



DECISION

Fair Work Act 2009

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

Canon Australia Pty Ltd
(AG2015/7898)

CANON AUSTRALIA PTY LTD (TECHNICAL CONSULTANTS) ENTERPRISE AGREEMENT, 2015

Business equipment industry

DEPUTY PRESIDENT BULL

SYDNEY, 27 JANUARY 2016

Application for approval of the Canon Australia Pty Ltd (Technical Consultants) Enterprise Agreement, 2015

[1] An application has been made by Canon Australia Pty Ltd (Australia) Pty Ltd (the applicant/Canon) for the approval of an enterprise agreement known as the *Canon Australia Pty Ltd (Technical Consultants) Enterprise Agreement, 2015* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act) and is a single enterprise agreement.

[2] The Agreement covers production employees engaged by the applicants that are engaged in the installation and servicing of business equipment, and who are classified within the Technical Consultants/Production Specialists stream. Pursuant to s.186(3) of the Act, I am satisfied that the group of employees was fairly chosen based on the operational distinctiveness of the proposed coverage.

[3] The Australian Municipal, Administrative, Clerical and Services Union (ASU) was an employee organisation involved in the agreement making process as a bargaining representative. The ASU has filed a statutory declaration (F18) in support of the approval of the Agreement, but disagreed with certain aspects of the employer's statutory declaration (F17).

[4] In particular, the ASU stated that the applicant did not disclose in its statutory declaration that it initially requested employees vote on the Agreement as per s.181 of the Act on 17 November 2015. The result of that ballot was that 66 employees voted in favour of the Agreement, and 65 employees did not support the approval of the Agreement, with one employee who did not vote.

[5] It is noted that the F17 only requires details relating to the agreement which is subject to approval and information in prior ballots is not required. The submitted F17 states that employees were requested to vote on the Agreement on 11 December 2015. The Agreement

39. DISPUTES AND GRIEVANCES

- a) All parties agree to abide by the following procedure in the resolution of any dispute/grievance arising under this Agreement or the National Employment Standards.
- b) The matter must first be discussed by the aggrieved employee(s) with the immediate supervisor/manager.
- c) If not settled, the employee(s) will then discuss the matter with the next level manager arising between them.
- d) If not settled, the employee will then discuss the matter with the General Manager - Direct Services and/or a member of the Human Resources Department (or a person designated by him/her).
- e) If the matter is not resolved after all agreed steps have been taken, it must be submitted to either the Fair Work Commission or another agreed mediator who is independent of the parties to the Agreement, for the purpose of conciliation and mediation. Alternatively the parties may agree to go straight to 'f' below. For the purposes of this provision "party" includes an employee or group of employees.
- f) If the matter is not resolved it must be submitted to the Fair Work Commission or an agreed arbitrator who is independent of the parties to the Agreement for arbitration. The Fair Work Commission may exercise the procedural powers in relation to hearings, witnesses, evidence and submissions which are necessary to make the arbitration effective. The decision of the member will bind the parties subject to either party exercising a right of appeal against the decision to a Full Bench.
- g) Until the matter is determined normal work must continue where practical (this includes, but is not limited to, the employee complying with a direction given by Canon to perform other available work at the same workplace or a different workplace). No party shall be prejudiced as to the final settlement by the continuance of work in accordance with this procedure.
- h) The parties must cooperate to ensure that these procedures are carried out expeditiously.
- i) A party to a dispute or matter arising under this clause may appoint another person from an organisation, association or union to accompany or represent them in relation to carrying out any of the procedures, under this clause.

PART H - LEAVE ENTITLEMENTS

40. ANNUAL LEAVE

- a) Each full-time employee shall accrue 150 hours (20 days) annual leave in respect of each twelve (12) months of service, and a pro-rata entitlement applies for part-time employees. Annual leave will be accumulated and be payable on a pro-rata basis from the day of commencement.
- b) Annual Leave will be taken within twelve (12) months of falling due and at a time agreed between Canon and the employee. As a general rule, leave should be taken at a time convenient to the work cycle of the department in which the employee works. Where possible annual leave should be taken in the same pattern as it is worked. Where agreement cannot be reached, then either party can require the leave to be taken with six (6) months' notice in writing.
- c) No employee can accrue more than forty (40) days leave without written permission. Once the level exceeds forty (40) days then Canon or the employee may, by giving one (1) months' notice, require the employee take the leave in excess of this amount. As a last resort, Canon will also have the