

From: Andrew Thomas [mailto:athomas@cfmeu.com.au]
Sent: Monday, 21 December 2015 11:30 AM
To: AMOD
Subject: CFMEU Submission in Reply - Clarification - Black Coal Mining Award 2015 - AM2014/67

Dear Sir/Madam;

Earlier today the CFMEU filed a submission in reply, in which we made some comments on the Ai Group submission.

For purposes of clarity, we wish it to be noted that comments in that submission were confined to the AIG Submission, dated 20 November 2015 on the revised exposure draft of the Black Coal Award 2015. It does not address any matter in the Ai Group submission in reply dated 7 December. If necessary these issues will be addressed during the next stage of the review.

I would be grateful if you could forward this email to the Full Bench and post on the relevant web site.

Yours Sincerely

Andrew Thomas

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FAIR WORK COMMISSION

FOUR YEARLY REVIEW OF MODERN AWARDS

AM2014/67 - BLACK COAL MINING INDUSTRY AWARD

SUBMISSION IN REPLY BY THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION, MINING AND ENERGY DIVISION ("CFMEU"), TO REVISED EXPOSURE DRAFT - PUBLISHED 4 NOVEMBER 2015

1. This submission is a reply to a number of the points raised by the Ai Group in its submission on the revised exposure drafts for sub-groups 1C - 1E and as concerns the "Black Coal Mining Award 2015".
2. The CFMEU makes specific comment on the following points raised in the Ai Group submission.

Clause 8.1 – Ordinary hours of work

3. At PN 86 of its submission, Ai Group raises a concern about the consistency of sub clause 8.1 in the revised exposure draft with s 147 of the Fair Work Act 2009. In general terms the Ai Group raises the issue of the interaction of s 147 with the ordinary hours of work provisions in modern awards at PN's 30 – 32 of its submission.
4. It is noted that the ordinary hours of work provision in the Black Coal Mining Industry Award 2010 provides that ordinary hours will be an average of 35 hours per week, with hours being averaged over the roster cycle (see sub clause 21.1). The revised exposure draft is worded differently – it refers to ordinary hours of 35 hours per week or an average of 35 hours per week over a roster cycle. In effect, however, there is no change in substance. In that regard the CFMEU is not aware of any issue being raised about the consistency of the current hours of work provision with s 147.

5. In the event the Full Bench determines that it is necessary or desirable for reasons expressed by the Ai Group, to amend the ordinary hours of work clause, the CFMEU submits that the Full Bench should not adopt the amendment as proposed by the Ai Group. It is submitted that the term “up to 35 hours” is conducive of unnecessary confusion. For example, the ordinary hours of work of a full time employee are 35 hours of an average of 35 hours, not “up to 35 hours”. The Ai Group proposals says that the ordinary hours of work of a full time employee can be less than 35 or an average of 35 per week. This is clearly incorrect.
6. In the alternative, the CFMEU would propose that the following wording be adopted in sub clause 8.1:
 - (a) *The ordinary hours of work of a full time employee are 35 hours per week, or an average of 35 hours per week over a roster cycle.*
 - (b) *The ordinary hours of work of a part time employee are as determined in sub clause 6.3 (a).*
 - (c) *The ordinary hours of work of a casual employee are up to and including 35 hours per week as determined in sub clause 6.4.*
7. It is submitted that the proposed wording in PN 6 above makes clearer the ordinary hours of work limits for the 3 types of employment covered by the Award and makes appropriate cross references to the sub clauses that expand on the terms and conditions of the ordinary hours of work of employees employed on a part time or casual basis.

Clause 13.1 – Penalty Rates

8. At PN 91, the Ai Group submits that sub clause 13.1 should be given the heading “Shift allowances”.
9. In doing so the Ai Group expresses a concern to ensure that the terminology used does not inadvertently negatively impact on employee and employer rights and entitlements in other legislation. In noting that concern, the CFMEU observes that whilst the current Black Coal Mining Industry Award 2009 does not refer to “shift allowances” but rather “Shiftwork rates”, no issue of inadvertent negative consequences have been raised. Nevertheless, we acknowledge that this is a matter to which the Full Bench should give consideration.

10. In PN 90, the Ai Group expresses a concern that shift premiums may be characterized as “penalties”. It is unclear as to why Ai Group has such a concern. As the CFMEU understands it, whether shift premiums are expressed as “allowances” or “loadings” or “rates” or something else, they fit into the broad family of penalty payments. The CFMEU notes, for example, that the exposure draft of the “Plain Language Draft” of the Pharmacy Industry Award 2015, which is being used as a template to draft a plain language modern award, describes payments for shift work as “penalty rates”.
11. Nevertheless, putting to one side what may be a semantic argument, the CFMEU is agreeable to the proposal by Ai Group to insert a sub heading “Shift allowances” in sub clause 8.1.
12. In that regard it is acknowledged that sub clause 15.9(b) of the revised exposure draft refers to “shift allowances”, as does sub clause 25.7(b) in the current Black Coal Mining Industry Award 2010 and that the reference to “shift allowances” is a reference to what are currently described as “Shiftwork rates” in the current Black Coal Mining Industry Award 2010.
13. For clarity sake, the CFMEU would submit that if the Full Bench is agreeable to the Ai Group proposal and inserts the sub heading “Shift allowances” in sub clause 8.1, that the cross reference “as per sub clause 8.1” be inserted after the term “shift allowances” in sub clause 15.9 of the revised exposure draft.

Other Comments

14. At PN 97, the Ai Group reiterates that it is seeking to vary sub clause 18.4 of the revised exposure draft. It is noted that the Ai Group has proposed a course of action to deal with this issue. Whilst the CFMEU is in the hands of the Full Bench on this question, the CFMEU does not have any objection to the Ai Group proposal to deal with the matter.
15. At PN 104, the Ai Group notes that the exposure draft does not include the current award provision for accident pay. In that regard the CFMEU refers to PN’s 4 – 6 of our submission on the revised exposure draft, which makes the same observation and notes that the revised exposure draft

informs us that transitional provisions have not been included pending the outcome of the review. In that submission the CFMEU also notes that given the proceedings on accident pay in the Black Coal Mining Award 2010 that accident pay provisions should appear in the final version of the "reviewed" modern award.

16. The CFMEU otherwise concurs with the position adopted by the Ai Group in PN's 85, 87, 92, 93, 94, 95, 96, 98, 99, 100, 101, 102, and 103

CFMEU Mining and Energy Division

21 December 2015