

RAIL CAR DRIVERS — PUBLIC HOLIDAY SCHEDULE

3225. Hon Ken Travers to the minister representing the Minister for Transport
- (1) Can the Minister confirm that the Public Transport Authority (PTA) implemented a public holiday schedule for train services on Friday 24 September 2010?
 - (2) Can the Minister confirm that there were at least twenty drivers who were not allocated to trains due a public holiday schedule and remained in the Public Transport depots during peak time on Friday 24 September 2010?
 - (3) Why were these drivers not allocated to trains during the peak period?
 - (4) Can the Minister advise whether any charges have been laid against drivers under the Public Transport Authority Rail Car Drivers (Transperth Train Operations) Award 2006 since 24 September 2010?
 - (5) If yes to (4) —
 - (a) how many have been charged;
 - (b) what is the nature of those charges;
 - (c) when was it determined that charges would be laid;
 - (d) who determined that charges would be laid; and
 - (e) when were drivers notified of the charges?
 - (6) Were you notified prior to charges being laid?
 - (7) Have all Rail Car Drivers who were absent on 24 September been charged and if no, how was it determined who would be charged?
 - (8) Have any Rail Car Drivers who were originally rostered off for 24 September been charged, and if yes, why?
 - (9) Does the Minister accept this action may inflame tensions at Rail Car Depots and increase stress levels of Rail Car Drivers?
 - (10) Was stress related illness one of the major reasons for Rail Car Drivers taking leave on 24 September 2010?
 - (11) Have any conditions of employment in the Public Transport Authority Rail Car Drivers (Transperth Train Operations) Award 2006 been removed by any process at any time, and if yes, what were the conditions removed or changed?
 - (12) Why were these Conditions removed or changed?
 - (13) How do Western Australian Rail Car Drivers pay and conditions compare to other States in Australia?
 - (14) Did the removal of any terms and conditions reduce the level of remuneration to Perth Urban Rail Car Drivers below that of similar Drivers in other States?
 - (15) Was the removal of Terms and Conditions from the 2006 Award legally enforceable?
 - (16) If no to (15), can the Minister explain why the PTA is laying charges against drivers but itself is not complying with the Award?
 - (17) Did the Commission issue any orders requiring that no parties take any industrial action whilst they are arbitrating on the dispute between the PTA and Perth Urban Rail Car Drivers?
 - (18) If yes to (17), does the Minister consider laying charges could be seen as an industrial action against the drivers?

Hon SIMON O'BRIEN replied:

- (1) The Public Transport Authority (PTA) did not implement a public holiday schedule for train services on Friday 24 September 2010.
- (2) Based on prior unofficial and informal advice that train drivers would be booking off sick in large numbers on Friday 24 September 2010, the PTA decided to design a special service (minimum ½ hourly) based on anticipated attendance of driver numbers for that day. This was to provide a more reliable regular service to passengers that could be advertised before the day and give some surety to passengers, as opposed to providing an unplanned adhoc service similar to that which eventuated on Friday 27 August 2010, due to a large number of driver absences.

By planning for a similar number of 'book offs' as which occurred on the 27 August 2010 the service to the public could be 'planned' and reflect the optimum that could be provided given the available driver numbers. It was also intended to run additional services (in between the minimum half hour service) should there be more drivers available than initially anticipated.

The only time a driver was in a depot and not allocated to a train at any time (whether peak or off peak) on the 24 September 2010 was if that driver's rostered times of duty, at any particular time, did not allow him/her to operate an additional train service. These drivers supplemented the base service provided when it fitted with their rostered hours of duty. This approach provided a level of certainty to the service, to the benefit of passengers, as well as providing an opportunity to enhance the base service.

- (3) Drivers that did attend work for their rostered times of duty were allocated to trains, and where excess drivers were available (that had time within their allocated times of duty) the PTA operated additional services over and above planned and advertised services. The only drivers that were not allocated to trains during the peak period were drivers who did not have enough time within their rostered times of duty to operate any additional trains.
- (4) Yes
- (5) (a) 57
- (b) The nature of charges were as follows:
- Failed to attend to a work rostered shift on 24 September 2010, being a day when the failure by a large number of Transperth Train Operation (TTO) Railcar Drivers to attend their shifts resulted in severe disruption to the Perth Metropolitan Rail Passenger Transport System.
 - Failed to provide proof to the PTA that would satisfy a reasonable person of the entitlement to leave on that day, where the PTA is entitled to require and has required such proof under clause 6.4 of the Award, as varied by clause 2b of the WA Industrial Relations Commission order in matter C33 of 2010 on 23 September 2010.
 - Failing to attend without leave, had failed to work in accordance with contract of employment.
- (c) 22 October 2010.
- (d) The General Manager, TTO.
- (e) Drivers who were charged were informed that charges had been laid against them via email on the 22 October 2010. A detailed letter explaining the rationale for the laying of the charges and providing individuals an opportunity to respond or provide additional information in response to the charges was sent to the drivers on the 28 October 2010.
- (6) I am advised my predecessor was informed that a number of drivers had been reported to the Head of Branch which is the first stage requirement under the disciplinary provisions applicable to railcar drivers. The then Minister was informed of the general progress in relation to the PTA's response to the absences of 24 September 2010 and that a final decision on whether to charge a driver would be made by the General Manager TTO. On 22 October 2010, the Minister's office was notified that the General Manager TTO had laid charges against a number of railcar drivers.
- (7) Not all railcar drivers absent on 24 September were charged. The decision to lay a charge was made based on the particular facts for each individual case and after consideration of whether the individual had produced proof that would satisfy a reasonable person of their entitlement to claim sick leave. The final determination was made by the General Manager TTO after consultation with the Executive Director People and Organisational Development and other relevant PTA and Government agencies.
- (8) No. As the term clearly identifies, drivers on a rostered day off are not required to attend to duty and therefore the issue of proof of absence or claims for sick leave does not arise.
- (9) As Minister I accept the expectation of the Perth community, whose travel, business and other arrangements were severely affected by the coordinated absences of railcar drivers, that appropriate action would be taken in response to any individual who failed to attend work and then sought to use safety net arrangements like sick leave to claim payment on a day of industrial action. Drivers were made aware of the potential implications for their actions including the potential for disciplinary action.

I would like to point out that the PTA would not have had to undertake such steps if the unauthorised action, which a significant number of drivers participated in, had not occurred in the first place.

- (10) No. Amongst the reasons given by drivers who made application for sick leave on the 24 September 2010, only 5 identified their illness as stress or fatigue as follows:

- 1 railcar driver booked off re personal issues (anxiety).
- 1 railcar driver booked off stating stress and fatigue.
- 2 railcar drivers booked off as unfit for duty due to 'tension in the workplace/current work related dispute'
- 1 booked off stating fatigue due to a 'domestic dispute'.

- (11) I am presuming the Hon Member's question is referring to the variation to the Public Transport Authority Rail Car Drivers (Transperth Train Operations) Award 2006 (the 2006 award), in respect of the Suburban Electric Railcar Allowance (SERA) in 2008 as it is this allowance which some drivers continue to be of the view was removed illegally as part of some wider conspiracy.

The 2006 award has been varied since its registration primarily to incorporate the outcomes of State Wage Case increases to the weekly rate of pay for drivers and twice in response to settlement of matters in dispute between the parties to the award being the PTA and the Australian Rail Tram and Bus Union (ARTBIU).

The variation to the award in respect to the SERA was made jointly by the PTA and the ARTBIU to reflect the determination of a private arbitration by Senior Commissioner Smith delivered on 30 May 2008. The private arbitration was agreed by the parties as a means of resolving 4 items in dispute, namely the correct base rate of payment; the SERA; annual leave loading cap; and daily overtime. This determination corrected a mistake in the drafting of the 2006 Award by inserting the missing words "rate per week" in clauses 4.3.1(a) — SERA of the 2006 Award.

- (12) The 2006 Award contained a mistake in that the words "rate per week" was missing from the clause describing an entitlement to the weekly SERA payment. SERA has been paid as a weekly allowance since its introduction in 1991 and was so described in the award applicable to railcar drivers prior to the introduction of the 2006 Award. This mistake led drivers to now believe that the SERA, at the time \$32.55 per week, should be paid per \$32.55 per shift.

- (13) An analysis of group certificate data shows that 238 railcar drivers, driver trainers and Driver Coordinators employed for the whole of 2009-10 earned on average \$72,068, including overtime, with individual earnings ranging from \$58,689 to \$92,117. Their base rate compares favourably with those of other employees in the public transport industry, for example local bus and coach operators.

A comparison with interstate passenger rail operations rates of pay show a decline in WA rates relative to Queensland, Victoria and New South Wales. This erosion is due to these employees having voluntarily foregone the opportunities taken by employees within those other operations to engage in enterprise bargaining. In 2009 WA drivers notably rejected a PTA offer of 15% over three years without any reduction in employment conditions.

The wage increases achieved in the negotiations by train drivers in other States will often have reflected productivity outcomes which benefited those enterprises. WA drivers should not, by opting out of bargaining for a period, expect to automatically adjust their base rate to pick up the wage increases typically achieved in other enterprises. It should also be noted that differences in conditions make direct comparisons with other operations potentially misleading. For example Queensland Rail works 40 hour weeks whereas the PTA works 38 hour weeks. The PTA provides paid meal breaks whereas Victoria does not.

- (14) No. The variation to SERA did not have the effect of reducing a driver's entitlement as the SERA continued to be paid as a weekly rate. The PTA had not been paying SERA on a per shift basis as may have been implied to the member.

- (15) The variation to the 2006 Award was made in accordance with the provisions of the WA Industrial Relations Act 1979.

- (16) Not Applicable

- (17) No. If the Hon Member is seeking to imply that the PTA in laying charges means it has engaged in industrial action contrary to the specific orders of the WA Industrial Relations Commission, then that is

not correct. On 24 September 2010, Commissioner Kenner issued an interim order pending the arbitration by the Commission of an enterprise order. This order provided an interim wage increase of 5 percent to railcar drivers and at item 3 of the order specified:

"That the interim wage increase is payable subject the condition that there be no further industrial action of any kind by the rail car drivers or disruption to the respondent's rail services by rail car drivers and any further such industrial action or disruption will result in the cessation of the interim wage increase and its recovery by the respondent"

(18) Not Applicable