

Fair Work Commission
Level 4, 11 Exhibition Street
Melbourne, Vic, 3000
Via email: chambers.clancy.dp@fwc.gov.au

29 August 2016

Dear Associate,

Re: AM2014/245 and 2014/227 Fitness Industry Award 2010 and Sporting Organisations Award 2010

I refer to the above matters, and the Conference of 09 August 2016 before Deputy President Clancy.

During that Conference, parties were directed to report back by 23 August 2016 regarding a coverage claim by the Australian Swim Schools Association (ASSA) for the *Fitness Industry Award*, and the outstanding issues relating to ordinary hours and overtime for casual employees in both awards. Parties convened for a teleconference on 18 August, and the outcome of those discussions and further correspondence to date is set out below.

1. Coverage claim – ASSA – Fitness Industry Award

ASSA circulated proposed wording to all parties to replace clause 3.4 of the Exposure Draft. This is an ASSA claim regarding the coverage of the *Fitness Industry Award* for employees providing administrative and other operational support. The proposed wording is as follows:

This award does not cover an employee who is employed by the employer to provide administrative and other operational support outside of fitness centres, group fitness organisations, weight loss/control centres, aquatic centres, indoor sports centres, golf driving ranges, dance centres, martial arts centres, recreational camps, tennis clubs and centres.

Fitness Australia, Business SA and the Australian Workers' Union (AWU) were not opposed to this wording, and I do not have a clear position from the Australian Federation of Employers and Industries and do not have a response from Australian Business Industrial and the New South Wales Business Chamber.

On the date of this letter, K&L Gates on behalf of Tennis Australia and Gymnastics Australia have proposed that clause 3.4 be deleted all together on the basis that both the proposed variation and clause 3.4 in its current form are ambiguous. All parties have not yet responded to this correspondence.

The AWU is opposed to the new claim by Gymnastics Australia and Tennis Australia. Our position is that the current clause, or alternatively the wording proposed by ASSA is appropriate given the potential overlap between the *Fitness Industry Award* and the *Clerks—Private Sector Award*.

2. Ordinary hours and overtime – All parties – *Fitness Industry Award – Sporting Organisations Award*

The AWU has a similar claim regarding ordinary hours for casual employees in both awards relating to section 147 of the *Fair Work Act 2009*. These claims continue to be opposed by all parties, and continue to be pressed by the AWU.

Parties remain in dispute regarding the Commission's question as to the application of overtime rates for casual employees in the *Fitness Industry Award*. This dispute is also relevant to the *Sporting Organisations Award* given that all interested parties oppose the AWU's claim regarding ordinary hours, which has implications for how the overtime provisions operate.

At 3:15 today, Fitness Australia contacted the AWU to foreshadow that they have a compromise position with regards to the overtime and ordinary hours opposing claims to be detailed and circulated to parties this afternoon. The AWU and other parties have not had an opportunity to view or consider this offer.

3. Further Directions

Although the AWU hoped to provide more clarity today, it is clear from the above, that many will be seeking further instructions in relation to new and existing claims.

The AWU also enquire as to how we are proceeding from here given that a Report to the Full Bench has already been issued. The AWU are also aware that the dispute regarding overtime is a substantive issue that has emerged out of drafting and technical proceedings, and should be subject to comprehensive submissions by the parties if the course is arbitration before the Full Bench. The AWU enquire as to whether final submissions are being scheduled in regards to this issue / all outstanding issues.

Please do not hesitate to contact me as below to clarify any of the above.

Kind regards,



Roushan Walsh

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