

Fair Work Commission

Award Review 2014

Fast Food Industry Award 2010

AM2014/267

Shop Distributive and Allied Employees' Association

Outline Substantive Claims Submission

3 October 2016

1. The SDA makes this submission in accordance with the Statement [2016] FWC 6062 issued by FWC on 26 August 2016.
2. The Statement requires parties to submit a written short outline confirming the substantive claims they wish to pursue.
3. The SDA had previously provided details of such claims in March 2015.
4. Detailed in the following paragraphs is the current position on each of the claims.

Full-Time Employees – clause 11

5. The current clause simply states:

11. Full-time Employees

A full-time employee is an employee who is engaged to work an average of 38 hours per week.

6. The SDA is seeking to vary clause 11 - Full-time employees, to include the requirement for agreement in writing at the time of engagement on a regular pattern of work and the requirements for variation to the pattern of work, which is contained in the Award for part-time employees at clause 12.2, 12.3 and 12.4.
7. The SDA also seeks to vary clause 11 of the Award to include a minimum shift of 4 hours for full-time employees. There is currently no minimum shift entitlement for full-time employees.
8. The proposed wording would be:

11. Full-time employees

A full-time employee is an employee who is engaged to work an average of 38 hours per week. The minimum hours per shift will be 4 hours.

11.1 At the time of first being employed, the employer and the full-time employee will agree, in writing, on a regular pattern of work.

9. At this time, it would appear this would be a merits based case.

Payment of wages – clause 22

10. This issue is being dealt with as a common issue.

Hours of work – clause 25

11. Currently, the *Fast Food Industry Award 2010* contains rostering provisions in the Overtime clause which are not referred to in the Hours of work clause. Clause 25, Hours of work, refers to a 38 hour week and maximum hours on a day. Clause 26 – Overtime, provides for overtime rates to apply beyond maximum days per week and before or after an employee's commencing and ceasing time.
12. For clarity and ease of understanding, the SDA submits that the following should be inserted into clause 25 - Hours of Work:
 - a. maximum days per week; and
 - b. a 'notification of rosters' clause to ensure that employers are obliged to notify employees of the rosters which they intend them to work.
13. In addition, the SDA seeks to insert a maximum roster period of four weeks. Currently, no such period is referred to in the Award.
14. The proposed wording of the provision is as follows:

25. Hours of work

- 25.1 *This clause does not operate to limit or increase or in any way alter the trading hours of any employer as determined by the relevant State or Territory legislation.*
- 25.2 *A roster period cannot exceed four weeks.*
- 25.3 **Ordinary hours**
 - (a) *The ordinary hours of work are an average of 38 per week over a period of no more than four weeks.*
 - (b) *Hours of work on any day will be continuous, except for rest pauses and meal breaks.*
- 25.4 **Maximum hours on a day**

An employee may be rostered to work up to a maximum of 11 ordinary hours on any day.
- 25.5 **38 hour week rosters**

A full-time employee will be rostered for an average of 38 hours per week, worked in any of the following forms:

 - (a) *38 hours in one week;*
 - (b) *76 hours in two consecutive weeks;*
 - (c) *114 hours in three consecutive weeks; or*
 - (d) *152 hours in four consecutive weeks.*

25.6 **Maximum days per week**

Ordinary hours will be worked on not more than five days in each week, provided that if ordinary hours are worked on six days in one week, ordinary hours in the following week will be worked on no more than four days.

25.7 **Notification of rosters**

- (a) *The employer will notify the employee in writing (which may include by electronic means) of:*
 - (i) *the number of ordinary hours to be worked each week;*
 - (ii) *the days of the week on which work is to be performed; and*
 - (iii) *the commencing and ceasing time of work for each day of the week.*
- (b) *The employer will retain superseded notifications for twelve months. The roster will, on request, be produced for inspection by an authorised person.*
- (c) *An employee's roster may not be changed with the intent of avoiding payment of penalties, loading or other benefits applicable. Should such circumstances arise the employee will be entitled to such penalty, loading or benefit as if the roster had not been changed.*

15. At this time, it appears this will be a merits based case.

Overtime – clause 26.5

16. This matter is now before the Part time and Casual Full Bench.

Compassionate leave – clause 29

17. The SDA seeks to vary the compassionate leave clause to provide the following entitlements to employees:

- a. include the terms 'foster parent' and 'step parent';
- b. increase the entitlement of leave from two to three days per occasion (paid for permanent employees, unpaid for casuals);
- c. insert wording which clearly states that casuals are to be re-engaged following such leave;
- d. include additional leave of absence for eligible interstate and/or overseas deaths; and
- e. provide that paid compassionate leave includes any applicable penalty rates, not ordinary time rates.

18. The proposed wording of the provision would be to include a new subclause 29.4 as follows

Insert new Subclause 29.4

Full time and part time employees shall be entitled to paid compassionate leave without deduction of pay (inclusive of any penalties).

29.4 *Compassionate leave shall be granted to employees as follows:*

- a) *On each occasion a full-time or part-time employee is entitled to paid compassionate leave for a period not exceeding the number of hours worked by the employee in three ordinary days work and a casual employee is entitled to be unavailable for work for three days . Immediate family includes foster parents and step-parents.*
- b) *Long Distances – where an employee is required to travel more than 300 kilometres each way, the employee shall be entitled to an additional two days of unpaid leave on each occasion,.*
- c) *Outside Australia - where an employee is required to travel outside of Australia, the employee shall be entitled to an additional 11 days of unpaid leave on each occasion.*

Amend subclause 29.2

Casual employees are entitled to be not unavailable for work or to leave work to care for a person who is sick and requires care and support or who requires care due to an emergency.

Such leave is unpaid. A maximum of 48 hours absence per occasion is allowed by right with additional absence by agreement.

An employer must not fail to re-engage a casual employee because the employee has accessed the entitlement under this clause.

19. At this time, it would appear this would be an evidentiary and merits based case.

Classifications – Schedule B

20. The SDA seeks to insert into the Classification structure for all employees (Fast Food Employee Level 1 – 3) wording to ensure that employees cannot be required to exhibit clothes or other fashion articles/accessories of a revealing or indecent manner, as this is not part of fast food industry duties and functions.

21. The wording to be inserted would be:

“No employee may be required to dress in a revealing or indecent manner.”

22. At this time, it would appear this would be an evidentiary and merits based case.

Airport employees’ allowance – New clause 20.x

23. The SDA is not pursuing this claim.

Blood and Bone Marrow Donor Leave – New Clause

24. The SDA is seeking to insert a Blood and Bone Marrow Donor Leave clause into the Award.

Blood Donor Leave:

25. The new clause would provide all permanent employees with 2 hours' paid leave on a maximum of 4 occasions per year for the purpose of donating blood, and would be subject to certain notification and evidence requirements.
26. Casual employees would be entitled to be absent for 2 hours, on a maximum of 4 occasions per year without pay.

Bone Marrow Donor Leave:

27. The new clause would provide up to a maximum 4 days paid leave, without deduction of pay, to undertake any procedure necessary for the donation of bone marrow including blood tests for the purpose of becoming a registered donor, pre-donation procedures and the time required to be taken when a bone marrow donation is given
28. Casual Employees would be entitled to be absent for the equivalent time provided to permanent employees without pay.
29. Blood donation and bone marrow donation are essential community services which need to be supported through workplace entitlements to ensure people are able to make this donation.
30. The lack of minimum entitlements for this purpose restricts employees from being able to make these vital donations.
31. At this time, it would appear this would be an evidentiary and merits based case.
32. The proposed wording would be as follows:

BLOOD DONOR LEAVE

- x.1 A permanent employee will be entitled to up to 2 ordinary hours' paid Blood Donor Leave, without deduction of pay, on a maximum of four occasions per year for the purposes of donating blood.*
- x.2 The employee shall notify his or her Employer as soon as possible of the time and date upon which they are requesting to be absent for the purpose of donating blood.*
- x.3 Absences will be arranged by mutual agreement between the employee and employer, taking into account the requirements of the business.*
- x.4 Upon request from the Employer proof that would satisfy a reasonable person of the attendance and duration of the absence will be required.*
- x.5 Casual employees are entitled to be absent for 2 hours, up to 4 occasions per year without pay, for the purposes of donating blood.*

BONE MARROW DONOR LEAVE

- x.1 *A permanent employee will be entitled to a maximum 4 days paid leave, without deduction of pay, to undertake any procedure necessary for the donation of bone marrow including blood tests for the purpose of becoming a registered donor, pre-donation procedures and the time required to be taken when a bone marrow donation is given.*
- x.3 *An employee will notify the employer as soon as possible of the time and date upon which they are requesting to be absent and as far as possible, will make arrangements for a bone marrow donation at a mutually agreed time , taking into account the requirements of the business.*
- x.4 *Upon request from the Employer proof that would satisfy a reasonable person of the attendance and the duration of the blood tests and bone marrow donation will be required.*
- x.5 *Casual Employees will be entitled to be absent for the equivalent time provided to permanent employees without pay.*

Employees under 18 years - not allowed to work after 10pm – New clause

33. The SDA seeks to insert a provision which would ensure that employees under 18 years of age are not permitted to work in fast food establishments after 10pm on any given night.

34. The proposed wording of the clause is:

An employee under the age of 18 are not permitted to be rostered for work between the hours of 10pm and 6am.

35. At this time, it would appear this would be an evidentiary and merits based case.