

## National Farmers' Federation Limited

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19 August, 2003

Justice Giudice  
President  
Australian Industrial Relations Commission  
Nauru House  
80 Collins Street  
**MELBOURNE VIC 3000**



Dear Justice Giudice

**Re: ACTU Work & Family Case (C2003/4302 & oths)**

The National Farmers' Federation (NFF) is acting on behalf of *Craig Mostyn Packing Co, Geoffrey Thompson Fruit Packing & Zurcas Coolstore & Packing* being members of the Victorian Farmers' Federation. The three businesses are respondents to the *Storage Services – Fruit Packing – Victoria Award 2002* [AW818390]. The respondents seek to vary the Award as attached.

NFF seeks to have this matter joined with the *ACTU Work & Family Case (C2003/4302 & oths)* as one of a number of counter applications being filed by employer groups.

The NFF application seeks to vary the award to include provisions to assist an employee to balance work and family responsibilities.

Yours sincerely



**DENITA HARRS**  
Industrial Advocate

FORM R6

Workplace Relations Act 1996

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

APPLICATION TO SET ASIDE OR VARY AN AWARD



IN the matter of:

**STORAGE SERVICES - FRUIT PACKING - VICTORIA - AWARD  
2002 [AW818390]**

Application is made by the respondent members of the Victorian Farmers' Federation being *Craig Mostyn Packing Co, Geoffrey Thompson Fruit Packing & Zurcas Coolstore & Packing* for variation of the abovementioned award in the following terms:

*Part 2 – Award Flexibility*

- [1]. Insert new clause 8A, "Flexibility To Balance Work And Family Responsibilities", as follows:

**8A. FLEXIBILITY TO BALANCE WORK AND FAMILY RESPONSIBILITIES**

- 8A.1** An employee may request, and employer may agree to vary hours, days and times of work (including breaks and meal times), on the basis of employee family responsibilities.
- 8A.2** Agreed variations may be on an ongoing basis, or as single or periodic variations to accommodate particular employee requests.
- 8A.3** Where agreement is made under this clause, that agreement shall apply notwithstanding any contrary provisions of this award.
- 8A.4** This clause operates only by agreement. Nothing compels an employee to make a request under this clause, or an employer to agree to a request.

- [II]. Insert new clause 8B, "Payment for Agreed Hours of Work", as follows:

**8B. PAYMENT FOR AGREED HOURS OF WORK**

- 8B.1** All varied hours worked at the request of the employee and by agreement between employer and employee under clause 8A, *Flexibility To Balance Work And Family Responsibilities*, shall be payable at the employee's ordinary time rate of pay, regardless of when the varied time is worked.
- 8B.2** No additional penalties, loadings, allowances, or payments which may otherwise apply under this award, will apply to hours varied at the employee's request under clause 8A.

*Part 4 – Employer and employees' duties, employment relationship and related arrangements*

- [III]. Delete clause 10.1, and insert the following:

- 10.1** An employer may employ persons on work, whether time work or piecework, covered by this award under one of the following classes of engagement:

**10.1.1 Weekly employees**

On a weekly basis; i.e. engaged and paid by the week and to become entitled to a weekly wage will be ready, willing and available to perform his or her usual work during the days and hours usually worked by such class of employee.

**10.1.2 Regular part-time employees**

- 10.1.2(a)** An employer may employ regular part-time employees in any classification in this award.

- 10.1.2(b)** A regular part-time employee is an employee who:

- (A) works less than full-time hours of 38 per week; and
- (B) has reasonably predictable hours of work; and
- (C) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

- 10.1.2(c)** At the time of engagement the employer and the regular part-time employee will agree in writing, on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.
- 10.1.2(d)** Any agreed variation to the regular pattern of work will be recorded in writing.
- 10.1.2(e)** An employer is required to roster a regular part-time employee for a minimum of three consecutive hours on any shift.
- 10.1.2(f)** An employee who does not meet the definition of a regular part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with 13.4.
- 10.1.2(g)** All time worked in excess of the hours as mutually arranged will be overtime and paid for at the rates prescribed in clause 24 - Overtime, of this award.
- 10.1.2(h)** A regular part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.
- 10.1.2(i)** Commencement of part-time work and return from part-time to full-time work shall not break the continuity of service or employment.
- 10.1.2(j)** The capacity of employers and employees to enter into part time employment, including for the purpose of assisting employees to balance work and family responsibilities, shall not be restricted by provisions of this award which have the following effects:
  - (A)** Any limits or restrictions on the hours, days or times at which part time employment may or may not be worked.
  - (B)** Any limits or restrictions on the capacity of part time employees to work during particular hours, or to work particular patterns of hours of work.
  - (C)** Any limits or restrictions on the duration of part time employment.

### **10.1.3 Seasonal employees**

On a two day basis only during the season in which case employment will be terminated by two days notice on either side given at any time during the day or by the

payment or forfeiture, as the case may be, of two days' ordinary wages, provided that for the purposes of this award, employees will be treated as weekly employees on a pro-rata basis where appropriate.

**10.1.4 Casual employees**

**10.1.4(a)** On a casual basis, in which case an employee shall be guaranteed not less than two hours engagement every start. Casual employment shall be terminated by one hour's notice on either side given at any time or the payment or forfeiture, as the case may be, of one hour ordinary pay.

**10.1.4(b)** A casual employee will be paid per hour 1/40th of the sum of the weekly wage rate prescribed by this award for the work which he or she performs plus 33-1/3rd% which is in lieu of annual leave, sick leave, public holidays, long service leave and bereavement leave.

**10.1.4(c)** The capacity of employers and employees to enter into casual employment, including for the purpose of assisting employees to balance work and family responsibilities, shall not be restricted by provisions of this award which have the following effects:

(A) Any limits or restrictions on the hours, days or times at which casual employment may or may not be worked.

(B) Any limits or restrictions on the capacity of casual employees to work during particular hours, or to work particular patterns of hours of work.

(C) Any limits or restrictions on the duration of casual employment.

[IV]. Insert new clause 11A, as follows:

**11A. UNPAID ABSENCE**

**11A.1** By agreement between employer and employee, including for the purpose of assisting an employee to balance work and family responsibilities, the employee may be granted periods of unpaid absence from hours, days and times that otherwise would have been rostered hours of work.

**11A.2** Accruals of all entitlements will cease for the duration of any approved unpaid absence in excess of one week.

**11A.3** Approved unpaid absence will not break continuity of service.

- 11A.4** The employer may require the employee to access all unused paid leave accruals, and any unused rostered days off, prior to the employee being granted unpaid absence.

*Part 6 – Hours of work, breaks, overtime, shift work, weekend work*

- [V]. Delete clause 21.6 "Make-up time", and insert the following:

**21.6 Make-up time**

- 21.6.1** An employer and employee may agree, including for the purpose of assisting the employee to balance work and family responsibilities, to the employee working 'make up time', under which the employee takes time off during ordinary hours and works those at a later time, at the rate which would have been applicable to the hours taken off.

- 21.6.2** There is no requirement that "make up time" be worked within ordinary hours of work under this award, nor within an employee's ordinary or usual hours of work.

- [VI]. Delete clause 25, '*Saturday Work*', and insert the following:

**25. SATURDAY WORK**

Subject to clause 26A, work performed on a Saturday shall be at the rate of time and a half for the first two hours and double time thereafter, provided that all time worked after 12.00 noon shall be paid at double time.

- [VII]. Delete clause 26, '*Sunday Work*', and insert the following:

**26. SUNDAY WORK**

Subject to clause 26A, weekly employees shall be paid double time for all work done on a Sunday.

- [VIII]. Insert new clause 26A, as follows:

**26A Time off in lieu of payment for penalty rates**

- 26A.1** By agreement between employer and employee, including for the purpose of assisting the employee to balance work and family responsibilities, time off at the penalty equivalent, or any part of it, may be taken in lieu of penalty rates otherwise payable for work performed during ordinary hours.

- 26A.2** This clause does not apply to penalties / additional payments for shift work or overtime.
- 26A.3** Such time off shall be taken within 28 days or is accumulated and added to the period of annual leave.

### *Part 7 – Leave of absence and public holidays*

[IX]. Delete clause 27.1.2, and insert the following:

- 27.1.2** If the employer and employee agree, including for the purpose of assisting the employee to balance work and family responsibilities, annual leave may be given and taken in separate periods, including single days.
- 27.1.2(a)** Access to annual leave, as prescribed in 27.1.2, will be exclusive of any shutdown period provided for elsewhere under this award.
- 27.1.2(b)** An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.

[X]. Insert new clause 27.1.9, as follows:

- 27.1.9** Where employer and employee agree, including for the purpose of assisting the employee to balance work and family responsibilities, the 17½% annual leave loading, payable on annual leave referred to in this clause may be taken as an equivalent amount of paid leave.

[XI]. Insert new clause 27A, as follows:

#### **27A Purchased Annual Leave**

- 27.9.1** A full time or part time employee may with the agreement of the employer, including for the purpose of assisting the employee to balance work and family responsibilities, purchase between one (1) and six (6) additional weeks of annual leave.
- 27A.2** Purchase of additional annual leave will be implemented through a proportionate adjustment to an employee's weekly wage in each week of the year. This will be calculated according to the following formula:

$$\text{Adjusted weekly wage} = \text{Employee's ordinary time pay rate.} \times \left[ \frac{52 - \chi}{52} \right]$$

Where:  $\chi$  = number of agreed weeks of additional purchased annual leave (between 1 and 6).

This formula yields the following:

<u>Additional Weeks Leave Purchased</u>	<u>Proportion of Employee Wage</u>	
1 week	51/52	98.0769%
2 weeks	50/52	96.1538%
3 weeks	49/52	94.2308%
4 weeks	48/52	92.3077%
5 weeks	47/52	90.3846%
6 weeks	46/52	88.4615%

**27A.3** The 17½% annual leave loading payable on annual leave under clause 27, will not be payable on any additional annual leave purchased under this sub-clause.

**27A.4** Any agreement under this clause shall operate for a minimum period of twelve months.

[XII]. Delete clause 28.5, and insert the following:

**28.5 Carer's leave**

**28.5.1 Paid leave entitlement**

The amount of personal leave an employee may take as carer's leave depends on how long the employee has worked for the employer and accrues as follows:

**28.5.1(a)** during the first year - 3-1/3rd hours for each complete month of service;

**28.5.1(b)** during the second year of service - 64 hours ordinary pay; and

**28.5.1(c)** during the third and subsequent years of service - 80 hours ordinary pay.

**28.5.2** By agreement, an employee may take accrued personal leave of more than the amounts set out in 28.5.1(b) and 28.5.1(c).

[XIII]. Delete clause 29.2.2(b), and insert the following:

**29.2.2(b)** for adoption leave, an unbroken period of up to three weeks at the time of placement of the child; or

[XIV]. Insert new clause 29.2.2(c), as follows:

**29.2.2(c)** any additional period of simultaneous unpaid leave agreed between employer and employee.

[XV]. Delete clause 29.6, and insert the following:

**29.6 Variation of period of parental leave**

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change to be notified at least ten weeks prior to the commencement of the changed arrangements.

[XVI]. Delete clause 29.9.1, and insert the following:

**29.9.1** An employee will notify of their intention to return to work after a period of parental leave at least ten weeks prior to the expiration of the leave.

[XVII]. Delete clause 31.5, '*Payment for work performed on a public holiday*', and insert the following:

**31.5 Payment for work performed on a public holiday**

**31.5.1 Weekly employees**

Subject to clause 26A, when a weekly employee is required to work on one of the abovenamed holidays, the employee shall be paid double time for all work done but is not entitled to any additional holiday pay for the hours worked.

**31.5.2 Pieceworkers**

**31.5.2(a)** Subject to clause 26A, if a pieceworker is required to work on Christmas Day, Eight Hours' Day or Labour Day, Union Picnic Day, Australia Day, Good Friday and Anzac Day or any day or days substituted by Act of Parliament or Proclamation in lieu of such public holidays, the pieceworker shall be paid double time for all work done on such day, but shall not be entitled to holiday pay as prescribed in 31.1.2 for the time worked.

**31.5.2(b)** Subject to clause 26A, a pieceworker shall be paid rate and a half for all work done on New Year's Day, Easter Saturday, Easter Monday, Queen's Birthday, Boxing Day or on Melbourne Show Day

or the Local Show Day, or any day or days substituted by Act of Parliament or Proclamation in lieu of such public holiday.

The grounds on which this application is made are as follows:

1. To give effect to the Principal Object of the *Workplace Relations Act 1996* (s.3), by:
  - a. Encouraging the pursuit of high employment, improved living standards, low inflation and international competitiveness through higher productivity and a flexible and fair labour market (s.3(a) of the *Workplace Relations Act 1996*).
  - b. Ensuring primary responsibility for the interaction of work and family affecting the relationship between employers and employees, rests with employers and employees at the workplace or enterprise level (s.3(b) of the *Workplace Relations Act 1996*).
  - c. Enabling employers and employees to choose the most appropriate form of agreement for their particular circumstances (s.3(c) of the *Workplace Relations Act 1996*).
  - d. Providing means for conditions of employment to be determined as far as possible by the agreement of employers and employees at the workplace or enterprise level, upon a foundation of minimum standards (s.3(d)(i) of the *Workplace Relations Act 1996*).
  - e. Assisting employees in balancing their work and family responsibilities effectively through the development of mutually beneficial work practices with their employers (s.3(i) of the *Workplace Relations Act 1996*).
  - f. Helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin (s.3(j) of the *Workplace Relations Act 1996*).
  - g. Assisting in giving effect to Australia's international obligations in relation to labour standards (s.3(k) of the *Workplace Relations Act 1996*).
2. To give effect to the Objects of Part VI of the *Workplace Relations Act 1996* (s.88A) by ensuring that:
  - a. Awards act as a safety net of fair minimum wages and conditions of employment (s.88A(b)).
  - b. Awards remain simplified and suited to the efficient performance of work according to the needs of particular workplaces or enterprises (s.88A(c)).

- c. Awards encourage the making of agreements between employers and employees at the workplace or enterprise level (s.88A(d)(i)).
3. To maintain the award safety net of minimum conditions of employment, as provided for in s.88B(2) of the *Workplace Relations Act 1996*.
  4. To prevent industrial disputation in Australian workplaces as provided for in s.89 of the *Workplace Relations Act 1996*.
  5. To give effect to s.93A of the *Workplace Relations Act 1996*, and the principles embodied in the Family Responsibilities Convention referred to in that section, by:
    - a. Assisting in minimising discrimination against employees with family responsibilities.
    - b. Helping employees to reconcile employment and family responsibilities.
  6. To give effect to s.143(1b) of the *Workplace Relations Act 1996* ensure awards do not:
    - a. Prescribe work practices that restrict or hinder the efficient performance of work, thereby giving effect to s.143(1B)(b) of the *Workplace Relations Act 1996*.
    - b. Contain provisions that have the effect of restricting or hindering productivity, having regard to fairness to employees, thereby giving effect to s.143(1B)(c) of the *Workplace Relations Act 1996*.
  7. To give effect to s.143(1C) of the *Workplace Relations Act 1996* by ensuring awards:
    - a. Contain facilitative provisions that allow agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how the award provisions are to apply (s.143(1C)(a)).
    - b. Contain provisions enabling the employment of regular part-time employees (s.143(1C)(b)).
    - c. Are expressed in plain English and are easy to understand in structure and content (s.143(1C)(c)).
    - d. Do not contain provisions that are obsolete or that need updating (s.143(1C)(d)).

- e. Do not contain provisions that discriminate against an employee because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin (s.143(1C)(f)).
8. To introduce into the award system conditions of employment that address work and family responsibilities in way that gives proper regard to the needs and legitimate interests of employers and employees.
  9. To provide a fair and equitable safety net of minimum conditions of employment which enable employers and employees to address work and family responsibilities in a manner which is compatible with the needs and circumstances of individual businesses and individual employees.
  10. To give effect to s.144 of the *Workplace Relations Act 1996* by ensuring award provisions are framed to avoid unnecessary technicalities:
  11. To encourage improved consultation and discussion between employers and employees on the interaction of work and family considerations affecting the relationship between employers and employees in Australian workplaces.
  12. To enhance and support the capacities of employers to address employee familial, caring and parental considerations through improved access to paid leave and paid time away from the workplace during usual or ordinary hours of work.
  13. To enhance and support the capacities of employers to address employee work and family responsibilities through improved access to unpaid leave and unpaid time away from the workplace during usual or ordinary hours of work.
  14. To maximise the capacity of employers and employees to agree to leave arrangements which can support and improve the interaction between work and family affecting the relationship between employers and employees in Australian workplaces.
  15. To ensure that employees and employers have access to an appropriate range of employment / engagement options which maximise scope for employment arrangements that can complement, facilitate and support individual employee work and family responsibilities.
  16. To improve scope for employees and employers to agree at the workplace level to vary hours work to complement, facilitate and support individual employee work and family responsibilities.

17. To improve the operation of parental leave provisions in awards by ensuring employers have more appropriate notice of employee availability for work following parental leave.
18. Such other grounds as the Commission sees fit.

Dated: 19 August 2003



*Denita Harris*  
*National Farmers' Federation Industrial Advocate*  
on behalf of the respondent applicants being  
members of the Victorian Farmers' Federation

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To the persons and organisations bound by the abovementioned award:

National Union of Workers'  
Victorian Employers' Chamber of Commerce & Industry

You are hereby notified that the abovementioned application will be heard by [name of Commission member] at [time] on [date] at [place] and that you may appear and be heard at the time and place so fixed.

Dated

Member of Commission  
[or Registrar]

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