

## IN THE FAIR WORK COMMISSION

**MATTER NO: C2019/5259**

**Review of certain C14 rates in modern awards**

### **SUBMISSIONS OF CFMEU-MUA DIVISION IN REPLY**

#### **Background**

1. On 3 November 2023 the CFMEU-MUA Division (**MUA**) made submissions in relation to the following modern awards:
  - Marine Tourism and Charter Vessels Award 2020;
  - Maritime Offshore Oil and Gas Award 2020;
  - Port Authorities Award 2020;
  - Professional Diving Industry (Industrial) Award 2020;
  - Seagoing Industry Award 2020; and
  - Stevedoring Industry Award 2020.
2. On 6 November 2023 the Australian Workers' Union (**AWU**) made submissions in relation to the Marine Tourism and Charter Vessels Award 2020.
3. On 1 December 2023 Maritime Industry Australia Ltd (**MIAL**) made submissions in reply.
4. On 6 December 2023 Business NSW & Australian Business Industrial (**ABINSWBC**) made submissions in reply.

<b>Lodged by:</b> McNally Jones Staff Lawyers on behalf of the CPSU	Telephone:	(02) 9233 4744
<b>Address for Service:</b> Level 3, 131 York Street Sydney NSW 2000	Fax:	(02) 9223 7859
	Email:	nathan@mcnally.com.au
	Ref:	NK:TM:5585

### **Maritime Offshore Oil and Gas Award 2020**

5. The MUA notes that MIAL supports its submission that no changes should be made to the award on the basis that the aggregate salary for the lowest classification (provisional integrated rating) exceeds the C13 rate.

### **Port Authorities Award 2020, Professional Diving Industry (Industrial) Award 2020**

6. The MUA notes that no other submissions were lodged in relation to these awards. The MUA's position remains that the lowest classification (Level 1) in the Port Authorities Award 2020 should be deleted as it is not used and that no changes should be made to the Professional Diving Industry (Industrial) Award 2020 on the basis that the total weekly rate for the lowest classification (Diver's attendant) exceeds the C13 rate.

### **Marine Tourism and Charter Vessels Award 2020**

7. There is no consensus as to how to approach this award. MIAL (at [7]) and ABINSWBC (at [56]) submit that no variation is required and the AWU submits that there should be no competency or qualification based requirement for progression (at [117]).
8. The relevant part of the award is clause 12 which provides:

#### **12. Classifications**

##### **12.1 Crew Level 1**

- (a) This wage level is for the first 3 months of employment (probationary period). During this timeframe the 5 day Introduction Deckhand Course may be completed by the new employee.
- (b) Duties include but are not limited to:
  - the service, hospitality and entertainment of passengers;
  - the preparation of the vessel for departure/s;
  - the setting, trimming, and striking of sails as required;
  - the stocking and dispensing of liquor under direction of licensee;
  - the preparation of meals;
  - the ordering of stores; and

- the performance of duties as required by the immediate supervisor, Coxswain or Master.

(c) Qualification training is not mandatory.

#### 12.2 Crew Level 2

- (a) After completing the first 3 months of employment (probationary period) and upon the completion of the Introduction Deckhand Course or relevant experience/qualifications as determined by the employer, the employees' wage level will rise to that of the Crew Level 2 wage. (our emphasis)
- (b) Duties include all those of a Crew Level 1 employee, usually to a higher level of competence than a Crew Level 1 employee.

9. The concern that the MUA's proposed variation seeks to address is that it is not simply the effluxion of time that enables an employee to progress to Crew Level 2. Instead, employees must in addition either complete a course or have obtained experience as determined by the employer. There is nothing in the submissions of MIAL or ABINSWBC that explains how long an employee must remain at Crew Level 1 before they have obtained sufficient experience that every employer will accept that the employee is entitled to be progressed to Crew Level 2 in the circumstance that the employee has not completed the course.
10. In light of the submission of ABINSWBC at [59] that "in most cases they [the employee] would presumably have obtained relevant experience" during that 3 month period" the MUA supports the position of the AWU that there should be no competency or qualification based requirement for progression and at the end of 3 months the employee progresses to Level 2.

#### Seagoing Industry Award 2020

11. The MUA and MIAL agree that the classifications of OS, Wiper, Deckboy, Catering Boy, 2nd Cook and Messroom Steward in the table in clause A.1.1 should not simply progress to new classifications by the effluxion of time. Where we differ is that the MUA says that the rates for those classifications should be increased to the C13 rate after 3 months whereas the alternative position of MIAL is that this occurs after 6 months.

**Stevedoring Industry Award 2020**

12. The MUA submits that the Grade 1 classification has no application throughout the industry based on the evidence of Warren Smith and therefore should be deleted. This would ensure that no classification in the award is paid below the C13 rate. Whilst ABINSWBC submits at [75(c)] that “We anticipate that employers in the sector do from time to time engage new entrants to the industry who require initial training” they have not filed any evidence in support of that submission or to otherwise contradict Warren Smith’s evidence. He has not been required to make himself available for cross examination.
13. In those circumstances the retention of the classification with an outer-limit time period for which an employee can remain on Grade 1 before progressing to Grade 2 is unnecessary. Grade 1 should be deleted.

Dated: 13 December 2023

Nathan Keats  
Solicitor for the CFMEU – MUA Division