



## DECISION

*Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*  
Sch. 5, Item 6 - Review of all modern awards (other than modern enterprise and State PS awards) after first 2 years

**Transport Workers' Union of Australia**  
(AM2012/198)

**Australian Public Transport Industrial Association**  
(AM2012/47)

Passenger vehicle transport (non rail) industry

COMMISSIONER BISSETT

MELBOURNE, 1 JULY 2013

*Modern Awards Review 2012 - application to vary the Passenger Vehicle Transportation Award 2010.*

[1] On 7 June 2013 I issued a decision [[2013] FWC 3221] and draft determination arising from the review of the *Passenger Vehicle Transport Award 2010* (PVT Award).

[2] At that time I sought comment on the draft determination as there was a formulation in that determination which had not been subject to consideration by the parties with an interest in the *PVT Award*.

[3] At the conclusion of the period for comment and/or submissions on the draft determination the APTIA indicated that it had no matters it sought to raise.

[4] The TWU made a brief submission on two points: firstly it sought to re-agitate the reason for the decision I made with respect to the payment of bus drivers of waiting time whilst on charter; and second it proposed a variation to the draft wording of the classification descriptor for a Grade 3 driver in relation to a bus driver on a day charter. The APTIA provided a brief response to the submission of the TWU.

[5] On the question of the payment of waiting time for a bus driver on a day charter I note that waiting time is defined in the *PVT Award*. 'Waiting time' is only that time when the driver is under *no* restraint and it is only during this period that a driver can be paid 50% of the ordinary pay. For the remainder of the charter period the driver is entitled to the ordinary rate in the *PVT Award*. A bus driver on a day charter who has responsibility for the bus and passengers is unlikely to be under 'no restraint.'

[6] As to the proposed definition of Grade 3 contained in Schedule B to the *PVT Award*, which is to be amended to reflect the classification of a bus driver driving a bus on a day

charter, the TWU submits that there is a need to include in the definition the carrying capacity of the bus.

[7] The APTIA, in its response suggested that this change by the TWU would not address the anomaly that the APTIA seek to overcome – that is the lack of a classification for a bus driver who only undertakes charter work.

[8] In my decision of 7 June 2013 I raised the issue of the different bases on which coach and bus driver are classified – one according to distance travelled and the other according to the carrying capacity of the vehicle. This difference is not one that should be set aside lightly but requires more detailed consideration and is perhaps more fittingly considered in the a more fulsome review of the *PVT Award*.

[9] Given the limited evidence by APTIA of the anomaly said to exist (bus drivers who only do day charter work) it is appropriate to ensure a definition which does not create further anomalies or have unintended consequences that may disadvantage employees covered by the *PVT Award*. I am satisfied that a bus driver who would not, for other reasons be classified at Grade 4, who undertakes day charter should be incorporated into the definition of a Grade 3.

[10] The classification at B.3 Grade 3 of the *PVT Award* shall be amended to read:

Grade 3 employees are employees with skills in excess of Grade 2 and includes all employees engaged in driving a passenger vehicle with a carrying capacity of 25 or more school children to and/or from school; employees engaged in driving a passenger vehicle with a carrying capacity of less than 25 passengers on a specified route service which operates regularly between fixed terminals; a coach driver of a passenger vehicle which undertakes charter, single day tours or which operates regularly between fixed terminals with a return distance of less than 650 km; a bus driver of a passenger vehicle who undertakes charter, single day tours which operates regularly between fixed terminals with a return distance of less than 650 km and who is not otherwise classified at the grade 4 by virtue of the specified route work normally performed or the carrying capacity of the bus.

[11] The revised determination will be issued in conjunction with the decision. I am aware that there may be consequences arising from the decision and the associated determination. For this reason the date of effect of the determination shall be the first full pay period occurring on or after 1 August 2013. This will ensure all parties covered by the award have adequate notice of the determination.



*Appearances.*

*M. Gibian* of Counsel for the Transport Workers' Union.

*I. MacDonald* for the Australian Public Transport Industrial Association.

*Hearing details:*

2013.  
Sydney;  
29 April.

*Final written submissions:*

Transport Workers' Union: 21 June 2013.  
Australian Public Transport Industrial Association: 21 June 2013.

