

TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

65198-1

SENIOR DEPUTY PRESIDENT HARRISON

AM2011/54

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

**Application by United Voice
(AM2011/54)
Security Services Industry Award 2010**

**(ODN AM2008/11)
[MA000016 Print PR985126]]**

Sydney

10.05AM, THURSDAY, 15 DECEMBER 2011

PN1

THE SENIOR DEPUTY PRESIDENT: May I have appearances in this matter.

PN2

MR N. SWANCOTT: Yes, your Honour. I appear with MR J. MILROY for the applicant, United Voice. My name is Swancott.

PN3

THE SENIOR DEPUTY PRESIDENT: Mr Swancott.

PN4

MR C. DELANEY: Yes. If it pleases your Honour, Delaney, initial C. I appear on behalf of the Australian Security Industry Association Ltd, ASIAL.

PN5

THE SENIOR DEPUTY PRESIDENT: Thanks, Mr Delaney. Now, this matter is listed for conference and programming. I thought it might be useful, though, that we have the first part of it at least transcribed so that any persons who might have an interest in what is to be achieved here by this variation might be able to read the transcript. Of course, there are grounds that describe the background reasoning for the variation as sought that accompanied the application, but it might be useful, Mr Swancott, for you to say anything more about those matters and let me know the extent to which you think this variation may be consented to or otherwise. Of course, Mr Delaney, in that respect, can let me know what his members think about it.

PN6

MR SWANCOTT: Yes, your Honour. As you're aware, the application with the detailed explanation under the heading Grounds - partly submissions but partly grounds - seeks to demonstrate that there's a potential ambiguity in the descriptors in the classification schedule, and it sets out the proposed variation to the schedule to meet that ambiguity. It may in fact be more a lacuna than ambiguity, but in any event the concern of my union, which we raised with Mr Delaney's registered association, was that there was potentially confusion as to the application of this award to the aviation security work that's described, and that it was in all of our interests that there be no such confusion. As I indicated, your Honour, the application and the grounds have been on the website since 2 December, which has meant that anybody with any interest at all in this matter has had access to it.

PN7

In the normal course, my union received the Fair Work Australia alert as a subscriber to the Security Industry Award Service and I therefore expect that all other subscribers to the service who have an interest in this award would have received the notification as well.

PN8

THE SENIOR DEPUTY PRESIDENT: I might get you to pause there. I might observe that we have received no contact nor any correspondence concerning this matter, and I think it would have been identified that this mention was listed today - well, not "I think". I know it was.

PN9

MR SWANCOTT: Yes. Unquestionably, today's notice of listing is on the website and has been there since 6 December. Your Honour, I make it clear that the security industry award applies to employers in the security industry. Relevantly, in relation to this application, it's employers who provide contract services in the aviation sector, so it's employers who employ security workers who are members of United Voice in a range of industries in activities, including the airport security zones that are mentioned. The application doesn't have the effect of extending the award to any other employers beyond those who are in the security industry and covered by the modern award. As I indicated, its purpose is to clarify that employees of security industry employers engaged in security work in that particular location are covered by the award for that work.

PN10

Your Honour, Mr Delaney, who represents many of the contracting companies that in fact will be employing our members to do that work has made a number of suggested minor amendments, but they're by way of having a consistent approach in the new words that have been added. I'll let Mr Delaney address them, but I indicate that United Voice agrees to his proposed amendments, in which case we can supply this afternoon an amended draft determination.

PN11

THE SENIOR DEPUTY PRESIDENT: Yes.

PN12

MR SWANCOTT: I don't want to pre-empt your Honour, but it may be that that could go onto the website for a brief period to see if it attracts anybody who has not yet been attracted to this matter. If not, subject to your Honour's satisfaction of the legislative powers, the matter could be finalised on the papers.

PN13

THE SENIOR DEPUTY PRESIDENT: Yes. Subject to any further amendments that Mr Delaney is going to address me on, the variations are those that are in bold in the annexure to your originating application.

PN14

MR SWANCOTT: Yes, your Honour. I think on the website they're in red.

PN15

THE SENIOR DEPUTY PRESIDENT: Are they? Good.

PN16

MR SWANCOTT: But they're in bold on the - - -

PN17

THE SENIOR DEPUTY PRESIDENT: We can all see them.

PN18

MR SWANCOTT: - - - black and white print out. Thank you.

PN19

THE SENIOR DEPUTY PRESIDENT: Mr Delaney.

PN20

MR DELANEY: Thank you, your Honour. Indeed, this is a clarification. Many of our members provide security services to the aviation industry. As all of us

would know, we travel on aircraft. The work is being performed by members of Mr Swancott's union, United Voice, and has always been notionally a part of security work and various security awards prior to this current modern award. The variation is prompted rightly, I think, by a change in the training regime for aviation security and a change in some of the language that has been used to describe that work. Appropriately, the type of language is now included in this application to vary, and we've discussed that with United Voice. ASIAL has discussed it.

PN21

We've discussed it with our members and we support the changes with some minor variation. I won't go to every clause and every variation, but if we consider in the application clause C23(e), it uses the words "including or in connection with". Now, what we're recommending is that phrase "including or in connection with" be consistent throughout all of the clauses. You'll note that if we go to (j) of that same subclause, it talks about "and screening using explosive trace detection in or in connection with". We say insert the word "including" and then it's consistent with all of the other clauses that are being recommended by United Voice.

PN22

Throughout the application, where the word "including" has not been used, we recommend that it be used, and that will appear in the amended application from United Voice, according to Mr Swancott. I think there are three or four places where that occurs.

PN23

THE SENIOR DEPUTY PRESIDENT: You have no concerns that the addition of those words or in fact the retention of them that are in the classification structure already could somehow inadvertently cut across classifications that are found in other awards?

PN24

MR DELANEY: No.

PN25

THE SENIOR DEPUTY PRESIDENT: I know in the past where there has been disputation concerning these officers at airports - it has been disputation I always described as in the security industry - but I'm concerned about what I don't know about - I'm just concerned about what I haven't - - -

PN26

MR DELANEY: What you haven't heard?

PN27

THE SENIOR DEPUTY PRESIDENT: What I haven't heard. And I'm not suggesting for a moment that something hasn't been volunteered that's relevant. It's not that at all. It's more whether something inadvertently could occur in terms of these variations.

PN28

MR DELANEY: These activities that are being performed, like the detection of explosive devices, walk-through protection systems, all of that, are currently work that are performed by security officers or is performed by security officers in a

range of different areas, not just the airport. It happens in some courts, it happens in other environments where detection devices are used, sometimes in or in connection with a venue, where activities - there may be a concert or something like that and they will use a detection device. It might be a wand or it might be a walk-through detection device.

PN29

What we're trying to do is not, by using the word "including, in or in connection with aviation zones or airport security zones", is by using that word not excluding other applications of that particular type of work. Some of it is already in the award. The frisk statements are not in other awards, but that activity occurs. Now, the only other award that has any relationship to activities like this in security would be the airport employees' award, and that would relate to direct employees of an airport employer - - -

PN30

THE SENIOR DEPUTY PRESIDENT: Yes. Rather than a security provider.

PN31

MR DELANEY: - - - rather than a contract security officer.

PN32

THE SENIOR DEPUTY PRESIDENT: So we think that it provides the appropriate level of descriptor to therefore avoid the ambiguity that arises out of the new training regime, where it has gone from the property services ITAB now over to the transport and logistics one. As Mr Swancott said in his grounds and explanation, those many parts to units within the new training regime in transport and logistics or transport protection are and have existed for security officers elsewhere.

PN33

MR DELANEY: I think that's all I have to say. I'm quite satisfied with Mr Swancott's indication as to how we might proceed with this matter, and clearly everybody who may have had an interest would have seen it already and would have been here or contacted either Mr Swancott or myself to make some comment. So we think it should proceed in the process suggested by United Voice. Thank you, your Honour.

PN34

THE SENIOR DEPUTY PRESIDENT: Yes. Well, what I'm inclined to do is to adopt that suggestion, Mr Swancott. From what I have read on the grounds as filed and on the submissions made today, my preliminary view, subject to hearing any opposition would be that it is a variation appropriate to be made and consistent to the statutory criteria to variations being made outside - and before, in this case, two-yearly review. I'm inclined to think that I'll ask you to file as soon as possible the terms of the orders sought, which will accommodate the changes Mr Delaney seeks, that I will put it on the website, that I will put also on there a statement that I'd be inclined to make a variation in the terms sought, and that anyone who wishes to be heard in opposition to it file submissions by a certain identified date.

PN35

I think in that respect - I had in mind probably a fortnight as reasonable - something less than that possibly isn't - but then we get the Christmas, New Year difficulty. So what say - if I was to have that placed on the website some time tomorrow and we go just a little more than two weeks; we go to the first working day after it. What if I was to say by close of business, the 4th? Does that create any difficulty with there being that delay in this variation, Mr Swancott?

PN36

MR SWANCOTT: Only if there are any objectors, your Honour, because otherwise I will be on holiday.

PN37

THE SENIOR DEPUTY PRESIDENT: Well, if there are any objectors, I think we have another short hearing ahead of us all but we'll worry about that then.

PN38

MR SWANCOTT: We'll accommodate that if that is needed.

PN39

THE SENIOR DEPUTY PRESIDENT: All right. Mr Delaney?

PN40

MR DELANEY: I'm in the same position, your Honour.

PN41

THE SENIOR DEPUTY PRESIDENT: All right. Very good. Well, that's what we'll do. In the event of any objection, you'll be informed of it the same time I will and we'll probably have another short hearing at the time that we can all get together again. In the event there are not, I should indicate that it is likely then that a variation in the terms sought will be made. Any issues about operative date? My proposal would normally be that it come to operation on that day?

PN42

MR SWANCOTT: Yes, and I think that's the statutory presumption as well.

PN43

THE SENIOR DEPUTY PRESIDENT: Yes, very good. We'll now adjourn.

<ADJOURNED INDEFINITELY

[10.21AM]