

FAIR WORK COMMISSION

FOUR YEARLY MODERN AWARD REVIEW

AM87/2014 – Submission in Support of the Application for Substantive Change

1. This is a joint submission of the Australian Rail, Tram and Bus Industry Union (RTBU) and the Australian Services Union (ASU). It supports the applications to vary the modern award by the ASU and the RTBU dated 5 and 6 November 2015, respectively.
2. The variation sought is set out in attachment A.
3. The issue that currently exists in the drafting of clause 23.2 (b) of the Rail Industry Award 2010 is that employees who work overtime between Monday and Friday are paid at a rate of 150% for the first 3 hours and 200% thereafter. This means that employees who work on a Saturday are being paid at a lesser overtime rate than those employed between Monday and Friday.
4. In the Fair Work Commission's Exposure Draft dated 12 September 2008, clause 21.1 states:

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

(b) An employee recalled to work overtime after leaving the employer's premises (whether notified before or after leaving the premises) will be engaged to work for a minimum of 4 hours or will be paid for a minimum of four hours work in circumstances where the employee is engaged for a lesser period.

5. Essentially the 2008 Exposure Draft clause 21.1 was drafted to pay overtime at the rate of 150% for the first 3 hours and 200% thereafter Monday until noon Saturday. And 200% after noon on a Saturday or at any time on a Sunday.
6. The RTBU has skimmed the transcripts of hearing in regards to the 2008 Exposure Draft and is at a loss as to how the overtime clause went from providing the industry standard overtime rates as set out in the 2008 Exposure Draft to the overtime rates that now exist in the current Modern Rail Award 2010.

7. The RTBU has also looked at the specific comparisons the Australian Industrial Relations Commission undertook as part of the Award Modernisation process and in particular the Overtime comparisons for both the Pre-reform Awards and NAPSAs¹.

8. Under Saturday overtime work for the pre-reform Awards the RTBU makes the following observations:

- **Locomotive Operations Award 2002**

39.2.2 on an ordinary shift:

39.2.2(a) in excess of eight hours but not in excess of eleven hours, at the rate of time and a half;

39.2.2(b) in excess of eleven hours, at the rate of double time provided that such part (if any) of the first overtime shift as is worked on a Saturday shall be paid at the rate of double time.

- **Locomotive Drivers (Victoria) Award 2001**

21.2.1 Time worked on an ordinary shift after eight hours from time signed on and shall be paid at the rate of time and a half for the first three hours and double time thereafter.

21.3 Time worked on a first or second excess shift in a fortnightly pay period shall be calculated at the rate of time and one half except that any such excess shift which is a Saturday shift, or any portion of an excess shift falling within Saturday time, shall be calculated at the rate of double time.

- **Locomotive Enginemen's - New South Wales Award 2002**

28.1 All time worked on an ordinary shift by an engineperson after 8 hours from time signed on excluding the book off portion of a broken shift or all time worked on an ordinary shift by a trainee/assistant in excess of 8 hours shall be paid for at the rate of time and one half for the first 3 hours and double time thereafter.

28.2.1(a) Employees working 10 ordinary shifts each fortnight: time and a half for the first ten hours thirty-six minutes and double time thereafter provided that if the excess shift be a Saturday shift (including the Saturday portion of a Friday excess shift) or if it constitutes a thirteenth or fourteenth shift for the fortnight it shall be paid for at the rate of double time throughout.

28.2.1(b) Employees working 10 and 9 shifts a fortnight to provide a total of 19 shifts based on one hundred and fifty-two hours work in a four week work cycle: time and a half for the first eleven hours and double time thereafter provided that if the excess shift be a Saturday shift (including the Saturday portion of a Friday excess shift) or if it constitutes a thirteenth or fourteenth shift when a 10 day fortnight is worked or a twelfth, thirteenth or fourteenth shift when a 9 day fortnight is worked shall be paid at the rate of double time throughout.

- **Railway Traffic Operating, Workshops and Miscellaneous Grades Award 2003**

¹ http://www.airc.gov.au/awardmod/research/Rail_industry.htm

17.2 Overtime shall be paid for all time worked as follows:

17.2.2(a) in excess of eight hours but not in excess of eleven hours, at the rate of time and a half; in excess of eleven hours, at the rate of double time;

17.2.2(c) on an overtime shift, namely a shift worked in excess of ten shifts in the fortnightly period....

17.2.2(c)(i) for the first shift: at the rate of time and a half for the first 7 hours 36 minutes of the shift and at double time thereafter;

17.2.2(c)(ii) for each subsequent shift: at the rate of double time, provided that such part (if any) of the first overtime shift that is worked on a Saturday shall be paid for at the rate of double time.

- **Railways Metal Trades Grades Award 2002**

20.2 All time worked by employees outside of their ordinary weekly hours shall be paid for at the rate of time and a half for the first three hours and double time thereafter or alternatively, all time worked in excess of 80 hours in any fortnightly period shall be paid for at the rate of time and a half provided that such calculations shall be made upon whichever of these alternatives gives the greater amount.

20.5 Time on duty between midnight Friday and midnight Saturday shall be paid at the rate of time and a half. Time worked on a Saturday shall be taken into consideration in the computation of overtime on a fortnightly basis and shall, subject to the exceptions prescribed in clause 22 - Public holidays, be subject to a maximum payment of double the ordinary rate.

- **The Railways Miscellaneous Grades Award [1960]**

19(d) The rate of payment for overtime shall be time and a half. Provided, however, that except as otherwise prescribed in this clause all time worked in excess of eleven hours on any day or shift shall be paid for at double rates.

19(f) (i) except as hereinafter provided, all time worked by an employee on an eleventh or twelfth shift in any fortnightly pay period, shall be paid for at the rate of time and a half, provided that where the whole or any portion of an eleventh or twelfth shift is worked on a Saturday, such shift or portion thereof shall be paid for at the rate of double time.

- **Railways Professional Officers Award 2002**

30.1 For all work done outside ordinary hours the rates of pay shall be time and a half for the first three hours and double time thereafter, such double time to continue until the completion of the overtime work.

- **Railways Salaried Employees (Victoria) Award 2002**

22.2.1 Time worked on an ordinary shift after eight hours from time signed on and shall be paid at the rate of time and a half for the first three hours and double time thereafter;

22.2.2 Time worked, excluding Sunday time, in excess of 80 hours on ordinary shifts within one fortnightly pay period and shall be paid at the rate of time and one half; provided that payment shall be made upon the

more favourable of these alternatives and only one of these alternatives shall apply in respect of all overtime in any one fortnightly period.

22.3 Time worked on a first or second excess shift in a fortnightly pay period shall be calculated at the rate of time and one half except that any such excess shift which is a Saturday shift, or any portion of an excess shift falling within Saturday time, shall be calculated at the rate of double time. Time worked on a further excess shift in the same fortnightly pay period shall be calculated at the rate of double time.

- **Railways Salaried Employees Award 2003**

20.1 In the case of employees whose ordinary hours of duty are 36-3/4 per week Monday to Friday inclusive, overtime shall be payable:

20.4 Overtime worked Monday to Friday in accordance with the preceding provisions of this clause shall be paid for at the rate of time and a half, and for overtime worked on a Saturday, at the rate of time and a half for the first three hours and double time thereafter.

20.5 Employees directly affected by train operations whose ordinary hours of duty are prescribed in 17.3.1 and 17.3.2 shall be paid for all time worked in excess of 7 hours 36 minutes on any shift or in excess of 76 hours per fortnight at the rate of time and a half, subject to the following provisions:

20.5.3(b) for each subsequent shift: at the rate of double time; provided that such part (if any) of the first overtime shift as is worked on a Saturday shall be paid for at the rate of double time;

20.6 Employees directly affected by train operations, whose ordinary hours of duty are prescribed in 17.3.3, 17.3.4 and 17.3.5 shall be paid for all time worked in excess of eight hours on any shift or in excess of 80 hours per fortnight at the rate of time and a half, subject to the following provisions:

20.6.3(b) for each subsequent shift: at the rate of double time; provided that such part (if any) of the first overtime shift as is worked on a Saturday shall be paid for at the rate of double time;

20.7 Employees not directly affected by train operations whose ordinary hours of duty are prescribed in 17.2.1 shall be paid for:

20.7.3 Overtime worked on a Saturday; at the rate of time and a half for the first three hours and double time thereafter.

- **Railways Traffic, Permanent Way and Signalling Wages Staff Award 2002**

20.3 The rate of payment for overtime shall be time and a half. Provided that, unless otherwise prescribed, all time worked in excess of 11 hours on any day shall be paid at double rates.

20.3.1 Such calculations shall be made upon whichever of these alternatives gives the greatest amount.

20.4 Except as otherwise provided, all time worked on an eleventh or twelfth shift in any fortnightly pay period, shall be paid for at the rate of time and a half, provided that any portion of an eleventh or twelfth shift worked on a Saturday, will be paid at the rate of double time

20.7 Saturdays

Time on duty between midnight on Friday and midnight on Saturday shall be overtime and shall be paid for at the rate of time and one-half.

20.7.1 Time worked on Saturday shall be taken into account in the computation of overtime on a fortnightly basis, and save for exceptions

provided in respect of public holidays, shall be subject to a maximum payment of double the ordinary rate.

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

19.2.1 Time worked by an officer, except as where provided for in 19.2.2 and 19.3, in excess of seventy-six hours per fortnight or in excess of seven hours thirty-six minutes in any one shift, shall be overtime and shall be paid for at the rate of time and one half. Provided that all time worked in excess of ten hours thirty-six minutes in any shift shall be paid for at the rate of double time, but shall not be included for the calculation of any other penalty.

9. As highlighted the majority of the Pre-reform Awards paid overtime on a Saturday at:

- a. Time & half for the first 2 or 3 hours and double time thereafter for hours worked outside of ordinary hours.
- b. Double time for hours worked in excess of ordinary hours.

10. The RTBU has also reviewed the AIRC Overtime comparison for the NAPSAs and makes the following observation:

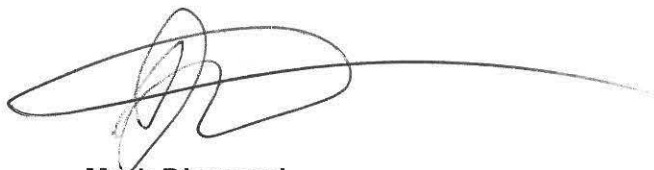
- a. Four out of the Five NAPSAs included clauses that paid time & half for the first 2 or 3 hours of overtime worked on a Saturday & double time thereafter.

11. The RTBU has reviewed all 122 modern awards currently in operation and found that the vast majority of them contain overtime rates for a Saturday that pay time and half for the first 2 or 3 hours, and double time thereafter.

12. The RTBU believes the payment of only 50% loading on overtime worked between midnight Friday and midnight Saturday to be anomalous. Especially given the fact that employees who work overtime between Monday to Friday receive an overtime payment of 50% for the first 3hrs and 100% thereafter.

13. It doesn't seem fair that employees who work overtime on a Saturday are actually paid less than those that work overtime during weekdays, especially as overtime rates or penalty rates applied to weekend work traditionally compensates employees for working unsociable hours.

14. Accordingly, the Applicant seeks that the Rail Industry Award 2010 be varied in the terms sought in attachment A.



Mark Diamond
National Lawyer
6 December 2016

DRAFT DETERMINATION

Fair Work Act 2009
Part 2-3, Div 4 – 4 Yearly reviews of modern awards

Rail Industry Award 2010
(ODN AM2014/87) MA000015

COMMISSION MEMBER/S

SYDNEY, XX YYY 2016

Review of modern awards to be conducted.

- [1] Further to the Decision and Reasons for Decision <<DecisionRef>> in <<FileNo>>, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the *Rail Industry Award 2010* be varied as follows:
- [2] Delete clause 23.2 (a) and insert the following:
- “A loading of 50% of the ordinary hourly rate of pay for the first three hours, and 100% of the ordinary base rate of pay thereafter for overtime worked on a Monday to Saturday, except public holidays”
- [3] In clause 23.2 (b) remove the words “and overtime” to read:
- “For all ordinary hours worked between midnight Friday and midnight Saturday a loading of 50% of the ordinary hourly base rate of pay”
- [4] The determination shall operate on and from XX YYY 2016.

VICE PRESIDENT