

REGISTER OF ENTERPRISE AGREEMENTS

ENTERPRISE AGREEMENT NO: EA05/315

TITLE: Command Industrial - TWU Enterprise Agreement

I.R.C. NO: IRC5/5792

DATE APPROVED/COMMENCEMENT: 2 December 2005 / 20 October 2005

TERM: 36

**NEW AGREEMENT OR
VARIATION:** New.

GAZETTAL REFERENCE: 23 December 2005

DATE TERMINATED:

NUMBER OF PAGES: 9

COVERAGE/DESCRIPTION OF

EMPLOYEES: The agreement applies to all employees employed by Command Industrial Pty Ltd, who fall within the coverage of the Ice Cream Carters and Van Salespersons (State) Award, Milk Treatment, &c. and Distribution (State) Award, Transport Industry (State) Award, Transport Industry Mixed Enterprise Interim (State) Award, Transport Industry Motor Bus Drivers and Conductors (State) Award, Transport Industry Petroleum &c., Distribution (State) Award, Transport Industry Quarried Materials (State) Award, Transport Industry - Retail (State) Award, Transport Industry Tourist and Service Coach Drivers (State) Award, Transport Industry Trade Waste (State) Award, Transport Industry - Waste Collection and and Recycling (State) Award, Transport Industry Wholesale Butchers (State) Award.

Federal Awards: Gate Gourmet Services - Transport Workers Award 2002, Transport Workers (Airlines) Award 1988, Transport Workers (Cateair Airport Services) Award 1990, Transport Workers (Oil Distributioj) 2000, Transport Workers (Oil Companies) Award 1992.

PARTIES: Command Industrial Pty Ltd -&- the Transport Workers' Union of New South Wales

COMMAND INDUSTRIAL - TWU ENTERPRISE AGREEMENT

An Enterprise Agreement made this 20 day of October 2005, between COMMAND INDUSTRIAL PTY LTD (the company) and THE TRANSPORT WORKERS' UNION OF NEW SOUTH WALES (the union), made under the *Industrial Relations Act* 1996 in accordance with the provisions of Part 2, Division 1 of the said Act, to regulate the following terms and conditions of employment.

Now it is hereby agreed by the parties as follows :

1. Title of Agreement

- (a) This agreement shall be known as the Command Industrial - TWU Enterprise Agreement.
- (b) It shall be fixed and maintained in a conspicuous place at the premises to which the agreement applies so as to be easily read by all employees. If any employees cannot understand the language in which the agreement is written, sufficient accurate (but simply expressed) summaries of the agreement will also be fixed and maintained for each of the employees to be able to read in a language which he or she understands.

2. Relationship to Parent Awards

- 2.1 This agreement shall apply concurrently with the relevant award or awards that apply, as a matter of law and are named in clauses 2.2 or 2.3 herein, or any other award or awards that apply as a matter of law, provided that the provisions of this agreement shall prevail to the extent of any inconsistency:

- 2.2 Relevant New South Wales Awards

Ice Cream Carters &c., and Van Salespersons (State) Award, as varied from time to time;

Milk Treatment &c., and Distribution (State) Award, as varied from time to time;

Transport Industry (State) Award, as varied from time to time;

Transport Industry-Mixed Enterprises (State) Award, as varied from time to time;

Transport Industry-Motor Bus Drivers and Conductors (State) Award, as varied from time to time;

Transport Industry-Petroleum &c., and Distribution (State) Award, as varied from time to time.

Transport Industry-Quarried Materials (State) Award, as varied from time to time;

Transport Industry-Retail (State) Award, as varied from time to time;

Transport Industry-Tourist and Service Coach Drivers (State) Award, as varied from time to time;

Transport Industry-Trade Waste (State) Award, as varied from time to time.

Transport Industry-Waste Collection and Recycling (State) Award, as varied from time to time;

Transport Industry-Wholesale Butchers (State) Award. as varied from time to time;

and/or any awards replacing or superseding the above awards in part or in whole.

- 2.3 Relevant Federal Awards

Gate Gourmet Services -Transport Workers' Award 2002.

Transport Workers (Airlines) Award 1988; as varied from time to time;

Transport Workers (Oil Companies) Award 1992; as varied from time to time;
Transport Workers (Oil Distribution) Award 2000, as varied from time to time;
and/or any awards replacing or superseding the above awards in part or in whole.

- 2.4 If any of the awards listed in clause 2.3 or other such award of the Australian Industrial Relations Commission applies, as a matter of law, clauses 6 and 8 of this agreement shall not apply.

3. Declaration

This Agreement was not entered into under duress by any party to it.

4. Objective of Agreement

The objectives of this agreement are:

- (a) To enable the company to perform work in the activities covered by this Agreement in a productive and efficient manner;
- (b) To enable employees to work in a productive, efficient, flexible and safe manner in accordance with their full skill and competence to meet the requirements of the company and their clients; and
- (c) To provide appropriate remuneration and conditions of employment for employees working under the terms of the Agreement.

5. Rates of Pay and Conditions of Employment

- (a) Employees under this agreement shall generally be required to perform work under the direction of businesses who are clients of the company.
- (b) When performing such work, employees (whether permanent full-time, permanent part-time, or casual) will be paid according to the relevant award, provided that where there is an agreement (registered or unregistered, and whether an enterprise agreement, award modernisation agreement or award) between the client and the union covering the client's own employees, then the provisions of that agreement will also apply to the employee.
- (c) Paragraph (b) cannot operate to allow in any circumstances the total remuneration of the employee to be less than that payable under the provisions of the relevant award.

6. Hours of Work

- (a) The spread of ordinary hours shall be that contained in the relevant award, provided that where there is an agreement (registered or unregistered, and whether an enterprise agreement, award modernisation agreement or award) between the client of the company and the union covering the client's own employees, then any span of hours in that agreement will apply to the employee in lieu of the spread of ordinary hours contained in the relevant award.
- (b) A casual employee on each separate engagement can work a maximum of 8 hours ordinary time before the commencement of overtime payments;
- (c) The minimum engagement for casual employees shall be 4 hours.

7. Retraining, Training, Education and Industrial Rights

- (i) In addition to any other entitlement of transport workers covered by this agreement the company, each month, shall make contributions of an amount equivalent to an additional 1% of the total payroll for transport workers covered by this agreement to the Transport Industry - Training, Education and Industrial Rights Council who may apply the money to:

Retrain and assist in the job placement of retrenched transport workers;

Train transport workers in vocational and professional skills, occupational health and safety and industrial rights; and

Further industrial rights compliance in the transport industry.

- (ii) The company shall be represented on the board of the Transport Industry Training Education and Industrial Rights Council.

8. Use of Casual Employees

At each work location of a client of the company, any number of casual employees may be used by the company provided that any provision of the award which applies to the client's own employees which provides for a ratio of permanent full-time employees to casual employees must be complied with in relation to all persons working at that work location.

9. Disputes Resolution Procedure

In the event of a question, dispute or difficulty arising at a branch:

- (a) The matter shall first be raised with the local management and agreement sought.
- (b) If the dispute is not resolved at this level, the matter may be discussed between the Union delegate (or, where there is no elected delegate at the company, the Union delegate of employees of the host employer) and the local Manager.
- (c) Should the dispute remain unresolved, the matter may be referred to an official of the Union , who shall discuss it with senior management.
- (d) In the event of no agreement being reached at this stage, the dispute will be referred to the Industrial Relations Commission of New South Wales.

While the procedure is being followed, normal work will continue.

10. No Extra Claims

It is a term of this Agreement that the union and each of the employees bound by this Agreement will not pursue any extra claims for the duration of this Agreement.

11. Superannuation

All employees shall at the commencement of their employment with the company join the TWU Superannuation Fund.

The company will make contributions to the TWU Superannuation Fund on behalf of their employees as required by the Transport Industry (State) Superannuation Award.

The payment of superannuation contributions shall be in accordance with the provisions of the relevant award provided that where there is an agreement (registered or unregistered, and whether an enterprise agreement, award modernisation agreement or award) between the client of the company and the union covering the

client's own employees, then any provision dealing with the calculation of superannuation in that agreement will apply to the employee in lieu of the provisions of the relevant award.

12. Company Obligations

The company shall ensure the following:

- (i) That it minimises the site to site movement of each employee by maximising the consecutive days that each employee works at a particular site of a host employer;
- (ii) Strong company recommendations that all of its employees join the TWU, including positive promotion of TWU membership at the point of recruitment;
- (iii) That it shall consent to the making, approval or certification (as the case may be) of one or more of the following industrial instruments as may be necessary to give enforceable effect to this Agreement under the *Industrial Relations Act 1996*, (NSW) in respect of the company's NSW operations or the *Workplace Relations Act 1996* (Cth) in respect of any ACT operations:
 - (a) an award or enterprise agreement under the *Industrial Relations Act 1996* (NSW);
 - (b) with respect to any ACT operations only, an agreement made under Section 170LJ of the *Workplace Relations Act 1996*;
- (iv) That any yard agreement or other unregistered arrangement in force at the time that this Agreement is executed shall continue to apply unless the parties to this Agreement specifically agree to other arrangements to apply in lieu thereof.
- (v) The training of its employees in occupational health and safety and other professional training as provided by a licensed Blue Card Provider; and
- (vi) Adherence to the principle of collective bargaining with the TWU including compliance with the following:
 - (a) The only instrument(s) regulating terms and conditions of engagement of its transport workers will be the relevant award or contract determination, this Agreement or a registered Union enterprise/certified agreement (whichever is/are applicable);
 - (b) The company will not enter into individual contracts or agreements (including Australian Workplace Agreements), or non-union agreements, with employees; and
 - (c) The company will not engage any of its transport workers on "ODCO" type arrangements.

13. Union Recognition, Induction and Union Membership

A. Union Recognition

- (i) The company recognises the TWU as being the sole Union that shall represent transport worker employees. This representation will extend to all terms and conditions of engagement of such employees engaged by the company, whether those terms and conditions are subject to this agreement or not.
- (ii) It is the policy of the company that it shall strongly recommend that all of its transport workers shall join the TWU. This includes positively promoting union membership at the point of recruitment and strongly recommending that all transport workers who are members of the TWU remain members of the TWU.
- (iii) The company will not take any actions or make any statements that will directly or indirectly state or imply opposition by the company to transport workers electing to join or remain members of the TWU.

- (iv) The company agrees not to discriminate, discharge, lay-off or discipline any transport workers for reason (or for reasons that include the reason) that the worker joined, proposed to join or is a member of the TWU, signed an authorisation card or engaged in Union activity.
- (v) The company agrees to supply to the Union the bank account details of employees as follows:
 - (a) upon request of an employee, the bank account details of that employee;
 - (b) upon request of the Union (such request to include confirmation of the authority to so request), the bank account details of each identified employee;

such details to be provided within 48 hours of a request made under (a) or (b) above.

B. Induction

- (i) A nominee or nominees of the Union shall be given an unfettered, uninterrupted opportunity to induct into the Union all new transport workers as required. The induction will be used to outline the value of Union membership and to encourage the workers to join the Union. To this end the company agrees to ensure the following:
 - (a) That it provides to the State Secretary of the TWU (or the Secretary's nominee) on the first day of each quarter a list of all of its transport workers. The list will state the following:
 - the name, address and email address of each transport worker;
 - the classification (class of vehicle for contract carriers) of each transport worker;
 - the department/section/yard/group in which the transport worker is engaged; and
 - the date the transport worker commenced engagement with the company.
 - (b) That the induction will take place on the site at which the work is to be performed in groups of no more than 15;
 - (c) That a room dedicated to the induction and appropriate for such use (such as a training room) is provided;
 - (d) That at least 30 clear minutes be allowed for the induction to take place;
 - (e) That transport workers receive no less than their usual or (where they have not yet commenced work) proposed rate of pay for the duration of the induction; and
 - (f) That prior to the induction there shall, at the request of the union, be posted in a prominent position accessible to all transport workers in the workplace, a Union generated notice as to the purpose of, and any other relevant information about, the induction.
- (ii) At the commencement of this Agreement, the company shall allow a one-off induction of the type and in the manner specified in B, above, of all existing transport workers. The company and the Union shall agree on a mutually convenient timetable for this to occur within 2 months of the commencement of the agreement.
- (iii) The company will notify the Union of all upcoming site inductions of new transport workers as soon as is practicable but no later than 72 hours before the site induction is to take place.

C. Delegates' Rights

- (i) The company shall recognise TWU delegates and shall ensure that TWU Delegates have the following rights:

The right to be treated fairly and to perform their role as Union Delegate or workplace Representative without any discrimination in their engagement.

The right to formal recognition by the company that endorsed Union Representatives speak on behalf of Union members in the workplace.

The right to bargain collectively on behalf of those they represent.

The right to consultation, and access to information about the workplace and the business.

The right to paid time to represent the interests of members to the company and to attend industrial tribunals.

The right to paid time during normal working hours to consult with Union members.

The right to paid time off to participate in the operation of the union.

The right to paid time off to attend accredited Union education and training.

The right to address new transport workers about the benefits of Union membership at the time that they commence work with the company.

The right to discuss Union and workplace matters with all transport workers at the workplace.

The right to access to a telephone, facsimile, photocopying, internet and email and office facilities for the purpose of carrying out work as a delegate and consulting with workplace colleagues and the Union.

The right to place Union information on a notice board in a prominent location in the workplace.

The right to up to 3 months paid time off to work with the Union.

- (ii) The company acknowledges, and will in no way hinder, the following functions of TWU delegates:

To provide awareness and understanding of the Union's aims and achievements whenever possible.

To know the profile of Union members in the workplace.

To recruit and involve transport workers in the workplace in the Union and its activities.

To be approachable and helpful to Union members in the workplace.

To seek out and encourage other Union members to take on roles and responsibilities.

To provide up to date and relevant Union information to Union members in the workplace

To regularly undergo Union education and training.

To represent the views of the members.

To represent Union members fairly and accurately in negotiations and in relation to individual grievances.

To keep in regular contact with the Union Organiser and other Union Representatives in the workplace.

14. Blue Card, EBA and on-Going Training

- (i) The company will promote vocational training, occupational health and safety training, safer work practices, knowledge of this agreement and other industrial entitlements, and other services for the benefit of the workers in the transport and distribution industry.
- (ii) The company recognises its responsibilities to provide a safe and healthy workplace for its employees and accordingly agrees to train its employees in accordance with this Clause.
- (iii) Prior to an employee commencing to work with or on behalf of the company the employee shall be trained in:

- occupational health and safety
- vocational skills;
- other professional training; and
- industrial rights

This will be achieved by providing each employee with Blue Card Training as specified in subclause (iv) of this clause and by facilitating Union inductions and supporting industrial rights education as specified in this agreement.

- (iv) Blue Card Training
 - (a) Each new employee shall undertake a Blue Card Program, conducted by a licensed Blue Card training provider, in conjunction with the company and the TWU delegate.

Note: The Blue Card course is competency based. Therefore although the duration of the training course would usually be of no less than four (4) hours duration, it may be of greater or lesser duration, depending upon the actual time required by each inductee to be trained.

- (b) In addition to the requirements contained in paragraph (a) above, the company shall arrange for a safety assessment in relation to the workplace of the company and any other site that an employee may visit or perform work at in the course of that employee's employment. This safety assessment shall be carried out by an appropriately qualified person. The company shall ensure that each employee who works at or in connection with such a workplace receives appropriate training relating to the safety assessment.
- (v) The following additional training will also be provided as follows:

- (a) EBA Training

At the commencement of this Agreement the company shall train all of its employees in its terms. This training shall be conducted by the TWU delegate, in conjunction with the company.

- (b) Ongoing Training.

The company shall:

- A. Comply with all current Codes of Practices, Regulations, Worksafe Australia documentation and approved and recognised industry standards as a minimum requirement, so as to meet and comply with the company's obligations under the NSW Occupational Health and Safety Act 2001 and the NSW Occupational Health and Safety Regulation;
- B. Authorise all transport workers elected to OH&S Committees and/or as OH&S Representatives to attend a committee training course (as per the NSW *Occupational Health and Safety Act 2001*)

as soon as practicable within 3 months of being elected to such a position. Further, the Company will establish an OH & S Committee in all workplaces with less than 20 employees;

- C. Train all TWU delegates and co-delegates to "Certificate 4 in Workplace Training and Assessing" trainer standard within three months of either the commencement of this agreement or the delegate or co-delegate assuming the position of delegate or co-delegate;
- D. Train all existing employees in the Blue Card Induction Program. Such training is to occur within three months of the commencement of the agreement, and shall be conducted by a licensed Blue Card training provider, in conjunction with the company and the TWU delegate;
- E. Enrol and provide all employees that perform driving duties, together with any allocation staff and fleet controllers with the opportunity and time to attend Driver Fatigue Management programs; and
- F. Provide all TWU delegates and co-delegates with an additional two weeks per annum paid training leave.

- (vi) Training to be paid for by the Company

The company shall pay for the training courses and programs referred to in this agreement, and all other reasonable expenses which would otherwise be incurred by attendees of the course, shall be borne by the company. Further, attendees shall receive no less than their usual pay whilst attending such courses.

15. Anti-Discrimination

- (a) It is the intention of the parties bound by this agreement to seek to achieve the object of section 3(f) of the *Industrial Relations Act 1996*, to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, ex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (b) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this agreement the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this agreement are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the agreement, which, by its terms or operation, has a direct or indirect discriminatory effect.
- (c) Under the *Anti-Discrimination Act 1977*, 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.
- (d) Nothing in this clause is to be taken to affect :
 - (i) any conduct or act which is specifically exempted from anti-discrimination legislation;
 - (ii) offering or providing junior rates of pay to persons under 21 years of age;
 - (iii) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*; or
 - (iv) a party to this agreement from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
 - (v) a party to this agreement from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (e) This clause does not create legal rights or obligation in addition to those imposed upon the parties by the legislation referred to in this clause.

Notes:

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56 (d) of the *Anti-Discrimination Act 1977*, provides :

"Nothing in the Act affects any of the act or practiced of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

16. Commitment to Agreement

- (a) In the event that legislative change enacted after the making of this agreement (including legislative change enacted by the commonwealth parliament) renders inoperative or invalid any or all of the provisions of this registered enterprise agreement/contract agreement, the parties agree to treat the agreement and all of its provisions (including any provisions deemed to be part of the agreement under subclauses (b) and (c) of this clause) as subsisting independent of any legislative framework.
- (b) In the event that legislative change enacted after the making of this agreement (including legislative change enacted by the commonwealth parliament) affects the operation or validity of state award/contract determination provisions, with the result of eliminating or reducing award/contract determination entitlements of persons covered by this agreement the parties agree that such state award/contract determination provisions will be deemed to be part of this agreement (and incorporated as provisions of this agreement) from the moment they cease to be operative or valid, except where they are inconsistent with an express provision of this agreement.
- (c) In the event that legislative change enacted after the making of this agreement (including legislative change enacted by the commonwealth parliament) affects the capacity of the Union to exercise the rights it possesses under section 296, 297 or 298 of the *Industrial Relations Act NSW 1996*, the parties agree that those provisions will be deemed to be part of this agreement (and incorporated as provisions of this agreement) from the moment they cease to be operative or valid.

17. Area, Incidence and Duration

- (a) This agreement applies to all employees of the employer, whether employed on a permanent, casual, part-time, temporary or fixed-term basis, performing work that falls within the coverage of the awards specified in clause 2 of this agreement, within the state of New South Wales.
- (b) This agreement shall commence upon the date of signing by the company. Its nominal term shall be three (3) years and the agreement shall continue in force thereafter until replaced or rescinded.

The parties hereby witness this agreement as follows:

SIGNED on behalf of the TRANSPORT WORKERS UNION OF NEW SOUTH WALES.

In the presence of:

SIGNED on behalf of Command Industrial Pty Ltd

In the presence of:

Dated: