



NATIONAL PRESIDENT

Gerard Dwyer

NATIONAL SECRETARY

Joe de Bruyn

13 April 2015

Justice Ross
President
Fair Work Commission
11 Exhibition Street
Melbourne, VIC 3000

By email: chambers.ross.j@fwc.gov.au

Dear Justice Ross,

Re: Correspondence of 10 April 2015 from FCB on behalf of ARA, NRA, ANRA and MGA

The SDA writes in response to the correspondence of the four retail employer groups which seeks to classify the SDA's overtime and casual loading claims as penalty rate matters.

We refute the accusation that the SDA's characterisation of its claims as non-penalty rate matters is disingenuous. Overtime and casual loading are long-standing features of industrial relations and are distinctly separate from each other as well as penalty rates. Conflating these conditions of employment ignores the merit behind these different entitlements.

The SDA's outline of submissions of 2 March 2015 seeks the following variations to the *General Retail Industry Award 2010* (GRIA):

16. The SDA seeks the following variations to the Overtime clause:
 - a. Insert wording to ensure that there is no ambiguity as to the payment of overtime for all permanent and casual employees performing work which goes beyond the times and patterns considered 'ordinary' as per the award.
 - b. Provide casuals with overtime rates for work in excess of 38 hours per week.
 - c. Vary clause 29.2(a)(i) to provide payment of double time after two hours worked.
17. The SDA is seeking the full casual loading for such employees at all times which incur penalty rates.
18. Casual employees are entitled to a 25% loading to offset leave entitlements which they do not receive, including, annual, personal and compassionate leave. Currently, their casual loading during evening work Monday to Friday and on a Sunday is fully absorbed by the 25% penalty rate. On a Saturday, their casual loading is reduced by 15%.

Overtime

The overtime claim sought by the SDA clearly concerns overtime and the payment of such to all employees. It does not seek to alter penalty rates within the Award. As the Commission would be aware, the Fair Work Ombudsman has identified the application and payment of overtime in the GRIA and several other awards as being a matter which requires clarification.

The SDA noted during the Mention for Group 2 matters on 2 December that Your Honour indicated that matters concerning overtime and casuals in the *Alpine Resorts Award 2010* may be referred to the Casual and Part-Time Employment Full Bench. The SDA itself also raised this as a possibility at the 2 December Mention for its identical claim in the *Pharmacy Industry Award 2010* (PIA) at PN408 and then in its Submissions in Response to the Pharmacy Industry Award Exposure Draft of 26 January 2015 at para 76.

At the Group 3 Mention, we also noted Your Honour's comments at PN32 of 30 March 2015 that "The entitlement of casuals to overtime is a matter that's been referred to that bench more generally. So we will make sure that your submission in that regard is sent to the casual and part-time Full Bench as well."

The SDA seeks that the employer groups' request that our claim to clarify the applicability of overtime be referred to the Penalty Rate Full Bench be refused, in light of the Commission's decision to refer such claims to the Casual and Part-Time Full Bench.

Casual loading and penalty rates

The SDA's claim for casual loading to be paid in addition to penalty rates is, once again, not a matter which seeks to alter the penalty rates per se. Irrespective of what penalty rates may be payable under the award, the SDA's concern is that casual employees receive their loading in addition to the rates set in the award.

This is an argument which goes to the nature of casual work and whether or not the absorption of casual loading within an award meets the Modern Awards Objective.

The SDA's approach

At no stage has the SDA attempted to obfuscate what it is seeking, or hinted at future claims it may or may not make. We have clearly stipulated every claim we intend to pursue in the GRIA, unlike several other parties in this Award stage which, in their Outline of Submissions, alluded to claims they may possibly seek at a later stage, but failed to clearly indicate by 2 March 2015, as per FWC Directions.

We respectfully seek that these matters are dealt with by the Casual and Part-Time Employment Full Bench or during the individual award review of the GRIA as the Commission so deems fit.

Yours sincerely,



IAN BLANDTHORN
NATIONAL ASSISTANT SECRETARY