

Monday, 9 August, 2021

My name is Davis Clayton. I am writing in response to the Commission's invitation to submit a written statement in relation to matter number AM2021/72.

Currently, I perform on-demand food delivery as a contractor. I am not engaged by Menulog. However, I perform deliveries for a variety of other similar companies. I have been contracting in this industry since 2017. While, as a contractor, I would not be recognised under any proposed new award, I argue that the possibility that the companies I work for may follow the applicant in deciding to convert contractors to become employees qualifies me as an interested party in this matter.

Below are my submissions in response to the Commission's provisional views and observations, as outlined in Section 4 - 'Next steps' [FWCFB 4053]. I have excluded points to which I have not provided a response.

Views

[11] Based on the observations of the Full Bench in the Proposed Helicopter Crew Award decision it is our provisional view that the Act requires us to consider the following initial matters before deciding whether or not to make a new modern award covering the on demand delivery services industry:

1. Whether employers and employees in that industry are currently covered by a modern award.

In my view, the type of work that I perform is covered by the *Road Transport & Distribution Award 2020 (the Road Transport Award)* under the classification 'Transport Worker Grade 1 - Courier Foot or Bicycle'. The type of work that I perform clearly falls within the definition of 'courier' as defined by the award.

[23] Our provisional view is that Menulog is correct and that the Fast Food Award does not currently cover employers and their courier employees in the on demand delivery services industry.

I agree with this view.

[35] On the basis of the coverage clause of the Miscellaneous Award as varied by the Full Bench in the Review, our provisional view is that if no other modern award covers employers and their courier employees in the ... on demand delivery services industry, then the Miscellaneous Award covers them.

In my view, the Road Transport Award covers the applicant's courier employees, so the Miscellaneous Award does not apply.

[43] We agree with those observations as to the character of the Miscellaneous Award. It is our provisional view that if the Miscellaneous Award does cover employers and their courier employees in the on demand delivery services industry, then it does not provide a fair and relevant safety net for that industry.

I agree with this view.

Observations

[29] Absent further submissions from Menulog and other interested parties, we do not propose to express a view as to whether or not the Road Transport Award covers employers and their courier employees in the on demand delivery services industry.

I request that the commission *does* seek to express a view, in this case, or at some stage, as to whether the Road Transport Award covers the applicant's courier employees. In my view, the classifications in the Road Transport Award clearly describe the type of work performed by myself, and the couriers engaged by Menulog. The few elements unique to the applicants' services are not so novel that they distinguish its couriers from couriers and drivers already recognised under classifications mentioned in the Road Transport Award.

[39] Menulog will need to expand upon these considerations in order to satisfy us that it is necessary to make a new modern award for the on demand delivery services industry to achieve the modern awards objective.

I agree with this observation.

[47] As with the issue of what awards presently cover employers and their courier employees in the on demand delivery services industry, and whether that current coverage meets the modern awards objective, further submissions and evidence will be required to inform our consideration of whether an existing modern award should be varied to cover those employers and employees.

I believe that variations to the Road Transport Award, if any are found to be required, would be a more suitable outcome, rather than the creation of a new award, as proposed by the applicant.