

From: Andrew Thomas [mailto:athomas@cfmeu.com.au]
Sent: Tuesday, 25 October 2016 2:56 PM
To: AMOD
Subject: AM2014/47 - Common Issue - Annual Leave - Black Coal Mining Industry Award 2010

Dear Sir/Madam;

On 13 October 2016, the Full Bench issued a draft determination regarding changes to the annual leave provisions in the Black Coal Mining Industry Award 2010.

On 21 October 2016, the Coal Mining Industry Employers' Group (CMIEG) filed a submission making some comments on that draft determination.

The CFMEU has considered that submission and seeks to inform the Full Bench that it does not agree to the proposed changes to what in the draft determination becomes sub clause 25.12 – Shutdown (currently sub clause 25.10).

In particular we say that paragraph (c) in sub clause 25.10 as proposed by the CMIEG in its submission goes beyond the terms of the decision of the Full Bench ([2016] FWCFB 6836). At PN [84] the Full Bench states: "We propose to add some introductory words to clause 25.10 to make it clear that the shutdown term operates independently of the excessive leave term." In our submission, the provision at Point 5 of the draft determination achieves that objective clearly and precisely and with a minimum of fuss. The provision in paragraph (c) in the CMIEG draft sub clause operates to entitle an employer to require an employee to take a period of annual leave during the period of a shutdown. In our submission this is an attempt to re-introduce the provision of sub clause 25.4(c) of the current award so far as it applies to a shut down in circumstances where the Full Bench has determined to delete that sub clause. Further, paragraph (c) and (d) in the CMIEG draft sub clause are at cross purposes – paragraph (c) allows an employer to "require" that an employee take a period of leave, whereas paragraph (d) provides that the employee "may" opt for one of the stated courses of action. The current shutdown provision does not provide that an employer may require an employee to take annual leave and there are no grounds in the recent Full Bench decision to change that position.

As the draft determination makes the appropriate changes in accordance with the Full Bench Decision, the CFMEU submits that the draft determination should be made into the final determination unchanged as far as the Shutdown provision is concerned. We do not have any opposition to the proposed amendment to the draft determination as set out in paragraph 4 of the CMIEG submission as it expressed the annual leave entitlement in the same form as in the annual leave clause (see sub clause 25.2 and 25.3 of the current award).

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

Yours Sincerely

Andrew Thomas

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