

From: Kimberly Pearsall [<mailto:KPearsall@nff.org.au>]
Sent: Tuesday, 17 April 2018 3:50 PM
To: Chambers - Ross J; AMOD
Subject: AM2014/231 - Horticulture Award

Dear Associate and AMOD

I refer to paragraph 122 to 124 of the Commission's decision [2018] FWCFB 1405 where the Commission asked the NFF to confirm whether or not it presses its proposed variation in relation to the calculation of the "full rate of pay" and the "base rate of pay" for pieceworkers under the Horticulture Award 2010.

The NFF's current position is as follows.

- When issuing the 2nd exposure draft of the modern Horticulture Award on 3 April 2009 the AIRC stated the following ([2009] AIRCFB 345 at [41]):

*We refer also to piecework provisions generally. The terms of the NES require that modern awards should specify the base rate of pay and the full rate of pay which are to apply to pieceworkers. The base rate of pay is relevant to annual leave, personal/carer's leave, community service leave and redundancy pay. The full rate of pay is relevant to notice of termination and that part of the parental leave provisions which deals with transfer to a safe job. Since casual employees do not have any entitlement to annual leave under the NES, the issue only arises in relation to weekly employees who are pieceworkers and who therefore have a fixed number of hours of work per week. Debate on the question was extremely limited. **We have decided to apply the definitions of base rate of pay and full rate of pay in the NES to pieceworkers as if they were not pieceworkers.** Should this approach give rise to problems the matter can be reviewed in due course at the appropriate time.*

- The AIRC appears to have given effect to this decision at clause 15 of the 2nd exposure draft issued 3 April 2009, which provided that:

15.8 For the purposes of the NES, the base rate of pay for a pieceworker is the base rate of pay as defined in the NES.

15.9 For the purposes of the NES, the full rate of pay for a pieceworker is the full rate of pay as defined in the NES.

- On 23 December 2009 clause 15 was (in effect) varied to accommodate a change to the modern award request. As part of that variation, clauses 15.8 and 15.9 were consolidated and renumbered to become clause 15.10 in the modern Horticulture Award. Nevertheless, for present purposes the language and substance of the provisions remained identical.

15.10. For the purposes of the NES:

(a) The base rate of pay for a pieceworker is the base rate of pay as defined in the NES.

(b) The full rate of pay for a pieceworker is the full rate of pay as defined in the NES.

- Given the comments in the AIRC's 3 August 2009 decision, in the NFF's view the position is that, for the purposes of calculating rates of pay while on leave etc., the base and full rates of pay of pieceworkers is the base rate of pay and full rate of pay which the employee would have earned if he/she had not had a piecework agreement in place at the relevant time(s).
- Consequently, provided no variations are proposed with respect to clause 15.10 of the current award (clause 10.2(j) of the exposure draft), the NFF does not press for any variation.

Regards,
Kimberly

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