

From: Sarah McKinnon [<mailto:SMcKinnon@nff.org.au>]
Sent: Tuesday, 26 July 2016 1:58 PM
To: Chambers - Asbury DP
Cc: Sarah McKinnon; margaret.chan@ablawyers.com.au; Stephen Crawford (stephen.crawford@nat.awu.net.au); Dean Astley (dean.astley@amwu.asn.au); Nicola Street; Kimberly Pearsall; Brent Ferguson
Subject: AM2014/247 - Sugar Industry Award - Exposure Draft

Dear Deputy President,

We refer to the conference in the above matter on 14 July 2016.

During the conference, the NFF undertook to review its position in relation to Item 17 in the Submission Summary Table (3 June 2016) dealing with the interaction between casual and piecework provisions of the Sugar Industry Award.

We have now reviewed our position and advise as follows:

1. Prior to commencement of the modern award, employment under the *Sugar Field Sector Award 2005* was on a weekly, hourly or daily basis.
2. There was no 'casual loading' for employees engaged on an hourly basis. Instead, loadings applied to employment on the single contract hourly rate (15%) and piecework (20%). Pieceworkers had no entitlement to paid leave under the Award (as they were paid the 20% loading instead).
3. From 1 January 2010, pieceworkers became entitled to both the 20% loading and leave entitlements. In addition, a new category of 'casual' employee was introduced into the award. Arguably, it is now possible to employ pieceworkers either as permanent or casual employees (rather than simply as pieceworkers). If they are employed as casual employees, they may be entitled to claim the 25% casual loading in addition to the 20% piecework loading.
4. In our view, this is a windfall for employees that was never intended to result from the modernisation of the award.
5. The NFF has sought to vary the Sugar Industry Award 2010 to reduce the piecework loading to 12.5% to address what is effectively a 'double dipping' in the award (see attached). Our understanding is that the claim will be dealt with in the award stage.
6. On that basis, we seek that Item 17 also be dealt with during the award stage, as it deals with the same substantive issue as the NFF claim.

We understand that the Australian Workers Union and the Australian Sugar Milling Council are comfortable with the matter being dealt with in that way.

Yours sincerely,

Sarah

Sarah McKinnon | General Manager, Workplace Relations and Legal Affairs | National Farmers' Federation

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4 yearly review of modern awards – Sugar Industry Award 2010

AM2014/247

**NATIONAL FARMERS' FEDERATION
SUBMISSION**

Date: 12 November 2015

1. The National Farmers' Federation (NFF) is the peak industry body representing Australian farmers and agribusiness across the supply chain, including all of Australia's major agricultural commodity groups.
2. On 2 November 2015, a Full Bench of the Fair Work Commission (**Commission**) issued directions in these proceedings requiring an outline of submissions in relation to any additional substantive claims to be filed by 12 November 2015.
3. This submission responds to those directions.
4. The NFF proposes a variation to the Sugar Industry Award 2010 (**the Sugar Award**) to reduce the piecework loading to 12.5 per cent. The variation is sought on the basis that the current piecework loading of 20 per cent factors for an amount for annual leave and personal leave entitlements, despite these entitlements also being provided under the National Employment Standards in the *Fair Work Act 2009* (**FW Act**). To the extent that the piecework loading accounts for leave entitlements, it amounts to double dipping.
5. The NFF proposes to file a written submission in support of the proposed variation, together with a witness statement drawn from the sugar industry and attesting to the industrial history of the Sugar Award insofar as it is relevant to the claim.

Sarah McKinnon

General Manager, Workplace Relations & Legal Affairs

12 November 2015