



DECISION

Fair Work Act 2009

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

Tasty Trucks Vic Pty Ltd
(AG2015/4786)

VAN STAFF ENTERPRISE AGREEMENT 2015

Fast food industry

DEPUTY PRESIDENT BULL

SYDNEY, 16 OCTOBER 2015

Application for approval of the Tasty Trucks Van Staff Enterprise Agreement 2015

[1] An application has been made for the approval of an enterprise agreement known as the *Tasty Trucks Van Staff Enterprise Agreement 2015* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). The Agreement is a single enterprise agreement, and covers van managers engaged by the employer.

[2] The application is made by the employer, Tasty Trucks Vic Pty Ltd (the applicant). The Shop Distributive and Allied Employees Association (the SDA) was a bargaining representative involved in the agreement making process. The *Fast Food Industry Award 2010* (the Award) is the relevant reference award for the purposes of the better off overall test (BOOT) as per s.186 of the Act.

Issues raised by the SDA

[3] The SDA have submitted a statutory declaration in relation to the approval of the Agreement (F18), noting that it supports the approval of the Agreement and wants to be covered by it. However, the SDA noted in its F18 that it did not agree with some of the characterisations made in the applicant's statutory declaration (F17), in particular that:

1. With respect to overtime at cl.13, the Agreement provides for time off in lieu as an option at the 'single time rate' as opposed to the Award being calculated at the penalty equivalent;
2. With reference to the "time off instead of overtime payment" option under the Award, it can be hours worked in excess of 38 hours per week for a 4 week period as opposed to being averaged over 8 weeks under the Agreement; and
3. The Agreement does not provide for annual leave loading as per the Award, but rather incorporated into the hourly rate of pay.

[4] The applicant was requested by the Commission to respond to the issues raised by the SDA.

[5] The applicant submits that the reduced time off in lieu with respect to overtime is acknowledged, but the employee has the right of choice.

[6] In this regard, the Commission notes that the applicant declared in its employer statutory declaration (F17) that with respect to clause 13 – overtime, employees having the option of receiving the penalty payment or time off as a term that is “more beneficial” than the Award, and at 3.5 of the F17 stated that overtime – time in lieu if elected by an employee, would be a term that is “less beneficial” under the Agreement as it is at single time.

[7] Having regard to the submissions of both parties, the rate at which the time off instead of payment for overtime under the Agreement can only be characterised as being less beneficial than the Award, however, this is dually noted in the applicant’s submitted F17.

[8] The applicant’s characterisation of the ‘option to elect’ to receive the time off instead of payment for overtime, that is at the discretion of the employee under the Agreement as opposed to ‘mutual agreement’ under the Award, may be considered as being more beneficial. However, taking in to account the overtime being averaged over 8 weeks under the Agreement as opposed to 4 weeks under the Award for which an employee may take time off in lieu of overtime, the Commission is not satisfied that cl. 13 with respect to time off instead of overtime is more beneficial than the Award.

[9] Having said this, the better off overall test is the global assessment of the Agreement; that is to take into account the terms of the Agreement as a whole and not the identification of any single provision, which was the principle adopted by the Full Bench of the Commission in *Armacell Australia Pty and Others*.¹

[10] Taking into account the greater entitlements under the Agreement than the Award, I am satisfied that as a whole, the Agreement will provide a greater benefit in terms than the Award, including:

- i. part time employees being entitled to a minimum 12 hour weekly engagement period;
- ii. confined ordinary hours of work span;
- iii. greater leave entitlements;
- iv. no separate junior rates; and
- v. increased rates of pay.

[11] With respect to the annual leave loading being incorporated into the hourly rate of pay under the Agreement, I have had regard for this with reference to the BOOT.

Single interest employer test

[12] Pursuant to s.172(2) of the Act, the Commission requested the applicant address how 3 employers may make a single enterprise agreement, and in particular, how the applicant would satisfy the single interest employer test under s.172(5) of the Act.

¹ [2010] FWAFB 9985 at [41]

[13] The single interest employer test under s.172(5) of the Act:

Single interest employers

(5) Two or more employers are *single interest employers* if:

- (a) the employers are engaged in a joint venture or common enterprise; or
- (b) the employers are related bodies corporate; or
- (c) the employers are specified in a single interest employer authorisation that is in operation in relation to the proposed enterprise agreement concerned.

[14] The applicant submits that the employers to be covered by the Agreement are all engaged in the common enterprise of the business of Tasty Trucks through franchise agreements, thereby meeting the requirements under s.172(5) of the Act.

Requirements under the Act

[15] Pursuant to s.172(5)(a) of the Act, I am satisfied that the employers to be covered by the Agreement are single interest employers within the meaning of the Act.

[16] As specified in cl.1 of the Agreement – Parties to the Agreement, the employees to be covered by the Agreement are van managers engaged by the employer. Pursuant to s.186(3), I am satisfied that the group of employees to be covered by the Agreement was fairly chosen.

[17] The SDA, being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it supports the approval of the Agreement and wants the Agreement to cover it. In accordance with s.201(2) of the Act, I note that the Agreement covers this employee organisation.

[18] I have had regard to the issues raised by the SDA, and for the reasons outlined above I am satisfied that the Agreement as a whole; results in employees being better off overall.

[19] 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.

[20] The Agreement is approved. In accordance with s.54(1), the Agreement will operate from 23 October 2015. The nominal expiry date of the Agreement is 30 June 2019.



DEPUTY PRESIDENT

[2015] FWCA 7084

Printed by authority of the Commonwealth Government Printer

<Price code A, AE416166 PR572919>



**Van Staff
Enterprise
Agreement
2015**

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1. PARTIES TO AGREEMENT

This Agreement is made between:

- i. Tasty Trucks Vic Pty Ltd ACN 004 459 429;
- ii. Tasty Trucks NSW Pty Ltd ACN 154 893 213;
- iii. Street Chef Investments Pty Ltd ACN 117 786 586 ----- (The Employer);
- iv. Van Managers of the Employer ----- (The Employee); and
- v. Shop, Distributive and Allied Employees' Association (The Union)

2. SCOPE

The Agreement covers employees employed in classifications listed in clause 14, but excluding persons employed in a supervisory position.

3. OBJECTIVES

The parties to the Agreement are committed to co-operating positively to enhance the productivity of the business through continued review of all aspects of operations and to continue to provide Employees with access to more fulfilling, varied and better paid work. This Agreement seeks to continue providing measures to:

- Ensure Employees are consulted and involved in making decisions that may affect them in their particular work areas
- Provide Employees with training and development to ensure that they have the opportunity to improve their skill and achieve their potential within the established career paths and meet the changing needs of the Employer
- Provide a safe, healthy and respectful workplace
- Ensure that Employees continue to benefit from the success of their efforts
- Ensure Employees work reasonable hours
- Ensure flexibility for work and family responsibilities
- Promote permanent employment within the workforce wherever possible
- Ensure the delivery of quality service to customers of the business and continuous improvement

The parties recognise that this is essential to job security, the affordability of salary increases and the future success of the business.

4. PERIOD OF OPERATION & SUPERCESSION

This Agreement will operate from the first pay period commencing on or after 1st July 2015. (but with respect to Street Chef Investments Ltd from the first pay period commencing on or after 1st July 2016) and will operate until the expiry date on 30th June 2019 and replaces all previous Agreements.

5. EMPLOYEE DUTIES

The Employee will diligently and faithfully perform all the duties and responsibilities arising from employment and will be bound by any policy and procedures formulated by the Employer and of which the Employee has reasonable notice.

6. RELATIONSHIP TO AWARD

The terms of the Fast Food Industry Award 2010 ("the Award") are incorporated into this Agreement however where there is any conflict or inconsistency between the Award and the Agreement, the Agreement shall apply to the extent of the conflict or inconsistency.

7. PROBATIONARY PERIOD

All new Permanent Employees shall be on probation for the first six (6) months of engagement. During this period the Employer may terminate employment by the giving of one weeks' notice.

8. MEAL INTERVALS / REST BREAKS

MEAL BREAK – No Employee is expected to work more than 5 hours without being entitled to an unpaid meal break of 30 minutes, which is to commence by 1.30pm.

REST BREAK – Where, given the urgent needs of the business, it is not possible for the company to designate a rest break in an Employee's work schedule on any given day, the Employee shall receive an allowance of \$4 in lieu thereof.

9. STAFF DISCOUNT / ACCESSING PRODUCT

STAFF DISCOUNT - All Employees of the Employer will be entitled to apply for a staff purchases card subject to the conditions of issue from time to time. The card entitles them to 50% discount off all purchases (excluding cigarettes).

The amount purchased by an Employee in a pay week will be deducted from the Employee's wage payment at the end of each pay week.

ACCESS TO PRODUCT

Employees may access, from designated binned items areas at the end of each day, up to 6 food items daily (non-cumulative) and access to further product may only be granted by specific authority.

10. HOURS OF WORK

Employees may be engaged to work between the hours of 5 am and 5pm Monday through to Friday.

The ordinary hours of work for a full time Employee will be 38 hours per week, on average, worked over a period of no more than 8 weeks (aggregate period).

Not more than ten ordinary hours may be worked in any day.

The ordinary hours may be worked in any one of the following methods:

- (a) a fixed day or days off in the aggregate period;

- (b) a rotating day, or days, off in the aggregate period; or
- (c) an accumulating day or days off in the aggregate period with a maximum of five days being accumulated.

An assessment will be made in each establishment as to which method of arranging hours best suits the business and the proposal will be discussed with the Employees concerned, the objective being to reach agreement on the method of implementation. An assessment may be initiated by either the Employer or Employees not more than once a year.

Time worked in excess of 38 hours in any one week within the aggregate period will not be paid but will be taken as in-lieu time in accordance with the roster for that aggregate period. In-lieu time will be counted and paid as time worked in the week in which it is taken.

By agreement, in writing, the in-lieu time may be transferred to another aggregate period and taken in conjunction with other accumulated in-lieu time provided that no entitlement to overtime shall arise by reason of the transfer and resultant increase in working time in the initial aggregate period.

In-lieu time will be taken in multiples of one day (7.6 hours) provided that any in-lieu time accumulated but not taken by the time of the Christmas closedown will be then taken in conjunction with annual leave.

The actual hours worked by an Employee will include:

- (i) Preparation time
- (ii) Travel time to and actual time of first stop of the day
- (iii) Selling at each stop
- (iv) Actual time of last stop and travel time back to base from last stop
- (v) Conducting stock take, attending cash room to account and stock balancing.
- (vi) Other duties as directed.

11. ROSTER

- (a) Employees shall be provided with a roster at least 8 weeks in advance.
- (b) Prior to any permanent roster change the Employer shall consult affected Employee(s) regarding the change in accordance with sub clause 34(10) change to regular roster or ordinary hours of work.
- (c) Any permanent roster change must be provided to the Employee in writing with a minimum 7 days' notice.
- (d) Should an Employee disagree with any permanent roster change they shall be provided with a minimum of 14 days' written notice in lieu of the 7 days' notice required in sub clause (c), during which time there shall be discussions aimed at resolving the matter in accordance with clause 31 Dispute Resolution Procedure, as provided in this Agreement.
- (e) The employer and Employee or Employees may mutually agree to a one off or a permanent roster change at shorter notice without the need for the Employer to comply with the notice provisions of sub clauses (b) and (c) hereof.
- (f) In the case of an operational requirement beyond the control of the Employer, the Employer may change a roster on a one off basis with a minimum 24 hours' notice and may change the starting and/or finishing times of an individual shift or shifts by notice to the Employees affected before the normal starting time of that shift.
- (g) Subject to the above an Employee shall be provided with a regular roster which will not be subject to frequent variations.

12. PART TIME EMPLOYEES

Part-time Employees shall be employed in accordance with the Award and for a minimum of 12 hours per week.

13. OVERTIME

Employees who work outside the spread of hours or in excess of ordinary hours will be compensated

Work outside the spread of hours or in excess of ordinary hours includes:

- (a) Work performed before 5am;
- (b) Work performed after 5pm;
- (c) More than 10 hours' work in any one day;
- (d) More than 304 hours work performed by a full time Employee in any aggregate period;
- (e) More than 38 hours in any week performed by a part time Employee; or
- (f) Work performed by a part time Employee in excess of contracted weekly hours where there is no agreement in writing prior to working the additional time.

At the discretion of the Employee, such overtime will be compensated by the granting of equivalent single time off without loss of pay within two weeks of the working of the overtime or paid at the rate of time and one half for the first two hours and double time thereafter.

In the case of part-time Employees, time worked in excess of contracted weekly hours will be compensated at ordinary rates, provided the Employee agrees in writing prior to working the additional time and the total time worked does not exceed 38 hours in any week. Otherwise the additional time will be compensated as for full -time Employees.

14. CLASSIFICATIONS

VAN MANAGER means an Employee engaged in displaying & selling pre-prepared food from a lunch van to regular customers whilst being responsible for stock and cash control.

RELIEF VAN MANAGER means an Employee engaged in displaying & selling pre-prepared food from a lunch van to customers normally serviced by a regular Van Manager, whilst being responsible for stock and cash control.

TRAINER VAN MANAGER means a Relief Van Manager who is also responsible for the training of new Van Managers.

15. WAGE RATES

VAN MANAGER – PERMANENT HOURLY RATE

	Van Manager	Relief Van Manager	Trainer
Base Rate	\$20.72	\$22.20	\$23.29
Leave loading	\$0.28	\$0.30	\$0.31
Full rate	\$21.00	\$22.50	\$23.60

Casual Position Hourly rate will be Base Rate + 25% Loading

No junior rates will apply.

16. WAGE INCREASES

Wages and Allowances will be increased by 3.0% or CPI, whichever is greater, from the first pay period on or after 1st July 2016 and thereafter on the anniversary of that date until the expiry date of the Agreement. CPI is to be measured by reference to the annual movement as at the end of the preceding March quarter.

17. ALLOWANCES

All allowances shall be paid as per the Award.

18. SUPERANNUATION

Superannuation contributions will be paid as required under the Superannuation Guarantee (Administration) Act 1992 as varied from time to time to any compliant fund chosen by the Employee. If no fund is chosen then contributions will be made to the AMP Flexible Super Fund No. 903253586

Contributions will be paid monthly.

19. ABSENCES

Notification of absence including anticipated length of absence is to be given as soon as practicable and should be made to the Employer well in advance of shift commencement time in order that alternative staffing arrangements can be made.

Notification must be received by phone call (texting is not acceptable) by the Employee only, unless extreme circumstances prevent this. In this instance only a phone call from a second party is to be received and the Employer may seek justification of this upon the Employee's return to work.

In the event of absence due to sickness, a medical certificate, statutory declaration or other satisfactory evidence will be required for any absence exceeding one day or for any absence abutting a public holiday, weekend or time off in lieu. This evidence, subject to privacy legislation, must explain the basis for any statement that the Employee is unfit for work.

20. ABANDONMENT OF EMPLOYMENT

An Employee who is absent from work for a period of three consecutive shifts without the consent of the Employer and, during that time, has failed to notify the Employer or satisfy the Employer the absence was for a reasonable cause, shall be deemed to have abandoned the employment and the Employer will be entitled to treat the employment as having been terminated, at the initiative of the employee, at the date the employee last worked.

Where employment is abandoned, no notice is payable to the Employee.

The Employer will make reasonable efforts to contact the absent Employee before employment is deemed terminated due to abandonment.

21. LEAVE PROVISIONS

Annual Leave

The provisions of the Fair Work Act 2009 and the Award shall apply, subject to the following:

Full time and part-time Employees are entitled to 4 weeks (20 days) annual leave for each completed year of service exclusive of public holidays falling within the period of leave. Part time Employees will be paid annual leave on a pro-rata basis.

Annual leave is to be taken at a time mutually agreed with the Employer or on four weeks' notice of the Employer. Annual leave should be taken within 12 months.

Leave requests must be submitted as early as possible and will generally only be considered where sufficient leave has been or will be accrued at the time of taking the leave.

Leave requests cannot always be accommodated however leave approval will not be withheld unreasonably.

Subject to the Fair Work Act 2009 the Employer may give the Employee 4 weeks' notice of any normal days when the business will not be operating and these days must be taken as Annual Leave by the Employee.

An Employee who leaves or is dismissed for any reason shall receive on termination, any accrued annual leave entitlement.

Annual leave loading is incorporated in the hourly rate of Employees (see Clause 15) and accordingly is not paid at the time of taking leave.

Personal leave

The provisions of the Fair Work Act 2009 shall apply.

All Full-time and Part-time Employees are entitled to paid personal leave (accumulated at 5.85hrs for every 152 hrs worked).

Noting the requirement under the Fair Work Act 2009 to provide Employees up to 2 days of unpaid carer's leave, the Employer may, at its discretion, grant additional unpaid personal leave under exceptional circumstances.

Notification and evidentiary requirements are as detailed in clause 18 Absences.

Subject to compliance with this clause, an Employee who is pregnant may access personal leave entitlements to attend medical appointments associated with the pregnancy.

Bereavement Leave

The provisions of the Fair Work Act 2009 shall apply.

Parental Leave

The provisions of the Fair Work Act 2009 shall apply.

Long Service Leave

In accordance with the Fair Work Act 2009, State Long Service Leave legislation will apply.

Community Service Leave

The provisions of the Fair Work Act 2009 shall apply.

Domestic and Family Violence Leave

The Employer and the Union recognise that Employees sometimes face situations of domestic violence or abuse in their personal life perpetrated by a family or household member either during a relationship or after separation.

The Employer and the Union are committed to providing support to Employees who experience family or domestic violence and will treat all matters with confidentiality.

Domestic and Family Violence

- 1 Employees who experience family or domestic violence and require time off work to attend to medical appointments, legal proceedings and/or any other related activities, shall be entitled to:
 - 1.1 paid leave of two (2) days per annum
 - 1.2 Unpaid leave for up to two (2) days per occasion; and
 - 1.3 use personal leave
- 2 Consideration will be given to requests for further unpaid leave on a case by case basis.
- 3 An Employee who supports a person experiencing family or domestic violence may take personal leave / carers leave, as per clause 20, to accompany them to court or hospital or to mind children.
- 4 Employees experiencing family or Domestic Violence will have the right to request flexible workplace arrangements.
- 5 Upon request, an Employee seeking leave or flexible working arrangements under the clause, may be required by the Employer to produce evidence that family or domestic violence has occurred, such as; a medical certificate, a document issued by the police service, court, district nurse or lawyer, or a statutory declaration.
- 6 All personal information concerning matters of family or domestic violence shall be kept confidential and may only be divulged in exceptional circumstances, in consultation with the Employer, where it is imperative to maintain the safety of the Employee and/or co-workers.
- 7 An Employee will not suffer discrimination or adverse action by any person if they disclose an experience of family or domestic violence.
- 8 The Employer, in consultation with the SDA, will develop guidelines and provide training which details the appropriate action to be taken in the event that an Employee reports family or domestic violence, such as appropriate referral information, development of safety action plans, and the roles and responsibilities of managers and Employees.

22. PUBLIC HOLIDAYS

The provisions of the Fair Work Act 2009 and the Award shall apply.

23. PRESENTATION AND APPEARANCE

Employees must maintain the highest personal presentation standards in accordance with the Tasty Trucks HAACP Food Safety Plan.

Uniform standards must be maintained at all times.

24. CLEANING DUTIES

It shall be part of a Van Manager's duties to perform regular cleaning functions incidental to their work. It will include the cleaning of shelves and cleaning of equipment used in their work and maintaining their vehicle cabin in a clean and presentable manner.

25. PAYMENT OF WAGES

Wages will be paid by the Tuesday after the end of the pay period into a bank account nominated by the Employee. It is the Employee's obligation to provide the correct bank details to the Employer and advise the Employer promptly if there are any changes to those details.

Pay slips giving details of earnings and deductions will be issued with each pay.

26. OCCUPATIONAL HEALTH & SAFETY

The Employer will provide any necessary safety training to enable the Employee to fulfill task requirements.

The Employee agrees to observe all relevant safety precautions and procedures as required by the Employer and the relevant workplace or occupational health and safety legislation and regulation, including the wearing of any protective clothing and equipment.

Tasty Trucks visits many sites daily and some have specific OH&S requirements and the Employer accepts that it will ensure the necessary training and inductions are completed where this is a requirement. The Employee agrees to observe all relevant safety precautions and procedures as supplied by customers from time to time.

27. CODE OF CONDUCT

Employees acknowledge that they will abide by the Tasty Trucks Core Values at all times with these being:

TEAM – supporting one another to achieve results
RESPECT – Everyone Counts
WIN-WIN – good for you good for me
INTEGRITY – we conduct business in a fair and honest way
CONTINUOUS IMPROVEMENT – Constantly searching for better ways.

ATTENDANCE

Employees understand that the Employer, other Employees and customers are adversely affected by lack of punctuality and attendance. It is the responsibility of all Employees to start work on time, irrespective of the starting time.

VEHICLES

Considerable investment has been made in assembling the vans for use on the road and the Employee will make every effort to keep the vehicles safe and roadworthy at all times. The Employees acknowledge that they will make every effort to maintain the vehicles in good working order at all times and report any faults as soon as they are noticed. The Employee also undertakes that they will do everything possible to avoid accidents and or damage to the vehicles, which adds a considerable cost to the business through insurance costs, replacement costs and loss of time on the road.

COMPANY PROPERTY

Employees are required to take all reasonable care in the use of company property and to protect any company property in their care.

On termination of employment or upon request to do so, Employees must return in good condition (subject to fair wear and tear) any property in their possession belonging to the Employer. Uniform bond taken at time of initial employment will only be refunded upon satisfactory return of uniform

provided, in good condition. Uniform bond will be refunded upon termination or completion of satisfactory probation period, whichever is the earliest event.

SMOKING POLICY

Both the Employer and Employee recognize the health risks of smoking and support the objective of a tobacco smoke-free work environment. Both parties also recognize the effects that the look and/or odour that smoking can create and have a direct impact on the profitability of this food handling business. To this end, smoking is prohibited throughout all the company's premises and whilst in charge of a company vehicle. Smoking is only allowed during break times in the designated outdoor smoking area.

Any breach of the Smoking Policy will be treated as serious misconduct.

VAN MANAGER STOCK & CASH BALANCING POLICY

Accurate cash handling and balancing is a critical aspect of an Employee's performance

Both the Employer and Van Manager recognize the importance of balancing the Stock and Cash in till amount each day.

A Van Manager, who has a daily stock discrepancy greater than 1 for any stock item, will be asked to re count the relevant stock item.

A Van Manager, who has an unreasonable daily cash discrepancy, will be counselled and re-trained in the correct cash handling procedures.

28. CONFIDENTIAL INFORMATION

The Employee will treat all "confidential information" (meaning all transactions, records and information pertaining to the business that are not in the public domain) as strictly confidential and will not disclose any "confidential information" to any person, firm, company or other body unless previously and expressly authorised in writing by the Employer.

The Employee shall hold all "confidential information" in strict confidence, both during the period of employment and also after termination of employment relationship.

The Employee will not use or attempt to use any "confidential information" in any manner and for any purpose other than the purpose of the business of the Employer.

29. TERMINATION & RESIGNATION

The Employer may terminate the employment contract at any time by giving the other party the required period of notice specified below. Instead of providing the specified notice the Employer may choose to make payment in lieu of notice. If the Employee fails to give the required notice, the Employee forfeits the entitlement to any monies owing equal to the amount of notice not given.

Nothing in this Agreement affects the Employer's right to dismiss an Employee without notice for serious misconduct and an Employee so dismissed shall only be entitled to be paid for the time worked up to the time of dismissal and any entitlements accrued to such time.

The notice of termination period shall be:

By the Employer:

Years of Service	Required Notice
Less than one Year	1 week
Years 2 – 3	2 weeks
Years 4 – 5	3 weeks
Over 5 Years	4 weeks

Employees 45 years and over who have completed at least two (2) years continuous service with the Employer will receive one (1) additional week's notice.

By the Employee: One week's notice in writing or such other period as agreed by the parties.

30. REDUNDANCY

The provisions of the Fair Work Act 2009 shall apply.

31. DISPUTE RESOLUTION PROCEDURE

In relation to any matter arising about the terms of this Agreement or the application of the National Employment Standards that may be in dispute between the parties to this Agreement ('the matter'), the parties:

- a. will attempt to resolve the matter at the workplace level, including, but not limited to:
 - i. the Employee and his or her supervisor meeting and conferring on the matter; and
 - ii. if the matter is not resolved at such a meeting, the parties arranging further discussions involving more senior levels of management (as appropriate); and
- b. acknowledge the right of either party to appoint, in writing, another person to act on behalf of the party in relation to resolving the matter at the workplace level; and
- c. agree to allow either party to refer the matter to the Fair Work Commission (FWC) for mediation and if necessary arbitration if the matter cannot be resolved at the workplace level; and
- d. agree that if either party refers the matter to mediation/arbitration both parties will participate in the mediation/arbitration process in good faith; and
- e. acknowledge the right of either party to appoint in writing, another person to act on behalf of the party in relation to the mediation /arbitration process; and
- f. agree that FWC may be appointed as arbitrator by either party and will be given all powers necessary to conclude an effective arbitration; and
- g. agree that during the time when the parties attempt to resolve the matter:
 - i. the parties continue to work in accordance with the contract of employment unless the Employee has a reasonable concern about an imminent risk to his or her health or safety; and
 - ii. subject to relevant provisions of any state or territory occupational health and safety law, even if the Employee has a reasonable concern about an imminent risk to his or her health or safety, the Employee must not unreasonably fail to comply with a direction by his or her Employer to perform other available work, whether at the same

workplace or another workplace, that is safe and appropriate for the Employee to perform; and

iii. the parties must cooperate to ensure that the dispute resolution procedures are carried out as quickly as is reasonably possible; and

h. agree not to commence an action:

i. to obtain a penalty under the Act; or

ii. to obtain damages for breaches of a Certified Agreement; or

iii. to enforce a provision of the Certified Agreement; unless:

iv. the party initiating the action has genuinely attempted to resolve the dispute at the workplace level; and

v. either:

A. a period of 7 days has expired from the date when the party initiating the action gave notice that mediation is not requested; or

B. mediation was requested by either party and that mediation has been completed.

32. PROVISION RELATING TO ANTI-DISCRIMINATION

The parties to this Agreement agree that:

(a) it is their intention to respect and value the diversity of the work force by helping to prevent and eliminate discrimination at their enterprise on the basis of race, colour, sex, sexual preference, sexual orientation, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; and

(b) any dispute concerning these provisions and their operation will be progressed initially under the dispute resolution procedure in this Agreement; and

(c) nothing in these provisions allows any treatment that would otherwise be prohibited by anti-discrimination provisions in applicable Commonwealth, State or Territory legislation.

33. MODEL FLEXIBILITY PROVISION

(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.

34. MODEL CONSULTATION TERM

- (1) This term applies if the Employer:
- (a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the Employees; or
 - (b) proposes to introduce a change to the regular roster or ordinary hours of work of Employees.

Major change

- (2) For a major change referred to in paragraph (1)(a):

- (a) the Employer must notify the relevant Employees of the decision to introduce the major change; and
 - (b) subclauses (3) to (9) apply.
- (3) The relevant Employees may appoint a representative for the purposes of the procedures in this term.
- (4) If:
- (a) a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and
 - (b) the Employee or Employees advise the Employer of the identity of the representative;
- the Employer must recognise the representative.
- (5) As soon as practicable after making its decision, the Employer must:
- (a) discuss with the relevant Employees:
 - (i) the introduction of the change; and
 - (ii) the effect the change is likely to have on the Employees; and
 - (iii) measures the Employer is taking to avert or mitigate the adverse effect of the change on the Employees; and
 - (b) for the purposes of the discussion—provide, in writing, to the relevant Employees:
 - (i) all relevant information about the change including the nature of the change proposed; and
 - (ii) information about the expected effects of the change on the Employees; and
 - (iii) any other matters likely to affect the Employees.
- (6) However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.
- (7) The Employer must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.
- (8) If a term in this 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 paragraph (2)(a) and subclauses (3) and (5) are taken not to apply.
- (9) In this term, a major change is **likely to have a significant effect on Employees** if it results in:
- (a) the termination of the employment of Employees; or
 - (b) major change to the composition, operation or size of the Employer's workforce or to the skills required of Employees; or
 - (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or

- (d) the alteration of hours of work; or
- (e) the need to retrain Employees; or
- (f) the need to relocate Employees to another workplace; or
- (g) the restructuring of jobs.

Change to regular roster or ordinary hours of work

- (10) For a change referred to in paragraph (1)(b):
 - (a) the Employer must notify the relevant Employees of the proposed change; and
 - (b) subclauses (11) to (15) apply.
- (11) The relevant Employees may appoint a representative for the purposes of the procedures in this term.
- (12) If:
 - (a) a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and
 - (b) the Employee or Employees advise the Employer of the identity of the representative;

the Employer must recognise the representative.
- (13) As soon as practicable after proposing to introduce the change, the Employer must:
 - (a) discuss with the relevant Employees the introduction of the change; and
 - (b) for the purposes of the discussion—provide to the relevant Employees:
 - (i) all relevant information about the change, including the nature of the change; and
 - (ii) information about what the Employer reasonably believes will be the effects of the change on the Employees; and
 - (iii) information about any other matters that the Employer reasonably believes are likely to affect the Employees; and
 - (c) invite the relevant Employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).
- (14) However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.
- (15) The Employer must give prompt and genuine consideration to matters raised about the change by the relevant Employees.
- (16) In this term relevant Employees means the Employees who may be affected by a change referred to in subclause (1).

35. UNION MATTERS

- (1) The Employer recognises the Shop, Distributive and Allied Employees' Association (SDA) as the union that has representation of Employees covered by this Agreement. This representation extends to all conditions of employment, whether those terms and conditions are subject to the Agreement or not.
- (2) The Employer undertakes upon written authorisation, to deduct Union membership fees, as levied by the SDA in accordance with its rules, from the pay of Employees who are members of the SDA. Such monies collected will be forwarded to the SDA in conjunction with each pay cycle, together with a schedule of such contributions.
- (3) The Employer shall recognise the Union Delegate(s) who are elected by the Employees, or appointed by the SDA, as the on-site representative(s) of the SDA and whose names(s) have been forwarded in writing to the Employer by the SDA.
- (4) The Employer undertakes that, as part of the induction procedure for any new Employee covered by the Agreement, it shall advise the new Employee that there is an Agreement on site that has been negotiated between the Employer and the Union.

Signed for on)
Behalf of)
Tasty Trucks VIC Pty Ltd)


Name..... COLIN LEAR
Address..... 15 CARROON AVE
DONCASTER EAST VIC 3009

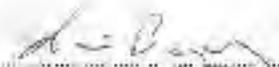
Signed for on)
Behalf of)
Tasty Trucks NSW Pty Ltd)


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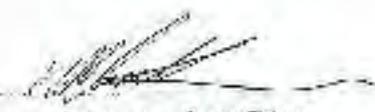
Signed for on)
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Signed for on)
Benefit of the Union Staff Employees)
C/T Taxi Trains Vio Pty Ltd, Trains)
Trains NSW Fly Ltd a/c Street Craft)
Investments Pty Ltd)


Name TANYA SACKLEY
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COLMELLE HILLS

Signed for on)
Benefit of)
Shop, Distributive and Allied)
Employee Association)


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