



# DECISION

*Fair Work Act 2009*

s.160—Variation of modern award

## Michael Chapman

(AM2012/2)

Coal industry

VICE PRESIDENT LAWLER

MELBOURNE, 10 AUGUST 2012

*Application to vary clause 17.2(b)(i).*

[1] This is an application under s.160 of the *Fair Work Act 2009* (**FW Act**) by Mr Michael Chapman to vary a modern award to remove an ambiguity or uncertainty or to correct an error.

[2] Mr Chapman makes application for a variation to the *Black Coal Mining Industry Award 2010*, specifically, Mr Chapman seeks the insertion of the word “or” at the end of the text of clause 17.2(b)(i). With that amendment included as a marked up addition, clause 17.2(b) provides:

### “17.2 Payment for overtime

- (a) Subject to the exceptions in clause 17.2(b), all time worked in excess of or outside the ordinary hours of any shift on the following days will be paid for at the following rates:

| <b>Day of week</b> | <b>Rate of pay</b>   |
|--------------------|--|
| Monday to Friday   | First 3 hours at time and a half<br>After 3 hours at double time |
| Saturday           | First 3 hours at time and a half<br>After 3 hours at double time |
| Sunday             | Double time  |

- (b) All time worked in excess of or outside the ordinary hours of any shift by employees:

- (i) who are six day roster employees or seven day roster employees; or
- (ii) who work a roster which requires ordinary shifts on public holidays and not less than 272 ordinary hours per year on Sundays; or
- (iii) who work a roster which requires ordinary shifts on Saturday and Sunday where the majority of the rostered hours on the Saturday or Sunday shifts fall between midnight Friday and midnight Sunday;

will be paid for at the rate of double time.”

(The word that Mr Chapman seeks to have added is indicated by underline.)

[3] In my view the meaning of clause 17.2(b) is clear and there is no ambiguity or uncertainty that needs to be resolved through the addition of the word “or” at the end of clause 17.2(b)(i). The manner in which clause 17.2(b) is expressed was agreed between the industry parties during the award modernisation process. It adopts a standard method of specifying disjunctive alternatives in a proper grammatical fashion. Clause 17.2(b) has the operation for which Mr Chapman is contending. The additional “or” he seeks is unnecessary. I am not satisfied that there is any ambiguity or uncertainty that requires correction and accordingly the application is dismissed. I note that this position was supported by the Construction, Forestry, Mining and Energy Union and the Coal Industry employers.



VICE PRESIDENT

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