

IN THE FAIR WORK COMMISSION

Matter No: AM2018/27

Section 158 – Application to vary or revoke a modern award --*Security Services Industry Award 2010*

SUBMISSION OF UNITED VOICE

1. This submission concerns the application of Mr Christian Gavin to vary clause 15.11(b) of the *Security Services Industry Award 2010* ('the Award').
2. Mr Gavin is a member of United Voice.
3. United Voice is also more broadly an interested party, as we are entitled to represent the industrial interests of employees covered by the Award.
4. United Voice supports the application of Mr Gavin to vary the Award.

The variation

5. Clause 15.11(b) of the Award states that:

Where an employee is required to wear a uniform the employer must provide the employee with the uniform or reimburse the employee for the cost of the uniform.

6. There is no definition of 'uniform' within the Award.

7. The variation sought by Mr Gavin seeks to amend clause 15.11(b) as follows:

Where an employee is required to wear a uniform including boots or other required footwear, as part of the employer's uniform policy, code of dress or corporate clothing or otherwise, the employer must provide the employee with those items specified by the employer's uniform policy, code of dress or corporate clothing or reimburse the employee for the cost of purchasing the items.

A uniform will include but is not limited to shirt or blouse, pants or dress and shoes or boots.

8. The variation seeks to clarify the circumstances in which the entitlement to the uniform allowance exists, and seeks to define the items included within a uniform.

9. The need for a variation to the Award arose as a result of Mr Gavin's employer refusing to pay the cost of his footwear.¹
10. In addition to footwear, the variation clarifies that uniform items include '*shirt or blouse, pants or dress.*' The general practice in the security industry is for the employer to provide employees with shirts, pants, jumpers and jackets. This aspect is likely to be less contested yet is still necessary as the variation will provide greater clarity to both employers and employees on what uniform items should be provided or reimbursed.

Award history

11. The Award was made on 19 December 2018 by the Australian Industrial Relations Commission (AIRC), following submissions by a variety of interested parties including the Liquor Hospitality and Miscellaneous Union (LHMU, United Voice's predecessor) and the Australian Security Industry Association Limited (ASIAL).²
12. There are no decisions during the award modernisation process that appear to go specifically to the issue of the uniform allowance within this Award.
13. Clause 15.11(b) has not been varied since the making of the Award.
14. Pre-modern awards varied to some extent in relation to the uniform allowance. Many pre-modern awards provided that uniforms should be provided by the employer or the cost reimbursed.³ However, generally the term '*uniform*' was not defined. Black shoes were excluded from the uniform allowance in the *Security Industry (New South Wales) Award 1999*⁴ whilst safety footwear was specifically included in the *Security Employees (Victoria) Award 1998*.⁵
15. Under the *Fair Work Act 2009* ('the Act') the Commission is required to ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account the modern awards objective.
16. The variation sought is necessary to meet the modern awards objective.

¹ See initial application of Christian Gavin to vary the Award, dated 8 November 2018.

² [2008] AIRCFB 1000.

³ See for example, *Security Employees (A.C.T.) Award 1998*, clause 5.5.3; *Security Employees (Victoria) Award 1998*, clause 17.6.5; *Security Industry (New South Wales) Award 1999*, clause 12.2; *Security Officers (Western Australia) Award 2002*, clause 13.5.

⁴ See clause 12.2.

⁵ See clause 17.6.5.

The modern awards objective

17. The relevant objectives are addressed below.

Section 134(1) (a) Relative living standards and the needs of the low paid

18. The Commission uses a threshold of two-thirds of median (adult) full-time ordinary earnings as the benchmark to identify who is ‘low paid’ within the meaning of s 134(1)(a).⁶ The Commission uses two measures to assess this figure, the ABS *Characteristics of Employment Survey* (CoE) and the ABS *Survey of Employee Earnings and Hours* (EEH). In accordance with the CoE measure in 2018, two-thirds of median earnings were equal to \$886.67 per week, or \$23.33 per hour.⁷ According to the EEH measure for 2018, two thirds of median earnings was equal to \$973.33 per week, or \$25.61 per week.⁸
19. In accordance with the above measures, the majority of employees covered by the Award can be regarded as low paid. Security Officers levels 1 to 4 fall below the CoH measure and all Security Officer classifications fall below the EEH measure.
20. For a low paid employee, the cost of purchasing uniform items can be prohibitive. Footwear can vary in cost, depending on the quality and shop. Non-slip safety footwear could cost from around \$60 to \$250.
21. Where an employer does not provide footwear, the employee would need to purchase a pair upon the commencement of employment, and then replace as required. As Security Officers are often ‘on-foot’, it can be expected that there would be a significant amount of wear and tear, and the shoes may need to be replaced yearly.
22. This is not an insignificant cost for a low paid employee. For low paid employees who live ‘week to week’ as a function of low pay and high costs of living, even an annual \$100 purchase of footwear may disrupt the household budget and have a significant impact on the employee’s ability to meet housing and other essential costs.
23. Further, there are potential safety issues that arise with regards to footwear. Slips, trips and falls are a common workplace health risk for security guards.⁹ It is inappropriate for the cost of purchasing safety footwear to be placed on low paid employees.

⁶ [2019] FWCFB 3500, paragraph [52].

⁷ FWC Statistical report –Annual Wage Review 2018-19, published 23 May 2019, page 41.

⁸ As above.

⁹ WorkSafe Victoria’s Injury Hotspots indicates that slips, trips and falls are a common hazard for employees in the security industry. See <http://injuryhotspots.com.au/#/security>

24. The variation seeks to ensure that low paid employees do not bear the cost of purchasing and replacing uniform items such as footwear. The variation would reduce work-related expenses for low paid employees, and as such, would improve to some extent the living standards of the low paid covered by this Award.

Section 134(1)(c) The need to promote social inclusion through increased workforce participation

25. Obtaining employment is the focus of this objective, although an employee's capacity to engage in community life is also a relevant matter.¹⁰ The broader notion of promoting social inclusion is also relevant.¹¹
26. Significant upfront costs may act as a barrier to obtaining employment, especially for the low paid and for unemployed people. Whilst the uniform cost may not be great overall, as discussed above, it is not an insignificant cost for a low paid worker or unemployed person who would need to purchase the uniform items upfront before starting the job. In this way, uniform costs falling upon the employee can act as a barrier to workforce participation.
27. This variation is consistent with this objective, as it would reduce one upfront (and ongoing) cost of employment, and as such may promote social inclusion through increased workforce participation.

Section 134(1) (f) The likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden

28. Some employers in the security industry would already provide all uniform items. This variation, if made, would have no impact on those employers.
29. For employers who do not currently provide uniform items such as footwear, the increased cost is likely to be minimal. The uniform allowance in clause 15.11(b) provides the employer with a choice as to whether to provide the employee with a uniform or reimburse the employee for the cost of the uniform. The employer can mitigate any additional costs by providing appropriate footwear rather than providing a reimbursement, if they so wish.
30. There is unlikely to be any significant increase in employment costs as a result of this variation. Therefore, this objective should not be taken to count against the variation being made.

¹⁰ Penalty Rates case, [2017] FWCFB 1001, paragraphs [179]-[180].

¹¹ As above, [180].

Section 134(1) (g) The need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards

31. The Award does not currently define ‘*uniform*’, either in clause 15.11(b) or in clause 2, definitions. This leaves open the possibility of dispute regarding which items are properly considered part of the uniform.
32. The variation seeks to insert a definition of uniform into the Award. The definition would remove any perceived ambiguity and ensure that that the Award is more simple and easy to understand. As such, the variation is consistent with this objective.
33. Section 134(1)(b), (d), (e), and (h) are neutral considerations.
34. The variation sought is necessary to meet the modern awards objective for the reasons above and should be made.

**UNITED VOICE
30 July 2019**