

IN THE FAIR WORK COMMISSION

Matter No.: AM2014/254



Submissions of the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)

4 Yearly Review of Modern Awards

COVER SHEET

About the Australian Manufacturing Workers' Union

The Australian Manufacturing Workers' Union (AMWU) is registered as the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union". The AMWU represents members working across major sectors of the Australian economy, including in the manufacturing sectors of vehicle building and parts supply, engineering, printing and paper products and food manufacture. Our members are engaged in maintenance services work across all industry sectors. We cover many employees throughout the resources sector, mining, aviation, aerospace and building and construction industries. We also cover members in the technical and supervisory occupations across diverse industries including food technology and construction. The AMWU has members at all skills and classifications from entry level to Professionals holding degrees.

The AMWU's purpose is to improve member's entitlements and conditions at work, including supporting wage increases, reasonable and social hours of work and protecting minimum award standards. In its history the union has campaigned for many employee entitlements that are now a feature of Australian workplaces, including occupational health and safety protections, annual leave, long service leave, paid public holidays, parental leave, penalty and overtime rates and loadings, and superannuation.

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Introduction

1. The Australian Manufacturing Workers' Union (**AMWU**) makes the following submissions in the matter of AM2014/254 – *Review of the Airline Operations – Ground Staff Award 2010* in response to the Group 4 technical and drafting Decision (**the Decision**)¹ and the updated exposure draft that was published on 23 March 2018.
2. Paragraphs [80]-[115] of the Decision deal with the outstanding technical and drafting matters in the Airline Operations Ground Staff Award.
3. At paragraphs [99], [110] and [114], The Full Bench Directed parties to:
 - a. Respond to the provisional views expressed in the Decision; and to
 - b. Confirm whether parties intend on pressing the outstanding claims.
4. These submissions are made in response to those Directions and will address:
 - a. Items 10 and 11 – Casual Employment;
 - b. Item 15 Ordinary hours of work;
 - c. Item 41 – Overtime;
 - d. Item 48 – Sunday overtime for shiftworkers (this has been moved to the list of outstanding substantive matters, but the AMWU maintains can be dealt with via the technical and drafting process);
 - e. The outstanding substantive claims.

Items 10 and 11 – Casual Employment

5. The AMWU acknowledges that the Full Bench has not called for further submissions with respect of these items. However the AMWU has previously indicated that its position in respect of this item had not been finalised.²
6. Thus, the AMWU respectfully seeks leave to make a brief further submission in relation to this issue and the drafting of this clause in the updated exposure draft.
7. At [94] of the Decision, the Full Bench states that the “*the casual loading in the Airline Operations Award is accurately described as being applied to the ordinary hourly rate and not the minimum.*”³
8. The AMWU agrees that this is the intention of the drafting and that the approach is consistent with principle established in the September 2015 Decision⁴ which concerns the way the casual loading is calculated.

¹ [2018] FWCFB 1548.

² AMWU Submission on Draft Report 01/11/2017.

³ [2018] FWCFB 1548 [94].

9. Nevertheless, the AMWU is concerned that the current drafting in the Exposure Draft does not identify with sufficient precision that the casual loading is to be calculated on the ordinary hourly rate and not the minimum rate.
10. The current drafting provides *“a casual employee must be paid the ordinary hourly rate prescribed for the class of work performed plus 25%.”* Thus it does not appear to specify that the 25% loading is to be calculated *on* the ordinary hourly rate. It merely states that casual employees are entitled to be paid the ordinary hourly rate and also a casual loading of 25%.
11. Thus the AMWU respectfully puts forward this alternative drafting proposal:

*“For working ordinary time, a casual employee must be paid:
(a) the ordinary hourly rate for the work being performed; plus
(b) A loading of 25% of the ordinary hourly rate,
for the classification in which they are employed.”*
12. The AMWU notes that the Exposure Drafts of most other modern awards that contain all purpose allowance have adopted either the same or similar drafting as above. Therefore, the adoption of the above drafting would bring the Airline Operations – Ground Staff Award in line with the drafting found in the Exposure Drafts of other such awards and thus is consistent with *“the need to ensure a simple, easy to understand, stable and sustainable modern award system.”*⁵

Item 15 – Ordinary hours of work

13. The AMWU agrees with the provisional view of the Full Bench expressed at [98].
14. Further, the AMWU notes that cross referencing is also required at clause 14.3(b). Therefore we propose the following amendment to clause 14.3(b):

“Subject to clause 14.3(c) the ordinary hours of shiftworkers are an average of 38 hours per week inclusive of meal breaks and must not exceed 152 hours in 28 consecutive days. Any changes to rosters or hours of work is subject to the consultative provisions in clause 31.”
15. The AMWU may seek to reply to any submissions made by other parties in this matter.

Item 41 - Overtime

16. The AMWU agrees with Qantas’ proposed variation and the provisional view of the Full Bench. The AMWU was of the understanding that all parties had agreed to this amendment.

⁴ [2015] FWCFB 6656 [110].

⁵ Fair Work Act 2009 s.134(g)

Item 48 – Overtime Rates for Shiftworkers (On Sunday)

17. The AMWU notes that this item has been referred to the list of substantive outstanding items. The AMWU does not agree that this is a substantive issue and submits that it should be dealt with as part of the technical and drafting process.

18. This is so because:

[1] The current award entitlement is that shiftworkers get paid double time for all time worked on Sunday;⁶

[2] The tables in Schedule B of the Exposure Draft that deal with penalty rates for shiftworkers (see B.2.4, B.3.4, B.4.4 and B.5.4) provide that shiftworkers working overtime on Sunday only get paid 150% for the first two hours and then double time thereafter;

[3] This constitutes a diminution of the current award entitlement;

[4] The decision to insert wage rate tables into Exposure Drafts as part of the current Award Review process was a drafting decision to assist modern award users to better understand their rights and obligations. It was not intended to make changes to any substantive award entitlement;

[5] And yet in the case of this award for reasons [1], [2] and [3] the introduction of wage rate tables in the exposure draft has changed the substantive entitlement from 200% for shiftworkers working on Sunday to 150% for shiftworkers on Sunday working overtime for the first two hours;

[6] Therefore prima facie it would appear that there has been an error with the drafting of the tables;

[7] If this reasoning is followed to its natural conclusion then this must be a technical and drafting issue and consequently should be dealt with as part of this process.

19. Furthermore, the tables in schedule B should also be updated so that the tables accurately reflect that a shiftworker working overtime on Sunday is entitled to be paid 200% for all hours.

20. If this is not done there will be a tension between clause 17.7 of the Exposure Draft which provides for a penalty rate of 200% for all work performed on Sunday; and the tables in schedule B (B.2.4, B.3.4, B.4.4 and B.5.4) that provide that the rate for shiftworkers working overtime on Sunday is 150% for the first two hours.

21. It is not practicable to address such a tension via a claim for a substantive variation given such a variation would require a merit and evidence based case.⁷

⁶ Airline Operations Ground Staff Award 2010 Clause 30.7.

Fixing a tension between two contradictory clauses in the exposure draft should not require a merit and evidenced based case.

22. The AMWU would be happy to provide further submissions written or oral if it would assist the Commission.

Substantive Matters - Classifications

23. The AMWU and the ALAEA have reached an agreement with Qantas to resolve the substantive claims S1 and S2.
24. Consequently the AMWU no longer intends on pursuing its proposed substantive variation relating to technical and supervisory classifications.
25. A copy of the Agreement reached with Qantas is attached to these submissions and marked "Attachment A" for the Commission's file.

Substantive Matters – Overtime for Shiftworkers

26. For the reasons outlined in paragraphs [17] – [22] of this submission the AMWU believes that the issue of the correct Sunday rate for shiftworkers can and should be dealt with via the technical and drafting process.
27. However this will not resolve a separate but related issue which is that in Part 10A Award Modernisation proceedings, the entitlement for shiftworkers working overtime was diminished.
28. In all the relevant pre-reform awards there was no distinction between the overtime entitlement for shiftworkers and continuous shiftworkers. Both were entitled to be paid double time from the commencement of the overtime.
29. However the corresponding clause in the modern award appears to have introduced a distinction between shiftworkers and continuous shiftworkers such that it would appear that only continuous shiftworkers are entitled to be paid a 200% penalty immediately upon commencement of the overtime.⁸
30. Prima facie, this change in the drafting appears to have come about by accident; with no evidence of the parties contemplating the consequences of the change in the drafting neither in either any of the relevant Decisions making the modern Airline Operations Ground Staff Award nor in the transcripts.
31. Therefore the AMWU will be pressing this as a substantive claim and seeking to restore the entitlement in the Modern Award to reflect the entitlement that existed in the relevant pre reform awards.

END

19 APRIL 2018

⁷ [2014] FWCFB 1788 [23].

⁸ Airline Operations Ground Staff Award 2010 clause 32.1(a).

Attachment A

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06 November 2017

BY EMAIL

Mr Glenn Thompson / Mr Steve Purvinas
Assistant National Secretary / Federal Secretary
Australian Manufacturing Workers' Union /
Australian Licenced Aircraft Engineers Association



Dear Mr Thompson and Mr Purvinas

Airline Operations - Ground Staff Award 2010

We refer to the applications by the AMWU and the ALAEA to vary the *Airline Operations - Ground Staff Award 2010* (**Ground Staff Award**), dated 12 November 2015 (**AMWU Application**) and 3 March 2015 (**ALAEA Application**) respectively.

We also refer to our recent discussions regarding the AMWU Application and the ALAEA Application, and to the letter from the AMWU dated 24 October 2017.

We confirm it is the position of the Qantas Group that the majority (if not all) of the employees who were covered by the now terminated *Airline Operations - Technical Salaried Staff - Qantas Airways Limited Award 2005* [AP839984] (**TSS Award**) and the *Airline Operations - AMWU Technical and Supervisory Staff - Qantas Airways Limited - Award 1999* [AP767002] (**Technical and Supervisory Award**) are now covered by the *Manufacturing and Associated Industries Award 2010*.

Further, to the extent there is any issue about modern award coverage for one or more of the classifications in a proposed enterprise agreement, that issue can be resolved at the appropriate time between the relevant parties.

Having regard to the above, we would appreciate it if you can please confirm that the AMWU and ALAEA no longer press their applications to vary the Ground Staff Award.

If you wish to discuss the matters contained in this letter please contact Kathy Srdanovic on (02) 9258 6171.

Yours faithfully



Ashurst Australia

CC: David Smith, National Secretary
Australian Services Union



16 January 2018
Ms Justine Oldmeadow
10 Bourke Road
Mascot NSW 2020

By email: Justine.oldmeadow@me.com; kathy.srdanovic@ashurst.com;
CC: Ruchi.bhatt@aigroup.com.au; jcooney@asu.asn.au

Dear Ms Oldmeadow,

RE: Airline Operations - Ground Staff Award 2010

We refer to the letter from Ashurst Australia dated 06 November 2017.

In the letter it is confirmed that it is the position of Qantas Group that:

1. The majority of employees who were covered by the now terminated *Airline Operations – Technical Salaried Staff – Qantas Airways Limited Award 2005 [AP839984]* and the *Airline Operations – AMWU Technical and Supervisory Staff – Qantas Airways Limited – Award 1999* can be covered by the *Manufacturing and Associated Industries and Occupations Award 2010 [MA000010]*.
2. To the extent necessary, any issue about modern award coverage for one or more of the classifications in a proposed enterprise agreement (or for other purposes) can be resolved at the appropriate time.

We agree with these terms and can confirm in response, by this joint letter, that the AMWU and ALAEA no longer press claims currently on foot to vary the *Airline Operations - Ground Staff Award 2010* in relation to technical staff classifications.

This will be formalised once the terms of agreement as outlined in paragraphs 1 and 2 (above) are read into the transcript, with copies of this exchange of letters delivered to the Fair Work Commission.

Yours in unity,

GLENN THOMPSON
ASSISTANT NATIONAL SECRETARY

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