



IN THE FAIR WORK COMMISSION

MATTER NO: AM2014/196 & 197

s.156 - 4 yearly review of modern awards – Casual Employment and Part-time Employment

SUBMISSIONS ON BEHALF OF THE MOTOR TRADES ORGANISATIONS

Introduction

1. This submission has been prepared by and filed on behalf of the Victorian Automobile Chamber of Commerce (**VACC**), the Motor Traders' Associations of NSW (**MTANSW**) and the Motor Trade Associations of South Australia (**MTASA**) and Western Australia (**MTAWA**), (collectively, the **Motor Trades Organisations**).
2. This submission is filed pursuant to the Directions made in relation to the decision of Full Bench of the Fair Work Commission (FWC) on 5 July 2017 re Casual employment and Part-time employment - [2017] FWCFB 3541.
3. At Item (13) – Next Steps - Directions at page 351, paragraph (902), of the decision at point (3) - interested parties were invited to make further written submissions concerning the provisional view of the Full Bench (FB) to include a 2 hour daily minimum engagement period for casual employees in modern awards which currently do not contain a daily minimum engagement period for casual employees.
4. For the purpose of this submission, the modern award of relevance is the Vehicle Manufacturing, Repair, Services and Retail Award 2010 [MA 000089] - (the Vehicle Award). This award is to be retitled as the Vehicle Industry Repair Services and Retail Award pursuant to the current 4 year review of modern awards with the removal of Sections 2, 3 and 4 which relate to vehicle manufacturing.



5. For the reasons set out in these submissions, the Motor Trades Organisations:
 - a) agree that a minimum engagement of 2 hours for casuals is appropriate in the Vehicle Award (as set out in paragraph 408 of the decision).
 - b) seek the confirmation from the FWC that the casual minimum engagement in the Vehicle Award as referred to above is consistent with their provisional view as expressed in the decision at paragraph 408.
 - c) call on the FWC to clarify their decision and exclude the variation to the Vehicle Award in relation to the AMWU claim. With the removal of the manufacturing sections from the Vehicle Award, any connection with the AMWU claim is irrelevant.
 - d) also submit that given there is no current minimum engagement for part-time employees in the Vehicle Award , that a 2 hour minimum engagement for part-time employees is reasonable and appropriate and would be consistent with the casual 2 hour minimum engagement.

Minimum engagement period for casual and part-time employees in the Vehicle Award

6. The MTA organisations filed written submissions on casual and part-time employment on 22 February 2017. Paragraphs 22- 32 of those submissions largely covered the union applications in relation to minimum engagement variations sought. The submissions also included the results of a member survey in **Attachment B**.
7. There is no mention in the decision of any consideration of the MTA organisation's submission, nor was there any explicit rejection of those submissions.
8. Paragraphs 24-25 of those MTA written submissions referred to the evidence of Maria Meilak, an employer in the automotive service and retail industry on the detrimental impact of the minimum engagement variations sought by the union applications.



9. Ms Meilak's Affidavit was attached in **Attachment C – List of Affidavits** in the MTA written submissions. Ms Meilak's affidavit was admitted as evidence when she gave sworn evidence on 21 March 2016 (Exhibit 83). Ms Meilak's transcript evidence is set out in PN7359 to PN7428.
10. When Ms Meilak gave evidence she told the Full Bench that the business employed some school students after school for around two hours and the business closed between 5.00pm to 5.30pm.
11. The evidence of Ms Meilak in fact urged the Commission not to insert a 4 hour minimum engagement into the Vehicle Award as it would force employers like her to no longer being able to provide an opportunity to students seeking work after school hours, (PN 7416 to 7418 transcript). Furthermore, she stated that this could also detrimentally impact on the take up of junior apprenticeships in an industry that is currently undergoing substantial change and struggles to find suitable skills or qualified tradespersons. These problems were reinforced by Ms Meilak at PN 7427 of transcript.
12. As was submitted in our written submissions, at a time when apprenticeship completions and skill shortages are of concern to many in the automotive industry, missing out on an opportunity to attract more young people to the industry would be a retrograde step.
13. Significantly, the decision of the FB refers to the evidence of Ms Meilak initially in paragraph 271 (under the listing of MTA's witnesses) and further in paragraphs 356 & 405(2).
14. In its consideration of the minimum engagement period, the FB in its decision at paragraph (404) also indicated that:
'Modern awards contain a range of different minimum daily engagement periods for casual and part-time employees, and some contain no minimum at all, such as the VMRSR Award. These provisions generally derive from provisions in pre-reform awards which were in most cases formulated by the agreement of the award parties. It can be presumed that in doing so the parties took into account the circumstances of the industries in which they operated that prevailed at the time,.....'



15. In paragraph 405, the FB dealt with the ACTU claim for a standard 4 hour minimum engagement for all part-time and casual employment. Awards listed as part of the ACTU application are identified in Attachments B & C of the decision and both Attachments list the Vehicle Award.
16. In their assessment of the ACTU claim, the FB indicated that it did not consider that a standard provision as sought by the ACTU would advance job and income security of such employees. Additionally, it was said that it *'would probably have the opposite effect and may lead in many cases to a loss of work opportunitieswhich currently exist'*.
17. In citing the evidence for this conclusion, the FB referred to the evidence of Ms.Meilak in the Vehicle industry (and others) where a 4 hour minimum engagement would prevent the use of school students for short engagements to gain an introduction to work in their industry.
18. Finally, in rejecting the ACTU claim as sought, the FB also concluded that it would be inconsistent with the modern awards objective in s134 as it could *'have the counter-productive result 'of reducing workforce participation and social inclusion....'*.
19. Nevertheless, in paragraph 408 of the decision, the Commission came to a reasoning that it was necessary for some form of minimum engagement for casual employees in awards that currently contain no minimum engagement period at all. These awards were listed in Attachment G with the provisional view that *'such awards should be varied to include a 2 hour minimum engagement period for casuals'*. The Vehicle Award is an award listed in Attachment G.
20. The MTA organisations agree with the provisional view of the FWC that a 2 hour minimum engagement for casuals in the Vehicle Award is reasonable and appropriate.
21. It is also submitted that a 2 hour minimum engagement for part-time employees is reasonable and appropriate.



The AMWU claim

22. The AMWU claims in relation to the minimum engagement of casual and part-time employees were set out in paragraph 109 and summarised in para 400 of the decision. Essentially, the claim sought a similar variation to that of the ACTU claim of a 4 hour minimum engagement for casual and part-time employees in four 'manufacturing' awards. The Vehicle Award was an award listed under the AMWU claim.
23. In support of the claims, the AMWU indicated that:
- a) an extensive list of awards have a safety net of between 3 and 4 consecutive hours engagement for casual employees.
 - b) several major manufacturing awards provide a 4 hour minimum engagement for part-time work.
24. Witnesses called in support of the union claims were predominantly AMWU officials. No employee witnesses under the Vehicle Award were called by the union. The MTA called 3 witnesses, including Ms Maria Meilak, whose evidence was referred to by the FWC in justifying their provisional view on the minimum engagement of casual employees.
25. Of the 4 awards listed by the AMWU, the Manufacturing and Associated Industries and Occupations Award 2010 (the Manufacturing Award) and the Food Beverage and Tobacco Manufacturing Award 2010 (the Food Manufacturing Award) are major manufacturing awards while the Graphic Arts, Printing and Publishing Award 2010 (Graphic Arts Award) covers printing , publishing and associated industries.
26. The Manufacturing Award currently has a minimum engagement of 4 hours for casual employees and a 3 hour minimum engagement for part-time employees.(refer clauses 14.2 and 13.2 of the Award)
27. There are similarly worded provisions in the Food Manufacturing Award (refer clauses 13.2 and 12.2).



28. The Graphic Arts Award has a minimum engagement of between 2 to 4 hours for casual employees depending on the department in which they are engaged and similar provisions in relation to the minimum engagement of part-time employees (refer clauses 12.4 and 12.3).

29. As indicated earlier in these submissions, the Vehicle Award is no longer a 'manufacturing' award. In undertaking the review of the Vehicle Award as part of the 4 year award review process, a FB of the FWC formed a provisional view on 2 November 2015 that the manufacturing components of the award should be removed and transferred to the Manufacturing Award. In a further decision on 16 August 2016, those views were finalised (refer [2016] FWCFB 4418).

30. Furthermore, unlike the above manufacturing awards (including the Graphic Arts Award), the Vehicle Award has no existing minimum engagement in relation to casual or part-time employees. The facilitative provisions referred to by the FWC (in paragraph 409) also do not exist in the Vehicle Award.

31. Given the rationale of the FWC in rejecting the ACTU's claim for a 4 hour minimum engagement for casual employees (as discussed in paragraphs 6-20 of these submissions) and the provisional view of the FWC that a 2 hour minimum engagement should apply to those awards (as listed in the Attachment G) that contain no current minimum engagement, including the Vehicle Award, the wording of the final sentence of paragraph 409 of the decision is unclear in its intent and inconsistent with the provisional views of the FB in the previous paragraph (408).

32. Furthermore, as confirmed by the FB in paragraph 407 of the decision, a four hour minimum engagement as sought by the union in awards, including the Vehicle Award, where uncontested evidence pointed to the detrimental impact it could have employment and workforce participation, is also inconsistent and at odds with the modern awards objective in s134.

33. MTA Organisations call on the FWC to clarify and confirm their provisional views on the minimum engagement of casuals under the Vehicle Award.



34. In relation to the AMWU claim on casual conversion provisions, it is our understanding that the current provisions in the Vehicle Award as contained in clause 13.3 are not intended to be varied.

A handwritten signature in black ink, appearing to read 'M Sheehan', is written over a horizontal dotted line.

Michael Sheehan, Snr Industrial Adviser, MTA-SA
On behalf of the Motor Trades Organisations

2 August 2017

Dated: