

IN THE FAIR WORK COMMISSION

Matter No.: AM2014/260 Building and Construction General On-site Award 2010

Re Application by: "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)



Submissions of the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU) re: Air-conditioning industry and refrigeration industry allowances

4 Yearly Review of Modern Awards

COVER SHEET

About the Australian Manufacturing Workers' Union

The Australian Manufacturing Workers' Union (AMWU) is registered as the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union". The AMWU represents members working across major sectors of the Australian economy, including in the manufacturing sectors of vehicle building and parts supply, engineering, printing and paper products and food manufacture. Our members are engaged in maintenance services work across all industry sectors. We cover many employees throughout the resources sector, mining, aviation, aerospace and building and construction industries. We also cover members in the technical and supervisory occupations across diverse industries including food technology and construction. The AMWU has members at all skills and classifications from entry level to Professionals holding degrees.

The AMWU's purpose is to improve member's entitlements and conditions at work, including supporting wage increases, reasonable and social hours of work and protecting minimum award standards. In its history the union has campaigned for many employee entitlements that are now a feature of Australian workplaces, including occupational health and safety protections, annual leave, long service leave, paid public holidays, parental leave, penalty and overtime rates and loadings, and superannuation.

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Introduction

1. The Australian Manufacturing Workers' Union (AMWU) makes the following Submissions about the Air-conditioning industry and refrigeration industry allowances (Air-conditioning allowances) to the Fair Work Commission. The submissions are made in response to directions given during a Conference conducted by Deputy President Gostencnik on 19 December 2017.
2. At the conference on 19 December 2017, employers questioned whether the Air-conditioning allowance should be paid for all purposes.
3. The AMWU subsequently directed the parties' attention to history of the clause, which indicated that it should be paid for all purposes. The CFMEU also noted the construction of other clauses which also supported this position.
4. The AiGroup indicated that given the relevant history, they "did not oppose" the Air-conditioning allowances being paid for "all purposes," indicating that a determination making the clause in the Award clearer was desirable. The Master Builders Association requested written submissions so that they might consider their position.
5. These Submissions will outline the relevant history of the Air-conditioning allowances which support the allowances being paid for "all purposes" of the Building and Construction General On-site Award 2010. The AMWU also notes clause 19.3(b) which supports a construction that the air-conditioning allowances are paid for all purposes.
6. Attached to these submissions is also a draft determination proposed by the AMWU. The AMWU will seek to facilitate a conference between the parties about the draft determination with the objective of reaching agreement prior to the conference which has been listed for 25 January 2018.

Air-conditioning allowances history

7. Prior to the Modern Building and Construction General On-site Award 2010 (Modern Building Award), the Air-conditioning allowance was present within the National Metal and Engineering On-site Construction Industry Award 2002 AP816828CRV¹ (MECA) at clause 18.6. Relevantly, clause 18 contained a heading and an introductory clause at 18.1 as follows:

"18. ALLOWANCES - ALL STATES AND ACT

All purpose payments

- 18.1 The amounts prescribed in this clause, with the exception of clause 18.11 and 18.12, shall be paid for all purposes of this award."

¹ [AP816828CRV - National Metal and Engineering On-site Construction Industry Award 2002](#)

8. The heading “All purpose payments” gives a clear indication that the clause contains all purpose payments. The specific words of the clause 18.1 also give a clear indication that only 18.11 and 18.12 would not be paid for all purposes of the award.

9. The Air-conditioning allowances then arise within clause 18 at clause 18.6 as follows:

“18.6 Air conditioning industry and refrigeration industry allowances

18.6.1 In addition to the award wage prescribed in 16.1, an air-conditioning tradesman (as defined) and a refrigeration mechanic (as defined) shall be paid an allowance at the rate of \$50.18 per week as compensation for the various disabilities and peculiarities associated with on-site air-conditioning work (as defined) or on-site refrigeration work (as defined).

18.6.2 An employee in receipt of this allowance shall not be entitled to the provisions of 22.1, 22.3, 22.4, 22.5, 22.6, 22.7, 22.8, 22.9 and 22.13.”

10. This clause 18.6 has effectively been imported in the Modern Building Award at clause 21.11 as follows:

“21.11 Air-conditioning industry and refrigeration industry allowances

(a) In addition to the appropriate minimum wage prescribed in clause 19.1, an air-conditioning tradesperson and a refrigeration mechanic must be paid a weekly allowance of 7.9% of the weekly standard rate as compensation for the various disabilities and peculiarities associated with on-site air-conditioning work or on-site refrigeration work.

(b) An employee in receipt of this allowance will not be entitled to special rates in:

clause 22.2(a)—Insulation;

clause 22.2(b)—Hot work;

clause 22.2(c)—Cold work;

clause 22.2(d)—Confined space;

clause 22.2(g)—Wet work;

clause 22.2(h)—Dirty work;

clause 22.2(l)—Asbestos eradication; and

clause 22.2(q)—Height work.”

11. These imported words achieve substantially the same effect – except the impact of clause 18.1 providing that the allowance was paid for all purposes was not imported.
12. The history clearly indicates that the Air-conditioning allowances should be paid for all purposes.

Proposed Variation

13. The AMWU proposed that the following words be added to clause 21.11 to clarify that the air-conditioning allowances are paid for all purposes.

“This amount will be will be regarded as part of the ordinary time hourly rate for all purposes of the award.”

14. The AMWU is not aware of any air-conditioning trades or refrigeration mechanics being daily hire workers. However, out of abundance of caution, the AMWU also proposes that “clause 21.11—Air-conditioning industry and refrigeration industry allowances;” be added to the relevant list in clause 19.3(a)(ii).
15. A draft determination is attached.

End

20 December 2017

DRAFT DETERMINATION

Fair Work Act 2009

Part 2-3 Division 4 – 4 Yearly Review of Modern Awards

s.156(2)(b)(i)

Building and Construction General On-site Award 2010 (MA000020)

Building, metal and civil construction industries

AM2014/260 Building and Construction General On-site Award

VICE PRESIDENT

SYDNEY, X XXX 2018

Review of modern awards to be conducted.

- [1] Further to the decision and reasons for decision <<decision reference>> in AM2014/260, it is determined pursuant to section 156(2)(b)(i) of the Fair Work Act 2009, that the Building and Construction General On-site Award 2010 be varied as follows.

Clause 21.11

- [2] Delete current clause 21.11 and replace with the following clause at 21.11:

“21.11 Air-conditioning industry and refrigeration industry allowances

(a) In addition to the appropriate minimum wage prescribed in clause 19.1, an air-conditioning tradesperson and a refrigeration mechanic must be paid a weekly allowance of 7.9% of the weekly standard rate as compensation for the various disabilities and peculiarities associated with on-site air-conditioning work or on-site refrigeration work. This amount will be regarded as part of the ordinary time hourly rate for all purposes of the award.

(b) An employee in receipt of this allowance will not be entitled to special rates in:

clause 22.2(a)—Insulation;

clause 22.2(b)—Hot work;

clause 22.2(c)—Cold work;

clause 22.2(d)—Confined space;

clause 22.2(g)—Wet work;

clause 22.2(h)—Dirty work;

clause 22.2(l)—Asbestos eradication; and

clause 22.2(q)—Height work.”

- [3] In clause 19.3(a)(ii), add the following words to the list of clauses referred to after the words “where applicable”:

“clause 21.11—Air-conditioning industry and refrigeration industry allowances;”

- [4] This determination will operate on and from 1 XXX 2018.

VICE PRESIDENT