

IN THE MATTER OF AM2019/23 and AM2019/2

SUBMISSION

Deputy President Sams

Please consider the following submission in reply, in the case currently before the Fair Work Commission under the Fair Work Act 2009 s 158 - Application to vary or revoke a modern award Application by Warner, Trevor (AM2019/23 and AM2019/2).

In the event it should be decided that a hearing before the Full Bench be held, I would like to request the opportunity to attend and present my submission to the Full Bench. This application will have significant impact on the Australian economy as it will if granted remove a legislated right for employers to not pay work for work performed by workers covered by this Award. As it is currently a hot topic with recent major companies & celebrities having come forward & been caught, under-paying employees either by not paying due diligence to the relevant award or deliberate under payments.

Any Operator of Organisation that opposes this application is saying that they support the concept of Wage theft. That it's acceptable to have an award that legalises the theft of wages through allowing work that is required to be done in the course of the employees duties to not require payment, yet that work is expected to be done.

As long as this award is in its current format, Australia continues to have a dual Legal process that on one hand says that there is certain work that Long Distance Drivers do that they don't have to be paid for, because the award doesn't specifically recognise it as work. & the Work Diary Legislation that says that it is work and must be recorded as such.

This **Road Transport (Long Distance Operations) Award 2010 [MA000039]** (the Award) has been used in recent court decisions to ensure that workers are not paid for work that under alternate Legislation is regarded as work. The work that is not being paid for as per the award is well documented in the application, but what must be understood is that the National Heavy Vehicle Regulations Define work as follows, taken from the NHVR (National Heavy Vehicle Regulator) Website <https://www.nhvr.gov.au/safety-accreditation-compliance/fatigue-management/counting-time> all Highlight are mine for emphasis;

Counting time

Legislation requires that work time and rest time be counted in a certain way. Understanding the rules for counting time will help drivers manage work and rest times and assist other responsible parties in the supply chain comply with their duties to manage work and rest time and prevent driver fatigue.

What is work time?

Work time includes **all tasks** to do with the operation of the fatigue-regulated heavy vehicle. Driving is obviously work time, but work time also includes tasks such as:

loading and unloading the vehicle

inspecting, servicing or repair work
attending to the load or to passengers (on a bus)

cleaning or refuelling the vehicle

instructing or supervising another person including learning to drive a heavy vehicle, learning a new route, **making deliveries etc.**

recording information or completing a document (for example your work diary).

It doesn't matter if the tasks occur on private property or on a road or road related area, they are still classified as work.

This can conflict with the interpretations of the Award in that the interpretations have not recognised instructing or supervising another person (i.e. a fork-lift driver or crane operator) on the correct loading of the truck for legal loading with regards to weight distribution or positioning to aid with correct load restraint as required under the NHVR.

Should the FWC decide to deny this application it will be contributing to the mismanagement of Fatigue within the transport industry. As such under the various Workplace Health & Safety Acts is contributing to unsafe workplaces by allowing a dual fatigue legislative arraignment that is contradictory in nature. So long as workers are not being paid for certain work, it can be determined that it is therefore not work and is not required to be recorded as such in the Work Diary, thus creating a situation where work that is contributing to fatigue is not recorded and results in Drivers working fatigued because the unpaid work still has to be done.

The second part of the application that of the Living Away from Home Allowance (LAFHA), I fully support the points made in the application. Furthermore, the LAFHA is regularly a point of roting by employers, it is a common practice within the transport industry for employers to deduct the LAFHA from a Drivers Kilometre rate then Deduct the tax due on the remainder, then 'give' the deducted amount back as your LAFHA. In effect Drivers are paying their own LAFHA. Another common practice within the Transport industry is for employers to pay Casual Drivers the Permanent Kilometre rate without applying the Casual Penalty provisions.

Again, any organisation or company that opposes this application is condoning wage theft, knowing that Drivers are doing unpaid work that by the interpretation of the Work Diary is work, yet the Award says is not, because the Courts apply a literal interpretation of the Award. The Award should be amended to reflect that all work associated with the Loading & Unloading of a truck be paid whether that work is specifically stated/described within the Award or not. Furthermore the FWC should be undertaking random spot audits to ensure that compliance with the correct application of the Award conditions are being met, rather than waiting for a complaint to be made by Drivers that are fundamentally in Unsecure work, and therefore feel the risk of reporting underpayment or roting of Taxation application of the LAFHA could result in the termination of their employment.

Regards

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