

In the Fair Work Commission

Matter Nos: AM2019/23 and AM2020/2

South Australian Road Transport Association (SARTA) Submission on these matters

1. The Applications seek to vary the Road Transport (Long Distance Operations) Award 2010 (the LDO Award) as follows:

1. The Applicant seeks to vary Clause 3, Definition of Loading and Unloading by:

Omitting;

“tarping, installing and removing gates and operation of on board cranes”

Inserting;

All non-driving activities including but not limited to;

- i. Complying with entrance and departure procedures at load or unload location.
- ii. Apply or release all load restraint devices, including gates and tarps.
- iii. Operation of trailer curtains.
- iv. Operation of forklifts, pallet jacks, winches and mobile cranes.
- v. Be on-call or to assist a third party to load or unload freight.
- vi. Waiting time or queueing time.
- vii. Processing of freight documentation.
- viii. Checking vehicle weights on weighbridges.

2. The Applicant seeks to vary clause 14.2 C(i) – “Travelling Allowance” by:

Omitting;

“This will not be payable where an employee is provided with Suitable Accommodation away from the vehicle.”

2. SARTA opposes these applications and the variations they seek to the LDO Award and seeks that the Commission dismiss these matters on the papers.
3. Alternatively SARTA considers these applications ought be dealt with by a Full Bench of the Fair Work Commission as work value cases under s. 157 of the Fair Work Act 2009.
4. SARTA, established in 1908, represents some 350 employer truck operator businesses of all sizes and in all sectors of the road transport industry throughout the State. We have been active participants in many previous cases in the Commission regarding the Road Transport Awards, including C2004/5932, C2004/261, C2004/5956 and C2005/1310 before President, Justice Guidice, Senior Deputy President Kaufman and Commissioner Foggo, which bears significant relevance in these matters.
5. SARTA is aware of and supports the submission of ARTIO in these matters.
6. SARTA considers that the detail of the Applications portray a fundamental misunderstanding of the nature and operation of the LDO Award, which covers long distance operations, and the

distinctions between it and its application and that of the Transport and Distribution Award 2010, which covers local operations of Heavy Vehicles.

7. The Applications are also at odds with previous decisions of the Commission, including:

Local v Long Distance Activity

8. The Applications appear to confuse the application and operation of the LDO vis a vis the Transport And Distribution Award 2010.
9. The Applicants argue at [8] that long distance drivers are effectively performing 'Local Work' when doing multiple pickups or drop-offs that ought be covered under the 'Local Award' (the Transport And Distribution Award 2010), arguing at [9] that clause 4.2 of the LDO ought apply to this aspect of the work since clause 4.2 provides:
 - a. The award does not cover an employee while they are temporarily required by their employer to perform driving duties which **are not on a long-distance operation**, provided the employee is covered by the Road transport and Distribution Award 2010 while performing such duties"
10. The Applicants argue at [9] that "there is no mechanism to identify where the Local Award takes effect, and the LD Award does not provide an option for an employee to be remunerated by way of "Hourly with Overtime" as reflected in the Local Award".
11. This argument put by the Applicants seeks to dissect out from the long distance operation any pickups or drop-offs which are integral to the long distance operation but which are not performed at the principal point of departure or principal point of destination. This is inconsistent with the intent and long-standing application of the LDO, as re-affirmed in past decisions of the Commission.
12. Clause 4.2 of the LDO was never intended to nor has it ever operated in this way. It is not a trigger to switch between coverage under the LDO and coverage under the Transport and Distribution Award during the course of a long-distance operation. Rather it is intended, and has always operated, to cover the situation which occasionally arises where a driver who ordinarily works performing long-distance operations, such as from their base in Adelaide to Sydney and return, is not required, for a period, to perform such long distance work and instead performs local work on journeys of less than 500kms return from their base in Adelaide or 200kms across a border. This reflects the reality that the variable nature of the road transport task and demand is such that many businesses are not fully engaged on long distance operations and as such some or all of their drivers may perform Local Work for weeks at a time before performing another long distance operation.

Additional Pickups and Drop-offs:

13. The Full Bench's decision in FWCFB 1913 in AM2016/32 rejected the TWU's proposed insertion of a "pickup and drop off allowance" and in particular noted (our underlining):
 - i. [97] There is nothing in the definition of "long distance operation" to imply that an operation will only involve one pickup and one drop-off. For a journey to constitute a long distance operation, it must (at least) involve moving livestock or materials from a principal point of commencement to a principal point of destination. That does not mean the journey might not involve picking up or dropping off at more than one location. Indeed that possibility is implicit in the use of the word 'principal', which implies that there might be 'secondary' points of commencement or destination.
 - ii. [98] The Long Distance Award has an unusual remuneration structure, reflecting the particular circumstances and needs of the industry. Long Distance drivers are not necessarily remunerated for the driving component of their work on the basis of the actual time taken. Instead, they are paid either on the basis of the kilometres travelled (the kilometre driving method) or by the hourly driving method.
 - iii. [103] The current remuneration structure has been contained in federal awards since at least 1993. These 'trip rates' strike a balance between the needs of the employers and the employees – giving employers a degree of certainty in tendering for work, and for employees in knowing what they will be paid. There is no need to calculate the exact number of kilometres driven, nor time taken, for each journey. In some cases, employees will be advantaged by the way the schedule operates; in other cases, there could be some advantage to the employer. We do not consider that the proposed variations should be made without a thorough reassessment of the schedules and the way in which they operate. No party sought such a wholesale reassessment and we do not have the evidence before us to conduct such an exercise. In these circumstances, we decline to make the proposed variations.

Non-driving Activities

14. The Applications essentially seek to overcome previous decisions of the Commission, such as the decision in *Laycock v J & C Independent Carriers Pty Ltd* [2018] FCCA 6, regarding the application of the Loading and Unloading rates of pay by varying the long-standing definition of 'Loading and Unloading' to include "all non-driving activities including" those listed in the Applications.
15. These 'non-driving activities' which the Applicants seek to have included in the definition of "Loading and Unloading" are not activities that are routinely applicable to all, or even the bulk of, Heavy Vehicle drivers performing long distance operations. The Applications present no substantive evidence to establish their argument for this proposed change.
16. Deputy President Beaumont, in *Transport Workers Union of Australia v Linfox Australia Pty Ltd* [2020] FWC 489, noted at paragraph 86 that it is clear that a 'long distance operation' goes "beyond the driving component and that the LDO Award contemplates that such rates (cents per kilometre) compensate for work, which extends past the driving and movement of the vehicle".

Travelling Allowance

17. The Applicants in seeking the removal of the exemption from payment of Travelling Allowance under clause 14.2 C(i) – “Travelling Allowance”, have not, in our view, established an argument that would warrant overturning the current construct of the LDO which was developed through a Consent Agreement between ARTIO, the TWU and SARTA and adopted by the Full Bench of the Australian Industrial Relations Commission (AIRC) in PR951827. This consent agreement was the outcome of lengthy and comprehensive discussion between the parties and Conferences with Senior Deputy President Lacy.
18. The Applicants present no substantive evidence, that is in any way representative of the norm within the long distance operations of the industry, to support, let alone justify, adoption of the Applicants’ proposed variations to the existing provisions of the LDO Award.
19. The LDO Award provisions remain appropriate and provide fair and reasonable remuneration for heavy vehicle drivers performing Long Distance Operations in a manner that recognises and accommodates the nature of the road transport task. This includes appropriate compensation for the issues raised in the Applications, through the loaded driving rates, whether cpk or hourly rate, incorporating the 30% Disability Allowance and the 20% Overtime Allowance, a net 156% of the Base Rate, which apply from the first km through the last km.
20. Nothing has changed in the operation of the industry and the conduct of long distance operations since the previous decisions of the Commission, including those noted above which are reflected in the current LDO Award provisions, that would warrant adoption of the variations proposed by the Applicants.

SARTA

20 March 2020