



January 2014 Staff at the Coal Face

Win for Staff at Wambo in the face of push from management for Award free contracts

Last year Peabody started to restructure some Staff positions and make some promotions at Wambo Mine conditional on giving up Staff employees' safety net of conditions covered in the Black Coal Award and the introduction of Guaranteed Annual Earnings (Award free) contracts. The impact of this approach was that Staff were no longer legally entitled to the Award conditions of three weeks per year of service, instead Staff would have to rely upon Peabody's redundancy policy as amended "from time to time". Elsewhere in the contracts, it said that "the policies...are not intended to be legally binding on the company...", so there was nothing stopping Peabody changing the current redundancy policy.

This left Staff very vulnerable as Peabody could simply decide to change its policy and revert to the basic conditions of the Fair Work Act, which are far less than the entitlement under the Award. Also of concern were the clauses relating to relocation and transfer, the potential reduction of Accident Pay entitlements, the reduction of rights to consultation around significant change and changes to sick leave entitlements.

Wambo Staff were unhappy with Peabody's approach which seemingly picked off individuals and forced people onto Guaranteed Annual Earnings contracts. Those members also reported to us that they felt like they had little power to negotiate. After direct approaches to Peabody failed, members decided to address the issues collectively. After a series of meetings on site where other Staff also decided to get involved and join the union, Wambo Staff decided that the best way to secure their current conditions and to ensure that if there were to be changes to their conditions that they would be collectively negotiated through an enterprise agreement.

The Commission granted a Majority Support Determination at Wambo on 6 December, and Staff have now commenced negotiations with Peabody. As a result of acting collectively Wambo Staff will now be able to secure their conditions in an ever-changing industry.

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What to do when facing a disciplinary investigation

We have seen a rise in recent months of members facing serious disciplinary issues. At times members have not realised the importance of getting advice and assistance until after the first meeting and by that stage the company has often asked many questions and gathered most of the information. Nothing is ever 'off the record' in these circumstances!

It is important to get in contact with us as soon as practicable, so that we can guide you through the process and give you the best assistance possible.

Most importantly:

- Don't go to a meeting alone - If your employer asks you to come to a meeting to discuss your work performance or a conduct issue it is important that you attend. However, you should not go alone. You have a right to ask to postpone a meeting for a reasonable amount of time until a support person or representative can attend with you.
- Call your Industrial Officer on (02) 9269 0688 as soon as possible for confidential advice and assistance, or your site delegate where there is one.
- Keep a record. Make sure you have a copy of any relevant documents such as emails, warning letters, performance reviews, policies and your work contract. Taking note of times and details of relevant conversations in a diary can also be helpful.
- Be candid and upfront with your Industrial Officer and provide them with complete and accurate information so that they can give you the best assistance possible.

Please take these things seriously and get advice immediately.

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Your rights in relation to restructures and redundancies

When there are to be significant changes at your mine site, including down-sizing, there are a number of different laws that affect you:

- Black Coal Mining Industry Award 2010 (the Award)
- Fair Work Act 2009/National Employment Standards (the Act)
- Your contract of employment/enterprise agreement if you have one
- Case Law

For Award covered employees, the company has an obligation to consult

Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must notify the affected employees and their representatives.

Employer to discuss change

- Your employer must discuss with affected employees and their representatives the effect the changes are likely to have on employees and measures to avert or mitigate the adverse effects on employees.
- Your employer must give prompt consideration to matters raised by the employees and their representatives.
- The discussions must commence as early as practicable after a definite decision has been made by the employer to make the changes.
- Your employer must provide in writing to the employees concerned and their representatives all relevant information about the changes including:
 - the nature of the changes proposed;
 - the expected effects of the changes on employees and any other matters likely to affect employees;
 - not required to disclose confidential information.

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Where there are 15 or more terminations at your mine site, under the Act, your employer must consult with your union about;

- measures to avert or minimise the proposed terminations;
- measures (such as finding alternative employment) to mitigate the adverse effects of the proposed terminations;
- the proposed terminations and the reasons for them;
- the number and categories of employees likely to be affected;
- the time when, or the period over which, the employer intends to carry out the terminations.

Your union will generally try to negotiate with the company to implement a voluntary redundancy/job swap process and for redundancy selection to be open and transparent.

I'm being made redundant, what next?

It has to be a genuine redundancy

A 'genuine redundancy' is when:

- the employee's job doesn't need to be done by anyone because of operational changes to the business (eg. downsizing or new machinery), and
- the employer has met the consultation requirements (found in the relevant modern award, enterprise agreement or other industrial instrument).

If either of these aren't met it may not be a genuine redundancy. The use of step-ups and contractors does not automatically make it unlawful and needs to be looked at on a case by case basis.

It may also not be a genuine redundancy if it is reasonable for the employee to be redeployed in either:

- the employer's business
- the business of an entity associated with the employer.

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Your entitlements

Your contract is unique to you, and may not be the same as your colleagues. Your contract in conjunction with the Award, and the Act will determine what you're entitled to when being made redundant. If you have any doubt, seek advice from your union.

If you are currently employed on an individual contract that has an Annual Guaranteed Earnings clause, you are no longer covered by the Award. This means you will not be eligible to be paid standard coal industry conditions on retrenchment such as 3 weeks per year of service, and the payout of accrued sick leave, unless these conditions are specifically written into your contract.

If you are on one of these contracts and your contract does not specify your conditions on retrenchment, you will be paid entitlements according to the National Employment Standards, which are capped at 16 weeks, regardless of how many years you have worked and you will not be entitled to the payout of accrued sick leave.

Redeployment/transfers

For Award covered employees, you are entitled to redundancy pay unless your employer finds you a new role that:

- You are competent to perform.
- Is the same or higher rate of pay.
- Is reasonable regarded as permanent.
- Allows you to reside in the same general locality.

Some companies are better than others in managing restructures and redundancies to minimise the effects on employees. It is vital that you contact your union if you hear of these changes happening at your site.

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**Collieries'
Staff and Officials
Association**

OUR NEW NAME COLLIERIES' STAFF AND OFFICIALS ASSOCIATION

APESMA NEW NAME PROFESSIONALS AUSTRALIA

YOUR STAFF UNION COMMITMENT TO OUR MEMBERS REMAINS THE SAME

APESMA recently implemented its new name - Professionals Australia. You will now receive emails from the Collieries' Staff team that end with "@professionalsaustralia.org.au". All our emails are diverted, so you can still use our old email addresses, including infocsd@apesma.com.au.

The best number to call us on is the same 02 9269 0688.

You will still speak to and see the same organisers –in NSW/TAS Kylie Rooke and Tom Pacey, Kristy Harper (QLD and WA) and Catherine Bolger (Director). Sue Carswell and Kathleen Studdert will continue to take your calls in the office.

If you have any questions please contact us on 02 9269 0688.

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