

IN THE FAIR WORK COMMISSION

Matter No:
AM2014/203

Matter:
4 Year Modern Award Review
Graphic Arts, Printing and Publishing Award 2010

WEST AUSTRALIAN NEWSPAPERS LTD AND COLOURPRESS PTY LTD FURTHER SUBMISSIONS

Background

1. On 22 February 2017, Deputy President Gostencnik issued Directions in these proceedings. These submissions are in response to direction 2, which requires any party that opposes variations sought to the *Graphic Arts, Printing and Publishing Award 2010 (Award)* to file written submissions and any witness evidence and/or documentary material in reply by 28 April 2017. This deadline was extended to 12 May 2017 in an email dated 24 March 2017 from Deputy President Gostencnik to relevant parties. On 12 May 2017, President Gostencnik granted West Australian Newspapers Ltd (**WAN**) and ColourPress Pty Ltd (**ColourPress**) an extension to file these submissions by the deadline of 18 May 2017.
2. These submissions are intended to be supplementary to the submissions made by WAN and ColourPress on 11 May 2014 and 23 October 2015 in these proceedings, and respond to the submissions of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (**AMWU**) dated 7 April 2017 (**AMWU submissions**).
3. The response of WAN and ColourPress to the variations to the Award sought by the AMWU in its submissions is outlined below.

Coverage of metropolitan daily newspapers

4. The AMWU submissions, in relation to the coverage of metropolitan daily newspapers in the Award, assert (in summary):
 - (a) the Award coverage of metropolitan daily newspapers is unclear, with employees being potentially award-free or having ambiguous Award coverage;
 - (b) the Award should be amended to 'properly reflect' that the Award covers metropolitan daily newspapers; and
 - (c) the Award should be varied to:
 - (i) replace all references to 'regional daily newspaper' with 'daily newspaper'; and
 - (ii) insert a new definition of 'daily metropolitan newspaper office' which is 'any daily newspaper office where the newspaper is a metropolitan masthead'.
5. WAN and ColourPress respectfully disagree with the AMWU that metropolitan daily newspaper employees are potentially award-free. As outlined in previous submissions, WAN and ColourPress consider they are covered by the Award with respect to their printing and publishing employees.

Lodged by: MinterEllison

Address for Service: Level 4, 77 St Georges Tce, Perth WA
6000

Telephone: (08) 6189 7934

Facsimile: (08) 6189 7999

Email: kathy.reid@minterellison.com

6. In response to the AMWU's submissions in relation to the News Ltd Decision, WAN and ColourPress submit the Full Bench did not conclusively determine the Award did not cover metropolitan daily newspapers. Rather, the Full Bench commented that the Award '...does not expressly apply to the production of metropolitan dailies' (our emphasis).
7. However, in order to address any ambiguity in relation to coverage of metropolitan daily newspapers by the Award, WAN and ColourPress agree with the AMWU's proposal to make a minor amendment to the Award to clarify the coverage of the Award includes metropolitan daily newspapers, as outlined in 4(c) above. This proposal is in keeping with WAN and ColourPress's previous proposal outlined in clause 13 of its submissions dated 23 October 2015.

Pre-Modernisation conditions

8. The AMWU also asserts in its submissions of 7 April 2017:
 - (a) the current Award conditions are inappropriate for metropolitan daily newspaper employees and do not provide a minimum safety net of terms and conditions for these employees in accordance with section 134 of the *Fair Work Act 2009* (Cth) (**FW Act**); and
 - (b) there are a number of 'standard' entitlements and conditions specific to metropolitan newspaper employees which should be included in the Award.
9. WAN and ColourPress respectfully disagree with the AMWU's position in this regard, and submit that there is no requirement to amend the Award to provide for additional and distinct entitlements for metropolitan daily newspaper employees.
10. The AMWU submits that the *Printing (Newspaper) Award 1979* covered WAN with respect to its daily newspaper employees prior to 2010. This is not disputed by WAN.
11. The *Printing (Newspaper) Award 1979* was listed by the Full Bench of Australian Industrial Relations Commission as a relevant pre-reform award and NAPSA under the Graphic Arts Group, as an instrument to be considered in the course of creating the new modern award covering these industries: *Award Modernisation* [2008] AIRCFB 708.
12. WAN and ColourPress submit that it is inappropriate to incorporate specific conditions and entitlements from these now terminated instruments into the Award in circumstances where the Fair Work Commission has indicated these instruments have been subsumed by the Award.

Impact on Safety Net

13. WAN and ColourPress submit the Award provides an adequate safety net of terms and conditions for metropolitan daily newspaper employees.
14. In the decision of *4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues* [2014] FWCFB 1788, the Full Bench confirmed at [23]:

The Commission is obliged to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net taking into account, among other things, the need to ensure a 'stable' modern award system (s.134(1)(g)). The need for a 'stable' modern award system suggests that a party seeking to vary a modern award in the context of the Review must advance a merit argument in support of the proposed variation.

15. The changes being sought by the AMWU are substantive. If granted, the AMWU's application will significantly change the safety net for metropolitan daily newspaper employees covered by the Award. the AMWU has advanced no merit argument or probative evidence to support its assertion that the current Award conditions are inappropriate for metropolitan daily newspaper employees. It is noted that WAN and ColourPress have been operating with the existing Modern Award as its safety net since 2010 with no issue.

Lodged by: MinterEllison

Address for Service: Level 4, 77 St Georges Tce, Perth WA
6000

Telephone: (08) 6189 7934

Facsimile: (08) 6189 7999

Email: kathy.reid@minterellison.com

16. Further, WAN and ColourPress submit that the additional conditions and benefits proposed by the AMWU, in relation to redundancy, personal leave and jury service, are well in excess of the comparable provisions in other modern awards. The submissions advanced by the AMWU do not provide any cogent reason as to why metropolitan daily newspaper employees are distinct from, and should be treated differently to, regional daily newspaper employees, and employees under other modern awards.

Conditions sought

17. In relation to the specific additional conditions and entitlements sought by the AMWU for metropolitan daily newspaper employees, WAN and ColourPress object to these proposals on the basis that they are wholly inappropriate, and no reasonable basis has been provided for the changes sought.

Redundancy

18. The AMWU submits there is a 'clear standard' of redundancy entitlements across the 'metropolitan daily newspaper awards'. It is assumed this refers to the *Printing (Newspaper) Award 1979*, the *Fairfax Printers Award 1999* and the *Print Centre (Canberra Times) Award 2000*. However, the AMWU provides no justification of how these three now terminated 'metropolitan daily newspaper awards' provide a standard of redundancy entitlements across Australian metropolitan daily newspaper operations.
19. Further, as outlined in the submissions of Fairfax Media Ltd dated 12 May 2017, only one of these awards (*Print Centre (Canberra Times) Award 2000*) provided for the redundancy entitlements proposed by the AMWU, and this was only in circumstances of voluntary redundancy. The *Printing (Newspaper) Award 1979*, which covered WAN previously, does not contain redundancy entitlements.
20. The AMWU also asserts that the proposed redundancy entitlements are reinforced by the redundancy standards within the News Ltd Enterprise Awards.
21. WAN and ColourPress submit that enterprise awards are awards that apply only to specific businesses and are created to address wages and conditions that have particular context and application to that business. The Full Bench created the four separate modern enterprise awards covering News Ltd printing operations based on a number of key factors, including the unique history of the current awards, the unique nature of metropolitan daily newspaper production at News Limited print sites, and the large number of enterprise specific provisions in the current instruments: *'Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union' known as the Australian Manufacturing Workers' Union (AMWU) [2014] FWCFB 6167 at [21] (News Ltd Decision)*.
22. These considerations were specific to News Ltd's enterprise. The AMWU has failed to advance any argument or lead any evidence in support of why the redundancy provisions of News Ltd's enterprise awards are applicable to metropolitan daily newspaper employees in other businesses.

Personal Leave

23. The AMWU assert there is a 'standard' for personal leave well in excess of the NES and other modern awards, and refers to the *Printing (Newspaper) Award 1979* and two of the four News Ltd enterprise awards in support of this assertion.
24. As outlined above, WAN and ColourPress submit that specific personal leave provisions under the News Ltd enterprise awards are established for, and relevant to, the particular circumstances of that business. The AMWU does not advance any cogent argument or evidence to support why such provisions form an industry 'standard', or why the personal leave provisions of News Ltd enterprise awards and one terminated pre-reform award are specifically applicable to all metropolitan daily newspaper employees.

Lodged by: MinterEllison

Address for Service: Level 4, 77 St Georges Tce, Perth WA
6000

Telephone: (08) 6189 7934

Facsimile: (08) 6189 7999

Email: kathy.reid@minterellison.com

25. In addition, the AMWU advances that 'employees who consistently work night shift or intermediate shift in order to ensure newspaper production' should have an entitlement to additional sick leave. WAN and ColourPress submit that if this submission is to be accepted, it would have a significant flow on effect to a large number of other industries who engage shiftworkers, and subsequently result in significant variations to a number of modern awards. The AMWU has not advanced any merit argument or any probative evidence to support such a significant and wide reaching variation, and WAN and ColourPress submit such a submission should be rejected by the Commission on this basis.

Jury Service

26. The AMWU assert a 'clear standard' of jury service above that provided by the NES should be included in the Award for metropolitan daily newspaper employees. WAN and ColourPress respectfully submit such a variation to the Award cannot be considered by the Commission in circumstances where the AMWU has failed to provide any argument or evidence in support of this significant variation or indeed what this 'clear standard' is based on.
27. WAN and ColourPress further agree with the submissions of Fairfax Media Ltd dated 12 May 2017 in relation to this claim.

Modern Awards Objective

28. The modern awards objective as set out in section 134 of the FW Act aims to ensure that modern awards, together with the National Employment Standards, provide a 'fair and relevant minimum safety net of terms and conditions'.
29. WAN and ColourPress each have a long history of negotiating enterprise agreements with their respective employees. This is likely to be significantly negatively impacted if the safety net is substantially raised for metropolitan daily newspaper employees as proposed by the AMWU. It is submitted the raising of the safety net removes the incentive and ability for WAN and ColourPress to negotiate enterprise agreements which are 'better off overall than' the Award. If made, these changes will therefore undermine collective bargaining for the printing and publishing industries, including WAN and ColourPress.



MinterEllison

on behalf of WAN and ColourPress

17 May 2017

Lodged by: MinterEllison

Address for Service: Level 4, 77 St Georges Tce, Perth WA
6000

Telephone: (08) 6189 7934

Facsimile: (08) 6189 7999

Email: kathy.reid@minterellison.com