



Australian Road Transport
Industrial Organisation

ABN: 63 734 697 902

AUSTRALIAN ROAD TRANSPORT INDUSTRIAL ORGANISATION

Respect, Respond and Represent

Senior Deputy President Hamberger
Fair Work Commission
11 Exhibition St
Melbourne Vic 3001

By email: chambers.hamberger.sdp@fwc.gov.au

Dear Senior Deputy President,

Re: 4 Yearly Review of Modern Awards – AM2016/32 - Road Transport Industry Awards

In accordance with your directions of 20 December 2016, please find attached the Australian Road Transport Industrial Organisation (ARTIO) submissions in these matters. ARTIO does not intend calling any witnesses however, it does expect to briefly cross examine several TWU witnesses, specifically:

- Garry Anderson
- Max Bird
- Daryl Coghill
- Mitchell O'Brien

Please contact Paul Ryan, National Industrial Advisor, on 0415331031 should you need any further information. Unfortunately, I will not be able to participate in the telephone mention for programming listed for 9.30am this coming Friday, 3 March.

Yours faithfully

Paul Ryan

National Industrial Advisor

2 March 2017

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FAIR WORK COMMISSION

4 yearly review of modern Awards – Road Transport Industry Awards

Matter No: AM2016/32

Submission by the Australian Road Transport Industrial Organisation (ARTIO) on applications by the Transport Workers' Union and the Ai Group to vary the Road Transport Awards

Background

1. The Australian Road Transport Industrial Organisation (ARTIO) is an Industrial Organisation of Employers registered under the Fair Work Act 2009. It represents employers in the transport and logistics industry. As at 31 December 2016, it had around 450 members. These include the large multi-national transport companies down to the small family owned businesses that perform a large percentage of Australia's freight task.
2. ARTIO operates as a federation with Branches in all States except South Australia. ARTIO and its Branches operate independently and in accordance with a common set of rules applying across the Organisation.
3. ARTIO Council, which has a representative from each State, meets on a bi-monthly basis to consider and discuss IR issues impacting on the organisation and its members. Much of its day-to-day activities are carried out by the Branches, especially when dealing with operational IR issues. This submission is made on behalf of the Organisation and its Branches.

Road Transport and Distribution Award 2010

Ai Group Proposals

4. The Ai Group is seeking to vary the Road Transport and Distribution Award (RTD Award) as follows:

1. Clause 19 would be varied so that an employee must work for 2 hours in a higher grade before an entitlement arises to be paid at that higher rate;
2. Clause 26.3 would be varied so that an employee, if notified the day before of a requirement to work overtime, would not be entitled to be paid a meal allowance.

5. ARTIO does not support either of these proposals.

Clause 19 - Higher duties

6. The current provision, which has been applicable since the Transport Workers Award 1983, has operated on the basis of where an employee works for any time on a particular day in a higher grade of vehicle then that employee is entitled to be paid at that higher rate for the whole day.
7. This arrangement avoids any disagreement at the workplace because both employer and employee understand that the driving of a vehicle on a public road is remunerated at the higher level if it occurs at any time.
8. The Ai Group proposal will lead to arguments and disputes at the workplace over whether or not an employee has satisfied the '2 hour' test to determine whether the higher rate is payable. It will cost more in administration and record keeping than maintaining the current arrangements.
9. Further, from an operational perspective the likelihood of an employee being directed to drive a higher classified vehicle to make a delivery for less than 2 hours is almost non-existent. The industry does not operate in that fashion.
10. The Ai Group submission compares the situation in other awards, where employees are in office or factory style environments. They are not out on the road and dependent on traffic and other conditions.
11. The current arrangements have been applicable for the last 30 years at least and work well. ARTIO is not aware of any disputes around this particular clause, because it is crystal clear to all concerned on how it applies and it is well understood.
12. ARTIO notes that the Ai Group has not provided any figures, or estimates, of what savings could be achieved as a result of this variation.

Clause 26.3 – Meal allowance Entitlement

13. It is well accepted within the road transport industry that an employee is expected to work around 50 hours per week to meet the transport task.
14. Once again, the current meal allowance provision has been around for over 30 years, since the Transport Workers' Award 1983, and it is a well-established and accepted entitlement in the industry.
15. It is also well understood by those close to the industry that the age profile is increasing and it is difficult to attract younger persons to a job with early starts and a requirement to work hard for around 50 hours per week.
16. There is a driver shortage across Australia.
17. If this provision was changed as the Ai Group are seeking to do it would remove around \$75 per week from many current employees. This would make it more difficult to attract employees to the industry, especially drivers, and ensure that employees are 'ready, willing and available' to work the overtime required to meet the freight task.
18. The current arrangements allow an employer to either pay a meal allowance or, alternatively, to provide a meal to those employees required to work 2 or more hours overtime after completing their ordinary hours of work.
19. There is also another rider applicable and that is 'for each meal required to be taken'. ARTIO considers that this means that a meal allowance would not be payable if the overtime is worked at a time when 'no meal is required to be taken'.
20. For example, in ARTIO's view, there would be no entitlement to a meal allowance for overtime which commenced at 2.30pm and concluded at 4.50pm as that is not a time when 'a meal is required to be taken'.
21. As with the previous proposal, Ai Group has not provided any figures, or estimates in savings, that would result from their proposed variation.

TWU Proposals

22. The TWU is seeking to vary the RTD Award to:
 - i. Insert a definition of driver duties;
 - ii. Amend the definition of Road Transport and Distribution Industry;

- iii. Insert a provision to allow work performed under another award to be counted as ordinary hours for an employee who is then required to temporarily perform duties under this award.
23. **In principle, ARTIO supports the TWU proposal in i. above to insert a definition of ‘driver duties’ on the proviso that any such definition not be exhaustive and must allow for tasks to be included, and or amended, at the work place level.**
24. ARTIO notes that the current application does not list driver duties such as - DG placarding, load restraint or safety related tasks/issues. These are clearly part of a driver’s job description and must be able to be performed when an employer requires.
25. **With respect to the definition of Road Transport and Distribution Industry, ARTIO maintains a neutral position.**
26. **ARTIO opposes the TWU application with respect to being temporarily engaged under the RTD Award to perform local driving duties, having already performed work under another award – specifically the Road Transport (Long Distance Operations) Award 2010 (LDO Award).**
27. ARTIO considers that this is directed to dealing with the situation where a driver might have time left in his work diary and can therefore perform some local work, after completing a long distance trip.
28. ARTIO notes that when an employee is engaged in a long distance trip he is already paid a notional overtime component of 20%, or 2 hours in 10, for all work performed under the LDO Award.
29. It would be unacceptable if the period of time worked under the LDO Award was then counted as ‘ordinary hours’ especially, when it has been remunerated at an overtime rate.
30. ARTIO does not accept that ‘ordinary hours of work’ can be combined under different awards.

Road Transport (Long Distance Operations) Award 2010

31. The TWU is seeking to vary the LDO Award to:
 - i. Ensure that a driver working under an accredited Fatigue Management Plan (FMP) is provided with a copy of such plan;

- ii. The introduction of a pick-up/drop off allowance (PUD) for long distance work done where:
 1. the driver is required to 'pick-up or drop off' at 2 or more locations, either at the principal point of commencement or principal point of destination. Such allowance to be calculated under the same formula for 'loading/unloading' work. (hourly rate x 1.3);
 2. the driver is required to 'pick-up or drop off' en route between the principal point of commencement and principal point of destination, then an allowance calculated as above be paid.
32. **ARTIO supports the variation proposed by the TWU to provide a driver with a copy of any accredited FMP under which the driver is expected to work.**
33. **ARTIO opposes the amendments proposed by the TWU around the 'pick up and drop off' (PUD) allowances.**
34. ARTIO notes that the current award terms provide payment based around 'principal point of commencement to principal point of destination' – it does not prescribe 'sole point' or 'single point', so it would be ARTIO's submission that a driver can be expected to perform an additional pick up or delivery at either end of the trip within reasonable constraints.
35. ARTIO would consider that a drop off to Botany when the 'principal point of destination' was Blacktown or its surrounds would not be reasonable as it is over 50 kilometres and would take at least an hour, probably more in traffic.
36. Finally, ARTIO notes that this claim by the TWU is not really an allowance. It is a claim for 'an hourly rate for additional hours worked' beyond a single pick up or drop off.
37. As such, it represents a substantial change to the current award provisions and should be processed as a 'work value claim' under s. 157 (2) of the Fair Work Act 2009.

Conclusion

38. In summary, ARTIO supports:
 - i. The provision of an accredited FMP to drivers and

- ii. Gives 'in principle support' to the definition of driver duties, provided that any list is not exhaustive and any proposed variation allows for the employer to expand and define additional driver duties at the depot, yard or workplace level.
39. ARTIO does not support:
- i. The Ai Group proposals to amend the RTD Award with respect to higher duties or the removal of an entitlement to a meal allowance if notified the day before.
 - ii. The TWU proposals around the introduction of 'pick-up or drop off' allowances in the LDO Award.
 - iii. The TWU proposal to have 'ordinary hours' counted under the RTD Award by including work performed under the LDO Award, which already includes an overtime component.
40. With respect to the TWU application to refine the definition of 'Road Transport and Distribution Industry' ARTIO remains neutral.