

Fair Work Commission

Award Review 2014

General Retail Industry Award 2010

AM2014/270

Shop Distributive and Allied Employees' Association

Outline Substantive Claims Submission

30 September 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.

Delete 1.5 hour Secondary Students clause – clause 13.4

10. The SDA at this time is at this time not pursuing the deletion of clause 13.4.

Junior Rates – clause 18

11. The SDA seeks to vary Clause 18 to provide for the payment of junior rates to Level 1 employees only.
12. Where an employee is performing work at a higher classification than Level 1, and is recognised as having the necessary skills and competencies applicable for a higher classification, the SDA submits that the full adult rate should apply, irrespective of age.
13. The proposed wording would be for a new subclause:

18.3 Junior Rates for Retail Employees at Level 3 and above

Junior rates for employees under 20 Years of Age apply to the following classifications only

Retail Employee Level 1 and Level 2.

14. At this time, it would appear this would be primarily a merits based case but there could be a need for some witness evidence.

Payment of Wages – clause 23

15. This matter is now before the relevant common claim proceeding.

Hours of Work – clause 27

16. The SDA seeks to simplify the Hours of Work provision by deleting subclause 27.2(b) (iii).
17. The SDA then proposes 10pm to be the finish time on Monday to Friday in subclause 27.2(a).
18. At this time, it would appear this would be a merits based case.

Rostering – clause 28

19. The SDA seeks to clarify the applicability of rostering provisions to all employees by rearranging current provisions already within the award in the following manner:
 - a) retain in clause 28 – 38 hour week rosters, those which apply only to full time employees;
 - I. averaging of and construction of the 38 hour week;
 - II. rostered days off provisions, and
 - III. notification of rosters
 - b) move clauses 28.9 – 28.13 into clause 27 – Hours of work.
20. The wording for the proposal would be:

Remove clauses 28.9 - 28.13 and insert into Clause 27 the following:

27.3 Full time, Part time and casual employees' working arrangements;

27.3.1 Maximum days per week.

- (a) *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.*

27.3.2 Ordinary hours and any reasonable additional hours may not be worked over more than six consecutive days.

27.3.3 Consecutive days off

- (a) *Ordinary hours will be worked so as to provide an employee with two consecutive days off each week or three consecutive days off in a two week period.*
- (b) *This requirement will not apply where the employee requests in writing and the employer agrees to other arrangements, which are to be recorded in the time and wages records. It cannot be made a condition of employment that an employee makes such a request.*
- (c) *An employee can terminate the agreement by giving four weeks' notice to the employer.*

27.3.4 Employees regularly working Sundays

- (a) *An employee who regularly works Sundays will be rostered so as to have three consecutive days off each four weeks and the consecutive days off will include Saturday and Sunday.*
- (b) *This requirement will not apply where the employee requests in writing and the employer agrees to other arrangements which are to be recorded in the time and wages records. It cannot be made a condition of employment that an employee make such a request.*
- (c) *An employee can terminate the agreement by giving four weeks' notice to the employer.*

27.3.5 A roster period cannot exceed four weeks.

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

Overtime – clause 29

22. The SDA seeks the following variations to the Overtime clause:

- a. *Insert wording to ensure that there is no ambiguity as to the payment of overtime for all permanent and casual employees performing work which goes beyond the times and patterns considered 'ordinary' as per the award. This matter is before the Part time and Casual Full Bench.*
- b. *Provide casuals with overtime rates for work in excess of 38 hours per week. This matter is before the Part time and Casual Full Bench.*

- c. Vary clause 29.2(a)(i) to provide payment of double time after two hours worked.

23. At this time only point c needs to be dealt with. It would appear this would be a merits based case.

Casual rate for evening and weekend work – clause 29.4

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

Shiftwork – Clause 30

25. The SDA seeks the deletion of Clause 30.2 (b).

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

Compassionate leave – clause 33

27. 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.

28. The proposed wording of the provision would be to delete subclause 33.3 and renumber subclause 33.2 as 33.4

Insert new Subclause 33.2

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

33.2 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 33.4

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.

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

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

Public Holidays – clause 34

30. The SDA seeks two changes to the Public Holiday clause:

- a. work on a Public Holiday to be at the election of the employee.
- b. insertion of a provision which would allow an employee who works on a public holiday to elect to be paid time and a half and receive an equivalent day or time off in lieu of penalty rate.

31. At this time, it would appear this would be a merits and evidentiary based case. No more than 10 witnesses would be called.

Classifications – Schedule B

32. The SDA seeks to insert into the Classification structure for all employees (Retail Employee Level 1 – 8) 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 retail duties and functions.

33. The wording to be inserted would be:

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

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

35. There are some drafting issues in the classification level descriptions that need to be worked through to ensure the classification structure is operating effectively. This is not a substantial matter but one worth highlighting here.

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

Airport transport allowance – New clause

37. The SDA is not pursuing this claim.

Blood and Bone Marrow Donor Leave – New clauses

38. The SDA is seeking to include a Blood and Bone Marrow Donor Leave clauses into the Award.

Blood Donor Leave:

39. 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.

40. 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:

41. 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

42. Casual Employees would be entitled to be absent for the equivalent time provided to permanent employees without pay.

43. 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.

44. The lack of minimum entitlements for this purpose restricts employees from being able to make these vital donations.

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

46. 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.*