



DIRECTIONS

Fair Work Act 2009

s.160 - Application to vary a modern award to remove ambiguity or uncertainty or correct error

4 yearly review of modern awards - Manufacturing and Associated Industries and Occupations Award 2010 (AM2014/75)

Local government administration

COMMISSIONER BISSETT

MELBOURNE, 9 SEPTEMBER 2016

[1] In its decision of October 2015¹ the Full Bench identified issues associated with the definition of ordinary hourly rate and the rate paid in certain circumstances where a penalty was paid for working ordinary hours (eg Saturday or ordinary hours on shift work) in the *Manufacturing and Associated Industries and Occupations Award 2010*² (Manufacturing Award). The Full Bench suggested the introduction of an “applicable rate of pay” but sought feedback from the parties as to the concept and the clauses identified as requiring some modification.³

[2] Despite long and detailed negotiations between the interested parties no agreed approach to the matter has been achieved.

[3] The general issue to be resolved is at what rate certain hours should be paid when an employee is otherwise working ordinary hours that attract some additional penalty – should the period:

1. be without loss of pay from that which is paid for the ordinary hours immediately preceding and/or following the period; or
2. be at some other rate of pay and, if so, at what rate.

[4] The clauses where this question was thought to arise identified in the October 2015 Decision are:

Clause 39.3 – Transfer to lower paid duties

Clause 27.4(e)(i) – Travelling time payment

Clause 23 – Extra times not cumulative

Clause 14.1(b) – Meal breaks

Clause 14.5(a) & (b) – Working through meal breaks

Clause 15 – Ship trials

Clause 30.13 – Standing by

Clause 30.10 – Rest break

Clause 34.5 – Rostered day off falling on public holiday

[5] Given the inability of the parties to resolve the matter, the following directions are issued:

1. Any party wishing to make a submission or file evidence on the question is required to file that material with the Fair Work Commission (the Commission) by **4.00pm Friday, 28 October 2016**.
2. Any party wishing to make any submissions and/or evidence in reply is required to file that material with the Commission by **4.00pm Friday, 11 November 2016**.
3. In filing materials in reply, parties are asked to indicate if they consider a hearing is required or the matter can be dealt with on the papers.
4. If a hearing is required, it will be held on **Tuesday, 29 November 2016 in Sydney**.
5. If there are any areas where there is agreement between any of the parties, this should be identified in submissions due on 28 October 2016.

[6] In providing submissions on this matter, the parties should not seek to interfere with any clause established in the exposure draft which is common across multiple awards (for example, the definitions of ordinary hourly rate).

[7] Submissions must be based on the exposure draft (including clause numbering) for the Manufacturing Award as at 4 November 2015.

[8] Following the hearing, the Commissioner will report to the Full Bench following a consideration of evidence and submissions received pursuant to these directions.

[9] Submissions should be filed with amod@fwc.gov.au and clearly marked ‘applicable hourly rate issue’.

COMMISSIONER

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Endnotes:

¹ [2015] FWCFB 7236.

² MA000010.

³ Ibid, [[95]-[106].