



REPORT TO FULL BENCH

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

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(AM2019/17)

COMMISSIONER BISSETT

MELBOURNE, 20 APRIL 2020

4 yearly review of modern awards – finalisation of Exposure Drafts and variation determinations – Vehicle Manufacturing, Repair, Services and Retail Award 2010.

[1] In submissions filed on 28 February 2020 The Australian Industry Group (Ai Group) identified an unintended effect of changes made to the provisions in relation to meal breaks and minimum breaks in the exposure draft for the Vehicle Repair, Sales and Retail Award.

[2] A conference of interested parties was held on 3 April 2020. That conference was attended by Ai Group, the Motor Traders Organisations (MTO) and the “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU). Arising from that conference the parties engaged in further discussion in an attempt to find an agreed resolution to the issues identified.

[3] The parties have produced a joint report and proposal arising from their discussions dated [17 April 2020](#) which addresses two issues detailed below. That report contains a joint proposal ([Attachment A](#)) and a proposal for a more extensive variation proposed by Ai Group and MTO but not supported by AMWU ([Attachment B](#)). An additional submissions was made by the [MTO](#).

1. Console operators’ exclusion from certain provisions

[4] The *Vehicle Manufacturing, Repair, Sales and Retail Award 2010* (2010 Award) has, in clause 26, the following:

26. Meal and rest breaks

26.1 This clause will not apply to a person principally employed to perform vehicle sales related duties, console operators or to employees on continuous shiftwork.

26.2 Meal breaks without pay will be for a period of not less than 30 minutes and not more than 60 minutes.

26.3 Subject to the exceptions provided below, an employee will not be required to work more than five hours without a break for a meal. An employee will be paid at the rate of time and one half for all time worked:

- (a) where the employee is required to work beyond five hours without a break for a meal; or
- (b) during meal breaks and thereafter until a meal break is allowed.

...

[underlining added]

[5] The exclusion at clause 26.1 operates on all aspects of clause 26.

[6] Clause 43 of the 2010 Award provides as follows:

43. Special provisions—driveway attendant, console operator and roadhouse attendant

43.1 Hours of work

- (a) For a person employed on a weekly, part-time or casual basis to principally perform duties of a driveway attendant, console operator or a roadhouse attendant as defined, the ordinary hours prescribed by clause 37.2 will be worked at the option of the employer in either of the following ways:
 - (i) continuously, on a daily basis except for meal and morning or afternoon tea breaks at the discretion of the employer; or
 - (ii) continuously, on a daily basis, with 20 minutes during such hours each day or shift for crib, whilst maintaining customer service. The 20 minute crib break will be counted as time worked.
- (b) A driveway attendant or console operator who is working alone is entitled to close and secure the work site so as to attend the toilet.
- (c) Provided that in the case of a person employed on a part-time or casual basis principally to perform the duties of a driveway attendant, console operator or a roadhouse attendant clauses 43.1(a)(i) and (ii) will not apply unless the time worked on any day has exceeded five hours.

[7] That is, the console operator excluded from clause 26 is covered by special provisions at clause 43.

[8] In the proposed Vehicle Repair, Sales and Retail Award clause 26, which deals with meal breaks, provides:

26. Breaks

26.1 Meal and rest breaks

- (a) Clause 26.1 will not apply to a person principally employed to perform vehicle sales related duties, or to employees on continuous shiftwork.

...

26.2 Working during or without a meal break

- (a) Subject to clause 26.2(b), an employee who works:
 - (i) beyond 5 hours without a meal break (or beyond 6 hours where agreed in accordance with clause 26.1(d)); or
 - (ii) during a meal break,

will be paid at **150%** of the minimum hourly rate for the time worked until a meal break is allowed.

[9] That is, the proposed clause does not contain the exclusion of console operators as currently applies in the 2010 Award.

[10] All parties agree that this matter is resolved by the following (as detailed in Attachment A of the report from the parties):

1. Amending clause 26.1(a) so that it reads:

26.1 Meal and rest breaks

- (a) Clause 26.1 will not apply to a person principally employed to perform vehicle sales related duties, or to employees on continuous shiftwork or console operators whose hours are organised otherwise than under clause 27.1(a)(i).

2. Amending clause 26.2 by inserting a new paragraph (a) and re-numbering clause 26.2 according:

26.2 Working during or without a meal break

- (a) Clause 26.2 will not apply to a person principally employed to perform vehicle sales related duties, employees on continuous shiftwork or console operators

[11] The Ai Group and MTO seek to add to the exclusions driveway attendants and roadhouse attendants. The MTO submits that this would better reflect the intention of the Full Bench of the Australian Industrial Relations Commission at the time of making the 2010 Award. The additional exclusions are not agreed to by the AMWU.

2. *Minimum break between shifts*

[12] The proposed Vehicle Repair, Sales and Retail Award has placed provisions in relation to the minimum break between shifts in Clause 26 – Breaks when it more properly sits within the Overtime provisions and not in provisions primarily concerned with meal breaks.

[13] All parties agree that clause 26.4 should be renumbered as clause 24.12.

[14] As a consequence clause 24.11 should be amended to read:

24.11 Breaks during and after overtime

An employee is entitled to overtime crib breaks in accordance with clause 26.3.

Preliminary view

[15] The proposal with respect to clause 24.11 – Minimum break between shifts as agreed by the parties be accepted and the parties advised accordingly.

[16] The joint proposal (attachment A to the joint report) with respect to clauses 26.1 and 26.2 be accepted.

[17] The Full Bench consider the additional exclusions under clauses 26.1 and 26.2 as sought by the Ai Group and MTO but not supported by the AMWU.


COMMISSIONER 

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