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Common Cause.



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BEN RENYARD

Hunter Valley coal miner

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OUR UNION HAS THIS WEEK FILED A LANDMARK CLASS ACTION LAW SUIT TO WIN BACK MILLIONS OF DOLLARS IN UNPAID ENTITLEMENTS FOR COAL MINERS MISCLASSIFIED AS CASUALS BY LABOUR HIRE FIRM WORKPAC.

Our union has this week filed a landmark class action law suit to win back millions of dollars in unpaid entitlements for coal miners misclassified as casuals by labour hire firm WorkPac.

The lead applicant is Hunter Valley coal miner, Ben Renyard, who worked at Mount Thorley Warkworth mine through WorkPac for nearly three years, but it covers all affected union members.

Despite doing the same work, on the same roster under the same supervisors as permanent employees, Ben was one of a majority in his crew employed casually on a flat hourly rate, with no sick or annual leave, and no job security.

"I worked on a crew alongside permanent workers on the same annual roster with the same supervisor, but I got less pay and no entitlements like annual leave or sick leave. As a casual you are treated like a second-class citizen," he said.

"I hope this class action puts the pressure on employers to stop exploiting casual workers."

The class action follows last year's Federal Court ruling in *WorkPac v Skene* – a case also run and funded by CFMEU Mining and Energy – which found that casual coal miners in regular on-going employment with advance fixed rosters were not legally casual workers and were entitled to paid leave.

General President Tony Maher said the Skene judgment had exposed the rort of hiring workers as 'permanent casuals', which is widespread in mining.

"At many Australian coal mines, half or more of the workers are employed as casuals in jobs where the nature of the work is not casual at all."

"This rort robs workers of their legal entitlements and siphons that money back into the pockets of rich mining company shareholders and executives."

"BEN'S STORY IS EMBLEMATIC OF A MINING INDUSTRY RELIANT ON SYSTEMICALLY SHORT-CHANGING ITS EMPLOYEES. BEN SPENT YEARS WORKING IN WHAT WAS EFFECTIVELY A PERMANENT JOB BUT BEING CALLED A CASUAL AND SO NOT GETTING ANY ENTITLEMENTS."

The class action covers members of the CFMEU Mining and Energy Division who are employed by labour hire company WorkPac and placed on assignment with a coal miner operator currently or for a period of at least three months since 2013. It applies to workers designated as casual, who are paid a flat hourly rate and work in accordance with a long-term roster determined by the mine operator.

Around 600 members have currently registered their interest in joining the action. Their unpaid annual leave entitlements alone are estimated to be worth more than \$12 million. Non-members are encouraged to register their interest as they may be able to join the class action if they join the union.

General President Tony Maher said the union-run class action would see all entitlements won flow directly back to members, with none lost in legal fees.

"Unlike class action law suits funded by profit-driven litigation funders, every single cent recovered by the CFMEU's class action will go directly back to the affected workers."

The class action has been filed by national law firm Slater & Gordon on behalf of the CFMEU Mining and Energy Division.

Find out more at classaction.cfmeu.org.au.

FAREWELL LEE, WELCOME ANDY



OUR SOUTH WESTERN DISTRICT HAS FAREWELLED SECRETARY LEE WEBB WHO RETIRED THIS MONTH, WITH ANDY DAVEY ELECTED TO REPLACE HIM.

Aimee Williamson grew up in the mining town of Tieri in Lee Webb has been in the Secretary's chair for four years, after a long career as a coal miner and union rep. An electrician by trade, Lee started his working life overhauling mining vehicles and equipment. He went underground after applying for a job at Tahmoor mine in 1986, where he stayed until becoming a full-time district official in 2015.

At Tahmoor, Lee quickly became the shift rep on afternoon shift – keeping the position for 16 years until he changed shifts. He later became Lodge Vice President, then Lodge Secretary, before putting his hat in the ring to become District Secretary.

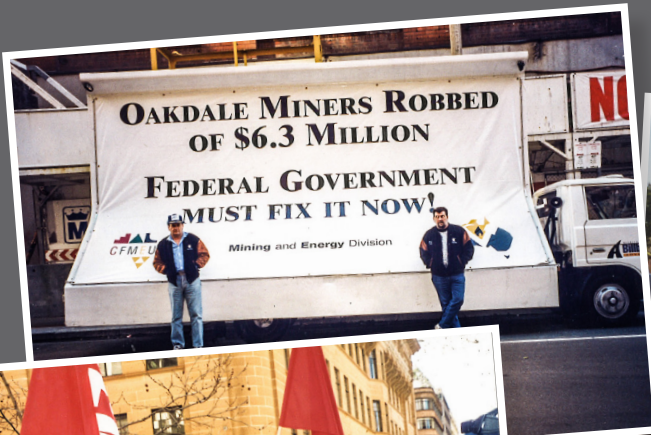
Lee was a stalwart at Tahmoor during years of upheaval, including major industrial action. *"We had at least seven companies running Tahmoor during my 28 years there, and when Xstrata turned up, they were the worst. Everyone hated this company with a passion, none more than myself."*

Andy Davey has worked in the coal industry for 25 years – including seven years and 18 years at Helensburgh, which is the oldest continuous coal mine in NSW. Andy has been a staunch unionist during his time in the industry, serving eight years as Helensburgh Lodge President and five years on the District Board of Management.

He hopes to build on Lee's work strengthening governance and compliance in the District, improving communications to members and reaching out to younger members.

On behalf of the whole union, congratulations to Andy and many thanks to Lee for his years of service, we wish him all the best in retirement. assessed independently.

OAKDALE DISPUTE



WHEN THE OAKDALE MINE CLOSED IN 1999, WORKERS WERE LEFT WITH MILLIONS OF DOLLARS IN UNPAID ENTITLEMENTS. A determined campaign, including a national strike, led to a \$6.3 million payout. 20 years later we look back at our great win.

Watch Oakdale promo video - <https://www.youtube.com/watch?v=1HuiBFoNORU&t=18s>

SHAREHOLDERS WIN, WORKERS LOSE AS BHP PROFIT JUMPS



BHP HAS POSTED RECORD DIVIDENDS TO SHAREHOLDERS AND HIGHER BUT NOT RECORD PROFITS FOR THE YEAR ENDED JUNE. PROFIT MARGINS REMAIN HUGE EVEN AS THE COMPANY CONTINUES COST-CUTTING.

BHP recorded official net profit of US\$8.3 billion, up a whopping 124% from US\$3.7 billion last year. But the profit jump is inflated by one-off factors last year. If they are stripped out, underlying profit has increased from US\$8.9b to US\$ 9.1b.

This is still way below the profit recorded at the height of the Resources Boom – US\$23.6b back in 2011. However, the dividend payout jumped to an all-time high of US\$1.33 per share, which translated to roughly three quarters of all profit.

The big factor driving the profits is still high global iron ore prices from the temporary closure of a lot of mines by Vale in South America following two dam collapses that killed

hundreds of people. The first of those – Samarco – involved BHP too, and the costs of dealing with that are still occurring with another US\$1.1b allocated.

Iron ore accounted for US\$11.1b of EBITDA (cash flow after operating costs) profit while coal came in with US\$4.1b of EBITDA profit.

The cash margins BHP enjoys continue to be huge – 65% for iron ore, 64% for petroleum, 46% for copper and 45% for coal.

While BHP is making noises about selling out of thermal coal, NSW Energy Coal (Mt Arthur) still had a very good cash margin of 28%.

The company is still planning on cutting costs, though to date it doesn't appear to be saving much money through automation and remote operations. The company is planning to spend around US\$800m on 500 automated trucks across iron ore and Queensland coal. And BHP is still relying on the "Operations Services" in-house labour contractor model for future "safety and productivity improvements" which is apparently new terminology for cutting wages.

It looks like shareholders are sharing in BHP's good times via big dividends, while the workers contribute via pay cuts through labour contracting.

PETER COLLEY,
National Research Director

PUBLIC HOLIDAY WIN: PAYMENT APPLIES EVEN WHEN ROSTERED OFF



CFMEU MEMBERS AT SPECIALIST CONTRACTOR WILSON MINING WILL RECEIVE BACKPAY FOR PUBLIC HOLIDAYS THAT FELL ON ROSTERED DAYS OFF IN A DECISION THAT CONFIRMS THAT MINeworkERS CAN BE ELIGIBLE FOR PUBLIC HOLIDAY LOADING EVEN IF THEY ARE NOT AT WORK.

Wilson's Enterprise Agreement states that mineworkers who are rostered off on a public holiday should receive an additional eight hours ordinary time pay plus average bonus.

However, Wilson stopped paying the entitlement in 2017, arguing workers on a day off weren't entitled to the additional payment. The Fair Work Commission disagreed.

In a case brought by the CFMEU, the Commission ruled that a rostered day off is not the same as a non-working day. On the continuous 24-hour rosters that operate in the coal mining industry, there are no non-working days. Rather, every day is covered by a roster, with some workers rostered on and some rostered off.

The Commission's Deputy President Asbury said the Black Coal Mining Industry Award was designed to recognise that coal miners are often required to work public holidays but have no choice over when they will be required to work.

"Employees often work long hours in concentrated periods and then have blocks of days off. The employees are required to commit to a roster and to be available in accordance with that roster. They have little if any choice about when they will take a rostered day off and those days are allocated in advance throughout the roster. The employer has the right to operate a roster on any day the employer requires work to be performed, including weekends and public holidays. Provisions of coal industry awards (and other awards) which entitle employees to be paid for public holidays falling on rostered days off are not new and are directed to addressing the position of employees who do not work on a public holiday by virtue of the rotation or cycles of the roster under which they are required to work."

Queensland District Legal Officer Chris Newman said the decision was relevant across the black coal industry. Many permanent employees are on salaries that take payment for public holidays into account but others, like those at Wilson, receive an hourly rate and may be missing out.

If you are not sure if you're being paid correctly, contact the Union.

QUEENSLAND SAFETY RESETS: HAVE YOUR SAY

ABOUT HALF OF QUEENSLAND MINES HAVE SO FAR CONDUCTED COMPULSORY MINE SAFETY 'RESETS' FOLLOWING SIX DEATHS IN THE INDUSTRY.

District officials report that the quality of the resets has been mixed – with some allocating sufficient time and resources and others just paying lip service:

Tell us your experience - <https://me.cfmeu.org.au/forms/safety-reset-share-your-experience>

**ATTN: Queensland
Coal Miners**

Share your Safety Reset
experience and help us fight
for mineworker safety



FROM THE PRESIDENT

Tony Maher



“SUCCESSFUL PASSAGE OF THE ENSURING INTEGRITY BILL WILL MAKE IT HARDER FOR WORKERS TO ORGANISE AGAINST ATTACKS FROM EMPLOYERS ON THEIR WAGES AND WORKING CONDITIONS.”

Tony Maher

ENSURING INTEGRITY THE LATEST ASSAULT ON UNIONS

Twenty years ago, our union stared down a fiercely anti-union government and won. When the Oakdale miners lost their jobs and entitlements when the mine operator suddenly went into administration in 1999, we were up against a government that had sent dogs and masked goons on to the waterfront to break a strong union.



The introduction of the Morrison Government's Ensuring Integrity Bill signals that we are heading towards another major assault on unions' rights to do their core job of representing members.

The Bill is a politically-motivated attack against Australia's independent and democratic trade union movement. It aims to introduce more punitive penalties against trade unionists in a range of areas. It would make it much easier to deregister unions and disqualify elected trade union officials – including those who volunteer their time as Lodge officials and as Board and Council members.

We are worried that the coal miners and power station workers who volunteer their time to represent workers on Union governing bodies will be tied up in red tape and face legal action over minor administrative errors – like the Union not submitting paperwork on time.

Under the proposed legislation Officials of the Union can be disqualified over minor breaches of regulation like filing

financial records a day late, which can be initiated by just about anyone (like the employer the Union is trying to negotiate a better deal for workers with) and these are much harsher penalties than the rules facing corporations.

Workers should be able to elect their own union leaders without fear they'll be removed by someone who thinks they're unsuitable, or that they'll face stricter legal and administrative requirements than company directors.

Our Division has strong democratic processes and a proud democratic tradition. We have a good track record of addressing problems in governance or behaviour that may occur.

The Ensuring Integrity Bill is due to be voted on in the Senate in the months ahead and with a cross-bench that is largely sympathetic to the Government, it is likely to be passed into law. It will certainly result in costly attacks on unions that will chew up time and money that should be spent supporting our members.

This attack on unions comes as we face major challenges in our industries: widespread casualisation of jobs, cuts to accident pay, efforts to wind back our industry long service leave scheme and continual attempts to cut local jobs. Successful passage of the Ensuring Integrity Bill will make it harder for workers to organise against attacks from employers on their wages and working conditions.

But, let's not forget that we have stood up to anti-union governments before. The Oakdale anniversary is a timely reminder that organised workers with a just cause and the backing of their communities can force governments to back down – even the nastiest governments with characters like Peter Reith. We have done it before and we can do it again.

TONY MAHER,
General President

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