

CFMEU

CONSTRUCTION

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5th March 2018

Deputy President Gostencnik
Fair Work Commission
11 Exhibition Street
Melbourne VIC 3000

By email: amod@fwc.gov.au
chambers.gostencnik.dp@fwc.gov.au

Dear Deputy President Gostencnik,

Re: AM2016/23 and Ors- 4 yearly review of modern awards – Construction awards

In response to the email from your Associate dated 1st March 2018, the CFMEU wishes to apologise for the delay in filing an agreed document on the classification of allowances. Whilst the parties have been attempting to agree on a document it has been complicated by what the CFMEU can only describe as a “new claim” by the MBA in regard to the nature of the refractory bricklaying allowance.

The MBA are now claiming that the refractory bricklaying allowance is not paid on an all purpose basis. This is despite the documents that they handed up at the conference on 25th January 2018 identifying the allowance as all purpose, and the fact that the MBA did not raise the issue at that conference nor the conference on 19th December 2017 where they had every opportunity to do so. The recognition by the MBA of the allowance as all purpose was also reflected in earlier MBA submissions to the Full Bench.

The CFMEU is extremely concerned at what we consider to be an attempt by the MBA to slip this matter in as a disputed matter, for determination by the Full Bench, without having made any submissions on why a change is warranted (the CFMEU have already pointed out to the MBA that clause 18.10.2 of the *National Building and Construction Industry Award 2000* clearly stated that the allowance was “*part of the wage rate for all purposes of the award*”).

The CFMEU is unsure of the MBA’s membership of employers who specialise in refractory work (if any) and are at a loss to understand why the MBA has now advanced this new claim. None of the refractory companies that the CFMEU deals with on a regular basis have ever disputed the all purpose nature of the allowance. The refractory bricklaying allowance is currently worth just over \$80 per week for a refractory bricklayer for a 38 hour week. With the amount of overtime worked in the refractory sector (due to the majority of work being done during shutdowns of blast furnaces, glass tanks, etc) removing the all purpose nature of the allowance will dramatically impact on the earnings of refractory workers. Accordingly such a change must be seen as significant, and as noted by the Full Bench in the recent Public Holidays Decision

([2018] FWCFB 4), changes of this nature “*need to be supported by appropriate submissions and probative evidence directed to demonstrating the facts supporting the proposed variations*”.¹

The CFMEU therefore submits that if the MBA persists with this “new claim”, and the Full Bench decides to allow the claim to be made, then directions should be issued along the following lines:

1. The MBA to provide written authorities from refractory companies that the MBA acts on their behalf and that the companies support a change in the nature of the refractory bricklaying allowance so that it is no longer paid on an all purpose basis.
2. The MBA file a written submission and any supporting evidence in support of its “new claim” regarding the refractory allowance by 4pm on Monday 12th March 2018.
3. Any party supporting the MBA “new claim” file written submissions by 4pm on Monday 12th March 2018.
4. Any party opposing the MBA “new claim” file written submissions and evidence by 4pm on Monday 19th March 2018.

Finally in regard to the filing of a document setting out the classification of allowances, the CFMEU understands that on Friday 2nd March 2018 the MBA circulated to the parties a redraft of an earlier CFMEU document setting out the classification of allowances and the identification of allowances where the classification remains in dispute. Whilst this document may reflect the new position of the MBA it does not reflect the position of the parties as at 25th January 2018. On this basis it is not agreed to by the CFMEU. The CFMEU advises however that, subject to its opposition being noted, and to expedite the proceedings the CFMEU does not object to the MBA filing the document.

Yours faithfully,



Stuart Maxwell
Senior National Industrial Officer

¹ [2018] FWCFB 4, at [73]