

IN THE FAIR WORK COMMISSION

Matter No: AM2014/268

Section 156 - Four Yearly Review of Modern Awards – Food, Beverage and Tobacco Manufacturing Award 2010

SUBMISSION IN REPLY

UNITED VOICE

1. This submission is made pursuant to the direction of the President, Justice Ross, on 26 August 2016. This submission is made in reply to a number of submissions concerning technical and drafting matters in the exposure draft of the *Food, Beverage and Tobacco Manufacturing Industry Award 2010* (*‘the FBT Award’*).
2. All references in this submission are to the exposure draft, unless otherwise specified.

Applicable rate of pay

3. We note the submissions of the Australian Industry Group (*‘AIG’*) and the Australian Federation of Employers and Industries (*‘AFEI’*) regarding the use of the term *‘applicable rate of pay’* in the Award. United Voice agrees with AIG that consideration of this matter should be deferred until after the Commission issues its decision regarding a similar issue in the *Manufacturing and Associated Industries and Occupations Award 2010* (*‘Manufacturing Award’*).
4. We ask that the parties be given an opportunity to consider the decision in the Manufacturing Award and file submissions regarding the matter in this review of the FBT Award. We note that there is value in the parties discussing the matter after the decision in the *Manufacturing Award* is made.

Clause 2 – Definitions – ordinary hourly rate

5. We agree with AIG that the definition of *‘ordinary hourly rate’* should be varied to reflect the decision of the Commission on 13 July 2015.¹ We propose the following words:

ordinary hourly rate means the hourly rate for the employee’s classification specified in clause 14, plus any allowances specified as being included in the employee’s ordinary hourly rate or payable for all purposes

¹ 4 yearly review of modern awards [2015] FWCFB 4658

Clause 10 – Casual employment

6. AIG submits that clause 10.2 (a) should not refer to the ‘*ordinary hourly rate*’ prescribed in clause 14. AIG note that clause 14 does not provide an ordinary hourly rate, it prescribes the minimum hourly rate. AIG proposes that the words ‘*ordinary hourly rate*’ should be replaced with ‘*minimum hourly rate*’.
7. If AIG’s proposal were adopted then the all purposes allowances that may be paid to a casual employee would not be included in the calculation of the casual loading. The clause should be amended to reflect the fact that the casual loading is calculated from the ordinary rate. United Voice proposes the following words:

A casual employee working ordinary time must be paid:

(a) the minimum hourly rate prescribed in clause 14 for the work being performed; plus

(b) any allowances specified as being included in the employee’s ordinary hourly rate or payable for all purposes; and

(c) a casual loading of 25% of the ordinary hourly rate

Clause 14 – Minimum wages and classifications

8. AIG submits that the wording of clause 14.1 (a) would impose an obligation on an employer to pay the minimum weekly wage set out in the table below to all employees, including casual and part-time employees. United Voice disagrees. We note that clauses 9.7 and 10.2 prescribe how casual and part-time employees are paid. We note that both clauses require an employer to pay an employee the minimum hourly rate for time actually worked.

Clause 20.2 – Expense related allowances

9. *Clause 20.2 (d) – Damage to clothing and equipment:* AIG submits that clause 20.2 (d) should be amended for brevity. AIG’s proposed form of words would render the clause meaningless. However, we agree that the clause requires some redrafting as follows:

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

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

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

Schedule B.1.5 – Full-time and part-time shift workers – ordinary and penalty rates; Schedule B.2.3 – Casual shift workers – ordinary and penalty rates

10. AIG submits that the second column, titled '*minimum hourly rate*' is unnecessary and should be deleted. United Voice opposes this proposal. The minimum hourly rate column shows that the rates displayed in the table are calculated using the minimum hourly rate. This is important because if an employee is paid an all purposes allowance, then that will be the employee's ordinary hourly rate, and the rates they are entitled to will be different from the rates displayed in the table. A note to this effect may assist the reader to understand the table.

**UNITED VOICE
22 FEBRUARY 2017**