

IN THE FAIR WORK COMMISSION

APPLICATION TO VARY THE *SECURITY SERVICES INDUSTRY AWARD 2010*

MATTER NO: AM2018/27

SUBMISSION BY MSS SECURITY PTY LTD (ABN 29 100 573 966)

1. This submission concerns the application made by Mr Christian Gavin (the Applicant) to vary clause 15.11(b) of the *Security Services Industry Award 2010* (“the Award”) to include definitions of what constitutes a uniform or uniform items for the purpose of these items being provided as part of the standard uniform issue and/or for employees to receive a reimbursement for the cost of those items where they are not provided.
2. MSS Security Pty Ltd (“MSS Security”) is a national security provider employing over 6,200 security personnel who are covered and paid in accordance with the Award or the Award underpins the conditions of its Enterprise Agreements.
3. MSS Security puts forward this submission opposing the application of Mr Gavin to vary the Award for reasons outlined below in accordance with the Directions of Deputy President Bull issued on 8 July 2019.

Relevant Award history

4. The purpose of the application matter number AM2018/27 (“the Application”) is to define uniform items to be issued to an employee or eligible for reimbursement. MSS Security contends that doing so would be inconsistent with the historical intent of pre-modern awards wherein this detail has not been historically specified. This can be evidenced in the *Security Industry (New South Wales) Award 1999*¹ and the *Security Employees (Victoria) Award 1998*².
5. The *Security Services Industry (New South Wales) Award 1999* (NSW Award) made reference to a reimbursement for the cost of a uniform in the event a uniform was not provided³. Further, specific reference was made that employees will be required to provide **their own black shoes**⁴. This demonstrates a history whereby employees covered by the Award have been required to provide their own shoes.
6. The *Security Employees (Victoria) Award 1998* did not prescribe specific uniform items however did make reference to protective clothing or safety footwear⁵.

¹ <http://awardviewer.fwo.gov.au/award/show/AP796356>

² <http://awardviewer.fwo.gov.au/award/show/AP796143>

³ Section 12.2 - *Security Services Industry (New South Wales) Award 1999*

⁴ Section 12.2 - *Security Services Industry (New South Wales) Award 1999*

⁵ Section 16A.4.6(e) - *Security Employees (Victoria) Award 1998*

7. In considering these pre-modern award examples together with the current wording of the Award, it is evident that the intent of the Award was not to include references to specific uniform items for the provision of a uniform or reimbursement of uniform items.
8. Further to this, a number of the modern awards referenced in the Applicant's application dated 10 July 2019 make reference to "special" or "protective" clothing which, particularly in cases where safety or protective gear is required, would be required to be provided by an employer by relevant state workplace health and safety legislation.⁶
9. The wearing of shoes for the purposes of employment is not an extraordinary, special or protective act, nor are a pair of black shoes an extraordinary, special or protective item of clothing or footwear.

The modern awards objective

10. The relevant objective to this matter is listed below.

"Section 134(1)(f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden..."

11. For employers who currently do not provide uniforms items such as footwear, United Voice asserts paragraph 29 of their submission, that the increased cost is likely to be minimal. This is refuted by MSS Security.
12. Regardless of whether an employer opts to include footwear as part of a standard uniform issue or reimburse employees for such a cost, the Award does not currently oblige an employer to do so. The proposal of introducing a definition which specifies items such as footwear would create a significant impost and cost. This provision and cost do not exist in the current Award and did not exist in the prior Award since its inception.
13. If, based on United Voice's assessment of the cost of footwear being in the realm of \$60 to \$250, based on the current number of employees employed by MSS Security covered by the Award being approximately 3,506 employees (not including employees whose pay and conditions are in accordance with an Enterprise Agreement), it would cost anywhere from approximately \$210,360 (on the basis of \$60) to \$876,500 (on the basis of \$250) to meet the requirements of the Award if such a variation was approved, with additional costs borne by an employer in an ongoing capacity for new hires and for ongoing replacement costs.
14. Given the above, this objective should be considered when reaching a decision regarding the proposed variation.
15. Accordingly, to approve an application to vary the Award as proposed would be detrimental to business and contrary to this modern award objective.

Response to submissions

16. Further to the points made above, MSS Security provides the following responses to United Voice's points:

⁶ <https://www.legislation.nsw.gov.au/#/view/regulation/2017/404/chap3/part3.2/div5>

- a. Regarding United Voice's paragraph 6, as mentioned above, "uniform" not being defined in the Award is consistent with the historical intent of pre-modern award provisions.
- b. MSS Security rejects the proposed variation referenced in Mr Gavin's application and included at paragraph 7 of United Voice's submission for reasons identified above and below.
- c. Regarding United Voice's paragraphs 8 and 10, to define items included within a uniform would not be possible given the variations currently required in uniform items in industry. The types of uniform items required to be worn by Security Officers varies dependent on the role, site and client for which a Security Officer performs their duties. This is the case within MSS Security given the variety of clients, roles and industries to which MSS Security provides services for and as such, a comprehensive list would create ambiguity due to these varied uniform requirements. To specify uniform items in a modern award which applies to a number of employers in the security industry would remove the flexibility for employers to meet client or site-specific requirements. Additionally, doing so would place an undue burden on employers to provide and stock specified items (if wording proposed by Mr Gavin and United Voice is accepted) where they may not be currently required to form part of the uniform.
- d. In response to paragraphs 11-14 of United Voice's submission, MSS Security has provided a brief overview of the history regarding the inception of the modern award relative to uniform definitions and requirements at paragraphs 4-9 of this submission. Whilst the specifics of how the modern award came to be are not widely disputed, MSS Security has provided views on the historical intent regarding uniform provisions which are relevant for consideration in deciding an outcome on this matter.
- e. MSS Security rejects United Voice's assertion at paragraph 16 of their submission that the variation sought is necessary to meet the modern awards objective. Paragraphs 11-15 of this submission demonstrate the detrimental impact such a variation would have on business and employment costs.
- f. Regarding paragraph 20 of United Voice's submission, as referenced above at paragraph 8, safety or protective footwear is required to be provided under relevant state workplace health and safety legislation and therefore this cost would not be borne by an employee.
- g. MSS Security rejects United Voice's assertion at paragraphs 21, 22 and 24 given the requirement to wear footwear is a common requirement for any role (within the security industry or in other industries) and that it is not an unreasonable expectation for an employee to ensure they provide their own footwear, unless this footwear is for safety, special or protective purposes, in which circumstance it is likely that this type of footwear would be provided to an employee due to workplace health and safety legislative requirements.
- h. MSS Security rejects paragraphs 25-27 of United Voice's submission as MSS Security employees are provided with uniform items relevant to their role on

commencement and ongoing as required. The requirement for an employee to provide their own footwear (in circumstances where this footwear is not for safety, special or protective wear purposes) does not create a barrier to workforce participation, therefore section 134(1)(c) is not a relevant consideration in this matter.

- i. Responses to United Voice's submission at paragraphs 28-30 are provided above at paragraphs 11-15 of this submission. MSS Security considers the modern award objective at section 134(1)(f) to be a relevant consideration.
 - j. MSS Security rejects United Voice's assertion at paragraphs 31-32 of their submission as the current reference to "uniform" provides employers with discretion to provide uniform items relevant to their business and services provided.
17. For the reasons identified above, the variation sought does not meet the modern awards objective, specifically objective 134(1)(f), and should not be made, therefore, the current wording of section 15.11(b) of the Award should remain as is.

MSS Security

20 August 2019