

Fair Work Commission
Level 10, Terrace Tower, 80 William Street
EAST SYDNEY NSW 2011
Via email: AMOD@fwc.gov.au

18 June 2018

Re: AM2014/247 Sugar Industry Award 2010

BACKGROUND

1. On 6 April 2018, Deputy President Asbury published Directions requiring parties to file written submissions regarding outstanding substantive issues of the *Sugar Industry Award 2010* ('Award').
2. The following parties filed submissions regarding piecework:
 - 2.1. The Australian Workers' Union¹ ('AWU'); and
 - 2.2. The National Farmers' Federation² ('NFF').
3. These submissions of the AWU are in response to those of the NFF on that issue.

REPLY SUBMISSIONS

4. The AWU notes that both the AWU and the NFF agree on the first limb of the Fair Work Ombudsman enquiry – that casual piecework employees are entitled to the casual loading in the Award in determining minimum entitlements for pieceworkers.
5. The AWU and NFF do not agree, however, on the second limb of the enquiry – the interaction between the casual loading and the piecework loading.

¹ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201756-sub-awu-080618.pdf>

² <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201756-sub-nff-070618.pdf>

6. The AWU notes that the table provided by the NFF in its submission³ is not necessarily an accurate depiction of the operation of the piecework loading. It is potentially misleading and oversimplified.
7. As addressed in our earlier submission, a pieceworker *does not* receive an hourly rate. A pieceworker receives payment for work completed in units. A table that expresses piecework as an hourly rate is therefore inaccurate.
8. The far right column of the table provided by the NFF is titled 'Piecework Rate'. This is also inaccurate. A piecework rate is what a pieceworker earns for completing a particular quantity of work. This is measured in work completed, not time taken.
9. In its submission, the NFF states that the purpose of the piecework loading is to incentivise faster work⁴. The AWU disagrees. The piecework loading does not exist for this purpose.
10. The purpose of a piecework arrangement itself is ostensibly to incentivise more productive work as a pieceworker is paid per unit of work completed.
11. However, the piecework loading is an element of a calculation to ensure the pieceworker is paid a piecework rate that enables him or her to earn at least the amount prescribed by the Award, which is what the pieceworker would have received if he or she were paid an hourly rate for the work performed per pay period, plus an additional 20% of that amount.
12. The AWU agrees with the NFF that the casual loading and the piecework loading are unrelated and distinct⁵. Contrary to the submission of the NFF though, the AWU submits that the conceptual independence of these loadings actually gives weight to the two being 'calculated' on a compounding basis.
13. A casual loading is compensatory in nature. It is calculated on an employee's minimum hourly rate of pay in recognition of casual employees not being entitled to a number of benefits in the workplace that permanent employees are, such as annual leave and paid sick leave.

³ NFF submission, paragraph 8

⁴ NFF submission, paragraph 12

⁵ NFF submission, paragraph 13

14. However, a piecework loading is not compensatory at all. A piecework loading is merely an element of a calculation to ensure a pieceworker is being paid a piecework rate that enables him or her to earn *at least* a certain amount per pay period. This amount is 20% in excess of what the pieceworker would have earned if he or she were paid by the hour for that pay period.
15. A piecework loading is not calculated on an employee's hourly rate of pay, but on the *entire amount* an employee *would* have been paid if paid hourly.
16. In its submission, the NFF makes the claim that under a pre-modern instrument, the *Sugar Field Sector Award – State 2005*, pieceworkers were paid a 20% loading in lieu of annual leave and sick leave⁶.
17. The AWU notes that this position has been advanced by the NFF without any real basis. Nothing in the above award expressly states or implies that the piecework loading is payable for such a purpose.
18. While it is true that piecework employees were not entitled to receive annual leave and paid sick leave under this state award, there is nothing to suggest that the 20% piecework loading was payable in compensation for this. The NFF seems to have conflated these two discreet issues for the purposes of supporting its position on this issue.
19. Accordingly, the NFF claim that the casual loading and piecework loading being payable together is at all a form of 'double-dipping' is unsupported by any actual evidence.
20. The AWU strongly disagrees with the NFF submission that the language of the Award doesn't provide a basis to conclude that the loadings are calculated on a compounding basis. The AWU notes that the NFF advanced this position without addressing the bulk of the piecework clause of the Award⁷ in its submission⁸.
21. The AWU position is exactly the opposite to that of the NFF – the language of the award strongly implies a compounding method of calculation. This is based

⁶ NFF submission, paragraph 14

⁷ *Sugar Industry Award 2010*, cl.20.2

⁸ The NFF only mentions paragraphs (d) and (e) of clause 20.2 of the Award in its submission.

on the words used in the piecework clause of the Award, which the AWU engaged with thoroughly in our submission.

22. The AWU submits that it is clear from the words used in the Award that the 20% piecework loading is calculated on the total amount *that would be received* by an employee paid an hourly rate. This obviously includes loadings.
23. The AWU does not disagree with the NFF observation that the casual loading is not an all-purpose rate under the Award. However, the AWU maintains that this is an irrelevant consideration. The piecework loading is not at all conceptually similar to other loadings and allowances – it is not applied to the hourly rate of an employee. The piecework loading is merely an element of a calculation to determine a piecework rate that meets the minimum standard of the Award.
24. The AWU submits that the NFF’s discussion regarding paragraphs 20.2(d) and 20.2(e) of the Award is not relevant to the current matter as these paragraphs are for permanent employees. Casual employees do not receive the entitlements under the NES to which these paragraphs refer – they are paid the casual loading in recognition of this.
25. The AWU maintains that under the terms of the Award, a pieceworker covered by the Award is entitled to a piecework rate that ensures the employee earns at least equal to the following per pay period:
 - 25.1. The hourly rate the pieceworker would have received for time worked; plus
 - 25.2. Any time-based loadings such as overtime if applicable; plus
 - 25.3. Any casual loading if applicable; plus
 - 25.4. A 20% loading on the total of 25.1, 25.2, and 25.3.

Yours Faithfully,



Zachary Duncalfe
NATIONAL LEGAL OFFICER
The Australian Workers' Union