



Before the Fair Work Commission

Matter: AM2021/72

Proposed On Demand Delivery Services Award

Brief Position Paper from the Transport Workers' Union of Australia

Introduction

1. The Transport Workers' Union of Australia (TWU) refers to the above named matter, the Decision of the Full Bench in this matter dated 28 January 2022 and to the correspondence received directing interested parties to file and serve a brief position paper including any proposed outcomes by 14 March 2022.
2. The TWU further notes that this matter is listed for conciliation before Commissioner McKinnon on 16 March 2022.
3. The Full Bench held as follows in its Decision:

*"We conclude that the Road Transport Award currently covers employers and their courier employees in the "on demand delivery services industry" as defined in Menulog's proposed award, and that the Fast Food Award does not cover such courier employees. It also necessarily follows from this conclusion that the Miscellaneous Award does not cover them by reason of clause 4.1 of that award."*¹

4. The Full Bench further observed the following potential next steps in this matter:

*"The next step in this matter is for consideration to be given as to whether the coverage of employers and employees in the "on demand delivery services industry" as defined by the Road Transport Award meets the modern awards objective in s 134(1) of the FW Act."*²

TWU Position

5. The position of the TWU remains consistent with that advanced by it during the course of these proceedings to date. That is, that there is already an instrument, the Road Transport and Distribution Award 2021 (MA00038) (**RTD Award**), that clearly covers couriers engaged in

¹ [2022] FWCFB 5 at [55].

² Ibid at [56].

Transport Workers' Union of Australia

National Office

a. 388-390 Sussex St, Sydney NSW 2000

t. 02 8114 6500

ABN 18 559 030 246



www.twu.com.au

National Secretary
Michael Kaine

the so-called “on demand” delivery services industry. The Decision of the Full Bench as referred to above is consistent with that position.

6. Without knowledge as to the further position of the Applicant in relation to the question of whether or not couriers in the on demand industry and covered by the RTD Award would otherwise meet the modern awards objective in section 134(1) of the *Fair Work Act 2009* (Cth) (**Act**), the TWU cannot further advance any position.
7. In the event the Applicant’s position is that a new award ought be made, it must surmount the requirement under s 157(1) of the Act and establish that the RTD Award is not meeting the modern award objectives in relation to the category of courier work its application relates to. That hurdle, in the TWU’s view, will not be surmounted and the application is with respect misguided. No attempt has been made by the Applicant to demonstrate how it is able to surmount this threshold.
8. The TWU opposes the application to make a new modern award specific to the on demand industry in reliance of the Decision of the Full Bench and will contest any attempt by the Applicant to contend that s 157(1) is satisfied.
9. Nonetheless, the TWU remains committed to engaging with the parties with a view to discussing any further matters put before it during the course of the conciliation conferences scheduled to take place.

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14 March 2022

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Michael Kaine