



## DECISION

*Fair Work Act 2009*  
s.185—Enterprise agreement

**Protech Personnel (Vic) Pty Ltd**  
(AG2017/3187)

### **PROTECH PERSONNEL (VIC) P/L SITE SPECIFIC (DOWNER RAIL VICTORIA) METALS LABOUR HIRE AGREEMENT 2017**

Building, metal and civil construction industries

COMMISSIONER WILSON

MELBOURNE, 11 OCTOBER 2017

*Application for approval of the Protech Personnel (Vic) P/L Site Specific (Downer Rail Victoria) Metals Labour Hire Agreement 2017.*

[1] An application has been made for approval of an enterprise agreement known as the *Protech Personnel (Vic) P/L Site Specific (Downer Rail Victoria) Metals Labour Hire Agreement 2017* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by Protech Personnel (Vic) Pty Ltd. The Agreement is a single enterprise agreement.

[2] The Applicant has provided written undertakings. A copy of the undertakings is attached in Annexure A. I am satisfied that the undertakings will not cause financial detriment to any employee covered by the Agreement and that the undertakings will not result in substantial changes to the Agreement.

[3] Subject to the undertakings referred to above, I am satisfied that each of the requirements of ss.186, 187, 188 and 190 as are relevant to this application for approval have been met.

[4] The “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU) being a bargaining representative for the Agreement, has given notice under s.183 of the Act that it wants the Agreement to cover it. In accordance with s.201(2) I note that the Agreement covers the organisation.

[5] The Agreement is approved and, in accordance with s.54 of the Act, will operate from 18 October 2017. The nominal expiry date of the Agreement is 30 June 2019.



COMMISSIONER

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Annexure A



Ben Fitzsimmons  
General Manager - VIC  
Protech Personnel (Vic) Pty Ltd  
Unit 6, 75 Lorimer St  
South Wharf VIC 3006

Commissioner Wilson  
Fair Work Commission  
11 Exhibition Street  
Melbourne VIC 3001

Tuesday, 10<sup>th</sup> October 2017

Dear Commissioner Wilson,

**AG2017/3187 – Application for approval of the Protech Personnel (Vic) P/L Site Specific (Downer Rail Victoria) Metals Labour Hire Agreement 2017**

We provide the following undertaking in relation to our application for Agreement Approval AG2017/3187 – Application for approval of the Protech Personnel (Vic) P/L Site Specific (Downer Rail Victoria) Metals Labour Hire Agreement 2017:

**Clause 13.5**

Delete. Replace with:

"A casual employee shall not be entitled to any forms of paid leave or unpaid leave, unless otherwise provided for in the NES and except for eligible casuals in the case of parental leave and Coinvest long service leave as provided for in this Agreement."

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ben Fitzsimmons', with a horizontal line drawn underneath it.

Ben Fitzsimmons  
General Manager - VIC  
Protech Personnel (Vic) Pty Ltd

**PART 1**

**1. Title**

This Agreement shall be known as the **Protech Personnel (VIC) P/L Site Specific (Downer Rail Victoria) Metals Labour Hire Agreement 2017**

**2. Arrangement**

The Agreement is arranged as follows:

1. Title
2. Arrangement
3. Application of Agreement
4. Unlawful Content Disclaimer
5. Parties Bound
6. Date and Period of Operation
7. Incorporation of Award Terms and National Employment Standards
8. Objectives of Agreement
9. Dispute Settlement Procedure
10. No Extra Claims
11. Wage Rates
12. Flexibility/Mobility of Labour
13. Casual Labour
14. Employee Representatives
15. Welder's Certificate Allowance
16. Annual Leave Loading
17. Travel Allowance
18. Standby
19. Payment of Wages
20. Superannuation
21. Protective Clothing
22. Occupational Health and Safety Representative
23. Compliance with Laws
24. Compensation for Lost Tools
25. Severance
26. Shutdown or Start Up on Major Jobs
27. Induction
28. Income Protection Insurance
29. Apprentices
30. Co-INVEST
31. Rostered Days Off (RDO) and Additional RDO
32. Picnic Day
33. Training
34. Trade Union Training Leave
35. Higher Classifications
36. Relativity at Client Sites
37. Consultation
38. Employee Flexibility Agreement
39. Signatures

**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 the agreement.**

**3. Application of Agreement**

- 3.1 This Agreement shall regulate the rates of pay and define the conditions of employment of employees of **Protech Personnel (VIC) P/L (ABN: 97 149 736 498)** engaged in one of the classifications pursuant to Clause 11, and who are on-hired to clients' and work under the clients' direction under the terms of and conditions of this Agreement.

This means, straight forward labour hire on an hourly hire basis for maintenance related tasks.

Such tasks include maintenance, installation, modification, trade and trade related fabrication, maintenance project, and shutdown work.

It excludes work carried out as part of a production process.

It applies to such employees within the metal and engineering industry who are engaged from or work in the Melbourne metropolitan area bound by a 50 km radius (which may be extended by agreement) from the Melbourne GPO.

For the purposes of this clause, "**trade maintenance related fabrication work**" shall also mean trade support functions such as trades' assistants, riggers, forklift drivers and the like, who are primarily assisting tradespeople.

- 3.2 This Agreement shall not apply to;

- 3.2.1 Electricians or electrical work; or,
- 3.2.2 On-site building and construction [as defined below].
- 3.2.3 any operation that is part of, or is preparatory to, or is for rendering complete, the prefabrication of made-to-order components to form part of any building, structure or works, whether carried out on-site or off-site;

'On-site building and construction' shall mean:

- (i) metal trades work performed in the work of construction, fabrication, erection and/or installation work or work incidental thereto when it is carried out at a construction site which is specifically established for the purpose of constructing, fabricating, erecting and/or installing the following:
  - power stations, oil refineries, terminals and depots; chemical, petro-chemical and hydrocarbon plants; and associated plant, plant facilities and equipment;
  - major industrial and commercial undertakings and associated plant, plant facilities and equipment including undertakings for the processing and/or smelting of ferrous and non-ferrous metals, the processing of forest products and associated by-products, acid and fertiliser plants, cement and lime works, and other major industrial undertakings of a like nature;
  - plant, plant facilities and equipment in connection with the extraction, refining and/or treatment of minerals, chemicals and the like;
  - transmission and similar towers, transmission lines and associated plant, plant facilities and equipment;
  - metal trades work on other engineering Projects, where a Project Agreement applies;
  - the on-site fabrication and/or installation of air-conditioning and/or ventilation systems and all work ancillary thereto, including packaged air conditioning units, thermostatic controls, water recirculation equipment, air volume regulators, diffusers, fans, heat exchange equipment and the like;
  - facilities and equipment in other construction engineering projects; and
- (ii) Maintenance and/or repair and/or servicing work carried out on-site by the employees of contractors or subcontractors in connection with contracts for on-site construction work referred to in clause 3.2.3 (i).

excluded from the definition of on-site building construction is, any work which is incidental to or of a minor nature in relation to the work normally performed by an employee of an employer not engaged substantially in metal and engineering construction, installation activities at existing sites, or any task mentioned in 3.1 above.

- 3.3 Any dispute to the application of this agreement shall be dealt in accordance with the dispute resolution procedure in this agreement.

**4. Unlawful Content Disclaimer**

It is not the intention of the parties to incorporate any term of any award that is unlawful content for the purposes of the *Fair Work Act 2009* ("Act") or does not pertain to the relationship between the employer and employees subject to

this Agreement.

**5. Parties Bound**

The parties bound to and or covered by this Agreement are;

- **Protech Personnel (VIC) P/L (ABN: 97 149 736 498) ("Company");**
- all employees of the Company who are engaged in one of the classifications as contained in Clause 11 of this Agreement and whose employment is, at any time when the Agreement is in operation, subject to this Agreement;
- subject to application pursuant to section 183 of the Act, the Automotive Food, Metals, Engineering, Printing and Kindred Industries Union
- This Agreement binds the Company, those of its employees to whom the Agreement applies the union and its members to whom the Agreement applies.

**6. Date and Period of Operation**

This Agreement comes into force 7 days after it is approved by the Fair Work Commission. The nominal expiry date of the Agreement is 30 June 2019.

**7. Incorporation of Award Terms and National Employment Standards**

7.1 This Agreement incorporates the terms of the Manufacturing and Associated Industries and Occupations Award 2010, as varied from time to time, the Metal, Engineering and Associated Industries (Accident Pay, Victoria) Award 1998 as in force on 1 March 2006; and, the Metal, Engineering and Associated Industries (Superannuation) Award 2000 as in force on 1 March 2006 (collectively referred to as "**the Award**") provided that where there is any inconsistency between the express terms of this Agreement, and the incorporated terms of the Award, the Agreement shall prevail to the extent of the inconsistency.

7.2 In this Agreement references to the Award shall mean the Award as incorporated into this Agreement unless the context requires otherwise.

**7.3 Relationship between this Agreement and the NES**

(a) The National Employment Standards (NES) is a set of legislated minimum employment entitlements under the *Fair Work Act*.

(b) In summary, the NES provides the following entitlements:

- An average of 38 ordinary hours of work per week;
- An employee with 12 months' service has the right to request a change in working arrangements to assist the employee to care for a child under school age. The employer can refuse the request on reasonable business grounds;
- Up to 12 months unpaid parental leave, with an employee right to request an extension for a further period of up to 12 months. The employer can refuse the request on reasonable business grounds;
- Four weeks annual leave per annum with an additional week for certain continuous shiftworkers;
- Up to 10 days per annum paid personal/carer's leave;
- Up to two days unpaid carer's leave per occasion for casuals and employees who have exhausted their paid carer's leave entitlements;
- Up to two days paid compassionate leave per occasion;
- Paid jury service leave and unpaid leave for eligible community service activities;
- Long service leave consistent with the relevant federal award provisions;
- Public holidays;
- Notice of termination and redundancy pay, subject to certain exclusions; and
- The provision of a Fair Work Information Statement to new employees.

(c) The NES shall apply to employees covered by this Agreement, except where this Agreement provides a more favourable outcome.

**8. Objectives of Agreement**

- 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.
- c. To provide appropriate remuneration and conditions of employment for employees working under the terms of the Agreement.

**9. Dispute Settlement Procedure**

- 9.1 This procedure applies to matters arising under this Agreement and anything that pertains to the relationship between the Company as an employer and the employees whose employment is covered by this Agreement.
- 9.2 For the avoidance of doubt, this includes but is not limited to the express terms of this Agreement and any incorporated instrument, the "General Protections" in the Act and the NES including any refusal of requests by the employer under the Act, s.65(5) and s.76(4).
- 9.3 The following procedure for the resolution of disputes shall apply:
- 9.4 The employee/s concerned shall first meet and confer with their immediate supervisor. The employee/s may appoint a representative to act on their behalf including a Shop Steward.
- 9.5 Subject to 9.11 and 9.12, below, where a representative who is an employee is involved, he or she shall be allowed the necessary time during working hours to meet the employee/s and the supervisor. Furthermore the representative and the relevant employees shall not lose ordinary time pay for the time spent dealing with the matter.
- 9.6 If the matter is not resolved at such a meeting further discussions involving more senior management and employee representatives will take place.
- 9.7 The parties to this Agreement shall be allowed to attend the workplace to undertake actions prescribed in the disputes settlement procedure in relation to an issue in dispute
- 9.8 To facilitate the speedy and efficient resolution of disputes:
- 9.8.1 the party with the grievance must notify the other party at the earliest opportunity of the problem;
  - 9.8.2 throughout all stages of the procedure all relevant facts must be clearly identified and recorded; and
  - 9.8.3 Sensible time limits must be allowed for completion of the various stages of discussion. However, the parties must co-operate to ensure that the disputes resolution procedure is carried out as quickly as possible.
- 9.9 If parties have followed the above procedure and the matter remains unresolved, the parties may seek assistance through an agreed third party to assist in resolving the issue. If any party fails or refuses to follow any step of this procedure the non-breaching party shall not be obligated to continue through the remaining steps of the procedure, and may immediately seek relief by application to the Fair Work Commission (FWC).
- 9.10 If the matter remains unresolved the parties may, jointly or individually, refer it to Fair Work Commission.
- 9.11 Notwithstanding the above, if a matter arises directly between the parties to this Agreement or if the parties otherwise agree, without all the steps in this procedure being followed, the matter may be referred directly to Fair Work Commission
- 9.12 If conciliation fails to resolve the matter in dispute Fair Work Commission shall resolve the matter by arbitration. If arbitration is necessary the FWC may exercise the procedural powers in relation to hearings, witnesses, evidence and submissions which are necessary to make the arbitration effective. Any decision or outcome that is made in any arbitration or appeal must be consistent with legislative obligations. The decision of the FWC will bind the parties, subject to either party exercising a right of appeal (under the relevant provisions of the Fair Work Act 2009) against the decision to a Full Bench or other relevant judicial body.
- 9.13 While the parties are attempting to resolve the matter the parties will continue to work in accordance with this Agreement and their contract of employment unless the employee has a reasonable concern about an imminent risk to his or her health and safety. 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

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must not unreasonably fail to comply with a direction by the Company to perform other available work, whether at the same enterprise or another enterprise, that is safe and appropriate for the employee to perform.

- 9.14 Subject to 9.13, except in the case of employee misconduct, whilst these processes are being followed the parties shall commit to avoiding stoppages of work, lock-outs or other bans and limitations on the performance of work. The Company shall ensure that all practices applied during the operation of this procedure are in accordance with safe working practices and consistent with its previous established practice.
- 9.15 In any dispute raised pursuant to this clause of the Agreement the employer and the union agree that each party shall bear its own costs.
- 9.16 It is an overriding condition of this Agreement that any outcome of a dispute determined by a third party must be consistent with the National Code of Practice for the Construction Industry (**the Code**), the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry (**the Guidelines**), and legislative obligations where the obligation to be code compliant applies.

### 10. No Extra Claims

The Company, employees covered by this Agreement, and the unions party to this Agreement agree that they will not, for the duration of this Agreement pursue any extra claims in relation to any matters except where consistent with this Agreement.

### 11. Wage Rates

The wages payable are as follows

Classification	current weekly pay rate (gross)	Column 1 3% increase First full pay period on or after September 18 2016	Column 2 3% increase First full pay period on or after July 1 2017	Column 3 3% increase First full pay period on or after July 1 2018
C12 (87.4%)	\$1157.06	\$1,191.77	\$1,227.52	\$1,264.35
C11 (92.4%)	\$1222.99	\$1,259.68	\$1,297.47	\$1,336.40
C10 (100%)	\$1349.50	\$1,389.97	\$1,431.67	\$1,474.62
C9 (105%)	\$1405.89	\$1,448.07	\$1,491.51	\$1,536.25
C8 (110%)	\$1463.24	\$1,507.14	\$1,552.35	\$1,598.92

The wage increases shall be payable as follows:

- The amount shown in Column 1 shall be payable from the beginning of the first pay period to commence on or after September 18, 2016.
- The amount shown in Column 2 shall be payable from the beginning of the first full pay period on or after 1 July 2017.
- The amount shown in Column 3 shall be payable on or after the beginning of the first full pay period on or after 1 July 2018.

### Wage rates apply retrospectively

To avoid doubt, if this Agreement comes into force on or after the first full pay period commencing 18 September 2016 and if the employees covered by the Agreement were not being paid at least the rates set out here, the Company must, within a reasonable period after this Agreement comes into force, pay the employees an amount of back pay equal to what the employees would have received had this Agreement came into force on or after the first full pay period commencing 18<sup>th</sup> September 2016.

Note: The Award tool allowance and EFT allowance is included in the relevant classifications' rate of pay set out above. This will be adjusted according to Agreement variations.

### 12. Flexibility/Mobility of Labour

Employees of **Protech Personnel (VIC) P/L (ABN: 97 149 736 498)** in the Labour Hire Industry must possess a broad range of trade skills as over a period of three (3) months; for example, they could be employed in ship repair, on



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maintenance and installation of equipment in a manufacturing plant or on an oil refinery shutdown. These different industries have individual work tasks that are particular to that industry and employees are expected to perform to the requirements of the client Company. This requires a broad range of skills over and above what is expected from an employee in a fixed occupation.

As they move around the range of industries, employees must abide by the various work practices required by the client companies. Demarcation practices also differ between clients which place additional demands on employees requiring a more multi-skilled approach to the work situation.

In the course of a 3 month period, employees could work at up to 20 different workplaces. This requires starting and finishing at different times as required by the client. Employees are also called upon to work overtime and shift work at short notice, as this is the nature of the industry.

### **13. Casual Labour**

13.1 A casual employee is one engaged and paid as such.

13.2 The parties confirm their commitment to maintaining a high level of full-time employment and to use wherever practicable full-time permanent employment.

13.3 Casual employees shall be paid a 25% casual loading on their classification's wage rate. The casual loading applies for all purposes. This casual loading is paid in lieu of the employee/s entitlement to paid annual leave, paid personal/carers leave, paid public holidays and other entitlements not applicable to casual employment.

13.4 Where the Company does engage a casual employee the Company shall provide the employee with a schedule of hours to be worked and likely period of engagement.

13.5 A casual employee shall not be entitled to any forms of paid leave or unpaid leave except for eligible casuals in the case of parental leave and Coinvest long service leave as provided for in this Agreement.

13.6 The parties to this Agreement acknowledge that the unions and many employees prefer full time employment. In order to facilitate permanency, casual employees who are engaged on a continuous full-time basis at a specific client site, for a continuous period of six (6) months will be converted to full time employment. An exemption to this will apply if an employer faces termination of their contract at a site or an employee can show cause so as to not be made full time, their period of casual engagement may be extended by a further three (3) months.

### **14. Employee Representatives**

14.1 The Company recognises the role of the employee representative(s) to represent any employee covered by this Agreement, where requested, in accordance with the disputes resolution procedure in clause 9.

14.2 The Company will ensure that employee representatives are provided with the necessary access and facilities to promote the resolution of disputes at the plant level, by measures based on consultation, co-operation and discussion.

14.3 Employee representative(s) shall not be docked for attending proceedings relating to the dispute resolution procedure.

### **15. Welder's Certificate Allowance**

Employees, who hold or obtain a Welder's Certificate/s (or the replacement equivalent qualification) and use such certificate/s in connection with their employment, shall be paid an allowance of \$10.00 per week for each certificate to a maximum of three.

Once payment has been made for using such certificate/s, such payment will continue, regardless of whether the certificate/s is/are being used or not.

Separate payment for certificate/s will cease if the employee is transferred to the equivalent of a higher classification i.e. payment shall not be made twice, through a new designation level and this allowance.

### **16. Annual Leave Loading**

↑

An employee other than a casual shall receive 17.5% annual leave loading paid on the all purpose rate on a pro-rata

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basis. This is also payable to employees who are retrenched, or who voluntarily terminate.

### 17. Travel Allowance

The following rates of travel allowance shall apply where an employee is required to start and finish work away from the Company workshop or designated depot (s), not using Company transport:

- \$27.56 per day within a 35 kilometer radius
- Thereafter, 1.875 cents per kilometer each way, plus, in the case of an employee not using Company transport, \$0.74 cents per kilometer car allowance to the site and return. Beyond this distance the provisions of the Award shall apply.
- Should an employee commence work at the designated site and then be requested/required to travel to an alternative site during work time and using their own vehicle, any toll charges reasonably incurred will be reimbursed by the company upon presentation of invoice/receipt.

### 18. Standby

Where the Company is unable to provide work for a weekly hire employee, the employee may be requested to remain at home awaiting work. If so, the employee shall keep in regular daily contact with the Company and be available for work on short notice. Under these circumstances, the employee shall;

In the first instance, use any accrued time off entitlement (RDO's); and thereafter the exhaustion of RDO, the employee and employer agree to the use of annual leave. Where the employee is on stand by he/she shall be paid their ordinary weekly base wage, \$10.00 less per day.

Nothing in this clause shall affect the rights of the parties under section 524 of the Fair Work Act 2009.

### 19. Payment of Wages

The payment of wages shall be made pursuant to the National Employment Standards as prescribed by the Act.

The Company shall pay wages direct into an employee's bank account by electronic funds transfer ("EFT"), the money to be available on a normal pay day.

Pay slips showing full details shall be issued within one working day of the pay date mailed or emailed to the employee's address. Details of amounts, superannuation payments and RDO accruals are to be included.

If through the fault of the Company, an employee who is paid by EFT is kept waiting for their wages after the normal pay time and after the employee has notified the Company then the employer shall make a cash payment to the employee prior to noon the day after the day the employer was notified.

Where as a result of the direct fault and causation of the employer, an employee's wages are not actioned to be paid by the employer and the employee receives a bank fee charged for the late payment of a loan repayment or dishonourment fee, the employee will raise a reimbursement claim for such fee incurred up to a maximum of \$85.00, subject to providing proof of the bank fee to the employer.

### 20. Superannuation

The Company agrees to make contributions into the C+BUS Superannuation Fund (provided that the fund offers a MySuper product) for all employees covered by this Agreement, both weekly hired and casual, unless an individual super choice form is enacted by an employee. These payments will be at the rate of \$90 per week or the Superannuation Guarantee Charge rate, whichever is the greater. These contributions will be paid on a pro rata basis for employment which is less than a completed week. This amount shall be calculated according to the number of day's employment per week (Monday to Friday only).

**21. Protective Clothing**

**21.1 Overalls/Workpants + shirts**

If required, employees will be issued with overalls or a pants/shirt combination. Overalls/Workpants + shirts will be issued free of charge (and they remain the respective Company's property) as near as practicable to commencement of employment.

Before being issued with overalls, each employee will sign an authority allowing the Company to deduct from final wages, an amount equal to the replacement value of any overalls that are not returned, regardless of the conditions of the same.

Pants/Shirt combination will be provided as near as practicable to the commencement of employment and become the property of the employee. These will be replaced on a fair wear and tear basis. Before being issued with the clothing, each employee will sign an authority allowing the company to deduct from final wages an amount equal to replacement value of the clothing should the duration of assignment be less than 3 months.

The employer will have the option to provide either one of these.

If an arrangement already exists on a certain site, then this arrangement will remain in place unless agreed between the employee and the company.

**21.2 Safety Boots**

Each employee, after 3 months' continuous service, will be reimbursed (on production of a receipt), the cost of one pair of safety boots (approved by the employer), in each year, to a maximum of \$140.00.

**21.3 Wet Weather**

All protective clothing such as wet weather jackets, safety helmets, welding jackets, welding shields, welding gauntlets, rubber boots, etc., (which remain the property of the Company), will be supplied on all occasions deemed necessary.

**21.4 Jackets**

After 12 months' continuous service, each employee will be supplied by the Company, free of charge, with a Bluey Jacket (or equivalent in cost or quality) either heavy or light duty. These jackets are to be of good quality. The Bluey Jacket will be the property of the employee, who will be responsible for the cleanliness and upkeep of the garment. Replacement will be on the basis of fair wear and tear. The jacket shall be produced to the employer for examination if so required. This clause will supersede the supply of Bluey Jackets applying under any other industrial agreements.

**21.5 General Conditions**

Where the Company is bound by a contract or other provisions which requires an issue of clothing which exceeds the above, the Company will observe the better provision.

**22. Occupational Health and Safety Representative**

The Company will recognise a duly elected occupational health and safety representative. The occupational health and safety representative will be provided with training at a suitable course of his/her choice. The cost of this to be met by the Company.

**23. Compliance with Laws**

The parties will comply with their obligations under the state occupational health and safety legislation.

**24. Compensation for Stolen Tools**

The Company will provide compensation for employee's tools of trade stolen whilst engaged for duties at a client's premises subject to the following conditions:

**24.1 The tools should be in a locked tool box provided by the employee.**

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- 24.2 The tools should be clearly identified with the employee's name.
- 24.3 The tools must be secured in a safe place nominated by the client at the said client's premises, subject to the following conditions:
- Any claim will only be accepted if there is a proven breaking and entering and resultant theft of/from the client's premises;
  - Any claim must be accompanied by a police report of the theft;
  - This clause will only apply to employees who are classified as a tradesperson under this Agreement.
  - Each claim for replacement of stolen tools shall only be considered where such claims is for at least \$100.00;

Each claim shall be limited to maximum total replacement value of \$800.00 regardless of trade.

- 24.4 Original receipts for purchases for any replacement tools must be produced by the employee prior to any reimbursements from the Company. This would not apply if the Company supplies equivalent replacement tools.

### 25. Redundancy Fund Contributions

- 25.1 An employee shall be entitled to redundancy in accordance with this clause
- 25.2 The redundancy payment amount is in lieu of the amounts applicable under the NES and the award. The contributions made to the fund are in full satisfaction of the employers' obligations in relation to redundancy pay..
- 25.3 Contributions will be made into the Protect Fund. Employees covered by this Agreement as non-metals classifications will have contributions paid into Incolink Fund No 2.
- 25.4 The maximum weekly contribution rate shall be \$73.00 per week worked for the life of the Agreement. A pro rata amount shall be payable for employment which is less than a completed week. This amount shall be calculated according to the number of days employment per week. (Monday to Friday only.)
- 25.5 In the case of apprentices the following contribution rate for the life of the agreement.
- |             |         |
|-------------|---------|
| First year  | \$35.00 |
| Second year | \$40.00 |
| Third year  | \$55.00 |
| Forth year  | \$65.00 |
- (except where prevailing conditions are greater)

### 26. Shutdown or Start up on Major jobs

There is potential for significant amounts of time to be lost in the start up of jobs involving large numbers of employees.

It is agreed that all employees will be ready for work at the nominated start time for each shift to allow for the efficient and prompt deployment of personnel and to enable work to commence on time.

### 27. Induction

Where an employee is invited to attend an induction specific to a client's site and then is employed on that client's site, the employee will be paid for attending the initial induction.

### 28. Income Protection Insurance

- 28.1 The Company shall provide and maintain income protection insurance for sickness and accident for all employees covered by this agreement.
- 28.2 Where the Company at the time this agreement comes into operation, does not have income protect insurance arrangements the parties shall agree upon a Provider.
- 28.3 Where the company looks to change provider during the life of the agreement, they will provide the PDS for the new cover to the parties to ensure that the coverage and benefits of the new Provider are comparable.

- 28.4 Such income protection insurance must be obtained by the Company through a provider although the Company shall not be required to contribute greater than 2.2% of payroll (including tax) for such insurance during the life of the agreement.
- 28.5 Benefits may be paid to the employee making a claim either directly by the Provider or through the Company. Where the Company is required to forward the benefit payment to the insured employee, the Company must make the payment to the employee as soon as insurance provides the payment.

**29. Apprentices**

The Company agrees that they will, subject to operational and business requirements, take on apprentices provided that the use of such apprentices does not jeopardise the employment of current personnel.

Consideration will be given to the usage of apprentices for short term duration from group schemes on a workload requirement basis.

All apprentices shall be supervised by an appropriately qualified tradesperson.

Apprentices working at sites pursuant to a written contract for the provision of a permanent maintenance crew will be paid the following percentages of the C10 rate of pay as set out in this Agreement;

- Year 1 50%
- Year 2 60%
- Year 3 75%
- Year 4 90%

The variations to the Manufacturing and Associated Industries and Occupations Award 2010 made pursuant to the Full Bench decision in *Modern Awards Review 2012—Apprentices, Trainees and Juniors* [2013] FWCFB 5411 shall be incorporated into this Agreement.

Apprentices shall be entitled to superannuation pursuant to the Superannuation Guarantee Levy.

The parties are committed to the further development of skills in the industry. In an endeavour to boost apprentice numbers in labour-hire, a joint committee will be formed to develop a framework with the aim of achieving this.

**30. Co-INVEST**

All eligible employees will be registered with Co-INVEST Limited.

**31. Roster Days off (RDO) and Additional RDO**

- 31.1 Employees that are on a 38 hour working week will accrue 13 RDO's per year
- 31.2 Employees shall not have more than 10 banked RDO's at any one time.
- 31.3 Employees may accrue an additional 6 RDO's per year (the "Additional RDO").
1. The Additional RDO's do not accrue in hours. The Additional RDO's will continue to accrue by deducting the proper quantum (in dollars) from the employee's gross ordinary weekly earnings, which is then set aside. The employee may take the Additional RDO when sufficient monies have been accrued.
  2. The way in which the additional RDO are taken will be agreed between the parties, in consultation with the employees concerned.

**32. Picnic Day**

Where practicable the company will allow employees to take a rostered day off on the first Monday in December for the purpose of attending the union picnic day. The request for taking this RDO will be gauged against client requirements and will not be unreasonably declined providing that it does not impact dramatically on client

requirements.

**33. Training**

Where an employee undertakes training required by the Company it shall be at the Company's expense and as far as practicable in the employee's usual working time and the employee shall not lose pay for attendance or travel costs associated with such training. Where an employee seeks to undertake further training and development that is consistent with the needs of the Company, the Company will provide assistance to the employee, in terms that the Company approves, for this to occur.

**34. Trade Union Training Leave**

The parties to this agreement recognise the importance of having suitably trained employee representatives whilst balancing this requirement with the impact upon the employer's business and that of the employer's clients. Therefore, a pool of five days trade union training leave, in total, shall be available to be accessed by employees covered by the agreement that are duly elected or appointed as the employee representative, provided that reasonable notice is provided to the employer prior to the proposed taking of such leave. The trade union training leave available shall be accredited trade union training courses conducted or approved by the union's party to this Agreement.

**35. Higher Classifications**

35.1 Where a client of the employer employs employees at the relevant client site, to perform the same work as employees covered by this Agreement, and such client employees are classified at a higher classification than normal, the relevant employee of the employer shall be paid the same rate of pay as that equivalent client employee for the duration of the assignment at that client site. This clause shall not apply where an employee covered by this Agreement is paid a higher rate of pay than the equivalent client employee.

35.2 Where the employer has entered into a client service arrangement with a business at a relevant client site prior to the approval of this Agreement, the Company and the employees' union shall meet to agree on arrangements for the implementation of this clause.

**36. Relativity at Client Sites**

36.1 Where the Company provides supplementary labour at a client site, the company shall maintain relativity with the normal client rate of pay including allowances, site disability payments and hours of work (where hours are 38 or lower) for equivalent classification, from the date of agreement. Excluded are such payments as service grants, performance bonuses and the like.

36.2 In cases where the client's employees are remunerated under an annualised salary arrangement, or receive site, disability payments and allowances not provided for in this Agreement and the parent award the parties agree to confer and establish the appropriate rate of pay.

36.3 This clause is intended to ensure that an employee jumps up to a higher client rate of pay but it is not intended to provide for double dipping where the client rate of pay is higher and includes penalties elsewhere provided for in this agreement and the parent award. This clause does not operate to provide for a situation where employees receive overall greater remuneration than the client's employees or reduce travel allowance as provided for in this agreement. The terms and conditions within this agreement may be varied to the extent required to accommodate the objectives of this clause.

36.5 Where the employer has entered into a client service arrangement with a business prior to the approval of this agreement, the employer and the employees' union shall meet to agree on arrangements for the implementation of this clause.

36.6 Where the parties have settled on the implementation of this clause for a specific site, the arrangements shall be transcribed in writing and copies provided to the relevant employee.

36.7 Where it is an existing practise on a client site, all work on a Saturday will be paid at double time.

36.8 Where a client site observes Anzac day as a Public holiday on the next working day, then this will be applied providing that the actual day is treated as a normal day.

**37. Consultation**

37.1 This term applies if:

- (a) 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
- (b) The change is likely to have a significant effect on employees of the enterprise.

37.2 The employer must notify the relevant employees of the decision to introduce the major change.

37.3 The relevant employees may appoint a representative for the purposes of the procedures in this term.

37.4 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.

37.5 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.

37.6 However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.

37.7 The employer must give prompt and genuine consideration to matters raised about the major change by the relevant employees.

37.8 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 sub-clauses (2), (3) and (5) are taken not to apply.

37.9 Provided that where it is part of the customary turn over of labour, or where this Agreement makes provisions for alterations of any of the matters referred to herein, such change shall be deemed not to have significant effect.

37.10 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.

37.11 In this term, relevant employees mean the employees who may be affected by the major change.

37.12 When the employer contemplates changes to regular rostering or ordinary hours of work, the employer must genuinely consult affected employees and the union(s) covered by this agreement, and any other representative of employees nominated by any affected employee, prior to the introduction of such changes, the effects they are likely to have and the measures for averting or mitigating the adverse effects of such changes

**38. Flexibility Arrangement RDO's and Leave Loading**

38.1. An employer and employee covered by this enterprise agreement may agree to flexibility arrangement to vary the effect of the following matters:

- a. RDOs;
- b. Leave loading;

38.1.1 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

38.1.2 The arrangement is genuinely agreed to by the employer and employee.

38.2. 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.

38.3 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.

39.4 The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

39.5 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.



## Metals Labour Hire Agreement 2017

### 40. Signatories



Signed and dated on behalf of the Automotive Food, Metals, Engineering, Printing and Kindred Industries Union

251 Queensberry Street, Carlton South, Victoria, 3053

Craig Kelly Assistant + State Secretary 27-7-17

Name

Title

Date



Signed on behalf of Protech Personnel (VIC) P/L (ABN: 97 149 736 498) Unit 6 / 75 Lorimer St, South Wharf VIC 3006

BEN FITZSIMMONS GENERAL MANAGER 27-7-17

Name

Title

Date



Ben Fitzsimmons  
General Manager - VIC  
Protech Personnel (Vic) Pty Ltd  
Unit 6, 75 Lorimer St  
South Wharf VIC 3006

Commissioner Wilson  
Fair Work Commission  
11 Exhibition Street  
Melbourne VIC 3001

Tuesday, 10<sup>th</sup> October 2017

Dear Commissioner Wilson,

**AG2017/3187 – Application for approval of the Protech Personnel (Vic) P/L Site Specific (Downer Rail Victoria) Metals Labour Hire Agreement 2017**

We provide the following undertaking in relation to our application for Agreement Approval AG2017/3187 – Application for approval of the Protech Personnel (Vic) P/L Site Specific (Downer Rail Victoria) Metals Labour Hire Agreement 2017:

**Clause 13.5**

Delete. Replace with:

“A casual employee shall not be entitled to any forms of paid leave or unpaid leave, unless otherwise provided for in the NES and except for eligible casuals in the case of parental leave and Coinvest long service leave as provided for in this Agreement.”.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Ben Fitzsimmons", with a long horizontal flourish extending to the right.

Ben Fitzsimmons  
General Manager - VIC  
Protech Personnel (Vic) Pty Ltd