



**TWU
SUBMISSION
ON THE
FAIR WORK
AMENDMENT
(SUPPORTING
AUSTRALIA'S
JOBS AND
ECONOMIC
RECOVERY)
BILL 2020**

**SWISSPORT/
AEROCARE
CASE STUDY**



INTRODUCTION

The Transport Workers' Union of Australia (TWU) represents tens of thousands of men and women in Australia's aviation, oil, waste management, gas, road transport, passenger vehicles and freight logistics industries.

With over one hundred years' experience, the TWU has been proactive in establishing industry standards that improve the lives and safety of transport workers, their families and the community. The TWU covers all workers in the aviation industry, with large groups of members in ground handling, fleet presentation, cabin crew, airline catering, security and pilots.

The TWU is of the view that many of the Government's proposed IR changes will result in workers being left worse off. This submission will focus on proposed changes to the Better Off Overall Test (BOOT) which will almost certainly leave workers worse off in an already decimated aviation industry. The TWU supports the ACTU's substantive submission on the industrial relations bill.

SWISSPORT: A CASE STUDY

Swissport, formerly Aerocare, operates a low-cost model to win contracts from airlines over competitors. The company grew 300% over a four-year period and now employs 3,000 workers in ground-handling services. It is contracted by the major airlines operating in Australia to work in all major airports.

Swissport is set to grow even further, after winning the ground handling operations at Australia's two busiest airports, Sydney and Melbourne, after Qantas announced that it would outsource its entire ground operations this year.

Swissport employs all of its workers, save for senior managers, on a "permanent part-time" basis or as casuals. The company's downward pressure on the industry arises out of an enterprise agreement, approved in 2012 and in place until 2020 despite union objections. This enterprise agreement allowed for:

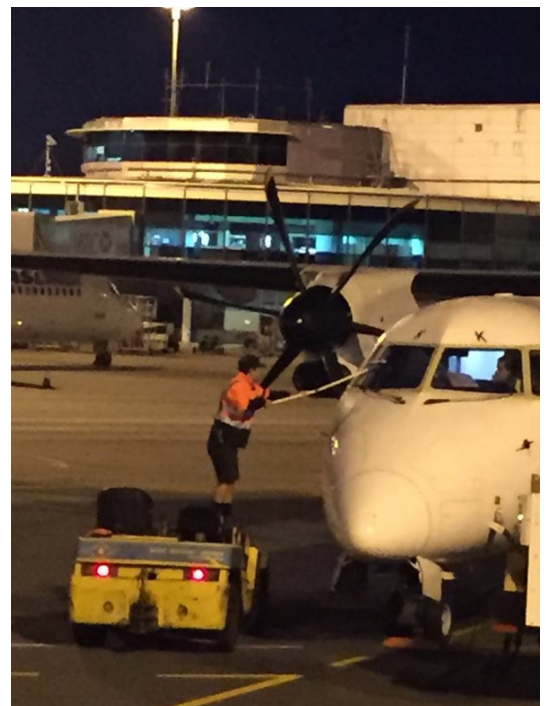


Photo: A Swissport/Aerocare worker stands on a tug to clean a plane

- 60 hours guaranteed a month (no weekly guarantee);
- Shift lengths of just three hours;
- Below award rates for weekends, Good Friday, Christmas and other public holidays;
- Absence of payment for overtime, night work and relevant aviation allowances per the minimum standards in the Airline Operations – Ground Staff Award; and
- The introduction of split shifts, which are precluded under the award.

These conditions meant many Swissport workers have struggled with daily life, unable to earn enough money and continually desperate to pick up extra hours.

In 2017, an exposé by the media revealed low paid Swissport workers were sleeping at the airports between split shifts [1]. Media also revealed that the working conditions had compromised safety with high injury rates among workers [2]. Failures at Swissport on security and safety were also exposed [3].

The 2012 enterprise agreement was in place paying thousands of workers below award rates for over seven years before it was terminated by the Fair Work Commission in 2019, its final days of operation in early 2020 [4] By then Swissport had failed already to get its 2017 enterprise agreement approved [5] and had lost a Federal Court case seeking approval for its split shifts [6].

A 2018 enterprise agreement has also had a long saga at the Fair Work Commission.



Photo: Split shifts impact on safety at the airport as chronic fatigue combines with understaffing. Injury records for Sydney International Airport show 132 injuries in just over one year out of a staff of 324



Photo: bedding area at Sydney International airport used by Swissport/Aerocare staff on split shifts

1. <https://www.abc.net.au/7.30/airport-workers-speak-out-about-poor-work/8371230>

2. <https://www.abc.net.au/7.30/airport-workers-speak-out-about-poor-work/8371230>

3. <https://www.smh.com.au/national/workers-point-to-security-flaws-at-canberra-and-perth-airports-20170803-gxousf.html>

4. <https://www.smh.com.au/business/workplace/wages-agreement-terminated-for-airport-workers-who-slept-at-terminal-between-shifts-20190806-p52egw.html>

5. <https://www.theguardian.com/australia-news/2017/aug/31/wage-deal-that-union-said-ripped-off-airport-workers-rejected-by-fair-work>

6. <https://www.smh.com.au/business/workplace/airport-workers-should-not-be-used-and-abused-court-rules-against-airport-split-shifts-20190125-p50trd.html>

Initially the Commission rejected the agreement on the grounds that it did not meet minimum rates or conditions but set multiple undertakings for Swissport to implement which the Commission then accepted. But in an appeal the Commission full bench rejected the patched-up deal [7]

Despite the high-profile media exposure and the multiple court cases that the company was embroiled in, the Federal Government refused to step in and hold the company to account over its treatment of workers and over its standards in safety and security. In fact, then Federal Employment Minister Senator Michaelia Cash backed the scandal-ridden company in 2017, accusing the TWU of “smears” by speaking out on behalf of workers [8].

The Qantas board also appears to have expressed no reservations about awarding the airline’s entire ground operations to Swissport at its two biggest sites, Sydney and Melbourne domestic terminals at the end of 2020.

Companies like Swissport continue to have a degrading effect on the aviation industry, our community and the wider economy by dragging standards down. But it is the airlines and airports at the top of the supply chain which profit from the low-cost contracts awarded to companies like Swissport. This profit is then funnelled into the pockets of investors, shareholders and senior management.



Photos: A Swissport/Aerocare vehicle used to tow aircraft was used at Canberra airport for several days with a smashed windscreen

7. <https://www.smh.com.au/politics/federal/after-four-years-aviation-giant-s-enterprise-agreement-is-still-notapproved-20200814-p551q6.html>

8. <https://www.theaustralian.com.au/nation/michaelia-cash-slaps-twu-for-smear-on-aviation-firm/newsstory/6b648f0e1463fbd845be8ef03522b45c>

PROPOSED CHANGES

Even after all of the aforementioned rejections of enterprise agreements and work practices by the Fair Work Commission and Federal Court, Swissport has continually sought to gain approval for enterprise agreements and work systems which do not meet Award standards.

If, because of the impact of Covid-19 in the aviation industry, Swissport is able to have an enterprise agreement approved due to being able to disregard the BOOT test which is explicitly worse than the Award then this will have a devastating impact on an aviation industry that has already had wages and conditions slashed as a result of Covid-19.

This is an industry that even before the impact of Covid-19 had seen real wages go backwards over the seven years prior to 2020 as can be seen by the below [9]:

Qantas Airways Limited Level 4 2013	Qantas Ground Services Level 4 2020	Seven Year Wage Growth	Seven Year CPI at 1.8% per year	Seven Year Real Wage Growth
\$22.61	\$23.78	5.2%	12.6%	-7.4%

A survey of aviation workers laid out starkly the effect of low wages and underemployment: 68% of respondents said their income did not meet living costs while 76% said they would not be able to afford to retire at 65 [10].

Covid-19 has seen thousands of redundancies in aviation and ground handling in particular and has seen Qantas deliberately outsource its ground handling operations to contractors using cheaper labour. The Government's proposed changes to the BOOT will further reduce wages for current Swissport workers and put downward pressure on all other ground handling operators across the country to follow suit in order to retain and win work. This is an industry where there are already: low wages; underemployment with guarantees of no more than 20 hours per week; and insecure employment. Any legislative changes which further allows the erosion of wages and conditions to undermine Award minimums will further destroy standards in aviation.

9. Qantas Airways Limited and Q Catering Limited – Transport Workers Workplace Determination 2012 and Qantas Ground Services Pty Limited Ground Handling Agreement 2015.

10. https://www.twu.com.au/wp-content/uploads/2020/12/The-Qantas-Effect_071215.pdf

RECENT DEVELOPMENTS

On January 29, 2021, after being required by the Full Bench of the Fair Work Commission to provide further undertakings in order to have the 2018 enterprise agreement pass the BOOT, the Fair Work Commission approved the enterprise agreement with significant undertakings which dealt with some of the BOOT issues including ensuring workers forced to work split shifts in a day are provided with penalty rates during the second shift.

Firstly, under the Government's proposed IR changes it is likely that many of the below minimum Award standards plaguing this Enterprise Agreement would not have even required undertakings.

Secondly, we are of the view that even with significant undertakings this enterprise agreement may still fail the BOOT and that a further appeal to the Full Bench of the Fair Work Commission may be appropriate. However we have serious concerns that if the Government's proposed IR changes are made into law, that a successful appeal in the Swissport enterprise agreement would result in the company using the lack of the BOOT test to negotiate an Enterprise Agreement with even lower standards with none of the sub-standard undertakings. This presents workers with a Hobson's Choice – either accept the sub-standard outcome or challenge it and risk an even worse outcome.

Aviation workers faced with one of the most crippling years in terms of loss of work and income should not be locked into several years of low standards and poverty because of Government action.



Photo: A Swissport/Aerocare worker stands on bollards to direct a plane

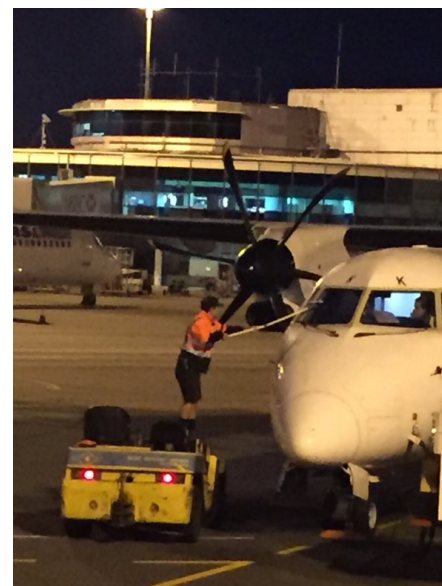


Photo: A Swissport/Aerocare worker stands on a tug to clean a plane