

FAIR WORK COMMISSION

4 yearly review of modern awards – Transport Industry Awards

Matter No. AM2016/32

RE *Road Transport (Long Distance Operations) Award 2010*

SUBMISSIONS IN REPLY FOR THE TRANSPORT WORKERS' UNION OF AUSTRALIA

INTRODUCTION

1. These submissions endeavour to summarise the submissions of the TWU in reply to submissions filed by the AI Group, Australian Business Lawyers, Natroad and ARTIO in relation to the Road Transport (Long Distance Operations) Award (“the LDO Award”).

FATIGUE MANAGEMENT PLAN

2. The proposed variation to clause 13.5(a)(iii) of the LDO Award to require a driver whose rate of pay is calculated in accordance with a Fatigue Management Plan to be provided with a copy of the plan is opposed by NatRoad.
3. NatRoad’s submissions (paragraph 123) appear to suggest that the TWU has an ulterior purpose for seeking the variation, namely, to reintroduce a requirement to prepare and maintain safe driving plans. The TWU has long supported a requirement for long distance drivers to have safe driving plans and such a requirement continues to apply to owner drivers in New South Wales under the *Transport Industry – Mutual Responsibility for Road Safety (State) Contract Determination*. The TWU fundamentally disagrees with NatRoad’s criticisms of safe driving plans.
4. However, this variation does not seek to introduce a requirement to prepared safe driving plans into the LDO Award. Clause 13.5(a)(iii) of the LDO Award operates in circumstances in which an employer “has an accredited Fatigue Management Plan in place”. An “accredited Fatigue Management Plan” must

be program approved under a Commonwealth, State or Territory law. All the proposed variation requires is for the employer to provide a copy of that document to the driver subject of its terms. The proposed variation should be uncontroversial. Also, as the employee is paid a trip rate pursuant to the FMP, the employee has a right to know how the rate was determined.

PICK UP AND DROP OFF ALLOWANCE

5. The proposed variation to the LDO Award to insert a new clause 13.7 to make provision for the payment of a pick and drop off allowance is opposed by the AI Group, Australian Business Lawyers, NatRoad and ARTIO. The issues which arise appear to be:
 - (a) Whether there is a jurisdictional impediment to the proposed variation being made?
 - (b) Whether the work involved in making multiple pick ups or drop offs is already appropriately remunerated by the payment structures in the LDO Award?
 - (c) Whether the proposed variation would have a practical impact upon the operations of transport providers?
 - (d) Whether the proposed variation is required to be dealt with as a work value claim?
6. Firstly, Australian Business Lawyers suggest that there is a jurisdictional issue in relation to the proposed pick up and drop off allowance. At paragraph 3.2-3.8 of their submissions, Australian Business Lawyers suggest that the jurisdictional impediment arises from the fact that the LDO Award does not apply where the employee is performing work that does not form part of a long distance operation. Whilst that is accepted, the circumstance endeavoured to be captured by the variation arises where a driver is required to pick up or drop off at more than one location at the point of commencement or point of destination.
7. The problem would not arise if a “long distance operation” were limited to a single point of commencement and a single point of destination. However both the AI Group and ARTIO contend that a “long distance operation” can encompass more than one pick up or drop off location: see, particularly,

paragraphs 122 to 127 of the AI Group submissions. If the submissions of the AI Group and ARTIO are accepted, then the difficulty identified in the TWU's evidence becomes plain. Drivers are being required to perform work for which no remuneration is available under the LDO Award.

8. Secondly, the AI Group and NatRoad submit generally that the remuneration structures in the LDO Award are appropriate. The submissions fail to have regard to the particular features of the remuneration structures of the LDO Award. Whether paid pursuant to the kilometre driving method in clause 13.4 or hourly driving method in clause 13.5, a driver is remunerated for common routes by reference to deemed distance travelled or deemed driving time and not actual driving distance or time. The deemed driving distances and times remunerate drivers only by reference to the distance between the two locations and do not account for any additional driving distance or time involved.
9. If a driver is required to pick up from two locations in Sydney and then travel to Brisbane, any additional driving distance or time involved is not remunerated at all. The deemed driving distance or deemed driving time from Sydney to Brisbane does not account for travel within Sydney prior to departure. The loading and unloading allowance provided for in clause 13.6 is only payable when an employee is "engaged on loading or unloading duties" and similarly does not account for additional working time involved with multiple pick ups or drop offs.
10. The proposed variation seeks to address this deficiency in the remuneration structures in the LDO Award. It is noted that at paragraph 35 of its submissions, ARTIO accepts that a drop off at Botany where the principal point of destination was Blacktown would be unreasonable as it would involve travel of over 50km and would take at least an hour. However, neither ARTIO nor any of the other submissions suggest how that unreasonable circumstance is prevented or addressed by the LDO Award. The proposed variation is necessary to ensure that the driver receives reasonable payment for the additional work involved.
11. Thirdly, the AI Group and NatRoad faintly suggest that practical difficulties may arise from the proposed variation. Absolutely no evidence is presented to support those submissions and they should be rejected. It is noted, however, that NatRoad filed evidence from Dr Brent Davis constituted by a survey

apparently conducted of NatRoad members. The survey is of limited scope and little credence can be given to it. However, it is notable that at page 17 and 18 of Dr Davis' report, the survey results indicate that the proposed pick up and drop off allowance is supported by 56% of respondents and opposed by only 21% and that 51% of respondents expected no impact or slight impact by the change and only 20% thought the impact would be significant.

12. Finally, NatRoad and ARTIO suggest that the proposed variation is required to be considered as a work value claim. The submission cannot be accepted. Section 156 of the Act permits the Commission to, among other things, vary a modern award during the 4 yearly review. Section 156(3) provides as follows:

(3) In a 4 yearly review of modern awards, the FWC may make a determination varying modern award minimum wages only if the FWC is satisfied that the variation of modern award minimum wages is justified by work value reasons.

13. The term "modern award minimum wages" is defined in s 284(3) of the Act as follows:

*Meaning of **modern award minimum wages***

*(3) **Modern award minimum wages** are the rates of minimum wages in modern awards, including:*

(a) wage rates for junior employees, employees to whom training arrangements apply and employees with a disability; and

(b) casual loadings; and

(c) piece rates.

14. The proposed variation does not seek to alter the minimum wages set out in the LDO Award. The proposed variation does no more than seek to address a deficiency in the application of the rates of remuneration which has been identified in the evidence.

Transport Workers' Union of Australia

Dated: 21 March 2017