

IN THE FAIR WORK COMMISSION

Matter No: AM2014/67 – Redundancy Pay – *Black Coal Mining Industry Award 2010*

Applicant: Coal Mining Industry Employers Group

Respondent: Construction, Forestry, Mining and Energy Union

NOTE IN RESPONSE TO QUESTION BY THE COMMISSION

1. During the course of reply submissions I was asked if there had been any consideration of whether Clause 14 of the *Black Coal Mining Industry Award 2010* (‘the Modern Award’) was more beneficial than the relevant National Employment Standard during the arbitral process leading to the insertion of the clause in the Modern Award. I was not able to immediately assist the Full Bench with an answer to this question.
2. After consideration of the available material, the short answer appears to be that there was no explicit consideration of this particular point in the proceedings leading to the making of the Modern Award.
3. However, in the material tendered in these proceedings there is some evidence going to a consideration of the general adequacy of what would become Clause 14 of the Modern Award. In particular, the witness statement of Andrew Vickers (Ex.17) deals with these matters at paragraphs [55] to [58]. The Vickers Statement at Annexure AV-8 also attaches the written submissions of the CFMEU in matters AM2008/2 and AM2008/6, which at pages 7 to 9 raised certain issues in respect to the proposed clause “13 Redundancy” in the *Coal Mining Industry Exposure Draft*.
4. It is noted that the CMIEG list of objections (Ex.10) does not take issue with paragraphs [55] to [58] of the Vickers Statement, or Annexure AV-8.
5. In summary, the material referred to shows that whilst the exposure draft of the Modern Award contained a redundancy scheme in substantially the same terms as existed in the predecessor coal industry awards, the CFMEU did seek a number of amendments to the proposed clause. These were:
 - An amendment to clarify the operation of sub-clause 14.3(c), which was granted.
 - An amendment to provide that where an employer sought relief from the obligation to make a retrenchment payment, “...*the Commission will determine what terms are just and expedient*”. This proposal was rejected.
 - The deletion of the words “*ordinary and customary turnover of labour*” from the definition of redundancy. This proposal was rejected and the proposed words were retained.

Alex Bukarica
Construction, Forestry, Mining and Energy Union

16 May 2016