

Alcoa Long Service Leave Conditions Award, 1980

1. - TITLE

This award shall be known as "Alcoa Long Service Leave Conditions Award, 1980".

2. - ARRANGEMENT

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3. - DEFINITIONS

"The Company" means "Alcoa of Australia Limited and Alcoa (Bunbury) Pty Ltd" wherever used.

4. - APPLICATION OF AWARD

This award shall apply to all employees of the respondents in the State of Western Australia who are eligible for membership in the applicant unions.

5. - LONG SERVICE LEAVE CONDITIONS

- (1) The long service which shall entitle an employee to such leave shall, subject as herein provided, be continuous service with one and the same Company, in the bauxite mining and alumina refining industries.
- (2) Such service shall include service prior to the first day of October, 1958, if it continued until such time but only to the extent of the last twenty completed years of continuous service.
- (3) (a) Where a Company has, whether before or after the coming into operation hereof, been 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 was an employee of the transmittor in that business becomes an employer of the transmittee the period of the continuous service which the worker 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) Where, over a continuous period, an employee has been employed by two or more companies each of which is a related company within the meaning of Section 6 of the Companies Act 1961 the period of the continuous service which the employee has had with each of those companies shall be deemed to be service of the employee with the company by whom he is last employed.

Section 6 reads:

- "(1) For the purposes of this Act, a corporation shall, subject to the provisions of subsection (3) of this section, be deemed to be a subsidiary of another corporation, if,
 - (a) that other corporation
 - (i) controls the composition of the board of directors of the first mentioned corporation;
 - (ii) controls more than half of the voting power in the first mentioned corporation; or
 - (iii) holds more than half of the issued share capital of the first mentioned corporation excluding any part thereof which carries no right to participate beyond a specified amount in a distribution of either profits or capital; or
- (2) For the purpose of subsection (1) of this section, the composition of a corporation's board of directors shall be deemed to be controlled by another corporation by it without the consent or concurrence of any other person can appoint or remove all or a majority of the directors; for the purposes of this provision that other corporation shall be deemed to have power to make such an appointment if
 - (a) a person cannot be appointed as a director without the exercise in his favour by that other corporation of such a power; or
 - (b) a person's appointment as a director follows necessarily from his being a director or other officer of that other corporation.
- (3) In determining whether one corporation is a subsidiary of another corporation
 - (a) any shares or power exercisable by that other corporation in a fiduciary capacity shall be treated as not held or exercisable by it;
 - (b) subject to paragraphs (c) and (d) of this subsection, any shares held or power exercisable
 - (i) by any person as a nominee for that other corporation (except where that other corporation is concerned only in a fiduciary capacity); or
 - (ii) by, or by a nominee for, a subsidiary of that other corporation, not being a subsidiary which is concerned only in a fiduciary capacity;shall be treated as held or exercisable by that other corporation;
 - (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first mentioned corporation or of a trust deed for securing any issue of such debentures shall be disregarded; and
 - (d) any shares held or power exercisable by, or by a nominee, for that other corporation or its subsidiary (not being held or exercisable as mentioned in paragraph (c) of this

subsection) shall be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is so exercisable by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(4) A reference in this Act to the holding company of a company or other corporation shall be read as a reference to a corporation of which that last mentioned company or corporation is a subsidiary.

(5) Where a corporation

- (a) is the holding company of another corporation;
- (b) is a subsidiary of another corporation;
- (c) is a subsidiary of the holding company of another corporation,

that first mentioned corporation and that other corporation shall for the purposes of this Act be deemed to be related to each other."

(5) 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 or injury to the employee 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 Company 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 British Commonwealth Occupation Forces in Japan and 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, and except in Korea or Malaya after 26th June, 1950;
 - (ii) as a member of the Civil Construction Corps established under the National Security Act, 1939 1946;
 - (iii) 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 Company by whom he was employed immediately before the commencement of such service.

(6) Service shall be deemed to be continuous notwithstanding

- (a) the transmission of a business as referred to in paragraph (3) of this subclause;
- (b) the employment with related companies as referred to in paragraph (d) of this subclause;
- (c) any interruption of a class referred to in paragraph (5) of this subclause;
- (d) any absence from duty authorised by the Company;

- (e) 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;
- (f) 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;
- (g) any termination of the employment by the Company on any ground other than slackness of trade if the employee be re employed by the same Company, within a period not exceeding two months from the date of such termination;
- (h) any termination of the employment by the Company on the ground of slackness of trade if the employee is re employed by the same Company within a period not exceeding six months from the date of such termination;
- (i) any reasonable absence of the employee on legitimate union business in respect of which he has requested and been refused leave;
- (j) any absence from duty after the coming into operation of this clause by reason of any cause not specified in this clause unless the Company 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 his last recorded address, in which case it shall be deemed to have reached him in due course of post.

Provided that the period of absence from duty or the period of any interruption referred to in placita (d) to (j) inclusive of this paragraph shall not (except as set out in paragraph (5) of this subclause) count as service.

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 subclause.
- (2) Subject to the provisions of paragraphs (4) and (5) of this subclause:

Where an employee has completed at least ten years' service the amount of leave shall be
 - (a) in respect of ten years' service so completed thirteen weeks;
 - (b) in respect of each successive ten years' service completed after the first ten years thirteen weeks;
 - (c) on termination of the employee's employment in any circumstances 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 thirteen week's leave for ten years' service.
- (3) Subject to the provisions of paragraph (5) of this subclause, where an employee has completed at least seven years' service, but less than ten years' service since its commencement and his employment is terminated in any circumstances including death the amount of the leave shall be such proportion of thirteen weeks' leave as the number of completed years of such service bear to ten years.
- (4) In the cases to which paragraphs (2)(c) and (3) of this subclause apply the employee shall be deemed to have been entitled to and to have commenced leave immediately prior to such termination.
- (5) An employee whose service with the Company commenced before the 1st October, 1980, 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 October, 1980, an amount of leave calculated on the basis of thirteen weeks' leave for fifteen years' service; and
- (b) for each completed year of service commencing on or after the 1st October, 1980, an amount of leave calculated on the basis of thirteen weeks leave for ten years' service.

7. - PAYMENT FOR PERIOD OF LEAVE

- (1) An employee 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 Alcoa of Australia (Western Australia) Award 1978 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 Company and the employee the commencement of the leave to which the employee is entitled or any portion thereof is postponed to meet the convenience of the employee, the rate of payment for such leave shall be at the rate of pay applicable to him 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 employees employed on piece or bonus work or any other system of payment by results the rate of pay shall be calculated by averaging the employee's rate of pay for each week over the previous three monthly period.

8. - TAKING LEAVE

- (1) In the case to which placita (a) and (b) of paragraph (2) of subclause (5) apply:
 - (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 Company and the employee 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 Company's establishment and the employees' circumstances.
 - (b) Except where the time for taking leave is agreed to by the Company and the employee or determined by the Special Board of Reference the Company shall give to an employee 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 Company and the employee so agree in not more than three separate periods in respect of a thirteen week entitlement.
 - (d) Any leave shall be inclusive of any public holidays specified in this award occurring during the period when the 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 employee goes on leave;

- (ii) at the same time as his wages would have been paid to him if the employee had remained at work, in which case payment shall, if the employee in writing so requires, be made by cheque posted to an address specified by the employee; or
 - (iii) in any other way agreed between the Company and the employee.
- (f) No employee shall, during any period when he is on leave, engage in any employment for hire or reward in substitution for the employment for which he is on leave, and if an employee 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 Company 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 paragraph (2)(c) or paragraph (3) of subclause (5) applies and in any case in which the employment of the employee who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the Company shall, upon termination of his employment otherwise than by death pay to the employee, and upon termination of employment by death pay to the personal representative of the employee 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 Company in respect of leave hereunder.

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

- (1) The Company may by agreement with an employee allow leave to such an employee before the right thereto has accrued due, but where leave is taken in such case the employee 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 an employee pursuant to the preceding paragraph before the right thereto has accrued due, and the employment subsequently is terminated, the Company may deduct from whatever remuneration is payable upon the termination of the employment such amount as represents payment for any period for which the employee 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 an employee by his Company in respect of any period of service with the Company 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 leave 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 employee hereunder

10. - RECORD TO BE KEPT

- (1) The Company shall, during the employment and for a period of twelve months thereafter, or in the case of termination by death of the employee for a period of three years thereafter, keep a record from which can be readily ascertained by name of each employee 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 the Alcoa of Australia (Western Australia) Award 1978 with respect to the time and wages record.

"Provided that before exercising a power of inspection the representative shall give reasonable notice not less than 24 hours to the employer

11. - SPECIAL BOARD OF REFERENCE

The Special Board of Reference established under the provisions of section 48 of the Industrial Arbitration Act 1979 shall be assigned the function of

- (a) the settlement of disputes of any matters arising hereunder;
- (b) the determination of such matters as are specifically assigned to it hereunder.

12. - STATE LAW

- (1) The provisions of any State Law to the extent to which they have before the coming into operation hereof conferred an accrued right on an employee to be granted a period of long service leave in respect of a completed period of fifteen or more years' service or employment or an accrued right on an employee or his personal representative to payment in respect of long service leave shall not be affected hereby and shall not be deemed to be inconsistent with the provisions hereof.
- (2) The entitlement of any such employee to leave in respect of a period of service with the employer completed after the period in respect of which the long service leave referred to in paragraph (1) of this subclause accrued due shall be in accordance herewith.
- (3) Subject to paragraphs (1) and (2) of this subclause, the entitlement to leave hereunder shall be in substitution for and satisfaction of any long service leave to which the employee may be entitled in respect of employment of the employee by the employer.
- (4) An employer who under any State Law with regard to long service leave is exempted from the provisions of that Law as at the first day of October, 1958, shall in respect of the employees covered by such exemptions be exempt from the provisions hereof.

13. - EXEMPTIONS

The Special Board of Reference may subject to such conditions as it thinks fit exempt the Company from the provisions hereof in respect of its employees where there is an existing or prospective long service scheme which, in its opinion, is, viewed as a whole, more favourable for the whole of the employees of the Company than the provisions hereof.

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 18th day of August, 1980

VARIATION RECORD

ALCOA LONG SERVICE LEAVE CONDITIONS AWARD, 1980 AWARD NO. A 12 OF 1980

Delivered 18/08/80 at 60 WAIG 1342
s.93(6) Consolidated on 11/04/00 at 80 WAIG 2010

CLAUSE NO.	EXTENT OF VARIATION	ORDER NO.	OPERATIVE DATE	GAZETTE REFERENCE
1. Title				
(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.	609/99	06/07/99	79 WAIG 1847
2. Arrangement				
	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	757/98	12/06/98	78 WAIG 2579
	Del. 1A.	609/99	06/07/99	79 WAIG 1847
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Appendix - Resolution of Disputes Requirement

Ins. Appendix	693/96	16/07/96	76 WAIG 2768
(1),(6), Del. (7)	2053/97	22/11/97	77 WAIG 3079

Appendix - S.49B - Inspection of Records Requirements

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