



AM2016/26

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COVER SHEET

NAME:	Sally Taylor
ORGANISATION:	Australian Manufacturing Workers Union
ADDRESS:	
Street Address 1:	133 Parramatta Road
Street Address 2:	Granville NSW 2142
Suburb/City:	
CONTACT DETAILS:	
Telephone:	0417 491 836
Email:	sally.taylor@amwu.asn.au

1. INTRODUCTION

1. The AMWU makes this submission in response to the Fair Work Commission's revised Directions of 6 December, 2016 (the Directions).
2. The AMWU supports the variation as sought by the Australian Rail, Tram and Bus Industry Union and Australian Services Union (the 'Unions') and their joint submission in support of the application.

2. THE 2008 PROCEEDINGS

3. The Unions' application and submissions identify that the federal pre-reform awards consolidated to become the *Rail Industry Award 2010* (the modern rail award) overwhelmingly provided for overtime on Saturday to be paid at the rate of time and half for the first 2 or 3 hours and double time thereafter. The Unions' submissions extracts clauses from awards identified on the then AIRC's website¹. The consolidated pre reform federal awards are:

Locomotive Operations Award 2002

Locomotive Drivers (Victoria) Award 2001

Locomotive Enginemen's - New South Wales Award 2002

Railway Traffic Operating, Workshops and Miscellaneous Grades Award 2003

The Railways Miscellaneous Grades Award [1960]

Railways Professional Officers Award 2002

Railways Salaried Employees (Victoria) Award 2002

Railways Salaried Employees Award 2003

Railways Traffic, Permanent Way and Signalling Wages Staff Award 2002

Salaried Officers' (Railways - New South Wales) Award 2002

¹ <http://www.airc.gov.au/awardmod/fullbench/industries/awardmodlist.cfm?award=rail>

4. The Unions' research² also identifies that the NAPSAs consolidated into the Rail Industry Award 2010 generally provide for the overtime at time and half for the first 2 or 3 hours and double thereafter, including overtime on Saturday. The AMWU has reviewed the consolidated federal awards and NAPSAs and confirms the Unions' submissions.
5. Extracts from NAPSAs identified on the AIRC's website are attached and marked 'A'. Attachment 'A' includes NAPSAs operating across a state as well as enterprise specific NAPSAs.
6. The full bench decision³ making the Rail Industry Award 2010 commented that there was little consistency amongst the pre reform awards and NAPSAs consolidated to form the modern rail award. There is no reference in the full bench decision providing an explanation as to why the overtime clause in the September exposure draft was amended. The high level of consistency amongst the pre reform awards and NAPSAs regarding the specific issue of the overtime rate for Saturday being time and half for 2 or 3 hours and double time thereafter is significant in determining now what is the fair and relevant minimum safety net for the modern rail award.
7. The exposure draft published by the AIRC on 12 September 2008 provided for:

21.1 Overtime payments: employees other than shift workers:

- a) Except where provided otherwise in this clause, an employee must be paid the following additional payments for all work done in addition to ordinary hours:
 - i. 50% of the ordinary hourly base rate of pay for the first three hours and 100% of ordinary hourly base rate of pay thereafter, for overtime worked from Monday until noon Saturday;
 - ii. 100% of the ordinary hourly base rate of pay for overtime worked after noon on a Saturday or at any time on a Sunday; and

² Application by RBTU, Form F46, paragraph 4.9, 6 November 2016

³ [2008] AIRCFB 1000, @242

- iii. 150% of the ordinary hourly base rate of pay for overtime worked on a public holiday.

8. This formulation provided for overtime to be paid at time and a half for the first 3 hours and then double time thereafter, with all overtime worked after 12 noon Saturday and on Sunday to be paid at double time. The decision⁴ of the full bench accompanying the September 2008 exposure draft is not illuminative of the source of the provision. It did not originate from either the employers' exposure draft of 25 August⁵ or the combined rail unions' draft of 26 August 2008.⁶ The provision is however consistent with the clause contained in **AP818906 - AWU Railway Alteration and Maintenance Award 2002** an enterprise award identified in the AIRC's 2008 list of Relevant Awards. The overtime provision of this Award is contained at Attachment A. Outcomes from enterprise awards and NAPSAs are relevant in determining the industry safety net as parties conceded and the Commission commented in 2008 that the Awards and NAPSAs had not been maintained, in some cases for many years as the industry was covered by enterprise agreements.

[243] It was conceded by the rail unions that the importance of awards had somewhat diminished over the years and they had been concentrating now for some time on enterprise bargaining agreements. The accuracy of this submission is reflected in the fact that many rail awards have not been varied for a considerable number of years. All parties accepted that it was not likely that any employee was award reliant⁷.

9. The majority of enterprise bargaining agreements in the rail industry provide for overtime on Saturday at either double or time and a half after 2 or 3 hours and double time thereafter. For example:

⁴ [2008] AIRCFB 717

⁵ [http://www.airc.gov.au/awardmod/databases/rail/Draft/ARA\(RSCC\)_Award_version2.pdf](http://www.airc.gov.au/awardmod/databases/rail/Draft/ARA(RSCC)_Award_version2.pdf)

⁶ http://www.airc.gov.au/awardmod/databases/rail/Draft/Union_draft.pdf

⁷ [2008] AIRCFB 1000

Queensland:

- Under clause 20.5 of AURIZON CONSTRUCTION AND MAINTENANCE ENTERPRISE AGREEMENT 2015 all overtime worked on Saturday is to be paid at double time,
- Under clause 37.5 of AURIZON TRAIN CREW AND TRANSPORT OPERATIONS ENTERPRISE AGREEMENT 2015 *'Subject to this clause, each time overtime is worked it will be paid at the rate of time and a half of the base rate of pay for the first 3 hours and double time thereafter.'*
- Under clause 19.1 ii of the BOMBARDIER TRANSPORTATION AUSTRALIA PTY LTD QUEENSLAND A&M SERVICES AGREEMENT 2016-2019
- *' Employees shall be paid at the rate of time and a half for the first three (3) hours of duty and thereafter at the rate of double time for hours worked on a Saturday, provided that a minimum payment of four (4) hours shall be paid.'*
- Under clause 63.4 of QUEENSLAND RAIL ROLLINGSTOCK AND OPERATIONS ENTERPRISE AGREEMENT 2016 *'Overtime worked on Saturday after the completion of a rostered ordinary hours shift will be paid at 200% of the base rate.'*
- Under clause 84.1.1 of QUEENSLAND RAIL NETWORK ENTERPRISE AGREEMENT 2016 *'overtime worked on Saturday before or after the completion of a rostered ordinary hours shift which will be paid at the rate of double time.'*

Western Australia

In Western Australia the standard for Saturday overtime is time and a half for first 2 hours and double time thereafter. Refer Attachment B.

- 10.** The relevant transcript⁸ of consultations occurring between the September 2008 exposure draft and the publication of the modern rail award in December 2008 identifies that the overtime safety net for technical and engineering classifications in the rail industry pre reform awards and NAPSAs was based on the metal industry entitlement which was, and remains, time and a half for the first three hours and double time thereafter⁹.

3. THE MODERN AWARD OBJECTIVE

- 11.** The variation sought by the Unions is consistent with the modern award objective. The modern award objective at s.134(da) provides that the Commission must take account of :

The need to provide additional remuneration for:

- (i) Employees working overtime; or
- (ii);or
- (iii) Employees working on weekends or public holidays.

- 12.** This provision was not a guiding principle in 2008 when the modern awards were made and did not appear within the Minister's Request or Part 10A of the Workplace Relations Act 1996. The current modern rail award provision provides a rate of 150% for working ordinary hours on Saturday, satisfying s.134(da) (iii) however makes no distinction between ordinary hours and overtime hours worked on Saturday thus failing the requirement at s.134(da) (i) to provide additional remuneration for working overtime.

- 13.** Employees working overtime Monday to Friday have a clear formula of time and half after three hours and double time thereafter. It is unfair and inconsistent with the modern award objective to provide a lower safety net for working overtime on Saturday when s.134(da) provides for additional remuneration when considering whether the award provides a fair and relevant minimum safety net..

- 14.** For the reasons advanced we submit the Unions' application is granted.

⁸ See for example PN1056, PN1056, Transcript 21 October, 2008

⁹ Manufacturing and Associated Industries and occupations Award 2010, Cl 40.1(a).

Attachment 'A'

N120139 – Coachmakers, &c., Rail (State) Award

15. OVERTIME, SATURDAY, SUNDAY AND HOLIDAY RATES

(a) Work done in excess of or outside the ordinary working hours prescribed by this award or outside an employee's rostered starting and finishing time, or on a shift other than a rostered shift, shall be paid for at the *rate of time and one-half for the first two hours on any one day or shift and at the rate of double time thereafter*, such double time to continue until the completion of overtime worked, except when the time is worked:

AN120158 – Connex Sydney Pty Ltd trading as Metro Monorail (State) Enterprise Award 2003

14. OVERTIME

(i) For all work done outside ordinary hours, the rates of pay shall be *time and one half for the first two hours and double time thereafter*. In computing overtime, each day's work shall stand alone.

AN120225 – Gangers (State) Award

4. OVERTIME

(i) All time worked in excess of or outside the limits prescribed by clause 3, Hours of Labour, of this award, shall be paid for at the rate of *time and a half for the first two hours and double time thereafter except as hereinafter provided*, For the purposes of calculating overtime payments each unbroken period of overtime shall stand alone.

AN120689 Sydney Light Rail (State) Award 1997

15. Overtime

(v) All time worked in excess of 8 hours in any shift shall be paid for at *the rate of time and a half for the first three hours and double time thereafter*.

AN140246 Queensland Rail Award - State 2003

6.2 OVERTIME

6.2.1 All time worked in excess of or outside the ordinary working hours of an employee will be paid at the rate of *time and a-half for the first 3 hours and double the rate thereafter* except for:

(a) Overtime worked on *Saturday after the completion of a rostered ordinary hours shift which will be paid at the rate of double time.*

(b) Overtime worked on Sunday which will be paid for at the rate of double time.

AN140247 Queensland Railways Institute Inc. Employees' Award 2003

6.1.2 Overtime shall be the actual time worked in excess of or outside the ordinary working hours as provided by clause 6.1.1 and shall be *paid for at the rate of time and a-half for the first 3 hours and after that at the rate of double time* and double time on Sunday:

Provided that in those instances where overtime rates have been paid after the completion of the ordinary working hours on any day such custom and practice shall prevail but no employee shall be entitled to payment of overtime at the rate of double time until after the completion of 10 and a-quarter hours on duty.

AN160264 – Prospector and AvonLink on Train Customer Service Officers Award

3.3 - OVERTIME PAYMENTS

3.3.1 Employees shall be paid at the rate of *time and a half for the first two (2) hours worked in excess of their rostered ordinary hours of work and double time thereafter.* Each day shall stand alone.

AN160355 – Public Transport Authority (Transwa) Award 2006

Ambiguous

AN160354 – Public Transport Authority Rail Car Drivers (Transperth Train Operations) Award 2006

3.2.3 Weekly - Overtime

(a) All time (exclusive of Sunday time) worked in excess of forty hours in any one week shall be paid at the rate of time and a half.

(b) All time worked in excess of 8 hours in any one of the first five shifts in a week shall be paid for at the *rate of time and one half for the first three hours and double time thereafter*, provided that all time paid at the rate of double time shall stand alone and be paid for in addition to the week's work.

(c) The overtime rates shall be computed on the rate applicable to the day on which the overtime is worked provided that double time shall be the maximum.

3.2.4 Sunday and Saturday

(a) All time worked on a Sunday shall be paid at the rate of double time, and all **ordinary time** worked on Saturdays by shift employee's shall be paid *at time and a half*.

(b) *When Saturday is an additional shift all time worked will be paid at double time.*

Enterprise Awards

AP818906 - AWU Railway Alteration and Maintenance Award 2002

27.3 Saturday work

27.3.1 *Overtime worked prior to 12.00 noon on a Saturday shall be paid for at the rate of time and one half for the first two hours and double time thereafter.*

27.3.2 *All overtime worked after 12.00 noon on Saturday shall be paid for at the rate of double time.*

Attachment B

COMPANY	EXPIRY DATE	O/TIME RATES	SATURDAY RATE
UGL Rail Services PTY LTD Bassendean EA 2014	30 th June 2017	Time and a half (2 hours) Double time thereafter.	First 2 hours time and a half, Double time thereafter.
Gemco Rail PTY LTD WA Collective EA 2016.	30 th June 2018	Time and a half (2 hours) Double time thereafter	First 2 hours time and a half, Double time thereafter
John Holland PTY LTD WA Rail Plant Services EA 2014	2018	Time and a half (2 hours) Double time thereafter	First 2 hours time and a half, Double time thereafter
Aurizon (WA) Rollingstock Maintenance EA 2014	10 th May 2017	base rate x .7 for additional hours	Base rate 1.7 all hours worked.
Watco WA Transport Services PTY LTD 2016	30 th September 2019	Once employee accumulates 84 hours in a fortnight receives time and a half thereafter.	
Fluor Rail Services PTY LTD 2013 (Karratha)	31 st Dec 2016	Time and a half (2 hours) Double time thereafter.	First 2 hours time and a half, Double time thereafter.