

IN THE FAIR WORK COMMISSION

Matter No: AM2014/268.

Section 156 - Four Yearly Review of Modern Awards

Food, Beverage and Tobacco Manufacturing Award 2010.

SUBMISSION OF UNITED VOICE

6 October 2016

INTRODUCTION

1. This submission is made pursuant to the directions made by His Honour the President on 26 August 2016.
2. This submission concerns United Voice's claims in the *Food, Beverage and Tobacco Manufacturing Award 2010* ('*Food and Beverage Award*').

EXISTING CLAIMS

3. We refer to the claims outlined in our submission of 3 March 2015. United Voice outlined claims regarding the coverage of cleaners and security officers, improvements to the Hot Places Allowance, the payment of penalties for work during meal breaks, the rate at which overtime is paid and the definition of a shift worker. United Voice confirms that it will pursue these claims as variations.
4. The claims regarding overtime and the penalty for working during meal breaks can be dealt with by submissions.
5. The claim regarding the definition of shiftworker may be dealt with by submission.
6. United Voice claim regarding the facilitative provisions or the coverage of security guards and cleaners may require 2 lay witnesses but we consider that this matter should be capable of being dealt with by way of submissions.

NEW CLAIMS

7. United Voice wishes to reframe its claim regarding the hot places allowance that was outlined in the submission of 3 March 2015.
8. In addition to the claim regarding how the temperature of the workplace is ascertained for the purpose of the allowance, United Voice is seeking to increase the rate paid for work performed in hot places. Additionally, United Voice is seeking a longer break for employees working in temperatures in excess of 54 degree Celsius for two hours or more.

9. Working in hot conditions for long periods of time is dangerous and arduous work. The allowance should recognise the danger to an employee of working in high temperatures for an extended period and create a disincentive for the over utilisation of such labour. Further, the current allowance does not adequately compensate for the disability associated with working in hot places. United Voice's proposed variation would ensure that remuneration for work in hot places reflects the disability associated with the work.
10. Further, the current provision for a break without loss of pay after working for two hours in temperatures in excess of 54 degrees is inadequate. After working in such extreme heat for such a long period of time, a break of 1 hour is appropriate.
11. This claim, if disputed, would be evidence based requiring evidence from persons who work in hot places and expert evidence concerning physiology.
12. Draft determinations for the changes that United Voice intends to pursue to this award are attached at **annexure A**.

ANNEXURE A

DRAFT DETERMINATION

Fair Work Act 2009

s.156 – 4 yearly reviews of modern awards

4 yearly review of modern awards – Award Stage

(AM2014/268)

Food, Beverage and Tobacco Manufacturing Industry Award 2010

(MA0000073)

[FULL BENCH]

SYDNEY, XX Month 2016

4 yearly review of modern awards

A. Further to the Decision and Reasons for Decision <<DecisionRef>> in <<FileNo>>, it is determined pursuant to section 156(2) (b) (i) of the *Fair Work Act 2009*, that the *Food, Beverage and Tobacco Manufacturing Industry Award 2010* be varied as follows.

[1] At clause 3.1, at the definition of ‘*food, beverage and tobacco manufacturing award*’ insert new subclauses (d) and (e) as follows:

(d) patrolling, protecting, screening, watching or guarding any people and/or property, including cash or other valuables, by physical means (which may involve the use of patrol dogs or the possession or use of a firearm) or by electronic means and the operation of a security control room or monitoring centre; and

(e) cleaning (including event cleaning, trolley collection and hygiene and pollution control and minor property maintenance which is incidental or peripheral to cleaning.’

[2] Delete subclause 26.3 (c) and insert new clause 26.3 (c) as follows:

‘(c) Hot places

(i) An employee who works for more than 30 minutes in the shade where the temperature is raised by artificial means must be paid the following percentage of the ordinary hourly rate for the employee’s classification for each hour of work or part thereof:

<i>Temperature</i>	<i>Penalty</i>
<i>Between 46 and 54 degrees Celsius</i>	<u><i>200%</i></u>
<i>In excess of 54 degrees Celsius</i>	<u><i>300%</i></u>

(ii) *In addition, where work continues for more than two hours in temperatures exceeding 54 degree Celsius, the employee is entitled to 1 hours rest after every two hours work without loss of pay.*

(iii) *The temperature will be agreed between the supervisor and the employee who claims the extra rate for the given period.*

[2]. Delete clause 32.5 and insert a new clause 32.5 as follows:

'Except as otherwise provided in clause 32- the rate of 150% must be paid for all work done during meal hours and thereafter until a meal break is taken.'

[3]. Delete clause 33.1(a) and insert and new clause 33.1(a) as follows:

'(a) Except as provided for in clauses 33.1(d), 33.1(e), 33.7 and 33.8, for all work done outside ordinary hours on any day or shift, as defined in clauses 30.2, 30.3 and 30.4, the overtime rate is 150% for the first two hours and 200% thereafter until the completion of the overtime work. For a continuous shiftworker the rate for working overtime is 200%.'

[4]. Delete clause 33.6 and insert a new clause 33.6 as follows:

'A day worker required to work overtime on a Saturday must be afforded at least four hours' work or be paid for four hours at the rate of 150% for the first two hours and 200% thereafter, except where overtime is continuous with overtime commenced on the previous day.'

[5]. Delete clause 33.7 and insert a new clause 33.7 as follows:

'An employee required to work overtime on a Sunday must be paid for a minimum of two hours' work at the rate of 200%. The 200% is to be paid until the employee is relieved from duty.'

[6]. Delete clause 33.8 and insert a new clause 33.7 as follows:

'Public holiday work

(a) A day worker required to work overtime on a public holiday must be paid for a minimum of two hours' work at the rate of 250%. The 250% is to be paid until the employee is relieved from duty.

(b) A continuous shiftworker required to work overtime on a public holiday must be paid for a minimum of two hours' work at the rate of 200%.

(c) A non-continuous shiftworker required to work overtime on a public holiday must be paid for a minimum of two hours' work at the rate of 250%. The 250% is to be paid until the employee is relieved from duty.'

[7]. Delete clause 34.3(a) and insert new clause 34.3(a).as follows:

'(a) For the purpose of the additional week of annual leave provided for in s.87(1)(b) of the Act, a shiftworker is a seven day shiftworker who is regularly rostered to work on weekends and public holidays.'

B. The determination comes into operation from XX Month 2016. In accordance with s.165 (3) of the *Fair Work Act 2009* this determination does not take effect until the start of the first full pay period that starts on or after XX Month 2016.

PRESIDENT