

ERARING ENERGY EMPLOYEES CONSENT AWARD 2004

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Eraring Energy.

(No. IRC 305 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert in the Arrangement of the award published 13 August 2004 (345 I.G. 940), the following new clause number and subject matter and renumber the existing clauses accordingly:

22. Parental Leave
23. Public Holidays and Picnic Day
24. Standby Allowance
25. Travelling Time and Fares
26. Working Away from Headquarters
27. Grievance and Disputes Procedures
28. Anti-Discrimination
29. Telecommuting
30. Miscellaneous
31. Appendix A

2. Delete clause 20, Family Carer's Leave, and insert in lieu thereof the following:

20. Family Carer's Leave

Use of sick leave

- 20.1 An employee, other than a casual employee, with responsibilities in relation to a class of person set out in 20.3 (ii) who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at Clause 19 of the award, for absences to provide care and support for such persons with they are ill, or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes Eraring Energy and the employee shall discuss appropriate arrangements which, as far as practicable, take account of Eraring Energy's and the employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at Clause 27 should be followed.

Proof of illness

- 20.2 The employee shall, if required,
 - (a) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
 - (b) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

Definitions

20.3 The entitlement to use sick leave in accordance with subclauses 20.1 to 20.2 is subject to:

- (i) The employee being responsible for the care of the person concerned; and
- (ii) The person concerned being:
 - (a) A spouse of the employee; or
 - (b) A de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
 - (c) A child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
 - (d) A same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
 - (e) A relative of the employee who is a member of the same household, where for the purposes of this paragraph:
 - 1. 'relative' means a person related by blood, marriage or affinity;
 - 2. 'affinity' means a relationship that one spouse because of marriage has to blood relatives of the other; and
 - 3. 'household' means a family group living in the same domestic dwelling.

Notice of absence

20.4 An employee shall, wherever practicable, give Eraring Energy notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify Eraring Energy by telephone of such absence at the first opportunity on the day of absence.

Unpaid Leave for Family Purpose

20.5 An employee may elect, with the consent of Eraring Energy, to take unpaid leave for the purpose of providing care and support to a class of person set out in 20.3 (ii) above who is ill or who requires care due to an unexpected emergency.

Annual Leave

20.6 An employee may elect, with the consent of Eraring Energy to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.

20.7 An employee may elect with Eraring Energy's agreement to take annual leave any time within a period of 24 months from the date at which it falls due.

20.8 Family Carer's Entitlement for casual employees

- (a) Subject to the evidentiary and notice requirements in 20.2 and 20.4 employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in 20.3(ii) who are sick and require care and support, or who require care due to an unexpected emergency or the birth of a child.

- (b) Eraring Energy and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (c) Eraring Energy must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of Eraring Energy to engage or not to engage a casual employee are otherwise not affected.

Time off in lieu of payment for overtime

- 20.9 An employee may elect, with the consent of Eraring Energy to take time off in lieu of payment for overtime at a time or times agreed with Eraring Energy, within twelve (12) months of the said election.
- 20.10 Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked.
- 20.11 If, having elected to take time as leave in accordance with subclause 20.9, the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of the twelve (12) month period, or on termination.
- 20.12 Where no election is made in accordance with subclause 20.9, the employee shall be paid overtime rates in accordance with this Award.

Make-up Time

- 20.13 An employee may elect, with the consent of Eraring Energy to work 'make-up time', under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in this Award, at the ordinary rate of pay.
- 20.14 An employee on shift work may elect, with the consent of Eraring Energy to work 'make-up time' (under which the employee takes time off ordinary hours and works those hours at a later time), at the shift work rate which would have been applicable to the hours taken off.

Rostered Days off

- 20.15 An employee may elect, with the consent of Eraring Energy to take a rostered day off at any time, in accordance with subclause 3.6 of this Award.

3. Delete subclause 21.5, of clause 21, Bereavement Leave, and insert in lieu thereof the following:

- 21.5 Bereavement leave may be taken in conjunction with other leave available under subclauses 20.5, 20.6, 20.9, 20.10, 20.11, 20.12, 20.13, 20.14 and 20.15 in the said clause 20, Family Carer's Leave. In determining such a request Eraring Energy will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.

21.6

- (a) Subject to the evidentiary and notice requirements in 21.2 and 21.3 casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in 20.3 Family/Carers Leave.
- (b) Eraring Energy and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

- (a) Eraring Energy must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.
4. Insert after clause 21, Bereavement Leave, the following new clause and renumber the existing clauses to reflect the new Arrangement:

22. Parental Leave

- 22.1 Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).
- 22.2 Eraring Energy must not fail to re-engage a regular casual employee (see section 53 (2) of the Act) because:
- (a) the employee or employee's spouse is pregnant; or
 - (b) the employee is or has been immediately absent on parental leave.

The rights of Eraring Energy in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

Right to request

22.3

- (a) An employee entitled to parental leave may request Eraring Energy to allow the employee:
 - (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
 - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
 - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age.to assist the employee in reconciling work and parental responsibilities.
- (b) Eraring Energy shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or Eraring Energy business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

Employee's request and Eraring Energy's decision to be in writing

- (c) Employee's request and Eraring Energy's decision made under 22.3 (a) (ii) and 22.3 (a) (iii) must be recorded in writing.

Request to return to work part-time

- (d) Where an employee wishes to make a request under 22.3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

22.4 Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, Eraring Energy shall take reasonable steps to:
 - (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
 - (ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- (b) The employee shall take reasonable steps to inform Eraring Energy about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part time basis.
- (c) The employee shall also notify Eraring Energy of changes of address or other contact details which might affect Eraring Energy's capacity to comply with paragraph (a).

5. This variation shall take effect from the 19 December 2005.

F. L. WRIGHT J , *President*

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