



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Protech Rail Pty Ltd T/A Protech Rail Pty Ltd
(AG2023/3098)

PROTECH RAIL AND RTBU AGREEMENT 2023

Rail industry

DEPUTY PRESIDENT GOSTENCNIK

MELBOURNE, 13 SEPTEMBER 2023

Application for approval of the Protech Rail and RTBU Agreement 2023

[1] An application has been made pursuant to s 185 of the *Fair Work Act 2009* (the Act) for the approval of a single enterprise agreement known as the *Protech Rail and RTBU Agreement 2023* (Agreement).

[2] 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.

[3] The following provisions are likely to be inconsistent with the National Employment Standards (NES):

- Clause 15.3 – Annual leave accrual; and
- Clause 16.1.7 – Public holidays.

However, noting clause 1.4.1 of the Agreement, I am satisfied the more beneficial entitlements of the NES will prevail where there is an inconsistency between the Agreement and the NES.

[4] The Australian Rail, Tram and Bus Industry Union 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 20 September 2023. The nominal expiry date of the Agreement is 13 September 2027.



DEPUTY PRESIDENT

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Protech Rail and RTBU Agreement 2023



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1. Agreement Application & Operation

1.1. Title of Agreement

Protech Rail and RTBU Agreement 2023 (Agreement).

1.2. Parties Bound

1.2.1. The Agreement covers:

- Protech Rail (ABN 15 658 017 951) (**Company**) in respect of all Employees of the Company covered by the Agreement); and
- The Australian Rail, Tram and Bus Industry Union (the “**RTBU**”), to the extent that the Fair Work Commission notes in its decision to approve the Agreement that the Agreement covers it; and
- All employees of the Company whose classification and rates of pay are contained in this Agreement and who are principally engaged to perform work, within Victoria, in connection with rail maintenance, major periodic maintenance, associated construction, refurbishment or renewals work within Victoria. (“**Employees**”).

1.3. Period of Operation

1.3.1. This Agreement shall take effect 7 days after the Agreement is approved by the Fair Work Commission, in accordance with the *Fair Work Act 2009* (Cth) and shall have a nominal expiry date of four (4) years from the commencement date.

1.4. Relationship to Awards and Agreements and NES

1.4.1. This Agreement will be read and interpreted in conjunction with the National Employment Standards (**NES**). Where there is an inconsistency between the Agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

1.5. No Extra Claims

1.5.1. The Agreement is in full and final settlement of all matters subject to claims by the Parties covered by the Agreement, and for the life of the Agreement no further claims will be made or supported by the Parties covered by the Agreement.

1.6. Scope and Intent of Agreement

1.6.1. In accordance with section 52 of the *Fair Work Act* (Cth), this Agreement will apply to all works undertaken by the Company by employees in the classifications set out in this Agreement in relation to rail maintenance, major projects maintenance, associated construction, refurbishment, and renewals work. No employee will be disadvantaged by the making of this Agreement.

1.6.2. To avoid doubt, this Agreement will continue to apply to Employees covered by this Agreement for work undertaken interstate, as may happen from time to time.

1.7. Definitions in this Agreement

“**Act**” means the *Fair Work Act 2009* (Cth) (as amended or replaced from time to time).

“**Agreement**” means the *Protech Rail and RTBU Agreement 2023*.

“**Associated Construction**” means all rail construction works covered under the RTBU Union Rules (as amended from time to time).

“ATO Act & Guidelines” means the *Taxation Administration Act 1953* and the *Income Tax Assessment Act 1997* and associated Regulations and Guidelines (as amended from time to time).

“Casual Employee” means a person who is engaged by the Company as a casual employee, who does not have reasonably predictable hours of work and who is paid a casual loading.

“Casual Loading Breakdown” shall mean the combination of the following components:

- In lieu of paid annual leave and leave loading entitlements;
- In lieu of paid personal leave entitlement;
- In lieu of notice of termination requirements for permanent employees;
- In recognition of the itinerant nature of casual work;
- In lieu of paid redundancy entitlements, except for where provided for in this agreement; and
- In lieu of any other entitlements associated with permanent employment.

“Classification Competencies” means the units of competence as defined in the National Transport and Logistics Industry Skills Council for Rail Transport (as amended from time to time), under the Australian Quality framework.

“Company” means Protech Rail (ABN:15 658 017 951)

“Continuous Employment” means when an employee has solely worked for the company without any Unapproved Absences and has no more than a 2 week break in performing work on a Company shift, except for if that break in shifts has been approved in writing by the Company and for permanent employees is a period of approved paid or unpaid leave under the terms of this Agreement.

“Day” means the length of any rostered shift.

“De Facto Partner” in relation to an employee means:

- a) a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis (whether the employee and the person are of the same sex or different sexes); and
- b) Includes a former de facto partner of the employee.

“Employee” means a person employed by the Company whose employment is covered by this agreement.

“FWC” means the Fair Work Commission.

“Home Depot” means the depot to which an employee is appointed upon commencement or as otherwise agreed with the employee.

“Immediate family” means:

- a) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
- b) A child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee.

“Long Service Leave Act” means the relevant Portable Long Service Leave Acts (construction) in each state the agreement operates.

“Infrastructure Works” means track inspections, spot track surfacing, geometry corrections, weld/rail fault corrections including associated aluminothermic welding; de-stressing; ad-hoc tie/transom replacement; drain clearing; vegetation clearing; fire break creation and/or restoration; platform adjustments; signage replacement; access road re-instatement; mechanical signal maintenance and construction, bituminous surface repairs; fencing repairs; cleaning; defect rectification; lubrication and servicing; points and crossings component replacement and adjustment, off-track and on-track machine operations and all other associated and like works.

Works considered under this classification also include design, investigation, feasibility and commissioning activities associated infrastructure upgrade and renewal programs.

“NES” shall mean the National Employment Standard (as amended or replaced from time to time).

“Ordinary hours of work” are set out in clause 10 of this Agreement.

“Construction Projects” means work other than maintenance and refurbishment on existing rail.

“Refurbishment” means in face track surfacing, dip/peak corrections including rail bending/grinding, aluminothermic welding, rail grinding, tie renewal, destressing adjustments following mechanised activities and general replacement work on a “like for like” basis including but not limited to tie renewal, bridge/structure/platforms, level crossing component/pavement, points and crossings, and rail replacements and/or relocations, re-railing including flash butt welding of rail and all other associated and like work.

“Residence” means the employee domicile place of residence has to be consistent with ATO Act and guidelines.

“Roster” means a work schedule containing the ordinary and overtime hours of work required of an employee over a period of time along with the RDOs, public holidays and other days of approved leave falling during that period.

“Rostered Day off (RDO)” means a weekday not worked as a result of the operation of a method of working a 38 hour week where sufficient extra ordinary time is worked on a number of days and accrued to allow for the day off.

“Union” means the Australian Rail, Tram and Bus Industry Union (RTBU) who is permitted to cover employees under its Union Rules.

1.8. Individual Flexibility

1.8.1. The Company and an Employee covered by the Agreement may agree to make an Individual Flexibility Arrangement (IFA) to vary the effect of terms of the Agreement if the IFA:

- (a) deals with one or more of the following matters:
 - (i) arrangements about when work is performed;
 - (ii) Parental Leave;
 - (iii) Compassionate Leave;
 - (iv) Jury Service, and
- (b) the arrangement meets the genuine needs of the Company and employee in relation to one or more of the matters mentioned in 1.8.1 (a); and
- (c) The arrangement is genuinely agreed to by the Company and employee.

1.8.2. The Company will ensure that the terms of the individual flexibility arrangement:

- (a) Are about permitted matters under section 172 of the Act; and
- (b) Are not unlawful terms under section 194 of the Act; and
- (c) Result in the employee being better off overall than the employee would be if no arrangement was made.

1.8.3. The Company will ensure that the individual flexibility arrangement:

- (a) Is in writing; and
- (b) Includes the name of the Company and employee; and

- (c) Is signed by the Company 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 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 their employment as a result of the arrangement; and
- (e) States the day on which the arrangement commences.

1.8.4. The Company will give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

1.8.5. The Company or employee may terminate the individual flexibility arrangement:

- (a) by giving 28 days written notice to the other party to the arrangement; or
- (b) if the Company and employee agree in writing — at any time.

1.9. Higher Duties

1.9.1. Where an Employee is directed to work for a full shift on a classification of work carrying a higher rate than the employee's usual classification, the employee shall be paid the higher rate for the shift.

2. Contract of Employment

2.1. Probation Period

2.1.1. New full-time and part-time Employees shall be employed on probation for a period of 6 months (Probationary Period), during which time the employee's performance will be monitored.

2.2. Skills, Competence & Training

2.2.1. The Parties acknowledge that the formal skills acquisition is beneficial to the Company and the industry. Therefore, the company is committed to training and development of its employees and providing career opportunities through appropriate training to acquire additional skills required.

2.2.2. All employees must be provided the opportunity after a period of 6 months continuous employment, to acquire a National TLI Certificate Level 3 notwithstanding that which is applicable for each classification structure contained within the attached annexures.

2.2.3. The Company will allow all full-time and part-time Employees undertaking training for the benefit of and at the direction of the Company time off without loss of ordinary pay to attend off-the-job training.

2.2.4. Employees may be required to undertake training at the direction of the Company. In order to increase the efficiency and productivity of the Company, a commitment to structured training and skill development is required.

2.2.5. To facilitate ongoing vocational training for employees, when an Employer requires training to be provided to employees the Employer will pay an organisation approved by the RTBU to deliver that training.

2.2.6. Compliance Training:

- (a) All ongoing compliance training for existing Employees must be approved and arranged by the Company.
- (b) Compliance training will be provided to Employees and the cost of training shall be paid directly by the Company.
- (c) Compliance training includes any training that is a requirement to work in the rail corridor and maintain the classification to which an employee was employed.

2.2.7. Upskill and Multiskilling Training:

- (a) All upskilling or multiskilling training must be approved and arranged by the Company.
- (b) The course cost of any upskill and multiskilling training provided to Employees will be paid directly by the Company.
- (c) Upskill and multiskilling training is all other accredited training that is not a minimum requirement to perform the classification under which an Employee is employed.

2.3. Medical Assessment

2.3.1. Where any employee is required by the Company to attend a medical assessment, the Company will pay the cost of the medical assessment.

2.3.2. The Company shall only pay full-time and part-time Employees for the time taken by the employee to attend and undertake the medical assessment if attendance is during rostered working hours.

2.4. Status of Employment

2.4.1. All employees covered by this Agreement shall be engaged as either full-time, part-time, maximum, or fixed term or casual employees.

2.4.2. The Employee will be directed to undertake a range of such activities that are within their skill, training, and competency. The level of flexibility and skill is comprehended in the rates for each classification.

2.4.3. Employees engaged in each of the above types of employment will be engaged at a base rate as set out in **Annexure A**.

2.4.4. The Company shall notify Employees in writing at the commencement of the terms on which they are engaged including whether they are engaged as a full-time, part-time, maximum term or casual employee and of any change to their employment.

2.5. Full time Employees

2.5.1. Ordinary hours of work for a full-time Employee are 38 hours per week to be worked in accordance with the provisions of clause 10 of this Agreement.

2.6. Part-Time Employees

2.6.1. A part-time employee works a regular pattern of hours which is an average of less than 38 ordinary hours per week.

2.6.2. For each ordinary hour worked, a part-time employee will be paid no less than the ordinary time hourly rate for the relevant classification and pro rata entitlements for those hours.

- 2.6.3.** The Company must inform a part-time employee of the ordinary hours of work and the classification applying to the work to be performed.
- 2.6.4.** Before commencing part-time employment, the Company must agree in writing with the employee to all of the following:
- (a) the number of hours of work, and
 - (b) the days of the week on which the hours will be worked, and
 - (c) the times at which the Employee will start and finish work each day and
 - (d) the classification applying to the work being performed.
- 2.6.5.** An agreement under clause 2.6.4 must state that any variation mutually agreed by the Company and the Employee of any of the matters mentioned in clauses 2.6.4(a) to 2.6.6 must be in writing.
- 2.6.6.** The Company must keep a copy of the agreement (including any variation to it) under clause 2.6.4 and give another copy to the Employee within 14 days.

2.7. Casual Employees

- 2.7.1.** A casual employee is an employee who is engaged by the hour and paid as such.
- 2.7.2.** Each engagement of a casual employee must be for a minimum of:
- (a) 8 hours in Victoria; and
 - (b) 4 hours elsewhere.
- 2.7.3.** The Company may not engage casual employees as Designated Shift Workers as provided for in clause 10.3 of this Agreement.
- 2.7.4.** Casual employees will be paid on an hourly rate basis equivalent to the minimum base salary prescribed for the classification. A casual loading of 25% will then be applied on top of that classification rate.
- 2.7.5.** The Company must pay any relevant penalty rates in addition to the casual loading. For the avoidance of doubt, penalty rates will be applied according to the following formula:
Pay (base x penalty rate) + casual loading calculated on the base rate in accordance with the Award. For example, where the penalty rate is 150%, casual employees will be paid 175% of the base rate of pay.

2.8. Casual Employees – Secure Employment

- 2.8.1.** The parties recognise the importance of Secure Employment in the rail industry and particularly for safety critical roles. The Parties acknowledge that secure employment results in increased levels of training, experience and understanding of the hazards of the job and industry.

2.9. Casual Conversion

- (a) A person engaged as a regular casual employee may request that their employment be converted to full-time or part-time employment.
- (b) A **regular casual employee** is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee.

- (c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 6 months 'casual employment may request to have their employment converted to full-time employment.
- (d) A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 6 months 'casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.
- (e) Any request under this subclause must be in writing and provided to the Company.
- (f) Where a regular casual employee seeks to convert to full-time or part-time employment, the Company may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.
- (g) Reasonable grounds for refusal include that:
 - (i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee that is, the casual employee is not truly a regular casual employee as defined in paragraph (b);
 - (ii) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;
 - (iii) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or
 - (iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.
- (h) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
- (i) Where the Company refuses a regular casual employee's request to convert, the Company will provide the casual employee with the reasons for refusal in writing with supporting evidence within 21 days of the request being made. If the employee does not accept the Company's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in Clause 3. Under that procedure, the employee or the Company may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- (j) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in this clause, the Company and employee must discuss and record in writing:
 - (i) the form of employment to which the employee will convert –that is, full-time or part-time employment; and
 - (ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 2.6.
- (k) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.

- (l) Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the Company.
- (m) A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under this clause.
- (n) Nothing in this clause obliges a regular casual employee to convert to full-time or part-time employment, nor permits the Company to require a regular casual employee to so convert.
- (o) Nothing in this clause requires the Company to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.
- (p) The Company will provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of this subclause within the first 12 months of the employee's first engagement to perform work.
- (q) A casual employee's right to request to convert is not affected if the Company fails to comply with the notice requirements in paragraph (p).

2.10. Termination of Employment

2.10.1. Termination of Employment by the Company or the Employee shall be by giving the relevant period of notice in writing as set out in the table below:

Where the Employee's Period of Continuous Service with the Company is:	The Period of Notice is:
All Casual employees	8 hours
All 'Full Time' and 'Part Time' employees:	
Up to 1 year	1 week
1 year or more but not more than 3 years	2 weeks
3 years or more but not more than 5 years	3 weeks
5 years or more	4 weeks

2.10.2. With the exception of casual employees, an Employee who is over the age of 45 and has completed at least 2 years of service with the Company at the time of giving of the notice is entitled to one extra weeks' notice in addition to the period set out in the above table.

2.10.3. In circumstances where the Employee terminates their employment, the Employee's obligations with respect to notice shall be as per the criteria in the table set out in sub-clause 2.10.1. If the Employee fails to give the required period of notice; the Company has the right to withhold monies owed to the Employee up to a maximum equal to the hourly rate of pay including allowances of the notice period. To avoid doubt, the Company is not entitled to withhold moneys arising from an NES entitlement, including accrued but untaken annual leave.

2.10.4. Alternatively, the Company may pay the Employee in lieu of their notice period, or require the Employee to work for part of the Employee notice period and pay the Employee in lieu of the balance of the period. Payment shall only be made for the time an Employee would have ordinarily worked during that period.

2.10.5. An Employee's employment may be terminated by the Company without notice for serious misconduct.

2.10.6. The employment of a limited term or assignment employee, or an employee employed for a project may be terminated by:

- (a) The completion of the specified time; or
- (b) Completion of the assignment, project, site; or
- (c) The notice provision outlined in Clause 2.10.

2.10.7. Where the employee has abandoned their employment the terms of clause 2.11 apply.

2.10.8. When an Employee's employment is terminated, the Company shall pay any wages due as soon as practicable, and in any case within the next pay run.

2.10.9. Should an employee lose specific qualifications required to perform the full and inherent requirements of their role as specified by their contract, the Company reserves the right to terminate their employment on that basis.

2.11. Abandonment of Employment

2.11.1. The absence of an employee from work for a continuous period exceeding 3 rostered working days shall be preliminary evidence that the employee has abandoned their employment if any of the following apply:

- (a) The employee is absent without consent of the Company; or
- (b) The employee is absent without a reason acceptable to the Company; or
- (c) The employee is absent without notification to the Company.

2.11.2. The Company must make reasonable attempts to contact an employee before declaring that the employee has abandoned their employment.

2.11.3. For the avoidance of doubt, reasonable attempts are defined as follows:

- (a) Phone contact to the Employee and their emergency contact; or
- (b) A formal letter sent to the Employee's last known address advising them that their employment will be terminated should the Employee fail to contact their supervisor by a certain date; and
- (c) Where possible face to face contact.

2.11.4. The amount of notice, or payment instead of notice, must be in accordance with the NES as prescribed in the Act.

2.12. Drugs and Alcohol

2.12.1. The Company expects all employees to attend work in a fit and healthy condition free from the effects of drugs and/or alcohol to ensure that work can be performed safely. Accordingly, it is prohibited for an employee to attend work under the influence of any drug or intoxicant, and the possession of drugs other than those medically prescribed is prohibited on site. If an employee uses or possesses medically prescribed and/or non-prescribed drugs that can potentially affect an employee's ability to be fit for work, then he/she must declare this to their supervisor prior to or when arriving on site. For the avoidance of doubt, drugs referenced in this clause means; illicit drugs, prescription drugs and over the counter medications.

2.12.2. If an Employee is found in possession of, using and/or under the influence of intoxicants or non-prescribed drugs, he/she will be subject to disciplinary action, which include suspension without pay or summary dismissal.

2.12.3. The employee(s) bound by this agreement will be required to adhere to the Company's, Client's and Rail Operators site alcohol and other drugs procedures that shall be consistent with the respective State's Rail Safety Act Provisions, which includes pre-employment, random and for

cause testing on site and completion of necessary declarations regarding any prescribed or “over the counter” medications being taken by the employee or brought onto site.

2.12.4. Random testing for the purposes of this clause will be done in paid work time.

2.12.5. Employees bound by this Agreement who require assistance and support with alcohol, gambling and/or drug issues, will have access to the Company Employee Assistance Program,

2.13. Employee Obligations

2.13.1. Each employee covered by this Agreement shall:

- (a) Complete any site induction program prescribed by the Company;
- (b) Agree to abide by the Company's policies and procedures, their employment contract and the provisions of this Agreement – for the avoidance of doubt the Company's policies and procedures are not incorporated into this Agreement;
- (c) Be required to carry out work either individually or as part of a team;
- (d) Be responsible for carrying out work in a safe manner and for the quality of their work;
- (e) Be prepared to carry out such duties as are within the limits of the employee's skills, competence and training consistent with the classification structure of the Agreement;
- (f) Be prepared to train employees/ employees classified at a lower level than themselves and assist employees/employees classified at a higher level than themselves;
- (g) Undertake work required of them on any worksite in a diligent, flexible and cooperative manner;
- (h) Present themselves fit for duty and remain on duty for the duration of their shift.
Employees shall understand that the Company is under no obligation to pay for any hours, where the employee is absent without authorised leave.

2.14. Clothing and Personal Protective Equipment

2.14.1. The Company will provide each employee with work and safety clothing and protective equipment in accordance with clause 2.14.2.

2.14.2. The work clothing and PPE shall be supplied prior to commencement of employment by the Company and will be consistent with the relevant Australian and New Zealand standards.

The following items of safety clothing will be provided by the Company and must be worn at all appropriate times:

- 2 sets of shirts
- 1 wet weather jacket
- 1 hat/beanie
- 1 pair of safety boots (lace up or ankle high)

2.14.3. All clothing and footwear specified in clause 2.14.2 will be replaced on a fair wear and tear basis on the condition that old clothing or footwear is presented for inspection if required.

2.14.4. Additional personal protective equipment e.g. hard hat, Hi-Vis vest (AUS/NZ 4602), gloves and safety glasses, will be supplied by the Company on an individual basis where/when required.

2.14.5. All clothing and PPE shall be deemed as Company property. All employees must use Company equipment in line with Company policy.

2.14.6. All company equipment, including uniform and PPE, must be returned by the employee to the Company prior to employment ending or on a date as agreed with the Company.

3. Dispute Settlement Procedure

3.1. Procedure

3.1.1. A dispute that relates to:

- (a) matter arising under the Agreement; or
- (b) the National Employment Standards; or
- (c) a matter pertaining to the employment relationship,

shall be dealt with in accordance with this clause.

3.1.2. At any stage of this Dispute Settlement Procedure, the Employee and the Company may appoint a representative of their choice. The Company and the Employee must recognise each other's representative.

3.1.3. The following procedure apply:

Stage 1

3.1.4. In the first instance, a dispute will be raised with the Manager of the employee (or employees) concerned.

The Company contact will provide a response to the employee and/or employee representative within a reasonable operational timeframe.

Where the matter is not resolved, the employee may progress to stage 2 of the process.

Stage 2

In the event that a matter remains unresolved following Stage 1, the employee may refer the matter to a Senior Manager.

The Senior Manager will respond to the employee and/or employee representative within a reasonable operational timeframe.

Where the matter is not resolved by the Senior Manager the employee may progress to Stage 3 of this process.

Stage 3

In the event that a matter remains unresolved following Stage 2, the employee may request that the matter be referred to the relevant Director and the Human Resources representative.

The Director or the Human Resources representative will then respond to the employee and/or employee representative in a reasonable operational timeframe.

Where the employee is dissatisfied with this response, the employee may progress to Stage 4 of this process.

Stage 4

In the event that a matter remains unresolved following Stage 3, the employee and/or their representative or the Company may refer the matter to FWC.

The FWC may deal with the dispute in 2 stages:

- (a) The FWC may first attempt to resolve the dispute as it considers appropriate, including by mediation, conciliation, expressing an opinion or making a recommendation; and

(b) If the FWC is unable to resolve the dispute at the first stage, the FWC may arbitrate the dispute, and make a determination that is binding on the parties.

3.1.5. If the FWC arbitrates the dispute, it may also use the powers that are available to it under the Act. A decision the FWC makes when arbitrating a dispute is a decision for the purpose of Division 3 of Part 5.1 of the Act. Therefore, an appeal may be made against the decision.

3.1.6. While the parties are trying to resolve the dispute using the procedure in this clause status quo will apply. The Employee must continue to perform his or her work in accordance with the usual practice unless the employee has a reasonable concern about an imminent risk to health and safety. For the avoidance of doubt, the state of affairs as it existed prior to the matter that is the subject of the dispute will remain in place. For example, if the dispute is about a change to work, the status quo represents the position before the change. Where the dispute relates to the ability to perform work the Employee must comply with a direction to perform other available work at the same workplace or another workplace, unless there are lawful or reasonable grounds for the employee not to comply with that direction. The Parties to the dispute agree to be bound by a decision made by the FWC in accordance with this clause.

4. Classifications

4.1.1. An employee will be assigned by the Company to a classification level based on qualification at time of employment and in consideration of the substance of the duties to be carried out on the site or workplace. The employee's initial classification level will be specified in the letter of offer made by the Company to the employee. If the Company elects to upskill an employee during their employment the appropriate classification will apply.

4.1.2. Classifications will be determined on skills required for the particular role.

4.1.3. The Classification structures are set out in **Annexure A**.

5. Wage Rates

5.1. Ordinary hourly wage rate

5.1.1. An employee will be paid:

- (a) The rate as prescribed in the attached Annexures for each applicable classification.
- (b) Employees are also entitled to allowances, overtime and any other entitlements as set out in this Agreement.
- (c) Where an employee travels interstate for temporary works, they will be paid at the rate applicable and in accordance with this Agreement.

5.2. Payment of Wages

5.2.1. Payment of wages shall be by electronic funds transfer on a fortnightly or weekly basis as determined by the Company to a bank account (or accounts) nominated by the employee and available no later than close of business on the following Friday after the pay period. Where a public holiday or weekend falls on the normal pay day, the payment shall be made as is practicable after the normal pay day.

6. Allowances

- 6.1.1. The Allowances set out in this clause shall be paid in addition to the rate of pay applicable to the employee who becomes eligible for the allowance.
- 6.1.2. The allowances contained within this clause 6 shall increase in line with the annual wage increase percentage.

6.2. Allowances

Allowance	\$ Value
First aid allowance (if dedicated First Aider for shift)	\$14.43 per day
Track & Civil Allowances	
Leading Hand Allowance ('All Purpose')	
Leading hand 4 employees or less	\$1.65 per hour
Leading hand more than 4 employees	\$2.08 per hour
Confined space	\$0.92 per hour (flat)

6.3. Phone Allowance

- 6.3.1. In circumstances where employees are required to use their personal phone in the performance of their duties as a Track Force Protection Coordinator (TFPC 1,2 or 3), the Company may elect to provide one of the following:
- (a) Provide Sim Cards to employees for work related communication; or
 - (b) Provide mobile phones to affected employees for work related communication; or
 - (c) Pay a phone allowance to contribute towards a monthly phone bill to a maximum value of \$80 per month, subject to appropriate evidence and invoices

6.4. On-Call and Cancellation

- 6.4.1. An employee who is required by the Company to be on-call and returns to work from their residence will be paid for the call out at the classification rate for a minimum of 4 hours. For the purposes of the minimum payment the first 2 hours will be paid at time and one half and then at double time, except that:
- (a) Any time worked on a Sunday will be paid at double time;
 - (b) Any time worked on a Public Holiday will be paid at double time and one half.
- 6.4.2. Where an on-call call out extends beyond the minimum 4-hour payment period the employee will be paid for those hours actually worked commencing from the time the employee is called until the employee returns home.
- 6.4.3. An Employee who is required by the Company to be available outside normal working hours for recall to work will be paid an allowance as set out below:
- (a) Rostered Ordinary Hours Shift Monday – Friday **\$25.79** per day.
 - (b) Non – rostered workdays Monday – Sunday **\$51.58** per day.

- 6.4.4.** An Employee who has been recalled to work shall be entitled to be absent from work until the Employee has had 10 consecutive hours off duty without deduction of pay for ordinary time of duty occurring during such absence.
- 6.4.5.** The provisions in clause 6.4.4 do not apply to an employee who is recalled to work within 2 hours of normal starting time.
- 6.4.6.** An employee whose shift is cancelled and cannot be redeployed at the Company's discretion within the following time frames is entitled to the corresponding shift payment:

Period	Defined Time Frame	Employee Entitlement
Monday to Friday	A shift cancelled greater than 12 hours prior to planned commencement; and/or prior to 4pm for a shift commencing the following day	NIL
Monday to Friday	A shift cancelled after 4pm and up to 8 hours prior to planned commencement for a shift commencing before midday the following day	4hrs
Weekend	A shift cancelled after 5pm Friday with a planned commencement any time Saturday or Sunday	8hrs
All	A shift cancelled less than 8 hours prior to planned commencement	8hrs

6.5. Daily Travelling Allowance

6.5.1. Daily Travel arrangements from the employee's principal place of residence to the worksite (as required by the Company) shall receive the following travel allowance provided they are not using the Company's transport or travelling from accommodation arranged by the Company;

- (a) Between 0 and up to 50 kms radial distance from the employee's principal place of residence to the worksite at \$36.38 per day.
- (b) Between 51 kms and up to 100kms radial distance from the employee's principal place of residence to the worksite at \$48.50 per day.
- (c) Over 100 kms radial distance from employee's principal place of residence to the worksite at \$86.50.

6.5.2. Daily Travel Allowance When Living Away From Home (LAHA)

Where an employee is eligible for Living Away From Home Allowance (LAHA) due to the location and scope of work performed, the employee will be reimbursed for their travel time but is not eligible for travel allowance on the first and last day of travel. When travelling from the employee's accommodation to the work site, the employee is eligible for the Travel 1 allowance only (clause 6.5.1(a)).

Travel Time will be paid at ordinary time on Monday – Friday and paid at Ordinary Time x1.5 when travelling on a Saturday or Sunday.

6.5.3. Provision of Transport

The allowance prescribed within clause 6.5.1 shall not be payable on any day on which the Company provides or offers to provide transport free of charge from the employee's principal place of residence to the place of work and return.

6.5.4. Use of Personal Vehicle During Ordinary Working Hours

- (a) An employee transferred from one site to another during working hours shall be paid for the time occupied in travelling and, unless transported by the Company, shall be paid reasonable cost of fares by most convenient public transport between such sites.

- (b) Provided that where the Company requests an employee (and the employee agrees) to use his/her own vehicle, the employee shall be paid an allowance at the current ATO rate for every kilometre travelled over and above 10km per day (already incorporated in the daily travel allowance in clause 6.5.1). Request for reimbursement for site KMs must be supported by evidence approved by the Company.
- (c) For the avoidance of doubt employees, who are requested to by the Company, and agree to use their own vehicle for work purposes shall qualify for the allowances prescribed in this clause regardless of whether the travel undertaken is between sites, or within the boundary of a single site.

6.6. Travel & Incidental Expenses

- 6.6.1.** Employees who are required to temporarily work at a location or locations, where they are unable to return to their usual place of residence daily and who incur the expense of overnight accommodation and meals, shall be paid entitlements in accordance with the rates set out in **Annexure A**.
- 6.6.2.** Where an employee incurs reasonable and actual expenses, on a daily basis, supported by receipts, in excess of the rates specified in the table in **Annexure A**, she/he shall be reimbursed by the Company for those expenses. Accommodation provided will be (where possible) to a single room, 3-star standard as accredited by the applicable state-based motoring organisation i.e., NRMA, RACV and RACQ will be considered “reasonable” for the purposes of reimbursement. Employees who seek to claim reimbursed cost due to travel will be required to gain prior approval from the company before any travel is arranged.
- 6.6.3.** In circumstances where the Company provides reasonable accommodation to its employees, the employees will be paid an amount as per the applicable travel and incidental allowance relevant to the state, provided in **Annexure A**.
- 6.6.4.** The allowances and conditions contained in clause 6.6 will be in strict compliance with the ATO Act and Guidelines.

7. Superannuation

- 7.1.1.** The Company will comply with all relevant superannuation legislation as amended from time to time.
- 7.1.2.** The Company will pay an amount equivalent to the prevailing Superannuation Guarantee Levy into a compliant fund of the employee’s choice or, where the employee does not choose a fund, the employer’s default fund, Australian Super or Uni Super.

8. Redundancy –Permanent Employees

- 8.1.1.** A Redundancy may occur where the Company determines that they no longer require the job to be done by the Employee or by anyone, except where this is due to the ordinary and customary turnover of labour.
- 8.1.2.** Where a Redundancy is proposed, the Company will undertake prior consultation in accordance with clause 17 with the affected Employee and their nominated representative (if any), regarding the reasons for the Redundancy; options or alternatives that may be available for the affected Employee and other relevant information, including time of implementation.

8.2. Employees exempted

8.2.1. This clause does not apply to:

- (a) Employees terminated as a consequence of serious misconduct, performance or other inability to fulfil the contract of employment; or
- (b) Employees who resign; or
- (c) Employees engaged for a specific period of time or for a specified task or tasks; or
- (d) Casual employees.

8.3. Incolink- Severance Pay for All Employees (Victoria Only)

8.3.1. The Company is, and will remain during the life of this Agreement, a member of the Redundancy Payment Approved Workers Entitlement Fund 2 ("Incolink Number 2 Fund") of which Redundancy Payment Central Fund Ltd ("Incolink") is trustee, and all the employees of the Company within the scope of this Agreement will be enrolled in the Incolink Number 2 Fund and be entitled to redundancy benefits in accordance with the terms of the Trust Deed.

8.3.2. The Company shall pay contributions to the Incolink Number 2 Fund on behalf of each employee on a weekly basis in accordance with the Trust Deed. If Incolink nominates any other fund, the Company shall pay contributions to that fund on behalf of each employee on a weekly basis and in accordance with the constituting documents of that other fund.

8.3.3. An employee is entitled to access his/her redundancy payments when they cease to be employed by the Company.

8.3.4. The liability of the Company to pay redundancy payments to an employee under this clause will be met by the making of the contributions on behalf of each employee required as a member of the Incolink Number 2 Fund, or by another fund nominated by Incolink.

8.3.5. Despite clause 8.3.4, in circumstances where an employee is made redundant, if there is a shortfall in the Incolink Fund the company will make up the difference to the amount due as specified in the NES.

8.3.6. References in this clause to "Incolink Number 2 Fund" include a reference to another fund for comparable purposes nominated by Incolink for the purpose of this Agreement as a fund which supersedes the Incolink Number 2 Fund.

8.3.7. Employees working less than 38 hours per week shall receive Incolink payments on pro rata basis.

8.4. Income Protection, Trauma and Journey Insurance for All Employees (Victoria Only)

8.4.1. The Company is, and will remain during the life of this Agreement, a participating employer in the Incolink Number 2 Fund (or other redundancy fund of which Incolink is a trustee) and an employer member of IPT Agency Co Ltd or IPT Agency Co (No. 2) Ltd. IPT Agency Co Ltd and IPT Agency Co (No. 2) Ltd administer the insurance schemes covering income protection, trauma and journey accidents (**Income Protection, Trauma and Journey Accidents Insurance Schemes**).

8.4.2. The Company shall pay contributions to IPT Agency Co Ltd or IPT Agency Co (No. 2) Ltd (as relevant) on behalf of each employee of the Company employed within the scope of this Agreement, on a monthly basis, in accordance with the Constitution of IPT Agency Co Ltd or IPT Agency Co (No. 2) Ltd (as relevant).

8.4.3. Pursuant to the Income Protection, Trauma and Journey Accidents Insurance Schemes, an employee of the Company employed within the scope of this Agreement will:

- (a) **(Income Protection)** receive defined weekly payments (the current table of benefits is available from Incolink) in the event of an extended work absence arising from any personal illness or injury that occurs at the time the employee is an employee of the Company.
- (b) **(Trauma)** receive or have paid on their behalf financial compensation in the event of a major work related accident (i.e. Work Cover) resulting in the death or permanent disablement of the employee and occurring at the time the employee is an employee of the Company (the full and precise conditions of this cover will be in accordance with the terms of the insurance policy and is available from Incolink).
- (c) **(Journey Accidents)** receive payments in accordance with the terms of the insurance policy for the duration of the employee's absence (the full and precise conditions of this cover will be in accordance with the terms of the insurance policy and is available from Incolink) if:
 - (i) the absence is because the employee is unable to work due to injuries resulting from any accident incurred during journey between the employee's residence and the workplace, that occurs at the time the employee is an employee of the Company; and
 - (ii) all such absences are supported by certification of a duly authorised medical practitioner and indicating the causal nexus between the travel to and from work and the employee's inability to attend for work

9. Induction and Orientation

- 9.1.1. All Employees engaged under this Agreement will undergo an induction and orientation program at the commencement of employment, during which they will be familiarised with the Company and the requirements of their position. The program will include an induction course aimed at welcoming new Employees and assisting them to work effectively in the Company.

10. Hours of Work

10.1. Hours of Work

- 10.1.1. The ordinary hours of work for full-time employees are 38 hours per week.

- 10.1.2. **Monday to Friday Shift Workers-** Ordinary hours Monday to Friday may be worked at any time between 12:00am Monday and 11:59pm Friday. Hours worked between 6:00am and 6:00pm Monday to Friday will be paid the ordinary rate of pay. Within the prescribed hours above, hours worked between 6.00pm and 6.00am will be paid at the ordinary rate of pay plus the night shift loading specified in clause 10.3. For the avoidance of doubt:

- (a) hours of work will be paid according to where the hours fall (with the exception of work commencing on a Sunday and continuing into a Monday which will be paid in accordance with clause 10.1.7); and
- (b) the night shift loading will be paid only on those hours worked between 6:00pm and 6:00am and not for any ordinary hours on the same shift that are worked outside this span; and
- (c) all hours worked on Saturday and Sunday are not ordinary hours and are overtime as set out in clause 10.2.

- 10.1.3. **Designated Shift Worker (Permanent Employees)** - An Employee who is designated by the Company as a Designated Shift Worker as provided for in clause 10.3, may work ordinary hours between Monday to Sunday and be paid at the penalty rates set out in clause 10.3.

- 10.1.4.** The ordinary hours of work for a Designated Shift Worker are 38 hours per week and may be averaged over a period of 2 weeks on an Extended Shift Roster.
- 10.1.5.** Where an employee agrees to work an Extended Shift Roster, ordinary hours will be the first 76 hours worked over a 2-week period and up to 10 hours in a shift where:
- (a) the 9th and 10th hour worked will be paid at 150%; and
 - (b) any hours in a shift after 10 hours will be Overtime and paid at 200%.
- 10.1.6.** Designated shift workers will have an established roster. Once established this roster can be varied by agreement between the Company and affected employees. Agreement cannot be unreasonably withheld. Refusal may be considered unreasonable if it does not relate to one or more of the following items
- (a) Work life balance
 - (b) Remuneration
 - (c) Fatigue
 - (d) Operational requirements
- 10.1.7.** Where an Employee (including a Designated Shift Worker) commences work on a Sunday, the entirety of their shift will be treated as a Sunday shift and paid accordingly.
- 10.1.8.** Rostered hours must fall between ordinary hours as prescribed by clause 10.1. These may only be varied by mutual agreement between the Company and the majority of affected employees.
- 10.2. Overtime**
- 10.2.1.** Employees may be required to work reasonable overtime where the Company deems it necessary.
- 10.2.2.** Overtime is:
- (a) hours worked outside of the span of hours specified in clause 10.1.
 - (b) hours worked in excess of 8 hours on any one day or shift, unless working on an Extended Shift Roster where overtime will be paid after 10 hours.
- 10.2.3.** All overtime worked Monday to Saturday (noon) must be paid at time and a half for the first 2 hours and double time thereafter.
- 10.2.4.** When working on an Extended Shift Roster all overtime is paid at double time.
- 10.2.5.** Employees engaged to work overtime on Saturday must be paid a minimum of 4 hours at the applicable overtime rate.
- 10.2.6.** All overtime worked on Saturday (after 12:00pm) and Sunday must be paid at double time.
- 10.2.7.** Employees engaged to work overtime on Sunday must be paid a minimum of 4 hours at the applicable overtime rate.
- 10.2.8.** Employees required to work any Public Holiday (Clause 16) must be paid double time and a half with a minimum of 8 hours paid.

10.3. Shift Work definitions

- 10.3.1. Monday to Friday Shift Worker** means an Employee whose ordinary hours of work may be worked Monday to Friday at any time between 12:00am Monday and 11:59pm Friday.
- 10.3.2. Designated Shift Worker** means an Employee who is designated by the Company as being able to be rostered to work ordinary hours of work on any day of the week, Monday to Sunday. Casual Employees may not be designated by the Company as Designated Shift Workers.
- 10.3.3. Extended Shift Roster** - An Extended Shift Roster is one in which the ordinary component of rostered shifts is greater than eight (8) hours.
- 10.3.4. Saturday Shift** means rostered ordinary hours of a Designated Shift Worker worked on Saturday (i.e. between 12:00am Saturday and 11:59pm Saturday).
- 10.3.5. Sunday Shift** means rostered ordinary hours of a Designated Shift Worker that commence between 12:00am Sunday and 11:59pm Sunday.
- 10.3.6. Shift Loadings**
- (a) Employees will be paid a loading of 30% for all ordinary hours of work worked between 6.00pm and 6.00am.
 - (b) Designated Shift Workers who work a Saturday Shift will be paid a loading of 50% for the first two hours and 100% thereafter.
 - (c) Designated Shift Workers who work a Sunday Shift will be paid a loading of 100% for all ordinary hours worked.

11. Rostering Principles

- 11.1.1.** Rostering will be based on fatigue management principles which:
- (a) Address the opportunity for quantity and quality of sleep, particularly the 'time of day' effect;
 - (b) Ensure the number of consecutive shifts (in particular night shifts), shift lengths and roster periods between shifts are considered in roster compilation; and
 - (c) Understands that employees have a need to balance their competing requirements of their job with social, community and/or home life obligations.
- 11.1.2.** The parties acknowledge the variations in business requirements for rostered work across the Company's business. These variations need to be addressed through consultation with the affected employee(s) which addresses business requirements while ensuring compliance with the roosting principles contained in this Agreement.
- 11.2. Rostered Days off (RDOs)**
- 11.2.1.** RDOs may be implemented at a site or workplace as approved by the Company, to meet the Company's operational requirements.
- 11.2.2.** The following RDO arrangements may be implemented:
- (a) 1 RDO per 4 week cycle as specified by the Company, where hours worked per day will accrue on a daily basis at the relevant rate; or

(b) 1 RDO per 4 week cycle accrues at the rate of 0.4 hours per day

- 11.2.3. An RDO may, by mutual agreement between the Company and the employee, be deferred and taken at an alternative date.
- 11.2.4. Any deferred RDO shall be taken within a period of 6 months from the date of the deferment. If the RDO is not taken within a period of 6 months it shall be paid out, on application by the employee, at the employee's pay rate.
- 11.2.5. Employees who are not accruing an RDO are entitled to overtime payments consistent with the overtime Clause 10.2 for time directed to be worked in excess of 38 hours per week or averaged over a period of up to 2 weeks.
- 11.2.6. Employees who are accruing an RDO are entitled to overtime payments consistent with the overtime Clause 10.2 for time worked in excess of 40 hours per week (this may vary by agreement between the employee and the Company).
- 11.2.7. Where an employee terminates employment with the Company with time accrued towards an RDO, such accrued time shall be paid out at the employee's base rate of pay or flat rate of pay (whichever is applicable to the particular employee).
- 11.2.8. An RDO may be cashed out at the requesting employee's base rate of pay (exclusive of any allowances) or flat rate of pay (whichever is applicable to the particular employee) subject to the Company's absolute discretion.
- 11.2.9. Multiple employees can have the same day off provided the Company's work schedule allows for multiple employees to be absent on the same day. Where the Company's work schedule prevents all employees taking RDO's on the same day, employees must seek approval from management for their requested RDO.
- 11.2.10. An employee cannot bank more than 5 RDOs.

12. Call Back

- 12.1.1. An employee who is recalled to work overtime after leaving their work assignment premises must be paid for at least 4 hours work at the appropriate rate for each time the employee is recalled.

13. Minimum Break Between Shifts

- 13.1.1. An employee, where reasonably practicable, must have 10 consecutive hours off duty. An employee, other than a casual, who works so much overtime between the termination of their ordinary work on one day and the commencement of their ordinary work on the next day who has not had 10 consecutive hours off duty between those will, be able to have 10 consecutive hours off duty without loss of ordinary working time occurring during such absence.
- 13.1.2. If on the instructions of the Company, an employee resumes or continues work without having had ten (10) consecutive hours off duty, the employee shall be paid double time until they are released from duty and will be entitled to be absent until ten (10) consecutive hours off duty has been taken, without loss of pay for ordinary working time occurring during the absence.
- 13.1.3. In the case of shift/rostered workers, 8 hours will be substituted for 10 hours overtime worked:
 - (a) For the purpose of changing shift rosters; or

- (b) Where a shift is worked by arrangement between the employees themselves.

14. Breaks

14.1. Meal Breaks

- 14.1.1. Employees must take an unpaid meal break of no less than 30 minutes, or as otherwise agreed between the Company and majority of employees, provided that an employee must not be required to work more than 5 hours without a meal break.
- 14.1.2. The meal break is unpaid for day workers and paid for workers undertaking a straight shift (shift worked with a planned or actual duration of up to 8hrs ordinary time where break time is not deducted and 20-minute paid break is provided).
- 14.1.3. Where an employee is required to work overtime for more than 2 hours without being notified on the previous day or earlier that he or she will be required to work, they shall either be supplied with a meal by the Company or be paid a meal allowance of **\$22.00**. If they work beyond a further 2 hours, a further meal allowance shall be paid for a second meal.
- 14.1.4. Overtime meal expenses listed at clause 14.1.3 will be adjusted as per wage percentage increases listed.

14.2. Rest Breaks

- 14.2.1. All employees shall be entitled to one paid rest break of fifteen minutes within an ordinary shift.
- 14.2.2. The rest pause will be taken at a mutually agreed time between the Company and the majority of employees affected so as not to interrupt the operations of the Company or Client site or workplace. To meet individual or Company needs, the Company and any individual employee may reach agreement to take rest pauses at a time other than that determined by the majority.

15. Leave Entitlement

15.1. Annual Leave (Permanent employees)

- 15.1.1. Annual leave entitlements are provided for in the NES. This clause supplements those entitlements and provides industry specific detail.

15.2. Entitlement to Annual Leave

- (a) An employee is entitled to annual leave, in accordance with the NES, such that the employee's total entitlement to annual leave pursuant to the NES and this Agreement for each year of employment is a total of 152 ordinary hours (four weeks on the basis of a 38-hour week).
- (b) A Designated Shift worker may be entitled to up to 190 ordinary hours (5 weeks on the basis of 38 hours per week) of annual leave accrued for every 12-month period of continuous service to be accrued on the basis outlined in clause 15.3.1.
- (c) For the purposes of the NES, a shift worker is defined as an:

- (i) An employee who regularly performs permanent night shift work as defined by the Rail Industry Award 2020; or
- (ii) an employee who is a 7-day shift worker who is regularly rostered to work on Sundays and public holidays.

15.3. Accrual of Annual Leave

15.3.1. Employees, other than casual employees, accrue annual leave at the following rate:

- (a) Monday to Friday Shift Workers accrue 152 hours per annum for 4 weeks annual leave
- (b) Designated shift workers accrue up to 190 hours per annum for up to 5 weeks annual leave on the following basis:
 - (i) a pro-rata accumulation per calendar quarter over a calendar year (period);
 - (ii) when Employees work a minimum of ten (10) rostered shifts in a calendar quarter of ordinary time that attract either of the following penalties;
 - Night shifts
 - Saturday shifts
 - Sunday shifts
 - Public holiday shifts

Then they will accumulate 1.25 days per calendar quarter in addition to the 152-hour minimum entitlement above

- (c) Employees who are shiftworkers for the purposes of the NES (as defined by cl.15.2(c) accrue 190 hours per annum for 5 weeks annual leave.
- (d) Annual leave is cumulative from year to year.
- (e) Part-time employees accrue annual leave on a pro-rata basis.

15.4. Calculation of Annual Leave Pay

- (a) Annual leave is paid at the ordinary base rate of pay (no penalties or shift loading) with the following annual leave loading:
 - (i) Monday to Friday Shift Workers: 17.5%
 - (ii) Designated Shift Workers (Monday to Sunday): 20%
- (b) If the Employee is on annual leave and that annual leave includes a period of other leave included in the NES (other than parental leave), the employee will not be taken to be on annual leave in accordance with section 89(2) of the Act.
- (c) If a public holiday falls within a period of annual leave, a day is credited to the employee's entitlement to annual leave.

15.5. Notice of Taking Annual Leave

15.5.1. An employee must give one months' notice of their intention to take annual leave. Annual leave applications are approved or declined by the Company upon consideration of its operational requirements.

15.6. Personal / Carer's Leave Entitlement (Permanent employees)

- (a) Casual employees are not entitled to paid Personal/carer's leave.
- (b) A full-time employee is entitled to 10 days on the basis of personal/carer's leave (inclusive of the employee's NES entitlement) per year which accrues progressively throughout each year of service. Any personal leave that is not taken by an employee must accumulate without limitation.
- (c) The Company may require the Employee to provide evidence that would satisfy a reasonable person of their entitlement to take personal/carer's leave. Where the absence extends beyond one working day, the Employee will be required to provide a doctor's certificate.
- (d) An employee is entitled to 5 single days per year absence on personal leave without the production of a medical certificate, provided that an Employee may not take more than 2 consecutive days off without a providing a certificate and/or must provide a certificate for any single day absence following a weekend, Public Holiday or paid day off.
- (e) Employees must where practicable notify the Company of their absence prior to the commencement of their shift. Employees who fail to notify the Company of their absence under this clause will be regarded as absent without approved leave and if the employee is unable to provide reasonable proof or evidence that they could not contact the Company to advise of their absence then they may be subject to disciplinary action.
- (f) Part-time employees accrue personal leave on a pro-rata basis.
- (g) Personal/ Carers leave is not paid out on termination.

15.7. Casual Employees

15.7.1. Casual employees will be entitled to 2 days of unpaid carer's leave in accordance with the Act.

15.8. Parental Leave

15.8.1. Employees will be entitled to Parental Leave in accordance with the Act.

15.9. Compassionate Leave

15.9.1. In accordance with and subject to the requirements of the Act a permanent employee is entitled to 2 days of compassionate leave for each occasion when a member of the employee's immediate family or a member of the employee's household;

- (a) Contracts or develops a personal illness that poses a serious threat to his/her life; or
- (b) Sustains a personal injury that poses a serious threat to his/her life; or
- (c) Dies

15.9.2. In accordance with section 104(1)(b) and (c) of the Act, this entitlement shall also apply if a child is stillborn, where the child would have been a member of the employee's immediate family, or a member of the employee's household, if the child had been born alive, or the employee, or the employee's spouse or de factor partner, has a miscarriage.

15.9.3. An employee is entitled to compassionate leave if the leave is for the purpose of spending time with the employee's **immediate** family member or member of the household in the circumstances of clause 15.9.1.

15.9.4. The employee will be required to give the Company any evidence that the Company reasonably requires of the illness, injury or death.

15.9.5. Payment for Compassionate Leave shall be at the amount the permanent employee would reasonably have expected to be paid if the employee had worked for the period of paid leave.

15.9.6. Casual employees will be entitled to 2 days of unpaid compassionate leave in accordance with the Act.

15.9.7. For employee's who have to attend a funeral interstate or overseas may combine the leave in this clause with other types of leave such as annual and/ or personal carer's leave.

15.10. Long Service Leave

15.10.1. Subject to the provisions of this clause, employees shall be entitled to Long Service Leave in accordance with applicable State or Territory Long Service Leave legislation.

15.10.2. Long Service Leave payments will be made on the basic hourly rate that applied immediately prior to the taking of Long Service Leave.

15.10.3. If an employee is entitled to Long Service leave payments in accordance with an applicable portable Long Service Scheme, then, subject to the law or rules of that scheme, they will either receive their entitlements under that scheme or in accordance with this clause, whichever is more beneficial to the employee (but not both).

15.10.4. At the Company's directions employees may be required to take long service leave and the Company will provide a minimum of 3 months' notice.

15.11. Community Service Leave

15.11.1. Employees are entitled to Community Service Leave in accordance with the NES. For the avoidance of doubt this will also cover Defence Reservists leave, Military leave and Jury Duty including that:

- (a) A full-time employee required to attend for jury service during his/her ordinary hours of work shall be reimbursed by the company an amount equal to the difference between the amount paid in respect of the attendance for jury service and the amount the employee would have received in respect of the ordinary time the employee would have worked had the employee not been on jury service.
- (b) A part time employee required to attend for jury service shall be paid in accordance with the above dot point where the attendance coincides with a day/s on which the employee would normally be required to work.
- (c) Where an employee is required to attend for jury service the employee shall notify the company as soon as possible of the date upon which the employee is required to attend.

15.12. Domestic and Family Violence

15.12.1. Leave to deal with Family and Domestic Violence. This clause applies to all employees, including casuals.

15.12.2. Definitions

- (a) In this clause:

family and domestic violence means violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful.

family member means:

- (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
 - (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
 - (iii) a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.
- (b) A reference to a spouse or de facto partner in the definition of family member includes a former spouse or de facto partner.

15.12.3. Entitlement to paid leave

An employee is entitled to 10 days' paid leave to deal with family and domestic violence, in accordance with the NES, as follows:

- (a) the leave is available in full at the start of each 12 month period of the employee's employment; and
 - (b) the leave does not accumulate from year to year; and
 - (c) is available in full to part-time and casual employees.
1. A period of leave to deal with family and domestic violence may be less than a day by agreement between the employee and the employer.
 2. The employer and employee may agree that the employee may take more than 5 days' unpaid leave to deal with family and domestic violence.

15.12.4. Taking unpaid leave

An employee may take unpaid leave to deal with family and domestic violence if the employee:

- (a) is experiencing family and domestic violence; and
- (b) needs to do something to deal with the impact of the family and domestic violence and it is impractical for the employee to do that thing outside their ordinary hours of work.

The reasons for which an employee may take leave include making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services.

15.12.5. Service and continuity

The time an employee is on unpaid leave to deal with family and domestic violence does not count as service but does not break the employee's continuity of service.

15.12.6. Notice and evidence requirements

a) Notice

An employee must give their employer notice of the taking of leave by the employee under clause 15.12.1. The notice:

- (i) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
- (ii) must advise the employer of the period, or expected period, of the leave.

b) Evidence

An employee who has given their employer notice of the taking of leave under clause 15.12.1 must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause 15.12.1.

Depending on the circumstances such evidence may include a document issued by the police service, a court or a family violence support service, or a statutory declaration.

15.12.7. Confidentiality

- a) Employers must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under clause 15.12.6 is treated confidentially, as far as it is reasonably practicable to do so.
- b) Nothing in clause 15.12.6 prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

Information concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers should consult with such employees regarding the handling of this information.

15.12.8. Compliance

An employee is not entitled to take leave under clause 15.12.1 unless the employee complies with clause 15.12.6.

16. Public Holidays

16.1.1. Entitlement

The public holidays for the purpose of this Agreement shall be:

Christmas Day,
Boxing Day,
New Year's Day,
Australia day,
Good Friday,
Easter Saturday,
Easter Sunday
Easter Monday,
Anzac Day,
Grand Final Eve (in Victoria or if gazetted by the relevant State)
Labour Day, as gazetted in the relevant State,
Queen's Birthday, and
Any other day as gazetted in the relevant State

16.1.2. The Company may request employees work on a public holiday in accordance with the NES and Act.

16.1.3. Holidays in lieu:

- (a) When Christmas Day is a Saturday or a Sunday, a Public holiday in lieu will be observed on 27th December.
- (b) When Boxing Day is a Saturday or a Sunday, a Public Holiday in lieu will be observed on 28th December.
- (c) When New Year's Day or Australia Day is a Saturday or a Sunday, a Public Holiday in lieu will be observed on the next Monday.

- 16.1.4.** All employees, other than casuals, shall be entitled to Public Holidays as prescribed, without loss of pay, except where an Employee has agreed to work on a Public Holiday and is absent without the consent of the Company or absent without reasonable cause.
- 16.1.5.** An employee required to work on a public holiday as prescribed by this clause shall be paid at the rate of double time and a half of their ordinary rate of pay or at the rate of time and a half with a day in lieu to be taken at a time mutually agreed.
- 16.1.6.** Where a permanent employee is rostered off on a public holiday the employee shall be paid for the ordinary hours normally worked on that day had it not been a public holiday.
- 16.1.7.** To meet Employee or Company needs, the Company and Employee(s) may agree to substitute one of the prescribed public holidays for another day and the prescriptions of this clause will apply to the substituted day. The Company commits to consult with affected employees prior to seeking their agreement to substitute any public holiday in this clause.

17. Consultation

- 17.1.1.** This clause applies if:
- The Company has made a decision to introduce a major change to production, program, organisation, structure, or technology in relation to its enterprise and the change is likely to have a significant effect on Employees; or
 - the Company proposes to introduce a change to the regular roster or ordinary hours of work of employees.
- 17.1.2.** The relevant employees may appoint a representative of their choice for the purposes of the procedures in this clause if:
1. A relevant employee appoints, or relevant employees appoint, a representative for the purposes of consultation; and
 2. The employee or employees advise the Company of the identity of the representative;
 3. The Company must recognise the representative.
- 17.1.3.** In the case of a major change, the Company must notify the relevant employees and/or their nominated representative of the decision to introduce the major change.
- 17.1.4.** As soon as practicable after making its decision to introduce major change, the Company must:
- (a) Discuss with the relevant employees and/or their nominated representative:
 - The introduction of the change; and
 - The effect the change is likely to have on the employees; and
 - Measures the Company is taking to avert or mitigate the adverse effect of the change on the employees; and
 - (b) For the purposes of the discussion — the Company will provide, in writing, to the relevant employees and/or their nominated representative:
 - All relevant information about the change including the nature of the change proposed; and
 - Information about the expected effects of the change on the employees; and
 - Any other matters likely to affect the employees.

- (c) However, the Company is not required to disclose confidential or commercially sensitive information to the relevant employees and/or their nominated representative.
- 17.1.5.** The Company must give prompt and genuine consideration to matters raised about the major change by the relevant employees.
- 17.1.6.** 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 Company, the requirements set out in subclauses 17.1.2, 17.1.3, 17.1.5 of this clause are taken not to apply.
- 17.1.7.** In this term, a major change is likely to have a significant effect on employees if it results in:
- The termination of the employment of employees; or
 - Major change to the composition, operation or size of the Company's workforce or to the skills required of employees; or
 - The elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
 - The alteration of hours of work; or
 - The need to work and/or alter shift work/rostering patterns; or
 - The need to retrain employees; or
 - The need to relocate employees to another workplace; or
 - The restructuring of jobs.
- 17.1.8.** In the case of a change to the employee's regular roster or ordinary hours of work, the Company must notify the relevant employees of the proposed change.
- 17.1.9.** As soon as practicable after proposing to introduce the change to regular roster or ordinary hours of work, 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 all relevant information about the change, including the nature of the change; information about what the employer reasonably believes will be the effects of the change on the employees; information about any other matters that the employer reasonably believes are likely to affect the employees; and 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).
- (c) However, the employer is not required to disclose confidential or commercially sensitive information to the relevant employees.
- 17.1.10.** The employer must give prompt and genuine consideration to matters raised about the change by the relevant employees.
- 17.1.11.** In this clause, a relevant employee means the Employee who may be affected by the major change or change to the regular roster or ordinary hours of work, as applicable.

18. Counselling and Disciplinary Procedures

- 18.1.1.** The Company may conduct a counselling or disciplinary process.
- 18.1.2.** Disciplinary investigations shall be confidential.
- 18.1.3.** Employees will be provided with the following in relation to any investigation
- the allegations that are the subject of investigation;

- an opportunity to respond to the allegations;
- entitlement to have a representative or support person present at any meetings/interviews, if so requested or appointed by the employee with reasonable notice to attend.

18.1.4. The Company reserves the right to suspend an employee while undertaking an investigation. If the Company suspends an employee, the employee will be suspended and paid as per roster until an outcome is achieved.

18.1.5. The outcome of an investigation may include the following disciplinary actions: counselling, formal written or verbal warnings or dismissal.

18.1.6. The Company will only dismiss an Employee, without notice, for serious misconduct warranting summary dismissal. The Company shall undertake an investigation into the issues pertaining to the serious misconduct in line with the Company's Disciplinary Procedure.

19. Inclement Weather

19.1. General Principles

19.1.1. "Inclement Weather" means abnormal climatic conditions (for example hail, high wind, severe dust storm, extreme temperatures) under which it is either unreasonable or unsafe for employees exposed to these conditions to continue working.

19.1.2. This clause is intended to ensure that the parties to this Agreement have an agreed understanding about how the general principle of maximising productivity is applied without exposing employees to unsafe inclement weather conditions.

19.2. Inclement Weather Procedure

19.2.1. An employee must comply with Company's instructions to:

- (a) Continue work when the area in which the employee is working is not affected by the inclement weather; or
- (b) Accept a transfer to work to an area of the site not affected by the inclement weather; or
- (c) Accept a transfer (within paid working time) from one site to another site not affected by the Inclement weather; (prior to the morning rest period) as long as it is within a 30km radial distance from the affected site unless agreed by a majority of the employees on the affected site; or
- (d) Leave the site without loss of pay. For the avoidance of doubt, employees will only receive ordinary hours due for the shift or for overtime shifts; payments will be consistent with clause 10.2 (minimum hours for Overtime) of this agreement.

19.2.2. Where it is necessary for an employee to traverse open ground (not work) the Company will provide the employee with safe transport and/or appropriate wet weather protective clothing. Such clothing will remain the property of the Company and may be returned to the Company on request. Employees shall take reasonable care of the clothing and pay the cost of its replacement if lost or damaged due to an employee's negligence.

19.2.3. An employee shall not be affected by inclement weather unless, by virtue of the weather conditions, it is not reasonable and it is not safe for work to continue.

SIGNATORIES

Signed for and on behalf of the "Company"

Name (Print): BEN FITZSIMMONS

Company Position: COO

Address: UNIT 8/75 LORIMER ST, SOUTH WHARF

Signature: 

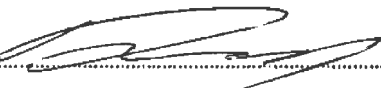
Date: 25.8.23

Signed for and on behalf of the RTBU

Name: Bryan Evans

Position: Organiser

Address: L2, 365 Queen st Melbourne

Signature: 

Date: 5/9/23

Annexure A – Victoria

Classification Definition – Victoria Non-Construction

See Table 1.

Ordinary Hourly Rate – Victoria Non-Construction

Table 1

Maintenance			
Classification Table		Commencement	Jul-24
RW1	General labourer Less than 12 months experience, Peggy	\$32.28	\$33.57
RW2	Way maintainer, Electrical spotter, Working at heights	\$35.89	\$37.32
RW3	Welders offsider, Fork lift operator, TRMO3 [Self Propelled Track Machinery], Backhoe / Front end loader operator, EWP, Non-Slewing crane, Crane operator[s] -C1,2,3,4,5&6, Dogman, Rigger, Roller operator	\$38.02	\$39.54
RW4	Way Gang driver, way gang bus driver, LR/MR Truck driver.	\$42.43	\$44.13
RW5	Hi-Rail Operator new/less experienced, Excavator operator	\$44.03	\$45.79
RW6	Leading Hand, Thermit welder, HR/HC Truck driver	\$45.51	\$47.33
RW7	Track inspector / Certifier, Trade qualified, Supervisor/Ganger, Skilled / Experienced Hi-Rail operator, TRMO C4 [Tampers & Regulator]	\$49.67	\$51.65
RW8	Superintendent, Road Foreman, Track Examiner	\$60.84	\$63.27

Wage increases.

The wage rates set out in the above Table shall increase in accordance with the following.

- From first pay period on or after 1 July 2023 - as per above Table.
- From first pay period on or after 1 July 2024 – 4%
- From first pay period on or after 1 July 2025 – 4%
- From first pay period on or after 1 July 2026 – 4%

Travelling and Incidental Expenses – Victoria

VIC	Lodgement	01-July-2024	01-July-2025
Breakfast	\$24.29	\$25.26	\$25.14
Lunch	\$24.29	\$25.26	\$25.14
Dinner	\$35.66	\$37.09	\$36.91
Accommodation	\$121.32	\$126.17	\$125.56
Total	\$205.56	\$213.78	\$212.75

Victorian Construction Rates

This only applies to employees working on construction sites in the state of Victoria.

1. CATEGORIES OF EMPLOYMENT

- 1.1 An employee may be engaged in one of the following categories.
- 1.2 An employee shall be specifically engaged as a full time, part time, casual or temporary employee.
- 1.3 Employees not specifically engaged as casuals or part time employees shall be employed as full time employees: i.e. employed by the week.
- 1.4 An employee may be engaged on a full time or part time basis for a specific period of time or for specific tasks, hereinafter referred to as employment on a temporary basis. The details of the specific period or specific tasks shall be set out in writing with a copy being kept by the Company and the employee. An employee engaged in this way will be regarded as a full time or part time Employee.
- 1.5 A full time, part time employee or temporary employee shall be engaged for a period of probationary employment for a period of 6 months. Either party giving a weeks' notice may terminate employment during a probationary period. An employee on a period of probation is for all purposes of the Agreement a full time, part time employee or temporary employee. A period of probation forms part of an employee's period of continuous service.

2. CONSTRUCTION SITE ALLOWANCE

2.1 Construction Definition

For the purpose of this clause it shall be deemed a construction site when an employee performs.

- (a) Amplifications - Work which involves the linear "extension" of existing infrastructure on an existing corridor such as passing lanes and/or track duplication and associated works.
- (b) New Construction - Work which involves the construction of new infrastructure on a corridor not previously used for Light/Heavy rail such as building sites, by passes and yards not on railway reserves.

2.2 Construction Site Allowances

The undermentioned rates apply to Employees of the Company who from time to time may be required to perform duties on a specific rail project related construction site for the time they are:

- (a) Engaged in activities (construction or maintenance) on the defined site; or
- (b) Engaged in activities (non-maintenance) supporting the work being undertaken on the defined site.
- (c) Site Allowances effective 1 October 2021

Project Value	Site Allowance \$ per hour
\$5 - \$30 million	\$2.50
\$30 - \$50 million	\$3.00
\$50 - \$100 million	\$3.50
\$100 - \$250 million	\$4.00
\$250 - \$400 million	\$4.50
\$400 million - \$1 billion	\$5.00
\$1 - \$2 billion	\$6.00
\$2 - \$3 billion	\$6.50
\$3 - \$4 billion	\$7.00

(d) Site allowances will be adjusted annually in accordance with CPI (All Groups, Melbourne) movements measured in the twelve month period. Effective as of 1 October from 2021 onwards.

2.3 Construction Site Minimum Wage

The minimum hourly rate of pay for an employee engaged on a construction site (as defined) shall be in accordance with Table 1.

3. Additional Construction Conditions

3.1 Inclement weather shall mean the existence of rain and or abnormal climatic conditions (whether they be those of hail, snow, cold, high wind, severe dust storm, extreme high temperature or the like or any combination thereof) by virtue of which it is either not reasonable or not safe for employees exposed thereto to continue working whilst the same prevail. High temperature for the purposes of this clause shall be deemed to be 35 degrees Celsius or higher. (NB: this clause only applies to employees engaged in recognised construction activities on designated construction sites and will not necessarily have application to other facets of the companies' activities.)

3.2 During a period of inclement weather employees may be required to complete their assigned work and for such work shall be paid at the rate of single time in addition to their rate at the time of the inclement weather calculated to the next hour, and in the case of wet weather has clearly ended the employees shall resume work at normal rates and the time shall be similarly agreed and noted.

3.3 Where it is necessary an employee shall work during periods of inclement weather to enable the rail network to remain safe whilst mobile plant or employees of the company or contractors' employees are restoring the rail network to normal operating conditions.

3.4 Except as provided in clause 3.3 above, no employee shall be required to work exposed to inclement weather conditions. For the purposes of this clause an employee operating machinery fitted with a functional weatherproof cab shall not be deemed to be exposed to inclement weather.

3.5 All employees working night shift shall be paid 100% loading for all hours worked.

3.6 An employee who is in receipt of workers compensation payments as a result of an injury occurring on a construction project, shall also receive payment from the company of an amount equal to the difference between the workers compensation payment and the employee's ordinary base rate of pay at the time of the injury for a maximum period of one hundred and four (52) weeks.

4. Long Service Leave (Co-Invest)

Long Service Leave benefits will be provided by Co-Invest. Payments must be made quarterly by the Company into the relevant Co-Invest Scheme.

5. INDUSTRY FUND COMPLIANCE

5.1 The Company shall ensure that all its employees covered by this Agreement are compliant with the industry schemes Incolink, CBus and Co-Invest.

5.2 It is acknowledged that information confirming compliance (i.e. registration and contribution status) may be provided by the industry scheme/s to the parties on request, provided that any individual whose information is to be made available has consented to such information being provided.

Ordinary Hourly Rate – Victoria Construction

Construction				
Classification Table			Commencement	Jul-24
RCW1	General labourer Less than 12 months experience, Paddy, Bus driver		\$45.33	\$47.14
RCW2	General Labourer more than 12 months, Electrical spotter, Working at heights		\$46.73	\$48.60
RCW3	Welders offsider, Fork lift operator, TRMO3 [Self Propelled Track Machinery], Backhoe / Front end loader operator, EWP, Non-Stewing crane, Roller operator, Truck driver, Excavator operator, Hi-Rail excavator New / less experienced		\$48.11	\$50.03
RCW4	Dogman/Rigger, Leading Hand, Thermit welder, Crane operator[s] -C1,2,3,4,5&6		\$51.31	\$53.36
RCW5	Track inspector / examiner / Certifier, Trade qualified, Supervisor/Ganger, Skilled / Experienced Hi-Rail operator, TRMO C4 [Tampers & Reg		\$56.46	\$58.72
RCW6	Superintendent, Road Foreman		\$61.70	\$64.17

Wage increases.

The wage rates set out in the above Table shall increase in accordance with the following.

- From first pay period on or after 1 July 2023 - as per above Table.
- From first pay period on or after 1 July 2024 – 4%
- From first pay period on or after 1 July 2025 – 4%
- From first pay period on or after 1 July 2026 – 4%

