



## DECISION

*Fair Work Act 2009*

s.160—Variation of modern award

**“Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU)**  
(AM2010/215)

### **CAR PARKING AWARD 2010**

[MA000095]

Building services

DEPUTY PRESIDENT IVES

MELBOURNE, 4 NOVEMBER 2010

*Variation to clause 20.4 - Superannuation.*

[1] This decision relates to an application made on 10 September 2010 by the “Automotive, Foods, Metals, Engineering, Printing and Kindred Industries Union” (AMWU) pursuant to s.160 of the *Fair Work Act 2009* (the Act) to vary clause 20.4 of the *Car Parking Award 2010*<sup>1</sup> (the Award) to remove ambiguity or uncertainty or correct error.

[2] The application was listed for hearing on 4 November 2010. Mr A Sachinidis appeared for the AMWU. The application was not opposed.

[3] The AMWU seeks to insert the MTAA Superannuation Fund as a default fund to clause 20.4 of the Award. The AMWU submitted that the variation sought satisfies the approach adopted by the Full Bench of the Australian Industrial Relations Commission (AIRC) as to when a default fund should be included in a modern award.

[4] In its decision issued on 2 September 2009 the Full Bench of the AIRC said that if a superannuation fund had either been named as a default fund in an award-based transitional instrument relevant to the modern award’s coverage or that representatives of the main parties subject to the modern award’s coverage provided consent, the fund should be named as a default fund in the award.<sup>2</sup>

[5] The AMWU submitted that the MTAA Superannuation Fund was a default fund in the *Car Park Attendants Award—South Eastern Division 2005*<sup>3</sup> and that this award-based transitional instrument was relevant to the Award’s coverage.

[6] I am satisfied that some employees subject to the coverage of the Award were previously covered by an award-based transitional instrument that recognised or permitted contributions to be made to the MTAA Superannuation Fund. In my view, if the award modernisation Full Bench had been made aware of this circumstance, the fund would have been listed as a default fund.

[7] I am satisfied that the error should be corrected by making the variation sought. A determination to this effect will be issued with an operative date of 1 January 2010.

DEPUTY PRESIDENT

*Appearances:*

A Sachinidis for the Australian Manufacturing Workers' Union

*Hearing details:*

2010.

Melbourne.

November 4.

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<sup>1</sup> MA000095

<sup>2</sup> [2009] AIRCFB 800 at 67

<sup>3</sup> AN140053