

FEBRUARY 2021

Common Cause.



**Coal Miners speak out:
IR Omnibus Bill will
make casualisation
worse**



CLOSE CALL: ESCAPE FROM A BURNING TRUCK

WHEN COAL MINER NIC STARTED AT 6AM THAT WINTER'S DAY HE HAD NO IDEA IT WOULD END WITH HIS 200-TONNE TRUCK BURSTING INTO FLAME UNDERNEATH HIM AND THREE HOURS OF WALKY-TALKY CHATTER WITH RESCUE TEAMS AS HE SCRAMBLED TO SAFETY.

It started as a normal shift – after pre-start he saw he was on the reject truck, not the dozer or the loader, like he usually was.

"I'd just got back from doing a traineeship in the washplant – so was bumped back to the reject truck," says Nic.

The reject truck runs 24/7 and takes rock and other contaminants from the coal washplant to the gigantic reject pile.

"The workload depends on how dirty the coal is, but if the reject truck stops the whole washplant shuts – so it's high pressure," he said.

"Every hour it's down is another \$100,000 they reckon."

At 2.30pm Nic was waiting at the reject bin and the two-way radio crackled to life – he was told to do one more run to the reject dump before coming in for crib break.

He started on the one kilometre run to the back of the ramp and at a snail's pace began the agonisingly slow drive up the ramp as the massive rig laboured on with a full load.

"From the summit you can see for miles, as I was reaching the top I noticed the watercart directly in front of me a couple of hundred metres away," he said.

"Just as I got to the top there was a huge bang and suddenly the whole deck was on fire. It felt like a tyre pop – but it was a bigger bang – I felt it move underneath me – instinct kicked in – I grabbed the two-way with one hand and with the other hit the park break and dropped the stairs,"

I said, 'Emergency, Emergency, Emergency, truck's on fire at the reject dump' and that was it.

"The deck blew off, flames came out everywhere.

"As I went round the deck and down the stairs I had to run through fire – I got all singed on the side of the face and on my arms.

"The watercart was up there – in my vision – so when I called emergency – they called for the water cart to be on scene – but it was already there.

"I ran for a couple of hundred metres towards the watercart.

"She's driven towards me – by the time I ran across the paddock she had her stairs down and I leapt in. The water truck was empty, so she took off and drove round the back end of the pile – we got as far away as we could."

But what neither Nic or the water cart driver didn't realise was there was another person on the mountain top that afternoon.

Driving up behind him as his truck exploded into flames was an OCE about to conduct an inspection.

Now the whole entrance to the top of the pile was a ball of flames.

Luckily, the OCE had made it onto the top and driven around to join the pair and was now standing with them looking at the inferno behind a low rise.

"There were 30-metre-high flames, and the truck is 10 metres tall, so yeah it was a sight.

"When the front driver wheel popped – she travelled 250 metres.

"So the three of us were there and they had to come up with a rescue plan to get us off before it blew up, and to make matters worse pretty soon the wind changed direction and was blowing toxic smoke towards us.

"We're standing behind a pile half the height of a truck while the rescue rangers are organising a plan, behind us is an old pit they pump water into, it's a natural fall – it's a 70-degree, 100 metre wall. We stood there for an hour – they couldn't get to us obviously as the burning truck was blocking the road.

"They got us to walk to the south on a non-flattop pile. Then we slid down the back and they dropped ropes to us so we could climb out again. It was like being rescued by Russell Coight."



**HEAR THE FULL STORY ON
OUR LATEST PODCAST**

FROM SUBZERO TO HERO

Coal miner Kyle Warren and more than 100 of his workmates who lost their jobs when labour hire contractor SubZero went bust are now tens of thousands of dollars better off due to a big court win by our Union.

SubZero employees worked permanent rosters at Bengalla Mine in the Hunter Valley, but were engaged under common law contracts that described their employment as casual with a flat hourly rate of pay. This rate was claimed to incorporate a 25 per cent casual loading.

When SubZero went into insolvency its employees made claims under the Fair Entitlements Guarantee (FEG) scheme. FEG recognised the workers were permanent, and not casual, but withheld the 25 per cent so-called casual loading from their claims.

Our Union fought this through the courts, culminating in today's Federal Court ruling that it is wrong to consider the 25 per cent casual loading as an offset of the rights these workers had as permanent employees.

"This is yet another powerful legal blow to the shameful 'permanent casual' labour hire rort in this country," said Northern District Peter Jordan.

"It's a fantastic victory for these mine workers who are now going to be tens of thousands of dollars better off on average. And we've also established a precedent that will apply to future labour hire companies that go into insolvency.

"The courts have been loud and clear. In Australia, if you work somewhere permanently and predictably, then you're a permanent. That entitles you to a package of rights and conditions.



"The Morrison Government, instead of trying to legalise the rort through its IR Omnibus bill, should try and stamp the practise out."

Peter Jordan said the union would continue to fight for labour hire contractors in the industry.

Lead claimant Kyle Warren, who now works at Mt Pleasant coal mine, said the result was great news. While he welcomes the severance pay windfall, the confirmation from the court that he was being exploited as a casual is more important to him.

"There were a lot of us in the industry at that time and we were getting rorted. If you're on a permanent roster, you should get permanent conditions.

"It's a historic case and I'm very happy with the outcome."



Workers rattled after withdrawal from Moranbah North coal mine

"Workers at Anglo's Moranbah North mine are deeply concerned about the conditions that led to their withdrawal from the underground coal mine last weekend due to high gas and possible fire.

Queensland District President Steve Smyth said it was a relief no-one was hurt when all crews were withdrawn on Saturday night due to high gas levels that were detected following reports of an overpressure event.

"The most important thing is the safety of the workforce," he said.

"But we should not lose sight of the seriousness of this event. Managing gas levels is core business in underground coal mines. To have gases detected that indicate a possible fire in an area of the mine that has high gas, is extremely concerning.

"Anglo should have processes in place to avoid ignition sources in the area of the mine known to have high gas, that could lead to possible explosion.

"The focus now must be on fully understanding what caused this event and ensuring it is 100% safe before re-entry. The regulator must leave no stone unturned."

The confidence of Queensland underground coal miners has been rattled by a series of events in the sector over the past couple of years.

"We've had the terrible explosion at Anglo's Grosvenor mine last year, severely injuring five miners," said Steve Smyth.

"Coal miners should not fear for their lives when they head underground to work. Underground mine operators and regulators have a lot of work to do to reassure workers of their safety and we will hold them to account every step of the way."



Coal miners speak out: IR Omnibus Bill would make the casualisation crisis worse

A delegation from our Union has told a Senate hearing that the Morrison Government's IR Omnibus Bill would make the casualisation crisis in mining worse, not better.

There are three main ways the IR Omnibus Bill would make the casualisation crisis in mining worse:

- An unfair definition of casual based on the words in your contract, not the real work arrangements.
- The definition is retrospective, meaning miners who've been unlawfully exploited as casuals can't be rightfully compensated.
- Weak and unenforceable casual conversion provisions that the employer can just ignore.

The Bill is currently in the hands of cross-bench Senators, email them at ProtectCasualMiners.com.au to stop the Bill in its current form.

Jeff Pearce from Peak Downs Lodge, Gav Adams from Grasstree Lodge, Queensland District Vice President Shane Brunner and National Legal Director Alex Bukarica attended the a Senate Hearing into the Bill earlier this month.

They told Senators about the casualisation crisis in mining and the Union's efforts to address it. Jeff Pearce recounted that when he was an apprentice at Newlands Mine 25 years ago, there were two casuals on the whole mine site.

"Now I'm at Peak Downs, and we would have more labour hire on that mine site than we have permanent employees.

The proposed definition of casual does this by I work in the field crew. I look after the diggers, dozers, draglines and shovels and we have more labour hire.

In my crew, the hydraulic crew, we have a crew of eight. There are only two permanents. That crew has been together for eight years. So those guys have been on that crew as labour hire, as casuals, for eight years."

Gav Pearce said the two-tier system was bad for morale.

"I've worked in my section at the mine for 16 years. In the last nine years I've worked in my department. I've had men come in to my area where they're classed as a member of that crew yet everyone is labour hire.

"They're paid less. It's demoralising to work alongside a man doing the same work and you know that that bloke next to you is getting 20, 30 or 40 per cent more plus all the perks that come with it.

I've seen it firsthand, and it takes its toll on a man. They've thrown a carrot, from time to time, 'There might be some permanent jobs coming up,' but that just doesn't happen."

Our National Legal Director Alex Bukarica said that landmark WorkPac Skene and Rossato decisions had successfully prosecuted the argument that the (permanent casual) employment model widespread in mining was not lawful. But while the Morrison Government was claiming to fix the epidemic of casual labour hire in mining, it would actually entrench it by overturning the WorkPac wins.

"Since our success in that case, the clamour arising from big business and labour hire lobbyists has been loud and persistent. And it appears that in relation to the Omnibus Bill, the Government has taken the side of big business over that of regional mine workers.



ProtectCasualMiners.com.au

"This is because the proposed definition of casual provided in the Bill essentially guts the Skene and Rossato Federal Court cases of their meaning and importance. The proposed definition of casual does this by giving primacy to the employer designation or label at the point of hire. It uses some of the language used in those cases, but then subverts the central point of the legal precedents by precluding an examination of the actual substance of the employment relationship.

"Instead of requiring that an employment contract reflects the truth about the legal relationship between a worker and his or her employer, the Government is proposing a form of wilful blindness to reality.

"We urge you to reject the proposed definition of casual in the Omnibus Bill. We respectfully request that you do all you can to protect the important gains achieved for mineworkers in the Skene and Rossato cases."



Gov Adams, Shane Bruncker, Alex Bukarica and Jeff Pearce



ADD YOUR VOICE

Email the senators at ProtectCasualMiners.com.au



The good, the bad and the dodgy: what you should know about enterprise bargaining



Collective bargaining over decades has delivered pay and conditions for coal miners well above legal minimums. But now, labour hire companies use sham bargaining to drive conditions down. Here's your guide to how the system works - and where it is failing.

1. Collective bargaining gives workers a chance to get a fairer share of profits

A boss and an individual worker don't have equal bargaining power, especially in the mining industry where the employers are often big multinationals. That's why having the right bargain collectively through unions is recognised under international conventions as essential to giving workers the opportunity to achieve a fair deal at work.

Under Australia's Fair Work Act, enterprise bargaining is a way for workers to band together to get a fairer share of the profits of a business, beyond the legal minimums in industry Awards and National Employment Standards.

Decades of collective bargaining in the coal industry has delivered EAs with substantially better pay and conditions than the Black Coal Industry Award, with pay rates about a third higher and improved protections in areas from shift penalties, allowances and leave arrangements to rostering, notice and termination.

Collective bargaining allows workers stand together through their union, assert their rights and apply pressure - through industrial action if necessary - to get a better deal.

2. Labour hire companies use 'sham bargaining' to game the system

Mining companies have sought to get around union collective bargaining by undercutting permanent workers with labour hire. Many labour hire companies simply want an Enterprise Agreement to lock in low rates so they can bid for contracts and undercut permanent workers - all at the direction of the mining companies who hire them. Once a valid EA is in place, workers can't take any lawful industrial action to improve their conditions for the term of the agreement, which is usually four years.

The minimum conditions for an enterprise agreement are that there are at least two employees covered by it and it passes a Better Off Overall Test (BOOT) and some procedural steps.

Labour hire companies often game the system by setting up a new company, hiring a couple of workers and saying to them 'there's a job for you but we need this Enterprise Agreement, and we'd prefer not to have the union involved, keep it quiet'. The workers are given documentation that they've had no input into and told they will be asked to vote for it in 21 days, which is the minimum 'consultation' period.

Once the boxes are ticked and the Fair Work Commission (FWC) approves it, the Enterprise Agreement voted on by just two, five or ten people can be used to employ many hundreds or even thousands of workers.

This tactic is used not only by fly-by-night contractors. BHP's in-house labour hire outfit Operations Services had two agreements voted on by a few non-union iron ore mineworkers in the Pilbara, which were intended to cover thousands of coal miners on the east coast.

The union has successfully challenged many of these dodgy non-union EAs in the mining industry - like BHP Operations Services agreements. There is a small window after they have been lodged when the Commission is considering whether it meets the BOOT and procedural requirements, where we are able to challenge them. The Mining and Energy Division has made this a priority and had considerable success in knocking off EAs or making employers go away and improve them.

3. Many Enterprise Agreements are deeply unfair, but still legal

However, there are many EAs in the mining industry which don't breach any laws but still lead to very unfair outcomes.

The BOOT only requires EAs to ensure workers are better off than the Award, not industry standard pay and conditions which are much higher due to successful union collective bargaining.

This is a failure of the system that leads to workers doing the same job but with vastly different pay and conditions, because they're employed on different EAs.

Further, the FWC regularly approves EAs that allow for casual work, even though casual work is not allowed for under the Black Coal Award. While EAs must be better off 'overall' than the Award, under the Fair Work Act they don't need to contain every Award provision. So by paying an hourly rate slightly above the Award minimum with a 25% casual loading, the FWC can and regularly does decide that workers would be better off overall than the Award and give their stamp of approval. This is despite strong arguments from the Union about the detrimental nature of casual work and the fact that workers have the double whammy of precarious work and pay well below industry standards.

We have pursued different legal strategies to address the 'permanent casual' rort.

4. The Union can't veto EAs we don't like

The Union can challenge EAs we believe don't meet legal requirements (although the IR Omnibus Bill is trying to remove this right). We have successfully challenged well over 50 EAs in the mining industry, mostly labour hire companies, which don't meet requirements in terms of content or proving workers genuinely understood what they were voting on.

However, if EAs are voted up by a majority of workers and meet the legal requirements set out by the Fair Work Commission, then generally the Agreement is made and it is valid. The Union can't veto it, even if we believe it is unfair and shouldn't be approved because it is well below industry standards.

Sometimes the Union is named in labour hire EAs so that we have the right to represent union members covered by it. We may negotiate on behalf of members, or recommend a vote for or against. However, EAs only become valid by being voted up by a majority of employees and approved by the Fair Work Commission – the Union plays no role in their approval.

5. We need fairer workplace laws

To stamp out sham enterprise bargaining in the labour hire sector, we need fairer workplace laws. Industry Awards should be more closely aligned to industry standards so that businesses aren't able to exploit the discrepancy in industries like coal mining. The Better Off Overall Test should reflect going rates in the industry.

'Same job same pay' laws for labour hire workers, as Federal Labor has recently committed to, would stamp out the business model where workers side by side can receive vastly different pay and conditions.

And we need a definition of casual in the Fair Work Act that reflects the actual nature of work performed, not just the label in the contract.

6. Higher union density delivers better outcomes in bargaining

The benefits of collective bargaining aren't automatic. Big companies don't just automatically decide to share their profits fairly with workers. The best outcomes are achieved when more workers are in the union – that's because they have the solidarity and support they need to assert their rights, which may sometimes include taking protected industrial action.

For more: listen to our podcast on 'How Enterprise Agreements are made'
Commoncause.cfmeu.org.au/podcast



And then, for a great story on getting a better deal, listen to: The Battle for Boggabri.



Convention to consider future for mining and energy workers



It's action stations in our National Office at the moment as we prepare for our National Convention next week.

We will have 300 delegates representing workers from mines, power stations and coal ports around Australia.

But like so many aspects of our lives over the past year, our plans have been affected by COVID.

Our Convention, which is held every four years, was due to be held in October 2020. We realised not long after the pandemic started unfolding that it wouldn't be going ahead in the place and form we imagined. Even six months later, we have had to give our usual Convention format an overhaul to deal with constantly changing border closures and social distancing requirements.

The model we've come up with is regional hubs, so that people can still get together in person while we convene nationally via Zoom.

I mean, what could go wrong!?

While I'll be sweating on the technology, there are plenty of big issues up for discussion this time around.

As we flagged last year, our Convention will consider whether our Mining and Energy Division should make an application under new 'withdrawal from amalgamation' provisions in the Fair Work Act. This would lead to all members having a vote on our future as a mining and energy union.

As soon as Convention considers this question, we'll let you know what is decided and what the next steps are likely to be.

We'll be hearing reports about growth, achievements and challenges from all our Districts; we'll discuss the future of our industries and the best ways for us to protect our Members' jobs; and we'll talk about the latest threats to the health & safety of mining and energy workers and how to keep pushing for continuous improvement.

Within the structure of the Mining and Energy Division, our quadrennial National Convention is the largest and most democratic forum we have. It ensures we have a broad and representative group of members providing input into our forward planning.

The resolutions taken by National Convention advise and inform our Central Council, which is the supreme decision-making body of the Union. Then our officials and staff set about putting those decisions into action.

Convention is sure to be a busy and exciting few days, but it has been many months in the planning. I'd like to thank everyone who has been working hard to make it happen. And I'm looking forward to reporting back to all Members on the discussions and decisions that take place (and a moment to recover).

