

FAIR WORK COMMISSION

Matter No: AM2014/197 & AM2014/197

4 yearly review of modern awards – Casual Employment & Part Time Employment

Stevedoring Industry Award 2010

SUBMISSIONS OF THE CONSTRUCTION, FORESTRY, MARITIME, MINING AND ENERGY UNION – THE MARITIME UNION OF AUSTRALIA DIVISION

1. These submissions are advanced by the Construction, Forestry, Maritime, Mining and Energy Union – the Maritime Union of Australia Division (**MUA**) in response to the Decision of the Full Bench dated 9 August 2018 [2018] FWC 4695 and the draft determination for the *Stevedoring Industry Award 2010* that was published on 30 August 2018.
2. The MUA opposes the making of the determination in its current form.
3. The Full Bench in rejecting the submission of the MUA that the model clause should be amended by substituting the words “pattern of hours” with “number of hours” has left the clause with little practical application.
4. As the Full Bench observed (at [60]) “all parties acknowledge, the notion of a regular working pattern for stevedores is a rare occurrence.” A more fulsome description was noted by Watson VP in *Stevedoring Industry Award 2010* [2015] FWCFB 1729:

[55] Evidence was led from a shift work expert, Mr James Huemmer on comparable industries in relation to hours of work, rostering, patterns of work, overtime and work on weekends and public holidays. The rostering and work allocation practices of stevedoring employers were explained by Mr Greg Nugent (Qube) and Mr Greg Muscat (DP World). It is apparent from this evidence that the rostering arrangements in the stevedoring industry provide a unique level of flexibility for employers by allowing them, on the day before the shift, to confirm

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whether work is required and nominate the shift starting time. A corresponding consequence of this flexibility is a significant inconvenience for employees who, for the most part, cannot plan the precise work, recreational activities and other responsibilities more than a day in advance.

...

[58] ... Australia remains highly dependent on sea based transportation of cargo. New technology such as containerisation and automated wharf operations is designed to bring about significant productivity and efficiency improvements. Stevedoring labour must be sufficiently flexible to meet variable shipping movements.

[59] While employees may be rostered to work on particular days in a roster cycle, the rosters are different to most other rosters that operate in other industries. The rosters do not guarantee work on the rostered days. Rather employees are expected to make themselves available on those days (subject to a limited number of refusals) and will not be rostered work on all of the days when they are effectively required, by virtue of their roster, to make themselves available. Allocation of labour at container terminals is typically performed on a day to day basis and is dependent on shipping schedules, actual shipping movements and the progress of unloading and loading activities.

[60] When rostered for work on a particular day, there is often no advanced notice of the time a shift is to be worked on that day until the day before. Employees are required to telephone an automated allocation system each day. They are then told whether they are rostered for work on the following day, and the time at which their shift will commence. Shift start times vary. For example, a day shift employee may be advised that the next day shift will start at 5, 6, 7 or 8 am. Evening shift starts may be 12, 1, 2, 3 or 4 pm. Night shifts may start at 9, 10 or 11 pm. They are usually not told the particular role they will be required to perform on that shift until the commencement of that shift. Fixed Salary Employees (FSEs) are usually rostered to perform their primary skill. Shifts can be extended at short notice.

[61] Rosters may nominate "I" which means that the actual shift required to be worked may be day, evening or night or the employee may not be required to work that day at all. According to Mr Warren Smith, the only stevedoring workers who have rosters where more than 50% of the shifts are predictable are the permanent workers at the larger container terminals in Sydney, Melbourne and Adelaide.

[62] These procedures vary dependent on the type of employee concerned. FSEs work an average of 35 ordinary hours per week. They are usually rostered to a particular panel in the roster. They are told the usual shift length, which is often 8 hours, but this can be extended by up to 4 hours. Variable salary employees (VSEs) are effectively part-time employees. They have a minimum salary guarantee and are required to work a certain number of hours and a mix of shifts to make up that guarantee. They must also be reasonably available to meet the needs of the business by being available to work shifts on an irregular basis. Supplementary employees are similar to casual employees. They are not

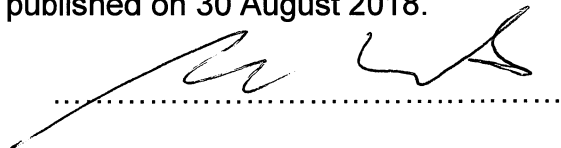
rostered to a particular panel. They work shifts when required and are used to supplement other categories of labour when needed.

[63] Stevedoring work is required to be performed on weekends and public holidays. Normally FSEs are rostered a standard number of Saturdays and Sundays. For example, at DP World Brisbane this is 29 Saturdays and/or Sundays a year. Other categories work a variable number of weekend days. The type of shifts is usually organised in a particular way. At DP World Brisbane approximately 1/3 of shifts are day shifts, 1/3 are evening shifts (similar to what are termed afternoon shifts in other industries) and 1/3 are night shifts. The starting time of the shift may vary from day to day.

5. The definition of a *regular casual employee*, which is the gateway to accessing the benefits conferred by the clause, is, however, tied to such a rare occurrence.
6. The MUA submits that the Full Bench should revisit the MUA's submission that the model clause should be amended by substituting the words "pattern of hours" with "number of hours".

Conclusion

7. The Full Bench should not vary the *Stevedoring Industry Award 2010* in accordance with the draft determination published on 30 August 2018.



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