Australian Industry Group

4 YEARLY REVIEW OF MODERN AWARDS

Submission - Applicable Hourly Rate Issue

Manufacturing and Associated Industries and Occupations Award 2010 (AM2014/75)

28 October 2016

4 YEARLY REVIEW OF MODERN AWARDS

SUBMISSION - APPLICABLE HOURLY RATE ISSUE MANUFACTURING AND ASSOCIATED INDUSTRIES AND OCCUPATIONS AWARD 2010 (AM2014/75)

1. INTRODUCTION

1. This submission is made in response to the Directions issued by Commissioner Bissett on 9 September 2016.

2. As identified in those Directions, in a decision of 23 October 2015,[1] a Full Bench of the Commission identified various issues associated with the rate payable for particular award entitlements under the *Manufacturing and Associated Industries and Occupations Award 2010* (**Manufacturing Award**) and proposed the use of the phrase *"applicable rate of pay"* in numerous clauses. Unfortunately, in doing so, the Commission inadvertently opened up numerous arguments between Ai Group and the Metal Trades Federation of Unions (**MTFU**) about the wording of the relevant award clauses. Ai Group very strongly opposed the Commission's proposed use of the phrase *"applicable rate of pay"* in the clauses as this would have led to a major change to existing award entitlements at great cost to employers (as highlighted in Ai Group's submission of 20 November 2015). None of the clauses have been problematic in the past and each of the clauses were in the Metals Award in largely similar terms for decades before being incorporated in the Manufacturing Award by agreement between Ai Group and the MTFU. In several cases, similar clauses were in the original 1920 version of the Metal Trades Award, and retained in the 1927, 1930, 1937, 1952, 1971, 1984, 1998 versions of the Metals Award.

[1] [2015] FWCFB 7236

3. The relevant clauses are:

Topic	***Clause number in Exposure Draft***	***Clause number in current award***
Unpaid meal breaks	14.1(b)	38.1(b)
Working through meal breaks	14.5(a)	38.4
Working through meal breaks	14.1(b)	38.5
Ship trials	15	39.4
Extra rates not cumulative	23	33
Travelling time payment	27.4(e)(i)	32.4(e)(i)
Rest break during overtime on Saturday, Sunday or public holiday	30.10(b)	40.10(b)
Rest break before overtime after ordinary hours	30.10(c)	40.10(c)
Standing by	30.13	40.6
Rostered day off falling on public holiday	34.5(a)(i)	44.3(a)(i)
Transfer to lower paid duties	39.3	23.3

4. As identified in paragraph [2] of the Commission's Directions of 9 September 2016, as at that date *"Despite long and detailed negotiations between the interested parties no agreed approach to the matter has been achieved".*

5. Over the past few weeks, Ai Group and the MTFU made a further concerted effort to reach agreement on the wording of the relevant provisions. The aim of Ai Group was to preserve existing industry practice.

6. Pleasingly agreement was reached on the wording for most of the clauses.

2. CLAUSES AGREED UPON BETWEEN Ai GROUP AND THE MTFU

7. Of those clauses identified above, agreement has been reached between Ai Group and the MTFU on the wording of all clauses with the exception of the following two:

- Clause 34.5(a)(i) - Rostered day off falling on public holiday; and
- Clause 39.3 – Transfer to lower paid duties.

8. The agreed wording for the clauses that have been agreed upon is set out in **Attachment A** to this submission.

9. Ai Group submits that the wording for the agreed clauses preserves current industry practice. In the interests of avoiding any further disagreements between Ai Group and the MTFU regarding the wording of these clauses, Ai Group has not sought to make detailed submissions on why the particular wording reflects the above principle. In most cases, this will be obvious from:

- the current wording of the clauses and the agreed wording;
- the interaction between these specific clauses and other award provisions; and
- the corresponding provisions in the 1920, 1930, 1937, 1952, 1971, 1984 and/or 1998 versions of the Metals Award.

10. In the event that the Commission is not convinced of the merits of the agreed wording for any particular agreed clause, Ai Group seeks the opportunity to file detailed submissions in support of the agreed wording for that clause.

3. CLAUSE 34.5(a)(i) – ROSTERED DAY OFF FALLING ON A PUBLIC HOLIDAY

11. Ai Group and the MTFU have not reached agreement on the wording of clause 34.5(a)(i) of the Exposure Draft re. Rostered day off falling on a public holiday.

12. Ai Group submits that the phrase *"ordinary hourly rate"* should be used in clause 34.5(a)(i) as this phrase reflects the intent of the current provision and the intent of the various predecessor provisions (as is evident from the following historical analysis of the clause). This phrase also reflects the widespread existing industry practice.

13. Clause 44.3 of the current Award states: (emphasis added)

> **44.3 Rostered day off falling on public holiday**
>
> **(a)** Except as provided for in clauses 44.3(b) and (c) and except where the rostered day off falls on a Saturday or a Sunday, where a full-time employee's ordinary hours of work are structured to include a day off and such day off falls on a public holiday, the employee is entitled, at the discretion of the employer, to either:
>
> **(i)** 7.6 hours of pay at the ordinary time rate; or
>
> **(ii)** 7.6 hours of extra annual leave; or
>
> **(iii)** a substitute day off on an alternative week day.
>
> **(b)** Where an employee has credited time accumulated pursuant to clause 34.6, then such credited time should not be taken as a day off on a public holiday.
>
> **(c)** If an employee is rostered to take credited time accumulated pursuant to clause 34.6 as a day off on a week day and such week day is prescribed as a public holiday after the employee was given notice of the day off, then the employer must allow the employee to take the time off on an alternative week day.
>
> **(d)** Clauses 44.3(b) and (c) do not apply in relation to days off which are specified in an employee's regular roster or pattern of ordinary hours as clause 44.3(a) applies to such days off.

14. The provision can be traced back to a decision of the Australian Conciliation and Arbitration Commission in 1974[2] to vary the Metal Trades Award, by consent, to insert the following provision in the Division of the Award that applied to Victorian Government Departments and Instrumentalities: (emphasis added)

[2] (1974) 155 *Commonwealth Arbitration Reports* 603

15(k) Seven Day Shift Workers

A seven day or continuous shift worker, that is a shift worker who is rostered to work regularly on Sundays and holidays, when his rostered day off falls on a public holiday prescribed by this clause shall at the discretion of the employer, be paid for that day at the ordinary rate or have an additional day added to his annual leave. This sub-clause shall not apply when the holiday on which he is rostered off falls on a Saturday or Sunday.

15. The relevant phrase in the above clause was *"the ordinary rate".*

16. A consolidated version of the *Metal Trades Award 1971* was reprinted on 22 January 1975.[3] By that time, the consent provision that had applied to Victorian Government workers, had been extended to all seven day and continuous shift workers under the Award. The wording was the same: (emphasis added)

22(k) Seven Day Shift Workers

A seven day or continuous shift worker, that is a shift worker who is rostered to work regularly on Sundays and holidays, when his rostered day off falls on a public holiday prescribed by this clause shall at the discretion of the employer, be paid for that day at the ordinary rate or have an additional day added to his annual leave. This sub-clause shall not apply when the holiday on which he is rostered off falls on a Saturday or Sunday.[4]

17. The relevant phrase in the above clause was *"the ordinary rate".*

18. It is obvious from the wording of the following subclause (g) in Clause 19 – Shift Work, of the same award, i.e. the *Metal Trades Award 1971*, that the phrase *"ordinary rate"* in the Award did not include shift allowances: (emphasis added)

Afternoon or Night Shift Allowances

(g)(i) A shift worker whilst on afternoon or night shift shall be paid for such shift 15 per cent more than his ordinary rate.

(ii) A shift worker who works on an afternoon or night shift which does not continue for at least five successive afternoon or nights in a five day workshop or for at least six successive afternoons or nights in a six day workshop shall be paid for each such shift 50 per cent for the first three hours thereof and 100 per cent for the remaining hours thereof in addition to his ordinary rate.

(iii) An employee who:

(a) during a period of engagement on shift, works night shift only; or

[3] (1975) 164 *Commonwealth Arbitration Reports* 320

[4] Ibid at 366

(b) remains on night shift for a longer period than four consecutive weeks; or

(c) works on a night shift which does not rotate or alternate with another shift or with day work so as to give him at least one-third of his working time off night shift in each shift cycle,

shall during such engagement period or cycle be paid 30 per cent more than his ordinary rate for all time worked during ordinary working hours on such night shift.[5]

19. The clause in the 1971 Award which clearly identifies that *"ordinary rate"* does not include shift allowances was not a recent development. For example, clause 4(c)(a) of the 1920 version of the Metal Trades Award[6] prescribed the following shift allowance for shift workers (other than those in a continuous process) if required for duty on a shift which continued for less than five nights in succession:

"If he (not being a roll-turner) be required for operations for which there has been a second shift for twelve months at least – ordinary rates with the addition of 5 per centum."

20. In 1982, as part of a series of amendments relating to the introduction of the 38 hour week, clause 22(k) of the *Metal Industry Award 1971* was deleted and replaced with the following clause: (emphasis added)

22(k) Rostered Day Off Falling on Public Holiday

(i) An employee who works continuous work and who by the circumstances of the arrangement of his ordinary hours of work is entitled to a rostered day off which falls on a public mentioned in this clause shall, at the discretion of the employer, be paid for that day prior to 15 March 1982, 7 hours 36 minutes at ordinary rates or have an additional day added to his annual leave. This provision shall not apply when the holiday on which he is rostered off falls on a Saturday or Sunday.

(ii) From 15 March 1982, in the case of an employee whose ordinary hours of work are arranged in accordance with sub-clause (b)(iii) or (b)(iv) or (e) of Clause 18A, the weekday to be taken off shall not coincide with a public holiday fixed in accordance with sub-clauses (a), (b) or(c) hereof. Provided that, in the event that a public holiday is prescribed after an employee has been given notice of a weekday off in accordance with subclause (g) of Clause 18A of this award and the public holiday falls on the weekday the employee is to take off, the employer shall allow the employee to take the day off on an alternative weekday.

[5] Ibid at 362

[6] (1921) 15 *Commonwealth Arbitration Reports* 336

21. The relevant phrase in the above clause was *"ordinary rates".*

22. In the *Metal Industry Award 1984*, clause 22(k) remained the same, except that the words *"prior to 15 March 1982"* were deleted from paragraph (i) and the words *"From 15 March 1982"* were deleted from paragraph (ii):

22(k) Rostered Day Off Falling on Public Holiday

(i) An employee who works continuous work and who by the circumstances of the arrangement of his ordinary hours of work is entitled to a rostered day off which falls on a public mentioned in this clause shall, at the discretion of the employer, be paid for that day 7 hours 36 minutes at ordinary rates or have an additional day added to his annual leave. This provision shall not apply when the holiday on which he is rostered off falls on a Saturday or Sunday.

(ii) In the case of an employee whose ordinary hours of work are arranged in accordance with sub-clause (b)(iii) or (b)(iv) or (e) of Clause 18A, the weekday to be taken off shall not coincide with a public holiday fixed in accordance with sub-clauses (a), (b) or(c) hereof. Provided that, in the event that a public holiday is prescribed after an employee has been given notice of a weekday off in accordance with subclause (g) of Clause 18A of this award and the public holiday falls on the weekday the employee is to take off, the employer shall allow the employee to take the day off on an alternative weekday.

23. The relevant phrase in the above clause was *"ordinary rates".*

24. Clause 19(g) was reformatted a little in the 1984 version of the Award but the entitlements remained the same, with the exception of an additional provision at clause 19(g)(ii)(b). Once again, it is obvious from the wording of clause 19(g) that the phrase *"ordinary rate"* in the Award did not include shift allowances:

19(g) **Afternoon or Night Shift Allowances**

(i) A shift worker whilst on afternoon or night shift shall be paid for such shift 15 per cent more than his ordinary rate.

(ii) A shift worker who works on an afternoon or night shift which does not continue:

(a) For at least five successive afternoons or nights in a five day workshop or for at least six successive afternoons or nights in a six day workshop; or

(b) For at least the number of ordinary hours prescribed by one of the alternative arrangements in subclauses (b) or (c) thereof:

shall be paid for each such shift 50 per cent for the first three hours thereof and 100 per cent for the remaining hours thereof in addition to his ordinary rate.

(iii) An employee who:

(a) during a period of engagement on shift, works night shift only; or

(b) remains on night shift for a longer period than four consecutive weeks; or

(c) works on a night shift which does not rotate or alternate with another shift or with day work so as to give him at least one-third of his working time off night shift in each shift cycle,

shall during such engagement period or cycle be paid 30 per cent more than his ordinary rate for all time worked during ordinary working hours on such night shift.

25. The Rostered Day Off Falling on Public Holiday clause was the subject of extensive negotiation between Ai Group and the MTFU during the award simplification process in 1996-1998. There was a great deal of discussion about how the clause should be worded to address the myriad of different working hours arrangements that operated in workplaces in the metal industry.

26. Eventually the wording of the clause was agreed upon between Ai Group and the MTFU, and the Australian Industrial Relations Commission (**AIRC**) included the following agreed clause in the *Metal Engineering and Associated Industries Award 1998*: (emphasis added)

7.5.4 Rostered Day Off Falling on Public Holiday

7.5.4(a) Except as provided for in 7.5.4(b), where a full-time employee's ordinary hours of work are structured to include a day off and such day off falls on a public holiday, the employee is entitled to, at the discretion of the employer, either:

- 7 hours and 36 minutes pay at ordinary rates; or
- 7 hours 36 minutes added to his or her annual leave; or
- a substitute day off on an alternative week day.

This shall not apply where the rostered day off falls on a Saturday or a Sunday.

7.5.4(b) (i) Where an employee has credited time accumulated (see 5.11.6), then such credited time should not be taken as a day off on a public holiday.

(ii) If an employee is rostered to take credited time as a day off on a week day and such week day is prescribed as a public holiday after the employee was given notice of the day off, then the employer shall allow the employee to take the time off on an alternative week day.

(iii) Paragraphs (i) and (ii) above shall not apply in relation to days off which are specified in an employee's regular roster or pattern of ordinary hours. Paragraph 7.5.4(a) shall apply in such circumstances.

27. The relevant phrase in the above clause was *"ordinary rates".*

28. In addition to the above clause, Ai Group and the MTFU agreed upon the following Afternoon and Night Shift Allowances clause for the 1998 Award. Once again, it is obvious from the wording of the clause that the phrase *"ordinary rate"* in the Award did not include shift allowances: (emphasis added)

> **6.2.2 Afternoon or Night Shift Allowances**
>
> 6.2.2(a) A shift worker whilst on afternoon or night shift shall be paid for such shift 15 per cent more than his or her ordinary rate.
>
> 6.2.2(b) An employee who works on an afternoon or night shift which does not continue:
>
> (i) for at least five successive afternoons or nights in a five day workshop or six successive afternoon or night shifts in a six day workshop (where no more than eight ordinary hours are worked on each shift); or
>
> (ii) for at least 38 ordinary hours (where more than eight ordinary hours are worked on each shift and the shift arrangement is in accordance with 6.1.2 or 6.2.3):
>
> shall be paid for each such shift 50 per cent for the first three hours and 100 per cent for the remaining hours, in addition to his or her ordinary rate.
>
> 6.2.3(c) An employee who:
>
> (i) during a period of engagement on shift, works night shift only; or
>
> (ii) remains on night shift for a longer period than four consecutive weeks; or
>
> (iii) works on a night shift which does not rotate or alternate with another shift or with day work so as to give him or her at least one-third of his or her working time off night shift in each shift cycle,
>
> shall during such engagement period or cycle be paid 30 per cent more than his or her ordinary rate for all time worked during ordinary working hours on such night shift.

29. The fact that the above clauses 7.5.4 and 6.2.2 were agreed upon between Ai Group and the MTFU is confirmed in the 11 March 1998 *Metal Industry Award Simplification Decision* of SDP Marsh.[7]

30. In 2008-2009, Ai Group and the MTFU spent several months negotiating a draft modern manufacturing award. The draft award that Ai Group and the MTFU jointly submitted to the AIRC in August 2008 during Stage 1 of the Award Modernisation Process included clauses identical to the above clauses 7.5.4

[7] Print P9311

and 6.2.2 in the 1998 Award – both clauses were marked *"AGREED"* in the jointly submitted draft award. The relevant clauses in the draft award were numbered 6.5.5 and 5.3.2. Just like clauses 7.5.4 and 6.2.2 in the 1998 Award, the relevant phrases used in the clauses were *"ordinary rates"* and *"ordinary rate".*

31. When the Manufacturing Award was made by the AIRC Award Modernisation Full Bench, the phrase *"ordinary rates"*, as proposed by Ai Group and the MTFU, had been replaced with *"ordinary time rates"*. Ai Group has found nothing in the submissions of any party or in any of the AIRC's Award Modernisation Decisions to indicate that the Commission intended to alter the meaning of the longstanding agreed provision.

32. Accordingly, it is very clear that it was not the intention of the Commission that the phrase *"ordinary time rate"* have a different meaning to *"ordinary rate".* Accordingly, the phrase *"ordinary hourly rate"* should be used in clause 34.5(a)(i) of the Exposure Draft.

Relevant authorities on the meaning of the phrase *"ordinary rate"*

33. The above analysis highlights that the meaning of the phrase *"ordinary rate"* in the Manufacturing Award aligns with the definition of *"ordinary hourly rate"* determined by the Commission during the 4 Yearly Review.

34. The following two decisions also support this view.

35. In *Kucks v CSR*,[8] Madgwick J considered the meaning of the phrase *"ordinary rate of pay"* under *CSR Staff (Consolidated) Award 1992*. The long service leave clause in the Award included the following provision (emphasis added): "*Each employee shall be paid for each week of leave the employees ordinary rate of pay applicable at the date of taking the period of leave."*

[8] *Kucks v CSR Ltd* (1996) 66 IR 182

36. Justice Madgwick rejected the argument that the phrase *"ordinary rate of pay"* included shift allowances and other penalties. The following extract from the decision is relevant:

> In Australia, the term ''ordinary pay'' has, according to the *Macquarie Dictionary* (2nd ed) entered the language, as meaning:
>
> > *''ordinary pay . . . remuneration for an employee's normal weekly number of hours fixed under the terms of his employment but excluding any amount payable to him for shift work, overtime, or other penalty.''*
>
> That meaning of ordinary is even more apt in the context of the present award.
>
> - - -
>
> When the framer(s) of the award wished to indicate that full, usual pay should be paid, they had no difficulty in making their meaning plain. For example, in cl 16, in relation to annual leave, it was provided:
>
> ''(a) . . . annual leave shall be granted *on full pay* ...
>
> - - -
>
> **Conclusion**
>
> For these reasons, the claim must fail.[9]

37. Also, in *Fonterra Brands (Australia) Pty Ltd v AMWU*,[10] a Full Bench of the FWC relevantly stated: (emphasis added)

> [16] The term 'ordinary pay' has a well-established and common industrial meaning and usage, namely remuneration for an employee's weekly hours but excluding any amount paid for shift work, overtime or other penalty. Giving the words of the Agreement their ordinary and 'industrial context' meaning, we consider there is no room for a conclusion such as that which was reached by the Commissioner.
>
> [17] The meaning of 'ordinary pay' in an award context was considered by Madgwick J in Kucks v CSR Ltd where it was held, having regard to the High Court decision in Scott v Sun Alliance, that terms like "ordinary rate of pay" and "standard hours" have well-known meanings in the sphere of industrial relations in this country. His Honour also referred to the definition in the Macquarie Dictionary:
>
> > "In Australia, the term "ordinary pay" has, according to the Macquarie Dictionary, 2nd edn, entered the language, as meaning:
> >
> > > "ordinary pay .... remuneration for an employee's normal weekly number of hours fixed under the terms of his employment but excluding any amount payable to him for shift work, overtime, or other penalty."
>
> [18] The award provision in that case dealt with the payment to be made to employees on termination of employment in respect of untaken long service leave. His Honour said that the adoption of the generally accepted meaning of 'ordinary pay' in the provision was even more apt in the context of the award that was before the Court. In

[9] Ibid, at 186-188.

[10] [2015] FWCFB 3423

this regard reference was made to other provisions of the award dealing with matters such as annual leave and sick leave where it was provided that such leave shall be granted "on full pay". It was said that when "the framer(s) of the award wished to indicate that full, usual pay should be paid, they had no difficulty in making their meaning plain."

[19] The term 'ordinary pay' is not defined in the Agreement. In these circumstances, and unless there are strong contextual or other reasons for adopting a different approach, we consider that 'ordinary pay' as it is used in the Agreement should be given its generally understood and accepted meaning in industrial usage. This is also the meaning which can be construed from a consideration of the Agreement as a whole and which is generally in line with the purpose of providing redundancy entitlements.

[20] There is no consistent use of the term 'ordinary pay' in the Agreement that suggests that the term is to have anything other than its common industrial meaning. Indeed several provisions of the Agreement specifically identify whether or not various loadings, penalties and allowances are to be included in calculations for certain entitlements. For example, clause 5.1.4 of the Agreement provides that changes made in order to improve productivity "will not reduce an employee's average ordinary weekly wages exclusive of any shift allowance." Clause 18.1 provides that compassionate leave will be paid "at the full rostered shift wage rate, including shift penalties incorporated in the roster."

- - -

[23] On our reading of the Agreement, it is clear that, for the purposes of clause 22.8.1 and the calculation of redundancy pay entitlements, the term 'ordinary pay' both in its generally understood meaning and its meaning in the context of the Agreement, does not include amounts payable for shift work, overtime or other penalties.

38. Accordingly, the ordinary industrial meaning of the phrase *"ordinary rates",* as used in the Rostered Day Off Falling on a Public Holiday Clause for decades, does not include shift loadings and other penalties.

39. It follows that the phrase *"ordinary hourly rate"* should be used in clause 34.5(a)(i) of the Exposure Draft.

Division 10 – Public holidays of Part 2-2 of the Fair Work Act

40. Compensating employees for a public holiday that falls on a day off at the *"ordinary hourly rate"* under clause 34.5(a)(i) of the Manufacturing Award would be far more consistent with s.116 of the *Fair Work Act 2009* than the unions' proposed approach.

41. Under s.116 of the FW Act, if an employee is absent from his or her employment on a day or part-day that is a public holiday the employer must pay the employee at the employee's "base rate of pay" for the employee's ordinary

hours of work on that day. "Base rate of pay" is defined in s.16 of the Act as the rate of pay payable to the employee for his or her ordinary hours of work, but not including: incentive-based payments and bonuses, loadings, monetary allowances, overtime or penalty rates, or any other separately identifiable amounts.

Section 138 and the modern awards objective

42. Clearly, it is not necessary for clause 34.5(a)(i) to require the payment of shift allowances and other penalties on the 7.6 hours of pay referred to in the clause, in order for the clause to achieve the modern awards objective.

43. Requiring a payment in excess of the "ordinary hourly rate", would be inconsistent with the provision of a *"fair and relevant minimum safety net of terms and conditions of employment"*. (s.134(1)).

44. The notion of "fairness" in s.134(1) is to be assessed from the perspective of employers and employees. This was confirmed by a recent Full Bench decision of the Commission regarding the annual leave common issues:

> [109] … It should be constantly borne in mind that the legislative direction is that the Commission must ensure that modern awards, together with the NES provide 'a *fair* and relevant minimum safety set of terms and conditions'. Fairness is to be assessed from the perspective of both employers and employees.[11]

45. It would not be fair to change a very longstanding award entitlement in a manner which is detrimental to employers, particularly when the history shows that the MTFU consented to the payment being calculated at "ordinary rates" on multiple occasions over a number of decades.

46. Requiring a payment in excess of the "ordinary hourly rate", would also be inconsistent with s.134(1)(f) which requires that the Commission must take into account *"the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden".*

[11] *4 yearly review of modern awards* [2015] FWCFB 3177 at [109].

Conclusion

47. For all of the above reasons, the phrase “ordinary hourly rate” should be used in clause 34.5(a)(i) of the Exposure Draft.

4. CLAUSE 39.3 – TRANSFER TO LOWER PAID DUTIES

48. This clause is a standard test case provision that appears in the redundancy clauses of most modern awards.

49. The Commission is currently considering the wording of this clause as part of the *Plain Language Drafting - Standard Clauses* proceedings (AM2016/15).

50. In view of this, Ai Group and the MTFU have agreed that this clause should be dealt with in the above proceedings and the outcome reflected in the Manufacturing Award.

25 October 2016

EXPOSURE DRAFT - MANUFACTURING AND ASSOCIATED INDUSTRIOES AND OCCUPATIONS AWARD 2010

	Clause Number and Topic	Wording
1.	**14.1(b) - Unpaid meal breaks** Agreed	**(b)** by agreement between an employer and an individual employee or the majority of employees in an enterprise or part of an enterprise concerned, an employee or employees may be required to work in excess of five hours but not more than six hours without a meal break, at the rate of pay applying to the employee immediately prior to the end of the fifth hour of work.
2.	**14.5(a) – Working through meal breaks** Agreed	**(a)** Subject to clause 14.1, an employee must work during meal breaks at the rate of pay applying to the employee immediately prior to the scheduled meal break whenever instructed to do so for the purpose of making good any breakdown of plant or for routine maintenance of plant which can only be done while the plant is idle.
3.	**14.5(b) – Working through meal breaks** Agreed	**(b)** Except as otherwise provided in clause 14—Breaks and except where any alternative arrangement is entered into by agreement between the employer and the employee concerned, employees must be paid as follows for all work done during meal hours and thereafter until a meal break is taken: (i) Except in the circumstances referred to in paragraphs (ii), (iii) and (iv) below: 150% of the ordinary hourly rate; (ii) Where the unpaid meal break is during ordinary time on a Saturday or a Sunday: 200% of the ordinary hourly rate; (iii) Where the unpaid meal break is during ordinary time on a shift on which the employee is entitled to a 15 per cent loading: 165% of the ordinary hourly rate; (iv) Where the unpaid meal break is during ordinary time on a shift on which the employee is entitled to a 30% loading: 180% of the ordinary hourly rate of pay.
4.	**15.4 – Ship trials** Agreed	The parties have agreed to retain the current wording in clause 39.4.
5.	**23 – Extra rates not cumulative** Agreed	The extra rates in this award, except rates prescribed in clause 27.3—Special rates and rates for work on public holidays, are not cumulative so as to exceed the maximum of double the ordinary hourly rate.

6.	**27.4(e) – Travelling time** Agreed	**(i)** The rate of pay for travelling time on Monday to Saturday is the ordinary hourly rate of pay and on Sundays and public holidays is **150%** of the ordinary hourly rate.
7.	**Clause 30.10(b) – Rest break during overtime on Saturday, Sunday or public holiday** Agreed	**(b)** Where a day worker is required to work overtime on a Saturday, Sunday or public holiday or on a rostered day off, the first rest break must be paid at the ordinary hourly rate.
8.	**Clause 30.10(c) – Rest break before overtime after ordinary hours** Agreed	**(c)** Where overtime is to be worked immediately after the completion of ordinary hours on a day or shift and the period of overtime is to be more than one and a half hours, an employee, before starting the overtime, is entitled to a rest break of 20 minutes to be paid at the rate of pay applying to the employee immediately prior to the scheduled meal break
9.	**30.13 – Standing by** Agreed	Subject to any custom prevailing at an enterprise, where an employee is required regularly to hold themselves in readiness to work after ordinary hours, the employee must be paid standing by time at the employee's ordinary hourly rate for the time they are standing by.
10.	**34.5(a)(i) – Rostered day off falling on public holiday** Not Agreed	**(a)** Except as provided for in clauses 34.5(b) and (c) and except where the rostered day off falls on a Saturday or a Sunday, where a full-time employee's ordinary hours of work are structured to include a day off and such day off falls on a public holiday, the employee is entitled, at the discretion of the employer, to either: **(i)** 7.6 hours of pay at the ordinary hourly rate.
11.	**39.3 – Transfer to lower paid duties**	This is a standard clause in most awards. It has been agreed that the wording of this clause will be determined through the plain language re-drafting of standard clauses.