

31 August 2018

Associate to President Ross
Fair Work Commission
11 Exhibition Street
MELBOURNE VIC 3000

BY EMAIL: amod@fwc.gov.au

Dear Associate,

AM2014/1 – NES Inconsistencies – Road Transport and Distribution Award 2010 [MA000038]

We refer to the decision of *4 yearly review of modern awards* [2014] FWCFB 9412 which was handed down by the Full Bench of the Commission on 23 December 2014 (**December decision**).

In the December decision at paragraphs 106 to 107, the Commission found that clause 30.5 of the *Contract Call Centres Award 2010* and clause 32.2 of the *Waste Management Award 2010* were inconsistent with provisions of the NES¹ as they imposed impermissible conditions on the public holiday entitlement. The identified modern award provisions removed an entitlement to payment for a public holiday where the employee is absent from work on the day before or after a public holiday without reasonable excuse or the employer's consent.

Determinations² giving effect to the December decision were issued on 27 May 2015 and the awards were varied accordingly.

The Transport Workers' Union of Australia (TWU) has since identified a similar provision in the *Road Transport and Distribution Award 2010* (**Road Transport award**). Clause 28.2(b) of the Road Transport award provides that:

¹ ss. 114(1) and 116 of the *Fair Work Act 2009*.

² PR567219 (*Contract Call Centres Award 2010*), PR567227 (*Waste Management Award 2010*).

An employee who, without the consent of their employer or without reasonable cause, is absent from work on the day before or the day after a public holiday is not entitled to any payment for such public holiday.

In our view, the operation and effect of clause 28.2(b) is identical to that of clause 30.5 of the *Contract Call Centres Award 2010* and clause 32.2 of the *Waste Management Award 2010* as they were at the time of the December decision.

Given the Commission's finding in the December decision as set out above, the TWU submits that clause 28.2(b) of the Road Transport award is inconsistent with the NES and accordingly, requests that it be deleted from the Road Transport award in its entirety to ensure consistency.

Yours sincerely,



Wendy Carr

Director of Legal & Operations

Transport Workers' Union of Australia

