



FAIR WORK
AUSTRALIA

DECISION

Fair Work Act 2009

s.185 - Application for approval of a single-enterprise agreement

Protech Holdings Pty Ltd

(AG2012/661)

PROTECH ON-HIRE EMPLOYEE AGREEMENT 2012

Miscellaneous

COMMISSIONER CAMBRIDGE

SYDNEY, 3 APRIL 2012

Application for approval of the Protech On-Hire Employee Agreement 2012.

[1] An application has been made for approval of an enterprise agreement known as the *PROTECH On-Hire Employee Agreement 2012* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). The application has been made by *Protech Holdings Pty Ltd* (the Employer). The Agreement is a single-enterprise agreement.

[2] The application was lodged at Sydney on 6 March 2012 by the Employer's representatives, IRIQ Pty Ltd (IRIQ). The application included a Statutory Declaration of *Marc Meili* made on behalf of the Employer and mistakenly dated 15 March 2013[sic], (the Declaration). The Declaration stated that the Agreement was made on 22 February 2012. Therefore the application was made within the 14 day lodgement time limit established by subsection 185 (3) (a) of the Act.

[3] The application for approval was listed for Hearing before Fair Work Australia (FWA) on 28 March 2012 at which time *Ms T Moltoni* from IRIQ appeared for the Employer. During the proceeding held on 28 March, FWA identified various issues relating to the contents of certain terms contained in the Agreement which required clarification.

[4] *Ms Moltoni* provided some important clarifications during the Hearing. The Employer was invited to consider some residual issues raised by FWA and to respond in writing. FWA received correspondence dated 29 March 2012, from IRIQ, which included further material in support of the application together with Undertakings made by and duly signed by the Employer, and proposed to FWA pursuant to s.190 of the Act (the Undertakings).

[5] Consequently I have further considered the application for approval having regard for the clarifications provided during the Hearing, the further material in support of the application, and the Undertakings.

[6] Part 2-4 of the Act includes various procedural requirements that must be satisfied before FWA can approve of an enterprise agreement. I have further examined the contents of the Declaration in the context of the clarifications provided during the Hearing and the further

material in support of the application. On the basis of this material I am satisfied that the procedural requirements of Part 2-4 of the Act have been met in this instance.

[7] I note that the Agreement contains a flexibility term at clause 17 and a consultation term at clause 16.

[8] I am prepared to accept the Undertakings. As provided by s.191 of the Act, the Undertakings are taken to be terms of the Agreement. I am satisfied that each of the requirements of ss.186, 187 and 188 of the Act as are relevant to this application for approval have been met.

[9] The Agreement as varied by the Undertakings is approved. In accordance with subsection 54 (1) of the Act, the Agreement will operate from 10 April 2012. In accordance with subsection 186 (5) (b) of the Act the nominal expiry date of the Agreement is 3 April 2016.



The seal of the Fair Work Commission of Australia is circular, featuring the text "THE SEAL OF FAIR WORK AUSTRALIA" around the perimeter and "COMMISSIONER" at the bottom. The central emblem depicts a kangaroo and a emu flanking a shield, with a star above. A handwritten signature in black ink is written across the seal.

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Undertakings:

Commissioner Cambridge
Fair Work Australia
Terrace Tower
80 William Street
East Sydney

28 March 2012

Dear Commissioner Cambridge,

Re: AG2012/661

Thankyou for your advice in Hearing on Wednesday 28 March in relation to our application for Agreement Approval (AG2012/661), the *Protech On-Hire Employee Agreement 2012*.

As discussed, we hereby give the following undertakings:

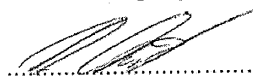
1. Protech Holdings Pty Ltd and its subsidiaries, undertakes to insert the following statement at the end of clause 15 of the Agreement:

"Where a request for the cashing out of annual leave is approved by the employer, the terms will be subject to those specified at s93(2) of the Fair Work Act, namely that:

- (a) paid annual leave must not be cashed out if the cashing out would result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks; and
- (b) each cashing out of a particular amount of paid annual leave must be by a separate agreement in writing between the employer and the employee; and
- (c) the employee must be paid at least the full amount that would have been payable to the employee had the employee taken the leave that the employee has forgone.


Yours faithfully,

Marc Meili
Managing Director
Protech Holdings Pty Ltd



.....

Witness Signature



.....

28.3.12
.....

Date

Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of this agreement.



Protech On-Hire Employee Agreement 2012

1. Title

This will be called the PROTECH On-Hire Employee Agreement 2012 (the Agreement).

2. Parties

This Agreement will apply to:

- a. PROTECH Holdings Pty Ltd (ACN 147 644 399) and its subsidiaries (the Company); and
- b. All On-Hire employees who are employed by the Company.

3. Duration

This Agreement commences operation 7 days after approval by Fair Work Australia. The nominal expiry date will be 4 years from the date of operation.

4. Application

- a. This Agreement applies to and is binding on the Company in relation to all of its On-Hire Employees employed in all of its operations within Australia.

5. Scope and Intent

- a. This Agreement incorporates the relevant Modern Award (and any other prior relevant Award) that would otherwise apply to you. The relevant Modern Award (and any other prior relevant Award) is to be read and applied in conjunction with the terms and conditions in this Agreement. To the extent that there is any inconsistency, the Agreement shall prevail.
- b. In the event that no Modern Award (and any other prior relevant Award) exists to cover a particular assignment, the terms and conditions of employment will be governed by this Agreement, together with the relevant legislation (inclusive of the National Employment Standards) that would otherwise apply.
- c. The rates of pay, terms and conditions in this Agreement represent the minimum that will be paid to you. The Company will assess the market conditions and may pay you a higher rate of pay or more attractive terms where it is able to negotiate this with the Client. Given the nature of the on-hire work, any increase above the minimums may vary from assignment to assignment and will be entirely at the discretion of the Company.

6. Casual Employment

- a. Where a relevant Award, in accordance with Clause 5 (a), contains Casual conversion provisions that require the conversion of Casual employees to Permanent Full or Part-time Employees, regardless of the circumstances, for the purposes of this Agreement those provisions will have no effect on you.

In order to compensate you for the loss of casual conversion rights, an additional 1% Casual Loading will be paid at such time as the Casual conversion (if any) would have otherwise applied but for this Agreement.

- b. Where a relevant Award, in accordance with Clause 5 (a), does not provide for Casual Employment, the following provisions will apply:
 - i. A Casual On-Hire Employee is one engaged and paid as such.
 - ii. A Casual On-Hire Employee will be paid the hourly rate of pay for the relevant classification in addition to a loading of 25% calculated on the base rate of pay.
 - iii. Casual loading is paid in lieu of entitlements which do not apply to casual employees, having regard for the National Employment Standards.
 - iv. The minimum engagement for a Casual On-Hire Employee will be four hours on any one day that you are required to work.

7. Definitions

"On-Hire Employees" shall mean all Company On-Hire employees covered by this Agreement.

"Fair Work Act 2009" shall mean the Act itself or any other legislation that replaces it.

8. Additional Claims

The parties will not, during the term of this Agreement, pursue any further claims about any matter which pertains to the employment relationship.

9. Lawful directions

- a. It is important that you follow all lawful and reasonable directions that are within your ability, given by their Leading Hand/Supervisor, or any other appropriate person, as nominated by the Company or Client. Should you not be able to perform the assigned task for any reason whatsoever, it is your duty to inform your Leading Hand/Supervisor or other appropriate person immediately.
- b. Refusal to comply with any lawful and reasonable direction may result in disciplinary action, which may include the termination of your employment.

10. Safety and Fitness for Work

- a. We are committed to undertaking our best endeavours to the establishment of healthy and safe workplaces, which includes the use of healthy and safe work methods, impairment testing (both planned and random), work organisation, working time, machinery and equipment.
- b. You will not be allowed to enter or engage in work on a site or workplace if you are, or are reasonably suspected to be, under the influence of, or affected by, alcohol or drugs.
- c. The Company often operates in Industries that carry significant safety risks. Your health and well being is an essential element of the our success. Any breaches of obligations in relation to Workplace Health and Safety may be considered serious and may result in consideration being given to disciplinary action which may include termination of employment.
- d. You will be required to wear relevant PPE at all times as directed and/or as required. Your clothing will be of a standard and nature as deemed relevant and appropriate by the Company.

11. Disputes at Work

- a. The following dispute resolution procedure will apply where a dispute arises in relation to a matter arising under the Agreement or the National Employment Standards.
- b. You will need to first meet and confer with your local Protech Manager.
- c. If the matter is not resolved at such a meeting the parties will arrange further discussions involving more senior management as appropriate.
- d. If the matter remains unresolved, the Company will refer the matter to its most Senior Manager who will attempt to resolve the matter within 14 days or longer as agreed by the parties.
- e. In the event of the matter remaining unresolved, either party may refer the matter to Fair Work Australia.
 - i. Fair Work Australia may assist to settle the dispute through conciliation and/or mediation (but not arbitration).
 - ii. Should it remain unresolved, the Company will appoint an independent third party, which may be Fair Work Australia, who has the capacity to settle the dispute through arbitration, of which a decision will be binding on the parties.
- f. Until the matter in dispute is determined, the status quo will prevail and the needs of the business will remain a priority except in situations where there is an immediate and significant threat to the health and safety of yourself or others.
- g. At any stage of this Dispute Resolution Procedure, you may appoint a representative, including another On-Hire Employee or any other person, to act as your representative in an attempt to achieve resolution.

12. Assignments

- a. At the commencement of each assignment you will receive a notice of offer that will confirm the details of your assignment including remuneration (together with any Market Arrangement that may apply in accordance with Clause 13.b), classification, initial hours of work and a guide to the duration of the particular assignment. This will be based on the needs of the client. It should be noted that the nature of on hire work is such that the assignment may be varied or terminated at any time and the Company will advise you of these changes as soon as possible.
- b. Your classification for each assignment will be based on skills required for the particular role and not skills or qualifications you may possess.

- c. Your assignments as an on-hire employee mean that from time to time you will be placed on assignment to provide services for the benefits of clients of the Company, with each shift constituting a discrete period of employment.
- d. The Company does not control the length of any assignment and while the Company may indicate the potential length of an assignment in good faith, the client may vary the length of the assignment or terminate your attendance at its absolute discretion. When this occurs, we will undertake our best endeavours to offer you alternate assignments, where they are appropriate.
- e. Where we have been unable to offer you an alternative assignment, despite our best endeavours, we reserve our right to discontinue your employment.
- f. Where the position offered is a casual position:
 - i. You will be notified within minimum one (1) hour of the start of your shift, if there is a cancellation or change to your shift start time.
 - ii. Should you not be able to make your shift you must make every reasonable effort to notify your PROTECH contact prior to the scheduled start of your shift, so they are able to make other arrangements.

13. Wages

a. Payment of Wages

Payment of wages shall be by direct deposit/electronic funds transfer on a weekly or fortnightly basis to a bank account nominated by you. Where a public holiday or weekend falls on the normal pay day, the payment shall be made as is practicable after the normal pay day.

b. Market Arrangements

Where you are placed on an assignment where it is necessary for us to pay you in excess of the wages or allowances in this Agreement, this arrangement will be received by you in satisfaction of any and/or all entitlements, terms, conditions, penalties and allowances which might otherwise apply to you under this Agreement. This may include (but is not limited to) flat or rolled up hourly rates. Please be assured that the total payment to you will not be less than you would have received under this Agreement.

14. Superannuation

The Company will comply with all relevant superannuation legislation. Contributions can be made to either Recruitment Super or CBUS. Contributions to any other fund, will be by mutual agreement between the parties. Protech may alter its default fund in the future.

15. Cashing out or taking of paid Annual Leave

Where an employee accrues annual leave, subject to the requirements of the Fair Work Act 2009 (or its successor):

- a. An employee may request the cashing out of accrued leave which the Company may approve at its discretion; and/or
- b. The Company may require an employee to take annual leave.

16. Consultation

- a. This term applies if:
 - i. the employer has made a definite decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise; and
 - ii. the change is likely to have a significant effect on employees of the enterprise.
- b. The employer must notify the relevant employees of the decision to introduce the major change.
- c. The relevant employees may appoint a representative for the purposes of the procedures in this term.
- d. If:
 - i. a relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 - ii. the employee or employees advise the employer of the identity of the representative;
 - iii. the employer must recognise the representative.
- e. As soon as practicable after making its decision, the employer must:
 - i. discuss with the relevant employees:
 1. the introduction of the change; and
 2. the effect the change is likely to have on the employees; and
 3. measures the employer is taking to avert or mitigate the adverse effect of the change on the employees; and
 - ii. for the purposes of the discussion — provide, in writing, to the relevant employees:
 1. all relevant information about the change including the nature of the change proposed; and
 2. information about the expected effects of the change on the employees; and
 3. any other matters likely to affect the employees.
- f. However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- g. The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- h. If a term in the enterprise agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the employer, the requirements set out in subclauses 15(b), 15(c) and 15(e) are taken not to apply.
- i. In this term, a major change is **likely to have a significant effect on employees** if it results in:
 - i. the termination of the employment of employees; or
 - ii. major change to the composition, operation or size of the employer's workforce or to the skills required of employees; or
 - iii. the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - iv. the alteration of hours of work; or
 - v. the need to retrain employees; or
 - vi. the need to relocate employees to another workplace; or
 - vii. the restructuring of jobs.
- j. In this term, **relevant employees** means the employees who may be affected by the major change.

17. Flexibility

- (1) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
 - (a) the agreement deals with 1 or more of the following matters:
 - (i) arrangements about when work is performed;
 - (ii) overtime rates;
 - (iii) penalty rates;
 - (iv) allowances;
 - (v) leave loading; and
 - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
 - (c) the arrangement is genuinely agreed to by the employer and employee.
- (2) The employer must ensure that the terms of the individual flexibility arrangement:
 - (a) are about permitted matters under section 172 of the Fair Work Act 2009; and
 - (b) are not unlawful terms under section 194 of the Fair Work Act 2009; and
 - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- (3) The employer must ensure that the individual flexibility arrangement:
 - (a) is in writing; and
 - (b) includes the name of the employer and employee; and
 - (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - (d) includes details of:
 - (i) the terms of the enterprise agreement that will be varied by the arrangement; and
 - (ii) how the arrangement will vary the effect of the terms; and
 - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - (e) states the day on which the arrangement commences.
- (4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (5) The employer or employee may terminate the individual flexibility arrangement:
 - (a) by giving no more than 28 days written notice to the other party to the arrangement;
or
 - (b) if the employer and employee agree in writing — at any time.

18. Signatories

The parties recognise that each has a responsibility to ensure the successful operation of this Agreement. The signatures below testify the fact that the Agreement has been approved by the employees who will be covered by the Agreement in accordance with the Fair Work Act 2009.

Signed for and on behalf of Protech Holdings Pty Ltd by:

Name:
Marc
MEILL

BM

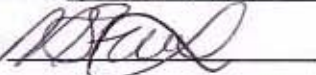
Signature 

Address 2/3464 Pacific Hwy, Springwood Q 4127

Position: Managing Director

Date 26/2/2012

Witness Name Natalie Stewart

Signature 

Address 2/3464 Pacific Hwy, Springwood Q 4127

Date 26/2/2012

Signed for and on behalf of the employees of Protech Holdings Pty Ltd by:

Printed Name Nicole Haverkamp

Signature NHaverkamp

Address 16 Utah Drive Morambah 4744

Position: Employee signing on behalf of the Employees covered by this agreement

Date 26/2/2012

Witness Name PIETER HAVERKAMP

Signature 

Address 16 UTAH DR, MORAMBAH, 4744

Date 26/2/2012

Commissioner Cambridge
Fair Work Australia
Terrace Tower
80 William Street
East Sydney

28 March 2012

Dear Commissioner Cambridge,

Re: AG2012/661

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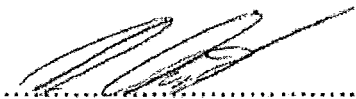
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Marc Meili
Managing Director
Protech Holdings Pty Ltd



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Witness Signature



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28.3.12
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Date