

Fair Work Commission  
Level 10, Terrace Tower, 80 William Street  
EAST SYDNEY NSW 2011  
Via email: [AMOD@fwc.gov.au](mailto:AMOD@fwc.gov.au)

28 May 2019

**Re: AM2014/247 Sugar Industry Award 2010**

## **BACKGROUND**

1. The Chambers of Deputy President Asbury has provided parties with an amended draft determination subsequent to the decision of the Full Bench of the Fair Work Commission (**Full Bench**) on 26 March 2019.<sup>1</sup>
2. The Deputy President has invited parties to provide comments on the amended draft determination by 28 May 2019.
3. The comments of The Australian Workers' Union (**AWU**) are below.

## **SEASONAL EMPLOYEES**

4. The AWU agrees with the Full Bench that the seasonal employee deeming provision is more appropriately placed at clause 11.5(b) of the *Sugar Industry Award 2010* (**Award**).

## **PIECEWORK RATES**

5. The AWU notes that proposed sub-clause 20.2(f) currently seems to deny a casual employee engaged on a piecework basis his or her casual loading in the formulation of their piecework rate.
6. By virtue of our involvement in this process, the AWU is aware of the intent of the proposed sub-clause – to ensure that in calculating a piecework rate for a casual employee, the casual and piecework loadings are both calculated on the minimum hourly rate and then added together to form a total rate. The proposed sub-clause 20.2(f) does not achieve this intent.

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<sup>1</sup> [2018] FWCFB1980

7. The expression used in the proposed sub-clause appears to imply that the piecework loading is payable to a casual pieceworker *instead* of the casual loading. This is due to the clause focusing solely on the piecework loading being calculated on the minimum hourly rate and failing to state the actual entitlements due to the employee, which is inconsistent with the intent of the Full Bench in amending clause 20.2 of the Award.<sup>2</sup>
8. The AWU proposes the following amendments to proposed sub-clause 20.2(f) for the purposes of clarifying the elements of a casual employee's piecework rate and the method of calculation (changes in red):

“(f) Casual employees may be engaged on a piecework basis in accordance with this clause. ~~The Casual piecework employees are entitled to both the casual loading specified in clause 11.3(a) and the piecework loading specified in clause 20.2(a) is calculated and as such both loadings must be taken into account in calculating a casual employee's piecework rate. However, each loading is to be calculated on the minimum hourly rate identified in clause 38 for the employee's classification level and does not compound on the casual loading specified in clause 11.3(a) not on a compounding basis.~~”

9. The AWU submits that the above proposed amended clause achieves the intent of the Full Bench in amending clause 20.2 of the Award to clarify that both loadings are payable, and that the method of calculation is cumulative, not compounding.<sup>3</sup>

Yours faithfully,



Zachary Duncalfe  
**NATIONAL LEGAL OFFICER**  
**The Australian Workers' Union**

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<sup>2</sup> [2018] FWCFB1980 at [62]

<sup>3</sup> Ibid.