

AW841208 [loose-leaf version]

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

AUSTRALIAN INDUSTRIAL REGISTRY LOOSE-LEAF CONSOLIDATION

THE CAPE FLATTERY SILICA MINES PTY LTD AWARD 2005

This award as varied to 29 September 2005 (variation PR963192) comprises pages:

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This award supersedes The Cape Flattery Silica Mines Pty Ltd Award 2000 [AW807142].

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Printed by Authority by the Commonwealth Government Printer

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996
s.113 application to vary an award

Cape Flattery Silica Mines Pty Ltd
(C2005/3586)

THE CAPE FLATTERY SILICA MINES PTY LTD AWARD 2000

(ODN C No. 4179 of 1984)

[AW807142 Print S3913]

Mining industry

COMMISSIONER HOFFMAN

BRISBANE, 1 JULY 2005

Deletion of clauses, schedules and appendices and insertion of new clauses, schedules and appendices.

ORDER

A. The above award is varied as follows:

By deleting all clauses, schedules and appendices and inserting the following in lieu thereof:

PART 1 - APPLICATION AND OPERATION

1. AWARD TITLE

This award shall be referred to as The Cape Flattery Silica Mines Pty Ltd Award 2005.

2. ARRANGEMENT

This award is arranged as follows:

Part 1 – Application and operation of award

1. Award title
2. Arrangement
3. Application
4. Definitions
5. Operation and duration
6. Anti-discrimination
7. No reduction

Part 2 – Enterprise Flexibility

8. Enterprise flexibility provision

Part 3 - Communication and dispute resolution

9. Settlement of disputes

Part 4 – Contract of employment

10. Contract of employment
11. Termination of employment
12. Abandonment of employment
13. Redundancy

Part 5 – Wages and related matters

14. Wage rates
15. Allowances
16. Shift work – Extra payment
17. Weekend work

Part 6 – Hours of work and cyclic work patterns

18. Day workers
19. Shift workers (Monday to Friday)
20. Continuous shift workers
21. Shift changes
22. Catering employees
23. Cyclic work patterns
24. Overtime
25. Meal breaks and crib time
26. Rest pauses

Part 7 – Leave and public holidays

27. Recreation leave
28. Public holidays
29. Sick leave
30. Long service leave
31. Bereavement leave
32. Family leave
33. Parental leave
34. Memorandum of Understanding

3. APPLICATION

This award shall apply to and be binding upon Cape Flattery Silica Mines Pty. Ltd. (hereinafter referred to as **the company**), The Australian Workers' Union (AWU) and the Communication Electrical Electronic Energy Information Postal Plumbing and Allied Services Union of Australia (CEPU) hereinafter referred to as **the Unions**, and all employees who are employed by the company in or in connection with or incidental to the industry of silica sand mining, treatment and loading of product.

4. DEFINITIONS

Shall be those as contained in the Memorandum of Understanding

5. OPERATION AND DURATION

This award shall operate from 30 June 2005 and shall remain in force for a period of two years.

6. ANTI-DISCRIMINATION

6.1 It is the intention of the respondents to this award to achieve the principal object in s.3(j) of the *Workplace Relations Act 1996* (the Act) through respecting and valuing the diversity of the workforce by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sex preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

6.2 Accordingly, in fulfilling their obligations under the Settlement of disputes clause, the respondents must make every endeavour to ensure that neither the award provisions nor their operation are directly or indirectly discriminatory in their effects.

6.3 Nothing in this clause is to be taken to affect:

6.3.1 any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation;

6.3.2 junior rates of pay, until 22 June 2000 or later date determined by the Commission in accordance with s.143 (IE) of the Act;

6.3.3 an employee, employer or registered organisation, pursuing matters of discrimination in any State or Federal jurisdiction, including by applications to the Human Rights and Equal Opportunity Commission;

6.3.4 the exemptions in s.170CK(3) and (4) of the Act.

7. NO REDUCTIONS

Nothing in this award shall operate to reduce any employees rate of pay existing at the commencing date of this award.

PART 2 – ENTERPRISE FLEXIBILITY

8. ENTERPRISE FLEXIBILITY PROVISION

Where the employer wishes to pursue an agreement at the enterprise or workplace about how the award should be varied so as to make the enterprise or workplace operate more efficiently according to its particular needs, the following process shall apply:

- 8.1** A consultative mechanism and procedures appropriate to the size, structure and needs of the enterprise or workplace shall be established.
- 8.2** For the purpose of the consultative process the employees may nominate the Union or another representative to represent them.
- 8.3** Where agreement is reached, an application shall be made to the Commission.

PART 3 - COMMUNICATION AND DISPUTE RESOLUTION

9. SETTLEMENT OF DISPUTES

9.1 Dispute settlement procedure

Subject to the *Workplace Relations Act 1996* any dispute or claim shall be dealt with in the following manner:

- 9.1.1** The matter shall be submitted by an employee on the job to the appropriate officer of the employer.
- 9.1.2** If not settled, the employee shall submit the matter to an appropriate official of the Union or the employee's nominated representative who shall submit the matter to the employer or employer's agent.
- 9.1.3** If the matter is still not settled, it shall be submitted to the Australian Industrial Relations Commission for decision.
- 9.1.4** While the above procedure is being followed, work shall continue normally. In the case of a new work arrangement the pre-existing work practice will be followed until resolved. No party shall be prejudiced as to the final settlement by the continuance of work in accordance with this subclause.

PART 4 - CONTRACT OF EMPLOYMENT

10. CONTRACT OF EMPLOYMENT

10.1 Employees under this award will be employed in one of the following categories:

- Full Time;
- Part Time; or
- Casual

- 10.2 At the time of engagement, each employee will be informed of the terms of their engagement and in particular, whether they are to be full time, part time or casual.
- 10.3 An employee shall carry out the functions of any position that the employee is qualified and authorised to perform.
- 10.4 A casual employee shall mean an employee engaged by the hour. A casual employee will receive 1/38th of the appropriate weekly rate for each hour worked plus a loading of 23%.
- 10.5 Where a full time employee has given or been given notice as set out in Clause 11 the employee shall continue in employment until the date of the expiration of such notice.
- 10.6 Any employee who, having given or been given notice as aforesaid, without reasonable cause is absent from work during such period shall be deemed to have abandoned the employment and shall not be entitled to payment for work done within that period.
- 10.7 Any employee not attending for duty shall, except when on paid leave, not be paid for the absence.

11. TERMINATION OF EMPLOYMENT

- 11.1 In order to terminate the employment of a full-time or part-time employee, the employer shall give to the employee the following notice:

Employee’s period of continuous service with the employer	Period of notice
Less than 1 year	At least 1 week
More than 1 year but less than 3 years	At least 2 weeks
More than 3 years but less than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

- 11.2 Where an employee is over the age of 45 years and has had at least two years continuous service with the employer, the employee shall be entitled to an additional week’s notice.
- 11.3 Payment in lieu of notice will be made if the appropriate notice period is not required to be worked. Compensation in lieu of notice must be calculated as if the employee had continued in normal employment for that period.
- 11.4 Nothing in this clause shall affect the right of the employer to dismiss any employee without notice for possession of alcohol, in non defined areas, the misuse of non prescription drugs, the use or possession of illicit drugs, drunkenness, confirmed positive drug test as defined in the companies “Fitness For Work Policy”, disobedience, failure to permit search of possessions or accommodation, neglect of duty or misconduct, and in such cases wages shall be paid up to the time of dismissal only, or the right of the employer to deduct payment for any day the employee cannot be usefully employed on account of any cessation of operations, either partial or complete, brought about by any cause for which the employer cannot reasonably be held responsible.

11.5 Notice of termination by employee

- 11.5.1** The notice of termination required to be given by an employee shall be the same as that required of the employer, except that there shall be no additional notice based on the age of the employee concerned.
- 11.5.2** If an employee fails to give notice the employer shall have the right to withhold moneys due to the employee with a maximum amount equal to the ordinary time rate of pay for the period of notice.

11.6 Time off during notice period

- 11.6.1** Where the employer has given notice of termination to an employee, the employee shall be allowed up to one day's time without loss of pay for the purpose of seeking other employment. The time off shall be at times that are convenient to the employee after consultation with the employer.
- 11.7** Where an employee has given or been given notice as aforesaid the employee shall continue in employment until the date of the expiration of such notice.
- 11.8** Any employee who, having given or been given notice as aforesaid, without reasonable cause is absent from work during such period shall be deemed to have abandoned the employment and shall not be entitled to payment for work done within that period.

12. ABANDONMENT OF EMPLOYMENT

- 12.1** An employee who is absent from work for a period of five days without notification or acceptable reasons will be considered to have abandoned employment.
- 12.2** Any employee who is absent from work for a period of six continuous months, or six months in any twelve month period, for any reason, including sickness and workers compensation will be considered to be unfit for permanent employment, and as such, may be terminated.
- 12.3** Termination of employment by abandonment shall operate from the date of the last attendance at work or the last day's absence in respect of which consent was granted by the employer, whichever is the later.

13. REDUNDANCY

In the event of a major drop off in sales the following arrangements will replace the standard T C R provisions:

13.1 Notice period

All employees with more than one years service will receive 4 weeks notice of termination.

13.2 Severance payments

All employees retrenched an ex-gratia payment of 4 weeks paid as at work.

13.3 Service Payment

Two weeks per year of service at the employees base rate.

13.4 Pro-rata Long Service Leave Payout

The payment will be .866 weeks per annum for employees with less than 7 years service. Employees having greater than 7 years service will have pro-rata leave paid out at 1.3 weeks per year of service.

13.5 Employees Approaching Normal Retirement Age

In the event that an employee being retrenched is approaching normal retirement age the total payment made to that person will not exceed the amount that the employee would have earned had the employment continued until retirement age.

13.6 Transfer to lower paid duties

Where an employee is transferred to lower paid duties as a result of redundancy, the employee shall be entitled to the same period of notice of transfer as they would have been entitled to if their employment had been terminated, and the employer may at the employer's option make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.

13.7 Employee leaving during notice period

Where an employee's employment is terminated as a result of redundancy, the employee may terminate his/her employment during the period of notice and shall be entitled to the same benefits and payments under this clause had he or she remained with the employer until the expiry of such notice. In such circumstances the employee shall not be entitled to payment in lieu of notice.

13.8 Alternative employment

An employer in a particular redundancy case may make application to the Australian Industrial Relations Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

13.9 Time off during notice period

13.9.1 During the period of termination given by the employer, an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

13.9.2 If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or he/she shall not receive payment for the time absent. For this purpose, a statutory declaration will be sufficient.

13.10 Superannuation benefits

13.10.1 Where an employee who is terminated receives a benefit from a superannuation scheme, he or she shall only receive a severance payment which is equivalent to the difference between the prescribed severance payment and the amount of superannuation benefit received which is attributable to employer contributions only.

13.11.2 If this superannuation benefit is greater than the amount of severance payment due, the employee shall receive no payment under that subclause.

13.12 Casuals and employees with less than one year's service

This clause will not apply to casuals or employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

13.13 Employees exempted

This clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, or employees engaged for a specific period of time or for a specified task or tasks.

13.14 Incapacity to pay

An employer in a particular redundancy case may make application to the Australian Industrial Relations Commission to have the general severance pay prescription varied on the basis of the employer's incapacity to pay.

PART 5 - WAGES AND RELATED MATTERS

14. WAGE RATES

[14.1 substituted by PR963192 ppc 22Sep05]

14.1 The following wage rates encompass payment for all disabilities normally encountered during work on the mine site.

Classification	Rostered Fortnightly Rate	
	Minimum	Maximum
Level 1	\$1,933.79	\$2,164.55
Level 2	\$2,168.40	\$2,549.17
Level 3	\$2,553.02	\$2,741.48
Level 4	\$2,745.32	

14.2 Arbitrated safety net adjustment

[14.2 substituted by PR963192 ppc 22Sep05]

The rates of pay in this award include the arbitrated safety net adjustment payable under the *Safety Net Review—Wages June 2005* decision [PR002005]. This arbitrated safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above-award payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous National Wage Case principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

15. ALLOWANCES

15.1 All allowances except Tool allowance and Live sewerage work are included within and covered by these agreed wage levels.

15.2 Tool allowance

Tool allowance will be paid to any employee who has completed a nationally accredited trades apprenticeship and who uses such qualifications on a regular basis in normal employment. This allowance is awarded at the flat rate of 5% of federal minimum wage per week and is used to compensate the employee for the provision and use of privately owned tools during such employment conditions.

15.3 Live sewerage work

Any work carried out on live sewerage will be paid at a minimum rate of 1.5 x ordinary hourly rate.

16. SHIFT WORK - EXTRA PAYMENT

16.1 Shift workers working on rostered afternoon or night shift shall for the time worked on each shift be paid in accordance with the roster calculation.

17. WEEKEND WORK

Employees who work ordinary hours on a shift starting on a Saturday will be paid one and a half times ordinary rates for ordinary hours. Ordinary hours work on a shift starting on a Sunday will be paid at the rate of double time.

PART 6 - HOURS OF WORK AND CYCLIC WORK PATTERNS

18. DAY WORKERS

The ordinary hours of work of dayworkers shall not exceed an average of 38 hours per week. Such ordinary hours shall be worked in continuous periods not exceeding twelve hours on any day between the hours of 5.00 a.m and 7.00 p.m. on any day of the week.

19. SHIFT WORKERS (MONDAY TO FRIDAY)

The ordinary working hours of Shift workers shall not exceed an average of 38 hours per week. A meal break is to be allowed during ordinary hours on each day.

20. CONTINUOUS SHIFT WORKERS

The ordinary working hours of continuous shift workers shall not exceed 152 hours in any four roster weeks. A meal break is to be allowed during ordinary hours on each day.

21. SHIFT CHANGES

21.1 Provisions may be made by mutual consent for exchange of shifts between employees without additional remuneration.

21.2 Any employee may be transferred from day work to shift work or from shift work to day work as required subject to the provision of 48 hours notice.

21.3 Shift work rosters shall specify the commencing and finishing times of ordinary working hours of the respective shifts and shall be posted to give at least seven days notice of any change; provided however, that shift changes to accommodate ship loading will follow the following procedure as much as possible:

21.3.1 On receipt of the initial vessel arrival date, shift crews are to be selected and advised of their work pattern. This advice could be as great as fourteen days in advance of the scheduled arrival date.

21.3.2 As progress reports confirming the accuracy of the scheduled arrival date are received the crews are to be advised of any changes to their work pattern.

21.3.3 On confirmation of arrival time crews will be advised of the docking arrangements and timing as well as the confirmed starting time of the individual shifts.

22. CATERING & CAMP SERVICE EMPLOYEES

The ordinary working hours of catering employees shall not exceed an average of 38 per week. Daily hours are to be worked between 4.30 a.m. and 8.30 p.m. with not more than two breaks between periods of work or any such other hours as may be agreed from time to time.

23. CYCLIC WORK PATTERNS

23.1 Due to the isolated position of the Cape Flattery Silica Mine, work may be carried out over consecutively recurring cycles, each consisting of a specified number of consecutive working days followed by a specified number of non-working days.

23.2 Calculation of daily ordinary time hours

The ordinary hours of work for each day shall be determined by multiplying the number of weeks in a cycle by 38 and dividing the result by the number of working days in the cycle.

24. OVERTIME

24.1 Day workers - All time worked in excess of or outside the ordinary working hours as prescribed by the award for Monday to Friday shall be paid for work performed at one and one-half times the ordinary rate for the first two hours, after which double time shall be paid until work is completed.

24.2 Saturday - Employees who are required to work overtime commencing on Saturday shall be paid at one and one-half times the ordinary rate for the first two hours, and double time thereafter.

24.3 Sunday - Employees required to work overtime on Sunday shall be paid double time for all work performed.

24.4 Shift workers - All time worked in excess or outside of the ordinary working hours on any day or shift as prescribed in the roster shall be paid double time.

24.5 An employee who works so much overtime between the completion of ordinary work on one day and the commencement of ordinary work on the next, such that at least ten consecutive hours off duty are not available, shall, unless directed to resume work at the normal start time, be excused from duty for ten consecutive hours.

24.5.1 An employee directed to resume work without having a ten hour break shall be paid double time until excused for ten consecutive hours.

24.5.2 Employees excused from duty under this clause are entitled to be paid for all ordinary working time falling within the ten hour break.

24.6 Call Outs- An employee recalled to work shall be paid a minimum of 4 hours at the appropriate overtime rate.

24.7 The provisions for a eight hour break shall not apply:

- in cases where it is necessary for an employee to return to the site to perform a specific job outside ordinary working hours, the employee shall be paid for a minimum of one hour's work at the appropriate rate, on each occasion.
- when work on a call out continues into ordinary working hours the overtime rate will continue to be paid for the duration of the call out period (two hours). However, the ordinary hours encompassed by the call out payment are ordinary hours for all other purposes of the award.

24.8 Where the actual time worked is less than two hours on recalls or on a recall, overtime worked in the circumstances specified in this subclause shall not be regarded as overtime for the eight hour break. Except that where two or more such recalls occur between the hours of midnight and 8.00 a.m. the provisions of this paragraph shall not apply.

24.9 Reasonable overtime

The employer may require an employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement. Reasonable overtime shall in the case of all employees include overtime necessary to complete shiploading.

25. MEAL BREAKS AND CRIB TIME

25.1 Day workers shall be allowed a meal break as set out in the roster.

25.2 Shift workers - both continuous and non-continuous shall be allowed a crib break of 30 minutes which shall be included as working time and shall be taken at such time as will not interfere with continuity of work where continuity is necessary.

26. REST PAUSES

All workers covered by this award shall be entitled to a 30 minute paid rest pause taken at a time that in conjunction with the meal break enables the day's work to be broken into three approximately equal periods.

PART 7 - LEAVE AND PUBLIC HOLIDAYS

27. RECREATION LEAVE

27.1 Every employee (other than a casual employee) covered by this award shall at the end of each year of employment be entitled to recreation leave on full pay as follows:

27.1.1 not less than five weeks if employed on continuous work or continuous shift work;

27.1.2 not less than four weeks on any other case;

27.1.3 where an employee during a year of service is employed upon work carrying an entitlement of five weeks leave as well as upon work carrying an entitlement to four weeks leave then the entitlement at the end of a year's employment shall be pro rata thereof.

27.2 Calculation of recreation leave pay including any proportional payments shall be as follows:

27.2.1 **Shift workers** - The rate of wage to be paid to a shift worker shall be the rate payable for work in ordinary time according to the employee's roster or projected roster, including Saturday and Sunday shifts.

27.2.1(a) Annual leave will be taken in cycle blocks of no less than two weeks.

27.2.1(b) The two weeks leave consists of fourteen consecutive days away from the site and commences on the first working day of the period of leave.

27.2.2 **Day workers** - The employee's ordinary wage rate as prescribed by the award for the period of the recreation leave and a further amount calculated at the rate of twenty per cent of the amount of holiday pay.

27.3 Taking of leave

27.3.1 Recreation leave will normally be taken at a time mutually agreed between the employer and the employee or in the absence of such an agreement will be taken at the direction of the employer by the giving of 14 days notice of the commencement of annual leave.

27.3.2 Except as hereinbefore provided, it shall not be lawful for the employer to give or for any employee to receive payment in lieu of recreation leave.

28. PUBLIC HOLIDAYS

28.1 The declared public holidays include:

- New Years Day the first of January

- Australia Day the twenty-sixth day of January
- Good Friday
- Easter Saturday (the day after Good Friday)
- Easter Monday
- Anzac Day April 25th
- Labour Day
- Birthday of the Sovereign
- Christmas Day December 25th
- Boxing Day December 26th
- Hopevale Show Day

or any day appointed under the *Holidays Act 1983 (Qld)* to be kept in place of any such holiday, shall be accepted as official public holidays for the purpose of this award.

28.2 Payment of public holidays

In lieu of Public Holidays worked or not, 10 hours per recognised Public Holiday occurring during the period of employment shall be credited to each employee for payment once per annum. This payment shall be in addition to their normal rostered earnings.

29. SICK LEAVE

29.1 Every employee shall become entitled to not less than 72 hours sick leave for each completed year of employment with the employer. Moreover, as respects any completed period of employment of less than one year with the employer, an employee shall become entitled to six hours sick leave for each month of service.

29.2 Every employee absent from work through illness, on the production of a certificate from a duly qualified practitioner, or other competent source, specifying the nature of the illness of the employee and the period or approximate period during which the employee will be unable to work, or of other evidence of illness to the satisfaction of the employer, shall, subject as herein provided, be entitled to payment as set out in the roster for sick leave payments.

30. LONG SERVICE LEAVE

30.1 All employees covered by this award shall be entitled to long service leave on full pay, subject to and in accordance with the provisions of the *Industrial Relations Act 1999 (Qld)*, as amended from time to time, save for the accrual factor, which shall be thirteen weeks of 38 paid hours long service leave after ten years service and the following exceptions:

30.1.1 In the case of an employee who has completed a period of seven years but less than ten years service with the company and who's service is terminated for reasons other than set out in Clause 11.4, payment shall be a proportionate amount on the basis of thirteen weeks for ten years service.

30.1.2 In the case of an employee who, after completing the first or subsequent period of ten years service with the company, continues that service and who terminates that service or the company terminates that service for any cause other than serious misconduct, be a proportionate further amount on the basis of thirteen weeks for ten years service.

30.1.3 In the event of a death in service, all accruals shall be paid to the employee's estate.

31. BEREAVEMENT LEAVE

31.1 Subject to production of satisfactory evidence of death, within Australia, of a wife, husband, father, mother, grandfather, grandmother, father-in-law, mother-in-law, brother, sister, child or step-child, an employee on weekly hire shall be entitled to leave up to and including the day of the funeral. Such leave shall be without deduction of pay but limited to a period not exceeding the time that would have been worked by the employee had he or she not been absent. Bereavement leave shall not exceed three days (24 hours) on each occasion of attendance of such a funeral in Australia and five days (38 hours) for attendance of a funeral overseas.

31.2 For the purposes of this clause the words **wife** and **husband** shall include a person who lives with the employee as a de facto spouse.

32. FAMILY LEAVE

32.1 Where an employee, as a result of accident or illness within their immediate family concerning their spouse or dependant children, requires leave to provide care for that immediate family, the leave may be requested on the following basis:

32.1.1 One adult only is required to provide such care.

32.1.2 Such leave is unpaid and accrues no additional or existing benefits.

32.1.3 A minimum of one complete cycle is requested and a maximum of two such cycles in any twelve month period. However, where circumstances dictate, other arrangements may be reached by mutual consent.

32.2 At present accrued leave and sick leave may be used for this purpose.

33. PARENTAL LEAVE

All employees shall be entitled to paternity, maternity and adoption leave in keeping with the Queensland Family Leave Award.

34. MEMORANDUM OF UNDESTANDING

Matters contained in the Memorandum of Understanding shall take precedence over the Award.

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