

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1988  
s.113 application for variation

**Transport Workers' Union of Australia**  
(C No. 30508 of 1990)

**SPRAYPAVE PTY LTD (BITUMEN SPRAYING ETC.) AWARD 1985<sup>(1)</sup>**  
(ODN C No. 00046 of 1984)

Transport workers Building, metal and civil  
construction industries

COMMISSIONER SIMMONDS MELBOURNE, 7 JANUARY 1991

**AWARD**

A. Further to the national wage decision issued by the Commission on 7 August 1989<sup>(2)</sup> the following award is made:

1 - TITLE

This award shall be known as the Transport Workers Spraypave Pty Ltd Award 1990.

2 - ARRANGEMENT

<u>Clause number</u>	<u>Subject matter</u>
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<sup>(1)</sup>Print G0538 [S024]

<sup>(2)</sup>Print H9100

2 - Arrangement - contd

<u>Clause number</u>	<u>Subject matter</u>
28	Accident make-up payment
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30	Jury service
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disputes or claims	
33	Introduction of change
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36	Maternity leave
37	No extra claims
Appendix A	District allowances
Appendix B	Agreements

## 3 - APPLICATION

This award shall operate from Tuesday 20 November 1990 and remain in force for a period of two years.

This award shall supersede the Spraypave Pty Ltd (Bitumen Spraying etc.) Award 1985, but no rights, obligations or liabilities incurred or accrued under that award shall be affected by such supersession.

## 4 - AREA AND SCOPE

This award shall apply to all employees of Spraypave Pty Ltd engaged in or in connection with the manufacture, placement or delivery of bituminous products and activities incidental thereto, the maintenance or construction of plant and equipment, the maintenance and propagation of clerical records, or any other activity undertaken by Spraypave Pty Ltd within Australia.

## 5 - DEFINITIONS

- (a) "Employer" means Spraypave Pty Ltd.
- (b) "Union" means the Transport Workers' Union of Australia.

(c) "Western District of Queensland" means all that part of the State of Queensland south-west of the boundary commencing at the State border at parallel 22 degrees 30 minutes of south latitude thence due east by that parallel of latitude of 147 degrees of longitude thence by that meridian of longitude due south to the twenty-fifth degree of south latitude thence due east by that parallel of latitude to 150 degrees of longitude thence due south by that meridian of longitude to the border of the State.

## 6 - CONTRACT OF EMPLOYMENT

- (a) Except as provided elsewhere in this award employment shall be by the week.
- (b) (i) Subject to subclause 6(c) hereof, employment may be terminated by the employer or employee giving the other the appropriate amount of notice as specified below or pay in lieu thereof, or part notice and part pay in lieu.

6 - Contract of employment (b) (i) - contd

<u>Period of continuous service</u>	<u>Period of notice</u>
1 year or less	1 week
1 year and up to 3 years	2 weeks
3 years and up to 5 years	3 weeks
5 years and over	4 weeks

In addition to the notice specified above the employer shall give employees 45 years of age or older, at the time of giving notice with not less than two years continuous service, an additional week's notice.

- (ii) (1) Termination of employment by an employer shall not be harsh, unjust, or unreasonable and shall include terminations with or without notice.

Without limiting the above, except where a distinction, exclusion or preference is based on the inherent requirements of a particular position, termination on the ground of race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin shall constitute harsh, unjust or unreasonable termination of employment.

- (2) Any dispute over whether a termination is harsh, unjust or unreasonable shall, subject to the Industrial Relations Act 1988, be dealt with in accordance with clause 32 of this award.

(c) The employer has the right to dismiss an employee without notice for neglect of duty or misconduct and in such cases wages shall be paid up to the time of dismissal only.

(d) An employee absent from duty, except as in accordance with annual leave, sick leave, bereavement or maternity leave, is not entitled to payment for the period of absence.

(e) It is a term and condition of employment and of rights accruing under this award that an employee shall:

- (i) Perform such work as the employer shall reasonably require.
- (ii) Work reasonable overtime at any time on any day of the week.
- (iii) Use appropriate protective clothing and equipment provided by the employer as directed by the employer.
- (iv) Carry out work as directed by the employer for safety of personnel and plant (including, when required, the continued operation of plant) and comply with the employer's direction to keep the workplace and equipment in a clean and safe condition.

6 - Contract of employment - contd

- (f) (i) Wages shall be paid fortnightly, provided that the last two days wages may be kept in hand; provided also that payment for overtime worked within the week prior to the pay day, need not be made until the succeeding pay day.
- (ii) Upon termination of employment, wages due to an employee shall be paid to him on the day of such termination, or forwarded to him by post on the next working day.

- (iii) On or prior to pay day, the employer shall state to each employee in writing the amount of wages to which he is entitled, the amount of deductions made therefrom, and the net amount being paid to him.
- (iv) Wages shall be paid by electronic transfer into a bank account as nominated by the employee. However, the bank account so nominated must be of a style nominated by the employer and at a banking institution nominated by the employer.

#### 7 - CASUAL EMPLOYEES

(a) Casual employees shall be paid for not less than four hours in any one day, at an hourly rate of one thirty-eighth of the weekly wage of the category in which they are employed, plus fifteen percent.

(b) Casual employees who are required to work in excess of eight hours per day, shall be paid in accordance with the overtime provisions of this award.

(c) Casual employees who are employed on an eight hour day basis shall accumulate 24 minutes for each such eight hours so worked towards a paid rostered day off.

(d) Casual employees shall be advised, prior to their finishing work on any day, of their requirement to attend for duty on the following day.

#### 8 - HOURS

(a) The ordinary hours of work shall be an average of 38 hours per week to be worked between the hours of 5.30 a.m. and 6.00 p.m., Monday to Friday, according to a roster established by the employer.

- (b)
  - (i) After each one hundred and 52 hours of ordinary time worked (nineteen days each of eight hours), the employee shall be entitled to a rostered day off.
  - (ii) Rostered day off entitlements will be accumulated, the maximum allowable accumulation being ten days over a 40 week period.
  - (iii) An employee shall take rostered days off subject to agreement between the employer and the employee regarding timing and location, and to the employee's rostered day off entitlement. In the absence of such agreement then with one week's notice, the employer may require the employee to take a rostered day or days off as directed, but this will not require such days to be taken at remote work sites.

8 - Hours (b) - contd

- (iv) (1) When there has been a cessation of operations resulting from annual or seasonal close-down, industrial action, compulsory closure as a result of a legislative direction, other circumstances beyond the control of the employer such as inclement weather, or in the event of machinery or plant breakdown, the employer may require the employees to take a rostered day or days off without prior notice to coincide with the day or days that operations were so affected, and such requirement may utilise up to a maximum of five rostered days off in advance of entitlement.
- (2) Where an employee takes a rostered day or days off in advance of the employee's entitlement in accordance with subparagraph 8(b)(iv)(1) above, each day advanced shall be offset at the rate of 152 hours of ordinary time worked subsequently.
- (v) The accrued rostered day or days off shall be taken and given as paid days off.
- (vi) When an employee is absent from duty on annual leave, long service leave, public holidays, paid sick leave, workers' compensation, bereavement leave or jury service, the employee's entitlement to accrue a rostered day off shall cease.
- (vii) The weekly wage as prescribed in clause 10 of this award will be paid for the ordinary hours worked in the subject week.
- (viii) Overtime and penalties will be paid for based on the appropriate overtime hours worked or penalty hours and on the ordinary hourly rate which is the weekly wage divided by 38.

## 9 - CLASSIFICATION

Employees will be classified as follows:

Group 1

- (a) A bitumen plant operator - group 1 shall mean an employee classified as such who is engaged on work in the manufacture of bituminous products, their placement or delivery and activities incidental thereto or any other activities undertaken by Spraypave Pty Ltd. The bitumen plant operator - group 1 may be required by the employer to perform any general duties including the completion of maintenance reports, minor maintenance of equipment and assisting with other maintenance, together with any of the duties listed hereunder, inclusive of trailer operations where required and, for training purposes, the duties of higher groups of bitumen plant operators.

## Duties - group 1

- (i) Yardman  
Slurry rake hand  
Drum filler/washer  
Labourer  
Traffic controller  
Sprayer operator  
Spreader hand

9 - Classification - contdGroup 2

(b) A bitumen plant operator - group 2 shall mean an employee classified as such who is engaged on work in the manufacture of bituminous products, their placement or delivery and activities incidental thereto or any other activities undertaken by Spraypave Pty Ltd. The bitumen plant operator - group 2 may be required by the employer to perform any general duties including the completion of maintenance reports, minor maintenance of equipment and assisting with other maintenance, together with any of the duties listed hereunder, inclusive of trailer operations where required and, for training purposes, the duties of higher groups of bitumen plant operators.

## Duties - group 2

- (i) Flat top truck driver
- Sign truck driver
- Bus driver
- Precoater operator
- Loader driver
- Steel roller driver
- Rubber-tyre roller driver
- Tractor driver
- Broom operator
- Fork-lift driver
- Light vehicle driver
- Other plant operator
- Refueller driver
- Pick up broom operator
- Clerical driver
- Bitumen emulsion tackcoater
- Product loader
- Load despatcher

Group 3

(c) A bitumen plant operator - group 3 shall mean an employee classified as such who is engaged on work in the manufacture of bituminous products, their placement or delivery and activities incidental thereto or any other activities undertaken by Spraypave Pty Ltd. The bitumen plant operator - group 3 may be required by the employer to perform any general duties including the completion of maintenance reports, minor maintenance of equipment and assisting with other maintenance, together with any of the duties listed hereunder, inclusive of trailer operations where required and, for training purposes, the duties of higher groups of bitumen plant operators.

## Duties - group 3

- (i) Tipper driver operating with spreader hand
- Bulk bitumen delivery driver
- Semitrailer driver
- Slurry machine driver

Group 4

(d) A bitumen plant operator - group 4 shall mean an employee classified as such who is engaged on work in the manufacture of bituminous products, their placement or delivery and activities incidental thereto or any other activities undertaken by Spraypave Pty Ltd. The bitumen plant operator - group 4 may be required by the employer to perform any general duties including the completion of maintenance reports, minor maintenance of equipment and

9 - Classification (d) - contd

assisting with other maintenance, together with any of the duties listed hereunder, inclusive of trailer operations where required and, for training purposes, the duties of higher groups of bitumen plant operators.

## Duties - group 4

- (i) Bulk bitumen "road train driver"  
Linemarker driver

Group 5

(e) A bitumen plant operator - group 5 shall mean an employee classified as such who is engaged on work in the manufacture of bituminous products, their placement or delivery and activities incidental thereto or any other activities undertaken by Spraypave Pty Ltd. The bitumen plant operator - group 5 may be required by the employer to perform any general duties including the completion of maintenance reports, minor maintenance of equipment and assisting with other maintenance, together with any of the duties listed hereunder, inclusive of trailer operations where required and, for training purposes, the duties of higher groups of bitumen plant operators.

## Duties - group 5

- (i) Bitumen sprayer driver (requires an assistant to complete "supply and spray" work)  
Linemarker operator  
Tipper driver operating without spreader hand  
Unqualified fitter  
Unqualified mechanic  
Unqualified welder

Group 6

(f) A bitumen plant operator - group 6 shall mean an employee classified as such who is engaged on work in the manufacture of bituminous products, their placement or delivery and activities incidental thereto or any other activities undertaken by Spraypave Pty Ltd. The bitumen plant operator - group 6 may be required by the employer to perform any general duties including the completion of maintenance reports, minor maintenance of equipment and assisting with other maintenance, together with any of the duties listed hereunder, inclusive of trailer operations where required and, for training purposes, the duties of higher groups of bitumen plant operators.

## Duties - group 6

- (i) Bitumen sprayer driver (requires no assistance to complete "supply and spray" works)  
Slurry machine operator  
Leading hand with supervisor or foreman  
Bitumen emulsion plant operator  
Fitter (trade certificate)  
Welder (trade certificate)  
Mechanic (trade certificate)

Group 7

(g) A bitumen plant operator - group 7 shall mean an employee classified as such who is engaged on work in the manufacture of bituminous products, their placement or delivery and activities incidental thereto or any

9 - Classification (g) - contd

other activities undertaken by Spraypave Pty Ltd. The bitumen plant operator - group 7 may be required by the employer to perform any general duties including the completion of maintenance reports, minor maintenance of equipment and assisting with other maintenance, together with any of the duties listed hereunder, inclusive of trailer operations where required and, for training purposes, the duties of higher groups of bitumen plant operators.

## Duties - group 7

(i) Leading hand

Group 8

(h) A bitumen plant operator - group 8 shall mean an employee classified as such who is engaged on work in the manufacture of bituminous products, their placement or delivery and activities incidental thereto or any other activities undertaken by Spraypave Pty Ltd. The bitumen plant operator - group 8 may be required by the employer to perform any general duties including the completion of maintenance reports, minor maintenance of equipment and assisting with other maintenance, together with any of the duties listed hereunder, inclusive of trailer operations where required and, for training purposes, the duties of higher groups of bitumen plant operators.

## Duties - group 8

(i) Foreman

## 10 - RATES OF PAY

(a) Employees other than casuals shall be paid at the rate specified for their classification below:

<u>Classification</u>	<u>Per week</u>
§	
Bitumen plant operator - group 1	395.50
Bitumen plant operator - group 2	405.60
Bitumen plant operator - group 3	415.80
Bitumen plant operator - group 4	422.45
Bitumen plant operator - group 5	445.90
Bitumen plant operator - group 6	466.00
Bitumen plant operator - group 7	486.00
Bitumen plant operator - group 8	503.00

(b) Applicable employees shall also receive the allowances listed in appendix A.

## 11 - SERVICE PAY

In addition to the wage rates as specified above, each employee shall receive a service margin, dependent upon their uninterrupted length of service with Spraypave as follows:

<u>Length of service</u>	<u>Service margin per week</u>
	§
6 months to 2 years	5.00
2 years to 3 years	10.00
3 years to 5 years	15.00
Over 5 years	20.00



## 12 - SICK LEAVE

(a) An employee, except for a casual employee, who is absent from work on account of personal illness or incapacity is entitled to payment of sick leave in accordance with this clause.

(b) Subject to this clause, an employee is entitled to five days leave in the first year of service and eight days leave in subsequent years of service.

(c) Sick leave not taken in any year may be accumulated from year to year, up to a maximum accumulation of ten years and taken in subsequent years, in addition to whatever sick leave may have accumulated in that year.

(d) The employee shall notify the employer, prior to the commencement of work, of the employee's inability to attend for duty and, as far as practicable, state the nature of the illness and incapacity and estimated duration of the absence. The employer may request the employee to provide proof that the employee was unable on account of illness or incapacity, to attend for duty for the period for which sick leave is claimed and in any event, the employee is not entitled to sick leave for more than two single day absences in any one year of service without the production of a certificate from a qualified medical practitioner.

(e) An employee on annual leave who suffers personal illness or injury may be entitled to additional paid leave for the period of that illness or injury if, within 24 hours of the employee's return to work after annual leave, the employee provides to the employer a certificate from a qualified medical practitioner that denotes that the employee was unfit to perform normal duties for a period of not less than five consecutive days.

(f) The additional annual leave to which an employee may be entitled pursuant to subclause 12(e) hereof, shall not exceed the amount of sick leave due to the employee at the time.

(g) Additional annual leave granted in accordance with subclause 12(e) hereof, shall be given and taken at a time to be agreed by the employer and employee.

(h) An employee granted additional leave as described in subclause 12(e) hereof, shall not be entitled to annual leave loading pursuant to subclause 13(c) of this award for that additional leave period.

## 13 - ANNUAL LEAVE

(a) Employees are entitled to four weeks leave on full pay for each twelve months continuous service with the employer and such leave shall accrue on a pro rata basis.

(b) On termination of employment, employees shall be paid for annual leave accrued pro rata but not taken.

(c) Prior to commencing annual leave, an employee shall be paid for that leave in advance at the ordinary time rate of pay for the employee's classification prescribed in clause 10 of this award, plus 22.5% of that amount.

(d) Annual leave shall be given and taken in a continuous period not later than six months after it accrues and at a mutually convenient time. Such continuous periods shall not exceed four in number.

13 - Annual leave - contd

(e) The employer may grant the employee annual leave before the right to the leave has accrued. No further annual leave shall then accrue until such time as the annual leave so given has been matched by the appropriate period of further continuous service.

(f) If annual leave is granted before its accrual, as detailed in subclause 13(e), and the employee leaves or is discharged prior to completing the qualifying service to which the leave in advance refers, the value of any outstanding leave in advance may be deducted by the employer from any payment due to the employee upon termination.

(g) An employee shall not accept other employment during annual leave and an employer shall not knowingly engage a worker who is on annual leave nor shall payment be made in lieu of annual leave.

(h) A public holiday, as prescribed by clause 14 of this award, which falls on what would have been an ordinary working day for an employee but for the fact that the employee is on annual leave, shall be added to the period of annual leave.

(i) Where a public holiday falls during a period of annual leave and the employee fails without reasonable cause to attend for work at the employee's ordinary starting time on the working day immediately following the last day of the period of annual leave, the employee shall not be entitled to be paid for such holiday.

(j) Subject to the preceding subclauses hereof, the timing of leave shall be by agreement between the employee and the employer.

## 14 - HOLIDAYS

(a) Employees other than casual employees are entitled to the following holidays without deduction of pay:

New Year's Day, Australia Day, Good Friday, Easter Monday, Labour Day (or the day observed as such), Anzac Day, the birthday of the Sovereign, Christmas Day, Boxing Day (except in South Australia where Proclamation Day shall apply), Adelaide Cup Day and Year End Holiday in South Australia, Easter Tuesday in Queensland, Melbourne Show Day in Victoria, Perth Show Day and Foundation Day in Western Australia.

(b) When Anzac Day falls on a Saturday or Sunday, the following Monday or the day gazetted by the relevant State Government to be observed as the Anzac Day shall be substituted for Anzac Day.

(c) Where, in a State or Territory or locality within a State or Territory, an additional public holiday is proclaimed or gazetted by the authority of the Commonwealth Government or of a State or Territory Government and such proclaimed or gazetted holiday is to be observed generally by persons throughout that State or Territory or a locality thereof, other than those covered by federal awards, or when such a proclaimed or gazetted day is, by any required judicial or administrative order, to be so observed then such day shall be deemed to be a holiday for the purposes of this award, for employees covered by this award who are employed in the State, Territory or locality in respect of which the holiday has been proclaimed or ordered as required. An employee shall not be entitled to the benefit of more than one holiday as a consequence of each such proclamation or gazettal.

14 - Holidays - contd

(d) An employee called upon to work on any of the holidays mentioned in subclause 14(a) hereof shall be paid triple time for all time worked, with a minimum payment as for four hours.

(e) Where an employee is absent from his employment on the working day directly before or after a holiday without the consent of the employer, the employee shall not be entitled to payment for such holiday.

## 15 - ACCOMMODATION, MEAL AND TRAVELLING ALLOWANCES

(a) For the purposes of this clause, meal allowance is the sum of \$6.20.

(b) An employee required to be absent from home overnight shall be provided by the employer with:

- (i) reasonable accommodation;
- (ii) an evening meal on the day of accommodation or a meal allowance;
- (iii) breakfast and lunch on the day following such accommodation or meal allowances;
- (iv) as an alternative to all of (i) (ii) and (iii) as above, the employee may, on direct approval from the employer, arrange his own accommodation and meals. On such occasions the employee shall be entitled to an allowance of \$37.60 per night.

(c) When an employee is not required to be absent from home overnight, the employee shall be paid a meal allowance when the employee:

- (i) commences work more than one and a half hours prior to the normal start time.
- (ii) works more than one and a half hours immediately after the employee's normal finishing time and that overtime is not due to the employee's fault or delay;
- (iii) notwithstanding paragraph (ii) of this subclause, works four hours overtime immediately after the employee's normal finishing time and for each additional four hours continuous work, provided the employee continues working after each qualifying four hour period.

(d) Where an employee is required by his employer to travel as a passenger by any conveyance, he shall, whilst so travelling, be paid at ordinary rates up to a maximum of twelve hours out of every 24 of such travelling except on Sundays or holidays, when payment shall be at the rate of time and one half, provided that when a sleeping berth is provided by the employer for all night travel, the maximum travelling time to be paid shall be eight hours out of every 24.

## 16 - OVERTIME

(a) All time of duty in excess of and/or outside of the hours prescribed in clause 8 of this award, shall be paid at the rate of time and a half for the first two and a half hours on any one day and double time thereafter, such double time to continue until the completion of the overtime worked.

(b) All overtime shall be paid on the weekly rate of wage that the employee is being paid.

(c) Each day's overtime shall stand alone and be paid for in addition to the ordinary weekly or casual wage, as the case may be.

(d) (i) An employee is entitled to ten hours off duty between the work of successive days (the rest period). If an employee works so much overtime on one day that the employee would not have the rest period before the normal starting time of the following day, the employee is entitled to be absent from work without loss of pay for ordinary working time occurring during such absence, until the employee has had the rest period.

(ii) If, in accordance with paragraph 16(d)(i) hereof, an employee would not be required to work until within two hours before the normal finishing time, the employee shall not be required to work at all on that day.

(iii) If an employee is instructed to work without having the rest period described by paragraph 16(d)(i) hereof, the employee shall be paid at double time until released from duty. He shall then be entitled to be absent until he has had such rest period off duty, without loss of pay for any ordinary working time which might occur during such absence.

(e) (i) An employee recalled to work overtime after leaving the employer's business premises (whether notified before or after leaving the premises) shall be paid for a minimum of four hours work at the appropriate rate for each time the employee is so recalled; provided that, except in the case of unforeseen circumstances arising, the employee shall not be required to work the full four hours if the job the employee was recalled to perform is completed within a shorter period. This subclause shall not apply in cases where it is customary for an employee to return to the employer's premises to perform a specific job outside the employee's ordinary working hours or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.

(ii) An employee who has not had ten consecutive hours off duty and responds to a recall after being contacted at home, shall, after completion of that call-back, be allowed to take a break of ten consecutive hours off prior to commencing ordinary work.

(f) (i) Subject to paragraph (e)(ii) of this clause, an employee contacted at home and called in to work, which requires the employee to make an additional trip to and from work, shall be paid one hour at the employee's ordinary rate of pay.

16 - Overtime (f) - contd

- (ii) An employee is not entitled to the travelling allowance provided in paragraph (f)(i) of this clause when it is customary for the employee to return to work to perform specific duties outside ordinary working hours.
- (g) (i) Subject to this clause an employee shall be paid:
  - (1) two hours at ordinary time rate for weekday overtime cancellation;
  - (2) four hours at ordinary time rate for Saturday, Sunday or Public Holiday overtime cancellation.
- (ii) An employee shall not be paid either of the above:
  - (1) if the employee is informed of the overtime cancellation or likelihood of overtime cancellation prior to leaving the workplace;
  - (2) if the employer by telephone or written notice to the employee's registered address advises that the overtime is cancelled prior to the time the employee would normally leave for work.
- (iii) An employee is entitled to a meal allowance if notification of overtime cancellation is not given at least one hour prior to the time the employee would normally leave for work and the employee would normally have a meal at work during the period of cancelled overtime.
- (h) (i) For all work done on a Saturday, the rates of pay shall be time and one half for the first two and a half hours and double time thereafter.
- (ii) For all work done on a Sunday, the rates of pay shall be double time.
- (iii) An employee required to report for work on either a Saturday or Sunday shall be paid for at least four hours at the appropriate rate for each attendance.

## 17 - UNIFORMS

(a) Where an employer requires a special uniform to be worn by employees while on duty, such uniform shall be supplied by the employer free of charge to the employee.

(b) Overalls, gloves, aprons, footwear and wet weather clothing shall be supplied to employees (together with such other special wearing apparel usually issued) working in places where it is agreed between the employer or the employer's representative and the secretary of the union or the union's representative that such are necessary. Two sets of protective clothing supplied in accordance with this provision shall be laundered once per week at the employer's expense.

Any articles issued under this clause remain the property of the employer.

## 18 - NIGHT WORK

To accommodate the operational demands of difficult work sites, it may be necessary to complete work at nights.

(a) Where employees are required to work at nights, the spread of hours shall be 5.30 p.m. to 6.00 a.m.

(b) Where employees are required to work at nights, their base rate of pay will be increased by 30%.

(c) An employee changing from the normal spread of hours to commence working under the spread of hours designated as night work in subclause 18(a) hereof, or vice versa, shall be entitled to the benefits of subclause 16(d) of this award.

(d) Employees shall receive verbal advice of their requirement to change from normal hours to night work or vice versa, at least 48 hours in advance of that change.

## 19 - UNAUTHORISED PERSONS ON VEHICLES

An employee shall not permit any unauthorised person or persons to accompany that employee on the employee's vehicle or permit any such person or persons to assist in the delivery of goods, wares, merchandise or material unless such person or persons have been engaged as an employee or is the owner of such goods, wares or merchandise or material or is the agent of such owner.

## 20 - TIME AND WAGES RECORD

(a) Each employer shall keep records at the yard or depot where the employee usually commences work or in a place easily accessible to both the employer and the employee.

(b) Such records shall show the name of each employee, the time the employee starts and finishes work each day, the number of hours worked by the employee, and the wages and overtime paid.

(c) Such records shall, on demand, be produced by the employer for inspection by any officials (not more than three in number at the one time) of the union duly authorised in writing by the President and secretary of the local branch or sub-branch of the union. The inspection shall be made at the place where the records are kept and during the usual office hours of such place, and the authorised union official shall be permitted to make a copy of extracts from such time and wages records relevant to the complaint the authorised union official is investigating.

(d) An employer may, at the employer's option, provide a mechanical clock for the purpose of such record.

(e) The employer and employee shall be severally responsible for the proper compilation of such time records daily.

## 21 - FIRST AID ALLOWANCE

An employee holding a current first aid qualification from St. John Ambulance or similar body and appointed by the employer to perform first aid duty, shall be paid, in addition to the employee's wages, \$9.50 per week while so appointed.

## 22 - RIGHT OF ENTRY

(a) For the purpose of interviewing employees on legitimate union business, a duly accredited union representative shall have the right to enter an employer's premises during the midday meal break, before the commencement and after the cessation of work each day.

(b) Provided that, where any employees are working at times which preclude a representative from interviewing them during the midday meal break, the representative shall have the right to enter the employer's premises for the purpose of interviewing such employees at such time and under such conditions as may be mutually arranged by the representative and the employer and provided that the union representative first approaches the appropriate company officer before interviewing any such employee.

## 23 - UNION DELEGATE

(a) An employee appointed as union delegate (or an employee appointed as co-delegate to act in the absence of the delegate) in a yard or depot shall, upon notification thereof to the employer by the branch or sub-branch secretary of the union, be recognised as the accredited representative of the union and shall be allowed the necessary time during working hours to interview the employer or the employer's representative on matters affecting employees in the yard or depot.

(b) A union delegate or, in the delegate's absence the co-delegate may interview a member or members of the union who are shift workers during their working hours, provided that, as a result of such interview, the employer is not required to pay overtime to such delegate, co-delegate or to the employees concerned.

(c) Where the employer is satisfied that a delegate's attendance at an Industrial Commission hearing will contribute to the proper conduct of proceedings involving the employer and the delegate's union, the delegate will be granted the necessary leave without loss of ordinary pay.

## 24 - AWARD TO BE EXHIBITED

A copy of this award and any variations thereto shall be posted and kept posted in a prominent position in an accessible place in each work location.

## 25 - MEAL BREAK

(a) One hour on Monday to Friday inclusive shall be allowed for a meal between 11.00 a.m. and 2.00 p.m., provided that, by agreement between an employer and the employees, the meal break may be shortened. Provided further that by agreement between an employer and the employees, the meal break may be taken earlier than 11.00 a.m. where the circumstances of the job so require. An employee shall not be required to work more than five hours without a break for a meal.

(b) If, on instructions from his employer, an employee is unable to have a full meal break between 11.00 a.m. and 2.00 p.m., he shall be paid double time from 1.00 p.m. until the full meal break is allowed.

## 26 - REST BREAK

Subject to the employer's safety regulations, all employees shall be allowed a rest break of ten minutes during each period of at least four hours ordinary working time, and during each continuous period of at least four hours performed on Saturdays, Sundays and holidays.

## 27 - TRANSPORT OF EMPLOYEES

(a) When an employee after having worked overtime finishes work at a time when the employee's normal means of transport or reasonable means of public transport are not readily available, the employer shall provide the

employee with a conveyance to such public transport as is available, or to the employee's home, or pay the employee at the ordinary time-rate of the employee's current wage for the time reasonably occupied in reaching the employee's home.

(b) When an employee, not having been notified before leaving the employer's business premises, is called in before the employee's usual commencing time to work overtime for which the employee has not been regularly rostered and at a time when the employee's normal means of transport or reasonable means of transport is not available, the employer shall provide the employee with a conveyance to the employee's place of work or pay the employee at the employee's ordinary rate for the time reasonably occupied in reaching the employee's place of work.

#### 28 - ACCIDENT MAKE-UP PAYMENT

(a) The make-up payment, prescribed in subclause (b)(iii) hereof, shall apply only in respect of an incapacity which results from an injury which is current during the first pay period which commences on or after 8 December 1980 or which occurs subsequent to that pay period.

(b) The circumstances under which an employee shall qualify for accident make-up payment shall be as prescribed hereunder:

- (i) An employer shall pay an employee accident make-up payment where the employee receives an injury for which weekly payment or compensation is payable by or on behalf of the employer, pursuant to the provisions of the appropriate Workers' Compensation or such other relevant Act, as amended from time to time.
- (ii) "Accident make-up payment" means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the said appropriate Act and the employee's appropriate 38 hour award rate, or, where the incapacity is for a lesser period than one week, the difference between the amount of compensation and the said award rate for that period.
- (iii) An employer shall pay, or cause to be paid, accident make-up payment during the incapacity of the employee within the meaning of the said appropriate Act until such incapacity ceases or until the expiration of a period of 52 weeks from the date of injury, whichever event shall first occur.
- (iv) The liability of the employer to pay accident make-up payment in accordance with this clause shall arise as at the date of the injury or accident in respect of which compensation is payable under the said appropriate Acts and the termination of the employee's employment for any reason during the period of any incapacity shall in no way affect the liability of the employer to pay accident make-up payment as provided in this clause.



28 - Accident make-up payment (b) - contd

- (v) In the event that the employee received a lump sum in redemption of weekly payments under the appropriate Acts, the liability of the employer to pay accident make-up payment as herein provided shall cease from the date of such redemption.
- (vi) An employer may at any time apply to the Australian Industrial Relations Commission for exemption from the terms of this clause on the grounds that an accident make-up payment scheme proposed and implemented by this employer contains provisions generally not less favourable to the employees than the provisions of this clause.

## 29 - BEREAVEMENT LEAVE

An employee (other than a casual employee) shall be entitled to a maximum of three days leave without loss of pay on such occasion and on the production of satisfactory evidence of the death in Australia of the employee's husband/wife, father, mother, brother, sister, child, step-child, or parents-in-law. For the purpose of this clause the words "wife" and "husband" shall include de facto wife or husband, and the words "father" and "mother" shall include foster father or mother.

## 30 - JURY SERVICE

Subject to the production of satisfactory evidence, an employee required to be absent from work due to jury service will be reimbursed by the employer for any loss of wages to the extent of the difference between the amount received for attendance on jury service and the ordinary time rate of pay during such absence.

## 31 - LICENCES

An employee required by law to hold a licence for vehicles or equipment used during the course of employment shall be reimbursed the cost of first obtaining that licence. This clause does not apply to private motor vehicle licences.

## 32 - SETTLEMENT OF DISPUTES OR CLAIMS

(a) Subject to the Industrial Relations Act 1988 as amended from time to time, any dispute or claim arising from the employment relationship covered by this award shall be settled in the manner set out below:

- (i) The matter shall first be discussed between the aggrieved employee and the employee's supervisor.
- (ii) If not settled by that discussion the matter shall be discussed between the union delegate and industrial officer or other appropriate officer of the employer.
- (iii) If not settled, the matter shall be further discussed between the State secretary of the union and the appropriate employer representative.
- (iv) If agreement has not then been reached, the matter shall then be discussed between a representative of the head office of the employer and the appropriate federal official of the union. This step need not apply when only one company is involved unless the employer or union requests otherwise.

32 - Settlement of disputes or claims (a) - contd

- (v) If the matter is still not settled, it shall be submitted to a member of the Australian Industrial Relations Commission whose decision shall, subject to the Industrial Relations Act 1988, be final and accepted by the parties.

(b) Until the matter is determined, work shall continue normally where it is agreed that there is existing custom, but in other cases the work shall continue as instructed by the employer. No party shall be prejudiced as to final settlement by the continuation of work in accordance with this clause.

## 33 - INTRODUCTION OF CHANGE

Employer's duty to notify

- (a) (i) Where an employer has made a definite decision to introduce major changes in production, programme, organisation, structure or technology that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and their union.
- (ii) "Significant effects" includes termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs. Provided that where the award makes provision for alteration of any of the matters referred to herein, an alteration shall be deemed not to have significant effect.

Employer's duty to discuss change

- (b) (i) The employer shall discuss with the employees affected and their union, inter alia, the introduction of the changes referred to in subclause 33(a) hereof, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or their unions in relation to the changes.
- (ii) The discussions shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in subclause 33(a) hereof.
- (iii) During such discussion, the employer shall advise the employees concerned and their union, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information, the disclosure of which would be inimical to the employer's interests.

34 - REDUNDANCY

Discussions before terminations

- (a) (i) Where an employer has made a definite decision that it no longer wishes the job the employee has been doing performed by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the employer shall hold discussions with the employees directly affected and with their union.
- (ii) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of paragraph 34(a)(i) hereof and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees concerned.
- (iii) During the discussion, the employer shall advise the employees concerned and their union, all relevant information about the proposed terminations, the number and categories of employees likely to be affected, and the number of workers normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information, the disclosure of which would be inimical to the employer's interests.

Transfer to lower paid duties

(b) Where an employee is transferred to lower paid duties for reasons set out in paragraph 34(a)(i) hereof, the employee shall be entitled to the same period of notice of transfer as he or she would have been entitled to if his or her employment had been terminated and the employer may at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.

Severance pay

(c) In addition to the period of notice prescribed for ordinary termination in subclause 6(b) hereof and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in paragraph 34(a)(i) hereof shall be entitled to the following amount of severance pay in respect of a continuous period of service:

<u>Period of continuous service</u>	<u>Severance pay</u>
1 year or less	nil
1 year and up to the completion of 2 years	4 weeks pay
2 years and up to the completion of 3 years	6 weeks pay
3 years and up to the completion of 4 years	7 weeks pay
4 years and over	8 weeks pay

34 - Redundancy (c) - contd

"Week's pay" means the ordinary time rate of a pay for the employee concerned.

Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

Employee leaving during notice

(d) An employee whose employment is terminated for reasons set out in paragraph 34(a)(i) hereof may terminate his or her employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had he or she remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

Alternative employment

(e) An employer, in a particular redundancy case, may make application to the Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

Time-off during notice period

- (f) (i) During the period of notice of termination given by the employer, an employee shall be allowed up to one day's time-off without loss of pay during each week of notice for the purpose of seeking other employment.
- (ii) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or he or she shall not receive payment for the time absent.

For this purpose, a statutory declaration will be sufficient.

Notice to Commonwealth Employment Service

(g) Where a decision has been made to terminate employees in the circumstances outlined in paragraph 34(a)(i) hereof, the employer shall notify the Commonwealth Employment Service thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

Superannuation benefits

(h) Subject to further order of the Commission, where an employee who is terminated receives a benefit from a superannuation scheme, he or she shall only receive under subclause 34(c) hereof the difference between the severance pay specified in that subclause and the amount of the superannuation benefit he or she receives which is attributable to employer contributions only.

If this superannuation benefit is greater than the amount due under subclause 34(c) hereof then he or she shall receive no payment under that clause.

34 - Redundancy - contdTransmission of business

- (i) (i) Where a business is, before or after the date of this award, transmitted from an employer (in this subclause called the transmittor) to another employer (in this subclause called the transmittee) and an employee who, at the time of such transmission, was an employee of the transmittor in that business becomes an employee of the transmittee.
- (1) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
- (2) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.
- (ii) In this subclause "business" includes trade, process, business or occupation and includes part of any such business and "transmission" includes transfer, conveyance, assignment or succession, whether by agreement or by operation of law and "transmitted" has a corresponding meaning.

Employees with less than one year's service

(j) This clause shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

Employees exempted

(k) This clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including wilful misconduct, malingering, inefficiency or neglect of duty or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks.

## 35 - BASIS OF SETTLEMENT

- (a) (i) This award is negotiated on the basis that it is in full settlement of claims generally.
- (ii) The rights of the union and the employer are reserved to confer with each other collectively with a view to a variation of this award during its currency due to a significant circumstance on an individual matter, subject to the union deciding at federal level or the respondent company agreeing that a significant circumstance has arisen to warrant such a conference.
- (iii) Any dispute arising out of the preceding paragraph 35(a) (ii) may be referred by either party to the Australian Industrial Relations Commission.

35 - Basis of settlement - contd

(b) Issues of a local nature, not requiring a variation of the award, which relate to the application of the award will be dealt with in accordance with existing procedures including reference to the Commission.

## 36 - MATERNITY LEAVE

Eligibility for maternity leave

(a) An employee who becomes pregnant shall, upon production to the employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that the employee has had not less than twelve months continuous service with that employer immediately preceding the date upon which the employee proceeds upon such leave.

For the purposes of this clause:

- (i) an employee shall include a part-time employee but shall not include an employee engaged upon casual or seasonal work.
- (ii) maternity leave shall mean unpaid maternity leave.

Period of leave and commencement of leave

- (b) (i) subject to subclauses (c) and (f) hereof, the period of maternity leave shall be for an unbroken period of from six to 52 weeks and shall include a period of six weeks compulsory leave to be taken immediately following confinement.
- (ii) an employee shall, not less than ten weeks prior to the presumed date of confinement, give notice in writing to the employer stating the presumed date of confinement.
- (iii) an employee shall give not less than four weeks notice in writing to the employer of the date upon which the employee proposes to commence maternity leave, stating the period of leave to be taken.
- (iv) an employer by not less than fourteen days notice in writing to the employee may require the employee to commence maternity leave at any time within six months immediately prior to the presumed date of confinement.
- (v) an employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with paragraph (iii) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

Transfer to a safe job

(c) Where, in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at the employee's present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

36 - Maternity leave (c) - contd

If the transfer to a safe job is not practicable, the employee may or the employer may require the employee to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (g) (h), (i) and (j) hereof.

Variation of period of maternity leave

- (d) (i) Provided the addition does not extend the maternity leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the employer, by the employee giving not less than fourteen days notice in writing stating the period by which the leave is to be lengthened.
- (ii) The period of leave may, with the consent of the employer, be shortened by the employee giving not less than fourteen days notice in writing stating the period by which the leave is to be shortened.

Cancellation of maternity leave

- (e) (i) Maternity Leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
- (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that the employee desires to resume work.

Special maternity leave and sick leave

- (f) (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then:
  - (1) the employee shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before the employee's return to work, or
  - (2) for illness other than the normal consequences of confinement, the employee shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which the employee is then entitled and which a duly qualified medical practitioner certifies as necessary before the employee's return to work.
- (ii) Where an employee not then on maternity leave suffers illness related to the pregnancy, the employee may take such paid sick leave as to which the employee is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before the employee's return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.

36 - Maternity leave (f) - contd

- (iii) For the purposes of subclauses (g), (h) and (i) hereof, maternity leave shall include special maternity leave.
- (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which the employee held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (c) hereof, to the position the employee held immediately before such transfer.

Where such position no longer exists but there are other positions available for which the employee is qualified and the duties for which the employee is capable of performing, the employee shall be entitled to a position as nearly comparable in status and salary or wage to that of the employee's former position.

Maternity leave and other leave entitlements

(g) Provided the aggregate of leave including leave taken pursuant to subclause (c) and (f) hereof does not exceed 52 weeks:

- (i) An employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which the employee is then entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on maternity leave.

Effect of maternity leave on employment

(h) Notwithstanding any award or other provisions to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

Termination of employment

- (i) (i) An employee on maternity leave may terminate the employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the ground of the pregnancy or of the employee's absence on maternity leave but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

Return to work after maternity leave

- (j) (i) An employee shall confirm the intention of returning to the employee's work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of maternity leave.



36 - Maternity leave (j) - contd

- (ii) An employee, upon the expiration of the notice required by paragraph (j)(i) hereof, shall be entitled to the position which the employee held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (c) hereof, to the position which the employee held immediately before such transfer. Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which the employee is capable of performing, the employee shall be entitled to a position as nearly comparable in status and salary or wage to that of the employee's former position.

Replacement employees

- (k) (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (ii) Before an employer engages a replacement employee under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising the employee's rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (v) A replacement employee shall not be entitled to any of the rights conferred by this clause except where the employment continues beyond the twelve months' qualifying period.

## 37 - NO EXTRA CLAIMS

It is a term of this award (arising from the decision of the Australian Industrial Relations Commission in the National Wage Case of 7 August 1989 (the terms of which are set out in Print H9100) that the union undertakes, for the duration of the principles determined by that decision, not to pursue any extra claims, award or overaward, except when consistent with those principles.

## APPENDIX A - DISTRICT ALLOWANCES

(a) Employees working in Western Australia shall be entitled to payment of a district allowance in accordance with the General Order of the Western Australian Industrial Relations Commission published in volume 68 of the Western Australian Industrial Gazette and as amended from time to time.

(b) Employees working in the Western District of Queensland shall be paid a district allowance of \$1.05 per week.

## APPENDIX B - AGREEMENTS

The following matters which have been agreed between the parties before the Commission, and which have not caused changes to existing award conditions, but rather generate agreed operating conditions, are listed here and should be referred to as though they are part of the award.

(a) Date: 29 May 1986, Melbourne

Before: Justice Maddern, President  
Justice Cohen  
Commissioner Paine

Agreement: The manning level on sprayers shall, where practical, be one man, the exception being when an additional man is required by work demands or by State Road Authorities or clients.

Agreement: The burner operation shall, where practical, be a one man operation, the exception being when an additional man is required by work demands or by State Road Authorities or clients.

Date of  
Operation: 2 April 1986.

(b) Date: 22 December 1988, Melbourne

Before: Commissioner Palmer

Agreement: Settlement of disputes or claims provisions to be strictly adhered to as covered by the award.

Agreement: The combined operation of driving and the spreading of aggregate will be completed by one man when this operation can be carried out safely and appropriate equipment is available.

Agreement: In order to contain costs and ensure the most efficient allocation of labour, if overtime is to be worked, manning levels must be decided by management.

Agreement: Drivers and operators agree to carry out minor maintenance on equipment, assist mechanics repair, as well as complete maintenance reports as and when required. The company will provide any necessary training to ensure the maintenance can be performed as required.

Agreement: Accidents are costly to both the individual and to the company. In the interest of personal safety, employees are required to ensure that the work place and equipment are kept clean and tidy at all times.

Agreement: Union meetings will not be held during working hours.

Agreement: Cash advances to the normal payroll will cease to be paid.

Appendix B - contd

Agreement: With mutual agreement between a work crew and the company, Sundays and holidays can be worked when employees are being accommodated by the company away from their normal home base. In remote locations where the non-working day benefit is considered minimal, the employee who agrees to work on the Public Holiday or Sunday will be paid at ordinary rates for the first eight hours worked and, thereafter, at overtime rates and receive the benefit of that day as leave at a future agreed time.

BY THE COMMISSIONER:

COMMISSIONER

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