

# Worsley Alumina Pty. Ltd. Long Service Leave Conditions Award, No. 27 of 1985

## 1. - TITLE

This award shall be known as "Worsley Alumina Pty. Ltd. Long Service Leave Conditions Award, 1984".

## 2. - ARRANGEMENT

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## 3. - DEFINITION

"The Company" means "Worsley Alumina Pty. Ltd." wherever used.

## 4. - APPLICATION OF AWARD

Except as hereinafter provided this award shall apply to all employees of the Company in the State of Western Australia who are eligible for membership of unions respondent to the Worsley Alumina Award.

## 5. - LONG SERVICE LEAVE

- (1) Right to Leave

An employee shall, as herein provided, be entitled to leave with pay in respect of long service.

- (2) Long Service

The long service which shall entitle an employee to such leave shall, subject as herein provided, be continuous service with one and the same employer

- (3) (a) Where a business is transmitted from an employer (herein called "the transmittor") to another employer (herein called "the transmittee") and an employee who, at the time of such transmission, is an employee of the transmittor in that business becomes an employee of the transmittee, the period of continuous service which the employee has had with the transmittor (including any such service with any prior transmittor) shall be deemed to be service of the employee with the transmittee.
- (b) In this subclause "transmission" includes transfer, conveyance, assignment or succession, whether voluntary or by agreement or by operation of law, and "transmitted" has a corresponding meaning.

(4) Such service shall include -

- (a) any period of absence from duty on any annual leave or long service leave;
- (b) any period of absence from duty necessitated by sickness of or injury to the worker but only to the extent of fifteen working days in any year of his employment;
- (c) any period following any termination of the employment by the employer if such termination has been made merely with the intention of avoiding obligations hereunder in respect of long service leave or obligations under any award in respect of annual leave;
- (d) any period during which the service of the employee was or is interrupted by service:-
  - (i) as a member of the Naval, Military or Air Forces of the Commonwealth of Australia other than as a member of the Permanent Forces of the Commonwealth of Australia except in the circumstances referred to in Section 31(2) of the Defence Act, 1903-1956.
  - (ii) in any of the Armed Forces under the National Service Act, 1951 (as amended).

Provided that the employee, as soon as reasonably practicable on the completion of any such service, resumed or resumes employment with the employer by whom that employee was employed immediately before the commencement of such service.

(5) Service shall be deemed to be continuous notwithstanding -

- (a) The transmission of a business as referred to in subclause (3).
- (b) Any interruption of a class referred to in subclause (4) irrespective of the duration thereof.
- (c) Any absence from duty authorised by the employer.
- (d) Any standing down of an employee in accordance with the provisions of an award, industrial agreement, order or determination under either Commonwealth or State Law.
- (e) Any absence from duty arising directly or indirectly from an industrial dispute if the employee returns to work in accordance with the terms of the settlement of the dispute.
- (f) Any termination of the employment by the employer on any ground other than slackness of trade if the employee be re-employed by the same employer within a period not exceeding two months from the date of such termination.
- (g) Any termination of the employment by the employer on the ground of slackness of trade if the employee is re-employed by the same employer within a period not exceeding six months from the date of such termination.
- (h) Any reasonable absence of the employee on legitimate union business in respect of which such employee has requested and been refused leave.
- (i) Any absence from duty after the date of this award by reason of any cause not specified in this schedule unless the employer, during the absence or within fourteen days of the termination of the absence, notifies the employee in writing that such absence will be regarded as having broken the continuity of service, which notice may be given by delivery to the employee personally or by posting it by registered mail to the employee's last recorded address, in which case it shall be deemed to have been received in due course of post.
- (j) Any absence from duty before the date of this award of a kind referred to in paragraph (i), unless the employer gave the notice referred to in that paragraph within the time and in the manner referred to in that paragraph.

Provided that the period of any absence from duty or the period of any interruption referred to in paragraphs (d) to (j) inclusive shall not, except as set out in subclause (4), count as service.

Employees, who have been absent from their employment without reasonable excuse when they should otherwise have been at work, will have their anniversary date for long service leave extended by the period of unauthorised absence but only if the employee has been accordingly notified in writing by the employer of the fact of that extension within forty eight hours of the employee having resumed his ordinary hours of work following that absence.

#### 6. – PERIOD OF LEAVE

- (1) The leave to which an employee shall be entitled or deemed to be entitled shall be as provided in this clause.
- (2) Subject to the provisions of paragraphs (5) and (6) of this subclause -  
Where an employee has completed at least ten years service; the amount of leave shall be -
  - (a) In respect of 10 years service so completed - 13 weeks.
  - (b) In respect of each successive 10 years service completed after the first 10 years - 13 weeks.
  - (c) On termination of the employee's employment for any cause other than serious and wilful misconduct, including death in respect of the number of years service with the Company completed since he last became entitled to an amount of long service leave - a proportionate amount on the basis of 13 weeks leave for 10 years service.
- (3) Subject to the provisions of paragraph (6) of this subclause, where an employee has completed at least seven (7) years service but less than 10 years service since its commencement and his employment is terminated for any cause other than serious and wilful misconduct, including death the amount of the leave shall be such proportion of 13 weeks as the number of completed years of such service bears to 10 years.
- (4) Subject to the provisions of subclause (6) of this clause where the employee has not completed the first or subsequent qualifying periods in accordance with subclause (2) and (3) hereof, payment in lieu of long service leave proportionate to his length of service shall be made where the employee -
  - (a) is not less than 60 years of age and resigned but only if he has completed a total of not less than 12 months continuous service prior to the day from which his resignation has effect or
  - (b) has completed a total of not less than 12 months continuous service and his employment is ended by his employer on account of incapacity due to old age, ill health or the result of an accident or
  - (c) dies after having served continuously for not less than 12 months next before his death.
- (5) In the cases to which subclause (4) of this clause applies the employees shall be deemed to have been entitled to and have commenced leave immediately prior to such termination.
- (6) An employee whose service with the Company commenced before the 1st February, 1984, and whose service would entitle him to long service leave under this clause shall be entitled to leave calculated on the following basis -
  - (a) for each completed year of service commencing before the 1st February, 1984, an amount of leave calculated on the basis of 13 weeks leave for 15 years service; and
  - (b) for each completed year of service commencing on or after the 1st February, 1984, an amount of leave calculated on the basis of 13 weeks leave for 10 years service.

#### 7. – PAYMENT FOR PERIOD OF LEAVE

- (1) A worker shall, subject to paragraph (3) of this subclause, be entitled to be paid for each week of leave to which he has become entitled or is deemed to have become entitled the rate of pay applicable to him at the date he commences such leave.
- (2) Such rate of pay shall be the rate applicable to him for the standard weekly hours which are prescribed by the award (or agreement), but in the case of casuals and part time workers shall be the rate for the number of hours usually worked up to but not exceeding the prescribed standard.
- (3) Where by agreement between the employer and the worker the commencement of the leave to which the worker is entitled or any portion thereof is postponed to meet the convenience of the worker, the rate of payment for such leave shall be at the rate of pay applicable to him at the date of accrual, or, if so agreed, at the rate of pay applicable at the date he commences such leave.
- (4) The rate of pay -
  - (a) shall include any deductions from wages for board and/or lodging or the like which is not provided and taken during the period of leave;
  - (b) shall not include shift premiums, overtime, penalty rates, special rates, disability allowances, fares and travelling allowances or the like.
- (5) In the case of workers employed on piece or bonus work or any other system of payment by results the rate of pay shall be calculated by averaging the workers' rate of pay for each week over the previous three monthly period.

#### 8. – TAKING LEAVE

- (1)
  - (a) Leave shall be granted and taken as soon as reasonably practicable after the right thereto accrues due or at such time or times as may be agreed between the employer and the worker or in the absence of such agreement at such time or times as may be determined by the Special Board of Reference having regard to the needs of the employer's establishment and the worker's circumstances.
  - (b) Except where the time for taking leave is agreed to by the employer and the worker or determined by the Special Board of Reference the employer shall give to a worker at least one month's notice of the date from which his leave is to be taken.
  - (c) Leave may be granted and taken in one continuous period or if the employer and the worker so agree in not more than three separate periods in respect of the first 13 weeks entitlement and in not more than two separate periods in respect of any subsequent period of entitlement.
  - (d) Any leave shall be inclusive of any public holidays specified in the award (or agreement) occurring during the period when leave is taken but shall not be inclusive of any annual leave.
  - (e) Payment shall be made in one of the following ways:-
    - (i) in full before the worker goes on leave;
    - (ii) at the same time as his wages would have been paid to him if the worker had remained at work, in which case payment shall, if the worker in writing so requires, be made by cheque posted to an address specified by the worker; or
    - (iii) in any other way agreed between the employer and the worker.
  - (f) No worker shall, during any period when he is on leave, engage in any employment for hire or reward in substitution for the employment from which he is on leave, and if a worker breaches

this provision he shall thereupon forfeit his right to leave hereunder in respect of the unexpired period of leave upon which he has entered, and the employer shall be entitled to withhold any further payment in respect of the period and to reclaim any payments already made on account of such period of leave.

- (2) In the case to which subclause (2)(c) or subclause (3) of clause (6) applies and in any case in which the employment of the worker who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of his employment otherwise than by death, pay to the worker, and upon termination of employment by death pay to the personal representative of the worker upon request by the personal representative, a sum equivalent to the amount which would have been payable in respect of the period of leave to which he is entitled or deemed to have been entitled and which would have been taken but for such termination. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave hereunder.
- (3) On the application of an employee, the employee and the employer may agree that the employee can forgo all or part of their long service leave entitlement under this Award provided that:
  - (a) In lieu of the entitlement, the employee receives the same before tax amount had the leave actually been taken; and
  - (b) The agreement is in writing.

The employee will be subject to tax on any amount paid under this clause pursuant to the Income Tax Assessment Act, 1936 and the employer will make the appropriate deduction from the payment.

#### 9. – GRANTING LEAVE IN ADVANCE AND BENEFITS TO BE BROUGHT INTO ACCOUNT

- (1) The employer may by agreement with a worker allow leave to such a worker before the right thereto has accrued due, but where leave is taken in such case the worker shall not become entitled to any further leave hereunder in respect of any period until after the expiration of the period in respect of which such leave had been taken before it accrued due.
- (2) Where leave has been granted to a worker pursuant to the preceding paragraph before the right thereto has accrued due, and the employment subsequently is terminated, the employer may deduct from whatever remuneration is payable upon the termination of the employment such amount as represents payment for any period for which the worker has been granted long service leave to which he was not at the date of termination of his employment or prior thereto entitled.
- (3) Any leave in the nature of long service leave or payment in lieu thereof under a State Law or a long service leave scheme not under the provisions hereof granted to a worker by his employer in respect of any period of service with the employer shall be taken into account whether the same is granted before or after the coming into operation hereof and shall be deemed to have been taken and granted hereunder in the case of leave with pay to the extent of the period of such leave and in the case of payment in lieu thereof to the extent of a period of leave with pay equivalent thereof of the entitlement of the worker hereunder.

#### 10. – RECORDS TO BE KEPT

- (1) The employer shall during the employment and for a period of 12 months thereafter, or in the case of termination by death of the worker for a period of three years thereafter, keep a record from which can be readily ascertained the name of each worker, and his occupation, the date of the commencement of his employment and his entitlement to long service leave and any leave which may have been granted to him or in respect of which payment may have been made hereunder.
- (2) Such record shall be open for inspection in the manner and circumstances prescribed by this award with respect to the time and wages record. Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to the employer.

#### 11. – SPECIAL BOARD OF REFERENCE

- (1) There shall be constituted a Special Board of Reference for the purpose hereof to which all disputes and matters arising hereunder shall be referred and the Board shall determine all such disputes and matters.
- (2) There shall be assigned to such Board the function of:-
  - (a) the settlement of disputes on any matters arising hereunder;
  - (b) the determination of such matters as are specifically assigned to it hereunder.
- (3) The Board of Reference shall consist of one representative or substitute therefore nominated from time to time by the Australian Mines and Metals Association (Inc.) and one representative or substitute nominated from time to time by the Trades and Labor Council of Western Australia together with a chairperson to be mutually agreed upon by the organisations named in this subclause.

#### APPENDIX - RESOLUTION OF DISPUTES REQUIREMENT

- (1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996 (Industrial Relations Legislation Amendment and Repeal Act 1995) and further varied by legislation which came into effect on 23 May 1997 (Labour Relations Legislation Amendment Act 1997).
- (2) Subject to this appendix, and in addition to any current arrangements the following procedures shall apply in connection with questions, disputes or difficulties arising under this award/industrial agreement.
  - (a) The persons directly involved, or representatives of person/s directly involved, shall discuss the question, dispute or difficulty as soon as is practicable.
  - (b)
    - (i) If these discussions do not result in a settlement, the question, dispute or difficulty shall be referred to senior management for further discussion.
    - (ii) Discussions at this level will take place as soon as practicable.
- (3) The terms of any agreed settlement should be jointly recorded.
- (4) Any settlement reached which is contrary to the terms of this award/industrial agreement shall not have effect unless and until that conflict is resolved to allow for it.
- (5) Nothing in this appendix shall be read so as to exclude an organisation party to or bound by the award/industrial agreement from representing its members.
- (6) Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission provided that with effect from 22 November 1997 it is required that persons involved in the question, dispute or difficulty shall confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission..

APPENDIX - S.49B - INSPECTION OF RECORDS REQUIREMENTS

- (1) Where this award, order or industrial agreement empowers a representative of an organisation of employees party to this award, order or industrial agreement to inspect the time and wages records of an employee or former employee, that power shall be exercised subject to the Industrial Relations (General) Regulations 1997 (as may be amended from time to time) and the following:
- (a) The employer may refuse the representative access to the records if: -
    - (i) the employer is of the opinion that access to the records by the representative of the organisation would infringe the privacy of persons who are not members of the organisation; and
    - (ii) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative.
  - (b) The power of inspection may only be exercised by a representative of an organisation of employees authorised for the purpose in accordance with the rules of the organisation.
  - (c) Before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.

DATED at Perth this 17th day of March, 1986

VARIATION RECORD

<b><u>WORSLEY ALUMINA PTY. LTD. LONG SERVICE LEAVE CONDITIONS</u></b> <b><u>AWARD, 198NO 27 of 1985</u></b>				
Delivered 17/03/96 at 66 WAIG 509 Consolidated at				
CLAUSE NO.	EXTENT OF VARIATION	ORDER NO.	OPERATIVE DATE	GAZETTE REFERENCE
<b>1. Title</b>				
(1A. State Wage Principles)				
	Ins. Cl.	1752/91	31/01/92	72 WAIG 191
	Cl. & Title	1457/93	24/12/93	74 WAIG 198
(1A. State Wage Principles December 1993)				
	Cl. & Title	985/94	30/12/94	75 WAIG 23
(1A. Statement of Principles December 1994)				
	Cl. & Title	1164/95	21/03/96	76 WAIG 911
(1A. Statement of Principles March 1996)				
	Cl & Title	915/96	7/08/96	76 WAIG 3368
(1A Statement of Principles - August 1996)				
	Cl & Title	940/97	14/11/97	77 WAIG 3177
(1A. Statement of Principles - November 1997)				
	Cl. & Title	757/98	12/06/98	78 WAIG 2579
(1A. Statement of Principles - June, 1998)				
	Del. Cl. & Title	609/99	06/07/99	79 WAIG 1843
<b>2. Arrangement</b>				
	Ins. 1A	1752/91	31/01/92	72 WAIG 191
	1A. Title	1457/93	24/12/93	74 WAIG 198
	1A. Title	985/94	30/12/94	75 WAIG 23
	1A. Title	1164/95	21/03/96	76 WAIG 911

	Ins. Appendix - Resolution...	693/96	16/07/96	76 WAIG 2768
	Ins. Appendix - S.49B...	694/96	16/07/96	76 WAIG 2789
	1A. Title	915/96	7/08/96	76 WAIG 3368
	1A	940/97	14/11/97	77 WAIG 3177
	1A. Title	757/98	12/06/98	78 WAIG 2579
	Del. 1A.	609/99	06/07/99	79 WAIG 1843
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	(3)	151/96	13/08/96	76 WAIG 3390
<b>9. Leave in Advance</b>				
<b>10. Record To Be Kept</b>				
	Ins text. (2)	491/98	16/04/98	78 WAIG 1471
<b>11. Special Board of Reference</b>				
<b>Appendix - Resolution of Disputes Requirement</b>				
	Ins. Appendix	693/96	16/07/96	76 WAIG 2768
	(1),(6), Del. (7)	2053/97	22/11/97	77 WAIG 3079
<b>Appendix - S.49B - Inspection of Records Requirements</b>				

	Ins. Appendix	694/96	16/07/96	76 WAIG 2789
	(1) ins. Text	2053/97	22/11/97	77 WAIG 3138
	App.	491/98	16/04/98	78 WAIG 1471