



DECISION

Fair Work Act 2009
s.739—Dispute resolution

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia

v

Triple Zero Victoria (TZV) Formerly Emergency Services Telecommunications Authority (ESTA) (C2025/893)

COMMISSIONER PANOPoulos

MELBOURNE, 22 JANUARY 2026

Alleged dispute about any matters arising under the enterprise agreement and the NES;[s186(6)]

[1] This decision arises from an application by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU) (the Applicant) for the Fair Work Commission (the Commission) to deal with a dispute under s.739 of the Fair Work Act 2009 (the Act). Triple Zero Victoria (TZV) (the Respondent) is the employer.

[2] It concerns the interpretation of the *Triple Zero Victoria Operations Enterprise Agreement 2024* (the Agreement). The dispute arises from the question of whether employees working weekends are required to wear their work uniforms in line with a proposed new protocol.

[3] The matter was allocated to Chambers and after several conferences remained in dispute. Directions for the filing and service of materials were issued and the matter proceeded to arbitration.

[4] At the hearing of the matter on 30 October 2025, Mr Dan Dwyer appeared for the Applicant and Mr Mark Felman appeared for the Respondent. Ms Catherine Hicks and Ms Nicole Ashworth gave evidence for the Respondent as witnesses.

Background and matters not in dispute

[5] The parties provided an agreed statement of the facts, some of which is included below.

[6] The Respondent provides emergency call-taking and dispatching services across Victoria, including for Victoria Police, the Victorian State Emergency Service, Country Fire Authority, Fire Rescue Victoria and Ambulance Victoria (collectively, the Emergency Services Organisations (ESOs)). The Respondent operates and provides the Victorian community with

a 24-hour emergency call-taking and dispatching services for the ESOs through its three State Emergency Communication Centres in Ballarat, Tally Ho and Williams Landing.

[7] The majority of the Respondent's workforce of approximately 1,415 employees are referred to as "operational employees". These employees are currently covered by the Agreement. The Respondent's operational employees currently include Call-takers, Dispatchers, Assistant Team Leaders, Team Leaders and Workplace Trainers. The majority of these employees work on rotating continuous shift rosters which involve a mix of day and night shifts across weekdays, weekends and public holidays.

Predecessor clauses regarding uniform

[8] The industrial instruments that applied to the parties from 1996 to 2009 contained uniform clauses to the effect that employees shall, whilst on duty, dress in uniform and display on their person their photo identification as provided by their employer.

[9] The first reference to the qualification of the obligation to wear a uniform ("other than on approved casual clothes days") in a uniform clause was found in the Emergency Services Telecommunications Authority Operational Employees Enterprise Agreement 2013 (2013 Agreement).

[10] There has not been any material change to the uniform clause between the 2013 Agreement and the Agreement.

Control Room Protocols

[11] There is a longstanding practice under which operational staff at the Respondent and the predecessor entities' communication centres were not required to wear uniforms during 'weekend' shifts (i.e. shifts falling in the period between Friday night and Sunday night).

[12] This practice is reflected in version 11.03 of the Control Room Protocols effective from 30 November 2011 (Current CR Protocols).

Proposed Control Room Protocols

[13] On 31 January 2024, the Respondent provided a draft of a proposed updated Uniform Policy (Draft Uniform Policy) to the Applicant and its delegates for consultation and feedback.

[14] The Applicant provided feedback on the Draft Uniform Policy and the Respondent made further changes. On 15 February 2024, the Respondent provided a summary of the feedback it had received and its responses to the Applicant and its delegates.

[15] On 12 July 2024, The Respondent provided a copy of its proposed new SECC Control Room Protocols (Proposed CR Protocols) to the Applicant and its delegates for consultation and feedback.

[16] The Applicant provided feedback by email dated 14 August 2024, indicating that it disputed the proposed changes including the requirement to wear uniform on weekends. The

Respondent provided a response by email dated 20 August 2024 outlining why it wished to proceed with the proposed changes.

[17] Clause 66.7 of the Agreement provides that work shall continue normally in accordance with the existing work practices before the subject matter of the dispute/grievance arose. At present, the Current CR Protocols continue to apply, and TZV employees are allowed to wear casual clothes on weekends.

The Agreement

[18] Clause 59 of the Agreement provides the following:

59 Uniform

59.1 Employees must, whilst on duty (other than on approved casual clothes days), dress in the TZV uniform and display on their person their photo identification as provided by TZV. The uniform for Full-time Employees (other than managers, Team Leaders, probationary Employees, Part-time Employees, casual Employees and pregnant Employees) will comprise:

- 59.1.1 trouser / skirt / pant / shorts – 3 items;
- 59.1.2 shirt / polo / blouse – 5 items;
- 59.1.3 outerwear / knitwear – 2 items.

59.2 Separate but consistent provisions apply to managers, Team Leaders, probationary Employees, Part-time Employees, casual Employees and pregnant Employees.

59.3 Uniforms will be replaced on a fair wear and tear basis. Generally, this will be after at least 2 years but will not be automatic after 2 years.

[19] Clause 65 of the Agreement provides the following:

65 TZV Policies, Procedures and Protocols

65.1 This Agreement is supported by various TZV policies, procedures, protocols and guidelines which provide further information about Employee obligations and terms and conditions of employment. Employees must familiarise themselves with and comply with these documents.

65.2 Policies, procedures, protocols and guidelines are not ordinarily incorporated into, and do not form part of, this Agreement. Accordingly, they may generally be amended by TZV from time to time, subject to the terms of the Agreement, including clause 32 (Consultation regarding Workplace Reform). This excludes the TZV Scheduling, Deployment and Staffing Levels Policy which may only be amended in accordance with clause 16 (Coverage and Staffing Levels).

65.3 To the extent that there is any inconsistency between policies, procedures, protocols and guidelines and the terms of this Agreement, the terms of this Agreement will prevail.

[20] Clause 66 of the Agreement provides the following:

66 Settlement of Disputes

66.1 Any dispute or grievance:

66.1.1 about matter/s pertaining to the employer/employee relationship; and/or

66.1.2 a matter arising under this Agreement; and/or

66.1.3 about the NES; except termination of employment, shall be dealt with in the following manner:

(a) Step 1: the dispute /grievance will be submitted by the Union and/or Employee(s) to the Employee's manager (e.g. Team Leader or Manager Emergency Communication Services) or other relevant TZV employee as appropriate to the nature of the dispute/grievance;

(b) Step 2: if not resolved after Step 1, it will then be submitted to the appropriate senior TZV employee (generally an Executive Manager Emergency Communication Services) or their delegate;

(c) Step 3: if not resolved after Step 2, it shall be submitted to the Executive Director People, Culture and Performance or their delegate.

66.2 If after following steps in sub-clause 66.1, the dispute remains unresolved, it may be referred to the FWC for conciliation, and where necessary, arbitration to determine the matter. The decision of the FWC must be accepted by the parties subject to any appeal available.

66.3 Any dispute or grievance regarding matters pertaining to the relationship between Unions and TZV shall be submitted to the Head of People, Culture and Performance or delegate. If not resolved after this, it may be referred to the FWC for conciliation and, by agreement from the parties, arbitration.

66.4 Employee(s) shall be entitled to have a representative, who may be a Union representative present at any or all steps in this procedure.

66.5 Steps 1 to 3 in clause 66.1 shall normally take place within a period of fourteen consecutive days and disputes/grievances should be resolved at the local level where possible.

66.6 During this disputes resolution process, both TZV and the aggrieved Employee(s) shall co-operate to ensure that these procedures are carried out expeditiously.

66.7 Until the dispute/grievance is determined, work shall continue normally in accordance with the existing work practices before the subject matter of the dispute/grievance arose.

66.8 No party shall be prejudiced as to the final settlement by the continuance of work in accordance with this procedure.

66.9 Resolution of occupational health and safety issues under this clause are subject to the relevant state occupational health and safety legislation and are not subject to clause 66.7.

Current Control Room Protocols

[21] Clause 4.9.2 of the Current CR Protocols relevantly provide as follows:

4.9.2 Casual Clothes

In special circumstances (as approved on a case by case basis by the Centre Manager) or on designated “casual clothes days”, casual/plain clothes may be worn.

The casual/plain clothes must be of a “neat/casual” standard. Jeans and runners in good condition are appropriate. Any clothing that is dirty, shabby, ripped or frayed is not appropriate.

Track suits, tights, leggings, UGG boots, moccasins or “Croc” style sandals are not appropriate.

Casual clothes days are:

- THO - 1800 Fridays to 0600 Mondays inclusive
- WTC - 1900 Fridays to 0700 Mondays inclusive
- BAL - 1900 Fridays to 0700 Mondays inclusive

Clothing that may cause offence to others (eg:- low necklines, sheer material, etc) is not permitted.

Draft Uniform Policy

[22] Clause 4 of the Draft Uniform Policy relevantly provides the following:

4. Wearing of casual clothes

The wearing of casual clothes is not permitted on the Operations floor unless the EMECS has authorised the wearing of casual clothes for special circumstances.

4.1. Special circumstances (within the SECC)

The EMECS can approve the wearing of casual clothing within the SECC in special circumstances.

This is optional and employees may choose to wear their issued uniform.

- The casual/plain clothes must be of a “neat/casual” standard.
- Jeans and runners in good condition are appropriate.
- Any clothing that is dirty, ripped, frayed, has offensive images or wording printed is not appropriate.
- Footwear principles remain, ‘clean, appropriate and closed shoe’ options. ‘Active’ wear inclusive of track suits, tights, or leggings are not permitted.

Proposed Control Room Protocols

[23] The Proposed CR Protocols relevantly provide as follows:

General appearance/uniforms

If you have been issued a uniform by TZV, it must be worn at all times when on duty in the SECCs, or when representing TZV away from the SECC, in accordance with the Uniform Policy (sharepoint.com). TZV name tags, security passes, and lanyards are to be worn at all times within the SECC environment. Refer to the Uniform Policy for details.

Casual clothes

As approved by the respective EMECS on a case-by-case basis, each SECC may opt to have a casual/plain clothes day for a special event, charitable cause or fundraiser. This is optional and employees may choose to wear their issued uniform.

Question for determination

[24] The parties agreed on the following questions for arbitration:

‘Does the Commission have jurisdiction to hear a dispute about the days on which employees covered by the Triple Zero Victoria Operations Enterprise Agreement 2024 are required to wear uniforms?’

If yes

Can these employees be required to wear the uniform on weekends?’

[25] I have had regard to all of the submissions, some of which are summarised below.

Applicant's submissions

[26] The Applicant submits that as a matter of interpretation, the words “approved casual clothes days” in clause 59.1 of the Agreement mean “(a) THO - 1800 Fridays to 0600 Mondays inclusive (b) WTC - 1900 Fridays to 0700 Mondays inclusive and (c) BAL - 1900 Fridays to 0700 Mondays inclusive”. Further, the definition of casual clothes days in the Current CR Protocols is and always was agreed between the parties.

[27] The Applicant's submissions rely on the well-established principles in *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union' known as the Australian Manufacturing Workers Union (AMWU) v Berri Pty Limited* [2017] FWCFB 3005 (9 June 2017) ('Berri') at [114] and include the following:

- “approved casual clothes days” is clear – employees must wear the uniform except on approved casual clothes days. Every agreement since 1996 required that uniforms must be worn at work. Weekends have been an exception since 1992.¹ Obviously, and objectively, the literal words in the series of agreements were qualified.
- The amendment in the 2013 Agreement was a deliberate variation (and maintained in following agreements) after the parties turned their minds to the topic. The Agreement was now in line, not only with custom and practice, but with the facts known to both parties – that weekends were an exception.
- It is significant that the word “approved” is used. Approved is past tense. It means already approved. The persons intended to be bound by the Agreement would know what days have been approved. They have lived with them every day of their working life with TZV.
- There is no objective evidence to support an interpretation to the effect that approved casual clothes days means that there are suddenly no approved casual clothes days at all, unless some form of approval is given in the future.

Does the Commission have jurisdiction to hear a dispute about the days on which employees covered by the Triple Zero Victoria Operations Enterprise Agreement 2024 are required to wear uniforms?

[28] The Applicant submits that the dispute clearly arises from Clause 59.1 of the Agreement. The key task is interpreting the meaning of “approved casual clothing day”. The literal meaning of the clause is that the employees must wear the uniform at work except on approved casual clothes days.

¹ C2025/893 Digital Hearing Book, pp 165-166 para 5.

Can these employees be required to wear the uniform on weekends?'

[29] The Applicant submits that the Agreement must be interpreted in the context that approved casual clothes days means that weekends are and have always been accepted as approved casual clothes days. Therefore, the Respondent cannot require staff to wear uniforms on weekends.

[30] The Applicant submits that the long-standing practice and expectations of being able to wear casual clothes on weekends would make it unfair, unjust and unreasonable to make a decision to terminate approved casual clothes days.

Respondent submissions

[31] The Respondent does not contest the jurisdiction of the Commission to arbitrate the dispute. However, they argue that the Commission should exercise its discretion to not entertain this dispute by reason that it interferes impermissibly with the Respondent's managerial prerogative.

[32] In summary, the Respondent submits that the Commission should find that "approved casual clothes days" in clause 59 of the Agreement are not defined or limited in the way asserted by the Applicant. The answer to Question 2 should be yes – TZV employees can be required to wear the uniform on weekends because the Agreement is silent on the matter and the Respondent has discretion to determine the uniform arrangements in its workplace.

[33] The Respondent submits that the principles to apply when construing industrial instruments are summarised in *James Cook University v Ridd* (2020) 278 FCR 566 at [65] (Griffiths and SC Derrington JJ).

[34] The Respondent submits that clause 59.1 of the Agreement refers to "approved" casual clothes days and says nothing about what those approved days are nor does it say they are fixed. Contrary to the Applicant's submissions, the word "approved" is not a reference to a fixed moment in time in a past tense. It is a reference to an act of TZV whereby it approves a particular state of affairs being permissible. Had the parties wished to set in concrete that approved casual clothes days were those on the weekend, those words could very easily have been inserted into clause 59. The Respondent further relies on the fact that the word "approve" is used in numerous other clauses in the Agreement (clause 40.6, 41.2, 56.2, 57.1 and 61).

[35] The Respondent submits that the surrounding provisions demonstrate that the parties to the Agreement and its predecessors are not afraid of being specific where this is the intention. Further, clause 65 of the Agreement shows a clear intention that matters which are dealt with in policies, procedures, protocols, and guidelines are not ordinarily intended to be incorporated into, or form part of the Agreement. The fact that the casual clothes arrangements have been set out in the Current CR Protocols is therefore consistent with an intention to retain discretion regarding these arrangements and not fix the arrangement in the agreement.

[36] The Respondent further submits that prior to the 2013 Agreement, the relevant clause simply provided that employees must dress in uniform whilst on duty. When the parties obviously turned their minds to the fact that the clause did not make any allowance for the

practice that had developed regarding allowing casual clothes to be worn, the limited exception of “other than on approved casual clothes days” was inserted. The Respondent submits that the continual retention of the word “approved” from 2013 onwards demonstrates an objective intention for the employer to retain discretion to determine what the casual clothes days are. Further, that the Current CR Protocols are a ‘lining document’ and have been approved in a number of occasions without objection from the Applicant.

Applicant’s reply submissions

[37] In reply to the Respondent’s submissions, the Applicant submits that the term approved ‘casual clothes day’ was defined by the Respondent in the widely available Current CR Protocols. The practice since 1992 has been in line with the Current CR Protocols.

[38] They further submit that there is no room for the Respondent to search for language that offends the ordinary meaning. The words were never intended to restrict casual clothes days to weekends. The staff voting, on several occasions, to accept the Enterprise Agreements were already subject to the protocol. They enjoyed the casual clothes days on weekends. The (protocol) words were unchanged for years. The practice was unchanged for years. The words in the Enterprise Agreement were unchanged for years. The protocols were well known, widely distributed and were enforced by TZV.

Consideration

Question 1: Does the Commission have jurisdiction to hear the dispute?

[39] The dispute settlement clause in the Agreement refers to three categories of matters with which it is concerned. The first category is described in clause 66.1.1 and provides for a dispute relating to ‘*...matter/s pertaining to the employer/employee relationship.*’ The second and third category refer to a matter arising under the Agreement (clause 66.1.2) and the NES (clause 66.1.3) respectively.

[40] In so far as submissions on the question of whether the Commission has jurisdiction to hear the dispute under clause 66.1 were made, submissions on this question were confined to clause 66.1.2, that the dispute relates to ‘*a matter arising under the Agreement.*’

[41] The Respondent does not contest the jurisdiction of the Commission but urges the Commission to exercise its discretion and not entertain the dispute because to do so would interfere with its managerial prerogative. The Applicant submits that the jurisdiction of the Commission is enlivened by clause 66.1.2 that refers to ‘*a matter arising under this Agreement...*’, specifically the dispute about the meaning of the phrase ‘approved casual clothes days’ in clause 59.1.

[42] The Commission does have jurisdiction to hear this dispute as it clearly relates to the meaning of casual clothes days, a term referred to in the Agreement.

Question 2: Can the employees be required to wear the uniform on weekends?

[43] The second question is essentially concerned with the Respondent's proposed changes that would effectively require staff to wear their uniform whilst working on weekend shifts.

[44] The requirement to wear a uniform in clause 59 of the Agreement provides, among other things, that:

“Employees must, whilst on duty (other than on approved casual clothes days), dress in the TZV uniform and display on their person the photo identification as provided by TZV.”

What is the meaning of 'clothes other than on approved annual clothes days'?

[45] This phrase is not defined in the Agreement. The Agreement could have defined the 'casual clothes days' but relevantly does not list or elaborate *which* days are to be casual clothes days other than qualifying they must be 'approved'. Given its ordinary meaning, approved means authorised authoritatively, sanctioned. That is, a proactive step needs to be taken for certain working days to be described/declared as casual clothes days.

[46] The Applicant submits that the historical evidence suggests weekends were the exception and that by applying that exception, there was a common understanding as it was in practice.²

[47] The Respondent submits that there must be clear evidence that the parties have acted upon this common understanding as to the meaning of the relevant provision. Relying on *Shop Distributive and Allied Employees' Association v Woolworths Limited* (2006) 151 FCR 513, they submit there is insufficient evidence to suggest that the parties relied on the meaning of 'casual clothes days' to definitively mean weekends.

[48] The practice in this matter is more akin to "*post agreement conduct which amounts to little more than the absence of a complaint or common inadvertence is insufficient to establish a common understanding.*"³ The bar set out must be clear evidence, which is not apparent to me in this case.

[49] I am not persuaded by the Applicant's submissions that in this context the word 'approved', through common understanding, means weekends.⁴ Nor that the use of the past tense of 'approved' means something that has already happened and is immutable when they state in their submissions that '*The persons intended to be bound by the agreement would know what days have been approved. They have lived with them every day of their working life with TZV.*'⁵ This submission effectively creates a permanent list of days that are casual clothes days. If this were the case, the Agreement would not need to use the word 'approved' but in all

² *Ibid*, p 162 para 31.

³ *Berri*, para [114].

⁴ C2025/893 Digital Hearing Book, p 172 para 32.

⁵ *Ibid*, p 162 para 35.

likelihood simply refer to ‘casual clothes days’ and the Current CR Protocols would not include further elaboration of the understanding of when causal clothes days were to operate.

[50] Further, I am not persuaded by the submission that *‘the definition of casual clothes days in the Protocols is and always was agreed between the parties.’*⁶ The express discretion in clause 65 of the Agreement for the Respondent to amend policies, procedure and protocols (including the Current CR Protocols relating to causal clothes days) clearly allows the Respondent to make changes to such documents.

[51] Clause 65 is titled TZV Policies, Procedures and Protocols.

Clause 65.1 states that ‘the Agreement is supported by various TZV policies, procedures, protocols and guidelines which provide further information about Employee obligations and terms and conditions of employment..’

[52] The words of the clause explain the relationship between the Agreement and other workplace related documents. The purpose of these documents is self-evident as sources of additional information that further explain to employees their work obligations and terms and conditions of employment.

[53] As per clause 65.1, the ‘further information’ about the approval of casual clothes days is contained in TZV’s Current CR Protocols, which at clause 4.9.2 begins with the sentence:

In special circumstances (as approved on a case by case basis by the Centre Manager) or on designated “casual clothes days”, casual/plain clothes may be worn.

[54] The opening sentence provides for two distinct situations in which casual clothes can be worn. The first category is one in which ‘*special circumstances*’ exist, that being a situation which can be distinguished from the ordinary or common run of situations and approval indicating a discretionary power to allow the wearing of casual clothes.

[55] In contrast, the second situation refers to the ordinary everyday situation of casual clothes days, and these are the days that are ‘designated’. Clause 4.9.2 of the Current CR Protocols goes on to list the days and times that are designated casual clothes days, summarised in the submissions and this decision as ‘the weekend’. The Collins dictionary states that *‘If something is designated for a particular purpose, it is set aside for that purpose.’* In this matter, the weekend has been designated as a period during which casual clothes can be worn. This designation does not support the Applicant’s interpretation that the first limb means the weekend.

[56] Clause 65.2 of the Agreement explains that the ‘Policies, procedures, protocols and guidelines are not ordinarily incorporated into, and do not form part of this Agreement. Accordingly, they be amended from time to time, subject to the terms of the Agreement, including clause 32 (Consultation regarding Workplace Reform)...’

⁶ Ibid, p 160 para 25.

[57] Clause 65.2 provides in explicit terms, that such documents can be generally amended by the Respondent from time to time as allowed by the Agreement including as per clause 32 (Consultation regarding Workplace Reform), indicating that the Respondent retain decision making regarding matters covered therein.

[58] There is no dispute between the parties regarding the adequacy of consultation in relation to the Respondent's proposal to change the Current CR Protocols. Having complied with the consultancy provisions in relation to these changes, a plain reading of the Agreement's words that documents like the Current CR Protocols '*may generally be amended*' clearly permit the Respondent to amend the Current CR Protocols such as to require the employees to wear their uniform on weekends.

[59] The Respondent completed the consultation process,⁷ thus complying with the requirement in the Agreement to consult. There is nothing in the Agreement that removes their discretion to change the days and circumstances on which casual clothes may be worn. It is what the Agreement has facilitated in clause 65.2. The purpose of the changes the Respondent wants to make to the Proposed CR Protocols, is to remove the designated days for the wearing of casual clothes – such as currently exists in the Current CR Protocols. The discretion to permit the wearing of casual clothes remains, albeit on an ad hoc basis for 'special occasions'.

[60] For the reasons above, the answer to Question 2 is yes.



COMMISSIONER

Appearances:

Mr D. Dwyer, Applicant

Mr M. Felman, Respondent

Hearing details:

In person

10.00am

Thursday 30 October 2025

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⁷ See [13] – [15].