift rates for glass or glazing work

[18] In respect of shift rates, ABI seeks that a new clause 28.3(d)(iii) be inserted in the JBT Modern Award, together with associated variations to other parts of clause 28.3(d). The new clause 28.3(d)(iii) sought is as follows:

“Glass and Glazing Work

An employee engaged on glass or glazing work as defined by clause 3 of this Award working an early morning, early afternoon, afternoon or night shift shall be paid 115% for those shifts provided that such an employee, who during a period of engagement works only on night shift, shall be paid 130% for those shifts.”

[19] The JBT Modern Award provides for shift rates as follows:

“28.3(d) Shift rates

- (i) Other than for work on a Saturday, Sunday or public holiday, the rate of pay for afternoon or night shift is 150% and the rate of pay for early morning and early afternoon shift is 125%, provided that the employee is employed continuously for five shifts Monday to Friday in any week. A public holiday in any week is not a break in continuity for the purposes of clause 28.3(d)(i).
- (ii) An employee who is employed for less than five consecutive shifts Monday to Friday must be paid for each day the employee works on shiftwork at the rate of 150% for the first two hours and 200% thereafter, provided that when a job finishes after proceeding on shiftwork for more than one week, or the employee terminates their services during the week, the employee must be paid at the rate specified in clause 28.3(d)(i) for the time actually worked.”

[20] In support of their proposed variation to the shift rates in the JBT Modern Award, ABI submits the shift rates sought are similar to those in the following award-based transitional instruments:

- *Glass Merchants and Glazing Contractors General (Victoria) Award 1997*
- *Glass Industry - Glass Production - Award 1998*
- *Glass Industry - Glass Merchants and Glazing Contractors - South Australia Award 1998;*
- *Glass Workers (State) Award (NSW)*
- *Glass Workers and Glazing (South Australia) Award.*

[21] Further, the witness evidence given by employers in support of the variation indicates that it is not uncommon for employees engaged on glass and glazing work to perform shift work and the cost to employers for such shift work will increase substantially as a result of the shift rates in the JBT Modern Award. Some employer witnesses also suggest the shift rates could adversely affect investment and employment in glass and glazing work.

[22] The Australian Industry Group (AiG), in supporting ABI's variation, did not present any witness evidence but submitted that it had been contacted by relevant employers citing the following effect of the shift rates in the JBT Modern Award:

- Large cost increases
- The cancellation of a planned afternoon shift
- Reversal of a decision made to hire extra staff
- Reduced staff numbers
- Importing of glass products from overseas that would otherwise have been made in Australia.

[23] The AiG submission contained a table showing the differences between some shift rates under the JBT Modern Award and award-based transitional instruments. The table is as follows:

	Afternoon Shift	Rotating Night Shift	Permanent Night Shift
<i>Joinery Modern Award</i>	50%*	50%	50%
<i>Glass Merchants and Glazing Contractors General (Victoria) Award 1997</i>	15%	15%	30%
<i>Glass Workers (State) Award - NSW NAPSA</i>	15%	15%	20%
<i>Glass Makers (State) Award - NSW NAPSA</i>	15%	15%	30%
<i>Glass Industry Award (Qld) 1998</i>	15%	15%	25%
<i>Glass Industry – Glass Merchants and Glazing Contractors – South Australia Award 1998</i>	15%	15%	30%
<i>Glass Workers and Glazing (South Australia) Award - SA NAPSA</i>	15%	15%	30%
<i>Glass Industry – Glass Merchants and Glazing Contractors (Tasmania) Award 1997</i>	15%	15%	30%
<i>Metal, Engineering and Associated Industries Award 1998 (which applied to the manufacture of a significant number of products which included glass components)</i>	15%	15%	30%

* The award also includes an early afternoon shift loading of 25% but this only applies to shifts which finish before 9pm. Typically, companies are not able to structure hours to have an afternoon shift finishing that early as day work would need to start at an hour which required the payment of a shift loading.

[24] MBA also supports the variation.

[25] In opposing the variation, the CFMEU points out that the shift rates in the JBT Modern Award were known to employers undertaking glass and glazing work when the CFMEU's application to transfer the "downstream glass industry" from the Manufacturing Modern Award to the JBT Modern Award was considered and decided upon in 2009.

[26] In this regard, the CFMEU also notes that the Glass Merchants and Glazing Association Victoria Incorporated supported the coverage of the "downstream glass industry" under the JBT Modern Award. Moreover, neither ABI or the HIA opposed the CFMEU's application. The CFMEU's application was also supported by 17 employers undertaking glass and glazing work without complaint about the shift rates in the JBT Modern Award that would apply to them, even though some of them now support ABI's application in respect of shift rates. For example, Stuart Rowswell, the General Manager of Chevron Glass (Royal Park) a Division of Chevron Glass Pty Ltd, wrote to Fair Work Australia on 17 November 2009 in respect of the CFMEU's application as follows:

"I understand that the CFMEU have made an application to vary the modern awards so that only the modern Joinery Award will apply to employers who are currently covered by the South Australian Glass Award. We support that application. The conditions in the Joinery Award are similar to those in the current South Australian Glass Award and represent a fair standard for all companies that operate our industry. Keeping a single award accurately reflects the way employers in this industry operate and will prevent the Award Modernisation from becoming a source of disputes and grievances in the industry."¹⁷

[27] Further, the CFMEU submits that many of the employers who now support ABI's shift rate variation also have employees performing joinery work and their employees performing joinery work are covered by the current shift rates in the JBT Modern Award.

[28] In opposing the variation, the CFMEU also indicates that the JBT Modern Award resulted in some improvements and some reductions in the terms and conditions of employment of employees undertaking glass and glazing work compared to the terms and conditions of employment in the award-based transitional instruments that previously covered their employment. For example, the trades rate in the JBT Modern Award is some \$67 per week less than the trades rate in the *Glass Workers (State) Award* (NSW). The employers' evidence about the cost increases from the shift rates in the JBT Modern Award should, therefore, be treated with caution as it fails to take into account the phasing of the increases, absorption into over-award payments and the availability of enterprise bargaining.

[29] I am not persuaded I should vary the JBT Modern Award in respect of shift rates as sought by ABI.

[30] The shift rates in the JBT Modern Award are higher than those in the award-based transitional instruments covering employers and employees engaged on glass and glazing work. However, the shift rates were included in the exposure draft of the JBT Modern Award and were included in the JBT Modern Award when the CFMEU in 2009 sought that the JBT Modern Award, rather than the Manufacturing Modern Award, cover the "downstream glass industry".

[31] The AiG opposed that change in coverage, at least in part, because it would increase employer costs.¹⁸ The Australian Federation of Employers and Industries (AFEI) also opposed the change in coverage on the basis that the conditions of the JBT Modern Award were inappropriate when compared against those in the *Glass Workers (State) Award* (NSW).¹⁹ Many employers, however, supported the change in coverage sought by the CFMEU in 2009. In deciding in 2009 to change the coverage, the Full Bench of the Commission said:

“[15] As for the conditions that the CFMEU seeks be included in the JBT Modern Award in light of its expanded coverage, we will vary the JBT Modern Award to provide for a form of industry allowance similar to that in the underlying awards and NAPSAs. Having regard to those awards and NAPSAs, we will also include the tool allowance, protective clothing and footwear, collection of monies, motor vehicle allowance, performing work away from the usual place of work, rest period and washing time provisions sought by the CFMEU. However, the laundry and silicone allowances sought by the CFMEU are not sufficiently prevalent in the underlying awards and NAPSAs to warrant their inclusion.”²⁰

[32] It may be accepted that some of the employers who supported the change in modern award coverage for the downstream glass industry in 2009 did not appreciate it could lead to increased shift rates for them and that some other employers simply failed to follow the award modernisation process carefully enough. However, it is apparent that in acceding to the change in coverage, the Full Bench had regard to the conditions in the underlying award-based transitional instruments.

[33] Further, the JBT Modern Award covers more than just glass and glazing work. Its conditions reflect that broader coverage and have resulted in the employers covered by it experiencing some increases and decreases in the conditions under the JBT Modern Award compared to those in the award-based transitional instruments that covered them.²¹

[34] Moreover, there was little substance to the evidence about the effect of the shift rates in the JBT Modern Award on employers and employees engaged in glass and glazing work. The evidence tended to explanation of the difference between the shift rates in the JBT Modern Award and those in the underlying award-based transitional instruments and to assertion about the effect of the difference.²² The evidence essentially failed to detail the actual effect of the shift rates in the JBT Modern Award compared to those in the underlying award-based transitional instruments or, given it is early days in the application of the shift rates in the JBT Modern Award, the projected actual effect.

[35] In the circumstances, I cannot conclude the variation sought by ABI in respect of shift rates is necessary to correct an error in the JBT Modern Award or to achieve the modern awards objective.

Recall for glass or glazing work

[36] ABI seeks that a new clause 30.3(c) be added to clause 30.3 of the JBT Modern Award. Clause 30.3 is currently as follows:

“30.3 Call back

- (a) An employee recalled to work overtime after leaving the employer’s business premises (whether notified before or after leaving the premises) must be paid for a minimum of three hours work at the appropriate rates for each time the employee is so recalled. Except in the case of unforeseen circumstances arising, the employee must not be required to work the full three hours if the job they were recalled to perform is completed within a shorter period.
- (b) Clause 30.3(a) does not apply where it is customary for an employee to return to the employer’s premises to perform a specific job outside the employee’s ordinary hours or where the overtime is continuous, subject to a reasonable meal break, with the completion or commencement of ordinary hours.”

[37] The addition ABI seeks is as follows:

- “(c) Where the actual time worked by an employee on glass or glazing work is less than three hours on such recall or on each of such recalls, overtime worked in the circumstances specified in this clause shall not be regarded as overtime for the purposes of clause 30.4 hereof.”

[38] Clause 30.4 of the JBT Modern Award is as follows:

“30.4 Rest period after overtime

- (a) When overtime work is necessary it must, wherever reasonably practicable, be arranged so that an employee has at least 10 consecutive hours off duty between the work of successive working days.
- (b) An employee, other than a casual employee, who works so much overtime between the termination of their ordinary hours on one day and the commencement of their ordinary hours on the next day that the employee has not had at least 10 consecutive hours off duty between those times must, subject to the other provisions of clause 30.4, be released after completion of the overtime until the employee has had 10 consecutive hours off duty without loss of pay for ordinary hours occurring during such absence.
- (c) If on the instructions of the employer an employee resumes or continues work without having had the 10 consecutive hours off duty the employee must be paid at the rate of 200% until the employee is released from duty for such period. The employee is then entitled to be absent until the employee has had 10 consecutive hours off duty without loss of pay for ordinary hours occurring during the absence.
- (d) The provisions of clause 30.4 apply in the case of a shiftworker as if eight hours were substituted for 10 hours when overtime is worked:
 - (i) for the purpose of changing shift rosters;

- (ii) where a shiftworker does not report for duty and a day worker or a shiftworker is required to replace the shiftworker; or
 - (iii) where a shift is worked by arrangement between the employees themselves.
- (e) An employee who has worked continuously, except for meal or crib breaks, for 20 hours must not be required to continue at or recommence work for at least 12 hours.”

[39] ABI submits the following award-based transitional instruments exclude the types of recall it refers to in its proposed clause 30.3(c) from the calculation of the 10 or eight hour break after overtime:

- *Glass Merchants and Glazing Contractors General (Victoria) Award 1997*
- *Glass Industry - Glass Merchants and Glazing Contractors (Tasmania) Award 1997*
- *Glass Industry - Glass Merchants and Glazing Contractors - South Australia Award 1998*
- *Glass Workers (State) Award (NSW)*
- *Glass Industry Award (Qld) 1998*
- *Glass Workers and Glazing (South Australia) Award.*

[40] Further ABI, supported by MBA, says the witness evidence of many of the employers engaged on glass and glazing work is to effect that to not disregard such recalls for the 10 or eight hour break provision would significantly increase costs and/or cause inefficiencies in their businesses and could result in a reduction in employment.

[41] In opposing the variation, the CFMEU submits that clause 30.4 of the JBT Modern Award does not require that an employee must have a 10 hour break after each recall, rather it requires an employee to have at least a 10 hour break between the termination of ordinary hours on any one day and the start of ordinary hours on the next day. Depending on rostered ordinary hours, it is possible for an employee to get a 10 hour break either between the end of work on one day and the recall or between the end of the recall and the beginning of work on the next day. The CFMEU adds that the witness evidence from the employers did not go to the frequency with which recalls occur, and the call back and rest period after overtime clauses were part of the exposure draft of the JBT Modern Award and also apply to employees of glass and glazing contractors.

[42] I am not persuaded I should grant the variation to the call back clause in the JBT Modern Award sought by ABI for reasons similar to those I have given for not being satisfied I should grant their proposed variation to shift rates. The call back clause was included in the exposure draft of the JBT Modern Award and included in the JBT Modern Award when the CFMEU in 2009 sought that the JBT Modern Award rather than the Manufacturing Modern Award cover the “downstream glass industry”. The Full Bench of the Commission had regard to the conditions in the award-based transitional instruments when it acceded in 2009 to the change in modern award coverage. The JBT Modern Award covers more than just glass and glazing work, its conditions reflect that broader coverage and its conditions have resulted in the employers covered by it experiencing some increases and decreases in the conditions under the JBT Modern Award compared to those in the award-based transitional

instruments that covered them. The evidence about the actual effects of the call back clause in the JBT Modern Award was also scant.

[43] In the circumstances, I am not satisfied the variation is necessary to correct an error in the JBT Modern Award or to achieve the modern awards objective.

Classification definitions

[44] ABI seeks that the following tasks be added to the classification definition of a Level 2 employee covered by the JBT Modern Award:

- “(viii) identifying, locating and safely handling, various types, dimensions, and qualities of treated and untreated glass, frame materials, putties, mastics, and sealants;
- (vix) feeding and removing glass from any automatic, semi automatic or single purpose machine;
- (x) grinding, polishing small simple shapes of glass, processing glass where a high standard of workmanship is not required;
- (xi) accurate measurement of glass, frames and other appropriate materials;
- (xii) loading, unloading and, conveying glass (treated or untreated) to and from cases, trucks, benches, pallets, stillages, bins, tables, process machinery, cages or racks by manual or mechanical means;
- (xiii) cleaning and visual inspection of processed glass;
- (xiv) fixing glass to frames with plastic or rubber strips or using silicone sealant (not outside a factory) where fitting or adjustment is not required;
- (xv) the use of hand and small power tools associated with tasks at this level (e.g. drill, hammer, pliers, screwdriver, files, spanner, stapler, nail gun, saws, grinders, sanders etc.);
- (xvi) all other repetitious, processing and manual work not mentioned herein, which does not require setting up or adjustment of machinery.”

[45] They also seek that the following tasks be added to the classification definition of a Level 3 employee covered by the JBT Modern Award:

- “(xi) ability to measure accurately;
- (xii) assists one or more tradespersons (ie. level 5 and above);
- (xiii) problem solving skills;
- (xiv) marking out to templates of glass for cutting to shape, drilling, notching etc.;

- (xv) operation of machinery for glass drilling, finger slotting, countersinking, or sawing;
- (xvi) cutting of glass in straight lines only to a maximum thickness of five millimetres;
- (xvii) assembly of leadlights to predetermined patterns using precut glass;
- (xviii) operating materials handling equipment including licensed crane driving and chasing, forklift driving, glass delivery vehicle driving (excluding crane mounted vehicle);
- (xix) despatching and receiving of materials including checking the quantities;
- (xx) making of cases to required measurements involving the use of power tools;
- (xxi) assisting in the on tile job training of other employees;
- (xxii) shall be capable to load and unload and inspecting glass from a glass toughening/laminating plant, and who may be under direct supervision of a laminating/toughening plant operator of the plant whilst training.”

[46] ABI, supported by MBA and in general terms by HIA, submit that the classification structure and definitions in the JBT Modern Award should reflect and be consistent with those in the award-based transitional instruments that applied to glass and glazing work. They maintain the classification structure and definitions in the JBT Modern Award may cause confusion amongst employers.

[47] The CFMEU points out that the classification definitions in the JBT Modern Award are generic. They also submit that the ABI’s variations seek to reduce the wage rates at which certain functions are performed and do not address some employers’ concerns about the use of the term “glass worker” in the classification definition of a Level 5 employee. The CFMEU proposes changes in the classification definitions of Level 2, 4 and 5 employees in the JBT Modern Award to address the concerns of ABI and others. The changes the CFMEU proposes are underlined in the following classification definitions from the JBT Modern Award:

“B.1.2 Level 2 [relativity to level 5 – 82%]

- (c) Indicative of the tasks which an employee at this level may perform are the following:
 - (i) repetitive fixing of pre-made components or parts of any article in predetermined ways, using basic written, spoken and/or diagrammatic instructions;
 - (ii) repetition work (including the feeding and removing of glass) on automatic, semi automatic or single purpose machines or equipment;
 - (iii) use of selected hand tools and hand operated power tools;

- (iv) maintenance of simple records;
- (v) manual handling skills;
- (vi) use of hand trolleys and pallet trucks;
- (vii) problem solving skills;
- (viii) handling of glass to and from cases, trucks, benches, pallets, stillages, bins, cages, or racks ...

“B.1.4 Level 4 [relativity to Level 5 – 92.4%]

- (c) Indicative of the tasks which an employee at this level may perform are the following:
 - (i) carrying out of tasks from basic plans, sketches and drawings in conjunction with appropriate written or verbal instructions;
 - (ii) operation of materials handling equipment requiring a licence or certificate;
 - (iii) setting up and operation and adjustment of machinery to produce more detailed components to exact specifications and standards;
 - (iv) fixing components or parts in pre-determined ways (including the making of cases) and simple rectification work to jobs in progress;
 - (v) assistance to other employees at this and other skill levels within their level of skill and training;
 - (vi) other tasks as directed in accordance with their level of skill and training;
 - (vii) completion of simple clerical tasks;
 - (viii) selection of suitable methods for completing tasks and planning the order in which to complete them;
 - (ix) keyboard skills at a level higher than Level 3;
 - (x) lubrication of production machinery equipment;
 - (xi) problem solving skills.
 - (xii) loading, unloading and inspection of glass from glass toughening/laminating, silvering, insulation or glass bending plants.

B.1.5 Level 5 [relativity to Level 5 – 100%]

- (c) Indicative of the tasks which an employee at this level may perform are the following:
- (i) carrying out of tasks from basic plans, sketches and drawings in conjunction with appropriate written or verbal instructions;
 - (ii) selection of materials and operation of machinery and/or equipment to produce articles in accordance with trade standards;
 - (iii) identification and initiation of relevant action to obtain materials, tools and machinery requirements for a particular job;
 - (iv) maintenance and use of hand held pneumatic, power and personal tools;
 - (v) understanding and undertaking of basic quality control/assurance procedures on the work of employees in lower classifications;
 - (vi) assisting in the provision of on-the-job training in conjunction with other trades persons and supervisors;
 - (vii) keyboard skills at a level higher than Level 4;
 - (viii) operation of all lifting equipment incidental to their work;
 - (ix) performance of non-trade tasks incidental to their work;
 - (x) performance of work which, while primarily involving the skills of an employee's trade, is incidental or peripheral to the primary task and facilitates the completion of the whole task and which does not require additional formal technical training;
 - (xi) approval and passing of first-off samples and maintenance of quality of product;
 - (xii) operation, setting up and adjustment of all production machinery in a plant to the extent of their training;
 - (xiii) performance of a range of maintenance functions;
 - (xiv) understanding and application of computer techniques as they relate to production process operations;
 - (xv) high level stores and inventory responsibility beyond the requirements of an employee at Level 4;
 - (xvi) marking out to templates of glass for cutting to shape, drilling, notching, etc;

- (xvii) operation of machinery for glass drilling, finger slotting, countersinking, or sawing;
 - (xviii) other tasks as directed in accordance with their level of skill and training.
- (d) Level 5 includes the following occupations:
- (i) Carpenter and/or joiner.
 - (ii) Stonemason.
 - (iii) Prefab tradesperson.
 - (iv) Painter.
 - (v) Plasterer.
 - (vi) Glazier.
 - (vii) Glass ~~worker~~ cutter.
 - (viii) Automatic bevelling/polishing machine setter operator.
 - (ix) Automatic edge grinding/polishing machine setter operator.”

[48] I am satisfied I should make the change from “glass worker” to “glass cutter” proposed by the CFMEU. This change was accepted by ABI. It addresses the main concern of the employers with the classification definitions in the JBT Modern Award and clarifies the types of occupations included in the Level 5 classification in the JBT Award. I am also satisfied I should make the other changes proposed by the CFMEU to the Level 2 classification definitions in the JBT Modern Award, given the correlation between these changes and some of those sought by ABI. However, I am not satisfied the other changes sought by ABI to the classification definitions in the JBT Modern Award are necessary to remove ambiguity or uncertainty or correct an error or to achieve the modern awards objective. The classification structure and definitions are generic, reflecting the broad coverage of the JBT Modern Award.

Determination

[49] A determination reflecting the variations that I am satisfied should be made to the JBT Modern Award is being issued at the same time as this decision.²³

SENIOR DEPUTY PRESIDENT

Endnotes:

- ¹ MA000029.
- ² MA000020.
- ³ AM2009/42 and AM2009/43.
- ⁴ MA000010.
- ⁵ *Re Joinery and Building Trades Award 2010 and another*, [2009] AIRCFB 974 at paragraph 11.
- ⁶ AP782094.
- ⁷ AP782093.
- ⁸ AP782190 CRV.
- ⁹ AP782248.
- ¹⁰ AP782192 CRV.
- ¹¹ AN120232.
- ¹² AN150058.
- ¹³ Daly, A and others, 1998, *Youth Wages and Employment*, Productivity Commission Staff Research Paper, AusInfo, Canberra, October.
- ¹⁴ See, for example, J Butler, 'Minimum Wage Laws and Wage Regulation: Do Changes to a Minimum Wage Affect Employment Levels?', (2006) *University of New South Wales Law Journal* (29(1)) 181; 'Youth Unemployment', Australian Chamber of Commerce and Industry Issues Paper, May 2010.
- ¹⁵ Exhibit ABI 6 and transcript in AM2010/80 at PN300-303, 317-318, 431, 545 and 552.
- ¹⁶ Transcript in AM2010/80 at PN947.
- ¹⁷ Exhibit CFMEU 8.
- ¹⁸ *Re Joinery and Building Trades Award 2010 and another*, [2009] AIRCFB 974 at paragraph 7.
- ¹⁹ *Ibid* at paragraph 9.
- ²⁰ *Re Joinery and Building Trades Award 2010 and another*, [2009] AIRCFB 974.
- ²¹ See, for example, exhibit CFMEU 17.
- ²² See, for example, exhibits ABI 2 and 9.
- ²³ *Re Joinery and Building Trades Award 2010*, PR503860.