

FAIR WORK COMMISSION

Four yearly review of modern awards – Timing of payment of wages

AM2016/8

Submissions - Coal Mining Industry Employer Group

Introduction

1. This submission is made for the Coal Mining Industry Employer Group (**CMIEG**) in accordance with the Statement ([\[2016\] FWCFB 6401](#)) and Directions issued by the Full Bench on 8 September 2016.
2. The CMIEG supports the deletion of the existing clause 16.7 of the Black Coal Mining Industry Award 2010 (**BCMI Award**) and the insertion of the new clause 16.7 as set out in the Draft Determination attached as Annexure A to the Statement of 8 September 2016.
3. The CMIEG accordingly supports the claims of the AiGroup and Australian Business and Industrial and NSW Business Chamber (ABI) for the variation as referred to in the Statements of the Full Bench of 6 July 2016 ([\[2016\] FWCFB 4519](#) at [7] to [10]) and 2 August 2016 ([\[2016\] FWCFB 5254](#) at [11] to [14]).
4. The CMIEG supports the [AiGroup submissions](#) filed on 20 September 2016, and the [ABI submissions](#) filed on 20 September 2016 in support of their claims in respect of timing of payment on termination of employment, insofar as those submissions relate to the claims generally and are relevant to the variation of the BCMI Award.¹

Variation to the Draft Determination proposed by the CFMEU

5. The [CFMEU submissions](#) filed on 20 September 2016, propose that the Draft Determination be amended in the following manner:

Upon termination of employment, wages due to an employee will be paid on the day of such termination or forwarded by post, within 72 hours, to the last address notified in writing by the employee.

¹ See AiGroup submissions [1]-[64]; ABI submissions at [1]-[2], [4]-[7]

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~~Despite 16.7(a), if the employee~~ Provided that where payment is normally paid made by electronic funds transfer (EFT), the wages due to an employee may be transferred into the employee's account in accordance with the usual pay cycle within 72 hours of the termination of employment.

6. The CMIEG submits that there is no reason to distinguish the circumstances of the BCMI Award and the black coal mining industry, from other modern awards and the industries and occupations which are covered by them. The CFMEU has provided no factual material, or reasoned examples, supporting its submissions. None of the issues raised by the CFMEU are particular to the black coal mining industry. There is, accordingly, no reason that would lead the Commission to determine that the approach to be taken to such terms should be any different in respect of the BCMI Award.
7. The CMIEG considers that the history of the clauses in predecessor awards to the BCMI Award, referred to at [7] in the CFMEU submissions, do not demonstrate any distinguishing feature of the BCMI Award or the black coal mining industry.
8. It is uncontroversial that a large number of employers pay their employees by electronic funds transfer (**EFT**).² While the BCMI Award provides for payment of wages by either cheque or EFT (clause 16.5), the incidence of EFT has significantly increased over time, making payment by cheque more the exception than the rule. The insertion of the proposed term is a sensible development given the increased prevalence of payment by EFT.
9. The processing of a payroll system outside of the usual pay cycle requires additional resources to be deployed and associated costs incurred by an employer, than would otherwise be expended or incurred in processing the payroll at the usual time. Depending on the nature of the employer's payroll system, this may involve making special manual adjustments in the payroll system.
10. Accordingly, an award provision that requires an employer to process a payroll for the purpose of making a termination payment outside of the usual pay cycle, increases the employment costs and regulatory burden on an employer. This is a relevant consideration for the Full Bench in considering whether to insert a clause in the form proposed by the CFMEU, as compared to that set out in the Draft Determination (see section 134(1)(f), *Fair Work Act 2009* (Cth)).³ By parity of reasoning with the decision of the Full Bench in the Annual Leave common issue proceedings,⁴ the CMIEG submits that the proposed term set out in the Draft Determination satisfies the modern awards objective.

² See the Decisions in the Annual leave proceedings (AM2014/47) issued on 11 June 2015 ([\[2015\] FWCFB 3406](#)) at [436]-[442] and 23 May 2016 ([\[2016\] FWCFB 3117](#)) at [38]; see also the ABI submissions at [5]

³ See the Decision ([\[2016\] FWCFB 3117](#)) at [177] (including the reference to the [CMIEG's submissions](#) dated 11 November 2015, at [3(c)] which were accepted in those proceeding) and [296].

⁴ Ibid

11. The CMIEG submits that the variation to clause 16.7 in the form of the Draft Determination should be made.

Question of the Full Bench concerning the Draft Determination

12. In the Statement of 8 September 2016, the Full Bench stated at [8((ii)(a))]:

(ii) Some of the remaining draft determinations retain existing award terms which give rise to issues which warrant further consideration, these are:

(a) Ten awards provide for termination payments to be made by post – is it envisaged that such payments would only be by cheque or is it intended that cash could be sent by post? The awards in question are:

Black Coal Mining Industry Award 2010 – cl 16.7(a)

...

We also note that a number of these awards specify that the payment be sent by post or registered post and there may be some merit in standardising the language used.

The BCMI Award provides only for payment of wages by cheque or electronic funds transfer (clause 16.5). Accordingly, any wages paid under the current clause 16.7, or under the proposed clause 16.7(a) in the Draft Determination, would be by cheque "forwarded by post".

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