

FAIR WORK COMMISSION

Four yearly review of modern awards – Annual leave **AM2014/47**

Submissions - Coal Mining Industry Employer Group

1. These submissions are made for the Coal Mining Industry Employer Group (**CMIEG**) in accordance with the Decision of the Full Bench issued on 22 September 2016 ([2016] FWCFB 6836) at [155].
2. In its Decision, the Full Bench determined to delete clause 25.4 of the Black Coal Mining Industry Award 2010 (**BCMI Award**) in its entirety, and the BCMI Award be varied to insert the revised excessive annual leave model term (at [84]).
3. On 13 October 2016, the Commission published a Draft Determination for the variation to clause 25 of the BCMI Award to give effect to the Decision of 22 September 2016.

Excessive annual leave clauses

4. The CMIEG makes the following comments on the Draft Determination:
 - (a) In respect of paragraphs 1, 3 and 4, for consistency with clauses 25.2 and 25.3 of the BCMI Award:
 - (i) the reference in clause 25.4(a) to "10 weeks" and "12 weeks" should read, respectively, "350 hours (10 weeks)" and "420 hours (12 weeks)";
 - (ii) the reference in clause 25.5(b)(i) to "6 weeks" should read "210 hours (6 weeks)";
 - (iii) the reference in clause 25.6(d)(i) to "6 weeks" should read "210 hours (6 weeks)"; and
 - (iv) the reference in clause 25.6(e) to "5 weeks" and "6 weeks" should read, respectively, "175 hours (5 weeks)" and "210 hours (6 weeks)".
 - (b) In respect of paragraph 7, setting out the terms of clause 25.6 operative from "XX October 2017, for consistency with clause 25.2 and 25.3 of the BCMI Award:

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- (i) the reference in clause 25.6(d)(i) to "6 weeks" should read "210 hours (6 weeks)"; and
- (ii) the reference in clause 25.6(e) to "5 weeks" and "6 weeks" should read, respectively, "175 hours (5 weeks)" and "210 hours (6 weeks)".

Shutdown clause

- 5. As noted, in its Decision, the Full Bench determined to delete clause 25.4 of the BCMI Award in its entirety.
- 6. In the case of a shutdown, employers covered by the BCMI Award would rely upon the operation of both clauses 25.10 and 25.4(c) to direct employees to take annual leave for the period of the shutdown. The removal of clause 25.4(c) now makes unclear the ability of the employer to require, or direct, the taking of paid annual leave during the period of a shutdown.
- 7. The CMIEG submits that clause 25.10 be amended to read as follows:

25.10 Shutdown

- (a) When an employer shuts down all or part of its operation, clauses 25.4 and 25.6 do not apply to employees directly affected by the shutdown and this clause will apply.
- (b) An employer that shuts down all or any part of its operation must give employees at least 28 days' notice of the shutdown or such shorter period as agreed between the employer and the employees affected.
- (c) Subject to (d), employees directly affected by the shutdown who have an entitlement to annual leave may be required by the employer to take a period of paid annual leave during the period of the shutdown.
- (d) Employees who are directly affected by the shutdown:
 - (i) may elect to take all or only part of the employee's entitlement to annual leave during the shutdown period, with the balance of the shutdown period being unpaid leave; or
 - (d) Employees who are directly affected by the shutdown and who are not yet entitled to sufficient annual leave may, during the shutdown period, elect to take any annual leave in advance accrued in accordance with clause 25.9 25.8, or otherwise be placed onto unpaid leave.

- 8. The CMIEG submits that these amendments are necessary to ensure that the construction of clause 25, as a whole, is clear and operates in the manner intended once the existing clause 25.4 is removed and the new clauses 25.4, 25.5 and 25.6 are inserted into the BCMI Award.

9. It is noted that there is an apparent cross-reference error in the current clause 25.10 of the BCMI Award. The reference in clause 25.10(c) to "clause 25.8" should read "clause 25.9".

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