

IN THE FAIR WORK COMMISSION

S 156 - 4 YEARLY REVIEWS OF MODERN AWARDS

AM2014/47 - COMMON ISSUE - ANNUAL LEAVE

SUBMISSION BY THE CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION, MINING AND ENERGY DIVISION

SHUTDOWN PROVISIONS IN THE ANNUAL LEAVE CLAUSE - BLACK COAL MINING INDUSTRY AWARD 2010

Introduction

1. This submission concerns the content of a shutdown provision in the annual leave clause in the Black Coal Mining Industry Award 2010 ('BCMIA'). It is being considered as part of the 4 yearly reviews of modern awards. To date it has been the subject of a number of proceedings in the Fair Work Commission ('FWC'), submissions from interested parties and decisions/statements of a Full Bench of the FWC.
2. The question before the parties and the FWC is what, in the circumstances of the black coal mining industry and conformity with the modern awards objective, is an appropriate shutdown clause to be inserted in the BCMIA.
3. The position of the Construction, Forestry, Mining and Energy Union, Mining and Energy Division ('CFMEU') is that the shutdown provision in the BCMIA should, other than a procedural change and that leave without pay count for service and be exclusive of public holidays, remain, as it currently exists. This shall be dealt with below.

4. This submission deals with the question and our position under a number of headings:
- The Contending Clauses.
 - History of the Shutdown clause in the Black Coal Mining Industry.
 - The Practice of Shutdowns in the Black Coal Mining Industry.
 - Shutdown Provisions, the Modern Awards Objective Review and the Modern Awards Objective
 - Summary and Conclusion.

The Contending Clauses

The current position and the CFMEU Position

5. Whilst it is recognised that the BCMIA has not been formally varied to incorporate the outcome of the decision that determined to delete the provisions allowing an employer to direct an employee to take annual leave as well as to insert the "excessive leave" clause, our picture of the current position includes those variations. Presently, those amendments are awaiting the outcome of these proceedings. Nobody has proposed anything different. Accordingly it is realistic to include the provisions of the Draft Determination for the purposes of the status quo.
6. Clause 25.10 of the BCMIA provides:
- That an employer must give 28 days' notice of any shutdown (full or partial) to employees affected or such shorter period as may be agreed.

- That an employee directly affected by a shutdown and who has an entitlement to annual leave may take all or part of that entitlement to cover the shutdown period.
 - That an employee affected by a shut down who does not have sufficient annual leave may elect to take leave in advance in accordance with clause 25.9.
7. As the Full Bench commented in its March 2017 Decision with respect to clause 25.10 of the BCMIA: *"However there does not appear to be any capacity for the employer to direct that annual leave be taken during the shutdown and no capacity for employees to be placed on leave without pay save that notice to take annual leave could be given by the employer in circumstances where the requirements of the model excessive leave provision have been met."*¹
 8. Under the current provision the employer has no right to direct an employee to take annual leave or to otherwise take leave without pay. The CFMEU supports the retention of this position
 9. An employee may take leave without pay if he/she so chooses and the employer consents. It would be an unusual occurrence for an employer to deny such leave in such circumstances.
 10. The CFMEU also submits that it is fair and reasonable that an employee taking leave without pay (either voluntarily or, if the FWC is against us, by compulsion) have that period of leave taken into account for the purposes of service.² Given that the leave is a product of the action of the employer and would not be taken in the absence of that action, it is fair in our

¹ 4 yearly review of modern awards - Annual Leave, [2017] FWCFB 959 @ PN [31]

² Whilst the provisions in the BCMIA for annual leave, personal leave and redundancy are based on years of employment as distinct from service, the entitlement to parental leave is, as per the NES, based on 12 month's service as it does under the Coal Industry Long Service Leave Act. It is noted that clause 41.10 of the Manufacturing and Associated Industries and Occupations Award 2010 provides that any leave taken as a result of a shutdown counts as service.

submission that the employee not incur any other penalty in these circumstances. It is distinct from a situation where an employee approaches his/her employer to take leave without pay.

11. The same treatment should apply to public holidays falling during a period of shutdown, namely that the public holiday should be paid. Again this is only fair in the circumstances.
12. The CFMEU does not object to a provision allowing for a shorter period of notice for employees who commence work after the 28-day notice period has been invoked. In that regard, it would most likely have been discussed prior to the employee commencing work.
13. In summary the CFMEU supports the current award position, modified to take any period of unpaid leave in account as service, to entitle an employee to public holidays and for a lesser than 28 day notice period for employees who commence employment within 28 days of any shutdown.

The provision in the "Revised Draft Clause 25.10"

14. The "revised draft" is attached to the directions issued by the Full Bench on 4 August 2017.
15. Relevantly, it can be distinguished from the current position by enabling an employer to direct an employee to take a period of annual leave on the condition that the direction is in writing and is reasonable.
16. There is no provision in the revised draft for any compulsion to take leave without pay.

The CMIEG Position

17. The latest draft from the CMIEG is attached to its submission as Annexure A.
18. Relevantly, it can be distinguished from the current position by enabling an employer to direct an employee to take annual leave during a shutdown and where the employee has insufficient annual leave accrual, *"then the employee is taken to be on leave without pay for the relevant period."*³ The only qualification is that a direction to take annual leave under clause 25.10 (d) must be reasonable and must be in writing. No such qualification applies to leave without pay.
19. By comparison with the revised draft clause 25.10, the relevant distinction is that an employee with insufficient annual leave is taken to be on leave without pay.
20. The notion that an employee is taken to be on leave without pay differs from an earlier draft clauses prepared by the CMIEG, which enables the employer to direct an employee to take leave without pay.⁴
21. It is difficult to precisely know why we see such a change in expression regarding the taking of leave without pay. If it is designed to circumvent any argument that it is not possible to include in an award a term directing an employee to take leave without pay, it is submitted that it does not achieve that objective.
22. We submit that regardless of how it is expressed, the end result is that an employee is compelled by a direction of the employer to take leave without pay in the absence of sufficient leave accruals and without the consent of the employee.

³ CMIEG Submission, 11 September 2017, clause 25.10 (d) (iii)

⁴ CMIEG Submission, 18 May 2017, Annexure A, clause 25.10 (d) (ii), (iii)

23. It is the employer who has determined to have a shutdown, it is the employer who has determined to direct employees to take annual leave and it is the employer who requires employees to take leave without pay in the absence of sufficient annual leave. It is not the case that by the art of wordsmithing an employee can simply be taken to be on leave without pay as if for no cause of the employer or for cause outside the control and direction of the employer.

History of Shutdown Provisions in the Black Coal Mining Industry

24. Up until the award restructuring process in the late 1980's, the coal mining industry was generally a Monday to Friday operation, with hours of work on weekends being performed on overtime.⁵

25. With respect to the taking of annual leave, the NSW Miners Award provided that in the absence of agreement it be taken in not more than three continuous periods per year. It also provided that leave be given and taken within a period of 12 months from the date of accrual.⁶

26. With respect to a shutdown, the 1982 Miners Awards provided:

There shall be a shutdown of productive operations for a period not to exceed three consecutive weeks per annum which shall in the absence of agreement be at Christmas provided that where the employer and the majority of employees at a mine or establishment agree production may

⁵ For example, the Coal Mining Industry (Miners) Award 1982, New South Wales defined ordinary hours as: ... 35 per week to be worked in shifts of 7 hours each bank to bank, including crib time of 30 minutes counted as time worked, Monday to Friday inclusive. (Clause 12 (a)) Hours of work could be varied by agreement (clause 12 (b) (i)). See The Coal Mining Industry (Miners) Award, 1982, New South Wales, C.R. 3129, dated 4 January 1983. A similar situation applied in Queensland. See Coal Mining Industry (Miners) Award 1982, Queensland, C.R. 3101, dated 1 December 1982, clause 9

⁶ Coal Mining Industry (Miners) Award 1982, New South Wales, C.R. 3129, clause 17 (c). A similar situation existed in Queensland. See Coal Mining Industry (Miners) Award 1982, Queensland, C.R. 3101, clause 13 (c)

*take place during such shutdown and the period and position of the shutdown may be varied.*⁷

*Where and (sic) employer shuts down his mine or establishment for the purpose of compliance with the provisions of this subclause he may allow those employees who are not then qualified for a full entitlement to leave to cover the period of shutdown on a proportionate basis at the prescribed rate for the employee's classification immediately prior to the commencement of such leave.*⁸

27. In other words, the practice in the coal mining industry was for the mine to have an annual shutdown of 3 weeks over the Christmas/New Year period. In some of the more "traditional" mines this practice continues.

28. In 1988 and as a result of the Award Restructuring Decision⁹, which involved changes to the hours of work regime in coal mines, a variation was also made to the shutdown provisions. The Order deleted the provision for a 3 week shutdown at Christmas/New Year and inserted a provision that an employer give 4 weeks' notice of its intention to shut down a mine or a section of a mine.¹⁰

29. When the Coal Industry Tribunal made The Coal Mining Industry (Production and Engineering) Interim Consent Award, September 1990, the provision for a shutdown remained as in the 1988 award variations: namely:

Where an employer decides to shut down the mine, or a section or sections thereof, the employer may allow those employees who are not then qualified for a full entitlement to leave to cover the period of shutdown, paid leave on a proportionate basis at the prescribed rate for the employee's classification

⁷ Coal Mining Industry (Miners) Award 1982, New South Wales, C.R. 3129, clause 17 (h) (ii). A similar situation existed in Queensland in clause 13 (h) (ii).

⁸ Coal Mining Industry (Miners) Award 1982, New South Wales, C.R. 3129, clause 17 (h) (iii). A similar situation existed in Queensland in clause 13 (h) (iii)

⁹ C.R. 4701, 8 September 1988

¹⁰ With respect to the NSW Miners Award, see C.R.4801, dated 10 October 1988 and with respect to the Qld Miners Award, see C.R. 4076, dated 10 October 1988

*immediately prior to the commencement of such leave. An employer who decides to shut down the mine or section or sections thereof shall give four weeks notice.*¹¹

30. When the then Australian Industrial Relations Commission made the Coal Mining Industry (Production and Engineering) Consolidated Award 1997, it inserted the following shutdown provision:¹²

29.11 Shutdown at a Mine

29.11.1. An employer who shuts down a mine or section of a mine must give employees four weeks notice of the shutdown.

29.11.2. Employees directly affected by the shutdown who are not yet entitled to a full annual leave entitlement may take that amount of leave accrued up to that time calculated using the formula in 29.9.

29.11.3. Payment for leave will be at the employee's classification rate immediately prior to commencing such leave.

31. Clause 29.11 was very much a reformatting of the prior clause.

32. The annual leave clause came under scrutiny as part of the "award simplification process" that followed the introduction of the Workplace Relations Act 1996 and the Workplace Relations and Other Legislation Amendment Act 1996.

33. Following a decision and order of Commissioner Harrison, the shutdown provision appeared as follows:¹³

29.11 Shutdown

29.11.1 An employer who shutdowns all or any part of its operation must give employees at least 28 days notice of the shutdown

¹¹ Coal Mining Industry (Production and Engineering) Interim Consent Award 1990, C.R. 4414, dated 23 November 1990, clause 15 (k)

¹² Coal Mining Industry (Production and Engineering) Consolidated Award 1987, Print P7386, clause 29.11. Clause 29.9 contained a table setting out an employee's pro rate leave hours depending upon whether the employee was entitled to 5 or 6 weeks annual leave.

¹³ Decision Print R4611, dated 16 July 1999 and Order Print S0657, dated 4 November 1999

or such shorter period as agreed between the employer and the affected employees.

29.11.2 Employees directly affected by the shutdown who have annual leave credits may take all or part of those credits during the shutdown period.

29.11.3 Employees directly affected by the shutdown who are not yet entitled to annual leave, may take leave during the shutdown period calculated using the formula in 29.9.

29.11.4 Payment for the leave will be at the employee's classification rate immediately prior to commencing leave.

34. The variation to the predecessor clause was the insertion of the new sub clause 19.11.2. In the decision there is a reference to the Unions objecting to an employer having a right to require the taking of annual leave *instead of or in respect of a shutdown only*, and as is clear, no such right was created and further the Commission regarded *the majority of the variations proposed by the employer as essentially a rewrite of existing entitlement in a plain English and simplified format.*

35. Staff employees in the coal mining industry in the period leading up to the introduction of the modern awards were covered by the Coal Mining Industry (Staff) Award 2004.¹⁴ As at December 2007, the shutdown provision was as follows:

26.11 Shutdown at a mine

26.11.1 An employer who shuts down a mine or section of a mine must give employees four weeks' notice of the shutdown or such shorter period as agreed between the employer and the affected employees.

26.11.2 Employees directly affected by the shutdown who have annual leave credits may take all or part of those credits during the shutdown period.

¹⁴ AP835164

26.11.3 Employees directly affected by the shutdown who are not yet entitled to annual leave may take leave during the shutdown period calculated using the formula in 26.9

36. Other than an absence of any reference to a reference to payment at the rate prior to the taking of annual leave, the position in the "Staff Award" is identical to the "Production and Engineering Award."
37. As far as the BCMIA is concerned it adopted in essence the provisions of the Staff Award and the Production and Engineering Award other than the reference in the Production and Engineering Award to payment being the rate applicable at the time the annual leave was taken.¹⁵

The Practice of Shutdowns in the Black Coal Industry

38. To address the practical operation of shutdowns in the black coal industry, the CMIEG has presented a survey and the CFMEU has provided statements from three officials who operate in the industry on a day-to-day basis.
39. With respect to the survey filed by the CMIEG, we make the following observations:
- 39.1 From the results of the survey, it is not possible to determine how frequent is the use of shutdowns by the respondent companies, as the question is not asked. At its highest the best that can be said is that relying on the responses to the reasons for shutdowns there have been 11 shutdowns over an indefinite period of time.¹⁶ On this basis the incidence of shutdowns is marginal at best. Further,

¹⁵ BCMIA, clause 25.10

¹⁶ It may well be that some of the reasons set out were applicable to the same shutdown and in that case the number given is not a reasonable assessment of the number of shutdowns. With respect to the indefinite period of time, the survey presents no time limitation other than pre and post BCMIA.

the data does not contain relevant information such as when the shutdowns occurred and how long they lasted.

39.2 The incidence of 11 shutdowns in the coal mining industry is even more marginal when it is considered that each of the companies surveyed owns and operates more than one coal mine that is physically distinct and operates as a separate entity from other mines. Removing BMA and Idemitsu who indicate that they have not had a shutdown, the remaining companies have control of in the order of 40 coalmines.¹⁷ In that respect we are talking about 11 shutdowns over an indefinite period of time in some 39 coal mines. Again, the marginality of shutdowns is manifest.

39.3 The survey contains no explanation as to whether the respondent relied on the BCMIA or an enterprise Agreement to institute a shutdown and to what extent a provision in an enterprise agreement may differ from an award. If the situation is satisfactorily covered by an enterprise agreement it diminishes the need for changes to the BCMIA. In that regard, we note the comment of the Full Bench where it stated: *"It would also be open to the parties to address these issues in enterprise bargaining"* and went on to identify the comment in the CMIEG's submission that there is a high incidence of enterprise agreements in the black coal mining industry and the Full Bench endorsed the observation that to the extent that where an employer is concerned that the award will not provide sufficient flexibility it can always address that concern in an enterprise agreement.¹⁸

¹⁷ For an indicative list of the mines owned and operated by these companies, see Annexure A

¹⁸ 4 yearly review of modern awards - Annual Leave, [2016] FWCFB 6836 @ PN [78]-[79]

- 39.4 Of the 9 companies in the survey, 5 companies look to avoiding a leave without pay situation and 2 companies provide specific alternatives such as training or undertaking general duties.¹⁹
- 39.5 Nearly 50% of the shutdowns are recorded as partial shutdowns, which means that work elsewhere in the coal mine is continuing. This militates against the need for employees to take leave against their will.
- 39.6 Of the 7 companies who responded that they have experienced a shutdown, only 3 companies responded that employees were required to take unpaid leave. They were Glencore, Centennial and Peabody. Each of these companies has Enterprise Agreements providing for shutdowns.²⁰
- 39.7 The survey reveals that the introduction of the BCMIA did not change their circumstances. Given this result, it is difficult for the CMIEG to advocate for change that its members do not appear to need.
- 39.8. The survey reveals that of the 9 respondents 6 of them claim not to have had any dispute over the use of unpaid leave during a shutdown. The other 3 respondents appear not to have responded. Whilst this may mean many things depending upon the circumstances, it does show that the BCMIA in its current form has not resulted in agitation for change. This is important given that the BCMIA and its predecessor awards do not provide an employer with any right to direct employees to take leave without pay.

¹⁹ See the comments under the issue of payment during shutdowns.

²⁰ See for example Peabody Energy Australia Wambo Open Cut Enterprise Agreement 2015, [2015] FWCA 8474, clause 14, Centennial Myuna Enterprise Agreement 2016, [2016] FWCA 2036, clause 18.10, Liddell Open Cut Enterprise Agreement 2013, [2014] FCA 279, clause 13.1 (b) (vi)

40. The evidence presented by the CMIEG, in our submission, contrasts poorly in quality terms against the evidence presented by the CFMEU.
41. The CMIEG presents evidence in the form of a survey that does not allow for conclusions of substance or certainty. The CMIEG has not produced evidence in any direct form. In any event, the CMIEG evidence tends to support the position of the CFMEU regarding the marginality of shutdowns in coal mine operations and their negligible impact when they do occur.
42. The CFMEU presents evidence from three current officers, who between them have some 87 years' experience either "at the coal face" or as officers of the CFMEU. Further, being from the Queensland District, the Northern District and the South Western District, they cover what is overwhelmingly the coal mining industry in Australia.²¹ They are currently responsible for the CFMEU activities as some 26 coal mines, 6 washeries and various contractors. Historically their experience extends beyond the mines directly mentioned in their evidence as coal mines they currently deal with directly. As officers of the various Districts, the witnesses participate in the activities of the formal decision making bodies and regularly converse with other officers. As such they are in a position to speak with authority about the incidence of shutdowns in their area of interest. These witness have given direct evidence on their experience as employees and as officers in the respective District.
43. In his evidence, Mr. Robin Williams, Vice-President of the Northern District of the CFMEU deposed:
- In the early days of his employment in the coal mining industry, it was common for coal mines to shut down over Christmas for a period of 3

²¹ In addition to the coal mines in NSW and Queensland there are a few coal mines in Tasmania and Western Australia.

weeks. This allowed for any necessary maintenance work to be performed. It was also an award provision.

- Following an award amendment in 1988, the incidence of the 3 weeks leave disappeared although it is understood that it continues to operate at a number of the older underground mines.
- In his time as Vice President, Robin Williams has not dealt with, nor is aware of any situation where a coal mine company, other than Glencore in 2014 has shut down and compelled its employees to take some form of leave.
- Coal mine companies do shut down a mine on a partial basis to undertake maintenance of a particular piece of plant or equipment. A dragline is a typical example. However, employees are not compelled to take any form of leave, participating in the maintenance work, performing work elsewhere in the mine, or taking leave voluntarily.
- The situation at Glencore in 2014 was a unique event. It had not been experienced before or since.
- The issue of shutdowns has not been the subject of disputation generally nor an issue for enterprise bargaining.
- The survey material filed by the CMIEG is not capable of proper analysis or application to the situation in the Northern District. To the extent that the survey extends beyond partial shutdowns for maintenance purposes and other than the unique situation at Glencore in 2014, it is inconsistent with the experience of Robin Williams.
- The experience of Robin Williams is that the coal mine employers are more focused on endeavouring to have continuous operation 365 days a year rather than introduce or extend the requirements for shutdowns.

44. In his evidence Mr. Steven Pierce, Vice President of the Queensland District deposed:

- Prior to 1988, the position in Queensland was that the coal mines shut for a period of 3 weeks over Christmas. This was an award provision that was altered in 1988.
- Shutdowns occur on an ad hoc basis across the coal mining industry in Queensland.
- The yardstick for a shutdown is a requirement for maintenance of a particular piece of plant or equipment such as a washery or a dragline. In such circumstances there is a partial shutdown only with any temporary surplus labour being absorbed into activities elsewhere in the coalmine.
- Steve Pierce is not aware of any incidence where employees have been compelled to take annual leave or leave without pay other than Glencore in 2014. The Glencore situation was a unique event that had not been experienced before nor been experienced since.
- There has not been any approach from a coal mining company to either insert a new shutdown provision or amend an existing shutdown provision in an enterprise agreement.
- In the past, enterprise agreements with shutdown clauses have adopted the provision in the BCMIA.
- There have not been any disputes regarding shutdowns

- A more contentious issue is the endeavours by coal mine employers to have continuous mining over 365 days per year. This is the opposite of seeking greater discretion to shut down the coal mine.

45. In his evidence, Mr. Robert Timbs, Vice-President of the South West District deposed:

- As an employee, he could only recall one occasion in the early 200's where the coalmine was shutdown and this was due to the coal mine running out of room to stockpile coal. At that time Robert Timbs took long service leave.
- Traditionally coal mines used to close at Christmas and a skeleton crew remained at work to monitor the mine.
- In 2014, Glencore shutdown its coal operations for a period of 3 weeks over Christmas on the basis of an oversupply of coal and low coal prices. It was a unique event that Robert Timbs has not experienced before or since.
- In practical terms, shutdowns are not used that much.
- He is unaware of any dispute over a shutdown.
- He has seen the survey of the CMIEG and states that it is of limited value and even so, does not reflect the position as he has experienced it.

46. In our submission, the evidence reveals that there is no issue in the coal mining industry regarding shutdowns and in particular the operation of the BCMIA as a safety net provision in that regard. Shutdowns occur infrequently at best (even on CMIEG's evidence), they are partial in nature,

based on the need for maintenance, and work is found for any employee directly affected by a shutdown. Where they have operated such as the Glencore example it was a rare and unique event the BCMIA was not a barrier to the company.

Shutdown Provisions, the Modern Awards Review and the Modern Awards Objective

47. In a recent decision that addressed the operation of the 4 yearly modern award reviews as required by the provisions of the Fair Work Act 2009, a Full Court of the Federal Court held that the review is "a review of the modern award as a whole".²² It is a review at large with the fulfillment of the modern awards objective" being achieved "by s 138 - terms may and must be included only to the extent necessary to achieve such an objective."²³ In that sense, the Full Court held that the review is not limited to "focusing upon any posited variation as necessary to achieve the modern awards objective as it is under s 157 (1) (a)."²⁴
48. In that respect the Full Court held that it was necessary "for the Commission to review the award and, by reference to the matters in s 134 (1) and any other consideration consistent with the objective, come to an evaluative judgement about the objective and what terms should be included only to the extent necessary to achieve the objective of a fair and relevant minimum safety net."²⁵
49. The Full Court found that the notion that the existing provision of modern awards as made in 2010 were to be regarded as prima facie compliant with the modern award objective is an acceptable proposition in light of s 134 (1) (g).²⁶

²² CFMEU v Anglo American Metallurgical Coal Pty Ltd., [2017] FCAFC 123 @ PN 28

²³ CFMEU v Anglo American Metallurgical Coal Pty Ltd., [2017] FCAFC 123 @ PN 28

²⁴ CFMEU v Anglo American Metallurgical Coal Pty Ltd., [2017] FCAFC 123 @ PN 28

²⁵ CFMEU v Anglo American Metallurgical Coal Pty Ltd., [2017] FCAFC 123 @ PN 29

²⁶ CFMEU v Anglo American Metallurgical Coal Pty Ltd., [2017] FCAFC 123 @ PN 38

50. The Full Court also found that the notion that regard needs to be had to the historical context applicable to each modern award and that there needs to be a “good or cogent reason to make a change to a modern award” are relevant features in addressing the requirement to maintain a stable modern award system.²⁷

51 The features of a modern award review find their genesis in the decision of a Full Bench of the FWC in *Preliminary Jurisdictional Issues Decision*.²⁸ In that Decision the Full Bench stated:

“The need for a ‘stable’ modern award system suggests that the party seeking to vary a modern award in the context of the Review must advance a merit argument in support of the variation. The extent of such an argument will depend upon the circumstances.... However, where a significant change is proposed it must be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation. In conducting the Review the Commission will also have regard to the historical context applicable to each modern award and will take into account previous decisions relevant to any contested issue.”²⁹

As the Full Court observed this must be seen in the context of a review of the Award as a whole.

52. Inherent in this process is the position that “there may be no one set of provisions which can be said to provide a fair and relevant minimum safety net of terms and conditions.”³⁰ To suggest otherwise is to suggest that all modern awards should be identical. This is also contrary to the view of the Full Bench that when taking into account the characteristics of

²⁷ CFMEU v Anglo American Metallurgical Coal Pty Ltd., [2017] FCAFC 122 @ PN39

²⁸ 4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues, [2014] FWCFB 1788 @ Point 3 in PN [60]

²⁹ 4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues, [2014] FWCFB 1788 @ Point 3 in PN [60]

³⁰ 4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues, [2014] FWCFB 1788 @ Point 6 in PN [60]

employees and employers, the application of the modern awards objective may result in different outcomes between different awards.³¹

53. The Full Bench has also found that:

"What is 'necessary' in a particular case is a value judgement based on an assessment of the considerations in s 134 (1) (a) to (h), having regard to the submissions and evidence directed to those submission. In the Review the proponent of a variation to a modern award must demonstrate that if the modern award is varied in the manner proposed it would only include terms to the extent necessary to achieve the modern awards objective."³²

54. As we read it the question is whether the BCMIA applied a whole is required to include the terms of the shutdown clause as set out in the FWC wording or as sought by the FWC to achieve the modern awards objective.

55. The CFMEU says the answer to that question, when the FWC has undertaken the evaluative process and judgement³³, as required by s 156 lies in the negative.

56. It is also our submission that there are two jurisdictional issues that impact upon this matter. We deal firstly with the issue of the power of the FWC to deal with a clause entitling an employer to require that an employee take leave without pay and secondly the power to insert a clause directing an employee to take annual leave.

³¹ 4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues, [2014] FWCFB 1788 @ Point 7 in PN [60]

³² 4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues, [2014] FWCFB 1788 @ PN [36]

³³ CFMEU v Anglo American Metallurgical Coal Pty Ltd., [2017] FCAFC 123 @ PN 29

Leave Without Pay – Jurisdiction

57. It is our submission that the FWC does not have the jurisdiction to insert a provision (however expressed) in a modern award whereby an employer can compel an employee to take leave without pay.
58. This is a situation distinguishable from leave without pay by consent. Needless to say, in a consent situation, an award provision is not strictly necessary for it to occur. It may be desirable to do so from an advisory perspective.
59. Whilst the term “leave” is used in the term “leave without pay” it needs to be considered in context. “Leave” generally connotes an entitlement that has the properties of payment and consent or at least one of them. And it is a notion that implies some form of benefit to the employee. Annual leave, personal leave, carer’s leave, parental leave have the properties of either payment or consent.
60. Leave without pay on a directory basis has neither property. It is an absence from paid employment by compulsion at the behest of the employee and there is no payment for the period of the absence. It is not “leave” for the purposes of the FW Act.
61. It is submitted that leave without pay is tantamount to a stand down. And as a stand down is covered by the FW Act it is not inserted in awards. Incidentally, a stand down provision is fairer on the employee than is any shutdown clause provided for leave without pay by direction. A stand down clause can only apply where an employee cannot be usefully employed and where the employer cannot be held to be reasonably responsible for the stand down; it permits the taking of other forms of leave; it permits an employee to take a dispute over any stand down to

the FWC (vesting the FWC with the power to arbitrate), and maintains continuity of service.³⁴

62. Further, leave without pay does not fit into any of the categories of award provisions set out in s 139. As submitted, it is not a form of leave that is consistent with s 139 (h). Accordingly it cannot be included in a modern award.

63. Whilst aware of this issue, the only response from the CMIEG is to contend that because the FWC inserted a shutdown clause with a leave without pay provision, in the *Aquaculture Award 2010* in 2016, it must have been “satisfied (even if provisionally)” that it was permissible under section 139.³⁵ In our submission this conclusion cannot be drawn. The only conclusion that can be drawn is that the FWC did not deal with the issue. It is not uncommon for the FWC or other tribunals not to deal with issues that are not before it.

64. Whilst this submission addresses a shutdown clause that has a leave without pay provision, it does so on a without prejudice basis regarding the position taken here.

Jurisdiction – Directing an employee to take Annual Leave

65. Another issue of consideration here is the notion that an employer can direct an employee to take annual leave. The jurisdiction of the FWC to include such a provision lies in s 93 (3) of the NES, namely, that an employer may direct an employee to take annual leave as long as it is reasonable.

³⁴ Fair Work Act, ss 524, 525, 526 and 22 (i)

³⁵ CMIEG Submission, 11 September 2017, paragraph 71

66. In our submission, the term compelling an employee to take annual leave during a shutdown as drafted by the CMIEG and the FWC is not reasonable for a number of reasons.
67. Firstly, the terms are broadly expressed. The question that arises in this context is what justifies a shutdown. The clause leaves that open to the employer. There is a concern that it could be used to circumvent the excessive leave clause.
68. Secondly, as was pointed out by the Full Bench in the AiGroup matter, there is no restriction on the number of times a shutdown can be used in a 12 month period and there is no restriction on the duration of the shutdown.³⁶
69. In this regard we rely on the statement by the Full Bench in the *CSRP Decision*, where it said: "It seems to us that for a term of an enterprise agreement to come within the permissible scope of s. 93 (3), the term itself must describe the '*particular circumstances*' in which the employee is required, or in which the clause permits the employee to be required, to take annual leave."³⁷ In our submission the respective shutdown clauses do not address the "particular circumstances" with sufficient particularity to satisfy the requirement of s 93(3).
70. Whilst it is recognised that both drafts of a shutdown clause contain the requirement that any direction for an employer be reasonable, we refer to the conclusion made by the Full Bench to an earlier proposition put by the CMIEG in the broader annual leave proceedings that specific mention be made to any direction being "reasonable" in a clause directing an employee to take annual leave³⁸ In the respect the Full Bench stated:³⁹

³⁶ 4 yearly review of modern awards – Annual Leave, [2015] FWCFB 3406 @ PN [372]

³⁷ *CFMEU v CSRP Pty Ltd.*, [2017] FWCFB 2101 @ PN [60]

³⁸ 4 yearly review of modern awards – Annual Leave, [2016] FWCFB 6836 @ PN [64]

³⁹ 4 yearly review of modern awards – Annual Leave, [2016] FWCFB 6836 @ PN [72]

“Similarly, in the context of the *BCMI Award* the adoption of the approach proposed by the CMIEG would give rise to significant uncertainty and potential disputation. The status of any employer direction would be open to challenge on the basis that the individual needs and circumstances of the employee had not been properly considered and the direction was not reasonable.”

71. It is submitted that there is a valid analogy between the capacity to direct an employee to take annual leave at large and the capacity to direct an employee to take annual leave during a shutdown when it comes to applying the term “reasonable. More so given the lack of clarity in the term “shutdown”.

72. It is submitted that, unlike the excessive leave clause there is nothing in either shutdown clause to meet the test of being reasonable, and as such jurisdiction does not exist.

73. Similar to the leave without pay jurisdictional issue, the broader critique in this submission, which also goes to any direction to take annual leave, is without prejudice to the position on jurisdiction.

Meeting the Modern Awards Objective

74. Section 134 (1) provides defines the modern awards objective as “as fair and relevant minimum safety net of terms and conditions of employment” taking into account a number of elements. A modern award can only include terms that may and only to the extent necessary achieve the modern awards objective.⁴⁰

⁴⁰ Section 138

75. The term “fair” connotes something that is just and appropriate, and the term “relevant” connotes something that is appropriate to the current time, period or circumstances or of contemporary interest.⁴¹
76. In the circumstances of the BCMIA and the evidence before the FWC, shutdown provisions including “force” periods of annual leave or leave without pay are neither fair nor relevant, either to employers or employees.
77. They are inherently unfair to employees. This can be discerned in two respects.
78. Firstly, employees are compelled to take leave at a time not of their choosing. Not only that, but they are denied the level of accrued annual leave that they may be saving for a time of their choosing. This impact extends beyond the immediate employee to the employee’s immediate family.
79. It is also the case the annual leave is more than simply a period of leave and recreation. It provides an opportunity to spend valuable periods of time with families, friends and relatives and to pursue activities at the appropriate time.
80. Secondly, with respect to leave without pay, it is to deny an employee payment for a period of time when they would otherwise be in paid employment. The longer the period, the greater the impact. The financial impact is not assuaged by the giving of notice, more so if an employee budgets on an annual basis and has no reason to believe that a shutdown is likely. The idea that an employee can be denied payment for a period of time is a serious one. The idea that an employee be denied payment in the circumstances set out in this matter is acutely unfair.

⁴¹ These definitions are taken from en.oxforddictionaries.com

81. In light of the evidence, there is no reason giving such entitlements to employers is to be fair to them in any balanced way. The evidence reveals that the employers are managing more than satisfactorily with the current provisions. Giving them something that they think that one day they may wish to use goes beyond fairness in the context of the modern awards objective.
82. With respect to relevance, it is evident that as the current situation as borne out by the evidence shows no need for any change, then the change as sought is not relevant.
83. It is submitted that the any such direction as sought by the CMIEG in its proposed clause and as is set out in the clause attached to the Directions is not reasonable and hence cannot be permitted.

The Absence of a Cogent Reason/s or Probative Evidence

84. As identified in the *Anglo American Decision* and the *Preliminary Jurisdictions Issues Decision*, a party wishing to amend the modern award as part of the 4 year review must have a cogent reason for doing so and provide probative evidence.
85. And the nature of the evidence will depend on the significance of the change.
86. It is submitted that the change sought by the CMIEG is one of significance. More so with the amendment of the annual leave provisions to conform to the National Employment Standards and the consequential "excessive leave" provisions. It is a change that goes to the essence of an employee's terms and conditions of employment, namely the relationship between working and non-working hours and payment. It is submitted that seeking the power to direct employees to take annual leave or leave

without pay in the circumstances of the coal mining industry and in the form sought by the CMIEG is to seek a significant change.

87. The only qualifications on such a power are that it be used in the context of a shutdown, be reasonable (in the instance of annual leave), and be based on 28 days' notice. There is no definition of what comprises a "shutdown" or what comprises "reasonable". Such qualifications hardly mitigate the significance of the change.

88. Given the significance of the change sought, it is submitted that the CMIEG has demonstrably failed to provide any cogent reason or probative evidence to the degree necessary to contend that as part of an overall evaluative judgement such a provision is necessary to meet the modern awards objective.

89. We have addressed the evidence in this matter at paragraphs 39 – 46 above and rely on what has been said in those paragraphs to support our case here.

Terms to the Extent Necessary to Achieve the Modern Awards Objective

90. With respect to a consideration of s 139, the FWC has stated⁴²:

"What is "necessary" in a particular case is a value judgement based on an assessment of the considerations in s 134 (1) (a) to (h), having regard to the submissions and evidence directed to those considerations. In the Review the proponent of a variation to a modern award must demonstrate that if the modern award were varied in the manner proposed then it would only include terms to the extent necessary to achieve the modern awards objective.

⁴² 4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues, [2014] FWCFB 1788 @ PN [36]

91. It is submitted that on any “evaluative judgement”⁴³ based on an assessment of the considerations in s 134 and the other material before the FWC it is not necessary to vary the BCMIA in the form sought by the CMIEG in order that the BCMIA is consistent with the modern awards objective.
92. In the absence of a cogent reason and in the absence of probative evidence to the required level there is no reason to amend the BMCIA accordingly.
93. Further, it is submitted that no evaluation of the considerations of s 134 demand such a conclusion. Certainly the CMIEG provide no such reasoning. The only consideration in s 134 addressed by the CMIEG is s 134 (1) (g) regarding the need to ensure a simple, easy to understand, stable and sustainable modern award system. The CMIEG contends that the current clause 25.10 is not easy to understand.⁴⁴ Our response is twofold.
94. Firstly, as the Full Bench has stated on an earlier occasion it is apparent that clause 25.10 does not provide for an employer to direct an employee to take annual leave nor does it entitle an employer to direct an employee to take leave without pay.⁴⁵ In that context the clause is hardly one that is so difficult to understand so as to require the changes sought by the CMIEG.
95. Secondly, the approach taken by the CMIEG in this matter is not to better express the current provision but to significantly change it. If it were a mere issue of expression of the current provisions, this matter would have been finalized a long time ago.

⁴³ CFMEU v Anglo American Metallurgical Coal Pty Ltd., [2017] FCAFC 123 @ PN 29

⁴⁴ CMIEG Submission, 11 September 2017

⁴⁵ See paragraph 15 above

96. Any evaluative judgement applied to the CMIEG position on the s 134 considerations could hardly produce the outcome sought by the CMIEG.

Matters Raised by the CMIEG – Fair and Relevant Safety Net

97. The CMIEG observes that whilst the modern awards review is to be conducted on an award by award basis, it may also be appropriate to take into account the terms of other modern awards in similar or related industries.⁴⁶

98. The principal position in the modern award review is an award by award analysis. It is not possible to say that a particular award does not meet the modern awards objective simply because it has a different provision to another award. As noted at paragraph 49 above, the Preliminary Jurisdictional Issues Full Bench found it likely that different awards may say different things about the same matter, as awards are a product of their own history and circumstances.

99. Even so, the position of the CMIEG it runs into further conflict with an earlier statement made by a Full Bench in the context of inserting shutdown clauses in modern awards.

100. When addressing and refusing the application by the AiGroup to insert a common shutdown clauses in number of modern awards, the Full Bench referred to a statement by the Modern Award Full Bench, where that Full Bench stated “provisions in awards and NAPSA governing close downs vary significantly” and further that the Modern Award Full Bench stated it had “adopted the approach of attempting to identify an industry standard in each case” which is why there may be “some variation in the close-down provisions”⁴⁷ In other words, the Award Modernisation Full Bench

⁴⁶ CMIEG Submission, 11 September 2017

⁴⁷ 4 yearly review of modern awards – Annual Leave, [2015] FWCFB 3406 @ PN [345]

found an industry analysis a daunting task and concluded that variations between awards will exist. This remains the case.

101. Secondly, when determining what similar and related industries are, the CMIEG has, at least for award purposes in this matter, fallen well short of the mark.

102. The difference between the BCMIA and the Mining Industry Award 2010 is stark. For example, the BCMIA has a 35 hour week, accident pay, an industry based redundancy scheme, 5 and 6 weeks annual leave, 15 days personal leave (based on a 7 hour day), payment of personal leave upon termination in specific instances, triple time payment for working public holidays and a number of other provisions that distinguish the two awards.

103. The Coal Export Terminals Award 2010 was first made in 2010 and hence has no historical relationship to the BCMIA. It has some conditions similar to the coal mining industry e.g. 35 hour week, but a number of distinctions.

104. The Quarrying Award has never been assessed against the BCMIA and has no historical or contemporary relationship to the BCMIA.

105. As a basis for supporting its position, this point falls well short of doing so.

106. The CMIEG then seeks to rely on a Full Bench decision in the Aquaculture Award 2010 when it inserted a shutdown provision in to that award.⁴⁸

⁴⁸ CMIEG Submission, 11 September 2017, paragraphs 66-71

107. In response, we submit that this merely reinforces the point that the FWC is adopting a case by case approach to the modern award review including with respect to shutdown clauses and that what occurred in that award cannot be simply be relied upon in this matter.

108. Further, with respect to CMIEG relying upon this decision to support its claim that the FWC has jurisdiction to insert a leave without pay requirement, we reject that and refer to our comments at paragraph 60 above.

109. The CMIEG also seeks to rely on a decision in the 2012 Interim Review Process.⁴⁹ Again the CMIEG take a decision out of context. As the Full Bench dealing with the AiGroup common claim on a shutdown provision said of the 2012 decision:⁵⁰

“In relation to this point, we would observe that the *Transitional Review – Annual Leave* decision did not endorse the close-down provisions in the *Asphalt Industry Award 2010* as an appropriate model term. The Full Bench simply dealt with an anomaly or technical problem arising from the Part 10A award modernisation process. The issue at the heart of the Full Bench decision was that the obligation under the NES to accrue annual leave progressively and make payment at the employee’s base rate of pay gave rise to an argument that the existing award provision provided for an additional payment over and above the amount otherwise payable for an absence on annual leave. Such an additional payment was unintended and the variations made resolved this anomaly.”

110. This decision provides no support for the CMIEG position.

111. The CMIEG then seeks to rely on the existence of shutdown provisions in enterprise agreements in the coal mining industry to support its case.⁵¹

⁴⁹ CMIEG Submission, Paragraph 72-75

⁵⁰ 4 yearly reviews of modern awards – Annual Leave, [2015] FWCFB 3406 @ PN [354]

⁵¹ CMIEG Submission, Paragraphs 76-77

112. The fact that a clause appears in an enterprise agreement cannot, ipso facto, be relied upon to justify its presence in an award. If that were the position, the CFMEU would have a case for significantly increased wage rates in the BCMIA and perhaps a number of other employee benefits. Further, the CMIEG reveals no evidence to support an assertion that such clauses were inserted to satisfy the better off overall test and we reject it totally.

113. The CMIEG then seeks to rely on the existence of certain pieces of legislation.⁵² It even relies on legislation that no longer exists e.g. Workplace Relations Act 1996. In response we submit that what exists in other legislation is irrelevant. The FWC can only work with the legislation within its jurisdiction for the purposes of determining this matter. In any event, the existence of shutdown provisions in legislation is the basis for an argument that they were not intended as matter of awards/agreements.

Summary and Conclusion

114. It is our submission, based on the evidence and material provided herein, that to shutdowns in the coal mining industry are not a common event and to the extent they occur, they are partial only, primarily motivated by a requirement to undertake maintenance of a particular piece of plant or equipment, and do not result in any requirement for employees to be directed to take annual leave or leave without pay.

115. The only exception revealed in the evidence was the Glencore shutdown at Christmas 2014. This shutdown was a unique event and hardly a model for designing a shutdown provision.

⁵²CMIEG Submission, Paragraphs 78-81

116. The BCMIA and its predecessor awards contain shutdown clauses that have/had no provision to compel employees to take leave without pay. To the extent that employees could be compelled to take annual leave, the basis was in other parts of the annual leave clause, which have been held to be inconsistent with s 93 (3) of the NES.
117. The modern awards objective requires that the FWC ensure that a modern award "provide a fair and relevant minimum safety net of terms and condition" taking into account certain specified matters.
118. The modern awards review calls for the FWC to make an evaluative judgement as to whether the modern award meets the modern awards objective.
119. It is submitted that the FWC can safely conclude, on the basis of the evidence, the history, and the absence of any cogent reason or probative evidence that the BCMIA does not require any amendment to the leave requirements during a shutdown in order to meet the modern awards objective.
120. In the event that the FWC determines to allow the taking of leave without pay either voluntarily or by direction of an employer, the CFMEU submits that the clause should make provision for any period of leave without pay to count for the purposes of service and an employee should be entitled to payment of any public holiday that falls during such a period.⁵³ In our submission it is only fair and reasonable that an employee not be even further prejudiced by taking a form of leave that they would, in the absence of a shutdown, not be taking. This is our submission is also consistent with the modern awards objective.
121. Accordingly the CFMEU submits that the shutdown provisions should allow an employee to voluntarily take annual leave or leave without pay
-

and provide for continuity of service where leave without pay is taken voluntarily as well as entitle an employee to the relevant public holidays. As with the current clause, there should be - indeed in our submission cannot be - any direction from an employer to take annual leave or leave without pay during a shutdown. If the FWC is against us on this point, then continuity of service and public holiday entitlements should apply during any period of leave without pay by direction.

Construction, Forestry, Mining and Energy Union

Mining and Energy Union

October 2017

Annexure A

List of Coal Mines Owned by Members of the Coal Mining Industry Employers Group

Glencore

Collinsville Open Cut
Newlands
Clermont Open Cut
Oak Creek Coal
Rolleston Open Cut
Ulan Coal
Mangoola Open Cut
Liddell Open Cut
Mount Owen Open Cut
Bulga Coal
Tahmoor Underground

BMA/BMC

Goonyella Riverside
Broadmeadow
Daunia
Peak Downs
Saraji
Blackwater
Caval Ridge
South Walker
Poitrel
Mt Arthur

Peabody

Metropolitan (Helensburgh) Underground
Wambo Open Cut
Wambo Underground
Wilpinjong
Coppabella
Middlemount
Millennium
Moovale
North Goonyella

Idemitsu

Muswellbrook Coal
Ensham
Tarrawonga

Jellinbah

Jellinbah
Lake Vermont

Centennial Coal

Airly Underground
Awaba Underground
Charbon Underground
Clarence Underground
Ivanhoe Underground
Lamberts Gully Underground
Mandelong Underground
Mannering Underground
Myuna Underground
Newstan Underground
Springvale Underground

South32

Appin Underground
Wongawilli Underground
Dendrobium Underground
West Cliff Washery

Wesfarmers

Curragh Open Cut
Bengalla Open Cut

IN THE FAIR WORK COMMISSION

S 156 - 4 YEARLY REVIEWS OF MODERN AWARDS

AM2014/47 - COMMON ISSUE - ANNUAL LEAVE

STATEMENT BY ROBERT TIMBS

1. I am a District Vice President of the Construction, Forestry, Mining and Energy Union, Mining and Energy Division, South Western District Branch ('Union'). I was elected to this position in June 2010.
2. Prior to commencing my current role, I worked as an underground and washery plant operator at the Tahmoor Mine for 23 years. The Tahmoor Mine is an underground south west of Sydney. During this period I held a number of elected positions in the Union, including Site Check Inspector, Lodge Vice President and Lodge President.
3. The eligibility rules of the South Western District Branch includes but is not limited to, workers engaged in or in connection with the coal and shale industry in or around the Illawarra, Southern Highlands, Lithgow and Mudgee regions on New South Wales, as well as mine workers in or around Broken Hill.
4. As District Vice President, I am responsible for representing the industrial interests of the Union's member employed in or in connection with the coal industry in or around the Illawarra and the Southern Highland area of New South Wales.
5. I am a member of the South Western District Board of Management. At the Board meetings we discuss matters of mutual interest across the

District and receive reports from officers who are responsible for other parts of the District.

6. I am a member of the South Western District Executive. The Executive comprises the full time officials from Wollongong, Lithgow, Mudgee and Broken Hill. We regularly discuss industrial issues that may arise for members in each of those areas across the District.

7. I have direct responsibility for attending to the industrial interests of Union members at the following:
 - Helensburgh (Metropolitan) Underground
 - Dendrobium Underground
 - Tahmoor Underground
 - Wongawilli Underground
 - Russell Vale Underground (currently on care and maintenance)
 - Berrima Underground
 - Tahmoor Washery
 - Helensburgh Washery
 - Westcliff Washery
 - Dendrobium Washery
 - Various contract companies (at least 5)
 - Mines Rescue Service

8. In my experience the coal mines operate on a continuous basis. As an employee, I can only ever recall one shut down in the early 2000's, which was the result of the mine running out of room to stockpile coal. During that shutdown I took long service leave.

9. Traditionally mines used to have a shutdown at Christmas time, where a skeleton crew remained at work to ensure the mine remained in a safe condition. This is a particular concern in the Illawarra/Southern Highlands mines where there is a high presence of various gases and a problem with the intake of water into the mine. They would also take the

opportunity to perform maintenance work that could not otherwise be performed during normal operating period.

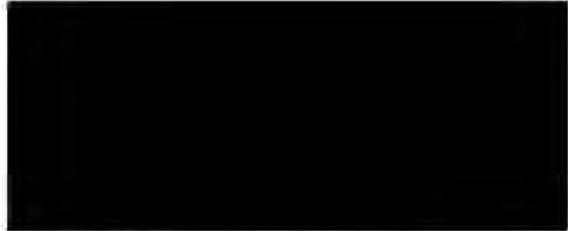
10. There was a partial shutdown at the Dendrobium Mine at Christmas 2015. The company continued to operate the long wall. The production schedule was such that the development and other activities were well in advance of the long wall operation. Employees took various forms of leave. An issue that arose at that time was whether the employees were entitled to workers compensation. I am not aware of any employee being compelled to take leave without pay or any disputation regarding the partial shutdown.

Attached and marked as Attachment 1 is a Question and Answer Sheet on the Christmas 2015 partial shutdown

11. In 2014, Glencore shutdown its coal mines for a period of 3 weeks over Christmas. This was the result of Glencore's view that it had an oversupply of coal at a time when the coal price was low. Glencore operates the Tahmoor Mine and also Ulan Mine outside of Mudgee. The Glencore situation was very much a unique event. I had not experience it before nor have I since.
12. In practical terms, the simple fact is that shutdowns are not used that much.
13. I am unaware of any dispute concerning a shutdown. It has not been an issue in enterprise bargaining.
14. I have seen the survey undertaken by Mr. Gunzburg and filed in this matter. The survey does not explain where the shutdowns occurred, when they occurred and for how long. Other than the Glencore shutdown in 2014 the Dendrobium shutdown in 2015, it does not reflect the position in the South West District.

15. At the same time I am always under pressure from coal mines to extend the period of operations to 365 days per year.

Signed: This 3rd Day of October 2017



Robert Timbs

Questions and Answer – Christmas Leave

1. Why is this happening?

The current schedule for the mine means our development and some other mining activities are well ahead of our long wall operation, and given the continued decline of the coal market it has been decided to temporarily cease all mining operations other than long wall production. As a result employees not directly involved in long wall operations will be required to take leave which will significantly assist by minimising our labour and operating cost during this period.

2. When will this occur?

Employees will be required to take leave for a period of 4 weeks for weekday employees, and 5 weeks for weekend employees commencing Friday 18th December 2015 until Monday 18th January 2016 (inclusive). Any employees who are required for work before 18th January 2016 will be notified.

3. Who will be affected?

All employees, including staff (apart from those required in Longwall operations) will be affected by this decision. Your Supervisor/Manager will be able to further clarify those who are required at work and those who are required to take leave.

4. What does it mean for me?

Unless you have been advised otherwise, you will be required to take leave for the specified period above. Paid annual leave will be entered for employees who are not required to work and have sufficient leave balance. If you wish to take unpaid or long service leave you should complete a leave form.

Please note your pay slip displays current leave balance not including any future booked leave. This means you need to consider any future booked leave when determining if you have sufficient leave available for the Christmas period. Please contact HR if you need assistance.

5. What happens if I don't have enough leave?

If you do not have sufficient leave, you should talk to your Department Manager regarding possible options which may include;

- Leave without pay
- Reallocation to longwall operations if there is a business need and you have the required skills

There may be an option to swap with someone who is required to work provided they have

volunteered to take leave and you have the necessary skills. Any swaps must be approved by either the Production or Maintenance Manager.

6. What is the minimum period of Long service leave?

Legislation stipulates that there is a 2 week minimum, consecutive period required in order to take a period of LSL. However you can access any available annual leave in addition to LSL if required.

7. Can I go into negative annual leave?

Employees will not be able to have a negative leave balance. Again, any employee who does not have sufficient leave available should discuss options with their Department Manager.

8. I have some leave booked in the future, how is that impacted?

If you have future leave booked you can elect to cancel or amend this leave if you have insufficient leave to cover the Christmas period.

If you have any further questions please feel free to contact your Department Manager or HR.

IN THE FAIR WORK COMMISSION

s 156 - 4 YEARLY REVIEWS OF MODERN AWARDS

AM2014/47 - COMMON ISSUE - ANNUAL LEAVE

STATEMENT BY ROBIN JAMES WILLIAMS

I, Robin James Williams of 67A Aberdare Road, Cessnock in the State of New South Wales states as follows:

1. I am a Vice President of the Northern Mining and NSW Energy District of the Construction, Forestry, Mining and Energy Union, Mining and Energy Division ('District').
2. I have held this position since I was elected in a ballot of the membership in accordance with the rules of the District on 12 May 2008.
3. Prior to being elected as a Vice President, I was employed as an engineering employee in the mechanical stream by Coal & Allied working at their Hunter Valley Operations (HVO). I am a qualified fitter and have worked in the coal mining industry since 1986. Prior to working at HVO I worked at Howick Foybrook Open Cut Mine, which was absorbed in to the HVO in 2000
4. Whilst employed at the coal mines I became a shift delegate for the CFMEU at the Howick Foybrook Open Cut Mine from 1992 to 1996. In 1996 I became the Lodge Secretary at Howick (Foybrook Open Cut having

ended its life at that stage) and upon absorption in to HVO I became the Lodge Secretary at HVO until I was elected as a Vice President. I was also a delegate to the District Board of Management from 2004 to 2008, when I became a Vice-President.

5. Currently my duties include attending to the industrial interests of members of the District at the following locations in the District:

Chain Valley Underground
Narrabri Underground
North Wambo Underground
Bengalla Open Cut
HVO
Mount Thorley Warkworth
Wambo Open Cut
Narrabri CHPP
Wambo CHPP
Various contractors

6. In the past I have been allocated to locations that include:

Muswellbrook Open Cut
Glennies Creek Underground
Integra Open Cut
Abel Underground
West Wallsend Underground
Macquarie CHPP
Boggabri Open Cut

7. I am a member of the District Board of Management, which is responsible for the management of the District. At each meeting each Vice President presents a report on what is happening in their allocated areas. The District Board of Management regularly discuss industrial issues across the District.

8. I also participate in regular meetings of the executive officers, being the full time elected officers. At these meetings we also discuss industrial matters of interest across the District.
9. I also regularly communication with my fellow officers to discuss issues, seek advice, discuss ideas and keep each other up to date with what is happening across the District.
10. When I commenced working in a coal mine in 1986, it was common practice for the mine to shut down for 3 weeks over the Christmas/New Year period. This permitted the employer to undertake any necessary maintenance work. At the time, most operations employees would take annual leave whilst the maintenance employees could work if they so chose on the maintenance work. Some operations employees could also be used in the maintenance process.
11. The shutdowns that occurred when I commenced work were the subject of an award provision. The coal mining awards at that time generally made provision for a 3 week shutdown over the Christmas/New Year Period.

Attached and marked as Attachment 1 is an extract from the Coal Mining Industry (Miners) Award 1982, New South Wales where at clause 17 (h) (ii) and (iii)) provision is made for the shutdown

Attached and marked as Attachment 2 is an extract from the Coal Mining Industry (Mechanics) Award 1982, New South Wales, where at clause 18 (h) (ii) and (iii) provision is made for the shutdown.

12. I am aware that in 1988, the Awards were amended to delete the provision for a 3-week shutdown over the Christmas/New Year Period.

Attached and marked as Attachment 3 is a order varying the Coal Mining Industry (Miners) Award 1982, New South Wales, where at page 4 of the Order, the 3 week shutdown provision has been deleted.

13. To the best of my recollection the practice of shutting down for 3 weeks over the Christmas/New Year period ceased in the early 1990's.

14. I am aware that some of the older underground mines continue to utilise the 3 week shutdown.

15. In my time as a Vice President, other than at Glencore in 2014, I have not dealt with, nor am I aware of, any situation where a coal mining company has shut down its operation for a period of time and compelled employees to take leave in one form or another.

16. I am aware of situations where a coal mining company may shut down a piece of equipment to allow for maintenance work to be performed.

17. For example, a coal mining company may shut down a dragline for maintenance that may be for a number of weeks. In that case, the dragline operators will be found work in another part of the mine, or some may be required to assist in the maintenance process. Some may choose to take annual leave.

18. The advantage of a partial shutdown is that work can generally be found elsewhere in the coal mine.

19. In 2014, Glencore made a decision to shutdown its coal mines for a 3 week period over Christmas/New Year. The reason given to employees

was an oversupply of coal in the market and the resulting weakness in prices.

Attached and marked as Attachment 4 is a copy of a letter sent by Glencore at its Liddell Coal Mine advising of the Christmas shutdown.

20. The Glencore situation was a unique situation. There has not been a situation like it prior to its occurrence or since its occurrence.
21. In enterprise bargaining, the issue of shutdown clauses has never been an issue of conflict. There is nothing to prevent an employer from putting a shutdown provision on the agenda for enterprise bargaining or changing an existing shutdown provision in a current enterprise agreement.
22. My experience in recent years with employers is that many are seeking an outcome that is the direct opposite of a requirement for a shutdown provision. Pressure is being applied by employers in general discussions and in discussions on enterprise agreements for continuous operation of coal mines over 365 days per year. There has been pressure to remove a provision that provides for coal mines to close on Christmas Day and Boxing Day each year. This provision is in accordance with the public holiday provisions in the Black Coal Mining Industry Award 2010, which is repeated in many enterprise agreements.

Attached and marked as Attachment 5 is a copy of clause 27 of the Black Coal Mining Industry Award 2010, which, at clause 27.5 provides that work not be performed on two public holidays each year.

23. I have read the statement of Mr. David Gunzburg filed in this matter and have looked at the results of the survey appended to that statement. In response I say that given its broad nature it is not possible to identify any specific shutdown, at what mine, for how long and when it occurred.

24. Other than the one off situation at Glencore in 2014, coal mining companies engage in shut downs on a partial basis in order to undertake necessary maintenance on plant and equipment. To the extent the survey suggest otherwise, it is, in my experience, inconsistent with what applies in the District.

Dated: This 29th Day of September 2017



Robin James Williams

COAL INDUSTRY ACT 1946-1973

(Australia)

In the matter of an industrial dispute or matter wherein

THE AUSTRALIAN COAL AND SHALE EMPLOYEES' FEDERATION

and

NEW SOUTH WALES COAL ASSOCIATION

and others

are parties.

No. 71 of 1981

Award, order and prescribe:

1—TITLE

This award may be referred to as 'The Coal Mining Industry (Miners) Award, 1982, New South Wales'.

1983
Sydney
Jan. 4
Coal
Industry
Tribunal

2—INDEX

Clause Number	Subject matter	Page No.
23	Accident pay	14
15	Afternoon and night shifts	8
17	Annual leave	10
25	Compassionate leave	15
27	Conditions not dealt with by the award	15
5	Contract of employment	3
13	Crib time	7
3	Definitions	2
28	Disputes	16
12	Hours	6
4	Incidence and application	2
21	Increase in hands	21
2	Index	1
24	Jury service	15
30	Leave reserved	16
22	Mechanical unit appointments	13
8	Mixed functions	3
14	Overtime	7
6	Payment of wages	3
20	Reduction of hands	13
19	Right of entry	12
26	Severance pay	15
18	Sick leave	11
9	Special rates	3
	(a) Dirty work	3
	(b) Erection of scaffolding	4
	(c) First aid allowances	4
	(d) High money	4
	(e) Longwall allowance	4
	(f) Shaft sinking or drift driving	4
	(g) Shiftmen boring shot-holes in stone	4
	(h) Shiftmen working in high places	4
	(i) Timber drawing	5
	(j) Timbering and tunnelling through falls (Southern District)	5
	(k) Transport allowances	5
	(l) Walking time	5
	(m) Washery allowance	5
	(n) Water money	5

AWARD—COAL MINING INDUSTRY (MINERS: NEW SOUTH WALES)

(i) Any employee (other than an employee on shift) called on to work on a recognised holiday shall be paid for at least three hours at the rate of double time in addition to a sum equal to the amount of the payment prescribed in sub-clause (e) hereof.

(j) An employee who works on a Sunday or a recognised holiday and (except for crib breaks) immediately thereafter continues such work shall on being relieved from duty be entitled to be absent until he has had ten consecutive hours off duty, without deduction of pay for ordinary time of duty occurring during such absence.

17—ANNUAL LEAVE

(a) A period of twenty-five ordinary working days annual leave shall be allowed annually to all employees at mines and establishments subject to this award, provided that on and from 1 July 1980 increased production capacity of at least eight days is made available to the employer or an arrangement contemplated by sub-clause (h) of this clause exists. At other mines and establishments a period of 20 ordinary working days annual leave shall be allowed annually to each employee.

(b) Leave in all cases will be allowed after twelve months service (less the period of annual leave) and for the purpose of this clause the qualifying period for such service shall be the 12 calendar months terminating on the last day of the first pay period which ends in the month of December each year.

(c) In the absence of agreement annual leave shall be given and taken in not more than three continuous periods. An employee wishing to proceed on annual leave pursuant to this clause shall give his employer not less than four weeks notice in writing of the time at which he desires to take his leave and he shall be allowed to take his leave at that time unless the operations of the mine or establishment at which the employee works, will in the opinion of the management of that mine or establishment be affected by the granting of leave at that time. Provided further that annual leave shall be given by the employer and taken by the employee within a period not exceeding twelve months from the date when the right to annual leave accrued.

(d) An employer may allow annual leave to an employee before the right thereto has accrued. Where leave has been granted to an employee pursuant to this clause and the employee subsequently leaves or is discharged from the service of the employer before completing the twelve month's service in respect of which the leave is granted, the employer may deduct payments already made under this clause for the leave taken before the right thereto had accrued from whatever remuneration is payable upon the termination of employment (including payments required to be made under sub-clause (i) hereof).

(e) If a recognised holiday falls within an employee's period of annual leave and is observed on a day which ordinarily would have been a working day, there shall be added to the period of such leave one day, being an ordinary working day, for each such recognised holiday.

(f) The annual leave provided by this clause shall be allowed and shall be taken and except as provided by sub-clause (g) hereof, payment shall not be made or accepted in lieu of annual leave.

(g) On the termination of his employment (other than by dismissal for wilful misconduct) an employee shall be paid for untaken leave at the hourly rate for his classification immediately prior to such termination for the period calculated in accordance with sub-clause (j) (ii) hereof. In addition, an employee shall be paid for the period so calculated at an hourly rate equal to 0.1429 of the daily sum required to be paid under sub-clause (i) (ii) hereof to an employee on leave during an annual leave shutdown.

(h) (i) Subject to this sub-clause, an employer respondent to this award shall have the right to carry out productive operations including the mining of coal on all ordinary working days during the year.

AWARD—COAL MINING INDUSTRY (MINERS: NEW SOUTH WALES)

(ii) There shall be a shutdown of productive operations for a period not to exceed three consecutive weeks per annum which shall in the absence of agreement be at Christmas provided that where the employer and the majority of employees at a mine or establishment agree production may take place during such shutdown and the period and position of the shutdown may be varied.

(iii) Where an employer shuts down his mine or establishment for the purpose of compliance with the provisions of this sub-clause he may allow those employees who are not then qualified for a full entitlement to leave to cover the period of shutdown paid leave on a proportionate basis at the prescribed rate for the employee's classification immediately prior to the commencement of such leave.

(i) (i) Each employee before going on leave shall be paid for the period for which he is entitled under this clause at the prescribed rate for his classification immediately prior to the commencement of his leave.

(ii) For each ordinary day of paid annual leave which is taken when the mine is out of production because of an annual leave shutdown, the employee shall be paid an additional amount equal to the daily average of the amounts received under a bonus scheme by each employee of his bonus classification for the available production days in the twelve calendar months terminating on the last day of the first pay period ending in the month of December which occurs immediately before the period in which the employee's leave is taken.

(iii) In the absence of agreement to the contrary, for each ordinary day worked by an employee during a period when the mine is out of production because of an annual leave shutdown, and on which he would have otherwise been entitled to paid annual leave, such employee shall be paid an additional amount equal to the daily sum required to be paid under sub-clause (ii) hereof to an employee on leave.

(iv) For each ordinary day of paid annual leave which is taken when the mine is available for production, the employee shall be paid an additional amount equal to the daily bonus payment he would have ordinarily received but for his absence from work.

(v) In addition to the payments otherwise prescribed in this sub-clause, during a period of annual paid annual leave, an employee shall receive a loading of 20% on ordinary rates but such loading shall not apply for the purposes of sub-clause (g) hereof.

(j) For the purpose of calculating proportionate leave from 1 July 1980 at mines or establishments where twenty-five days annual leave is granted, leave shall accrue at the rate of 3.3654 hours for each completed week of service. At other mines and establishments leave shall accrue at the rate of 2.6924 hours for each completed week of service.

18—SICK LEAVE

Any employee who is absent from his work with an employer on account of personal illness or on account of injury sustained without his own default or wilful act shall be entitled to paid sick leave of absence subject to the following conditions and limitations:

(a) The first day of July each year shall be the date upon which each employee shall be credited with ten days sick leave for the ensuing year provided further that an employee who commences employment with his employer after such first day of July shall be credited with a pro rata sick leave credit from the date of his commencement to the next ensuing 30 June at the rate of 1.3462 hours for each uncompleted week of service to the next ensuing 30 June, and provided further that the maximum accrual shall be 10 days per year.

(b) Subject to the provisions of sub-class (d) hereof for all service prior to 1 July 1980 one day's leave shall be credited to each employee for each 22 shifts or part

COAL INDUSTRY ACT 1946-1973

(Australia)

Attachment 2

In the matter of industrial disputes or matters wherein
AMALGAMATED METAL WORKERS AND SHIPWRIGHTS UNION
THE ELECTRICAL TRADES UNION OF AUSTRALIA
THE FEDERATED MINING MECHANICS ASSOCIATION
OF AUSTRALASIA
 and
NEW SOUTH WALES COAL ASSOCIATION
 and others

are parties.

No. 72 of 1981

Award, order and prescribe:

1—TITLE

This award may be referred to as 'The Coal Mining Industry (Mechanics) Award, 1982, New South Wales'.

1983
 Sydney
 Jan. 4
 Coal
 Industry
 Tribunal

2—INDEX

Clause number	Subject matter	Page number
25	Accident pay	15
16	Afternoon and night shifts	10
18	Annual leave	11
27	Compassionate leave	16
30	Conditions not dealt with by the award	16
5	Contract of employment	4
14	Crib time	8
3	Definitions	2
29	Disputes	16
13	Hours	8
4	Incidence and application	4
22	Increase in hands	15
2	Index	1
26	Jury service	15
32	Leave reserved	17
8	Mixed functions	5
15	Overtime	9
6	Payment of wages	4
24	Preference	15
21	Reduction of hands	14
20	Right of entry	14
28	Severance pay	16
23	Shop stewards	15
19	Sick leave	13
9	Special rates - (a) Confined spaces	5

AWARD—COAL MINING INDUSTRY (MECHANICS: NEW SOUTH WALES)

(c) Any employee (other than an employee on shift) called on to work on a Sunday shall be paid for at least three hours at the appropriate rate.

(d) The recognised holidays shall be—New Year's Day, Australia Day, Good Friday, Easter Monday, Easter Tuesday, Anzac Day, Queen's Birthday, Labor Day, Christmas Day and Boxing Day or any day observed by the public in the State of New South Wales in lieu thereof, together with all other days gazetted from time to time as public holidays which are observed generally by the public in that State.

(e) Any employee not required to work on a recognised holiday including employees rostered off, shall be paid for that day at the appropriate rate for his class of work, provided that any employee who, without good and sufficient reason, fails to work on the working day immediately preceding a recognised holiday or the first working day following such holiday shall not be entitled to payment for such holiday not worked. For the purposes of this sub-clause appropriate rate shall include an amount equal to the daily sum required to be paid to the employee under sub-clause (i) (ii) of Clause 18 for annual leave purposes.

(f) Any employee not required to work on a recognised holiday who changes his employment from one employer to another after the working day immediately preceding but before the first working day following such holiday shall, subject to the provisions of sub-clause (e) hereof, receive payment for such holiday from the employer by whom he is employed on the first working day following the holiday and the said employer shall have the right to recover from the employer by whom the employee was employed on the working day immediately preceding the holiday 80 per centum of the amount of the payment made to the employee.

(g) An employee not required to work on a recognised holiday who through the operation of Mine Workers' Pensions Legislation is required to vacate his employment after the working day immediately preceding but before the first working day following such holiday shall be entitled to payment for such holiday unless without good and sufficient reason he fails to work on the working day immediately preceding the holiday.

(h) The rate for all work performed on a recognised holiday not exceeding 7 hours and whether continuous or not with the completion of work commenced the previous day shall be double time in addition to a sum equal to the amount of the payment prescribed in sub-clause (e) hereof, and thereafter at the rate of treble time on ordinary rates.

(i) An employee (other than an employee on shift) called on to work on a recognised holiday shall be paid for at least three hours at the rate of double time in addition to a sum equal to the amount of the payment prescribed in sub-clause (e) hereof.

(j) An employee (other than an employee engaged on continuous process) who works on a Sunday or a recognised holiday and (except for meal breaks) immediately thereafter continues such work shall on being relieved from duty be entitled to be absent until he has had ten consecutive hours off duty, without deduction of pay for ordinary time of duty occurring during such absence.

18—ANNUAL LEAVE

(a) A period of twenty-five ordinary working days annual leave shall be allowed annually to all employees at mines and establishments subject to this award, provided that on and from 1 July 1980 increased production capacity of at least eight days is made available to the employer or an arrangement contemplated by sub-clause (h) of this clause exists. At other mines and establishments a period of 20 ordinary working days annual leave shall be allowed annually to each employee.

AWARD—COAL MINING INDUSTRY (MECHANICS: NEW SOUTH WALES)

(b) Leave in all cases will be allowed after twelve months service (less the period of annual leave) and for the purpose of this clause the qualifying period for such service shall be the 12 calendar months terminating on the last day of the first pay period which ends in the month of December each year.

(c) In the absence of agreement annual leave shall be given and taken in not more than three continuous periods. An employee wishing to proceed on annual leave pursuant to this clause shall give his employer not less than four weeks notice in writing of the time at which he desires to take his leave and he shall be allowed to take his leave at that time unless the operations of the mine or establishment at which the employee works, will in the opinion of the management of that mine or establishment be affected by the granting of leave at that time. Provided further that annual leave shall be given by the employer and taken by the employee within a period not exceeding twelve months from the date when the right to annual leave accrued.

(d) An employer may allow annual leave to an employee before the right thereto has accrued. Where leave has been granted to an employee pursuant to this clause and the employee subsequently leaves or is discharged from the service of the employer before completing the twelve months' service in respect of which the leave was granted, the employer may deduct payments already made under this clause for the leave taken before the right thereto had accrued from whatever remuneration is payable upon the termination of employment (including payments required to be made under sub-clause (i) hereof).

(e) If a recognised holiday falls within an employee's period of annual leave and is observed on a day which ordinarily would have been a working day, there shall be added to the period of such leave one day, being an ordinary working day, for each such recognised holiday.

(f) The annual leave provided by this clause shall be allowed and shall be taken and except as provided by sub-clause (g) hereof, payment shall not be made or accepted in lieu of annual leave.

(g) On the termination of his employment (other than by dismissal for wilful misconduct) an employee shall be paid for untaken leave at the hourly rate for his classification immediately prior to such termination for the period calculated in accordance with sub-clause (j) (ii) hereof. In addition, an employee shall be paid for the period so calculated at an hourly rate equal to 0.1429 of the daily sum required to be paid under sub-clause (i) (ii) hereof to an employee on leave during an annual leave shut down.

(h) (i) Subject to this sub-clause, an employer respondent to this award shall have the right to carry out productive operations including the mining of coal on all ordinary working days during the year.

(ii) There shall be a shut down of productive operations, for a period not to exceed three consecutive weeks per annum which shall in the absence of agreement be at Christmas provided that where the employer and the majority of employees at a mine or establishment agree production may take place during such shut down and the period and position of the shut down may be varied.

(iii) Where an employer shuts down his mine or establishment for the purpose of compliance with the provisions of this sub-clause he may allow those employees who are not then qualified for a full entitlement to leave to cover the period of shut down paid leave on a proportionate basis at the prescribed rate for the employee's classification immediately prior to the commencement of such leave.

(i) (i) Each employee before going on leave shall be paid for the period for which he is entitled under this clause at the prescribed rate for his classification immediately prior to the commencement of his leave.

(ii) For each ordinary day of paid annual leave which is taken when the mine is out of production because of an annual leave shut down, the employee shall be

AWARD—COAL MINING INDUSTRY (MECHANICS: NEW SOUTH WALES)

paid an additional amount equal to the daily average of the amounts received under a bonus scheme by each employee of his bonus classification for the available production days in the twelve calendar months terminating on the last day of the first pay period ending in the month of December which occurs immediately before the period in which the employee's leave is taken.

(iii) In the absence of agreement to the contrary, for each ordinary day worked by an employee during a period when the mine is out of production because of an annual leave shut down, and on which he would have otherwise been entitled to paid annual leave, such employee shall be paid an additional amount equal to the daily sum required to be paid under sub-clause (ii) hereof to an employee on leave.

(iv) For each ordinary day of paid annual leave which is taken when the mine is available for production, the employee shall be paid an additional amount equal to the daily bonus payment he would have ordinarily received but for his absence from work.

(v) In addition to the payments otherwise prescribed in this sub-clause, during a period of paid annual leave, an employee shall receive a loading of 20% on ordinary rates but such loading shall not apply for the purposes of sub-clause (g) hereof.

(j) For the purpose of calculating proportionate leave from 1 July 1980 at mines or establishments where twenty-five days annual leave is granted, leave shall accrue at the rate of 3.3654 hours for each completed week of service. At other mines and establishments leave shall accrue at the rate of 2.6924 hours for each completed week of service.

19—SICK LEAVE

Any employee who is absent from his work with an employer on account of personal illness or on account of injury sustained without his own default or wilful act shall be entitled to paid sick leave of absence subject to the following conditions and limitations.

- (a) The first day of July each year shall be the date upon which each employee shall be credited with ten days sick leave for the ensuing year provided that an employee who commences employment with his employer after such first day of July shall be credited with a pro rata sick leave credit from the date of his commencement to the next ensuing 30 June at the rate of 1.3462 hours for each uncompleted week of service to the next ensuing 30 June and provided further that the maximum accrual shall be 10 days per year.
- (b) Subject to the provisions of sub-clause (d) hereof for all service prior to 1 July, 1980, one day's leave shall be credited to each employee for each 22 shifts or part thereof worked and/or where payment was made for absence from work on long service leave.
- (c) Leave allowable under this clause which is not availed of by an employee during the time it accrues shall be allowed to accumulate without limitation provided that an employee who changes his employment shall only be entitled to credit by his new employer of up to fifteen days for leave accumulated but not availed of by him in his former employment.
- (d) Any sick leave taken shall be deducted from the sick leave accumulated, the balance if any remaining to the credit of the employee.
- (e) An employee shall not be entitled to paid sick leave of absence for any period in respect of which he is entitled to workers' compensation.
- (f) Within 72 hours of the commencement of such absence the employee shall inform the employer of his inability to attend for duty and as far as practicable state the nature of illness or injury and the estimated duration of the absence.

COAL INDUSTRY ACT 1946

Attachments

(Australia)

COAL INDUSTRY ACT 1946

(New South Wales)

In the matter of an industrial dispute or matter wherein
THE AUSTRALASIAN COAL AND SHALE EMPLOYEES FEDERATION
and
NEW SOUTH WALES COAL ASSOCIATION
and others

are parties.

(No. 71 of 1981)

No. 379 and 380 of 1988

Award, order and determine

A. That the 'Coal Mining Industry (Miners) Award, 1982, New South Wales' (CR Print No 3129), as varied, be further varied in manner following that is to say:

1988
SYDNEY
Oct. 10

1. By adding to Clause 3 Definitions, the following new sub-clauses:

Coal
Industry
Tribunal

(d) 'Make up production' shall be coal production to make up for production time lost in an open cut mine due to weather, breakdown of equipment and industrial disputes.

(e) 'Production' means the extraction of coal (excluding underground development as defined herein) including coal hauling in an open cut mine. Provided that this definition does not include hauling of coal extracted as overburden and coal previously mined and stockpiled due to infrastructure or marketing constraints.

(f) 'Underground development' means the driving of headings and gate roads in longwall operations and first working in 'bord and pillar' operations.

By deleting Clause 12 Hours in its entirety and by inserting in lieu thereof the following new Clause:

12—HOURS

(a) Subject to sub-clause (e) hereof the ordinary hours of work without payment of overtime for employees shall be an average of 35 per week to be worked in shifts of up to 8 hours each bank to bank, including crib time of 30 minutes counted as time worked. Where shifts commence between 11.00 pm and midnight on a Sunday, the time worked before midnight shall, for the purpose of this sub-clause, be regarded as ordinary time provided payment is made therefor at the rate of double time.

(b) (i) The ordinary working hours of any shift shall be worked between such hours as may be agreed upon between the management and the employees.

(ii) In the case of failure of the management and the employees to agree, the starting and finishing times and payment therefor shall continue until the matter shall be referred to the appropriate industrial authority and determined.

(c) 'Bank to bank' shall be reckoned from the time the first person working on a shift leaves the surface to the time the last person working on the same shift returns to the surface.

(d) (i) The ordinary hours of work without payment of overtime for 6 or 7-day shift workers shall not exceed an average of 35 minutes counted as time worked.

(ii) In the case of 6 or 7-day shift workers whose regularly rostered hours of work average more than 35 per week, overtime rates shall be paid in respect of time worked in excess of an average of 35 hours per week.

(iii) No 6 or 7-day worker shall on any day work more than the number of hours for that day set out in this sub-clause without payment of overtime except:

(A) by arrangement between the employees themselves

(B) to effect the customary periodical rotation of shifts.

(1) See CR print No. 4071

VARIATION—COAL MINING INDUSTRY (MINERS: NEW SOUTH WALES)

(iv) There shall be a roster of shifts which may provide for rotation and, subject to the provisions of sub-clause (d)(iii) of this clause, for not more than one shift on any day. Such roster shall not be altered except by mutual agreement. Provided further that an employee's place on a roster shall not be changed, except on one week's notice of such change or payment at overtime rates.

(v) In manning any 6 or 7-day roster the following process shall be complied with:

- (A) Volunteers will be called for; and
- (B) In the event that the roster is not fully manned and the mine is employing additional labour new starters will fill any vacancies; and
- (C) In the event that the roster is still not fully manned, the employer shall discuss any shortfall with state officials of the union respondent to this award with a view to achieving full manning; and
- (D) In the event that the roster is still not fully manned, an employee with the necessary skills to perform the work and who has the least amount of service at the mine shall be appointed to the roster.

(e) The duration, number and spread of ordinary shifts as prescribed in the foregoing provisions of this Clause, may be varied by the management or by order of the appropriate industrial authority. Provided that, unless there is agreement to the contrary, the duration of any ordinary shift does not exceed 8 hours and further provided that the average weekly spread of ordinary hours in any roster cycle not exceed 35 hours.

(f) The management shall have the right to carry out:

- (i) All operations except production (as defined in Clause 3 herein) for the 24 hours of each day of the year.
- (ii) The production of coal from underground operations on any 6 days of each week of the year
- (iii) Make up production (as defined in Clause 3 herein) on a 6th day of any week of the year, provided that management shall nominate the reason for such make up and maintain a record thereof.

(g) In addition to their normal shift all employees may, for the purposes of work which cannot reasonably be performed while the pit is working, or in the case of a flood, fire, breakdown of machinery or an accident be required to work on any occasion.

(h) At the option of the management and for the purposes of essential services and safety working employees may be required to perform work on any day. For the purpose of this sub-clause 'essential services' means any work which cannot reasonably be performed while the pit is working.

~~(i) Except as provided in sub-clauses (j) and (k) hereof, in cases where, by virtue of the arrangement of ordinary hours, an employee is entitled to a rostered day off during the work cycle such employee shall be advised by the employer at least four weeks in advance of the day the employee is to take off, provided that a lesser period of notice may be agreed by the employer and the majority of employees in the mine or section or sections concerned.~~

(j) An employer, with the agreement of the majority of employees concerned, may substitute the rostered day off an employee is to take off for another day in the case of a breakdown in machinery or a failure or shortage of electric power or to meet the requirements of the mine or some other emergency situation.

An individual employee, with the agreement of his employer, may substitute the day he is to take off for another day.

(k) Notwithstanding any other provision in this clause, an employer, the union or unions concerned and the majority of employees in the mine, section or sections concerned may agree to accrue up to a maximum of five (5) rostered days off in special circumstances.

Where such agreement has been reached, the accrued rostered days off must be taken within 12 months of 10 October, 1988 and each twelve months thereafter.

It is understood between the parties that the involvement of the union or unions concerned would be necessary.

By deleting sub-clause (a) from clause 14 Overtime, and by inserting in lieu thereof the following new sub-clause:

(a) (i) Subject to sub-clause (a) (ii) hereof all time worked in excess of or outside the ordinary working hours prescribed by this award shall be paid for at the rate of time and one-half for the first three hours and double time thereafter, such double time to continue until the completion of the overtime work. Except as provided in this sub-clause or sub-clause (b) hereof in computing overtime each day's work shall stand alone. Subject to sub-clauses (g) and (h) of Clause 12 hereof an employer may require an employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.

VARIATION—COAL MINING INDUSTRY (MINERS: NEW SOUTH WALES)

(ii) All time worked by 6 or 7-day shift workers in excess of or outside the ordinary hours of work prescribed by this award shall be paid for at the rate of double time. Time worked by 6 or 7-day shift workers during the ordinary hours of work on a Saturday shall be paid for at the rate of time and one half for the first four hours and double time thereafter.

(iii) Subject to sub-clause (i) herein, nothing shall prevent an employee's roster from including planned overtime.

(iv) Any employee who works overtime Monday to Friday or during any other period which in accordance with the provisions of this award allows the production of coal shall, if directed, produce coal.

By deleting Clause 16 Sunday and Holiday work in its entirety and by inserting in lieu thereof the following new Clause:

16—SUNDAY AND HOLIDAY WORK

(a) The rate for all Sunday work shall be double time.

(b) Any employee (other than an employee on shift) called on to work on a Sunday shall be paid for at least three hours at the appropriate rate.

(c) The recognised holidays shall be: New Year's Day, Australia Day, Good Friday, Easter Monday, Easter Tuesday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day and Boxing Day, or any day observed by the public in the State of New South Wales in lieu thereof, together with all other days gazetted from time to time as public holidays which are observed generally by the public in that State.

(d) It shall be agreed between an employer and the majority of employees who will be working on a 6 or 7-day roster which public holidays will be worked provided that work shall not be carried out on 2 of such holidays.

(e) An employee not required to work on a recognised holiday including employees rostered off, shall be paid for that day at the appropriate rate for his class of work (which in the case of a contract worker shall be at the rate payable to him for annual leave purposes), provided that an employee who, without good and sufficient reason fails to work on the working day immediately preceding a recognised holiday or the first working day following such holiday shall not be entitled to payment for such holiday not worked. For the purposes of this sub-clause appropriate rate shall include an amount equal to the daily sum required to be paid to the employee under sub-clause (i) (ii) of clause 17 for annual leave purposes.

(f) Any employee not required to work on a recognised holiday who changes his employment from one employer to another after the working day immediately preceding but before the first working day following such holiday shall, subject to provisions of sub-clause (e) hereof, receive payment for such holiday from the employer by whom he is employed on the first working day following the holiday and the said employer shall have the right to recover from the employer by whom the employee was employed on the working day immediately preceding the holiday 80 per centum of the amount of the payment made to the employee.

(g) An employee not required to work on a recognised holiday who through the operation of Mine Workers Pensions Legislation is required to vacate his employment after the working day immediately preceding but before the first working day following such holiday shall be entitled to payment for such holiday unless without good and sufficient reason he fails to work on the working day immediately preceding the holiday.

(h) The rate for all work performed on a recognised holiday not exceeding seven hours and whether continuous or not with the completion of work commenced the previous day shall be double time in addition to a sum equal to the amount of the payment prescribed in sub-clause (e) hereof and thereafter at the rate of treble time on ordinary rates.

(i) Any employee (other than an employee on shift) called on to work on a recognised holiday shall be paid for at least three hours at the rate of double time in addition to a sum equal to the amount of the payment prescribed in sub-clause (e) hereof.

(j) An employee who works on a Sunday or a recognised holiday and (except for crib breaks) immediately thereafter continues such work shall on being relieved from duty be entitled to be absent until he has had ten consecutive hours off duty, without deduction of pay for ordinary time of duty occurring during such absence.

(k) (i) Notwithstanding sub-clause (d) hereof an employee who is entitled to a rostered day off which falls on a holiday prescribed by this clause shall, at the discretion of the employer, be paid for that day at the rate prescribed by sub-clause (e) hereof or have an additional day added to his annual leave. This provision shall not apply when the holiday on which he is rostered off falls on a Saturday or Sunday.

(ii) In the case of an employee whose ordinary hours of work are arranged in accordance with sub-clause (a) or (e) of Clause 12, the weekday to be taken off shall not coincide with a public holiday fixed in accordance with sub-clause (c) hereof. Provided that, in the event that a public holiday is prescribed after an employee has been given notice of his weekday off in accordance with sub-clause (h) of Clause 12 of this award and the public holiday falls on the weekday the employee is to take off, the employer shall allow the employee to take the day off on an alternative weekday.

VARIATION—COAL MINING INDUSTRY (MINERS: NEW SOUTH WALES)

By deleting sub-clauses (a) and (b) of Clause 17, Annual Leave, and by inserting in lieu thereof the following new sub-clauses:

(a) A period of 5 weeks annual leave, including non-working days, shall be allowed annually to an employee after 12 months continuous service (less the period of annual leave).

For the purpose of this clause the qualifying period for such service shall be the 12 calendar months terminating on the last day of the first pay period which ends in the month of December each year.

(b) (i) Seven day shift workers, that is shift workers who are regularly rostered to work on Sundays and holidays, shall be allowed one additional week's leave including non-working days.

(ii) An employee who, for part of his 12 month period works as a 7 day shift or continuous shift worker shall accrue proportionate leave in accordance with the provisions of sub-clause (j) hereof.

By deleting sub-clauses (h), (i) and (j) from clause 17, Annual Leave, and by inserting in lieu thereof the following new sub-clauses:

(h) (i) Subject to Clause 12 (f) hereof an employer shall have the right to carry out any or all operations of a mine (production and ancillary) for the 52 weeks of the year.

(ii) Where an employer decides to shut down the mine, or a section or sections thereof the employer may allow those employees who are not then qualified for a full entitlement to leave to cover the period of shutdown paid leave on a proportionate basis at the prescribed rate for the employees' classification immediately prior to the commencement of such leave. An employer who decides to shut down the mine or a section or sections thereof shall give 4 weeks' notice of the intention so to do.

(i) (i) Each employee before going on leave shall be paid for the period for which he is entitled under this clause at the prescribed rate for his classification immediately prior to the commencement of his leave.

(ii) For each ordinary day of paid annual leave which is taken when the mine is out of production because of a shutdown, the employee shall be paid an additional amount equal to the daily average of the amounts received under a bonus scheme by each employee of his bonus classification for the available production days in the twelve calendar months terminating on the last day of the first pay period ending in the month of December which occurs immediately before the period in which the employee's leave is taken.

(iii) In the absence of agreement to the contrary, for each ordinary day worked by an employee during a period when the mine is out of production because of a shutdown, and on which he would have otherwise been entitled to paid annual leave, such employee shall be paid an additional amount equal to the daily sum required to be paid under sub-clause (ii) hereof to an employee on leave.

(iv) For each ordinary day of paid annual leave which is taken when the mine is available for production, the employee shall be paid an additional amount equal to the daily bonus payment he would have ordinarily received but for his absence from work.

(v) In addition to the payments otherwise prescribed in this sub-clause during a period of paid annual leave an employee shall receive a loading of 20% on ordinary rates. Under this sub-clause a 7-day roster worker shall be paid the award rate for work in ordinary time according to his roster or projected roster (including Saturday, Sunday and holiday shifts) or the loading of 20% on ordinary rates whichever be the greater. Loadings prescribed under this sub-clause shall not apply for the purposes of sub-clause (g) hereof.

(j) For the purpose of calculating proportionate leave from 1 July 1980 at mines or establishments where twenty-five days annual leave is granted, leave shall accrue at the rate of 3.3654 hours for each completed week of service, except in the case of 7 day workers where leave shall accrue at the rate of 4.0385 hours for each completed week of service.

By deleting Clause 18, Sick Leave, in its entirety and by inserting in lieu thereof the following new Clause:

18—SICK LEAVE

Any employee who is absent from his work with an employer on account of personal illness or on account of injury sustained without his own default or wilful act shall be entitled to paid sick leave of absence subject to the following conditions and limitations:

(a) (i) On 1 July, 1986 each employee shall be credited with 13 days sick leave for the ensuing year provided further that an employee who commences employment with his employer after 1 July 1986 shall be credited with a pro rata sick leave credit from the date of his commencement to 30 June, 1987 at the rate of 1.75 hours for each uncompleted week of service, and provided further that the maximum accrual for the period 1 July, 1986 to 30 June, 1987 shall be 13 days.

(ii) Commencing on 1 July, 1987, the first day of July each year shall be the date upon which each employee shall be credited with 15 days sick leave for the ensuing year.

Provided that on and from 8 September, 1988, the accrual provided by this sub-clause shall be 15 days per year or in the case of an employee who normally works more than 7 ordinary hours on any day an accrual of 105 hours per year.

Provided further that an employee who commences employment with his employer after such first day of July shall be credited with a pro rata sick leave credit from the date of his commencement to

VARIATION—COAL MINING INDUSTRY (MINERS: NEW SOUTH WALES)

the next 30 June at the rate of 2.0192 hours for each completed week of service to the next ensuing 30 June and provided further that the maximum accrual shall be 15 days per year or in the case of an employee who normally works more than 7 ordinary hours per day, 105 hours.

(b) Subject to the provisions of sub-clause (d) hereof for all service prior to 1 July, 1980 one day's leave shall be credited to each employee for each 22 shifts or part thereof worked and/or where payment was made for absence from work on long service leave.

(c) (i) Leave allowable under this clause which is not availed of by an employee during the time it accrues shall be allowed to accumulate without limitation provided that an employee who changes his employment shall only be entitled to credit by his new employer of up to 15 days or 105 hours for leave accumulated and not availed of by him with his former employer.

(ii) Where an employee normally works in excess of 7 ordinary hours on any day the untaken balance of the sick leave entitlement as at 8 September, 1988 shall be multiplied by 7 to convert it to an hourly entitlement.

(d) Any sick leave taken shall be deducted from the sick leave accumulated, the balance if any remaining to the credit of the employee.

(e) An employee shall not be entitled to paid sick leave of absence for any period in respect of which he is entitled to workers compensation.

(f) Within 72 hours of the commencement of such absence the employee shall inform the employer of his inability to attend for duty and as far as practicable state the nature of illness or injury and the estimated duration of the absence.

(g) The employee shall prove to the satisfaction of his employer (or in the event of a dispute, of the appropriate industrial authority) that he was unable on account of such illness or injury to attend for duty on the day or days for which sick leave is claimed.

(h) The employee shall be paid for each day of leave allowable under this clause at the appropriate rate for his class of work; in addition the employee shall be paid for each day of leave allowable under this clause an amount equal to the daily bonus payment he would have ordinarily received but for his absence from work.

(i) Notwithstanding the provisions of Clause 5 hereof, where an employer gives notice of termination of employment to an employee who is absent from work on paid sick leave, the termination of employment shall not take effect until the employee's paid sick leave has expired or he is fit for duty, whichever happens first.

(j) An employee who is retrenched, whose services are terminated through operation of Mine Workers' Pensions legislation because of age or by his employer because of ill health or who dies and who at the date of such retrenchment, termination or death has accrued ten or more days or 70 or more hours of unused sick leave shall be granted payment to be made to him (or in the case of death to his personal representative) on the basis of one ordinary day's pay for each day of sick leave accrued by him and not already taken.

2. By deleting Schedule A in its entirety and by inserting in lieu thereof the following Schedule:

SCHEDULE 'A'

New South Wales

The minimum rates of wage payable to the following classes of employees shall be:—

Column 1	Column 2	Column 3
Number	Classification	Rate of wage per week
	(i) Northern District	\$
1	Banker-off	411.40
2	Bathroom attendant	411.40
3	Borer	438.80
4	Borer Operator (in open-cuts)	449.70
5	Braceman	419.60
6	Braceman's Assistant	411.40
7	Bratticer	411.40
8	Brusher	428.00
9	Chock builder	428.00
10	Cleaning-up gang	428.00
11	Coal cutting Machineman	438.80
12	Greaser	411.40
13	Horsebreaker	417.10
14	Jackman	417.10
15	Jetty hand	418.40
16	Labourer	411.40
17	Loaderman	438.80

VARIATION—COAL MINING INDUSTRY (MINERS: NEW SOUTH WALES)

Column 1	Column 2	Column 3
Number	Classification	Rate of wage per week
		\$
18	Locomotive driver (underground)	
	(a) electric	428.00
	(b) diesel (under 25 tonnes)	428.00
	(c) diesel (25 tonnes and over)	438.80
19	Locomotive shunter (underground)	411.40
20	Miner (day wage)	428.00
21	Onsetter	429.60
22	Onsetter's assistant	411.40
23	Pitbottom hand	411.40
24	Roadlayer (1st class)	424.10
25	Roofbolter	438.80
26	Screenhand	411.40
27	Setrider	411.40
28	Shaftsinker or driftdriver	438.80
29	Shiftman (1st class)	428.00
30	Shiftman (2nd class)	411.40
31	Shotfirer (certificated)—Maitland field	497.30
32	Shotfirer (uncertificated)—Maitland field	469.50
33	Shotfirer (open-cut)	482.50
34	Shuttlecar driver	438.80
35	Stoneduster	411.40
36	Timber loader	411.40
37	Turntable employee	428.00
38	waggon packer	411.40
39	Waggon tailer-in	411.40
40	Waggon tailer-out	411.40
40A	Washery operator	438.80
41	Waste examiner	446.90
42	Water bailer	411.40
43	Water splasher	411.40
44	Yardman	411.40
45	Youths—	
	(a) from 16 to 17 years of age	265.90
	(b) from 17 to 18 years of age	290.40
	(c) from 18 to 19 years of age	322.30
	(d) from 19 to 20 years of age	348.20
	(e) from 20 to 21 years of age	379.10
	Provided that a youth of 18 years of age or over with two years experience in the industry shall be paid adult rates.	

An employee at an underground mine with two years experience of work at the coal face shall be paid an amount of \$9.20 per week for all purposes of this award in addition to the rate for his particular classification.

VARIATION—COAL MINING INDUSTRY (MINERS: NEW SOUTH WALES)

Column 1	Column 2	Column 3
Number	Classification	Rate of wage per week
		\$
	(ii) Southern District	
1	Bathroom attendant	411.40
2	Borer	438.80
3	Braceman	419.60
4	Brusher	424.20
5	Brusher (shiftwork)	429.20
6	Coal-cutting machineman	438.80
7	Dumper (Wongawilli Colliery)	416.60
	To carry out all duties as associated with the arrival and despatch of 10 tonne car trains and operation of dumper transfer, tray feeder, compressors and belt and routine cleaning and oiling of equipment.	
8	Fettler	411.40
9	Gang leader (South Bulli Colliery)	438.80
10	Greaser (Wongawilli Colliery)	416.20
11	Labourer (surface)	411.40
12	Labourer (underground)—	
	Shiftman (2nd class)	411.40
13	Loaderman	438.80
14	Locomotive driver (underground)—	
	(a) electric	428.00
	(b) diesel (under 25 tonnes)	428.00
	(c) diesel (25 tonnes and over)	438.80
15	Locomotive shunter (underground)	411.40
16	Onsetter	429.60
17	Roofbolter	438.80
18	Screenhand	411.40
19	Shaftsinker or driftdriver	438.80
20	Shiftman (1st class)	428.00
21	Shuttlecar driver	438.80
22	Washery hand (Wongawilli)	416.60
22A	Washery operator	438.80
23	Youths—	
	(a) from 16 to 17 years of age	265.90
	(b) from 17 to 18 years of age	290.40
	(c) from 18 to 19 years of age	322.50
	(d) from 19 to 20 years of age	348.20
	(e) from 20 to 21 years of age	379.10
	Provided that a youth of 18 years of age and over with two years experience in the industry shall be paid adult rates.	

An employee at an underground mine with two years experience of work at the coal face, shall be paid an amount of \$9.20 per week for all purposes of this award in addition to the rate for his particular classification.

VARIATION—COAL MINING INDUSTRY (MINERS: NEW SOUTH WALES)

Column 1	Column 2	Column 3
Number	Classification	Rate of wage per week
		\$
	(iii) Western District	
1	Bathroom attendant	411.40
2	Borer	438.80
3	Braceman	419.60
4	Coal-cutting machineman	438.80
5	Fettler	411.40
6	Horsebreaker	411.40
7	Labourer	411.40
8	Loaderman	438.80
9	Locomotive driver (underground)—	
	(a) electric	428.00
	(b) diesel (under 25 tonnes)	428.00
	(c) diesel (25 tonnes and over)	438.80
10	Locomotive shunter (underground)	411.40
10A	Mobile crusher operator (in open cuts)	438.80
11	Onsetter	429.60
12	Roofbolter	438.80
13	Screenhand	411.40
14	Setrider	411.40
15	Shaftsinker or driftdriver	438.80
16	Shiftman (1st class)	428.00
17	Shiftman (2nd class)	411.40
18	Shotfirer (certificated)	469.50
19	Shotfirer (uncertificated)	438.80
20	Shuttlecar driver	428.00
21	Timberman	411.40
22	Tippler	438.80
22A	Washery operator	411.40
23	Water bailer	438.80
24	Youths—	
	(a) from 16 to 17 years of age	265.90
	(b) from 17 to 18 years of age	290.40
	(c) from 18 to 19 years of age	322.50
	(d) from 19 to 20 years of age	348.20
	(e) from 20 to 21 years of age	379.10

Provided that a youth of 18 years of age or over with two years experience in the industry shall be paid adult rates.

An employee at an underground mine with two years experience of work at the coal face shall be paid an amount of \$9.20 per week for all purposes of this award in addition to the rate for his particular classification.

In each district herein youths not in receipt of adult rates of pay shall accrue time for the purpose of the experience payment at the rate of 50% to a maximum of one year's accrual.

B. The foregoing variations contained in A1, shall operate on and from 10 October, 1988 and shall remain in force for a period of six months thereafter or until further order.

C. The foregoing variations contained in A2 shall operate as follows:

- (i) From 26 September, 1988 at mines or establishments where prior to 10 October, 1988 agreement is reached on implementation of changes pursuant to the variations contained in A1 hereof and the Tribunal is notified of such agreement prior to payment; and
- (ii) From the date of implementation at mines or establishments where subsequent to 10 October, 1988 agreement is reached on implementation of changes pursuant to the variations contained in A1 hereof and the Tribunal is notified of such agreement prior to payment.

and shall remain in force for a period of six months from 10 October, 1988 or until further order.

D. When advising the extent of change pursuant to the variations contained in A1 hereof employers shall also advise the degree of change and of job security resulting from such change.

E. Implementation of the variations in A1 hereof shall be reviewed on 14 November, 1988.

LIDDELL

GLENCORE

13th November 2014

To all Liddell Coal Employees,

Re: Christmas Shutdown of Operations

In view of current market oversupply and resulting weakness in prices, Glencore has decided to shut down all operations for three weeks over the Christmas period in 2014. The following is therefore an outline of the planned shutdown for Liddell:

- 7pm Monday 15th December 2014 to 7pm Monday 5th January 2015 – all operations will be stood down except train loading requirements at the CHPP
- Maintenance A crew will be required to return to work on 7am Monday 5th January 2015 to allow sufficient time for restart of plant

Requirements for train loading will be discussed with the relevant individuals at the CHPP.

The table below outlines the roster days per crew during the shutdown of operations (excludes the normal Christmas Shutdown period from 24 Dec – 26 Dec).

Opencut Crew	Days	CHPP Crew	Days
A Crew	10	A Crew	10
B Crew	9	B Crew	9
C Crew	10	C Crew	10
D Crew	9	D Crew	9

All employees will be required to take annual leave or long service leave during this period as per your normal roster (per Clause 13 of the Liddell Open Cut Enterprise Agreement and per Clause 14 of the Liddell Coal Preparation Plant Enterprise Agreement). Employees will be permitted to go into negative leave up to a maximum of 3 days during this period. Access to unpaid leave will be required for leave in excess to the above.

I understand the planned shutdown may present difficulties for certain employees and their families, however, this is a decision not taken lightly during these difficult times. It also will allow employees to take leave during Christmas period with their families.

We remain confident in demand growth for our products and that the supply / demand balance will be restored in the medium term.

Should you have any queries or concerns in relation to the above, please contact your supervisor or myself directly.

Regards



David Foster
Operations Manger

PO Box 7, Singleton, NSW 2330
Old New England Highway, Ravensworth, NSW 2330
T + 61 2 6570 9900 F + 61 2 6570 9999 www.glencore.com

Liddell Coal Operations Pty Ltd ABN 40 058 857 882
Manager and Agent of the Liddell & Foybrook Joint Ventures

Black Coal Mining Industry Award 2010

This Fair Work Commission consolidated modern award incorporates all amendments up to and including 21 June 2017 ([PR592096](#), [PR592258](#), [PR593799](#)).

Clause(s) affected by the most recent variation(s):

- 16—Minimum wages and allowances
- Schedule A—Production and Engineering Employees
- Schedule B—Staff Employees
- Schedule D—National Training Wage
- Schedule H—Mines Rescue Service Employees

Current review matter(s): [AM2014/47](#); [AM2014/67](#); [AM2014/190](#); [AM2014/196](#); [AM2014/197](#); [AM2014/300](#); [AM2014/301](#); [AM2015/1](#); [AM2015/2](#); [AM2016/8](#); [AM2016/15](#); [AM2016/17](#)

Table of Contents

[Varied by [PR988356](#), [PR994553](#), [PR544668](#), [PR546288](#), [PR545966](#), [PR582969](#), [PR584077](#), [PR588916](#), [PR588916](#), [PR592096](#)]

Part 1— Application and Operation	3
1. Title	3
2. Commencement and transitional	3
3. Definitions and interpretation.....	4
4. Coverage.....	6
5. Access to award and the National Employment Standards	8
6. The National Employment Standards and this award	8
7. Award flexibility	8
Part 2— Consultation and Dispute Resolution	10
8. Consultation.....	10
9. Dispute resolution.....	11
Part 3— Types of Employment and Termination of Employment	12
10. Types of employment.....	12
11. School-based apprentices	13
12. Employer and employee duties	14
13. Termination of employment.....	14

26.3 Evidence required

- (a) If requested by the employer, the employee must provide a medical certificate or such other evidence as will prove to the employer's reasonable satisfaction that the absence from work was for the reasons set out in the NES.
- (b) If the proof is disputed, such a dispute may be dealt with in accordance with the dispute resolution procedure.

26.4 Deduction of personal leave

Any personal leave taken must be deducted from the employee's personal leave entitlement as follows:

- (a) where the absence is for fewer than half the ordinary hours component of the shift, no deduction; or
- (b) in all other cases, the full ordinary hour's component of the shift will be deducted for each absence.

27. Public holidays

[Varied by [PR994553](#), [PR531393](#); 26 renumbered as 27 by [PR545966](#) ppc 01Jan14]

[26.1 varied by [PR994553](#) from 01Jan10]

27.1 Public holiday entitlements are provided for in Division 10 of the NES.

27.2 Transfer of recognised public holidays

The employer and the majority of employees affected may agree to observe a holiday on a day other than the day prescribed. If this occurs, the day agreed upon is the award holiday and the actual holiday becomes an ordinary working day.

27.3 Employee not required to work on a public holiday

An employee who is not required to work on a holiday which would otherwise have been a working day for that employee will be paid for that day at the employee's classification rate unless the employee, without good and sufficient reason, fails to work on the employee's:

- (a) last working day immediately before the holiday; or
- (b) first working day after the holiday;

in which case the employee is not entitled to payment for such holiday.

27.4 Employee required to work on a recognised public holiday

- (a) An employee who is required to work on a holiday is to be paid at the rate of double time for work performed during ordinary hours, in addition to the payment prescribed.
- (b) Work performed in excess of ordinary hours on a holiday is to be paid at the rate of treble time.

27.5 Notice of public holidays to be worked (other than employees working shifts of up to 8.5 ordinary hours)

- (a) On a date agreed, the employer will nominate which public holidays will be worked in the following 12 months by employees (other than employees working shifts of up to 8.5 ordinary hours on weekdays), provided that work will not to be carried out on two of such holidays.

[26.5(b) varied by PR531393 ppc 30Nov12]

- (b) If the employer does not require employees to work on a public holiday (as nominated in clause 27.5(a)) the employer must give the employees as much notice as possible of this decision.
- (c) If the notice required by clause 27.5(b) is less than four weeks inclusive of the holiday, an employee who was rostered to work on the holiday is to be paid for ordinary hours as if the holiday had been worked.
- (d) If the employer decides not to require work to be performed on a public holiday because of a strike or ban, employees, other than those involved in the strike or ban, are to be paid at their classification rate for ordinary hours.

27.6 Employees working Monday to Friday shifts of up to 8.5 ordinary hours

- (a) An employee who only works shifts of up to 8.5 ordinary hours on weekdays cannot, as an integral part of their roster cycle, be rostered for ordinary hours on public holidays. Such employees may, however, in exceptional circumstances, be required to work on public holidays to meet operational needs.

IN THE FAIR WORK COMMISSION

s 156 - 4 YEARLY REVIEWS OF MODERN AWARDS

AM2014/47 - COMMON ISSUE - ANNUAL LEAVE

WITNESS STATEMENT OF STEVEN ALLAN PIERCE

I, Steven Allan Pierce, 33 Milton Street, Mackay, in the State of Queensland, do hereby state:

1. I am a Vice-President of the Queensland District of the Mining and Energy Division of the Construction, Forestry, Mining and Energy Union ('Union').
2. The position of Vice-President that I hold is an elected position whereby the incumbent is elected by the members of the Queensland District to four yearly terms of office. I have held this position since 2000.
3. Prior to being elected to position of Vice President of the Queensland District, I worked as an auto-electrician at the Saraji coal mine in Central Queensland. I worked at the Saraji coal mine for a period of some 18 years.
4. As a Vice President, my fundamental role is to protect and advance the industrial interests of the members of the Union. Amongst other things, this role involves representing members with personal or collective grievances at work, representing members in disciplinary matters and

workers compensation matters, negotiating enterprise agreements and appearing in the Fair Work Commission when necessary.

5. As part of my duties I look after the interests of members who work at locations from Mackay to Dysart in the west to Weipa in the north.
6. I am regularly in contact with other District Officials where we discuss what is happening in the coal mining industry in Queensland in general.
7. Whilst I am not a member of the Queensland District Board of Management, I regularly attend the meetings so as to keep abreast of what is happening in the coal mining industry in Queensland
8. I have responsibility for the members at the following coal mines:
 - Broadmeadow
 - Burton Downs
 - Carborough Downs
 - Coppabella
 - Lake Vermont
 - Newlands Open Cut
 - Saraji
 - Sonoma
 - Collinsville
 - Millenium
 - Moorvale
 - Poitrel
 - South Walker Creek
 - Various contractors including Orica Queensland, Kalari, and Valley Long Wall.

9. I have also had responsibility for the following coal mines that are presently inactive:

Eaglefield

Newlands Underground

10. Up until 1988, when as a result of the award restructuring, 7 day continuous working was introduced into the industry, a shutdown occurred each Christmas for a period of 3 weeks. This was an award provision.

Attached and marked as Attachment 1 is an extract from the Coal Mining Industry (Miners) Award, 1982, Queensland where at clause 13 (h) (i) and (ii) provision is made for a 3 week shutdown

Attached and marked as Attachment 2 is an extract from the Coal Mining Industry (Electrical and Engineering) Trades) Award 1982, Queensland where at clause 17 (h) (ii) and (iii) provision is made for a 3 week shutdown.

Attached and marked as Attachment 3 is an order of the Coal Industry Tribunal varying the Coal Mining Industry (Miners) Award 1983, Queensland, deleting the provision for a 3 week shutdown.

11. In my time as both an employee in the coal mining industry in Queensland and as a full time official, the operation of shutdowns has occurred on an ad hoc basis.

12. The yardstick for a shutdown is a requirement to undertake maintenance on a particular piece of plant or equipment. For example, a coal mine company may wish to undertake maintenance at a wash plant or on a drag line. It is the large equipment that lends itself to a shutdown. Other plant and equipment such as trucks tend to be maintained on a breakdown basis.

13. A shutdown of equipment such as a drag line results in the closure of that piece of equipment only. The rest of the mine continues to work. Accordingly, if there is any temporarily surplus labour, it is readily absorbed into other parts of the coal mine. Some drag line operators may also participate in the maintenance process to undertake such requirements as moving the drag line. Some may choose to take annual leave.
14. I am not aware of any instance where an employee has been compelled against his or her will to take annual leave or leave without pay.
15. The only exception was in 2016, when Glencore shutdown its activities for 3 weeks over Christmas because of what it determined was an oversupply situation and low coal prices.
16. The Glencore situation was a one-off situation. I am not aware of any such situation occurring before or since that event.
17. I have not been approached by any coal mining company during enterprise agreement negotiations to either insert a new shutdown provision in an enterprise agreement or to amend any such clause in an existing enterprise agreement. There is nothing to prevent a coal mining employer from raising any such issue.
18. In the past where shutdown clauses have been included in enterprise agreements they have adopted the provisions in the current Black Coal Mining Industry Award.
19. I have not been involved in any dispute regarding the institution of a shutdown.

20. In my experience, the issue of more concern with coal mining companies is their pressure to have continuous working for 365 days each year. This would involve the removal of the current arrangement whereby the coal mine closes on Christmas Day and Boxing Day to allow employees to have those days with their respective families. Some coal mine companies have sought to be able to work on those days. Rather than shut down mines for temporary periods, the coal mining companies are seeking to keep them open for longer continuous periods.

21. I have seen a copy of the survey filed by Mr. Gunzburg in this matter. The survey provides no detail of when, for how long and at what coal mines the stated shutdowns occurred. The survey does not reflect my experience in Queensland.

Dated: This 3rd Day of October 2017

A large black rectangular redaction box covering the signature area.

Steven Allan Pierce

COAL INDUSTRY ACT 1946-1973

(Australia)

343 Attachment 1

In the matter of an industrial dispute or matter wherein
THE AUSTRALIAN COAL AND SHALE EMPLOYEES FEDERATION
 and
THE QUEENSLAND COAL OWNERS ASSOCIATION
 and others

are parties.

No. 71 of 1981

Award, order and prescribe:

1—TITLE

This award may be referred to as 'The Coal Mining Industry (Miners) Award, 1982, Queensland'.

1982
 SYDNEY
 Dec. 1
 Coal
 Industry
 Tribunal

2—INDEX

Clause Number	Subject matter	Page Number
38	Accident pay	19
15	Afternoon and night shifts	10
13	Annual leave	8
17	Board of Reference	11
34	Compassionate leave	18
36	Conditions not dealt with by the award	18
5	Contract of employment	4
10	Crib time	5
28	Dargs or restrictions of output	15
3	Definitions	2
19	Dismissal of employees	12
18	Disputes	12
20	Employees engaged by same ownership	12
8	Employees working less than a full shift	4
9	Hours	4
4	Incidence and application	3
2	Index	1
33	Jury service	17
39	Leave reserved	19
21	Mechanical unit employees	13
16	Mixed functions	11
11	Overtime	5
6	Payment of wages	4
26	Preference to unionists	14
24	Reduction of hands—(General)	14
25	Reduction of hands—Burgowan Collieries	14
32	Right of entry	17
35	Severance pay	18
22	Sharing of work	13
14	Sick leave	9

AWARD—COAL MINING INDUSTRY (MINERS: QUEENSLAND)

(j) Any employee (other than an employee on shift) not engaged upon contract called on to work on a recognised holiday shall be paid for at least three hours at the rate of double-time in addition to a sum equal to the amount of the payment prescribed in sub-clause (f) hereof.

(k) Where an employee is absent on annual leave in a period in which a recognised holiday occurs, that day shall be regarded as an ordinary day for the purpose of paying for or computing annual leave.

(l) An employee who works on a Sunday or a recognised holiday (and except for crib breaks) immediately thereafter continues such work shall on being relieved from duty be entitled to be absent until he has had ten consecutive hours off duty, without deduction of pay for ordinary time of duty occurring during such absence.

13—ANNUAL LEAVE

(a) A period of twenty-five ordinary working days annual leave shall be allowed annually to all employees at mines and establishments subject to this award, provided that on and from 1 July 1980 increased production capacity of at least eight days is made available to the employer or an arrangement contemplated by sub-clause (h) of this clause exists. At other mines and establishments a period of 20 ordinary working days annual leave shall be allowed annually to each employee.

(b) Leave in all cases will be allowed after twelve months service (less the period of annual leave) and for the purpose of this clause the qualifying period for such service shall be the 12 calendar months terminating on the last day of the first pay period which ends in the month of December each year.

(c) In the absence of agreement annual leave shall be given and taken in not more than three continuous periods. An employee wishing to proceed on annual leave pursuant to this clause shall give his employer not less than four weeks notice in writing of the time at which he desires to take his leave and he shall be allowed to take his leave at that time unless the operations of the mine or establishment at which the employee works, will in the opinion of the management of that mine or establishment be affected by the granting of leave at that time. Provided further that annual leave shall be given by the employer and taken by the employee within a period not exceeding twelve months from the date when the right to annual leave accrued.

(d) An employer may allow annual leave to an employee before the right thereto has accrued. Where leave has been granted to an employee pursuant to this clause and the employee subsequently leaves or is discharged from the service of the employer before completing the twelve months' service in respect of which the leave was granted, the employer may deduct payments already made under this clause for the leave taken before the right thereto had accrued from whatever remuneration is payable upon the termination of employment (including payments required to be made under sub-clause (i) hereof).

(e) If a recognised holiday falls within an employee's period of annual leave and is observed on a day which ordinarily would have been a working day, there shall be added to the period of such leave one day, being an ordinary working day, for each such recognised holiday.

(f) The annual leave provided by this clause shall be allowed and shall be taken and except as provided by sub-clause (g) hereof, payment shall not be made or accepted in lieu of annual leave.

(g) On the termination of his employment (other than by dismissal for wilful misconduct) an employee shall be paid for untaken leave at the hourly rate for his classification immediately prior to such termination for the period calculated in accordance with sub-clause (j) hereof. In addition an employee shall be paid for the period so calculated at an hourly rate equal to 0.1429 of the daily sum required to be paid under sub-clause (i) (ii) hereof to an employee on leave during an annual leave shut down.

AWARD—COAL MINING INDUSTRY (MINERS: QUEENSLAND)

(h) (i) Subject to this sub-clause, an employer respondent to this award shall have the right to carry out productive operations including the mining of coal on all ordinary working days during the year.

(ii) There shall be a shut down of productive operations, for a period not to exceed three consecutive weeks per annum which shall in the absence of agreement be at Christmas provided that where the employer and the majority of employees at a mine or establishment agree production may take place during such shut down and the period and position of the shut down may be varied.

(iii) Where an employer shuts down his mine or establishment for the purpose of compliance with the provisions of this sub-clause he may allow those employees who are not then qualified for a full entitlement to leave to cover the period of shut down paid leave on a proportionate basis at the prescribed rate for the employee's classification immediately prior to the commencement of such leave.

(i) (i) Each employee before going on leave shall be paid for the period for which he is entitled under this clause at the prescribed rate for his classification immediately prior to the commencement of his leave.

(ii) For each ordinary day of paid annual leave which is taken when the mine is out of production because of an annual leave shut down, the employee shall be paid an additional amount equal to the daily average of the amounts received under a bonus scheme by each employee of his bonus classification for the available production days in the twelve calendar months terminating on the last day of the first pay period ending in the month of December which occurs immediately before the period in which the employee's leave is taken.

(iii) In the absence of agreement to the contrary, for each ordinary day worked by an employee during a period when the mine is out of production because of an annual leave shut down, and on which he would have otherwise been entitled to paid annual leave, such employee shall be paid an additional amount equal to the daily sum required to be paid under sub-clause (ii) hereof to an employee on leave.

(iv) For each ordinary day of paid annual leave which is taken when the mine is available for production, the employee shall be paid an additional amount equal to the daily bonus payment he would have ordinarily received but for his absence from work.

(v) In addition to the payments otherwise prescribed in this sub-clause, during a period of paid annual leave, an employee shall receive a loading of 20% on ordinary rates but such loading shall not apply for the purposes of sub-clause (g) hereof.

(j) For the purpose of calculating proportionate leave from 1 July 1980 at mines or establishments where twenty-five days annual leave is granted, leave shall accrue at the rate of 3.3654 hours for each completed week of service. At other mines and establishments leave shall accrue at the rate of _____ hours for each completed week of service.

14—SICK LEAVE

Any employee who is absent from his work with an employer on account of personal illness or on account of injury sustained without his own default or wilful act shall be entitled to paid sick leave of absence subject to the following conditions and limitations:

- (a) The first day of July each year shall be the date upon which each employee shall be credited with ten days sick leave for the ensuing year provided that an employee who commences employment with his employer after such first day of July shall be credited with a pro rata sick leave credit from the date of his commencement to the next ensuing 30 June at the rate of 1.3462 hours for each uncompleted week of service to the next ensuing 30 June, and provided further that the maximum accrument shall be 10 days per year.

COAL INDUSTRY ACT 1946-1973

(Australia)

367 Attachment 2

In the matter of industrial disputes or matters wherein

THE AMALGAMATED METAL WORKERS AND SHIPWRIGHTS UNION

THE ELECTRICAL TRADES UNION OF AUSTRALIA

and

THE QUEENSLAND COAL OWNERS ASSOCIATION

and others

are parties.

No. 72 of 1981.

Award, order and prescribe:

1—TITLE

This award may be referred to as 'The Coal Mining Industry (Electrical & Engineering Trades) Award, 1982, Queensland.'

1982
SYDNEY
Dec. 1

Coal
Industry
Tribunal

2—INDEX

Clause Number	Subject Matter	Page No.
32	Accident pay	17
16	Afternoon and night shifts	9
18	Annual leave	11
26	Apprentices	15
30	Board of Reference	16
28	Compassionate leave	16
24	Conditions not dealt with by the award	14
5	Contract of employment	3
14	Crib time	8
3	Definitions	3
23	Disputes	14
13	Hours	7
4	Incidence and application	3
2	Index	2
27	Jury service	16
33	Leave reserved	18
8	Mixed functions	4
15	Overtime	8
25	Parity allowances	14
6	Payment of wages	4
22	Preference	14
20	Right of entry	13
29	Severance pay	16
21	Shop stewards	14
19	Sick leave	12
9	Special rates	4
	(a) Confined spaces	4
	(b) Damage to clothing and tools	4
	(c) Dirty work	5
	(d) First aid allowances	5

AWARD—COAL MINING INDUSTRY (ELECTRICAL AND ENGINEERING
TRADES: QUEENSLAND)

(j) An employee (other than an employee engaged on continuous process) who works on a Sunday or a recognised holiday and (except for meal breaks) immediately thereafter continues such work shall on being relieved from duty be entitled to be absent until he has had ten consecutive hours off duty, without deduction of pay for ordinary time of duty occurring during such absence.

18—ANNUAL LEAVE

(a) A period of twenty-five ordinary working days annual leave shall be allowed annually to all employees at mines and establishments subject to this award, provided that on and from 1 July 1980 increased production capacity of at least eight days is made available to the employer or an arrangement contemplated by sub-clause (h) of this clause exists. At other mines and establishments a period of twenty ordinary working days annual leave shall be allowed annually to each employee.

(b) Leave in all cases will be allowed after twelve months service (less the period of annual leave) and for the purpose of this clause the qualifying period for such service shall be the twelve calendar months terminating on the last day of the first pay period which ends in the month of December each year.

(c) In the absence of agreement annual leave shall be given and taken in not more than three continuous periods. An employee wishing to proceed on annual leave pursuant to this clause shall give his employer not less than four weeks notice in writing of the time at which he desires to take his leave and he shall be allowed to take his leave at that time unless the operations of the mine or establishment at which the employee works, will, in the opinion of the management of that mine or establishment be affected by the granting of leave at that time. Provided further that annual leave shall be given by the employer and taken by the employee within a period not exceeding twelve months from the date when the right to annual leave accrued.

(d) An employer may allow annual leave to an employee before the right thereto has accrued. Where leave has been granted to an employee pursuant to this clause and the employee subsequently leaves or is discharged from the service of the employer before completing the twelve months' service in respect of which the leave was granted, the employer may deduct payments already made under this clause for the leave taken before the right thereto had accrued from whatever remuneration is payable upon the termination of employment (including payments required to be made under sub-clause (i) hereof).

(e) If a recognised holiday falls within an employee's period of annual leave and is observed on a day which ordinarily would have been a working day, there shall be added to the period of such leave one day, being an ordinary working day, for each such recognised holiday.

(f) The annual leave provided by this clause shall be allowed and shall be taken and except as provided by sub-clause (g) hereof, payment shall not be made or accepted in lieu of annual leave.

(g) On the termination of his employment (other than by dismissal for wilful misconduct) an employee shall be paid for untaken leave at the hourly rate for his classification immediately prior to such termination for the period calculated in accordance with sub-clause (j) hereof. In addition, an employee shall be paid for the period so calculated at an hourly rate equal to 0.1429 of the daily sum required to be paid under sub-clause (i) (ii) hereof to an employee on leave during an annual leave shutdown.

(h) (i) Subject to this sub-clause, an employer respondent to this award shall have the right to carry out productive operations including the mining of coal on all ordinary working days during the year.

AWARD—COAL MINING INDUSTRY (ELECTRICAL AND ENGINEERING
TRADES: QUEENSLAND)

(ii) There shall be a shutdown of productive operations for a period not to exceed three consecutive weeks per annum which shall in the absence of agreement be at Christmas provided that where the employer and the majority of employees at a mine or establishment agree production may take place during such shutdown and the period and position of the shutdown may be varied.

(iii) Where an employer shuts down his mine or establishment for the purpose of compliance with the provisions of this sub-clause, he may allow those employees who are not then qualified for a full entitlement to leave to cover the period of shutdown paid leave on a proportionate basis at the prescribed rate for the employee's classification immediately prior to the commencement of such leave.

(i) (i) Each employee before going on leave shall be paid for the period for which he is entitled under this clause at the prescribed rate for his classification immediately prior to the commencement of his leave.

(ii) For each ordinary day of paid annual leave which is taken when the mine is out of production because of an annual leave shutdown, the employee shall be paid an additional amount equal to the daily average of the amounts received under a bonus scheme by each employee of his bonus classification for the available production days in the twelve calendar months terminating on the last day of the first pay period ending in the month of December which occurs immediately before the period in which the employee's leave is taken.

(iii) In the absence of agreement to the contrary, for each ordinary day worked by an employee during a period when the mine is out of production because of an annual leave shutdown, and on which he would have otherwise been entitled to paid annual leave, such employee shall be paid an additional amount equal to the daily sum required to be paid under sub-clause (ii) hereof to an employee on leave.

(iv) For each ordinary day of paid annual leave which is taken when the mine is available for production the employee shall be paid an additional amount equal to the daily bonus payment he would have ordinarily received but for his absence from work.

(v) In addition to the payments otherwise prescribed in this sub-clause during a period of paid annual leave, an employee shall receive a loading of 20% on ordinary rates but such loading shall not apply for the purposes of sub-clause (g) hereof.

(j) For the purpose of calculating proportionate leave from 1 July 1980 at mines or establishments where twenty-five days annual leave is granted, leave shall accrue at the rate of 3.3654 hours for each completed week of service. At other mines and establishments leave shall accrue at the rate of 2.6924 hours for each completed week of service.

19—SICK LEAVE

Any employee who is absent from his work with an employer on account of personal illness or on account of injury sustained without his own default or wilful act shall be entitled to paid sick leave of absence subject to the following conditions and limitations:

(a) The first day of July each year shall be the date upon which each employee shall be credited with ten days sick leave for the ensuing year provided that an employee who commences employment with his employer after such first day of July shall be credited with a pro-rata sick leave credit from the date of his commencement to the next ensuing 30 June at the rate of 1.3462 hours for each uncompleted week of service to the next ensuing 30 June and provided further that the maximum accrue ment shall be 10 days per year.

COAL INDUSTRY ACT 1946

(Australia)

In the matter of an industrial dispute or matter wherein
THE AUSTRALASIAN COAL AND SHALE EMPLOYEES FEDERATION
and
QUEENSLAND COAL ASSOCIATION
and others

are parties.

(No. 71 of 1981)

No. 361 and 380 of 1988

Award, order and determine:—⁽¹⁾

A. That the 'Coal Mining Industry (Miners) Award, 1982, Queensland' (C.R. print No. 3101), as varied, be further varied in manner following that is to say:

1988
SYDNEY
Oct. 10
Coal
Industry
Tribunal

1 By adding to Clause 3 Definitions the following new sub-clauses:

(aa) 'Make Up Production' shall be coal production to make up for production time lost in an open cut mine due to weather, breakdown of equipment and industrial disputes.

(ab) 'Production' means the extraction of coal (excluding underground development as defined herein) including coal hauling in an open cut mine. Provided that this definition does not include hauling of coal extracted as overburden and coal previously mined and stockpiled due to infrastructure or marketing constraints.

(ac) 'Underground Development' means the driving of headings and gate roads in longwall operations and first workings in 'bord and pillar' operations.

By deleting Clause 9 Hours in its entirety and by inserting in lieu thereof the following new clause:

9—HOURS

(a) Subject to sub-clause (e) hereof the ordinary hours of work without payment of overtime for employees shall be an average of 35 per week to be worked in shifts of up to 8 hours each bank to bank, including crib time of 30 minutes counted as time worked. Where shifts commence between 11pm and midnight on a Sunday, the time worked before midnight shall, for the purpose of this sub-clause, be regarded as ordinary time provided payment is made therefor at the rate of double time.

(b) (i) The ordinary working hours of any shift shall be worked between such hours as may be agreed upon between the management and the employees.

(ii) In the case of failure of the management and the employees to agree, the starting and finishing times and payment therefor shall continue until the matter shall be referred to the appropriate industrial authority and determined.

(c) 'Bank to bank' shall be reckoned from the time the first person working on a shift leaves the surface to the time the last person working on the same shift returns to the surface.

(d) (i) The ordinary hours of work without payment of overtime for 6 or 7 day shift workers shall not exceed an average of 35 per week and shall be worked in shifts of up to 8 hours each inclusive of crib time of 30 minutes counted as time worked.

(ii) In the case of 6 or 7 day shift workers whose regularly rostered hours of work average more than 35 per week, overtime rates shall be paid in respect of time worked in excess of an average of 35 hours per week.

(iii) No 6 or 7 day shift worker shall on any day work more than the number of hours for that day set out in this sub-clause without payment of overtime except:

(A) by arrangement between the employees themselves; or

(B) to effect the customary periodical rotation of shifts.

(iv) There shall be a roster of shifts which may provide for rotation and, subject to the provisions of sub-clause (d) (iii) of this clause, for not more than one shift on any day. Such roster shall not be altered except by mutual agreement. Provided further that an employee's place on a roster shall not be changed, except on one week's notice of such change or payment at overtime rates.

(v) In manning any 6 or 7 day roster the following process shall be complied with:

(A) volunteers will be called for; and

(B) in the event that the roster is not fully manned and the mine is employing additional labour new starters will fill any vacancies; and

⁽¹⁾ See C.R. print No. 4071

Attachment 3

VARIATION—COAL MINING INDUSTRY (MINERS: QUEENSLAND)

- (C) in the event that the roster is still not fully manned, the employer shall discuss any shortfall with district officials of the union respondent to this award with a view to achieving full manning; and
- (D) in the event that the roster is still not fully manned, an employee with the necessary skills to perform the work and who has the least amount of service at the mine shall be appointed to the roster.

(e) The duration, number and spread of ordinary shifts as prescribed in the foregoing provisions of this clause, may be varied by the management or by order of the appropriate industrial authority. Provided that, unless there is agreement to the contrary, the duration of any ordinary shift does not exceed 8 hours and further provided that the average weekly spread of ordinary hours in any roster cycle not exceed 35 hours.

(f) The management shall have the right to carry out:

(i) All operations except production (as defined in clause 3 herein) for the 24 hours of each day of the year.

(ii) The production of coal from underground operations on any 6 days of each week of the year.

(iii) Make up production (as defined in clause 3 herein) on a 6th day of any week of the year, provided that management shall nominate the reason for such make up and maintain a record thereof.

(g) In addition to their normal shift all employees may, for the purposes of work which cannot reasonably be performed while the pit is working, or in the case of a flood, fire, breakdown of machinery or an accident be required to work on any occasion.

(h) At the option of the management and for the purposes of essential services and safety working employees may be required to perform work on any day. For the purpose of this sub-clause 'essential services' means any work which cannot reasonably be performed while the pit is working.

(i) Except as provided in sub-clauses (j) and (k) hereof, in cases where, by virtue of the arrangement of ordinary hours, an employee is entitled to a rostered day off during the work cycle, such employee shall be advised by the employer at least four weeks in advance of the day the employee is to take off, provided that a lesser period of notice may be agreed by the employer and the majority of employees in the mine or section or sections concerned.

(j) An employer, with the agreement of the majority of employees concerned, may substitute the rostered day off an employee is to take off for another day in the case of a breakdown in machinery or a failure or shortage of electric power or to meet the requirements of the mine or some other emergency situation.

An individual employee, with the agreement of his employer, may substitute the day he is to take off for another day.

(k) Notwithstanding any other provision in this clause, an employer, the union or unions concerned and the majority of employees in the mine, section or sections concerned may agree to accrue up to a maximum of five (5) rostered days off in special circumstances.

Where such agreement has been reached the accrued rostered days off must be taken within twelve months of 10 October 1988 and each twelve months thereafter.

It is understood between the parties that the involvement of the union or unions concerned would be necessary.

(l) The ordinary working shift for deputies on the day shift shall not commence more than two hours prior to the miners customary starting time.

By deleting sub-clause (a) from clause 11 Overtime and by inserting in lieu thereof the following new sub-clause:

(a) (i) Subject to sub-clause (a) (ii) hereof all time worked in excess of or outside the ordinary working hours prescribed by this award shall be paid for at the rate of time and one-half for the first three hours and double time thereafter, such double time to continue until the completion of the overtime work. Except as provided in this sub-clause or sub-clause (b) hereof in computing overtime each day's work shall stand alone. Subject to sub-clauses (g) and (h) of clause 12 hereof an employer may require an employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.

(ii) All time worked by 6 or 7 day shift workers in excess of or outside the ordinary hours of work prescribed by this award shall be paid for at the rate of double time. Time worked by 6 or 7 day shift workers during the ordinary hours of work on a Saturday shall be paid for at the rate of time and one half for the first four hours and double time thereafter.

(iii) Subject to sub-clause (i) herein, nothing shall prevent an employee's roster from including planned overtime.

(iv) Any employee who works overtime Monday to Friday or during any other period which in accordance with the provisions of this award allows the production of coal shall, if directed, produce coal.

VARIATION—COAL MINING INDUSTRY (MINERS: QUEENSLAND)

By deleting clause 12 Sunday and Holiday Work in its entirety and by inserting in lieu thereof the following new clause:

12—SUNDAY AND HOLIDAY WORK

- (a) The rate for all Sunday work shall be double time.
- (b) Any employee (other than an employee on shift) called on to work on a Sunday shall be paid for at least three hours' at the appropriate rate.
- (c) The recognised holidays shall be—New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, May Day, Queen's Birthday, Exhibition or Show Day, Christmas Day and Boxing Day, or any day observed by the public in the State of Queensland in lieu thereof, together with all other days gazetted from time to time as public holidays which are observed generally by the public in that State. Provided that Exhibition or Show Day may be taken in a District on any day specified from time to time by the Minister by notification published in the Gazette as the day appointed under 'The Holidays Act 1912 to 1961' to be kept as a holiday in relation to the annual horticultural or industrial show held at the principal city or town as specified in such notification of such district, provided that no employee shall be entitled to receive more than one day per year as Exhibition or Show Day.
- (d) It shall be agreed between an employer and the majority of employees who will be working on a 6 or 7 day roster which public holidays will be worked provided that work shall not be carried out on 2 of such holidays.
- (e) Any employee not required to work on a recognised holiday including employees rostered off, shall be paid for that day at the appropriate rate for his class of work provided that any employee who, without good and sufficient reason fails to work on the working day immediately preceding a recognised holiday or the first working day following such holiday shall not be entitled to payment for such holiday not worked. For the purposes of this sub-clause appropriate rate shall include an amount equal to the daily sum required to be paid to the employee under sub-clause (i) (ii) of clause 13 for annual leave purposes.
- (f) Any employee not required to work on a recognised holiday who changes his employment from one employer to another after the working day immediately preceding but before the first working day following such holiday shall, subject to provisions of sub-clause (e) hereof, receive payment for such holiday from the employer by whom he is employed on the first working day following the holiday and the said employer shall have the right to recover from the employer by whom the employee was employed on the working day immediately preceding the holiday 80 per centum of the amount of the payment made to the employee.
- (g) An employee not required to work on a recognised holiday who through the operation of mine workers pensions legislation is required to vacate his employment after the working day immediately preceding but before the first working day following such holiday shall be entitled to payment for such holiday unless without good and sufficient reason he fails to work on the working day immediately preceding the holiday.
- (h) The rate for all work performed on a recognised holiday by employees not engaged upon contract during hours which on any day from Monday to Friday inclusive would be regarded as ordinary hours of work without payment of overtime shall be double time in addition to a sum equal to the amount of the payment prescribed in sub-clause (e) hereof and thereafter at the rate of treble time on ordinary rates. Any employee engaged upon contract and employed on a recognised holiday shall be paid in addition to his contract earnings for that day, a further sum equal in amount to twice the daily sum to which he is entitled under the award in respect of each day of annual leave.
- (i) Any employee (other than an employee on shift) called on to work on a recognised holiday shall be paid for at least three hours at the rate of double time in addition to a sum equal to the amount of the payment prescribed in sub-clause (e) hereof.
- (j) Where an employee is absent on annual leave in a period in which a recognised holiday occurs, that day shall be regarded as an ordinary day for the purpose of paying for or computing annual leave.
- (k) An employee who works on a Sunday or a recognised holiday (and except for crib breaks) immediately thereafter continues such work shall on being relieved from duty be entitled to be absent until he has had ten consecutive hours off duty without deduction of pay for ordinary time of duty occurring during such absence.
- (1) (i) Notwithstanding sub-clause (d) hereof an employee who is entitled to a rostered day off which falls on a holiday prescribed by this clause shall, at the discretion of the employer, be paid for that day at the rate prescribed by sub-clause (e) hereof or have an additional day added to his annual leave. This provision shall not apply when the holiday on which he is rostered off falls on a Saturday or Sunday.
- (ii) In the case of an employee whose ordinary hours of work are arranged in accordance with sub-clauses (a) or (e) of clause 9, the weekday to be taken off shall not coincide with a public holiday fixed in accordance with sub-clause (c) hereof. Provided that, in the event that a public holiday is prescribed after an employee has been given notice of his weekday off in accordance with sub-clause (i) of clause 9 of this award and the public holiday falls on the weekday the employee is to take off, the employer shall allow the employee to take the day off on an alternative weekday.

VARIATION—COAL MINING INDUSTRY (MINERS: QUEENSLAND)

By deleting sub-clauses (a) and (b) of clause 13 Annual Leave and by inserting in lieu thereof the following new sub-clauses:—

(a) A period of 5 weeks annual leave, including non-working days, shall be allowed annually to an employee after 12 months continuous service (less the period of annual leave).

For the purpose of this clause the qualifying period for such service shall be the 12 calendar months terminating on the last day of the first pay period which ends in the month of December each year.

(b) (i) Seven day shift workers, that is shift workers who are regularly rostered to work on Sundays and holidays, shall be allowed one additional week's leave including non-working days.

(ii) An employee who, for part of his 12 month period works as a 7 day shift or continuous shift worker shall accrue proportionate leave in accordance with the provisions of sub-clause (j) hereof.

By deleting sub-clauses (h), (i) and (j) from clause 13 Annual Leave and by inserting in lieu thereof the following new clauses:

(h) (i) Subject to clause 9 (f) hereof an employer shall have the right to carry out any or all operations of a mine (production and ancillary) for the 52 weeks of the year.

(ii) Where an employer decides to shut down the mine, or a section or sections thereof, the employer may allow those employees who are not then qualified for a full entitlement to leave to cover the period of shutdown paid leave on a proportionate basis at the prescribed rate for the employee's classification immediately prior to the commencement of such leave. An employer who decides to shut down the mine or a section or sections thereof shall give 4 weeks notice of the intention so to do.

(i) (i) Each employee before going on leave shall be paid for the period for which he is entitled under this clause at the prescribed rate for his classification immediately prior to the commencement of his leave.

(ii) For each ordinary day of paid annual leave which is taken when the mine is out of production because of a shutdown, the employee shall be paid an additional amount equal to the daily average of the amounts received under a bonus scheme by each employee of his bonus classification for the available production days in the twelve calendar months terminating on the last day of the first pay period ending in the month of December which occurs immediately before the period in which the employee's leave is taken.

(iii) In the absence of agreement to the contrary, for each ordinary day worked by an employee during a period when the mine is out of production because of a shutdown and on which he would have otherwise been entitled to paid annual leave, such employee shall be paid an additional amount equal to the daily sum required to be paid under sub-clause (ii) hereof to an employee on leave.

(iv) For each ordinary day of paid annual leave which is taken when the mine is available for production, the employee shall be paid an additional amount equal to the daily bonus payment he would have ordinarily received but for his absence from work.

(v) In addition to the payments otherwise prescribed in this sub-clause during a period of paid annual leave an employee shall receive a loading of 20% on ordinary rates. Under this sub-clause a 7 day roster worker shall be paid the award rate for work in ordinary time according to his roster or projected roster (including Saturday, Sunday and holiday shifts) or the loading of 20% on ordinary rates whichever be the greater. Loadings prescribed under this sub-clause shall not apply for the purposes of sub-clause (g) hereof.

(j) For the purpose of calculating proportionate leave from 1 July 1980 at mines or establishments where twenty-five days annual leave is granted, leave shall accrue at the rate of 3.3654 hours for each completed week of service except in the case of 7 day workers where leave shall accrue at the rate of 4.0385 hours for each completed week of service.

By deleting clause 14 Sick Leave in its entirety and by inserting in lieu thereof the following new clause:

14—SICK LEAVE

Any employee who is absent from his work with an employer on account of personal illness or on account of injury sustained without his own default or wilful act shall be entitled to paid sick leave of absence subject to the following conditions and limitations:

(a) (i) On 1 July 1986 each employee shall be credited with 13 days sick leave for the ensuing year provided further that an employee who commences employment with his employer after 1 July 1986 shall be credited with a pro rata sick leave credit from the date of his commencement to 30 June 1987 at the rate of 1.75 hours for each uncompleted week of service, and provided further that the maximum accrual for the period 1 July 1986 to 30 June 1987 shall be 13 days.

(ii) Commencing on 1 July 1987, the first day of July each year shall be the date upon which each employee shall be credited with 15 days sick leave for the ensuing year.

Provided that on and from 8 September 1988, the accrual provided by this sub-clause shall be 15 days per year or in the case of an employee who normally works more than 7 ordinary hours on any day an accrual of 105 hours per year.

Provided further that an employee who commences employment with his employer after such first day of July shall be credited with a pro rata sick leave credit from the date of his commencement to

VARIATION—COAL MINING INDUSTRY (MINERS: QUEENSLAND)

the next 30 June at the rate of 2,0192 hours for each completed week of service to the next ensuing 30 June and provided further that the maximum accrual be 15 days per year or in the case of an employee who normally works more than 7 ordinary hours per day, 105 hours.

(b) Subject to the provisions of sub-clause (d) hereof for all service prior to 1 July 1980 one day's leave shall be credited to each employee for each 22 shifts or part thereof worked and/or where payment was made for absence from work on long service leave.

(c) (i) Leave allowable under this clause which is not availed of by an employee during the time it accrues shall be allowed to accumulate without limitation provided that an employee who changes his employment shall only be entitled to credit by his new employer of up to 15 days or 105 hours for leave accumulated and not availed of by him with his former employer.

(ii) Where an employee normally works in excess of 7 ordinary hours on any day the untaken balance of the sick leave entitlement as at 8 September 1988 shall be multiplied by 7 to convert it to an hourly entitlement.

(d) Any sick leave taken shall be deducted from the sick leave accumulated, the balance if any remaining to the credit of the employee.

(e) An employee shall not be entitled to paid sick leave of absence for any period in respect of which he is entitled to workers compensation.

(f) Within 72 hours of the commencement of such absence the employee shall inform the employer of his inability to attend for duty and as far as practicable state the nature of the illness or injury and the estimated duration of the absence.

(g) The employee shall prove to the satisfaction of his employer (or in the event of a dispute, of the appropriate industrial authority) that he was unable on account of such illness or injury to attend for duty on the day or days for which sick leave is claimed.

(h) The employee shall be paid for each day of leave allowable under this clause at the appropriate rate for his class of work; in addition the employee shall be paid for each day of leave allowable under this clause an amount equal to the daily bonus payment he would have ordinarily received but for his absence from work.

(i) Notwithstanding the provisions of clause 5 hereof, where an employer gives notice of termination of employment to an employee who is absent from work on paid sick leave, the termination of employment shall not take effect until the employee's paid sick leave has expired or he is fit for duty, whichever happens first.

(j) An employee who is retrenched, whose services are terminated through operation of mine workers pensions legislation because of age, or by his employer because of ill health, or who dies, and who at the date of such retrenchment, termination or death has accrued ten or more days or 70 or more hours of unused sick leave shall be granted payment to be made to him (or in the case of death to his personal representative) on the basis of one ordinary day's pay for each day of sick leave accrued by him and not already taken.

2 By deleting Schedule A in its entirety and by inserting in lieu thereof the following new Schedule:

SCHEDULE 'A'

The minimum rates of wage payable to the following classes of employees shall be:—

Column 1	Column 2	Column 3	Column 4	Column 5
Number	Classification	Southern Division	Central Division	Northern Division
		Rate of wage per week		
		\$	\$	\$
1	Borer	438.80	439.40	440.40
2	Borer operator (in open cuts)	449.70	450.30	451.30
3	Braceman in charge of sinking shafts	419.60	420.20	421.20
4	Carter	411.40	412.00	413.00
5	Coal-cutting machineman	438.80	439.40	440.40
5A	Coal sampler (Thiess Bros Pty Ltd—South Blackwater only)		426.60	
6	Coke burner	428.00	428.60	429.60
7	Colliery blacksmith	432.10	432.70	433.70
8	Experienced tradesman—colliery blacksmith	438.80	439.40	440.40
9	Colliery carpenter	437.80	438.40	439.40
10	Experienced tradesman—colliery carpenter	444.00	444.60	445.60
11	Deputy and deputy waste examiner	507.70	508.30	509.30
12	Horsekeeper	427.60	428.20	429.20
12A	ICI explosives controller	496.50	497.10	498.10
12B	ICI explosives operator	439.60	440.20	441.20
12C	Industrial painter	437.80	438.40	439.40
12D	Experienced tradesman—industrial painter	444.00	444.60	445.60

VARIATION—COAL MINING INDUSTRY (MINERS: QUEENSLAND)

Column 1	Column 2	Column 3	Column 4	Column 5
Number	Classification	Southern Division	Central Division	Northern Division
		Rate of wage per week		
		\$	\$	\$
13	Labourer (surface)	411.40	412.00	413.00
14	Labourer (underground)	411.40	412.00	413.00
15	Lamproom mechanic	426.10	426.70	427.70
16	Loaderman	438.80	439.40	440.40
17	Locomotive driver (underground)—			
	(a) electric	428.00	428.60	429.60
	(b) diesel (under 25 tonnes)	428.00	428.60	429.60
	(c) diesel (25 tonnes and over)	438.80	439.40	440.40
18	Locomotive shunter (underground)	411.40	412.00	413.00
19	Lump breaker and barrier down	427.60	428.20	429.20
20	Motor lorry drivers—			
	(i) of motor lorries with carrying capacity of up to and not exceeding 3 tonnes	415.30	415.90	416.90
	(ii) of motor lorries with carrying capacity of over 3 tonnes and not exceeding 5 tonnes	418.40	419.00	420.00
	(iii) of motor lorries with carrying capacity of over 5 tonnes and not exceeding 8 tonnes	426.60	427.20	428.20
	(iv) of motor lorries with carrying capacity of over 8 tonnes and not exceeding 10 tonnes	436.00	436.60	437.60
	(v) of motor lorries with carrying capacity of over 10 tonnes and not exceeding 12 tonnes	438.50	439.10	440.10
	(vi) for each additional tonne or part thereof exceeding 12 tonnes and whether articulated or not—38 cents per week extra			
21	Open-cut examiner	498.70	499.30	500.30
22	Pitbottomer	429.60	430.20	431.20
23	Pitheadman	419.60	420.20	421.20
23A	Rigger/dogman	432.30	432.90	433.90
24	Roadman	424.10	424.70	425.70
25	Roofbolter	438.80	439.40	440.40
26	Scraper loader crew	438.80	439.40	440.40
27	Screen plant employee	411.40	412.00	413.00
28	Shifman miner (18 years and over)	428.00	428.60	429.60
29	Shotfirer	497.30	497.90	498.90
30	Shovel groundaman	411.40	412.00	413.00
31	Shuttlecar driver	438.80	439.40	440.40
32	Sinker	438.80	439.40	440.40
33	Timberman	428.00	428.60	429.60
33A	Tyre fitter	428.30	428.90	429.90
33B	Washery operator	438.80	439.40	440.40
34	Wheeler, horse driver, jig runner & rope runner—18 years and over	411.40	412.00	413.00
35	Youths—surface only			
	(a) from 15 to 16 years of age	239.00	239.30	239.70
	Surface and underground—			
	(b) from 16 to 17 years of age	265.90	266.30	266.80
	(c) from 17 to 18 years of age	290.40	290.80	291.40
	(d) from 18 to 19 years of age	322.50	322.90	323.60
	(e) from 19 to 20 years of age	348.20	348.70	349.50
	(f) from 20 to 21 years of age	379.10	379.60	380.50

Provided that a youth of 18 years of age or over with two years experience in the industry shall be paid adult rates

In each division herein youths not in receipt of adult rates of pay shall accrue time for the purpose of the experience payment at the rate of 50% to a maximum of one year's accrual.

An employee other than a deputy and deputy waste examiner employed at an underground mine with two years experience of work at the coal face, shall be paid an amount of \$9.20 per week for all purposes of this award in addition to the rate for his particular classification.

B. The foregoing variations contained in A1 shall operate on and from 10 October 1988 and shall remain in force for a period of six months thereafter or until further order.

C. The foregoing variations contained in A2 shall operate as follows:

(i) from 26 September 1988 at mines or establishments where prior to 10 October 1988 agreement is reached on implementation of changes pursuant to the variations contained in A1 hereof and the Tribunal is notified of such agreement prior to payment; and

(ii) from the date of implementation at mines or establishments where subsequent to 10 October 1988 agreement is reached on implementation of changes pursuant to the variations contained in A1 hereof and the Tribunal is notified of such agreement prior to payment;

and shall remain in force for a period of six months from 10 October 1988 or until further order.

D. When advising the extent of change pursuant to the variations contained in A1 hereof employers shall also advise the degree of change and of job security resulting from such change.

E. Implementation of the variations in A1 hereof shall be reviewed on 14 November 1988.