



AFPA

DISPUTE NOTIFICATION

12th September 2007 – FOR IMMEDIATE DISTRIBUTION

AFPA DISPUTES AFP INTERPRETATION OF PENALTY PROVISIONS AND MANDATORY REST PERIODS

AFPA National President Jon Hunt-Sharman has lodged a formal dispute with the AFP NMHR relating to the interpretation of the Collective Agreement. If the dispute is not satisfactorily resolved at this level the AFPA is prepared to take it to the Industrial Commission.

The dispute relates to representations made in an all staff email by the AFP concerning the interpretation of particular penalty provisions in the CA. More specifically, the dispute relates to two areas:

1. The Safety Net Provisions (clause 20.2.4 of the CA)
2. Mandatory Rest Periods (clause 20.2.4(d))

The AFPA's position on these issues is clearly outlined in APEC Bulletins 1 and 2 that were distributed to members on Friday, August 31st. We believe the AFP position has arisen out of a genuine misunderstanding of the provisions.

The Safety Net Provisions

The AFP suggests that a consequence of a penalty payment for working beyond the hour limits set down in 20.2.4 is that the remaining Safety Net Provisions that provides protection from other excessive work practices or provide a separate penalty for working on a public holiday do not apply.

The Association believes that working beyond the hourly limits in clause 20.2.4(a) does not preclude the operation of the remaining distinct penalty provisions in 20.2.4, and those elsewhere in the Agreement.

Consider the following scenario by way of an example as to the Association's interpretation of the interaction of the Provisions:

I have worked 60 hours in 6 days and am required to attend duty for the 11th day in a row. I work for 8 hours on the 11th day (and 68 hours in a 7 day period)

If a member is required to work more than 10 consecutive days then, in accordance with 20.2.4(f), the member accrues double time hours towards their quarterly tally of hours until they are appropriately stood down. However, if, at the same time, a member exceeds the hourly limits

outlined in 20.2.4(a) then they are entitled to be paid the overtime rate for the hours actually worked. The hours actually worked (as opposed to the hours accrued) are paid at the overtime rate and do not count towards the quarterly tally of hours.

For that period of duty, double time hours accrue towards the quarterly total as a penalty for working more than 10 days in a row (i.e. 16 hours). In addition to this, the overtime rate is paid for the 8 hours in excess of the 60 hour limit for a 7 day period. The hours that attract the penalty payment (8 hours) do not count towards the quarterly total. Consequently, only 8 hours (of the 16 accrued hours) count towards the quarterly total and 8 hours are paid at the overtime rate as a separate penalty.

The Association is concerned by, and vigorously opposes the position that because a penalty payment applies in relation to particular hours, other distinct and equally serious penalties do not apply if breached simultaneously.

To do otherwise would be to unnecessarily place our members at risk. The AFP has a duty of care to abide by penalty provisions that they negotiated.

Mandatory Rest Periods

The AFP's position is that while there should be provision for rest periods between shifts that the Collective Agreement does not *literally* require that mandatory rest periods apply to a standard 8 hour shift and consequently there is no penalty for not providing a rest period.

While the AFP's position is consistent with a literal reading of clause 20.2.4(d), the Association's interpretation is based on custom and practice and the clear interpretation that was given to these words under the previous CA. A virtually identical clause in the previous CA was interpreted by both parties in a manner that required a minimum rest period for any shift of 8 hours or more (clarified in the CA Q&A). During negotiations, no indication was given by the AFP that the interpretation of this clause would change in any way.

The Association believes that this is not a responsible position for a law enforcement agency to take, particularly one where the nature of the work requires a vigilant approach to fatigue management for the safety of employees and the general public.

As per the dispute avoidance and settlement procedure, these matters are now with the National Manager of Human Resources. If no resolution can be reached at this level, the Association is prepared to take the final step in the process and apply to the Australian Industrial Relations Commission.

If you have any concerns about the issues in this bulletin or other CA 2007- 2001 queries please contact your local representatives or the AFPA National Office on afpa.industrial@afpa.org.au for more information.