

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999* - s. 698 - reprint of award

**MILK INDUSTRY TRANSPORT AWARD - SOUTHERN DIVISION 2003**

Pursuant to s. 698 of the *Industrial Relations Act 1999* Milk Industry Transport Award - Southern Division 2003 with all amendments as at 10 December 2009, is hereby reprinted.

I hereby certify that the Award contained herein is a true and correct copy of the Milk Industry Transport Award - Southern Division 2003 as at 10 December 2009.

Dated 10 December 2009.

G.D. Savill  
Industrial Registrar

**MILK INDUSTRY TRANSPORT AWARD - SOUTHERN DIVISION 2003**

**PART 1 - APPLICATION AND OPERATION**

**1.1 Title**

This Award is known as the Milk Industry Transport Award - Southern Division 2003

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### **1.3 Application of Award**

1.3.1 This Award shall apply to all persons engaged in or in connection with the carting, vending and distribution of milk, cream, butter, cheese and their derivatives within the Southern Division of the State of Queensland.

*Southern Division.-* All that part of the State south of a line commencing at the junction of the sea-coast with 22 degrees of south latitude; then by that parallel of latitude west to 147 degrees of east longitude; then by that meridian of longitude south to 22 degrees 30 minutes of south latitude; then by that parallel of latitude west to the western border of the State.

1.3.2 This Award shall not apply to any person who is covered by the Transport, Distribution and Courier Industry Award - Southern Division.

1.3.3 As to the employers named in the Schedule to this Award the provisions of the Award are modified in accordance with the requirements of the individual orders listed in such Schedule.

#### 1.4 Date of operation

This Award takes effect from 17 February 2003.

#### 1.5 Parties bound

This Award is legally binding upon the employees as prescribed by clause 1.3 and their employers, and the Union and its members.

#### 1.6 Definitions

- 1.6.1 The "Act" means the *Industrial Relations Act 1999* as amended or replaced from time to time.
- 1.6.2 "Assistants, Loaders and General Hands" means any employee who accompanies the Driver to assist with deliveries, loads or unloads vehicles, greases, oils, refuels or cleans vehicles.
- 1.6.3 "Articulated Vehicle" means a vehicle with 3 or more axles, comprising of power unit (called "tractor truck", "prime mover", etc.) and semi-Trailer which is superimposed on power unit, and coupled together by means of a king pin revolving on a turn-table and is articulated whether automatically detachable or permanently coupled.
- 1.6.4 "Bulk Milk and Bulk Cream" means all milk and cream that is carted in bulk to milk factories but shall not include milk or cream which has been subject to pasteurisation.
- 1.6.5 "Carrying Capacity or Tonnes Carry Capacity" are used in this Award. They mean the capacity claimed by the makers or agents in their catalogues or price lists. Where the makers or agents' catalogues or price lists are not available the capacity shall be that registered under *Transport Operations (Road Use Management) Act 1995*, as amended.
- 1.6.6 "Commission" means the Queensland Industrial Relations Commission.
- 1.6.7 "Double Articulated Vehicle" means a vehicle with 4 or more axles, comprising of power unit (called "tractor truck", "prime mover" &c.) and semi-Trailer (called "dolly Trailer") which is superimposed on the power unit, which in turn has a load-carrying semi-Trailer superimposed upon the dolly Trailer, both semi-Trailers and the power unit being coupled together by means of king-pins and revolving on turntables and are articulated whether automatically detachable or permanently coupled.
- 1.6.8 "Driver" means all drivers of motorcars, motor lorries, motor cycles, or other similar vehicles propelled by motor.
- 1.6.9 "Foreperson Driver" means and include an employee in charge of or responsible for the work of others, who is appointed as such.
- 1.6.10 "Gross Vehicle Mass/GMV" means:
- (a) In the case of an articulated truck or heavy Trailer combination the maximum permissible mass (whether described as the gross train mass or otherwise) for the motor vehicle and the Trailer/s or semi-Trailer/s attached to it, together with the load carried on each, as stated in any certificate of registration or other certificate that is issued in respect of the motor vehicle by the relevant Authority or by the corresponding Authority of another State or Territory or that is required by law to be painted or displayed on the motor vehicle; and
- In any other case:
- (b) The maximum permissible mass (whether described as the Gross Vehicle Mass or otherwise) for the motor vehicle and its load (but excluding any Trailer and its load) as stated in a certificate of registration or other certificate that is issued in respect of the motor vehicle by the relevant Authority or by the corresponding Authority of another State or Territory or that is required by law to be painted or displayed on the motor vehicle.
- 1.6.11 "Junior" means an employee under 20 years of age who is in receipt of less than the prescribed minimum wage for adults.
- 1.6.12 "Milk Factory" - For the purpose of this Award "Milk Factory" or "Factory" shall include a depot established and approved of by the appropriate authorities.
- 1.6.13 "Pasteurised" means milk or cream that has been subjected to the process of pasteurisation.

1.6.14 "Senior" means an employee 20 years of age or over:

1.6.15 "Trailer" means any vehicle or conveyance on wheels attached to and drawn by a motor vehicle.

1.6.16 "Union" means and refer to the Transport Workers' Union of Australia, Union of Employees (Queensland Branch).

## **PART 2 - FLEXIBILITY**

### **2.1 Enterprise flexibility**

2.1.1 As part of a process of improvement in productivity and efficiency, discussion should take place at each enterprise to provide more flexible working arrangements, improvement in the quality of working life, enhancement of skills, training and job satisfaction and to encourage consultative mechanisms across the workplace.

2.1.2 The consultative processes established in an enterprise in accordance with clause 2.1 may provide an appropriate mechanism for consideration of matters relevant to clause 2.1.1. Union delegates at the place of work may be involved in such discussions.

2.1.3 Any proposed genuine agreement reached between an employer and employee/s in an enterprise is contingent upon the agreement being submitted to the Commission in accordance with Chapter 6 of the Act and is to have no force or effect until approval is given.

## **PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION**

### **3.1 Grievance and dispute settling procedure**

The matters to be dealt with in this procedure shall include all grievances or disputes between an employee and an employer in respect to any industrial matter and all other matters that the parties agree on and are specified herein. Such procedures shall apply to a single employee or to any number of employees.

3.1.1 In the event of an employee having a grievance or dispute the employee shall in the first instance attempt to resolve the matter with the immediate supervisor, who shall respond to such request as soon as reasonably practicable under the circumstances. Where the dispute concerns alleged actions of the immediate supervisor the employee(s) may bypass this level in the procedure.

3.1.2 If the grievance or dispute is not resolved under clause 3.1.1, the employee or the employee's representative may refer the matter to the next higher level of management for discussion. Such discussion should, if possible, take place within 24 hours after the request by the employee or the employee's representative.

3.1.3 If the grievance involves allegations of unlawful discrimination by a supervisor the employee may commence the grievance resolution process by reporting the allegations to the next level of management beyond that of the supervisor concerned. If there is no level of management beyond that involved in the allegation the employee may proceed directly to the process outlined at clause 3.1.5.

3.1.4 If the grievance or dispute is still unresolved after discussions mentioned in clause 3.1.2, the matter shall, in the case of a member of a Union, be reported to the relevant officer of that Union and the Senior management of the employer or the employer's nominated industrial representative. An employee who is not a member of the Union may report the grievance or dispute to Senior management or the nominated industrial representative. This should occur as soon as it is evident that discussions under clause 3.1.2 will not result in resolution of the dispute.

3.1.5 If, after discussion between the parties, or their nominees mentioned in clause 3.1.4, the dispute remains unresolved after the parties have genuinely attempted to achieve a settlement thereof, then notification of the existence of the dispute is to be given to the Commission in accordance with the provisions of the Act.

3.1.6 Whilst all of the above procedure is being followed, normal work shall continue except in the case of a genuine safety issue.

3.1.7 The *status quo* existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed.

3.1.8 All parties to the dispute shall give due consideration to matters raised or any suggestion or recommendation made by the Commission with a view to the prompt settlement of the dispute.

3.1.9 Any Order or Decision of the Commission (subject to the parties' right of appeal under the Act) will be final and binding on all parties to the dispute.

3.1.10 Discussions at any stage of the procedure shall not be unreasonably delayed by any party, subject to acceptance that some matters may be of such complexity or importance that it may take a reasonable period of time for the appropriate response to be made. If genuine discussions are unreasonably delayed or hindered, it shall be open to any party to give notification of the dispute in accordance with the provisions of the Act.

## **PART 4 - EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS**

### **4.1 Employment categories**

4.1.1 Employees (other than casual employees) covered by this Award shall be advised in writing of their employment category upon appointment.

Employment categories are:

- (a) full-time;
- (b) part-time (as prescribed in clause 4.2); or
- (c) casual (as prescribed in clause 4.3).

### **4.2 Part-time employment**

4.2.1 A part-time employee is an employee who:

- (a) is employed for not less than 7.6 hours per week and for not more than 32 ordinary hours 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 covered by this Award.

4.2.2 At the time of engagement, the employer and the employee will agree in writing on the pattern of work required, including specifying the number of ordinary hours per week, the days on which the work is to be performed and the usual daily starting and finishing times.

4.2.3 Any amendment to the normal starting and ceasing times will be in accordance with methods of altering the ordinary hours of work for full-time employees in clause 6.2 or a lesser period as mutually agreed.

4.2.4 The agreed number of ordinary hours per week will not be amended without the consent of the employee. Any such agreed amendment to the number of weekly hours of work will be recorded in writing.

4.2.5 An employer is required to roster a part-time employee for a minimum of 2 consecutive hours on any one day.

4.2.6 All time worked outside the spread of ordinary working hours as provided for in clause 6.1 and all time worked in excess of the hours as mutually arranged in clauses 4.2.2 or 4.2.3 will be overtime and paid for at the rates prescribed in clause 6.6 - Overtime, of this Award.

4.2.7 A part-time employee employed under the provisions of clause 4.2 must be paid for ordinary hours worked at the rate of 1/40th of the weekly rate prescribed for the class of work performed:

Provided that a part-time employee employed under the provisions of clause 4.2 at Pauls Limited - Brisbane Operations (clause 6.1.4) must be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.

4.2.8 Where a public holiday falls on a day upon which an employee is normally employed, that employee will be paid the appropriate rate for the number of hours normally worked on that day.

4.2.9 Where an employee and their employer agree in writing, part-time employment may be converted to full-time, and vice-versa. If such an employee transfers from full-time to part-time (or vice-versa), all accrued award and legislative entitlements will be maintained. Following transfer to part-time employment accrual will occur in accordance with the provisions relevant to part-time employment.

4.2.10 All other provisions of the Award relevant to full-time employees will apply to part-time employees.

### **4.3 Casual employment**

4.3.1 A casual employee is an employee (other than a part-time employee) employed in any week for a period of less than 5 ordinary working days.

4.3.2 Casual employees shall be entitled to payment at the rate of 23 per cent in addition to the appropriate hourly rate ascertained by dividing the appropriate weekly rate by the number of ordinary working hours:

Provided that if a casual employee is employed for not more than 4 hours on any one day the employee shall be paid for the actual time worked with a minimum of 2 hours at the casual rate.

4.3.3 If an employee works more than 4 hours the employee shall be entitled to a full day's pay in accordance with clause 4.3.2.

4.3.4 Casual employees shall be notified at the end of the day if their services are not required the next day, failing such notice a full day's wages shall be paid.

4.3.5 Casual employees shall have the same starting and finishing time and shall work the same number of ordinary working hours per day as a full-time employee.

4.3.6 Where a casual employee replaces, for a period of not exceeding 3 months, a full-time employee absent on leave such casual employee may be employed full-time during the relief period:

Provided that in these circumstances where a casual employee works less than 4 hours on any one day the employee shall be paid for 4 hours and when a casual works more than 4 hours on any one day the employee shall be paid for the actual time worked, at the casual rate of pay.

#### **4.4 Mixed functions**

Where an employee is called upon to perform 2 or more classes of work on any one day, the employee shall, for the purpose of assessing the wages to be paid, be deemed to have worked the full day at the class of work for which the highest rate of wages is prescribed in this Award.

#### **4.5 Duties**

4.5.1 An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this Award provided that such duties are not designed to promote deskilling.

4.5.2 An employer may direct an employee to carry out such duties and use such tools and equipment as may be required provided that the employee has been properly trained in the use of such tools and equipment.

4.5.3 Any direction issued by an employer pursuant to clauses 4.5.1 and 4.5.2 shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.

4.5.4 Unless specifically advised by the employer to the contrary, Drivers shall carry out minor repairs and/or maintenance which falls within their training and capability and for which trade skills are not a prerequisite.

#### **4.6 Employer's property**

Where employees are held responsible for the collection of consignment notes, dockets, papers or money, the property of the employer, the employee shall on request, be provided with suitable facilities for protection of the employer's property.

#### **4.7 Anti-discrimination**

4.7.1 It is the intention of the parties to this Award to prevent and eliminate discrimination, as defined by the *Anti-Discrimination Act 1991* and the *Industrial Relations Act 1999* as amended from time to time, which includes:

(a) discrimination on the basis of sex, marital status, family responsibilities, pregnancy, parental status, age, race, impairment, religion, political belief or activity, trade union activity, lawful sexual activity and association with, or relation to, a person identified on the basis of any of the above attributes;

(b) sexual harassment; and

(c) racial and religious vilification.

4.7.2 Accordingly, in fulfilling their obligations under the grievance and dispute settling procedure in clause 3.1, the parties to this Award must take reasonable steps to ensure that neither the Award provisions nor their operation are directly or indirectly discriminatory in their effects.

4.7.3 Under the *Anti-Discrimination Act 1991* it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

4.7.4 Nothing in clause 4.7 is to be taken to affect:

- (a) any different treatment (or treatment having different outcomes) which is specifically exempted under the *Anti-Discrimination Act 1991*;
- (b) an employee, employer or registered organization, pursuing matters of discrimination, including by application to the Human Rights and Equal Opportunity Commission/Anti-Discrimination Commission Queensland.

## 4.8 Termination of employment

### 4.8.1 *Statement of employment*

An employer shall, in the event of termination of employment, provide upon request to the employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the employee.

### 4.8.2 *Termination by employer*

- (a) An employer may dismiss an employee only if the employee has been given the following notice:

Period of Continuous Service	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

- (b) In addition to the notice in (a) above, employees 45 years old or over and who have completed at least 2 years' continuous service with the employer shall be entitled to an additional week's notice.

- (c) Payment in lieu of notice shall be made if the appropriate notice is not given:

Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

- (d) In calculating any payment in lieu of notice the minimum compensation payable to an employee will be at least the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period. The total must be worked out on the basis of:

- (i) the ordinary working hours to be worked by the employee; and
- (ii) the amounts payable to the employee for the hours including for example allowances, loadings and penalties; and
- (iii) any other amounts payable under the employee's employment contract.

- (e) The period of notice in this clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a casual employee, or an employee engaged by the hour or day, or an employee engaged for a specific period or tasks.

### 4.8.3 *Notice of termination by employee*

The notice of termination required to be given by an employee shall be 2 days. If an employee fails to give notice, the employer shall have the right to withhold monies due to the employee with a maximum amount equal to the amount the employee would have received under clause 4.8.2(d) for a period of notice of 2 days.

### 4.8.4 *Payment on termination*

An employer shall pay to a full-time or part-time employee to whom the employer has given notice of, or to a full-time or part-time employee who has given to the employer 2 days' notice of the termination of their employment, forthwith on the termination of the employment all moneys earned by the employee, failing which the employer shall pay to the employee the sum of \$9.71 for each and every day or part thereof during which such default continues.

The provisions in clause 5.4.3 "Overtime rates shall be paid for all time lost through delay in receiving wages" shall have no application to employees covered by clause 4.8.4:

Provided that the 2 days' notice shall not be continued from day to day after the first 2 days, and shall not be counted as annual leave:

Provided further that any employee whose services are terminated without notice on either side shall be paid within one hour of ceasing work if the banks are open, and in the case where the termination of employment takes place outside of the hours of operation of the trading banks, the employee shall be paid within one hour after the bank opens.

#### 4.8.5 *Time off during notice period*

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 for the purpose of seeking other employment. This time off shall be taken at times that are convenient to the employee after consultation with the employer.

### **4.9 Introduction of changes**

#### 4.9.1 *Employer's duty to notify*

- (a) Where an employer decides to introduce changes in production, program, 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, where relevant, their Union or Unions.
- (b) '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 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.

#### 4.9.2 *Employer's duty to consult over change*

- (a) The employer shall consult the employees affected and, where relevant, their Union or Unions about the introduction of the changes, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals), and the ways to avoid or minimise the effects of the changes (e.g. by finding alternative employment).
- (b) The consultation must occur as soon as practicable after making the decision referred to in clause 4.9.1.
- (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their Union or Unions, 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 adverse to the employer's interests.

### **4.10 Redundancy**

#### 4.10.1 *Consultation before terminations*

- (a) Where an employer decides that the employer no longer wishes the job the employee has been doing to be done 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 consult the employee directly affected and where relevant, their Union or Unions.
- (b) The consultation shall take place as soon as it is practicable after the employer has made a decision, which will invoke the provisions of clause 4.10.1(a) and shall cover the reasons for the proposed terminations, measures to avoid or minimise the terminations and/or their adverse effects on the employees concerned.
- (c) For the purpose of the consultation the employer shall, as soon as practicable, provide in writing to the employees concerned and, where relevant, their Union or Unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, 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 adverse to the employer's interests.

#### 4.10.2 *Transfer to lower paid duties*

- (a) Where an employee is transferred to lower paid duties for reasons set out clause 4.10.1 the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated under clause 4.8.
- (b) The employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former amounts the employer would have been liable to pay and the new lower amount the employer is liable to pay the employee for the number of weeks of notice still owing.
- (c) The amounts must be worked out on the basis of:
  - (i) the ordinary working hours to be worked by the employee; and
  - (ii) the amounts payable to the employee for the hours including for example, allowances, loadings and penalties; and
  - (iii) any other amounts payable under the employee's employment contract.

#### 4.10.3 *Transmission of business*

- (a) Where a business is, whether before or after the date of insertion of this clause in the Award transmitted from an employer (transmittor) to another employer (transmittee), and an employee who at the time of such transmission was an employee of the transmittor of the business, becomes an employee of the transmittee:
  - (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
  - (ii) 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.
- (b) In clause 4.10.3, 'business' includes trade, process, business or occupation and includes a part or subsidiary (which means a corporation that would be taken to be a subsidiary under the Corporations Law, whether or not the Corporations Law applies in the particular case) 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.

#### 4.10.4 *Time off during notice period*

- (a) Where a decision has been made to terminate an employee in the circumstances outlined in clause 4.10.1, the 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.
- (b) 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 the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

#### 4.10.5 *Notice to Centrelink*

Where a decision has been made to terminate employees in the circumstances outlined in clause 4.10.1, the employer shall notify Centrelink as soon as possible giving all relevant information about the proposed terminations, including a written statement of the reasons for the terminations, the number and categories of the employees likely to be affected, the number of workers normally employed and the period over which the terminations are intended to be carried out.

#### 4.10.6 *Severance pay*

- (a) In addition to the period of notice prescribed for ordinary termination in clause 4.8.2(a), and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in clause 4.10.1(a), shall be entitled to the following amounts of severance pay:

Period of Continuous Service	Severance Pay weeks' pay)
Less than 1 year	nil
1 year but not more than 2 years	4
More than 2 years but not more than 3 years	6
More than 3 years but not more than 4 years	7
More than 4 years but not more than 5 years	8
More than 5 years but not more than 6 years	9

More than 6 years but not more than 7 years	10
More than 7 years but not more than 8 years	11
More than 8 years but not more than 9 years	12
More than 9 years but not more than 10 years	13
More than 10 years but not more than 11 years	14
More than 11 years but not more than 12 years	15
More than 12 years	16

(b) 'Weeks' Pay' means the ordinary time rate of pay for the employee concerned:

Provided that the following amounts are excluded from the calculation of the ordinary time rate of pay: overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and any other ancillary payments.

#### 4.10.7 *Superannuation benefits*

An employer may make an application to the Commission for relief from the obligation to make severance payments in circumstances where:

- (a) the employer has contributed to a superannuation scheme which provides a particular benefit to an employee in a redundancy situation; and
- (b) the particular benefit to the employee is over and above any benefit the employee might obtain from any legislative scheme providing for superannuation benefits (currently the federal Superannuation Guarantee levy) or an award based superannuation scheme.

#### 4.10.8 *Employee leaving during notice*

An employee whose employment is terminated for reasons set out in clause 4.10.1(a), may terminate such employment during the period of notice, and, if so, shall be entitled to the same benefits and payments under this clause had such employee 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.

#### 4.10.9 *Alternative employment*

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

#### 4.10.10 *Employees with less than one year's service*

Clause 4.10 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.

#### 4.10.11 *Employees exempted*

Clause 4.10 shall not apply:

- (a) where employment is terminated as a consequence of misconduct on the part of the employee; or
- (b) to employees engaged for a specific period or task(s); or
- (c) to casual employees.

#### 4.10.12 *Employers exempted*

- (a) Subject to an order of the Commission, in a particular redundancy case, clause 4.10 shall not apply to an employer including a company or companies that employ employees working a total of fewer than 550 hours on average per week, excluding overtime, Monday to Sunday. The 550 hours shall be averaged over the previous 12 months.

(b) A 'company' shall be defined as:

- (i) a company and the entities it controls; or
- (ii) a company and its related company or related companies; or
- (iii) a company where the company or companies has a common Director or common Directors or a

common shareholder or common shareholders with another company or companies.

#### 4.10.13 *Exemption where transmission of business*

(a) The provisions of clause 4.10.6 are not applicable where a business is before or after the date of the insertion of this clause into the Award, transmitted from an employer (transmittor) to another employer (transmittee), in any of the following circumstances:

- (i) where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor, and any prior transmittor, to be continuous service of the employee with the transmittee; or
- (ii) where the employee rejects an offer of employment with the transmittee:
  - (A) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and
  - (B) which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee.

(b) The Commission may amend clause 4.10.13(a)(ii) if it is satisfied that it would operate unfairly in a particular case, or in the instance of contrived arrangements.

#### 4.10.14 Incapacity to pay

An employer in a particular redundancy case may make application to the Commission to have the general severance pay prescription amended on the basis of the employer's incapacity to pay.

### **4.11 Continuity of service - transfer of calling**

In cases where a transfer of calling occurs, continuity of service should be determined in accordance with sections 67-71 of the Act, as amended from time to time.

## **PART 5 - WAGES AND WAGE RELATED MATTERS.**

### **5.1 Wages**

The minimum weekly wage to be paid to the following classes of employees shall be:

	Award Rate Per Week
	\$
GRADE 1 Greaser/Cleaner, Yard Person, Vehicle Washer and Detailer, Motor Drivers Assistant, Loader	602.00
GRADE 2 Driver - Rigid vehicles to 4.5 tonnes, GVM (Gross Vehicle Mass)	617.30
GRADE 3 Driver forklift up to 5 tonnes, Driver a 2 axle rigid vehicle or any other rigid, vehicle exceeding 4.5 tonnes GVM but not exceeding, 13.9 tonnes GVM (unless by special permit or registration, such vehicle may be up to 15 tonnes GVM)	625.00
GRADE 4 Driver forklift over 5 tonnes up to and, including 10 tonnes lifting capacity, Driver 3 axle rigid vehicle exceeding 13.9 tonnes GVM	636.50
GRADE 5 Driving a forklift with lifting capacity in excess of 10 tonnes and up to 34 tonnes, Driving a rigid vehicle with 4 or more axles, and a GVM exceeding 13.9 tonnes, Driving a rigid vehicle and heavy Trailer combination with 3 axles and a GCM of 22.4 tonnes or less. Driving an Articulated Vehicle with 3 axles and a GCM of 22.4 tonnes or less	644.10
GRADE 6 Driver rigid vehicle and heavy Trailer combination with more than 3 axles and a GCM greater than 22.4 tonnes. Mobile crane lifting over 15 tonnes up to 20 tonnes. Driver Articulated Vehicle with more than 3 axles and a GCM greater	651.80

	Award Rate Per Week \$
than 22.4 tonnes.	
GRADE 7 Driver Double Articulated Vehicle up to and including 53.4 tonnes GCM (includes B-doubles)	661.50
GRADE 8 A Driver rigid vehicle and Trailer(s) or Double Articulated Vehicle exceeding 53.4 tonnes GCM (includes B-doubles)	680.50
B Foreperson Drivers	652.80

No load shall exceed the limit prescribed by or under any Queensland State Act.

Employees driving a motor vehicle to which a Trailer is attached shall be paid in addition to the rates prescribed above, the extra applicable amount set out hereunder:

\$2.37 per day when drawing a loaded single axle Trailer;

\$1.40 per day when drawing an empty single axle Trailer;

\$3.13 per day when drawing a loaded Trailer with more than one (1) axle;

\$1.74 per day when drawing an empty Trailer with more than one (1) axle:

Provided that if on any day an employee drives a motor vehicle drawing an empty and a loaded Trailer the employee shall be paid for that day the extra rate applicable for such loaded Trailer:

Provided further that not more than one Trailer shall be attached and drawn at any one time:

Provided further that the extra payment herein shall not apply to employees driving Articulated Vehicles.

NOTE: The rates of pay in this Award are intended to include the arbitrated wage adjustment payable under the 1 September 2009 Declaration of General Ruling and earlier Safety Net Adjustments and arbitrated wage adjustments. This arbitrated wage adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this Award which are above the wage rates prescribed in the Award. Such payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Queensland workplace agreements, award amendments to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous State Wage Cases or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated wage adjustments.

## 5.2 Wages - junior assistants

### 5.2.1

	Percentage of rate for Grade 2 Transport Driver %
Under 17 years of age	45
17 years and under 18 years	55
18 years and under 19 years	65
19 years and under 20 years	80

And thereafter the rates prescribed for Seniors.

Junior rates shall be calculated in multiples of 10 cents with any result of 5 cents or more being taken to the next highest 10 cent multiple.

5.2.2 The work of a Junior shall be limited to the duties of a Driver's assistant and, if permitted to act as a Driver, such

Junior shall be paid not less than adult Driver's rates while so engaged.

5.2.3 No Junior under the age of 18 years shall be called upon to lift any weight exceeding 38 kg unless the Junior shall receive the adult wage.

5.2.4 No Junior under the age of 14 years shall be employed in any capacity whatsoever.

### **5.3 Allowances**

5.3.1 *Bulk Milk/Tanker farm pick-up Drivers* - Bulk Milk tanker farm pick-up Drivers who perform grading duties shall be paid in addition to their ordinary rate an allowance of \$13.30 per week.

5.3.2 *Handling money* - Employees who are required to handle money shall be paid \$4.60 per week in addition to their ordinary rates.

5.3.3 *Western allowance*

All full-time employees in the Southern Division who are employed to the west of meridian 150 degrees of west longitude and all full-time employees in the Central Division who are employed to the west of meridian 147 degrees of east longitude shall be paid \$1.05 per week above the rates set out in clause 5.1 and all casual employees employed west of the said meridians shall be paid 3.333c an hour above the rates set out in clause 5.1.

### **5.4 Payment of wages**

5.4.1 All wages shall be paid in the employer's time and shall be paid weekly on Thursday or Friday as determined by the employer, but the day on being fixed shall not be altered more than once in 3 months.

5.4.2 No employer shall hold more than 2 days' wages in hand.

5.4.3 Overtime rates shall be paid for all time lost through delay in receiving wages.

5.4.4 Subject to the provisions of any Act of Parliament applying in Queensland and subject to the employer reaching agreement with Union, the employer may pay the employees pay directly into a bank account. The amount available to the employee shall not be less than the employee would have received had they been paid in cash.

## **PART 6 - HOURS OF WORK, BREAKS, OVERTIME, SHIFT WORK, WEEKEND WORK**

### **6.1 Hours of Work**

6.1.1 *Pasteurised milk and cream, etc. distributors and vendors*

Pasteurised milk and cream, etc. distributors and vendors are engaged as employees in or in connection with the wholesale or retail carriage, distribution, delivery or vendoring of pasteurised milk or cream and or associated products, whose rates of pay are set by this Award:

Provided that work done on farms or in dairies and any work done in the delivery of bulk or surplus milk from any farm or dairy to any railway station or cold store, where possession of ownership is unchanged, and, to any work done in the carting of fodder for the live stock of a milk producer is excluded.

(a) Subject to clause 6,2 and subject to the exceptions hereinafter provided, the ordinary hours of work will be an average of 38 per week, to be worked in one of the following ways.

(i) 38 hours within a work cycle not exceeding 7 consecutive days; or

(ii) 76 hours within a work cycle not exceeding 14 consecutive days; or

(iii) 114 hours within a work cycle not exceeding 21 consecutive days; or

(iv) 152 hours within a work cycle not exceeding 28 consecutive days;

(b) The ordinary hours of work prescribed may be worked on not more than 5 consecutive days in a week, Monday to Sunday inclusive, subject to the following:

(i) Ordinary hours worked on a Saturday and/or Sunday will be paid at time and a-half

(c) Any arrangement of hours which includes a Saturday or Sunday as ordinary hours will be subject to agreement between the employer and a majority of employees concerned.

In cases where agreement cannot be reached as a result of consultation between the parties, either party may request the assistance or advice of their Union or employer organisation.

In cases where such consultation does not result in agreement, either party may request the assistance of the Commission.

- (d) Provided that the ordinary daily working hours shall be worked continuously except for the meal time.

Such hours shall be worked as follows:

- (i) Night workers between the hours of 11.30 p.m. and 9.30 a.m.
- (ii) Afternoon workers between the hours of 2.00 p.m and 12.00 a.m.
- (iii) Day workers between the hours of 6.00 a.m. and 5.00 p.m.

Notwithstanding the above, where an employee works the majority of his/her hours within the spread of a day worker, afternoon shift worker or night shift worker, the employee will be paid as such.

- (e) The commencing time within the spread of hours may be altered by the employer giving at least 7 days' notice to employees:

Upon giving 7 days' notice or such shorter period as may be mutually agreed upon, the ordinary starting and finishing times of various groups of employees or individual employees may be altered or staggered subject to agreement of the employer and the majority of employees.

In cases where agreement cannot be reached as a result of consultation between the parties, either party may request the assistance or advice of their Union or employer organisation.

In cases where such consultation does not result in agreement, either party may request the assistance of the Commission.

- (f) The ordinary hours of work prescribed will not exceed 10 hours on any day.

#### 6.1.2 *Bulk milk carters*

Bulk milk carters are employees engaged in or in connection with the cartage of Bulk Milk and/or cream whose rates of pay are set by this Award but shall not apply to any work done on farms or in dairies, nor to any work done in the delivery of bulk or surplus milk from any farm or dairy to any railway station or cold store, provided possession or ownership is unchanged, nor to any work done in the carting of fodder for the livestock of a milk producer.

- (a) Subject to clause 6.2 and subject to the exceptions hereinafter provided, the ordinary hours of work will be an average of 38 per week, to be worked in one of the following ways.

- (i) 38 hours within a work cycle not exceeding 7 consecutive days; or
- (ii) 76 hours within a work cycle not exceeding 14 consecutive days; or
- (iii) 114 hours within a work cycle not exceeding 21 consecutive days; or
- (iv) 152 hours within a work cycle not exceeding 28 consecutive days.

- (b) The ordinary hours of work prescribed may be worked on not more than 5 consecutive days in a week, Monday to Sunday inclusive, subject to the following:

- (i) Ordinary hours worked on a Saturday and/or Sunday will be paid at time and a-half:

Provided that the ordinary daily working hours shall be worked continuously except for the meal time.

- (c) Such ordinary working hours shall be worked between the hours of 12.30 a.m. and 10.00 p.m.

#### 6.1.3 *Butter, cheese and condensed Milk Factories*

Employees other than Bulk Milk carters covered by clause 6.1.8 are employees engaged in or in connection with condensed milk factories, butter factories and cheese factories whose rates of pay are set by this Award, and all such persons engaged by contractors performing or executing any caning work for such condensed milk factories, butter factories and cheese factories or suppliers thereto.

- (a) The ordinary working hours for all employees covered by this section other than grooms, stablemen, and yardmen, shall not exceed 38 per week Monday to Saturday inclusive.
- (b) Such ordinary working hours on any one day shall be worked in one continuous shift not exceeding 7 hours and 36 minutes per shift for 5 days, and 4 hours on the day of the weekly half-holiday, or in the alternative in 2 shifts between the hours of 7.00 a.m. and 7.00 p.m.
- (c) The hours in which the work shall be performed each day shall be fixed by mutual agreement between the employer and the employee.
- (d) The ordinary working hours for grooms, stablemen and yardman shall not exceed 38 in any one week, and shall be worked on not more than 6 out of 7 consecutive days.

#### 6.1.4 *Parmalat - Brisbane Operations*

- (a) Subject to clauses 6.1.12(d) to 6.1.12(i) and subject to the exception hereinafter provided, the ordinary hours of work shall not (except as may be otherwise mutually agreed upon between the employer and the Union) exceed an average of 38 per week, to be worked on one of the following bases:
  - (i) 38 hours within a work cycle not exceeding 7 consecutive days; or
  - (ii) 76 hours within a work cycle not exceeding 14 consecutive days; or
  - (iii) 114 hours within a work cycle not exceeding 21 consecutive days; or
  - (iv) 152 hours within a work cycle not exceeding 28 consecutive days.
- (b) Subject to the provisions of the Transport Operations (Road Use Management) Act 1995, a daily meal time of ½ hour shall be allowed in the employer's time, and shall be taken at a location mutually agreed upon between the employer and the employees. Any Brisbane pool Driver required to drive to Toowoomba or to a location out of the vicinity of the employer's amenities and who takes their meal break during that trip will receive a \$3.00 coffee allowance on each occasion.
- (c) Other operational arrangements as agreed between the parties.
- (d) The 38 hour week shall be implemented on one of the following bases, most suitable to the particular business, after consultation with, and giving reasonable consideration to the wishes of the employees concerned:
  - (i) by employees working less than 8 ordinary hours each day; or
  - (ii) by employees working less than 8 ordinary hours on one or more days each work cycle; or
  - (iii) by fixing one or more work days on which all employees will be off during a particular work cycle; or
  - (iv) by rostering employees off on various days of the week during a particular work cycle, so that each employee has one work day off during that cycle.

- (e) The employer and the majority of employees concerned may agree to accrue up to a maximum of 12 rostered days off.

Consent to accrue rostered days off shall not be unreasonably withheld by either party. Where such agreement has been reached, the accrued rostered days shall be taken within 12 calendar months of the date on which the first rostered day off was accrued. In all cases, rostered days off shall be taken at times to suit the employer's work requirements.

As a direct result of the cost offsets achieved the employer agrees to implement the 38 hour week by encouraging employees to accrue up to a maximum of 12 rostered days off which may then be taken in blocked form.

- (f) Different methods of implementation of the 38 hour week may apply to individual employees or groups of employees in the business concerned.
- (g) The employer and all employees concerned in the establishment shall consult over the most appropriate means of implementing and working a 38 hour week.

The objective of such consultation shall be to reach agreement on the method of implementing and working the 38 hour week.

The outcome of such consultation shall be recorded in writing,

In cases where agreement can not be reached as a result of consultation between the parties, either party may request the assistance or advice of their relevant employee or employer organisation.

- (h) Notwithstanding the consultative procedures outlined above and notwithstanding any lack of agreement by employees, the employer shall have the right to make the final determination as to the method by which the 38 hour week is implemented or worked from time to time.
- (i) After implementation of the 38 hour week, upon giving 7 days' notice or such shorter period as may be mutually agreed upon, the method of working the 38 hour week may be altered, from time to time, following negotiations between the employer and employees concerned, utilising the foregoing provisions of this clause, including clause 6.1.12(e).

## **6.2 Working of a 38 hour week**

6.2.1 The 38 hour week will be implemented on one of the following basis, most suitable to the particular employer, after consultation with, and giving reasonable consideration to the wishes of the employees concerned:

- (a) by employees working less than 10 ordinary hours each day; or
- (b) by employees working less than 10 ordinary hours on one or more days each work cycle; or
- (c) by fixing one or more work days on which all employees will be off during a particular work cycle; or
- (d) by rostering employees off on various days of the week during a particular work cycle, so that each employee has one work day off during that cycle.

6.2.2 Notwithstanding any other provision in this clause, where the arrangement of ordinary hours of work provides for a rostered day off, the employer and the majority of employees concerned, may agree to accrue up to a maximum of 5 rostered days off. Where such an agreement has been reached, the accrued rostered days off will be taken within 12 calendar months of the date on which the first rostered day off was accrued. Consent to accrue rostered days off will not be unreasonably withheld by either party but shall be taken at times suitable to the employers work requirements.

6.2.3 When the ordinary work cycle provides for a rostered day off the rostered day off will not fall on a public holiday, but will be on the ordinary working day immediately before or immediately after the public holiday, or deferred in accordance with clause 6.2.3.

6.2.4 Different methods of implementation of the 38 hour week may apply to individual employees, groups or sections of employees in the organisation concerned.

6.2.5 *Procedures for enterprise level discussions*

- (a) The employer and all employees concerned in each enterprise will consult over the most appropriate means of working a 38 hour week.
- (b) The objective of such consultation is to reach agreement on the method of working the 38 hour week in accordance with clause 6.1.
- (c) The outcome of such consultation must be recorded in writing.
- (d) In cases where agreement cannot be reached as a result of consultation between the parties, either party may request the assistance or advice of their Union or employer organisation.
- (e) Notwithstanding the consultative procedures outlined above, and notwithstanding any lack of agreement by employees, the employer has the right to make the final determination as to the method by which the 38 hour week is implemented or worked from time to time.
- (f) Upon giving 7 days' notice or such shorter period as may be mutually agreed upon, the method of working the 38 our week may be altered, from time to time, following negotiations between the employer and employees concerned, utilizing the provisions of clause 6.1.

## **6.3 Method of payment for ordinary hours of work**

Ordinary hours for all employees (excluding pan-time employees and casuals), will be paid on the basis of not more than 38 per week, on an averaged basis according to the work cycle, notwithstanding that in excess of 38 ordinary hours may be worked to maximize leisure time off in accordance with clauses 6.1 and 6.2.



#### **6.4 Night workers**

Night workers employed under clause 6.1.1 shall be paid the rates prescribed in this Award plus an additional 10 per cent of such rates.

#### **6.5 Rest pauses**

Every employee shall be entitled to rest pauses in the employer's time on the following basis:

- 6.5.1 One rest pause of 10 minutes' duration in the first and second half of daily work; or
- 6.5.2 One combined rest pause of 20 minutes' duration in either the first or second half of the daily work with the meal break and the combined rest pause being arranged, wherever possible, in such a way that the ordinary working day is broken up into 3 approximately equal periods.
- 6.5.3 Such rest pauses shall be taken at such time as will not interfere with continuity of work where continuity is necessary.

#### **6.6 Overtime**

6.6.1 For all work done outside ordinary hours on any working day, the rates of pay shall be time and a-half for the first 3 hours and double time thereafter, calculated on the rates payable in respect to ordinary hours of work on the day on which such overtime is worked.

6.6.2 All time worked by shift workers in excess of ordinary hours shall be paid for at the rate of double time.

##### *6.6.3 Rest period after overtime*

Employees who work so much overtime between the termination of their ordinary work on one day and the commencement of their ordinary work on the next day that they have not at least had 10 consecutive hours off duty between those times, shall, subject to clause 6.6.3, be released after completion of such overtime until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

If on the instructions of the employer such employees resumes or continues work without having had such 10 consecutive hours off duty, they shall be paid double rates until they are released from duty for such period and they shall then be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

6.6.4 Overtime worked in the circumstances specified in 6.6.3 shall not be regarded as overtime for the purposes of clause 6.6.5 when the actual time worked is less than 2 hours on such recall or on each of such recalls.

6.6.5 *Call back* - 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 3 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 3 hours if the job the employee was recalled to perform is completed within a shorter period.

This 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 of ordinary working hours or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.

6.6.6 Nothing in clause 6.6 shall be construed to permit the working of hours in excess of the limit prescribed by or under any Act of the Parliament of the State of Queensland.

6.6.7 *Work on rostered day off* - An employee required to work on the employee's rostered day off shall be provided with a minimum of 4 hours work or payment therefor at the following rates:

(a) First rostered day off - time and a-half for the first 3 hours and double time thereafter;

(b) Second rostered day off - double time:

Provided that when an employee is required to work on a rostered day off which falls on a public holiday, such employee shall, in addition to the appropriate penalty rate, will be paid one day's pay or shall have a day added to the employee's annual leave.

#### **6.7 Meal times**

- 6.7.1 Employees shall be entitled to a break of not less than 30 minutes and not more than one hour for a meal between the 4th and 6th hour from the time of commencement of work.
- 6.7.2 To cope with circumstances which may arise from time to time particular to the job, employees may defer their meal break by up to 1/2 hour without any extra payment.

However, where the employee works more than 1/2 hour beyond the commencement of the scheduled meal break the penalty prescribed by the Award shall apply.

- 6.7.3 Where an employee is required to work for more than one hour 30 minutes on any day beyond the employee's ordinary finishing time, the employee shall be allowed a break of 1/2 hour for a meal, and shall be paid the sum of \$9.60 extra as tea money in addition to overtime rates. If the employee works more than 4 hours' overtime, the employee shall be allowed another break of 1/2 hour and a further allowance of \$9.60 for a meal.
- 6.7.4 All work done during the recognised meal period shall be paid for at the rate of double time, such payment to continue until a meal period has commenced. Such meal period to be of the prescribed duration.
- 6.7.5 An employee whose ordinary working hours are worked on Monday to Friday, inclusive, shall if required to work on Saturday or Sunday be entitled to a break of not less than 30 minutes and not more than one hour for a meal between the 4th and 6th hour from the time of commencement of work;

Where such employee is required to work on any such day for more than one hour beyond 8 hours from the time of commencement of work, the employee shall be allowed a break of 1/2 hour for a meal before that work of more than one hour is commenced and shall be paid the sum of \$9.60 extra as tea money in addition to overtime rates.

- 6.7.6 An employee whose ordinary working hours are worked on Monday to Saturday inclusive shall, if required to work on Sunday, be entitled to -
- (a) a break of not less than 30 minutes and not more than one hour for a meal between the 4th and the 6th hour from the time of commencement of work;
  - (b) where such employee is required to work on any such day for more than one hour beyond 8 hours from the time of commencement of work, the employee shall be allowed a break of 1/2 hour for a meal before that work or more than one hour is commenced and shall be paid the sum of \$9.60 extra as tea money in addition to overtime rates.

## **PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS**

### **7.1 Annual leave**

- 7.1.1 Every employee (other than a casual employee) shall at the end of each year of their employment be entitled to annual leave on full pay as follows:
- (a) not less than 5 weeks if employed on shift work where 3 shifts per day are worked over a period of 7 days per week; and
  - (b) not less than 4 weeks in any other case.
- 7.1.2 Such annual leave is exclusive of any public holiday which may occur during the period of that annual leave and (subject to clause 7.1.3) must be paid for by the employer in advance:
- (a) in the case of any and every employee in receipt immediately prior to that leave of ordinary wages at a rate in excess of the ordinary wages payable under clause 5.1, at that excess rate; and
  - (b) in every other case, at the ordinary time rate of pay payable to the employee concerned immediately prior to that leave.
- 7.1.3 If the employment of any employee is terminated at the expiration of a full year of employment, the employer shall be deemed to have given the leave to the employee from the date of termination of the employment and shall immediately pay to the employee, in addition to all other amounts due to them, their pay, calculated in accordance with clause 7.1.5, for 4 or 5 weeks as the case may be and also their ordinary time rate of pay for any public holidays occurring during such period of 4 or 5 weeks.
- 7.1.4 If the employment of any employee is terminated before the expiration of a full year of employment, such employee shall be paid, in addition to all other amounts due, an amount equal to 1/9th of their pay for the period of their employment in the case of a Shift Worker, and 1/12th of their pay for the period of their employment in

the case of a Day Worker, calculated in accordance with clause 7.1.5.

#### 7.1.5 *Calculation of annual leave pay*

In respect to annual leave entitlements to which clause 7.1 applies, annual leave pay (including any proportionate payments), shall be calculated as follows:

- (a) Shift workers - Subject to clause 7.1.5(c), the rate of wage to be paid to a Shift Worker shall be the rate payable for work in ordinary time according to the employee's roster or projected roster, including Saturday, Sunday or public holiday shifts.
- (b) Leading hands etc. - Subject to clause 7.1.5(c), leading hand allowances otherwise payable for ordinary time worked shall be included in the wages to be paid to employees during annual leave.
- (c) All employees - Subject to the provisions of clause 7.1.5(d), in no case shall the payment by an employer to an employee be less than the sum of the following amounts:
  - (i) the employee's ordinary wage rate as prescribed in clause 5.2 for the period of the annual leave (excluding shift premiums and weekend penalty rates);
  - (ii) leading hand allowance prescribed in clause 5.2;
  - (iii) a further amount calculated at the rate of 17 1/2% of the amounts referred to in clauses 7.1.5(c)(i) and 7.1.5(c)(ii).
- (d) Clause 7.1.5(c) does not apply to:
  - (i) any period or periods of annual leave:
    - exceeding 5 weeks in the case of employees employed in a calling where 3 shifts per day are worked over a period of 7 days per week; or
    - exceeding 4 weeks in any other case; or
  - (ii) employers who are already paying an annual leave bonus, loading or other annual leave payment which is not less favourable to employees.

7.1.6 Unless the employee agrees otherwise, the employer must give the employee at least 14 days' notice of the date from which the employee's annual leave will be taken.

7.1.7 Except as provided in clause 7.1.4, it is not lawful for the employer to give, or for the employee to receive, payment in lieu of annual leave.

#### 7.1.8 *Short term annual leave*

An employee may request and, with the consent of the employer, take short term annual leave, not exceeding 4 days in any calendar year, at a time or times separate from any of the periods determined in accordance with clause 7.1.

### **7.2 Picnic day - retail milk vendors**

7.2.1 Within the area of the City of Brisbane the first Wednesday after the commencement of the Christmas school vacation as provided for by the relevant Queensland Government legislation will be picnic day.

7.2.2 It shall be a breach of this Award for any employer or employee to deliver milk to a household customer on such day:

Provided that nothing shall prohibit the delivery of milk and/or cream to shops for sale to the public nor to offices, factories and other industrial establishments, schools, milk bars, cafes, hospitals and/or other institutions on such Picnic Day.

### **7.3 Sick leave**

#### 7.3.1 *Entitlement*

(a) Every employee, except casuals and school-based apprentices and trainees, is entitled to 64 hours' sick leave for each completed year of their employment with their employer:

Provided that every employee of Pauls Limited - Brisbane Operations (clause 6.1.4), except casuals and

school-based apprentices and trainees, is entitled to 60.8 hours' sick leave for each completed year of their employment with their employer.

Provided further that part-time employees accrue sick leave on a proportional basis.

(b) This entitlement will accrue at the rate of 8 hours' sick leave for each 6 weeks of employment:

Provided that this entitlement will accrue at the rate of 7.6 hours' sick leave for each 6 weeks of employment for employees of Pauls Limited - Brisbane Operations.

(c) Payment for sick leave will be made based on the number of hours which would have been worked if the employee were not absent on sick leave.

(d) Sick leave may be taken for part of a day.

(e) Sick leave shall be cumulative, but unless the employer and employee otherwise agree, no employee shall be entitled to receive, and no employer shall be bound to make, payment for more than 13 weeks' absence from work through illness in any one year.

### 7.3.2 *Employee must give notice*

The payment of sick leave is subject to the employee promptly advising the employer of the employee's absence and its expected duration.

### 7.3.3 *Evidence supporting a claim*

When the employee's absence is for more than 2 days the employee is required to give the employer a doctor's certificate, or other reasonably acceptable evidence to the employer's satisfaction, about the nature and approximate duration of the illness.

### 7.3.4 *Accumulated sick leave*

An employee's accumulated sick leave entitlements are preserved when:

- (a) The employee is absent from work on unpaid leave granted by the employer;
- (b) The employer or employee terminates the employee's employment and the employee is re-employed within 3 months;
- (c) The employee's employment is terminated because of illness or injury and the employee is re-employed by the same employer without having been employed in the interim.

The employee accumulates sick leave entitlements whilst absent from work on paid leave granted by the employer.

### 7.3.5 *Workers' compensation*

Where an employee is in receipt of workers' compensation, the employee is not entitled to payment of sick leave.

### 7.3.6 *Absenteeism control measures*

It should be noted that sick leave is unlike annual or long service leave in that sick leave is conditional upon an employee being ill or injured, to the point of being unfit for duty. It is an insurance to protect the employee against hardship should the employee be unable to continue in the employee's normal occupation.

The procedure is designed to curtail abuse by employees who are absent from work and who are not genuinely unfit for duty.

- (a) A Senior officer shall review the absence records and provide the company manager with a list of the employees who have been absent from work for say more than 3 days during any 3 monthly period.
- (b) The company manager or delegate will then have the following matters examined:
  - (i) Check the pattern of leave for repetition, e.g. Mondays, Fridays, etc.;
  - (ii) Check past history of absences to see if this pattern is unusual for the employee;
  - (iii) Check with the employee's supervisor regarding knowledge of the employee's personal problems or situation at the time the employee was absent, or whether it was genuine absence for injury or sickness;

- (iv) The results of the above checks should be noted for future information;
- (v) If the results of the above examination show unsatisfactory attendance and reasons for absence, then the following actions should be taken.
  - (c) The employee shall be interviewed by the company manager, or delegate, in the presence of their supervisor (and Union representative if the employee so requests). If the discussion in respect to the absences does not provide satisfactory reason for the absences then a letter shall be sent to the employee advising that their record needs to be improved.
  - (d) If no improvement is observed within the next 3 months, the employee shall again be interviewed, and if the interview results in unsatisfactory reasons again being given, then a second letter shall be sent to the employee, indicating that proof of illness or a certificate may be required for any further absence.
  - (e) If the above action still results in unsatisfactory attendance at work then grounds may have been established for termination of employment.
  - (f) The above procedure does not operate to withdraw the company's right to take termination procedures or other disciplinary action against any employee if that employee has been guilty of filling out a false sick leave application form and claims sick leave pay when that person was not on genuine sick leave. Such behaviour is fraudulent misrepresentation which may justify instant dismissal.

#### **7.4 Long service leave**

All employees covered by this Award are entitled to long service leave on full pay under, subject to, and in accordance with, the provisions of Chapter 2, Part 3, sections 42-58 of the Act as amended from time to time.

#### **7.5 Bereavement leave**

##### *7.5.1 Full-time and part-time employees*

Full-time and part-time employees shall, on the death of a member of their immediate family or household in Australia, be entitled to paid bereavement leave up to and including the day of the funeral of such person. Such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in 2 ordinary days of work. Proof of such death is to be furnished by the employee to the satisfaction of the employer.

##### *7.5.2 Long-term casual employees*

- (a) A long-term casual employee is entitled to at least 2 days unpaid bereavement leave on the death of a member of the person's immediate family or household in Australia.
- (b) A "long-term casual employee" is a casual employee engaged by a particular employer, on a regular and systematic basis, for several periods of employment during a period of at least one year immediately before the employee seeks to access an entitlement under clause 7.5.2.

##### *7.5.3 "Immediate family" includes:*

- (a) A spouse (including a former spouse, a *de facto* spouse and a former *de facto* spouse, spouse of the same sex) of the employee; and
- (b) A child or an adult child (including an adopted child, a foster child, an ex-foster child, a stepchild or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

##### *7.5.4 Unpaid leave*

An employee with the consent of the employer, may apply for unpaid leave when a member of the employee's immediate family or household in Australia dies and the period of bereavement leave entitlement provided above is insufficient.

#### **7.6 Family leave**

The provisions of the Family Leave Award apply to and are deemed to form part of this Award.

It is to be noted that:

- 7.6.1 part-time work can be performed by agreement in the circumstances specified in the Family Leave Award;

7.6.2 a copy of the Family Leave Award is required to be displayed in accordance with s. 697 of the Act.

7.6.3 The Family Leave Award also provides for the terms and conditions of leave associated with:

- (a) Maternity leave
- (b) Parental leave
- (c) Adoption leave
- (d) Special responsibility leave for the care and support of the employee's immediate family or household.

## **7.7 Public holidays**

7.7.1 An employee who would ordinarily be required to work on a day on which a public holiday falls is entitled to full pay for the time the employee would ordinarily have been required to perform work on that day.

7.7.2 All work done by any employee on:

- the 1st January;
- the 26th January;
- Good Friday;
- Easter Saturday (the day after Good Friday);
- Easter Monday;
- the 25th April (Anzac Day);
- The Birthday of the Sovereign;
- Christmas Day;
- Boxing Day; or
- any day appointed under the *Holidays Act 1983*, to be kept in place of any such holiday

will be paid for at the rate of double time and a-half with a minimum of 4 hours.

### *7.7.3 Labour Day*

All employees covered by this Award are entitled to be paid a full day's wage for Labour Day (the first Monday in May or other day appointed under the *Holidays Act 1983*, to be kept in place of that holiday) irrespective of the fact that no work may be performed on such day, and if any employee concerned actually works on Labour Day, such employee will be paid a full day's wage for that day and in addition a payment for the time actually worked by the employee at one and a-half times the ordinary time rate of pay prescribed for such work with a minimum of 4 hours.

### *7.7.4 Annual show*

All work done by employees in a district specified from time to time by the Minister by notification published in the *Industrial Gazette* on the day appointed under the *Holidays Act 1983*, to be kept as a holiday in relation to the annual agricultural, horticultural or industrial show held at the principal city or town, as specified in such notification of such district will be paid for at the rate of double time and a-half with a minimum of 4 hours.

In a district in which a holiday is not appointed for an annual agricultural, horticultural or industrial show, the employee and employer must agree on an ordinary working day that is to be treated as a show holiday for all purposes.

### *7.7.5 Double time and a-half*

For the purposes of clause 7.7, where the rate of wages is a weekly rate, "double time and a-half" means one and a-half day's wages in addition to the prescribed weekly rate, or *pro rata* if there is more or less than a day.

### *7.7.6 Stand down*

Any employee, with 2 weeks or more of continuous service, whose employment has been terminated by the employer or who has been stood down by the employer during the month of December, and who is re-employed in January of the following year, shall be entitled to payment at the ordinary rate payable to that employee when they were dismissed or stood down, for any one or more of the following holidays, namely, Christmas Day, Boxing Day and 1st January (New Year's Day).

7.7.7 No deduction shall be made from the wages of any full-time or part-time employee for any holiday not worked.

7.7.8 Where an employee's day off falls on a public holiday which would otherwise be an ordinary working day the employee shall be granted an additional day's annual leave in lieu thereof which shall be paid for at the appropriate rate.

## **7.8 Jury service**

An employee, other than a casual employee, required to attend for jury service during their ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of their attendance for such jury service and the ordinary pay the employee would have been paid if the employee was not absent on jury service.

Alternatively, by agreement, fees (other than meal allowance) received by the employee to attend jury service will be paid to the employer and the employer will continue to pay the employee their ordinary pay for the time the employee was absent on jury service.

Employees shall notify their employer as soon as practicable of the date upon which they are required to attend for jury service and shall provide their employer with proof of such attendance, the duration of such attendance and the amount received in respect thereof.

If the employee is not required to serve on a jury for a day or part of a day after attending for jury service and the employee would ordinarily be working for all or part of the remaining day, the employee must, if practicable, present for work at the earliest reasonable opportunity.

"Ordinary pay" means the rate of pay that an employee would normally expect to receive for working ordinary hours on an ordinary day of the week, including any over-award payment. "Ordinary pay" excludes overtime, penalty rates of all types - including those attaching to working ordinary hours (for example) on a Saturday, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and other ancillary payments of a like nature.

## **PART 8 - TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK**

NOTE: No provisions inserted in this Award relevant to this Part.

## **PART 9 - TRAINING AND RELATED MATTERS**

### **9.1 Training**

9.1.1 Following proper consultation, an employer shall develop a training policy and programme consistent with -

- (a) the current and future skill needs of the enterprise;
- (b) the size, structure and nature of the operations of the enterprise;
- (c) the need to develop vocational skills relevant to the enterprise and the Transport Industry through courses conducted by appropriate educational institutions and training providers.

9.1.2 Where, as a result of consultation, it is agreed by the employer that additional training in accordance with the programme developed pursuant to clause 9.1.1 should be undertaken by an employee, that training may be undertaken either on or off the job:

Provided that if the training is undertaken during ordinary working hours the employee concerned shall not suffer any loss of pay. The employer shall not unreasonably withhold such paid training leave.

9.1.3 Any costs associated with standard fees for prescribed courses and textbooks (excluding those textbooks which are available in the employer's technical library) incurred in connection with the undertaking of training shall be reimbursed by the employer upon production of evidence of such expenditure:

Provided that reimbursement shall be on an annual basis, subject to the presentation of reports of satisfactory progress.

9.1.4 Travel costs incurred by an employee undertaking training in accordance with clause 9.1 which exceed those normally incurred in travelling to and from work shall be reimbursed by the employer.

### **9.2 Training rates**

No deduction shall be made from wages when the employee is learning the run.

## **PART 10 - OCCUPATIONAL HEALTH AND SAFETY MATTERS, EQUIPMENT, TOOLS AND AMENITIES**

### **10.1 Water-proof clothing**

- (a) *Work in the rain.*- Suitable waterproof clothing shall be supplied by the employer to employees who are required to work in the rain:

Provided that if such an employee while using such clothing nevertheless gets their clothes wet the employee shall be paid double rates for all work performed and such payment shall continue until the employee is able to change into dry clothing or until the employee ceases work whichever is the earlier.

- (b) *Rubber boots* - Where they are necessary to prevent the feet of the employees from becoming wet, suitable waterproof boots shall be supplied to employees by the employer free of charge. When not in use, boots shall be stored by the employees as required by the employer.

## **PART 11 - AWARD COMPLIANCE AND UNION RELATED MATTERS**

### **Preamble**

Clauses 11.1 and 11.2 replicate legislative provisions contained within the Act. In order to ensure the currency of existing legal requirements parties are advised to refer to sections 366, 372 and 373 of the Act as amended from time to time.

### **11.1 Right of entry**

#### *11.1.1 Authorised industrial officer*

- (a) An "Authorised industrial officer" is any Union official holding a current authority issued by the Industrial Registrar.
- (b) Right of entry is limited to workplaces where the work performed falls within the registered coverage of the Union.

#### *11.1.2 Entry procedure*

- (a) The authorised industrial officer is entitled to enter the workplace during normal business hours as long as:
- (i) the authorised industrial officer alerts the employer or other person in charge of the workplace to their presence; and
  - (ii) shows their authorisation upon request.
- (b) Clause 11.1.2(a)(i) does not apply if the authorised industrial officer establishes that the employer or other person in charge is absent.
- (c) A person must not obstruct or hinder any authorised industrial officer exercising their right of entry.
- (d) If the authorised industrial officer intentionally disregards a condition of clause 11.1.2 the authorised industrial officer may be treated as a trespasser.

#### *11.1.3 Inspection of records*

- (a) An authorised industrial officer is entitled to inspect the time and wages record required to be kept under section 366 of the Act.
- (b) An authorised industrial officer is entitled to inspect such time and wages records of any former or current employee except if the employee:
- (i) is ineligible to become a member of the Union; or
  - (ii) is a party to a QWA or ancillary document, unless the employee has given written consent for the records to be inspected; or
  - (iii) has made a written request to the employer that the employee does not want that employee's record inspected.
- (c) The authorised industrial officer may make a copy of the record, but cannot require any help from the employer.
- (d) A person must not coerce an employee or prospective employee into consenting, or refusing to consent, to the inspection of their records by an authorised industrial officer.

#### *11.1.4 Discussions with employees*



An authorised industrial officer is entitled to discuss with the employer, or a member or employee eligible to become a member of the Union:

- (a) matters under the Act during working or non-working time; and
- (b) any other matter with a member or employee eligible to become a member of the Union, during non-working time.

#### 11.1.5 *Conduct*

An authorised industrial officer must not unreasonably interfere with the performance of work in exercising a right of entry.

### **11.2 Time and wages record**

11.2.1 An employer must keep, at the place of work in Queensland, a time and wages record that contains the following particulars for each pay period for each employee, including apprentices and trainees:

- (a) the employee's award classification;
- (b) the employer's full name;
- (c) the name of the Award under which the employee is working;
- (d) the number of hours worked by the employee during each day and week, the times at which the employee started and stopped work, and details of work breaks including meal breaks;
- (e) a weekly, daily or hourly wage rate - details of the wage rate for each week, day, or hour at which the employee is paid;
- (f) the gross and net wages paid to the employee;
- (g) details of any deductions made from the wages; and
- (h) contributions made by the employer to a superannuation fund.

11.2.2 The time and wages record must also contain:

- (a) the employee's full name and address;
- (b) the employee's date of birth;
- (c) details of sick leave credited or approved, and sick leave payments to the employee;
- (d) the date when the employee became an employee of the employer;
- (e) if appropriate, the date when the employee ceased employment with the employer; and
- (f) if a casual employee's entitlement to long service leave is worked out under section 47 of the Act - the total hours, other than overtime, worked by the employee since the start of the period to which the entitlement relates, worked out to and including 30 June in each year.

11.2.3 The employer must keep the record for 6 years.

11.2.4 Such records shall be open to inspection during the employer's business hours by an inspector of the Department of Industrial Relations, in accordance with section 371 of the Act or an authorised industrial officer in accordance with sections 372 and 373 of the Act.

### **11.3 Award to be exhibited**

A copy of this Award shall be kept exhibited by the employer at the place where the industry is carried on, so that it is visible, legible and accessible to employees.

### **11.4 Trade union training leave**

Upon written application by an employee to an employer such application being endorsed by the Union and giving to the employer at least one month's notice, such employee shall be granted up to 5 working days' leave (non-cumulative)

on ordinary pay each calendar year to attend courses and seminars conducted by the Union.

For the purposes of clause 11.4 "ordinary pay" means at the ordinary weekly rate paid to the employee exclusive of any allowance for travelling time and fares or shift work.

The granting of such leave shall be subject to the following conditions:

- (a) An employee must have at least 12 months uninterrupted service with an employer prior to such leave being granted.
- (b) Clause 11.4 shall not apply to an employer with less than 10 full-time employees bound by this Award.
- (c) The maximum number of employees of one and the same employer attending a course or seminar at the same time will be as follows:

Where the employer employs from 10 to 100 employees 2

Where the employer employs over 100 employees 4

Provided that where the employer has more than one place of employment in Queensland, then the formula above shall apply to the number of employees employed in or from each individual place of employment.

- (d) The maximum aggregate number of days per annum that employees of one employer may be absent attending courses or seminars will be as follows:

Where the employer employs between 10 and 49 employees inclusive 20 days

Where the employer employs from 50 to 100 employees inclusive 40 days

Where the employer employs more than 100 employees 80 days

Provided that where the employer has more than one place of employment in Queensland, then the formula above shall apply to the number of employees collectively across all places of employment.

- (e) The granting of such leave shall be subject to the convenience of the employer and so that the operations of the employer will not be unduly affected.
- (f) The scope, content and level of the course shall be such as to contribute to a better understanding of industrial relations within the employer's operations.
- (g) In granting such paid leave, the employer is not responsible for any additional costs except the payment of extra remuneration where relieving arrangements are instituted to cover the absence of the employee.
- (h) Leave granted to attend courses will not incur additional payment if such course coincided with the employee's day off in the 19 day month working arrangements or with any other concessional leave.
- (i) Such paid leave will not affect other leave granted to employees under this Award.

## SCHEDULES

### Schedule 1 Second tier Orders

List of employers with second tier Orders which to varying degrees modify the provisions of this Award

Name	Case No.	Date of Order
The Queensland Dairy Product Manufacturers Association Inc.	B4/89	19.1.89
Q.U.F. Industries Ltd. - Nambour, Maryborough Brisbane	B28/89 B283/89	1.2.89 13.6.89
Port Curtis Co-operative Dairy Association Limited	B244/89	5.7.89
Gold Coast Milk Pty. Ltd.	B929/89	15.1.90

Dated 18 December 2002.

By the Commission,  
[L.S.] E. EWALD,  
Industrial Registrar.

Operative Date: 17 February 2003