



FAIR WORK  
AUSTRALIA

## DECISION

*Fair Work Act 2009*  
s.185—Enterprise agreement

**El Zorro Transport Pty Ltd**  
(AG2011/5680)

### EL ZORRO ENTERPRISE AGREEMENT 2009

Rail industry

DEPUTY PRESIDENT IVES

MELBOURNE, 7 MARCH 2011

*Application for approval of the El Zorro Enterprise Agreement 2009.*

[1] An application has been made for approval of an enterprise agreement known as the *El Zorro Enterprise Agreement 2009* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). It has been made by El Zorro Transport Pty Ltd. The agreement is a single enterprise agreement.

[2] I am satisfied that each of the requirements of ss.186, 187 and 188 as are relevant to this application for approval have been met.

[3] The Australian Rail, Tram and Bus Industry Union (RTBU) being a bargaining representative for the Agreement, has given notice under s.183 of the Act that they want the Agreement to cover them. In accordance with s.201(2) of the Act I note that the Agreement covers the organisation.

[4] The Agreement is approved and, in accordance with s.54, will operate from 14 March 2011. The original expiry date of the Agreement is 1 December 2013.

The seal of Fair Work Australia, featuring the coat of arms of Australia and the text 'THE SEAL OF FAIR WORK AUSTRALIA' around the perimeter.

DEPUTY PRESIDENT

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# EL ZORRO TRANSPORT PTY LTD.

(ABN 54 087 200 995)



# ENTERPRISE AGREEMENT 2009-2013

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## **PART A – COMMON CLAUSES**

### **1. Title**

The title of this agreement is referred to as the El Zorro Enterprise Agreement 2009.

### **2. Parties**

The parties to this Agreement are:

- El Zorro Transport Pty Ltd ;( ABN 54 087 200 995)
- Australian Rail Tram and Bus Industry Union (ARTBIU); and
- Employees employed by El Zorro to perform work within the classifications contained within this Agreement.

### **3. Scope**

**This Agreement shall apply to:**

Each of the parties; and

- Employees employed to perform work in positions within El Zorro that fall within the classification structure/s as set out in this Agreement.
- This Agreement shall comprise both Part A & Part B which shall be read in conjunction with each other along with any attachments.
- No person engaged by El Zorro under an Appointment Agreement, to perform work equivalent to the classifications contained within this agreement are to receive less than the applicable terms and conditions which apply to that classification, position or role.

### **4. Incident of Agreement**

The terms of this Agreement will apply specifically to Train Crew Employees employed by EL ZORRO.

The provisions of the EL ZORRO Enterprise Agreement 2009 - 2013 shall be deemed to regulate the conditions of employment for Employees covered by this Agreement. In so far as the EL ZORRO Transport Pty Ltd Union Collective Agreement 2007 (including attachments) is inconsistent with this Agreement, then this Agreement (including attachments), shall prevail to the extent of the inconsistency.

### **5. Term**

This Agreement shall operate from the date of lodgement and shall have a nominal expiry date of 1<sup>st</sup> December 2013 .In the absence of re-negotiation, the last increase of pay detailed in Part A Clause 37 will be the agreed increase of pay for each anniversary such date thereafter.

### **6. Aim of the Agreement**

The aim of this Agreement is to provide a simple effective instrument that can be relied on to give fair and reliable outcomes to all parties. The parties agree to move forward in 'good faith' and will adopt a common sense attitude in resolving differences.

The parties recognise that Customer and Employee satisfaction is necessary to make the Company profitable and therefore provide for the long-term security of its workforce.

The parties also recognise the necessity of adopting a consultative and participative approach to the workplace to achieve efficiency at all levels within the Company.

The parties' objective is to achieve and maintain the following:

- a. A focus on Customer satisfaction by working with Customers to identify their needs and to develop plans to meet those needs,
- b. A commercial perspective,
- c. An environment and the means to ensure continuous improvement in all areas of the business,
- d. Safe and efficient operations,
- e. Open communication with Employees and a co-operative management style encouraging teamwork,
- f. A focus on Employee satisfaction.

## 7. Definitions

**ADO** – Accrued Day Off – is for non-train crew working a 19 day month

**Allowances** – Refers to any Allowances as set out in Part A Clause 41

**Barracks Detention** – This is calculated from the sign off time on first leg of a Rest Job and the sign on for the return journey. Barracks Detention is paid on all time in excess of 12 hours and is recorded separately and paid in the fortnight that it occurred.

**Blank Line Rostering** - A roster or a line or lines in a roster where no known work is indicated (i.e. not Forecast Work rostering).

**Company** – Refers to any Company with whom EL ZORRO has entered into an agreement to carry out defined tasks or services in exchange for consideration.

**Customer** – Refers to any Company with whom EL ZORRO has entered into an agreement to carry out defined tasks or services in exchange for consideration.

**Daily Roster** – The published document issued every day by 1400 hrs setting out the scheduled work for train crews to be undertaken on the next day.

**Duty Cycle** - For Train Crew Employees only, it shall mean a standalone period of 4 weeks, where ordinary hours are averaged. The Duty Cycle consists of 160 ordinary hours and broken down into 2 fortnights that average 80 hours per fortnight.

**Emergency**- Means an actual or imminent occurrence (such as fire, flood, storm, earthquake, explosion, accident, epidemic or warlike action) which endangers, destroys or damages (or threatens to endanger, destroy or damage) the safety of persons or property.

**Employee** – Any person employed by EL ZORRO Transport Pty Ltd.

**Employee Representative** - Refers to any person/s elected/nominated by the Employees to represent their best interests.

**Employer** – EL ZORRO Transport Pty Ltd.

**EL ZORRO Grain Train** - A grain train where EL ZORRO is the head transport contractor.

**Guarantee** – Refers to the minimum paid hours per Pay Cycle.

**Lay Back** – Lay Back is the process of having Employees start their shift later than originally posted on the Daily Roster. The Company may lay back Train Crew to a maximum of four (4) hours.

**Lift Up** – Lift Up is the process of having Employees starts their shift earlier than originally posted on the Daily Roster. The Company may lift up Train Crew to a maximum of four (4) hours.

**Leave Applications** – This is the form that is required to be completed for all type of leave so that payment can be authorised.

**Master Roster** – The high level roster maintained, that identifies all permanent work and off roster days of the Company that will be rotated equitably amongst train crew according to the Rostering Code.

**Meal Break** – This is a break given to train crews and is to be taken between the 3rd and 5th hour of the shift unless otherwise agreed between both Train Control and Train Crew.

**Method of Payment** – EL ZORRO pays all Employees via EFT into their nominated bank account at the end of each fortnightly cycle.

**Performance Standard** – The Performance Standard expected from an Employee is that the Employee will display a level of operational competence and safe working, commensurate with the level of training given to the Employee; compliance with the rail industry rules and regulations; compliance with Company policy; satisfactory record of attendance and punctuality.

**Posted Shift** – Refers to the sign on/sign off dates and times displayed at the depot.

**Public Holiday** - This is a day designated by the government set aside to celebrate various occasions.

**Ordinary Hours** – 38 hours ordinary time, plus 2 hours per week

**Redeployment** – This is when the position an Employee currently holds no longer exists and the Company then offers another role within the Company.

**Redundancy** – This is when the position an Employee currently holds no longer exists and there is no other position available within the Company. Further details are spelt out in Part A Clause 17

**Rest** – This is the time allocated to train crew when they Rest (min 8 hours) between both legs of a Rest Job.

**Rest Job** – This is a job which requires the train crew to run a train to another location, Rest then return a train back to their home depot.

**Revised Shift** – Change of Posted Shift sign on/sign off dates and times.

**Rostered Day Off (RDO)** - Is a day designated on the Master Roster where employees are not required for duty. Further details are spelt out in Part B Clause 8

**Rostered Shift** – The Posted Shift or the Revised Shift, whichever is the most recent.

**Rostering Code** – Provides instruction for the Employer and Employees in the development of fair and equitable rosters as laid out in Part B - Roster Code

**Secondment** – This is when an Employee agrees to transfer temporarily to a special job at EL ZORRO or with one of its Customers for a defined period of time.

**Start Date** – This is the date that an Employee begins paid employment with the Company and is not changed if an Employee takes up another position within the Company.

**Stand Alone** - Means the hours paid that are not included in the accumulation of the duty cycle hours. Payments of hours that stand Alone are additional to the duty cycle and are paid in the rostered fortnight within which they are incurred.

**Summary Dismissal** – An Employee may be summarily dismissed from employment with the Company for any breach of the Company Drug and Alcohol Policy; wilful destruction of property; significant breaches of rail safe working practices; excessive absenteeism without good reason; serious criminal offences attracting incarceration

**Temporary Transfer** – This is when an Employee is required to move his home depot to another home depot (outside suburban area) and work from that location for a designated period. During the time away the Employee will be entitled to relieving expenses in accordance with Part A Clause 31.

**Timesheet** – Document completed by the employee to claim payment and will identify Sign on/Sign off times and dates actually worked.

**The Act** – The Fair Work Act 2009 (Cth) as amended from time to time.

**The Standard** – refers to The National Employment Standards

**Wasted Meal** – This is when an Employee is unable to have their Needs Break and will be paid in accordance Part A Clause 41.

## 8. Contract of Employment

### General Principles and Undertakings

El Zorro shall use its best endeavour to ensure that full time employment is the principal form of employment. Further, subject to the provisions contained in this Agreement, no Employee shall have their form of employment altered without agreement of the affected Employee(s).

Notwithstanding the above, El Zorro may offer employment on one or more of the types of employment described below.

**Full-time Employees** are those who are engaged to work ordinary hours of two thousand and eighty hours (2080) per annum, inclusive of public holidays and annual leave hours. This is the equivalent of fifty-two weeks at 38 + 2 hours per week.

**Permanent Part-time Employees** are those (other than casual Employees) employed to work less than the ordinary hours of work for an equivalent full-time Employee. Further, a Permanent Part Time Employee shall:

Be engaged for no fewer than four (4) hours per engagement;

Be entitled to pro rata accruals with respect to annual and long service leave;

Have the minimum number of hours agreed to in writing and may be required to work additional hours at ordinary rates up to a maximum of forty (40) hours per week;

Have any additional hours beyond 40 per week paid at the overtime penalty rates of 1.2 multiplied their normal rate.

**Casual Employees** are Employees paid on an ad hoc basis by the hour. The minimum engagement on each instance shall be four (4) hours. Casual Employees shall be entitled to the normal Rate of pay applicable to the equivalent full time classification plus an additional loading of 25%.

Casual Employees shall not be entitled to:

Annual leave, personal/carer's leave or compassionate leave; or

Parental leave (unless the casual Employees are entitled to parental leave in accordance with the Act); or

Public holidays (unless work is performed on a public holiday by the Casual Employee, in which case he/she will be entitled to the payment specified in Part A Clause 19 or

Redundancy payments.

El Zorro may, at any time, offer a casual Employee the opportunity to be appointed as a permanent full time or a part-time Employee, under terms provided for in this Agreement.

Where a casual Employee has worked the equivalent ordinary hours of a full time Employee for a continuous period of six (6) months he/she may seek to be appointed as a permanent or as a part-time Employee. Where a casual Employee seeks appointment under this sub-clause, El Zorro will comply with such a request and make the appointment.

Any offer to convert the employment status of a Casual Employee must be in writing. The Casual Employee may elect to accept or to reject any offer made.

Where an offer is made and rejected, El Zorro may seek to fill the position by other means and this action may result in the casual Employee's employment being terminated.

**Fixed Term Employees** are engaged for a specific task or project (which may include the replacement of an Employee who is on leave) for a specified, fixed period of time and shall generally not be engaged for a period greater than twelve (12) months.

## 9. Probationary Employment

A probationary period of up to three months (3) months from the date of commencement will be applied to all new Employees, other than Casual Employees and Fixed Term Employees engaged for less than a period of six (6) months and will be outlined in their letter of engagement.

During the probationary period, the Employee's employment may be terminated by either the Employee or El Zorro by providing one week's written notice.

On commencing employment, probationary Employees will be advised as to the performance standards required, including the provision of regular performance reviews during the period of probationary employment

## 10. Recruitment, Selection and Induction

The selection process for filling position vacancies will be based on the merit principle. The merit of applicants will be determined by considering the abilities, competence, qualifications, experience, and standard of work performance and work history of candidates, relative to the position.

El Zorro will advertise all vacancies for positions covered by this Agreement, unless those vacancies are filled in accordance with prevailing policy related to redeployment or transfer of Employees.

All vacancies will be advertised internally throughout El Zorro's depots and offices. At times, El Zorro may elect to advertise a vacancy externally through media advertisements, recruitment agencies and other sources.

Where an offer is made to appoint Employees under the terms of this Agreement, following advertising, the offer will be in writing in the form of a letter of engagement which shall contain the following:

Position, level and title contained in this Agreement;

Appointment date;

Salary level; and

That in addition to the terms of the letter of engagement, this Agreement applies to the Employee's employment.

El Zorro will ensure that all Employees are appropriately inducted into their workplace following appointment.

All selections will reflect El Zorro's commitment to equal employment opportunity and the elimination of unlawful discrimination.

El Zorro will provide training relevant to job/position requirements and Employee needs that is aligned to the Transport and Logistics Industry Training Package. Certificates and statements of attainment will be issued to Employees upon satisfying the requirements of the specific training.

## 11. Salary Sacrifice and Superannuation

EL ZORRO will provide the facility of salary sacrificing for all the locomotive grades to nominate a fixed amount from the pre-taxed fortnightly wages to be paid into their agreed superannuation fund. Any changes made to the agreed contribution periods will attract an administration fee. The fixed amount may be varied twice in a 12 month period and will be deposited into the nominated fund no later than 24 hours after pay day.

### **Superannuation:**

EL ZORRO Transport Pty Ltd will deposit the superannuation guarantee funds into the complying fund of choice of the Employee. This contribution at a minimum will be quarterly and in line with the Employer Superannuation Guarantee Contribution Payment.

## 12. Service Agreement:

EL ZORRO may negotiate work for other companies using EL ZORRO Employees to carry out the train operations. EL ZORRO will meet the following criteria of a service agreement:

- The parties agree that EL ZORRO Transport Pty Ltd crews can be seconded to other rail companies for a defined period as agreed between the parties.
- That all relevant documentation pertaining to accreditation and qualifications of the staff will be provided on request of the signatories of this agreement.
- EL ZORRO will take responsibility that all Employees will have all appropriate equipment and work instructions provided.
- All Employees will be properly accredited for the work they are employed to do.
- Seconded El Zorro crews will work to the conditions of this agreement and at a minimum will receive their pay rates within this agreement. If the seconded rate is higher than this agreement, then they will receive the higher rate whichever is the greater.
- Work Cover liability will be the responsibility of EL ZORRO Transport Pty Ltd.
- Employees will be paid all relevant Allowances and expenses pertaining to the work, as defined in this Agreement.
- All the parties must consult and agree for the renewal of any Secondment period.

El Zorro may employ train crew from a labour hire company. In these circumstances these employees will operate to the conditions as set above.

## 13. Confidentiality

All Employees are required to keep information about the business of the Employer confidential. Disclosure may only be made with the express consent of EL ZORRO Transport Pty Ltd management.

## 14. Disciplinary Procedures

### Disciplinary Measures:

Subject to the following provisions of this clause, the disciplinary measures that EL ZORRO may take against an Employee include:

- a) Caution or Reprimand - A caution or reprimand;
- b) Temporary Reduction - Subject to availability of suitable positions, a temporary reduction in position, classification and pay for a period of up to six months;
- c) Suspension With Pay - Suspension from duty with pay whilst the investigation takes place; and
- d) Suspension Without Pay - Suspension from duty without pay (subsequent to the results of an appropriate investigation) for a period of up to two weeks; and
- e) Dismissal - Dismissal, with or without notice as applicable.
- f) Disciplinary Measure discounted - Where the Employee is found to have committed an offence that results in a disciplinary measure being applied as outlined in sub clauses a) and b) and, EL ZORRO in applying the appropriate disciplinary measure will, for those sub clauses only take into account any rostered hours the Employee has lost when withdrawn from the operating roster for that cycle and lessen the disciplinary measure applied by the rostered hours lost for that cycle.

**Actions Pending Disciplinary Outcomes:**

Pending the outcome of the disciplinary process Employees may be:

- Withdrawn from the operating roster on guaranteed hours. Where the Employee is subsequently exonerated, the Employee will be paid for the rostered hours for that cycle if not worked; or
- Placed on alternative duties; or
- Re-assessed and returned to normal duties as suitable.

**Discipline Processes:**

Any internal investigation of a matter or incident by EL ZORRO that may lead to disciplinary action being taken by EL ZORRO must apply the principles of natural justice.

These principles include:

- The Employee being made fully aware of the reasons and the matters that are the subject of an investigation;
- The Employee being provided with relevant information to enable the provision of an informed response;
- The Employee being entitled to have a representative of their choice present as a witness, and to provide support and guidance where necessary at any meetings/ interviews, if so requested;
- The Employee being given adequate time to prepare a response to any allegations or matters which are the subject of the investigation;
- The Employee being given a reasonable opportunity to put their case to those in charge of the investigation and those who will make any findings and / or determine the disciplinary measures (if any) to be taken;
- Disciplinary inquiries and investigations shall be confidential.

**15. Termination of Employment**

- a) An Employee's employment (other than a casual) will be terminated with the following period of notice:

Period of service	Notice period required
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

- b) For Employees over 45, the notice period specified in clause a) above will be increased by 1 week.
- c) In circumstances where the Employee terminates their employment, the Employee's obligations with respect to notice shall be 2 week's notice in writing or by mutual agreement.
- d) If El Zorro so chooses, the Employee shall receive a payment in lieu of working the notice period.
- e) Notwithstanding clauses a) and b) above, El Zorro has the right to terminate an Employee's employment without notice if the Employee is guilty of serious misconduct.
- f) A casual Employee may be terminated with the provision of one (1) day's notice or by mutual agreement.
- g) Where the Employer has given notice to an Employee, the Employee shall be allowed up to one (1) day per week, time off without loss of pay for the purpose of seeking other employment. The time off shall be taken at a time convenient to both parties

## 16. Abandonment of Employment

Where an Employee is absent from duty for more than 5 days this shall be considered prima facie an abandonment of employment.

However prior to El Zorro confirming the termination, El Zorro must write to the Employee, at the last known address, advising the Employee that their employment will be terminated should the Employee fail to contact their supervisor within a further 5 days of the date of the letter.

If no response is received, El Zorro shall confirm the termination.

## 17. Redundancy Pay

Where an Employee is made redundant by EL ZORRO Transport Pty Ltd the Employee shall be entitled to the following payment:

- Four weeks' notice or payment in lieu thereof.
- 4 weeks pay per year of service to a maximum of 28 weeks.
- Long service Leave will be paid on a pro-rata basis after five years of continuous service.

Notice of Termination by reason of Redundancy:

An Employee who:

- is over 45 years of age at the time of the giving of the notice;
- with over 2 years of completed service; and
- whose employment is terminated by reason of Redundancy;

Must be given 5 weeks' notice of the termination of their employment, or payment in lieu.

Definitions:

For the purposes of this clause, the following definitions apply:

- Redundancy occurs when EL ZORRO decides that it no longer wishes the job the Employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour.
- Weeks' pay means the normal rate of pay for the Employees concerned

In addition to the period of notice (or payment in lieu) an Employee who:

- has more than 4 years' continuous service with EL ZORRO and its predecessors;

- whose employment is terminated by reason of Redundancy; and
- who would, apart from the operation of this clause would not have sufficient length of service to have an entitlement to long service leave or payment in lieu:
- Must be paid an amount in lieu of long-service leave on a pro-rata basis.

## 18. Annual Leave

- a) Employees are entitled to Annual Leave in accordance with the Act and as set out below.
  - i. Train Crews shall receive 5 weeks annual.
- b) An Employee's entitlement to annual leave accrues progressively during a year of service according to an Employee's ordinary hours of work, and accumulates year to year.
- c) Leave should be taken in the year following its accrual. For this to happen an Annual Leave Roster will be developed in consultation for each depot and will run from July to June of each year. This will allow for all employees to experience leave at various times of the year. Each employee will have the ability to swap between employees subject to the approval of the Operations Manager.
- d) Annual leave loading is included in the Wage Rates.
- e) Annual leave is normally rostered and taken in blocks of one or more calendar weeks. Employees may request to take leave in less than one week blocks. Any such request is subject to approval by El Zorro
- f) For all Employees, when annual leave is taken in less than a 1 week block, it will be deducted from the Employee's accrual at rate of 8 hours for each day of leave taken. Otherwise all annual leave will be deducted, from the Employees accrual of annual leave, at their normal ordinary hours per week.
- g) Where a public holiday falls during a period of annual leave, El Zorro will credit the Employee with an additional day of annual leave.
- h) Employees may, subject to approval by El Zorro, exchange rostered blocks of annual leave with other Employees in the same position. Exchanges must not create operational constraints and must be cost neutral to El Zorro. Subject to these conditions, El Zorro will not unreasonably withhold approval.
- i) Where an Employee believes that special circumstances exist, they may apply to their manager to defer the taking of their annual leave for up to twelve months. Applications to defer annual leave should be made prior to the posting of the annual leave roster and approval by El Zorro is subject to the operational needs of the business.
- j) Payment of accrued leave, including upon termination, will be made at the ordinary rate of pay.
- k) The parties acknowledge that if, in a particular respect, the Act provides a more favourable outcome for Employees than the entitlements in this clause, and then The Act prevails.
- l) Any Employee who becomes ill while on annual leave may have the annual leave re-credited and applied as personal / carers leave provided they can produce a medical certificate and that the period is for a minimum of 5 consecutive days. Notification of the illness is to be given to the Operations Manager as soon as possible for the credits to be sustained.

### Cashing Out of Annual Leave

Employees may, with the agreement of El Zorro, cash out accrued annual leave as follows:

- a) Each request made by an Employee must be in writing to El Zorro and,
- b) An Employee may only cash out accrued annual leave in excess of the equivalent of one (1) years entitlement. That is, after cashing out, an Employee must have no fewer than the equivalent of one (1) years entitlement of accrued annual leave.

## 19. Public Holidays

### Prescribed Public Holidays

An employee shall be entitled to holidays without loss of pay on the following days:

- (a) New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day, Boxing Day, Australia Day, Anzac Day, Queen's Birthday, Labour Day (to their state prescribed day) and Melbourne Cup Day in Victoria, Adelaide Cup Day in South Australia; and a day in lieu of the Bank Holiday in NSW.  
Any further public holidays gazetted by either State or Federal Government shall be considered as part of this Clause
- (b) There is no substitution of Public Holidays for drivers. The Public Holiday will be the actual day on which it falls. For example if Christmas Day falls on a Sunday, then Sunday will be the Public Holiday. This is irrespective of any substitution made as a consequence of Government gazettal notices.

### Working on a Public Holiday:

Where an employee is required to work on a Public Holiday that employee shall be entitled to the following:

- Roster cycle payment for all hours worked on the shift, plus
- Stand Alone payment of all hours worked at 150% (1.5) to be paid in the pay cycle that it was worked.

### Public Holiday falling on Rostered Day Off:

Where an employee is not required to work on a Public Holiday that employee shall be entitled to the following:

- **Substituted Day:** the employee and the company may agree to substitute another day in lieu. In this instance, the employee will be paid eight hours (8hrs) at the ordinary rate of pay. These hours are not included as ordinary working time for the Roster Cycle; or
- **Payment in lieu:** the employee and the company may agree for the employee to receive payment of eight hours (8hrs) at the ordinary rate where such hours are Stand Alone.

### Available Day falling on a Public Holiday:

Where an employee is not to work when a Public Holiday falls on an Available Day they will be credited with the rostered shift towards their roster cycle.

**Part-time employees:** Part time employees shall be entitled to Public Holidays provided the holidays occur on a day which the employee normally works.

**Casual employees:** A casual employee required to work on a Public Holiday will be paid at the employee's casual rate of pay for the hours worked on the day.

**Public Holidays during annual leave:** where a Public Holiday falls within a period of an employee's annual leave, the employee shall be re-credited the annual leave day or have an additional day of leave added to that period annual leave.

## 20. Long Service Leave

An Employee is entitled to 13 weeks Long Service Leave with pay after the completion of 10 years continuous service. After 10 years of continuous service Long service leave will accrue to the Employee at 1.3 weeks per annum.

In calculating the period of service for Long Service Leave purposes any continuous period of leave of absence without pay for two (2) weeks or more is to be excluded.

An Employee wishing to take Long Service Leave must give four (4) weeks' notice to the Operations Manager to allow operational coverage.

Employees who have completed 5 years continuous service will be entitled to a pro-rata payment of accrued Long Service Leave upon termination of employment.

## 21. Personal / Carers Leave

- a) The paid Personal / Carer's leave entitlement for a permanent full-time Employee is one hundred and twenty (120) hours per annum, which is equivalent to fifteen (15) days at 8 hours per day and shall accrue at the rate of 10 hours per month. Any untaken leave will accumulate from year to year, without limit.
- b) Part-time Employees will receive a pro-rata allocation of Personal / Carer's leave.
- c) Employees are required to provide a medical certificate or statutory declaration in circumstance where it is not practicable to obtain a medical certificate when Personal/Carer's leave:
  - I. Exceeds three (3) working days for all Employees
  - II. If a El Zorro Manager doubts whether an Employee's previous absences from work are due to genuine illness or injury, the Employee may be required to provide medical certificates for every personal/carer's leave absence within a defined period of up to twelve (12) months.
- d) Unless provided for in this clause, the operation of personal/carer's leave will be in accordance with the provisions of The Act. This includes, but is not limited to, provisions of The Act regarding:
  - I. The method or manner required for taking personal/carer's leave; and
  - II. The provision of documentary evidence regarding personal/carer's leave.
- e) Each shift in respect of which Personal / Carer's leave has been approved will be deducted on the following basis:
  - I. For Train Crew, each shift in respect of which Personal / Carer's leave has been approved will be deducted from the hours of work cycle at the rate of 8 hours per shift or rostered hours, in which case the rostered hours will be deducted from the Employee's personal carer's leave accrual. The Employee concerned will advise his/her supervisor at the time of taking the leave as to which option shall be applied.
  - II. For all other Employees, Personal / Carer's leave deductions will be made in accordance with the rostered hours.
- f) **Medical Examination**

If:

  - I. An Employee has taken personal leave on the basis of an illness or injury; and
  - II. It is considered necessary by El Zorro that the Employee attend a medical examination in respect of the illness or injury prior to returning to work,

The Employee may be required to attend a medical examination in respect of the illness or injury, conducted by a medical practitioner nominated by El Zorro. El Zorro will meet the cost of examination and any travelling costs.

- g) If an Employee becomes ill or injured whilst on annual leave, Personal / Carer's Leave shall be approved and the Employee's leave shall be re-credited.
- h) If an Employee becomes ill while on long service leave, Personal / Carer's leave may be approved and long service leave re-credited in the following circumstances:
  - I. Where the illness extends more than five calendar days; and
  - II. The Employee has contacted their manager / supervisor within three (3) days of becoming sick; and
  - III. The illness is supported by a medical certificate.

This provision only applies for illness. It does not apply to injuries sustained on long service leave.

**i) Medical retirement**

- I. Where an Employee has no reasonable prospect of returning to perform the position they are appointed to, owing to the nature of their illness or injury, El Zorro will examine opportunities for reclassification to an alternate position or may initiate action to terminate the Employee's employment contract. The Employee shall submit a claim for disability retirement to the relevant superannuation fund immediately upon becoming eligible to submit such a claim.
- II. Where medical retirement is progressed, the Employee is to utilise the entire Employee's accumulated Personal/Carer's sick leave prior to a medical retirement taking effect. Personal / Carer's leave does not accrue from the date the medical retirement is approved. This provision does not apply to an Employee on worker's compensation as they are not entitled to take accumulated personal / carer's leave before medical retirement.

**j) Sick Leave pending Worker's Compensation**

Employees may access accumulated personal leave whilst a claim for Worker's Compensation is being considered. Where the claim is accepted, any personal leave shall be re-credited.

**k) Cashing Out of Personal / Carers Leave**

Employees may, cash out accrued personal / carers leave as follows:

- I. Each request made by an Employee must be in writing to El Zorro and,
- II. An Employee may only cash out accrued personal / carers leave in excess of the equivalent of one (1) years entitlement. That is, after cashing out, an Employee must have no fewer than the equivalent of one (1) years entitlement of accrued personal / carers leave.

## **22. Unpaid Carer's Leave**

The entitlement to unpaid carer's leave will be in accordance with The Standard.

An Employee (including a casual Employee) is entitled to a period of up to two (2) days unpaid carer's leave for each occasion when a member of the Employee's immediate family, or a member of the Employee's household, requires care or support during such a period because of:

**A personal illness, or injury, of the member; or**

**An unexpected emergency affecting the member.**

Unpaid carer's leave may be taken in a single unbroken period of up to two (2) days or in any separate periods as agreed between the Employee and El Zorro.

An Employee is only entitled to unpaid carer's leave if the appropriate documentation and notice is provided as outlined in The Standard.

Unpaid carer's leave is only available where an Employee has exhausted their entitlement to paid carer's leave or, as with a casual Employee, has no entitlement to paid carer's leave.

Notice of the taking of unpaid carer's leave is expected to be given to El Zorro prior to the commencement of the Employee's shift, but where this is not possible, as early as is reasonably practicable to do so.

If the care or support required is because of a personal illness, or injury, a medical certificate from a registered health practitioner will be provided by the Employee where it is reasonably practicable to do so. If it is not reasonably practicable for the Employee to provide a medical certificate, a statutory declaration made by the Employee will be provided which includes a statement to the effect that the Employee requires (or required) leave during the period to provide care or support to the member of their household because the member requires (or required) care or support during the period because of

- A personal illness, or injury, of the member; or
- An unexpected emergency affecting the member.

The parties acknowledge that if in a particular respect The Standard provides a more favourable outcome for Employees than the entitlements in this clause, The Standard prevails.

### **23. Compassionate Leave**

The provisions of this clause apply to Full-Time and Permanent Part-Time Employees (on a pro rata basis) but do not apply to casual Employees.

Paid leave entitlement:

- a) Employees are entitled to 2 days Compassionate Leave per occasion. The rules for the taking of Compassionate Leave are set out in the Act and are incorporated into this Agreement.
- b) Notwithstanding the provisions of clause a) above, paid leave of up to 5 days will be available where a death involves the Employee's spouse or partner or former spouse or child (which child will include a step, foster or adopted child) or Parent, grandparent or grandchild of either the Employee or their spouse and brothers and sister of either the Employee or their spouse.
- c) Each period of compassionate leave stands alone and is not debited against any other type of leave.
- d) Employees may be required to produce satisfactory evidence to support applications for leave under this clause.

Unpaid Compassionate Leave:

An Employee may take unpaid compassionate leave by agreement with the Employer.

### **24. Trauma Leave**

When Employee/s is involved with a serious collision/accident/incident involving his/her rail vehicle the Employee/s will be provided with up to five days paid leave per allocated work on the weekly roster provided he/she is undertaking post traumatic stress counselling nominated by EL ZORRO Transport.

Employees will not be financially disadvantaged by their taking Trauma Leave. Trauma Leave commences from the first shift the Employee would normally have been rostered to work following the shift on which the accident occurred. The five-day Trauma Leave entitlement will be provided for each and every separate collision/accident/incident and will not be deducted from any Employee credits.

The Employer will immediately organise a relief crew and transport the affected employee/s either to their home or their home depot as nominated by the Employee.

### **25. Parental Leave**

An Employee is entitled to Parental Leave as defined in Division 4 Parental leave and related entitlements as outlined in The National Employment Standards

## 26. Jury Service

A Full Time Employee required attending for jury duty during their ordinary working hours shall be reimbursed by El Zorro the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on jury duty. The Employee may retain any payment made by the court.

Where a part time Employee is required to attend for jury duty and such attendance coincides with a day on which the Employee would normally be required to work, payment shall be made to the Employee of eight (8) hours per day.

The Employee shall notify El Zorro as soon as possible of the date upon which they are required to attend for jury duty. Further, the Employee shall give El Zorro proof of attendance and the duration of such attendance.

## 27. Special Leave

Special leave is paid leave which enables Employees to participate in community activities, deal with public emergencies or be involved in other special situations not covered by other forms of leave provided.

Each application for leave under this provision will be assessed on its merits. Approval will be granted subject to the operational requirements of the work unit or team. El Zorro will not unreasonably withhold such approval.

El Zorro will provide unpaid leave for defence force reservists in accordance with the requirements set out in the Defence Reserve Service (Protection) Act 2001.

## 28. Consultation and Change

### Consultation:

- a. The parties are committed to pursue all opportunities to adopt the world's best practices through modern technology and continuous improvement to all aspects of El Zorro operations.
- b. Levels of staffing, equipment and methods of operation may be varied from time to time by El Zorro to reflect the need for safe work practices, improved technology, and new types of machinery or systems, customer service needs or for any other reason.
- c. El Zorro having made a definite decision that it intends to proceed with any significant change shall issue a notification, in writing, advising:
  - i. The affected Employees, or their representatives and their Union;
  - ii. The nature of the change;
  - iii. The reason for it;
  - iv. The timing of it; and
  - v. Any other relevant information.
- d.
  - i. El Zorro shall allow the Employee, their representative and the Union, an opportunity to express their view or concerns. El Zorro will allow Employees, their representative and their Union to actively participate in the consultative process. That is, allow for the reasonable release and payment of Employees to attend meetings and access to entitlements as provided for in this Agreement.
  - ii. El Zorro shall genuinely consult and consider any views or advice from the Employees, their representative and their Union in relation to the proposed change and provide written reasons addressing concerns raised by Employees and or Employee representatives

- e. This consultative process must be completed within a period of 14 days from the date of notification by El Zorro as set out in clause (c) above, subject to the provisions of (d) being complied with. Failure to comply with the provisions of (d) will delay and or extend the 14 day period accordingly.
- f.
  - I. Should El Zorro fail to provide the notification as required in clause (c) above El Zorro shall not implement any of the proposed changes until such time that the proper notification of change has been provided and the consultation process set out in sub clause (d) has been complied with.
  - II. Further, where El Zorro has failed to engage in any consultation whatsoever with the affected Employees, their representative or their Union, may issue El Zorro, within 7 days of the non compliance, with a notice of dispute, in writing, setting out the reasons for the dispute in the form set out in Schedule 1 of this Agreement. Upon receiving such notice of dispute El Zorro will not implement the change and or cease the change should it have been already implemented.
- g. It is agreed between the Parties that after the above notification and consultation process has satisfactorily taken place, El Zorro, may implement change after a further fourteen (14) days.

#### **h. Significant Change**

For the purposes of this clause and without limiting the generality thereof, significant change includes changes in the composition, operation or size of the workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of Employees to other work or locations and the restructuring of jobs.

#### **i. Right to Conciliation**

Notwithstanding the above, once the notification has been provided or consultation has commenced in accordance with this clause, either party may notify FWA of a dispute, in Part A Clause 29, with respect of the proposed change. In such circumstances, Part A Clause 28 (c) (i) to (iv) need not be followed.

#### **j. Right to Arbitration**

- I. Either party shall have the right to have FWA arbitrate a dispute arising under this clause in circumstance where a party has failed to follow the notification and or the consultation process outlined in clause (c) & (d) above.
- II. The Employees with their representatives shall have a further right to arbitrate a dispute where El Zorro has introduced the change and the provisions of clause (f)(ii) have been enacted.

## **29. Resolution of Disputes**

- a. Employees may be represented at any stage of the Resolution of Disputes process by a representative of their choosing which representative may include a union.
- b. Where a dispute or grievance arises between El Zorro and its Employees in relation to the application of this Agreement or other workplace change, the following will occur:
  - i. Where a person or their representative wish to lodge a dispute or grievance it must be done so in writing in the form as set out in Schedule 1 of this Agreement.
    - A. Where the person or their representative who lodges the dispute / grievance elects to commence the dispute settling process with this step, the Employee(s) who is (are) affected by the decision will discuss the matter with their Local Manager. This may be appropriate, even where the Local Manager was not the El Zorro Manager that made the decision which is subject of the dispute notice.

- B. The Local Manager will consider the issues raised and will respond to the Employee who lodged the notice within 24 hours. This response may be verbal or in writing, if so requested.
- ii. If the dispute / grievance remains unresolved, it may be referred to the General Manager and if the Employee(s) affected so request, a Union representative for discussion. These discussions must be concluded within 48 hours.
- iii. If the dispute / grievance remains unresolved, it may be referred to the Group General Manager of the relevant business unit and if the Employees(s) affected so request, a representative, which may include a union. Where an Employee chooses a union to represent them, the relevant State Secretary or National Secretary (or their nominee) may choose to be involved in these discussions. These discussions must be completed within 48 hours.
- iv. If the dispute / grievance remain unresolved, a "cooling off period" of 48 hours (excluding weekends and public holidays) will occur at this stage of the process. During this period, the parties may continue to have discussions at whichever level they regard as most likely to assist in resolving the dispute / grievance. The parties may agree, at this point, to utilise mediation to resolve the dispute.
  - A. During, or at the conclusion of the cooling off period, either party may decide to refer the matter to a mutually acceptable independent mediator or the FWA for the purpose of conciliation of the dispute. The conciliation must occur as soon as reasonably practicable.
  - B. Where a dispute / grievance are escalated to the point of involvement of either an independent mediator or the FWA in conciliation, the parties acknowledge the significance of this point being reached. Therefore, any recommendation made by the independent mediator or FWA in an attempt to assist the parties to resolve the dispute / grievance will be treated as highly influential.
  - C. Where both parties agree, they may empower the mediator or member of the FWA to resolve the matter by arbitration.
- c. Any of the steps in the process may be removed where both parties agree. Likewise, the parties may agree to extend the timeframes within which each of the steps is to be completed.
- d. At all times during this process work shall continue in the matter it was being performed immediately before the dispute or grievance.

### 30. Transfer of Employees

El Zorro proposals that may require Employees to relocate will be subject to the consultative provisions outlined in Part A Clause 28 of this Agreement. Any final decision regarding individual Employee relocation will be made on assessment of the individual's circumstances with regard to reasonableness.

Where a transfer instigated by El Zorro requires the Employee to relocate their residence, El Zorro will meet all relocation expenses.

Based on individual circumstances, the following expenses will be met:

#### **Housing Expenses**

Costs associated with selling a residence at the "old" location, including agent's commission, legal expenses, stamp duty and bank charges.

Costs associated with the purchase or construction of a new residence at the "new" location, where that residence will be the usual place of residence, such as legal expenses, stamp duty, bank charges, connection of utilities and mortgage insurance (one-off payment).

**Removal expenses**, including removalist's fees, insurance charges and temporary storage (up to twelve months).

**Travel expenses**, including:

One familiarisation visit, of up to five days with travel costs, to the limit of economy class airfares for the Employee and spouse to visit the location to examine housing and other services; and

Actual travel costs, to the limit of economy class airfares for the Employee and family during the actual relocation.

**(b) Resettlement Allowance**

Resettlement Allowance is provided to cover the costs of temporary accommodation for Employees and their families until a permanent residence is available. A resettlement allowance is paid as a reimbursement to cover actual costs incurred for temporary accommodation on the following basis:

Employees with dependants may be reimbursed up to the value of six weeks' pay, calculated on their Normal Rate , where the dependants accompany them; or

Employees without dependants may be reimbursed up to the value of three weeks' pay, calculated on their Normal Rate.

Employees who transfer at their own request will meet all costs associated with any relocation. However where notwithstanding an Employee making such an election El Zorro may, subject to the managers approval, meet most of the relocation expenses incurred by the employee if the transfer provides benefit to El Zorro.

### **31. Temporary Transfer**

Personnel volunteering for Temporary Transfer shall rotate through an availability list. Any member declining his turn of relief shall be placed on the bottom of the rotation list.

**The process for Temporary Transfers involves:**

EL ZORRO will offer transfers on a rotating basis.

A minimum of five days notice shall be provided unless a shorter period of notice is agreed to by the Employee.

The Employee can elect to arrange accommodation themselves. If requested EL ZORRO will arrange accommodation using best endeavours to provide the Employee with appropriate accommodation, as set out in Attachment A (Accommodation) and the appropriate expenses shall be paid from the time the Employee signs on at their home depot to the time the Employee signs off at their home depot at the end of the transfer period.

The time taken to travel to the Temporary Transfer location shall be deemed working time for the roster period in which it occurs.

EL ZORRO shall provide transport to the temporary location where the Employee indicates an inability to use their own transport.

The Employee shall be compensated for use of their own vehicle to transport themselves to the temporary location in accordance Part A Clause 41.

Expenses shall be paid for the entirety of the transfer arrangement inclusive of days off and approved leave except where the Employee clears approved paid leave over 4 days.

Employees who are temporarily transferred shall be paid expenses at the rate of \$168.53 for each full day or part thereof away from their Home Base. The payment of expenses will be called Living Away from Home Allowance and consists of Breakfast – Lunch – Dinner and Grain allowances.

Expenses shall be adjusted by a formula that applies the Consumer Price Index (CPI) by the Meals Out and Take Away Food component of the CPI for the meals components. This adjustment shall be made annually in the first full pay period following the release of CPI data for the September quarter each year.

While an employee is on Temporary Transfer, all conditions expressed within the Rostering Code in relation to an employee's home depot shall prevail. More specifically, employees will be placed on vacant lines which have been agreed upon during the formation of a master roster for the depot to which the employee has been transferred. If the employee is on Temporary Transfer for the purpose of providing Leave relief then the employee will be placed on the incumbent's line on the Master Roster. In all circumstances, the Rostering Code will not be compromised by virtue of an employee being Temporarily Transferred during a roster cycle e.g. one RDO in week one of the roster cycle at the employee's home depot (then transferred) = three RDO's owing to the employee during week two of the roster cycle at the temporary transfer location.

## 32. Uniforms

El Zorro will provide Employees with uniforms and, where required, protective clothing or equipment.

El Zorro will replace uniforms, protective clothing and equipment on a "fair wear and tear" basis.

If El Zorro intends to make significant changes to uniforms, protective clothing and equipment issued under this clause, it will undertake consultation in accordance with the provisions outlined Part A Clause 29 of this Agreement.

## 33. Individual Flexibility Agreement

El Zorro and an Employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of the terms of this Agreement if:

- a. the individual flexibility agreement deals with one (1) or more of the following matters:
  - i. Arrangements for when work is performed;
  - ii. Overtime rates;
  - iii. Penalty rates;
  - iv. Allowances; and
  - v. Leave loading; and
- b. The arrangement meets the genuine needs of El Zorro and the Employee in relation to one (1) or more of the matters mentioned in paragraph (a); and
- c. The arrangement is genuinely agreed to by El Zorro and the Employee.

El Zorro shall inform the RTBU when it intends to negotiate an Individual Flexibility Agreement with an Employee covered by this Agreement and of the nature of any such agreement. Nothing in this Clause requires or permits El Zorro to provide information about Employees to other Parties covered by this Agreement except where the provision of that information is required or authorised by law.

An Employee may nominate a representative, including the RTBU to assist in negotiations for an individual arrangement.

El Zorro will ensure that the terms of the individual flexibility arrangement:

- a. Are about permitted matters under section 172 of the Act;
- b. are not unlawful terms under section 194 of the Act;
- c. result in the Employee being better off overall than the Employee would be if no arrangement was made; and
- d. Does not have an adverse effect on the wages and conditions and working arrangements of any other Employee covered by this Agreement.

**Terms of the individual flexibility arrangement will:**

- a. be in writing; and
- b. include the name of El Zorro and the Employee; and
- c. be signed by El Zorro and the Employee and if the Employee is under 18 years of age, signed by a parent or guardian of the Employee; and
- d. include details of:
  - i. The terms of the Agreement that will be varied by the arrangement;
  - ii. How the arrangement will vary the effect of the terms; and
  - iii. How the Employee will be better off overall in relation to the terms and

Conditions of his or her employment as a result of the Individual Flexibility Arrangement; and

- e. States the day on which the Individual Flexibility Arrangement commences.

El Zorro must give the Employee a copy of the Individual Flexibility Arrangement within fourteen (14) days after it is agreed to.

El Zorro shall inform the RTBU when it intends to negotiate an Individual Flexibility Agreement with an Employee covered by this Agreement and of the nature of any such agreement.

Nothing in this clause requires or permits El Zorro to provide information about Employees to other Parties covered by this Agreement except where the provision of that information is required or authorised by law.

El Zorro or the Employee may terminate the Individual Flexibility Arrangement:

- a. By giving no more than twenty eight (28) days written notice to the other party to the Individual Flexibility Arrangement; or
- b. If El Zorro and the Employee agree in writing – at any time.

### **34. Occupational Health and Safety**

Where a matter involving occupational health and safety arises, it shall be dealt with in accordance with the provisions of the Occupational Health and Safety Act in the relevant state.

### **35. Health Assessments**

Where, through the operation of the National Standard for Health Assessment of Rail Safety Workers ("National Standard") an Employee is required to undertake a Health Assessment, EL ZORRO will pay the cost of the medical assessment up to the "Determination", including the medical assessment itself, a stress ECG, if required, and/or other referred test(s). The employee will be rostered for a minimum shift or the time taken to complete the medical.

The Determination occurs when a qualified health professional, in satisfaction of the National Standard, has determined that the Employee is either:

- a) Fit for duty;
- b) Fit for duty subject to review;
- c) Fit for duty subject to position modification;
- d) Temporarily unfit for duty subject to review; or
- e) Permanently unfit for duty.

If further tests are required following the determination, EL ZORRO will only be liable to cover the costs of such tests where it is identified that there was no basis for this referral i.e. there is no apparent underlying condition that should have prompted such referral.

In order to ensure privacy is maintained in relation to the medical files, where an Employee seeks to claim such costs in these circumstances, the Company Doctor or their nominee will review the case file and make a determination as to whether the referral was justified. The decision of the Company Doctor in such matters will be final.

Where it is determined that the referral was not justified, EL ZORRO will:

- a) Reimburse the Employee for the medical costs incurred as a result of the referral; and
- b) Re-credit any sick leave that has been used as a result of being unable to perform their duties as a result of the referral.

The above provisions do not exclude any obligations arising under the applicable Worker's Compensation legislation.

EL ZORRO shall roster an Employee to attend a health assessment which will include an eight (8) hour payment for the fasting period, which shall be paid within the current pay period and is a standalone payment, for the blood test. El Zorro

will ensure that the employee is given one (1) months' notice for the medical assessment to enable the blood test to be completed at least 5 working days prior to the medical assessment.

### 36. Payment of wages

Wage/salary payments will be made by Electronic Funds Transfer (EFT) on a fortnightly basis in arrears.

Where stand alone payments are due, these will be made by Electronic Funds Transfer (EFT) on a fortnightly basis in arrears. Overtime incurred in the circumstances outlined in this Agreement will be paid in the following pay period.

Fortnightly payments are based on averaging the annual ordinary hours on a fortnightly basis and making payment of one twenty-sixth of annual ordinary time pay each fortnight (notionally eighty (80) hours per fortnight), excluding overtime, expenses and detention time.

Where employment is terminated, the final payout for hours worked will be calculated on the basis of reconciling the completed hours worked with the notional hours paid. El Zorro has the right to deduct any overpayment of monies from the Employee's final payment.

El Zorro will ensure that Employee's pay dockets will be provided in accordance with the Act.

### 37. Remuneration

#### Remuneration Increase

The Remuneration outlined in this agreement will be increased in the following manner:

#### Operative Date Percentage Increase

From the beginning of the first pay period on or after lodgement of this Agreement

- 4% effective from the 1<sup>st</sup> December 2009
- 1<sup>st</sup> December 2010 – 2.5%
- 1<sup>st</sup> June 2011 – 2.5%
- 1<sup>st</sup> December 2011 - 2.5%
- 1<sup>st</sup> June 2012 – 2.5%
- 1<sup>st</sup> December 2012 – 2.5%
- 1<sup>st</sup> June 2013 – 2.5%

### 38. Safe Working Equipment

- (a) All Employees will be issued with PPE equipment and required to wear this equipment in carrying out their various tasks.
- (b) All employees will be issued with the appropriate safe working equipment necessary to carry out their tasks.
- (c) Personal issue equipment will be as agreed at the local consultative level.

#### Safe Working Equipment:

**EQUIPMENT –** Each Employee will be issued with the appropriate Safe Working Keys, a torch, mobile phone for work usage, workbag and memo book

The above keys and equipment when issued are the responsibility of the Employee concerned and will be returned to EL ZORRO Transport should they leave the Company. Should these keys be lost, the replacement costs may be deducted from their final payout figure.

**RADIO –**

Each Employee will be issued with a hand held radio and accessories. (Radio, cover, two (2) batteries, charger, hand piece) and will be the responsibility of the person concerned to maintain the equipment in good working order at all times. Should this equipment be lost or damaged costs for its replacement or repair may be recouped from the Employee if it deemed he/she was negligent in duty.

### 39. Salary Maintenance

Where an existing Employee is redeployed or reclassified to another position with a lower Total Remuneration, that Employee shall receive salary maintenance on the following basis:

- I. The Employee will receive the rate applicable to their former position for a period of twelve months (and receive the increases prescribed in Part A clause 37 of this Agreement during this period.
- II. At the conclusion of the twelve month period, the Employee will revert to and be paid the applicable rate for the position they are actually occupying.

### 40. Conflict of Interest

Employees shall not, during the term of this Agreement, set them up or engage in private business or undertake other employment in direct competition with the Employer using knowledge or materials gained in their employment with the Employer.

However, Employees may undertake other employment so long as such employment is in their own time and does not conflict with their employment with EL ZORRO Transport Pty Ltd. The Employee must advise and seek endorsement from EL ZORRO Transport Pty Ltd management. Failure to do so may result in dismissal.

Employees must gain approval from EL ZORRO prior to driving for other rail operators. If approved, any shift information must be submitted to rostering staff so that an appropriate fatigue assessment can be performed.

### 41. Allowances

In addition to the wages referred to in Part B clause 2, the following shall be paid to Employees who are qualified and authorised by management to fulfil such designated roles.

These rates will increase in accordance with the remuneration outlined in Part A Clause 38 and rounded up to the nearest cent.

- Driver Only allowance – per hour \$2.84
- On Job trainer Allowance – per hour \$3.31
- SCID Allowance – per hour \$5.56

Allowances below will increase with Consumer Price Index (CPI) and adjustment shall be made annually in the first full pay period following the release of CPI data for the September quarter each year.

- Meal or Wasted meal Allowance - \$7.16
- Rest Meal Allowance – per 8hr or part thereof \$19.50 up to a maximum of \$25
- Breakfast – daily rate \$17.31
- Lunch – daily rate \$17.31
- Dinner – daily rate \$26.91
- T&I – Bed – per occasion \$80.73
- Living Away from Home Allowance (temporary transfer) – daily rate \$168.53

The Company will supply agreed standards of accommodation, and if unable to supply, Travel and Incidental (T&I bed) expenses will be paid in lieu.

### Motor Vehicle Allowances

In the case where the Employee is required to use his personal vehicle the said Employee will be entitled to:

Rates per Business Kilometre - current ATO figure for Motor Vehicle expenses including Motorcycles		
Engine Capacity		Cents per Kilometre
Ordinary Engine	Rotary Engine	
1.6 litre (1600cc) or Less	0.8 litre (800cc) or less	\$ 0.63
1.601 - 2.6 litre (1601-2600cc)	0.801 - 1.3 litre (801 - 1300cc)	\$ 0.74
2.601 Litre (2601 cc) or more	1.301 litre (1301cc) and over	\$ 0.75

## 42. The Wage Rates

Following the certification of the EL ZORRO Transport Enterprise Agreement 2009- 2013 all Train Crew Employees will be paid the wage rates amounts outlined in the attendant wage rates table (Part B Clause 2). The hourly rate has been calculated so that it includes compensation for:

- Shift Penalties
- Tonnage/Distance Payments
- Weekend Penalties
- Geelong Grain Loop and Fuel Point Allowances
- Annual Leave Loading

## 43. Best Practice

The parties are committed to the objective of achieving the best known practice, where such practice is considered relevant and adaptable by utilisation of appropriate benchmarks. Best practice is a continuous improvement process, which involves constantly reviewing, changing, adapting and integrating related approaches to organisational issues within the framework of this Agreement. Best practices are not fixed and not restricted to an examination of costs, but also include quality and delivery of service issues.

The parties recognise that best practice must be achieved within agreed timeframes to enhance the performance of the Company via the Consultation and Change clause.

The parties acknowledge that the implementation of the best practice approach will lead to the implementation of agreed initiatives.

The parties agree that best practice is outcome rather than simply activity based. It provides the processes, structures, rights and obligations which are essential to ensure that the full capacity for innovation of Employees is fully and effectively used.

Best practice programs are to be based on the following principles:

- Employees will be fully involved;
- a planned and structured approach will be used to set and achieve objectives;
- appropriate facts, data and analysis will be made available to Employees involved in the process;
- partnerships with suppliers and Customers will be actively pursued;
- quality will be achieved by having well planned and managed processes;
- processes will be standardised as part of process management;
- continual improvement of all processes will be pursued;
- ways will be sought to innovate and redesign processes;
- emphasis will be on prevention and improvement; and
- An appropriate level of community and environmental responsibility will be demonstrated.

#### **44. Transmission of Business**

**Parties Bound:**

This agreement will bind a successor, assignee or transmittee of EL ZORRO business in accordance with the Act.

**Transmitted Employee's Entitlements:**

Where a business is transmitted from EL ZORRO to another Employer ("the transmittee") and an Employee, who at the time of such transmission was an Employee of EL ZORRO and pursuant to the terms of an offer of employment from the transmittee becomes an Employee of the transmittee at the time of the transmission, then;

- I. the continuity of employment of the Employee is deemed not to have been broken by reason of such transmission; and
- II. the period of employment which the Employee had with EL ZORRO is deemed to be service of the Employee with the transmittee; and
- III. In this clause "business" includes trade, process, business or occupation and includes part of any such business and "transmission" includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and "transmitted" has a corresponding meaning.

#### **45. Multi-Skilling**

Employees will operate flexibly between workstations and work areas and carry out such duties as are within the limits of each Employee's skill, classification structure, training and qualification. Subject to appropriate level of qualification, safe-working, industrial agreements with the Employer, legal and health and safety requirements, Employees are to perform all jobs within the workplace, consistent with a productive, efficient and flexible enterprise.

Employees shall carry out such duties as directed by the Employer from time to time subject to the limits of their skills, qualification and training relative to their grade/career structure. Should any disputes arise in the application of this clause, it shall be dealt with according to the Consultation and Dispute Settling clause (Part A Clause 28).

## 46. Representatives

- a) El Zorro recognises workplace delegates who are authorised by the Union and will permit such delegates to perform their role without discrimination. This clause is subject to the delegates concerned continuing to act in accordance with their contract of employment and the terms and conditions of this Agreement.
- b) It is further recognised that workplace delegates represent union members at the workplace and will be allowed reasonable time to attend to any work related matters, without limitation, on behalf of union members but must advise their supervisor prior to attending to any such matters.
- c) El Zorro will allow workplace delegates reasonable access to telephone, facsimile, photocopying and email services, where available and provided, for the purpose of carrying out their role. The use of resources by a workplace delegates will be subject to the delegate complying with the prevailing company policy provisions (which shall not impose unreasonable restriction on the operation of this sub clause) and the specific directions of the site manager.
- d) Workplace Delegates will be entitled to reasonable paid time off to attend union meetings, congresses and conferences, subject to operational constraints. Workplace delegates seeking such leave are required to give fourteen (14) days notice and El Zorro will not unreasonably refuse to approve such leave.
- e) El Zorro will provide a lockable notice case to be used by workplace delegates for posting formal Union notices signed off by the delegates and or Union official. All material posted must be authorised by the relevant Union.
- f) Special paid leave, at ordinary hours, will be granted to employees of El Zorro who are elected through the Australian Electoral Commission as delegates of their Union to attend their Union's National Council; National Executive; Branch Council; Branch Executive and; Divisional Committee meetings, or their equivalent.

To be eligible for special paid leave, the employee:

- i. Is required to apply for leave at least four (4) weeks prior to the meeting;
- ii. Is required to provide documentary evidence, signed by the appropriate authorized Officer of the Union, that they are an elected delegate of the Union and are required by the Union to attend the meeting. This documentation must also include the duration of the meeting.

## 47. Workplace Relations Training

- a) Workplace relations training is specifically targeted at maintaining harmonious workplace relations between El Zorro and its Employees.
- b) Unions will identify training course content and ensure that all training is delivered by appropriately qualified trainers. Unions will fund all cost associated with the development and delivery of workplace relations training programmes.
- c) El Zorro will allow a maximum of 1000 paid hours in total per year for such training.

## Schedule 1 - Notification of Dispute or Grievance

To: \_\_\_\_\_ Date: \_\_\_\_\_  
*Insert Name of Manager to whom Notice is Given*

I hereby give notice that I wish to invoke the dispute settlement process in Part A Clause 29 of the El Zorro 2009 Enterprise Agreement. The details of this dispute are as follows:

**The Decision I wish to Dispute is:**

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**The person who made the decision is:**

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**The date the decision was made is (If Known)**

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**The reasons I wish to dispute the decision are :**

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**Your Name:** \_\_\_\_\_ **Position:** \_\_\_\_\_

**Signed:** \_\_\_\_\_

Please Print Clearly

**You're Work Location & Telephone Number:**

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## PART B – Roster Code

### 1. Classification and Pay Levels

Employees covered by this Agreement shall be employed in any of the classifications as set out below:

- a. El Zorro may, subject to complying with any consultation requirement outlined in Part A clause 29 of this Agreement, where the implementation of any change will have a significant impact on employees, determine the following:
  - I. The type and number of positions in the organisation and the organisational structures;
  - II. Employee levels;
  - III. Specific work practices; and
  - IV. Specific equipment and its use.
- b. The classifications to which this Agreement applies are set out in this clause.
  - I. The classification structure provides flexibility to design new positions or to redesign existing positions, including the way work is performed, so that El Zorro can respond to changes in the business and commercial environment.
  - II. The process of position design or position redesign may require employees to undertake activities that have not traditionally been within their classification stream or that have not been previously part of their position.
  - III. Where positions are adjusted or redesigned, the employee will be entitled to be paid at a classification level that equates to the work or activities being undertaken in the new position subject to the provisions of the Salary Maintenance clause of this Agreement.
- c. There is one defined career path with an appropriate classification structure that operates within this Agreement.
- d. The career path provides a structured career path for employees who are engaged in positions that directly focus on the business operations of the organisation.
- e. This Agreement and the above stream improves flexibility, this allows work to be allocated in the most efficient manner, recognising employee's use of skills and competencies within the appropriate classification and pay levels.
- f. Subject to employees completing relevant training and acquiring the necessary competencies for their position, they will progress through the classification structure.

#### Principles

The classification structure operates in accordance the following principles:

- a. Positions will be defined in terms of their primary accountabilities or main functions;
- b. Employees moving through the classification levels will be required to accept responsibility for the safe and efficient management of train operations.
- c. Classification of a position will be made on the basis of matching the primary accountabilities or main functions with the appropriate level of the classification structure.
- d. On this basis, employees will be classified at a level within the classification structure that is commensurate with the major and substantial requirements of the position undertaken. Employees will progress through the classification structure
- e. Classification of an employee is based on business need and assessment of the demonstration of primary tasks, accountabilities, qualifications, competencies, capability and performance required in the position rather than skills possessed by an employee;

## 2. Wages rates

All pay rates are gross amounts excluding Allowances listed in Part A Clause 41. These rates will increase in accordance with the wage increases outlined in Part A Clause 37.

### Weekly rate of pay for Ordinary Hours Worked

Position Held	Hourly	Weekly
Trainee	\$20.47	\$818.80
Qualified 2nd Person	\$24.51	\$980.40
Trainee Driver	\$27.86	\$1,112.00
Qualified Driver - Internal	\$33.43	\$1,337.20
Qualified Driver - External	\$33.43	\$1,337.20
Locomotive Driver	\$39.09	\$1,563.60
SCID	\$44.57	\$1,782.80

## 3. Hours of Work

The ordinary hours of work, for a full-time Employee, is two thousand and eighty hours (2080) per annum. This is equivalent to fifty-two weeks at thirty-eight ordinary hours plus two hours per week. The annual ordinary hours are made up as follows:

Two thousand and eighty (2080) hours, which includes eighty-eight (88) hours for a minimum of eleven (11) public holidays and two hundred (200) hours of annual leave for a shift worker.

The above hours will be balanced out over 160 hours of work over 4 weeks to form the monthly cycle.

While public holiday hours are included in the total hours outlined above, where an Employee is rostered to work on a public holiday they are required to attend for work and undertake activities as rostered, subject to the provisions of the Act.

In addition to the ordinary hours specified above, an Employee may be required to work reasonable overtime (with the exception of working on rostered days off (RDOs) for payment at overtime penalty rates.

An Employee may decline to work overtime in circumstances where the working of such overtime would result in the Employee working hours which are unreasonable having regard to:

Any risk to an Employee's health and safety that may reasonably be expected to arise if the Employee worked the additional hours;

The Employee's personal circumstances (including any family responsibilities);

The operational requirements of El Zorro in relation to which the Employee is required or requested to work the additional hours;

Any notice given by El Zorro of the requirement or request that the Employee work the overtime;

- f. An employee in a particular classification may be required to perform activities and tasks that are deemed to be safe and appropriate to that classification and for which the employee has been trained and has current and demonstrated competency;
- g. An employee may be requested to participate in forums about safety, operational enhancements, business improvement and customer requirements to assist and support the overall El Zorro objectives.

### Classification Structure

GRADE	DESCRIPTION
TRAINEE NEW START	Is a new start within the Freight Train Drivers Training Scheme
QUALIFIED 2 <sup>ND</sup> PERSON	Means a Trainee who has successfully completed and passed the necessary training to enable the trainee to perform 2 <sup>nd</sup> person duties.
TRAINEE DRIVER (Completed 12 months)	Means a Qualified 2 <sup>nd</sup> person who has completed 12 months experience and/or has developed the necessary competencies to progress their train driving career.
QUALIFIED DRIVER - INTERNAL	Means a Trainee Driver who has achieved successful completion of the driver training program and practical on job assessment.
QUALIFIED DRIVER – EXTERNAL	Means a current Qualified Train Driver whose qualifications has been achieved at another Company and is yet not qualified to perform any EL ZORRO Transport allocated work as a driver. All effort will be made to complete training however; progression to the grade of Qualified Loco Driver will be subject to the successful completion of a practical on job assessment.
LOCOMOTIVE DRIVER – QUALIFIED	Means a person who has successfully completed the EL ZORRO Freight Train Drivers Scheme and has a minimum of 6 months driving experience.
SPECIAL CLASS INSTRUCTOR DRIVER -	Locomotive driver who is appointed to be responsible for determining the train operation strategies for all types of trains on specified corridors, conducting classroom instructional duties, for evaluating or qualifying trainee drivers to locomotive drivers, responsible for coordination and monitoring of on the job training for trainee drivers and locomotive drivers. Other duties include the development of instructional classes and training exercises and carry out check rides, Safety Audit rides as required.

Any notice given by the Employee of their inability to work the overtime;

Whether any addition hours are on a public holiday;

The Employee's hours of work over the cycle ending immediately before the Employee is required or requested to work the additional hours.

#### **4. Higher Duties**

Where Employees perform work that falls within a higher classification level, they will be entitled to be paid at the higher classification level for the shift / shifts during which the work was performed.

#### **5. Home Base and Sign-On/Sign-Off Provision**

Upon commencing employment, an employee shall be allocated a sign on/sign off point at which he/she shall commence and finish a shift. This point shall be located within a depot, terminal or office (referred to as the "home base") where the employee shall report in order to commence and complete a shift.

Home base sign on points will contain the following

1. Car Parking – Consultation will occur at each location where new car parking is proposed. Where current car parking facilities exist they will be maintained.
2. Amenities including a meal room with appropriate facilities
3. Communications as required
4. Operational documentation
5. Notice board

#### **6. Rostering Guidelines**

Subject to the guidelines contained herein rotations will be developed to suit each depots work requirements.

At all locations EL ZORRO's rostering personnel are to work in conjunction with the chosen representatives of the Employees to frame suitable rosters/rotations on an agreed basis.

##### **Master Rosters**

It is intention of parties to introduce Blank Line Rostering during the life of this agreement.

- a. A Master Roster shall be exhibited primarily for the purpose of indicating rostered days off (RDO's) and any known work and to meet the operational requirements of the business having regarded to fatigue principles.
- b. El Zorro in consultation with the local rostering committee where formed, will develop and modify master rosters consistent with operational and business requirement
- c. The number of El Zorro initiated Master Roster changes shall not exceed four (4) in any twelve (12) month period, unless there is a specific business requirement. Where there is a business requirement to exceed 4 changes formal consultation will occur with the depot.
- d. Where a change to a Master Roster is proposed, formal consultation will commence at least twenty eight (28) days prior to the intended implementation date of the new Master Roster.
- e. Following the consultation, the final Master Roster is to be posted 14 days in advance of its introduction.

- f. Any changes to the Master Roster which do not impact on an Employee's RDO will not constitute a Master Roster change.
- g. Rosters shall be arranged to provide the maximum number of complete weekends rostered off duty which shall be at least one weekend off in four unless altered by way of consultation.

**Maximum Shifts Rostered Per Fortnight**

The maximum number of ordinary shifts per fortnight will be ten (10). It will be up to the individual Employee to agree to work in excess of 10 shifts in any period of 14 consecutive days.

In Victoria a compulsory Rostered Day off must be rostered after 12 straight working shifts.

In NSW a compulsory Rostered Day off must be rostered after 11 straight working shifts.

Rotations will be constructed so that no more than 10 shifts of work will be rostered in any period of 14 consecutive days. Additional shifts may be worked, up to a maximum of 12 shifts per fortnight, by agreement with the Employee concerned. Rostering staff will ensure that when Locomotive-grade Employees work additional shifts they are not rostered more than 12 shifts per fortnight.

**Depot posted documents;**

- A Master Roster will be displayed at the depot sign on point.
- A copy of this Enterprise Agreement.

Current El Zorro Depots

Including but not limited to:

- Head Office – Williamstown, Victoria
- Portland, Victoria
- Junee, New South Wales
- Newcastle, New South Wales
- Werris Creek, New South Wales
- Narrabri, New South Wales
- Parkes, New South Wales
- Dubbo, New South Wales
- Moss Vale, New South Wales

**Daily Roster:**

Daily Rosters will be posted as soon as possible but no later than 1400 hours each weekday.

In developing or altering the Daily Roster, EL ZORRO may be required to change an Employee's sign-on to within a four hour lift up or four hour layback of the original sign-on time, in accordance with the posting of Daily Rosters.

When rostered on a Rest Job working Employees are not to have their daily sign-on time altered more than four hours lift up or four layback sign-on time shown on the Master Roster rotation, on either the forward or return journey, unless by agreement with the Employee concerned.

Should an employee agree to a Lift Up or Lay Back outside the conditions agreed above, the employee is to be paid the extra hours at the Hourly Rate and these extra hours will Stand Alone from the ordinary roster cycle hours.

**Call Period:** While at their Home Depot, crews will be advised within the agreed personal call period specified by each employee for the purpose of Lift Up and Lay Back only. Once called at barracks the Train Crew will be signed on at the times associated with that call in the case of Lift Up & hours credited in the above statement

**RDO's** it is agreed that RDO's will not be infringed upon by either the expressed Lift Up or Lay Back provisions unless by mutual agreement.

### **Train Crew Notification**

Advice of roster alterations shall be affected by an agreed communication process between the individual Employee and the rostering staff. Notifications are to occur for all shifts commencing at 0001hrs and 0600hrs between 0900 – 1100 hrs the previous day. Notification is to occur for all shifts commencing after 0600hrs between 1400 – 1600hrs the previous day.

If Blank Line Master Rostering (i.e. rostering rotations display RDO's only in the absence of regularly scheduled train running) is implemented, then all days other than RDO's shall be considered as **Available Days**. For the purpose of this clause, **Available Days** are days where employees are expected to be available to work. In this circumstance:-

- I. If the employee is notified that he/she is working an ordinary hours shift and is notified within the a.m./p.m. advice periods stipulated above, all hours worked will be counted as part of the roster cycle hours,
- II. If the employee is rostered to work into an RDO there must be consultation and agreement from the affected employee and all work worked into the RDO will attract an additional stand alone payment of 0.8
- III. No work is to exceed 0300hrs working into an RDO

### **Sign On – Sign Off Time Allowance:**

In developing Daily Rosters for train crew they will include a ten minute time Allowance during the sign on and five minute Allowance during the sign off process to enable train crew to read and understand relevant train safety notices and any other applicable documentation.

### **Train/Locomotive Preparation Allowance:**

In developing Daily Rosters for train crew recognition will be given to the inclusion of an agreed time Allowance to enable train crew to prepare the Locomotive/s and or Train to allow for safe operation on the Rail Network.

### **Easter & Christmas Rosters:**

Rosters covering Christmas and Easter holidays are to be posted at the earliest opportunity up to a maximum of two weeks, and a minimum of one week, prior.

## **7. Exchange of Shifts**

An exchange of shift between Employees covered by this agreement will be permitted subject to Award and/or the provisions of this agreement being adhered to and the exchange of shifts is approved by Rostering Officer.

## 8. Rostered Days Off (RDOs)

- a. There will be a minimum of 104 designated RDOs per annum averaged over the annual hours inclusive of periods of leave.
- b. Rostered days off can only be altered via a Master Roster change, unless by agreement of the employee concerned.
- c. Single rostered days off should be avoided wherever possible in favour of grouping of such days off.
- d. Defining the dimensions of RDO's
  - I. All single RDO's shall be for a minimum of 30 hours from midnight to 0600 the following day.
  - II. Multiple RDO's will commence from 0001 and conclude at 0600 the following day, each additional day will be in blocks of 24 hours duration following the duration of the initial RDO at 0600 hours.
- e. From time to time train running may infringe an RDO, where this occurs consultation and agreement with the individual must be sought and any infringement of an RDO will attract an additional stand alone payment at the rate of point eight (0.8) of the employee's rate of pay.
- f. When employees agree to sign on during an RDO, all hours worked will Stand Alone and attract a payment of 1.8 times the employee's hourly rate.

## 9. Shifts Lengths

### **Driver Only:**

Driver Only shifts from sign on to sign off will be rostered up to 8 hours in duration.

### **Part Driver Only:**

Part D.O.O. and part Two-Person shifts from sign on to sign off will be rostered up to 9 hours in duration.

### **Two Person (Driver and 2<sup>nd</sup>):**

Shifts with two-persons consisting of a Locomotive Driver and another Employee not qualified to drive (or non-route qualified driver) from sign on to sign off will be rostered up to 9 hours in duration.

### **Two Person (Two Drivers):**

Shifts with Two Drivers (both qualified) from sign on to sign off can be rostered up to 11 hours in duration.

### **Minimum Rostered Shifts:**

The Company will roster train crew for shifts of maximum lengths as described as above, but reserves the right to set minimum lengths for any shift provided the length is not less than four (4) hours in duration.

### **Travelling Shift:**

When Employees are travelling to or from relieving location, a minimum shift of 4 hours or actual hours worked, whichever greater, will be paid.

## 10. Meals Breaks

Employees shall have a meal break of 20 minutes built into the working arrangements for that shift. Meal breaks shall be taken before the completion of the sixth hour at such times as will not interfere with the efficient running of the business including the operation of the network

In the event of late running the timing of daily Meal Breaks to be arranged in consultation with the Train Crew and Train Control

In the event of a Meal Break not being unable to be taken, this will be considered a "Wasted Meal" and paid in accordance Part A Clause 41.

The Operations Manager is responsible for authorising payment for all Wasted Meal Allowances.

## 11. Interval of Rest between Shifts

The time which an Employee must be off duty will be 11 hours at their home depot, or if time is available 12 hours, and 8 hours whilst at a Rest depot.

Where a Rest Job extends beyond 10 hours duration on the first leg, a period of 10 hours Rest shall be allowed, unless in case of Emergency attendance is required earlier.

These times may be varied by EL ZORRO and the Employees subject to agreement and adherence to the Fatigue Management Policy of EL ZORRO.

## 12. Mandatory Rest Period

- a. A Mandatory Rest Periods will be provided after having worked consecutive shifts inclusive of single sick days.
- b. Mandatory Rest Periods shall conform to the same conditions as an RDO, as outlined Part B Clause 8.
- c. In Victoria a Mandatory Rest Day must be rostered after 12 straight working shifts.
- d. In NSW a Mandatory Rest Day must be rostered after 11 straight working shifts.
- e. Where an employee works an overtime shift, at the Company's request, and this result in the employee not being able to work a previously rostered shift due to the taking of the Mandatory Rest Period, the company will credit the shift to the employee's duty cycle.

## 13. Resting Away (Barracks Working)

Where an Employee is at Rest, alterations to sign on time will be kept to a minimum. If the original sign on time is lifted up (i.e. amended to sign-on at an earlier sign-on time), then the Employee will receive a credit towards ordinary hours for all time from the new sign on time. If the original sign-on time is laid back (i.e. amended to sign-on at a later sign-on time) the Employee will be paid from the original sign-on time until sign-off time at the end of the shift. The actual shift limit will start from the sign on time.

E.g. Original Sign on 1400 put back to 1500  
Employee to receive a credit towards ordinary hours from 1400.

Where any working with Rests is involved, the first crew to book on at the home depot shall be the first to book off at the home depot, but not necessarily the first out of the barracks. This may involve working on or travelling on trains other than that for which crews were originally rostered to work or travel.

### **Detention Away From Home Depot:**

Rotations will be developed so that wherever practicable detention away from home depot on a Rest Job will not exceed 12 hours duration after sign-off at the Rest location. A payment will be made, at the Employee's ordinary rate, for all hours that an Employee is detained at Rest in excess of 12 hours from the actual sign off time.

The actual shift limit will start from the sign on time after the detention time has lapsed.

These hours do not contribute to an Employee's ordinary cycle hours and will be paid separately as a Stand Alone payment. The total detention hours owed the Employee will be paid out in the fortnight it was worked.

### **Rostered Hours When Going To Rest:**

Each leg of a Rest Job is to be credited for a minimum of 8 hours unless otherwise agreed. Each leg will count as a shift.

Replacement of an Employee for a Rest Job would be arranged by each location and determined on a local basis.

The standard of accommodation at all Rest locations to comply with Attachment A.

**Rest Meal Allowances (as per Part A Clause 41):**

The entitlement will be calculated from the sign on at the home depot to the return back to that depot and will receive one (1) meal for every eight (8) hours or part thereof. E.g. Sign on at 1400 and return back to depot at 1500 the next day then there will be a payment of 4 meals.

## 14. Guarantee Payment

**Full Time:**

A Full Time Employee who is ready, willing and able for all work offering is Guaranteed 160 hour's payment in a cycle, but paid over two fortnights at 80 hours each.

**Permanent Part Time:**

In the case of Permanent Part-time Employees the Guaranteed payment in each fortnight will be according to their employment contract payment in each of two fortnights over a 4 week cycle.

The Guarantee will be withdrawn during any fortnight that an Employee is not available for all work offering. This will include any application for Leave without Pay during that Fortnight unless agreed to between the employee and the relevant Manager. In such event the Employee will be paid only for the actual hours worked in that fortnight.

Where Employees are not required for any rostered duty and no alternative duty is likely to become available then staff is to be notified as soon as possible. The Guaranteed fortnightly aggregate wage remains intact.

**Absent from Duty:**

If an Employee is absent from duty without authorisation, the Guarantee will be withdrawn on the fortnight concerned and the Employee will be paid only for the actual hours worked.

## 15. Minimum Payment

An Employee not required for rostered working that is given less than 10 hours notice shall be paid 4 hours pay.

An Employee who signs on and undertakes duty required shall be paid 4 hours, or the hours worked, whichever is the greater.

## 16. Excess Hours

**Full Time:**

Locomotive-grade Employees will be paid at 1.2 times the applicable rate for all hours worked in excess of 160 hours and up to 180 hours in a 4 week cycle.

Hours worked in excess of 180 hours in a 4 week cycle will be paid at 1.8 times the applicable rate.

**Permanent Part Time:**

Have the minimum number of hours agreed to in writing and may be required to work additional hours at ordinary rates up to a maximum of forty (40) hours per week;

Have any additional hours beyond 40 per week paid at the overtime penalty rates of 1.2 multiplied their normal rate.

**Full & Permanent Part Time:**

- Personal Leave will count as a shift towards excess hours/shifts. Personal Leave hours will be credited towards ordinary hours for the cycle.
- All Employees covered by this agreement shall make themselves available to work reasonable time outside of master rotation hours to ensure train running requirements are met.
- Unauthorised leave and Leave without pay will not be credited to Ordinary Hours for the purpose of calculating Excess Hours in the Pay Cycle.
- Any Employee called in for additional jobs shall not have their original roster adjusted, unless agreed.

## 17. Reporting Off / Back for Duty

### Reporting Off Duty:

When reporting off duty due to illness the Employee must notify the Rostering Officer a minimum of two hours prior to sign on time so that other arrangements can be made. Failure to give the appropriate notice could result in a refusal to pay personal leave for that shift.

### Reporting back for Duty:

When reporting back for duty, (ex-personal, or any other type of leave, etc) Employees will advise the Rostering Officer of their availability, prior to 1200 hours on weekdays or unless otherwise agreed between both parties.

When reporting "Back for Duty" ex Personal leave due to an illness/ailment and has required an absence from duty for only that day the Employee may report back on that same day.

## 18. Timesheets

Time sheets must be submitted at the completion of each individual shift, and all tasks including trips, hours worked, etc **MUST** be completed on the Timesheet, by all Locomotive-grade Employees. All Timesheets not received by 1600 Monday (after period) will not be included in that pay and once received will be paid in the next period. Time sheets may be submitted electronically, by fax or hand delivered to Head Office in Willimastown.

## 19. Driving Company Motor Vehicles

EL ZORRO will provide a motor vehicle in accordance with Attachment B.

Locomotive-grade Employees holding a current car driving licence are required to drive EL ZORRO Company vehicles as per rotation. Should the Employee not hold a current licence, other arrangements will be made. When an Employee is required to drive Company vehicles for purposes in connection with their work or transfer arrangements, this time to be recognised and paid.

Company motor vehicles will not be driven by Employees who have in excess of eleven (11) hours on duty since their time of signing on. It is expected that all crews in so doing the above will be in accordance with the EL ZORRO Fatigue Management Policy.

All Employees, including the driver of the Company vehicle, being transported in a Company vehicle, will be fully covered for personal injury, or some other equivalent insurance, in the event of an accident causing personal injury.

## Attachment A – Minimum Standards of Accommodation

Application - (Applies to Employees on Temporary Transfer who elect not to arrange their own accommodation or to Employees travelling to Rest on a single away from home depot shift and return)

Location and Amenity - Apartment / Hotel / Motel accommodation must be in a quiet location and the rooms in these establishments should be as acoustically sound as possible to prevent external noise or noise from adjacent rooms.

Apartment / Hotel / Motel requirements – Apartment / Hotel / Motel type of accommodation must:

- Be within easy walking distance to the sign on point or transport must be provided
- Be regularly cleaned and serviced
- Have reverse cycle air conditioning with individual adjustment provided
- Have hot and cold running water
- Have sufficient power points
- Have a draft excluder fitted to any external doors
- Have drapes and or blinds to exclude daylight
- Have key security for individual rooms
- Have no less than king single size ensemble beds
- Have fitted carpet provided in the accommodation except wet areas
- Have a wardrobe for hanging clothes
- Have a chair and table provided in the accommodation
- Have a refrigerator
- Have a colour TV
- Have a mirror in the accommodation
- Have separate bathroom/toilet facilities
- Have a sanitary disposal unit
- Provide the Employee with an allocated room which is available for the duration of the stay
- Provides clean towels (bath, hand and floor mat) and fresh linen supplied for use by Employees
- Provide a spare pillow & blanket available for each room/occupant
- Have a radio alarm clock
- Have a direct dial telephone for a reasonable number of outgoing calls
- Have clothes drying facilities as well as an iron & ironing board
- Have cooking/kitchen facilities including microwave oven, toaster, tea/coffee facilities, crockery and cutlery (*It should also be noted that hotel / motel accommodation generally does not provide specific cooking/ kitchen facilities*).

Compliance - In addition the accommodation must comply with the relevant State Fire Codes for accommodation specific buildings. This includes (but is not limited to) Fire Alarms and Smoke Detectors, Sprinkler Systems if applicable, Fire Fighting Equipment, Fire Escapes, Emergency Exits and Signage, and Evacuation Procedures.

Inspection – Accommodation proposed for regular use may be inspected by a nominated workplace representative and the employer representative. The inspection must be conducted based on the requirements of this standard, and the relevant inspection sheet completed and made available to all parties. Inspection may be waived by local agreement.

## **Attachment B - MINIMUM STANDARD OF MOTOR VEHICLES**

When it is necessary to provide a Company motor vehicle for train crews, the Company will make all genuine attempts to ensure the vehicle meets reasonable standards in regard to:

- Cruise Control
- Cleanliness
- Air conditioning
- Automatic Transmission
- Power front windows
- Power mirrors
- Air bags
- Roadworthiness
- First Aid Kit
- Fire Extinguisher

EL ZORRO Employees holding a current car driving licence must drive EL ZORRO Company vehicles. Should the Employee not hold a current licence, other arrangements will be made.

Employees driving EL ZORRO Company vehicles must obey all road rules and drive in a safe and courteous manner.

The driver of an EL ZORRO motor vehicle is responsible for any fines which may be incurred by the driver resulting from the operation of the motor vehicle.

Employees must ensure that the interior of the motor vehicle is left in a clean condition on completion of use.

Employees must notify management of any accident or mechanical issues with a motor vehicle so that appropriate action can be taken.

## **ATTACHMENT C – JOB SHARING CONDITIONS**

El Zorro recognizes that it has responsibility for ensuring that it has a sustainable workforce for the future and will continue to promote social responsibility by having flexible working arrangements that encourage a work life balance and assists employees to meet family responsibilities.

Whilst El Zorro is vigilant of ensuring that it meets operational requirements in regard to delivering services in regional locations, job share arrangements will provide the opportunity for employees to combine work and family responsibilities, maintain and further develop skills and assist with transition from full time employment when nearing retirement.

### **Definition**

A job share position is defined as when 2 employees are employed to share the duties of one full time position. The position is held jointly and is conditional upon the offer of job share being accepted by both the employees for position.

### **The Process**

It is appreciated that there are a number of circumstances that may apply to employees who wish to participate in job share arrangements such as,

- Transition to Retirement,
- combining work and family responsibilities
- The ability for an employee to maximize superannuation benefits through exercising options when available.  
For each of the considerations the following frameworks will apply;
- Where two employees agree to a job share position one will vacate their rostered position and share the full time rostered position of the other. After this process, the two employees equally occupy the one full time position

The filling of the job share position may be accomplished in a number of ways for example,

- if one employee is of retirement age and wishes to access superannuation by serving notice to their superannuation body of their intentions to end their full time employment and then be re-employed on the job share position, or
- If both employees are at retirement age, they may end their full time status with the superannuation body, both accessing their superannuation benefits, and take up the job share arrangement in accordance with this agreement.

The full time position and work rotation is divided between the participants and will be no less than a week and up to a maximum of three months in duration. Participants will work on a full time basis during their respective agreed work rotations. The division of working time will be agreed between the two participants, but the normal split is on a 50/50 basis. Pay rates and leave entitlements are the same as full time employees but are calculated on a pro rata basis.

Annual leave will accrue on a pro rata basis for both employees and would be taken when rostered as the full time position. Job share employee who has worked on a 50/50 basis for a full year must be rostered leave as required for a full time employee and taken as 2.5 weeks for each individual consecutively over 5 weeks.

A job share working arrangement consists of a minimum of five (5) shifts per fortnight to a maximum of three months or as prescribed in the following dot points:

- One week working and one week off: or
- One month on and one month off to a maximum of 3 months on and 3 months off.

### **Transition to Retirement**

An employee appointed to a job share position who has accessed his superannuation is required to resign from their full time position. All leave entitlements will be paid out on resignation. A employee appointed to a job share position will be

considered a "new" start employee in regards to sick leave annual leave, and long service leave (no prior service will be recognized). For the purposes of long service leave prior service will be recognized provided the amount of annual leave and long service leave accrual paid out on resignation covers any period between resignation and the time that job share position commences.

### **Superannuation Option**

Where two employees want to exercise superannuation options and they both wish to work a job share position the following framework will apply:

The employee who attains the age for access to superannuation options first will be required to resign from their full time employment. All leave entitlements will be paid out at the time of resignation. The roster worked by this employee in their full time employment will be retained and will be split between the two job share employees.

The employee who attains the age at the latter date will not be required to resign from their full time employment until they attain the age required for the option. During this interim period they will be required to work reduced hours. At the time they attain age 54/11 they will be required to resign from their full time position and to make an application for a part time/job share position. The maximum period for this interim work arrangement is nine (9) months. During this interim period sick, annual and long service leave entitlements accruals will be based on the hours worked.

Appointment to a job share position will be based on a current Category 1 Medical and fitness for duty, experience and skills, employment history which amongst other things will take into consideration attendance record and from a sequencing perspective only, the date of attaining the age for the superannuation option.

### **Work/Family Responsibilities**

It is recognized from time to time that family responsibilities may impact on the ability of an employee fulfilling a full time employment arrangement. In these circumstances should an employee wish to work under a job share arrangement the following framework will apply:

The employee must provide evidence of the need to work reduced hours due to family responsibilities. Should the duration of a job share arrangement due to family responsibilities extend beyond 2 Years, the employee may be required to resign from their full time employment and be employed as a part time employee. An employee who wishes to work reduced hours on a job share arrangement will not be required to resign from their full time employment for the duration of the period that they are working reduced hours.

### **Selection**

El Zorro (Human Resources) will seek expressions of interest from employees interested in potential job share opportunities to establish a list in accordance with the job share criteria, with appointments made based on the order of date of application.

### **General Conditions**

Appointment to job share position will be conditional on El Zorro being able to appoint both "halves" of the job share position and will be subject to El Zorro having sufficient employees available to deliver service plan requirements. All terms and conditions of employment, salary and leave entitlements will be on a pro-rata basis for all existing and future award and agreement provisions, and the overall duties and responsibilities of the "whole" position will be shared by both the job share position partners.

During periods of short term absences e.g. sick or annual leave the remaining job share partner, by mutual agreement may increase their hours of work to undertake the additional shifts resulting from the absence of their job share partner.

Extra shifts outside of the designated job share positions will only be offered to job share employees on the basis that no full time employee is available to undertake the additional shift.

The terms of the job share arrangement will be in writing and will include rotation of shifts and the hours to be worked. The job share employees can only alter the agreed working arrangement by mutual consent with El Zorro.

### **Resignation**

In the event that a resignation is received from one or both job share employees the vacant job share position(s) may be offered to employees who have expressed an interest for the position of job share. If there are no suitable employees to fill the vacant "half" this will be covered by overtime in the affected depot until it is either filled or the other job share employee resigns. If after a period of three months the vacant half of the position is unable to be filled, the job share employee will be required to revert back to full time employment.

If both job share employees resign simultaneously and El Zorro after reviewing the list and/or seeking expressions of interest for employees wishing to participate in a job share position is unable to fill both halves of the vacant position expressions of interest will be sought for a full time employee.

**Access & Equity**

Job share employees shall have the same access as full time employees to training, employee assistance program and trauma counselling.

**DECLARATION AND SIGNATORIES:**

**Declaration:**

This Enterprise Agreement has been negotiated through extensive consultation between management and Employees. The content of the agreement has been canvassed with all parties.

**Future Negotiations:**

The parties agree to commence negotiations on a new agreement no later than three (3) months before the nominal expiry date. This agreement will not preclude the negotiation of other agreements between the parties during the term of this agreement.

**No extra claims:**


During the term of this Agreement both parties agree that they will not pursue any extra claims unless provided for in this agreement.

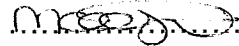
**Signatories:**

This Agreement has been developed through extensive consultation. All parties are entering into this Agreement with full knowledge as to the content and effect of the document.

Signed for and on behalf of  
**El Zorro Transport PTY LTD**

in the presence of

  
.....  
El Zorro Transport (Director)  
Ray Evans  
Date 28/10/2011

  
.....  
Witness  
Date 28/10/2011

Signed for and on behalf of the  
**Australian Rail, Tram and Bus Industry Union**

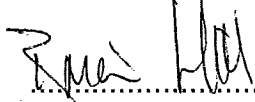
in the presence of

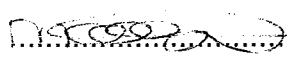
.....  
Rail Tram & Bus Union (National Secretary)  
Allan Bardon  
Date / /

.....  
Witness  
Date / /

Signed for and on behalf of the  
**Australian Rail, Tram and Bus Industry Union**

in the presence of

  
.....  
Rail Tram & Bus Union (Divisional Secretary Vic)  
Brian Hill  
Date 28/11/2011

  
.....  
Witness  
Date 28/11/2011

Signed for and on behalf of the  
**Australian Rail, Tram and Bus Industry Union**

in the presence of

.....  
Rail Tram & Bus Union (Divisional Secretary NSW)  
Robert Hayden  
Date / /

.....  
Witness  
Date / /

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Signed for and on behalf of  
El Zorro Transport PTY LTD

in the presence of

Address: .....  
83-89  
Darwick Street  
Redfern  
NSW 2016  
Date 28/10/2011

Witness .....  
Address: .....  
51a Albemarle  
Street,  
Williamstown North  
VIC 3016  
Date 28/10/2011

Signed for and on behalf of the  
Australian Rail/Tram and Bus Industry Union

in the presence of

.....  
Rail Tram & Bus Union (National Secretary)  
Allan Bardon  
Date 7/12/11

Witness .....  
Date 7/12/11

Signed for and on behalf of the  
Australian Rail, Tram and Bus Industry Union

in the presence of

.....  
Rail Tram & Bus Union (Divisional Secretary Vic)  
Brian Hill  
Date 2/11/2011

Witness .....  
Date 2/11/2011

Signed for and on behalf of the  
Australian Rail, Tram and Bus Industry Union

in the presence of

.....  
Rail Tram & Bus Union (Divisional Secretary NSW)  
Robert Hayden  
Date 9/12/2011

Witness .....  
Date 4/12/2011