

4 Yearly Review of Modern Awards

Matter No's: AM2014/208 and AM2014/212

Road Transport and Distribution Award (2010)
Passenger Vehicle Transportation Award (2010)

Further submissions on the technical and drafting issues related to the exposure draft.

1. The Transport Workers' Union of Australia (TWU) refers to the Report to the Full Bench by Deputy President Hamberger dated 11 August 2016. A conference was held on 28 July 2016 to deal with outstanding technical and drafting issues concerning the four yearly review of the five transport awards.
2. These submissions relate to Attachment B – Non-Agreed Variations as set out in Deputy President Hamberger's report. The AIG propose a variation to the listed awards in Attachment B relating to the ordinary hours of work so as to define the ordinary hours for casual employees. The TWU oppose the variation as proposed by the AIG.
3. The *Fair Work Act 2009* requires modern awards to include terms defining the ordinary hours of work. Section 147 deals with the ordinary hours of work.

“147 A modern award must include terms specifying, or providing for the determination of, the ordinary hours of work for each classification of employees covered by the award and each type of employment permitted by the award.”

4. The ordinary hours of work in many awards provide for the ordinary hours of work for permanent employees but generally exclude casual employees. The TWU submits it is not necessary to specify the hours of work for casual employees as they are engaged as a casual employee and paid by the hour.

5. Section 147 is necessary, according to the Explanatory Memorandum to the Fair Work Bill 2008 in order to determine entitlements under the NES. Para 582 states the section is necessary because “many of the entitlements (such as paid annual leave) under the NES are calculated on the basis of an employee’s ordinary hours of work”.
6. Casual employees are not entitled to most of the minimum standards under the NES and it is not necessary to define the ordinary hours of work for a casual employee. However if the Commission’s view is that ordinary hours of work should be defined, the TWU makes the following submissions.

Passenger Vehicle Transportation Award (2010) (the PVT Award)

7. Clause 6 of the Exposure Draft of the PVT Award deals with types of employment. The ordinary hours of work can be determined for both a full-time and part-time employee.
8. Clause 8 deals with Ordinary hours of work and rostering for a full-time employee. Whilst not specified in the current award it is clear that the clause relates to full-time employees based on how the ordinary hours of work may be worked and the provision for rostered days off.
9. Although casual employees are engaged as casual employees and paid by the hour with no requirement to agree to the usual hours of work, the TWU is not opposed to defining the ordinary hours of work for a casual employee.
10. The appropriate clause for defining the ordinary hours of work for a casual employee is in Clause 6.5 as Clause 8 deals with full-time employees. As with part-time employees, the ordinary hours of work should not be averaged as the averaging of hours apply to full-time employees as set out in 8.1(b).
11. The TWU proposes the following variation to the award by inserting a new sub clause 6.5(b) as follows:

“The ordinary hours of work for a casual employee will be up to 38 hours per week”.

12. The remaining sub-clauses to be renumbered accordingly.

Road Transport and Distribution Award (2010) (the RT&D Award)

13. As with the PVT Award, clause 6 deals with types of employment and clause 8 deals with ordinary hours of work. Again whilst not specified in the current award it is clear that the clause relates to full-time employees based on the rostering of ordinary hours and the provision for a rostered day off.
14. The TWU proposes the following variation to the award by inserting a new sub clause 6.5(b) as follows:

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“The ordinary hours of work for a casual employee will be up to 38 hours per week”.

15. The remaining sub-clauses to be renumbered accordingly.

Wendy Carr
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16 August 2016