

21 April 2017

Associate to Commissioner Lee
Fair Work Commission
Level 10, Terrace Tower, 80 William Street,
EAST SYDNEY NSW 2011

Dear Associate

AM2014/268 - Food, Beverage and Tobacco Manufacturing Award 2010

We refer to the above matter that was listed for conference before Commissioner Lee on 12 April 2017.

At the conference, the AMWU was directed to report back by 21 April 2017 in relation to a number of the items appearing in the *Summary of Submissions – Technical and Drafting (summary of submissions)* published by the Commission on 8 March 2017 concerning the Exposure Draft of the Food, Beverage and Tobacco Manufacturing Award 2016 (**Exposure Draft**).

The AMWU's position in relation to each item requiring report back is set out below.

Item 4

We understand that AiG proposes an amendment to the definition of “ordinary hourly rate in the following terms:

Ordinary hourly rate means the minimum hourly rate for an employee's classification prescribed by this Award, plus any all purpose allowance to which an employee is entitled.

The AMWU does not oppose the amendment sought.

Items 9, 10

The AMWU presses its submission that a reference to both cl. 24.10 – Agreement to take Annual Leave in Advance and cl. 24.13 – Cashing out of Annual Leave, are appropriate inclusions in the list of facilitative provisions located at clause 7 of the Exposure Draft.

An employee who elects to cash out annual leave, or to take annual leave in advance, is departing from the established Award provision, which is that an employee accrues annual leave progressively and takes paid time off work. An election to do anything else is a departure from the Award standard by an individual employee, and a clause that facilitates such a departure should be identified.

Item 25

We understand that AiG proposes an amendment to clause 10.2(a) of the Exposure Draft so that it would read:

“ the minimum hourly rate prescribed in clause 14 for the work being performed; plus ”

We do not oppose the amendment sought.

Item 27

We press our submission that clause 15.10 of the current *Manufacturing and Associated Industries and Occupations Award 2010 (Manufacturing Award)* should be inserted in to the Exposure Draft. The inclusion of clause 15.10 of the Manufacturing Award is necessary as it acts as a flag to the presence of probation periods within the individual employee’s training contract.

If the Commission is not minded to vary the Exposure Draft in the terms sought, we submit that it is necessary that cl. 14.2 of the present *Food, Beverage and Tobacco Manufacturing Award 2010* be inserted in to the Exposure Draft.

Item 33

We do not support the AiG submission to insert “full-time employee” below “minimum weekly wage” in clause 14.1(a). In circumstances where express guidance on the meaning of wages expressed by the week is provided at cl. 14.1(b), an additional reference would be superfluous.

Item 35

We press our submission that an amendment to the formatting of cl. 20 – Allowances is necessary in order to make the award simple and easy to understand. The AMWU proposes suggested formatting at **Annexure A**, that revises the suggesting formatting annexed to our submissions of 18 January 2017 in these proceedings.

Annexure A alters the position of *Transfers, Travelling And Working Away From Usual Place Of Work*. Annexure A also reflects changes agreed between the parties in items 36, 37, 38 and 39 of the summary of submissions.

Item 45

We understand that the employer groups submit that the clause 23.3 of the Exposure draft should be removed and replaced by the present cl. 31.3 of the Award. As a corollary, the definition of “permanent night shift” would also be removed from the Exposure Draft.

We are not of the view that the Exposure Draft wording creates ambiguity about the circumstances in which night shift loading is payable. However, in the event that such ambiguity did exist, it could likely be remedied by minor variation to the Exposure Draft clause, rather than removal of clause 23.3 in its entirety.

Australian Manufacturing Workers' Union
21 April 2017

ANNEXURE B

20. Allowances and special rates

Employers must pay to an employee the allowances the employee is entitled to under this clause. See Schedule C for a summary of monetary allowances and method of adjustment.

20.1 All purpose allowances

Allowances paid for **all purposes** are included in the rate of pay of an employee who is entitled to the allowance, when calculating any penalties or loadings or payment while they are on annual leave. The following allowances are paid for all purposes under this award:

(a) Leading hands

A leading hand in charge of three or more people must be paid:

In charge of	\$ per week extra
3–10 employees	34.27
11–20 employees	51.20
more than 20 employees	65.17

(b) Heavy vehicle driving allowance

An employee who is required to drive a vehicle of more than three tonnes Gross Vehicle Weight (GVW) must be paid while they are engaged on such work:

Vehicle size	\$ per hour extra
over 3 tonnes GVW and up to 4.5 tonnes GVW	0.12
over 4.5 tonnes GVW and up to 14.95 tonnes GVW	1.03
over 14.95 tonnes GVW	1.36
a semi-trailer	2.45

(c) Boiler attendants allowance

An employee holding a Boiler Attendants Certificate and appointed by the employer to act as a boiler attendant must be paid **\$17.62** per week extra.

20.2 First Aid Allowance

An employee must be paid **\$15.58** per week extra if they are:

- (a) The current holder of appropriate first aid qualifications such as a certificate from the St John Ambulance or similar body; and
- (b) Appointed by their employer to perform first aid duty.

20.3 Special rates

Subject to clause 20.3(a), the following special rates described in this clause must be paid to an employee including a junior.

(a) Special rates are not subject to penalty additions

The special rates in clause 20.2 must be paid irrespective of the times at which the work is performed, and are not subject to any premium or penalty additions.

(b) Cold places

An employee who works for more than one hour in places where the temperature is reduced by artificial means below 0 degrees Celsius must be paid **\$0.58** per hour extra. In addition, where the work continues for more than two hours, the employee is entitled to 20 minutes' rest after every two hours' work without loss of pay.

(c) Hot places

- i. An employee who works for more than one hour in the shade in places where the temperature is raised by artificial means must be paid:

Temperature	\$ per hour extra
Between 46 and 54 degrees Celsius	0.60
In excess of 54 degrees Celsius	0.78

- ii. In addition, where work continues for more than two hours in temperatures exceeding 54 degrees Celsius, the employee is entitled to 20 minutes' rest after every two hours work without loss of pay.
- iii. The temperature is to be determined by the supervisor after consultation with the employee who claims the extra rate.

(d) Wet places

- i. An employee working in any place where their clothing or boots become saturated by water, oil or another substance must be paid **\$0.60** per hour extra. Any employee who becomes entitled to this extra rate must be paid this rate only for the part of the day or shift that they are required to work in wet clothing or boots.
- ii. This clause does not apply to an employee who is provided by the employer with suitable and effective protective clothing and/or footwear.

(e) Confined spaces

An employee working in a confined space must be paid **\$0.78** per hour extra.

(f) Dirty or dusty work

An employee who performs work of an unusually dirty, dusty or offensive nature must be paid **\$0.60** per hour extra.

(g) Fumigation gas

An employee using methyl bromide gas in fumigation work must be paid **\$7.87** per day extra for any day on which the employee is required to use this gas.

20.4 Expense-related allowances

(a) Meal allowance

An employee must be paid a meal allowance of **\$13.81** on each occasion the employee is entitled to a rest break in accordance with clause 22.9, except in the following circumstances:

- (i)** if the employee is a day worker and was notified no later than the previous day that they would be required to work such overtime; or
- (ii)** if the employee is a shiftworker and was notified no later than the previous day or previous rostered shift that they would be required to work such overtime; or
- (iii)** if the employee lives in the same locality as the enterprise and could reasonably return home for meals; or
- (iv)** if the employee is provided with an adequate meal by the employer.

- (b)** If an employee has provided a meal or meals on the basis that they have been given notice to work overtime and the employee is not required to work overtime or is required to work less than the amount advised, they must be paid the prescribed meal allowance for the meal or meals which they have provided but which are surplus.

(c) Vehicle allowance

An employee who reaches agreement with their employer to use their own motor vehicle on the employer's business, must be paid **\$0.78** per kilometre travelled.

(d) Damage to clothing, spectacles and hearing aids

Where an employee suffers any damage to, or soiling of, clothing or other personal equipment, including spectacles and hearing aids, as a result of

- i.** performing any duty required by the employer; and
- ii.** negligence of the employer;

then the employer is liable for the replacement, repair or cleaning of any such clothing or personal equipment.

(e) Special clothing and equipment allowance

Where an employee is required to wear special clothing and equipment, the employer must reimburse the employee for the cost of purchasing and laundering such special clothing and equipment unless the clothing and equipment is paid for and/or laundered by the employer.

20.5 Transfers, travelling and working away from usual place of work

(a) Excess travelling and fares

An employee required to start and/or finish work at a job away from the employer's usual workplace must be paid:

- i.** travelling time for all time reasonably spent by the employee in reaching and/or returning from the job which is in excess of the time normally spent by the employee in travelling between the employee's usual residence and the employee's usual workplace; and
- ii.** any fares reasonably incurred by the employee which are in excess of those normally incurred in travelling between the employee's residence and the employee's usual workplace,
- iii.** or if the employee used their own means of transport, any fares which would have been incurred by the employee had the employee not used their own means of transport, except where the employee has an arrangement with their employer for a regular allowance.

(b) Distant work

- i. An employee required to remain temporarily away from the employee's usual residence because the employee is working temporarily in a locality away from the employee's usual workplace must be paid travelling time for necessary travel between the locality and the employee's usual workplace and expenses.
- ii. After each four week period on distant work an employee is entitled to be paid for a return fare reasonably incurred for personal travel between the locality and the employee's usual residence, unless such distant work is inherent in the normal work of the employee.

(c) Transfer involving change of residence

An employee required to transfer permanently from the employee's usual workplace to another locality must be paid travelling time for necessary travel between the employee's usual workplace and the new locality and expenses for a period not exceeding three months or, where the employee is in the process of buying a residence in the new locality, for a period not exceeding six months. Payment for travel time and expenses ceases after the employee has taken up permanent residence in the new locality.

(d) Travelling time payment

The rate of pay for travelling time is:

- i. the applicable rate of pay on Monday to Saturday, and
- ii. 150% of the applicable rate of pay on Sundays and public holidays.

The maximum travelling time to be paid for is 12 hours out of every 24 hours or, when a sleeping berth is provided by the employer for all-night travel, eight hours out of every 24 hours.

(e) Expenses for the purposes of clause **20.5** means:

- i. all fares reasonably incurred;
- ii. reasonable expenses incurred while travelling including **\$13.81** for each meal taken; and
- iii. a reasonable allowance to cover the cost incurred for board and lodging.

(f) **Training costs**

This provision may be affected by [AM2016/14](#)

- (i) Any costs associated with standard fees for prescribed courses and prescribed textbooks (excluding those textbooks which are available in the employer's technical library) incurred by an employee in connection with training agreed to by the employer must be reimbursed by the employer on the production of evidence of such expenditure by the employee, provided that reimbursement may be on an annual basis subject to the presentation of reports of satisfactory progress.
- (ii) Travel costs incurred by an employee undertaking training agreed to by the employer, which exceed those normally incurred in travelling to and from work, must be reimbursed by the employer.
- (iii) Clause 20.5(f) does not apply to costs associated with training that are in connection with an apprentice's training contract. Such costs are subject to clause 11 and not this clause.

20.6 ~~Extra rates not cumulative~~

~~The extra rates in this award, except rates prescribed in clause 20.2—Special rates and rates for work on public holidays, are not cumulative so as to exceed the maximum of double the applicable rate of pay.~~