

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1988
s.113 application for variation

Australian Council of Trade Unions

and

Australian Chamber of Commerce and Industry
(C Nos 31484, 31485, 31486, 31487, 31488, 31489, 31490, 31491 of 1994)

and

Public Sector, Professional, Scientific Research, Technical, Communications,
Aviation and Broadcasting Union

and

Minister for Industrial Relations
(C No. 31494 of 1994)

SADDLERY, LEATHER, CANVAS AND PLASTIC MATERIAL WORKERS AWARD 1985
(ODN C No. 03936 of 1985)
[Print G0692 [S0001]]

HOTELS, MOTELS, WINE SALOONS, CATERING, ACCOMMODATION, CLUBS AND CASINO
EMPLOYEES (NORTHERN TERRITORY) CONSOLIDATED AWARD 1986
(ODN C No. 03276 of 1979)
[Print G6935 [H0021]]

COMMUNITY CARE SERVICES (A.C.T.) AWARD, 1987
(ODN C No. 03951 of 1984)
[Print G6635 [C0196]]

CSR WOODPANELS AWARD 1990
(ODN C No. 01065 of 1982)
[Print J2368 [C0275]]

TIMBER INDUSTRY AWARD 1990
(ODN C No. 00031 of 1950)
[Print J2380 [T0028]]

RETAIL AND WHOLESALE SHOP EMPLOYEES (AUSTRALIAN CAPITAL TERRITORY) AWARD 1983
(ODN C No. 03078 of 1982)
[Print J5408 [R0017]]

GENERAL CLERKS (NORTHERN TERRITORY) CONSOLIDATED AWARD 1985
(ODN C No. 01286 of 1980)
[Print G0198 [G0019]]

BRISBANE CITY COUNCIL SALARIED STAFF AWARD 1992
(ODN C No. 36257 of 1989)
[Print K2160 [B0056]]

ADMINISTRATIVE AND CLERICAL OFFICERS' (AUSTRALIAN PUBLIC
SERVICE) SALARIES AWARD 1986
(ODN C No. 07114 of 1986)
[Print G3598 [A0324]]

Various employees

Various industries

PRESIDENT O'CONNOR
VICE PRESIDENT McINTYRE
COMMISSIONER GAY

MELBOURNE, 10 OCTOBER 1994

Wage rates - supported wage system - disabled employee - joint application for a supported wage system - facilitates employment of workers with disability in open employment at a rate of pay commensurate with employee's assessed productive capacity - model clause defines conditions applying to such employees - awards varied.

DECISION

These matters came before the Commission as a result of joint applications under section 113 of the Industrial Relations Act 1988 (the Act) by the ACTU (acting on behalf of the relevant unions) and employers to vary the above awards by consent to include a model clause (annexured to this decision) which makes provision for the operation of the "Supported Wage System". The matters were heard by the Commission on 20 July 1994, when joint submissions were presented by the ACTU, employers and Commonwealth Government in support of the applications. The Governments of New South Wales, Queensland, Tasmania and the Australian Capital Territory also appeared to express their support.

The "Supported Wage System" facilitates the employment of workers with disabilities in open employment at a rate of pay commensurate with the employee's assessed productive capacity. The system is an important social and industrial advance.

The model clause, referred to above, defines the conditions to apply to employees who, because of the effects of a disability, are eligible for a supported wage under the terms of the clause. The clause among other things:

specifies the applicable percentages of minimum award rate of pay payable to an employee having regard to the employee's capacity;

provides for the assessment of an employee's productive capacity and its documentation in an assessment instrument;

requires the lodgment with the Registrar of all assessment instruments, including the appropriate percentage of the award to be paid to the employee; and

provides that, where an assessment has been made, the applicable percentages are to apply to the wage rate only and that employees will be entitled to the same terms and conditions of employment as all other workers covered by the award paid on a pro rata basis.

The model clause constitutes part only of the "Supported Wage System". Other parts of the system include a disability wage supplement paid through the social security system and other forms of support, such as on-the-job support and financial support for employers with respect to some of the additional costs of employing a person with a disability.

Where, in the awards before us, the model clause replaces an existing "slow" or "infirm" workers clause, it is agreed that a savings provision be added to the model clause to enable persons employed under the "slow" or "infirm" workers clause to continue to be paid under that clause as if the model clause had not been inserted in the award.

At the conclusion of proceedings on 20 July the Commission indicated that it intended to grant the applications to insert the model clause into the awards before it.

The Commission is satisfied that there is a jurisdictional basis for the proposed variations to each award and that the model clause is consistent with ILO conventions, the Disability Discrimination Act 1992, the Disability Service Act 1986, the objects of the Act and the Commission's own wage fixing principles. The Commission is also satisfied that the proposed model clause contains appropriate safeguards to ensure that the wages paid are equitable and that workers with disabilities are not exploited.

The Commission is conscious of the fact that the consent applications before it are an historic initiative which has attracted unanimous support from all the parties involved, and has been the result of extensive consultative processes. The model clause is, as the parties submitted, facilitative only; i.e. it will not be sufficient in itself to promote greater employment opportunities for people with disabilities. The clause, to be effective, requires a commitment by the industrial parties to make use of the award provisions. We confidently expect that this commitment will be forthcoming and that the model clause will be implemented in workplaces to assist those people with disabilities who may have previously found it difficult or impossible to compete for jobs in the open labour market. We hope that other awards of the Commission will be varied to include the model clause and that the parties to those awards will implement its provisions. The Commission congratulates the parties on their co-operation and considerable efforts in developing the "Supported Wage System" which, we hope, will encourage industry to employ workers with disabilities and assist the integration of disabled workers into the general workforce.

We publish separately orders varying each of the awards before us. These orders will come into force from the first pay period to commence on or after 20 July 1994 and will remain in force for a period of six months.

Appearances:

M. Ferguson with D. Whelan and J. Collins for the Australian Council of Trade Unions.

I. Spicer with R. Hamilton for the Australian Chamber of Commerce and Industry.

P. Core with P. Drever for the Minister for Industrial Relations for the Commonwealth.

J. Johnston for Her Majesty the Queen in right of the State of Queensland (intervening).

M. Trenerry for Her Majesty the Queen in right of the State of New South Wales (intervening).

J. Woodrow for the Government of the Australian Capital Territory (intervening).

L. Lawrence for Her Majesty the Queen in right of the State of Tasmania (intervening).

Hearing details:

1994.

Melbourne:

July 20.

ANNEXURE - MODEL CLAUSE

1 WORKERS ELIGIBLE FOR A SUPPORTED WAGE

(a) This clause defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this agreement/award. In the context of this clause, the following definitions will apply:

- (i) "Supported Wage System" means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability, as documented in "[Supported Wage System: Guidelines and Assessment Process]".
- (ii) "Accredited Assessor" means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.
- (iii) "Disability Support Pension" means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.
- (iv) "Assessment instrument" means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

Eligibility criteria

(b) Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this agreement/award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a Disability Support Pension.

(The clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this agreement/award relating to the rehabilitation of employees who are injured in the course of their current employment).

The award does not apply to employers in respect of their facility, programme, undertaking service or the like which receives funding under the Disability Services Act 1986 and fulfills the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under s.10 or under s.12A of the

Act, or if a part only has received recognition, that part.

Supported wage rates

(c) Employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this award/agreement for the class of work which the person is performing according the following schedule:

DECISION - VARIOUS INDUSTRIES

Assessed capacity % of prescribed award rate
(sub-clause (d))

10%*	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

(Provided that the minimum amount payable shall be not less than \$45 per week).

* Where a person's assessed capacity is 10%, they shall receive a high degree of assistance and support.

Assessment of capacity

(d) For the purpose of establishing the percentage of the award rate to be paid to an employee under this award/agreement, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either:

- in
- (i) the employer and a union party to the award/agreement, consultation with the employee or, if desired by any of these;
 - (ii) the employer and an accredited Assessor from a panel
- agreed
- by the parties to the award and the employee.

Lodgment of assessment instrument

- (e) (i) All assessment instruments under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Industrial Relations Commission.
- (ii) All assessment instruments shall be agreed and signed by
- the
- parties to the assessment, provided that where a union which is party to the award/agreement, is not a party to the assessment, it shall be referred by the Registrar to the union by certified mail and shall take effect unless an objection is notified to the Registrar within 10 working days.

Review of assessment

(f) The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

Other terms and conditions of employment

(g) Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the provisions of the clause will be entitled to the same terms and conditions of employment as all other workers covered by this award/agreement paid on a pro rata basis.

Workplace adjustment

(h) An employer wishing to employ a person under the provisions of this clause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

Trial period

- (i) (i) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
- (ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.
- (iii) The minimum amount payable to the employee during the trial period shall be no less than \$45 per week.
[or in paid rates awards]
- (iii) The amount payable to the employee during the trial period shall be \$45 per week or such greater amount as is agreed from time to time between the parties (taking into account the Department of Social Security income test free area for earnings) and inserted into this Award.
- (iv) Work trials should include induction or training as appropriate to the job being trialled.
- (v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under subclause (c) hereof.

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