

Fair Work Commission
Level 10, Terrace Tower, 80 William Street
EAST SYDNEY NSW 2011
Via email: AMOD@fwc.gov.au

28 November 2017

Re: AM2014/247 Sugar Industry Award 2010

BACKGROUND

1. The Full Bench of the Fair Work Commission ('FWC') published the *4 yearly review of modern awards – Award stage – Group 3 (AM2014/223 and others) Decision*¹ ('Decision') on 30 October 2017. The Decision considered the proposed variations to the *Sugar Industry Award 2010* ('Award').
2. The Full Bench has invited parties to file submissions on various matters.
3. The submissions of The Australian Workers' Union ('AWU') are below.

DRAFTING AND TECHNICAL ISSUES

Item 23 – Hours of work – altering the spread of hours

11.3(c)

4. The AWU notes that the Full Bench has taken the view that the words, '*up to one hour at either end*' in clause 11.3(c) of the Exposure Draft allow parties to increase the spread of ordinary hours by up to two hours in total.
5. The clause agreed upon by the parties regarding 11.3(c) of the Exposure Draft in the Report to the Full Bench is informed by a different interpretation of the above

¹ [2017] FWCFB 5536

words, i.e. that the spread of hours can only be altered by up to one hour in total. Consequently, the Full Bench of the FWC determined that the agreed clause changed the current operation of the provision².

6. The AWU understands that opposing interpretations of how the above words are to operate is not unique to this Award, and earlier in the current 4-yearly review a different Full Bench determined that the issue of the operation of the words would be considered at the conclusion of the 4-yearly review³.

11.3(d)

7. The addition of the words, '*other than in accordance with clause 11.3(c)*' by the Full Bench does not reflect the current award provision. The current award provision makes overtime rates payable for work done outside the spread of hours, regardless of if the spread of hours has been altered by the preceding provision or not⁴.
8. Consequently, the inclusion of the above words in clause 11.3(d) is a substantive change in entitlements under the Award that The AWU strongly opposes. There is no ambiguity to the current award provision, and it is the understanding of The AWU that no merit- or evidence-based argument to reduce an employee's entitlement to overtime under this provision has been offered and made out.

Item 25 – Meal breaks

9. The AWU does not agree with Australian Industry Group ('AIG') that clause 12.1(a) requires amendment.

Item 33 – Single contract hourly rate

10. The AWU does not share the view of the National Farmers Federation ('NFF') regarding the *Single contract hourly rate* column at clause 13.1 of the Exposure Draft and opposes the removal of that column.
11. The inclusion of the *Single contract hourly rate* column in the table at clause 13.1 adds to the ease-of-use of the Award and has no other effect.

² [2017] FWCFB 5536 at [462]

³ [2015] FWCFB 7236 at [159]

⁴ *Sugar Industry Award 2010*, 29.3(d)

12. If an additional clause is being inserted into the Award to attend to the NFF's concerns regarding the application of the 15% loading, The AWU sees no reason why it is necessary to also delete the *Single contract hourly rate* column in the table at clause 13.1.
13. The AWU understands that the Full Bench has not determined the content of the new clause 13.2(d), and opposes the content of clause 13.2(d) proposed by the NFF as it purports to remove the entitlement for periods of long service leave.
14. The AWU requests the opportunity to comment on any proposed clause 13.2(d).

Item 45 - Allowances

15. The AWU is unaware of any circumstances where the current measurements in the award have caused confusion regarding entitlements and therefore we view any rounding of figures as largely unnecessary.
16. This is especially so regarding the proposal to amend the qualifying weight for the carting allowance in clause 16.1(f)(ii). Unlike the heights in clause 16.1(r), the 508kg in the current award provision is already a whole figure and therefore requires no rounding. It is not apparent how a 'rounding' from 508kg to 510kg makes the weight any less 'specific' or has any effect at all except increasing the threshold for the application of this allowance entirely arbitrarily. The AWU opposes this proposal from the Full Bench for this reason.

Item 55A – Extra weekend payments

17. The AWU continues to press our proposed amendment to clause 26.4, and we rely on our submissions made to date.
18. There are no interaction issues between the proposed clause 26.4 and clause 26.3(b). Clause 26.3(b) provides the ordinary hours of continuous shiftworkers; proposed clause 26.4 provides for a loading to be paid should those hours fall on the weekend.
19. In the absence of an explicit statement that the extra weekend payments will be made in addition to the penalties in clause 26.5 (as there is for sugar mill

shiftworkers), The AWU understands that bulk terminal shiftworkers will not be entitled to the penalty rates provided for in clause 26.5 when working afternoon and night shifts on weekends. That is, the afternoon and night shift loadings are not payable while the extra weekend payments are.

20. The AWU understands that the words, '*all time worked up to 8 hours*' in proposed clause 26.4(a) do not place a limitation on the number of hours that can be worked by a shiftworker on a weekend, but a limitation on how many hours the extra payment is payable for.

21. The AWU understands that the proposed 'minimum hourly rate' refers to that of a permanent employee.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'ZD', with several horizontal lines drawn through it.

Zachary Duncafe
NATIONAL LEGAL OFFICER
The Australian Workers' Union