



IN THE FAIR WORK COMMISSION

**Matter Nos : AM2014/254
: AM2014/287**

Fair Work Act 2009

Section 156 – 4 yearly review of modern awards

***Airline Operations – Ground Staff Award 2010
Surveying Award 2010***

Submission of the AMWU

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INTRODUCTION

1. This submission is made in response to a suggestion made by the President, Justice Ross during proceedings on 6 December, 2016¹ regarding an oral submission made by the AMWU in relation to Clause 11.2- Casual employment in the exposure draft of the Airline Operations – Ground Staff – Award 2010 (the Airlines Award). The same issue arises in respect to a similar clause found at Clause 11.2 of the Surveying Industry Award 2010 (Surveying Award) and the following submissions are made also with respect to the Surveying Award.

THE CLAUSES

2. Clause 11.2 of the **Airlines Award** exposure draft states:

A casual employee must be paid the ordinary hourly rate prescribed for the class of work performed, plus **25%**. *This loading is instead of entitlements to leave and other matters from which casuals are excluded by the terms of this award and the NES.* (emphasis added)

3. Clause 11.2 of the **Surveying Award** exposure award states:

For each ordinary hour worked, a casual employee will be paid the minimum hourly rate for the work performed. In addition, a casual employee will receive a 25% loading *instead of annual leave, personal/carer's leave, bereavement leave and public holidays.*(emphasis added)

THE ISSUE

4. The AMWU submits that the above clauses do not reflect the reasoning of the Full Bench which in 2000 established a 25% standard loading in the metal industry award.
5. In confirming the 25% as the standard casual loading for modern awards in 2008 the Commission adopted the earlier reasoning made by the Full Bench in the

¹ Transcript, PN 191, 6 December, 2016

2000 *Metal, Engineering and Associated Industries Award 1998 casual case* (the Metal industry award)². The 2008 modern awards' Full bench said with regard to the 25% that:

[49] In 2000 a Full Bench of this Commission considered the level of the casual loading in the Metal, Engineering and Associated Industries Award 1998 (the Metal industry award). The Bench increased the casual loading in the award to 25 per cent. The decision contains full reasons for adopting a loading at that level. The same loading was later adopted by Full Benches in the pastoral industry. It has also been adopted in a number of other awards. Although the decisions in these cases were based on the circumstances of the industries concerned, *we consider that the reasoning in that case is generally sound* and that the 25 per cent loading is sufficiently common to qualify as a minimum standard³. (emphasis added)

[50] In all the circumstances we have decided to confirm our earlier indication that we would adopt a standard casual loading of 25 per cent....

6. In awarding the 25% in the Metal Industry Award the 2000 Full Bench considered the components to be included in a casual loading. The Bench reasoned that not all components for calculating a fair loading can be specified with precision or individually valued.⁴
7. The bench for example stated that in addition to leave a component for matters less easily computed such as jury and training leave⁵ and employment by the hour effects and shorter hours should be included in the loading⁶.

² Print T4991 (2001) 105 IR 27

³ [2008] AIRCFB 1000 @ 49-50

⁴ T4991 @ 157

⁵ *Ibid* @ 166

⁶ *Ibid* @ 199

8. The relevant clauses from the Airline and Surveying award extracted above vary in their assessment as to which matters are compensated for by the 25% loading. That is an issue in itself. Additionally, neither clause includes recognition of the less commutable, employment by the hour effects determined in 2000 and reaffirmed in 2008 as relevant for inclusion as components of the loading. The text in question is commentary and does not establish an award right or responsibility. The clauses are inconsistent and will cause distraction and confusion when future applications to increase the loading are made. They do not make the awards easier to understand.

REMEDY

9. The AMWU submits that the exposure drafts should be amended as follows:

Airlines Award:

- 11.2 A casual employee must be paid the ordinary hourly rate prescribed for the class of work performed, plus **25%**. ~~This loading is instead of entitlements to leave and other matters from which casuals are excluded by the terms of this award and the NES.~~

Surveying Award:

- 11.2 For each ordinary hour worked, a casual employee will be paid the minimum hourly rate for the work performed **plus 25%**. ~~In addition, a casual employee will receive a 25% loading instead of annual leave, personal/carer's leave, bereavement leave and public holidays~~

END