

E-BULLETIN Postal

#6. Thursday 24 April, 2014



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1. Editorial: have you been wrongly “coded”? – there is a remedy

Your union receives many complaints from members about incompetent managers who see formal counselling and warning counselling as a management tool. It often amounts to simple bullying. The managers think that there is no appeal so they can get away with it.

During the last EBA negotiations we sought protections for our members from managers who misuse their authority. An appeal mechanism was proposed. Unfortunately Post walked away and put a non-union EBA to staff.

This did not stop us. Last Thursday, the Fair Work Commission (FWC) found that Australia Post had not acted properly when issuing a Warning Counselling to two members. The important point is that we supported our members all the way to the FWC. Our members won! The FWC held:

I determine that Australia Post should remove all records relating to the disciplinary action arising from the incident of 2 November 2012 from the files of Mr Johnson and Mr McDonald and treat the two employees as if the warning counselling had not occurred. (FWC 17 April 14)

The Fair Work Commission Overturns Warning Counselling

The Background

The FWC decision is significant in that a number of issues were explored. It is worth analysing these to provide guidance in the future. There were 8 witnesses. The full decision will be placed on our web page.

www.cwu.org.au The incident occurred at Mansfield in Brisbane and is described by the FWC as follows:

The Commissioner: [19] In the period leading up to the disciplinary action a number of employees at the Mansfield Delivery Centre and their representative the CEPU were discontented about the large amount of overtime which was required to be worked and perceived problems with late delivery of mail to the centre including the delivery of mail which had not been sequenced and therefore required sorting before the PDOs could take the mail out for delivery. These matters were also affected by short and long term absences, unfilled vacancies and problems with filling such vacancies. Management were aware of the discontent amongst some employees and the CEPU.

Mr Fryer, Operations Support Manager for the area which contains the Mansfield Delivery Centre, concedes that: “Post was struggling with recruitment generally (particularly given the competition with the mining sector) and mail levels were increasing in the lead up to Christmas.”

[20] On the morning of 2 Nov 2012 the Mansfield Delivery Centre was down by nine PDOs, including five on sick leave. Given that there are approximately 41 PDO runs at Mansfield this was a significant problem. Mr Fryer made phone calls to other delivery centres and was able to arrange for three relief staff to assist. Following this Mr Fryer was advised by Mr Parker, Delivery Manager Mansfield, that approximately 18 PDOs had told their team leaders, who had reported to him, that they could not work after 2.30pm that day.

The Incident

The Commissioner: [27] Although Mr Parker refers to it as a rumour, the evidence demonstrated that the employees had provided advice to their team leaders that they did not wish to work beyond 2.30pm.

[28] Mr Fryer provided an analysis of the working times on 2 Nov 2012 for 18 of the PDOs.11 The total number of PDOs who were rostered to work from 6am on that day is more than twice that number.

Of the 18 in the analysis only two, Mr Johnson and Mr McDonald failed to complete their deliveries and returned mail. It is not in contention that it would have taken between a further 30 and 45 minutes for them to complete their mail deliveries. As identified earlier, arrangements had been made for other employees to deliver the mail that day in the event that any mail was returned and this in fact happened when the mail was returned.

Post's Actions

The Commissioner: [30] It is not suggested that Mr Johnson and/or Mr McDonald deliberately worked slowly in order to ensure that they did not deliver all their mail by 2.30pm. However, Post did raise concerns about the standard of performance of the two employees on their indoor work.

[31] Mr Fryer conducted interviews with Mr Johnson and Mr McDonald and after considering the matters that they raised determined to issue a warning counselling.

Mr McDonald

The Commissioner: [33] At the interview Mr McDonald said that:

- In the last eleven days he had done 29 hours overtime and he believed that to be excessive.
- Mail was one hour late and was shelf sorted.
- His run was a large run and he tried as hard as he could.
- The team leaders were just waiting to see how much mail was going to be brought back.
- He provided evidence that he provides good customer service.

[39] I found Mr McDonald's evidence concerning the reasons why his indoor work took longer than might have been expected by Post to be convincing. ... **I am not satisfied that there was an appropriate basis to discipline Mr McDonald...**

Mr Johnson

The Commissioner: [36] At the interview Mr Johnson said that:

- He had a lot of personal problems since late July....
- (personal) and this meant that he was upset on 2 November 2012.
- His head wasn't right on the day. He had a million things running through his head.
- This did affect his performance of the indoor duties.
- He had performed significant amounts of overtime in the recent period.
- He would commit to complete deliveries each day in the future.

[40] The evidence of Mr Johnson concerning the reasons why his indoor work performance was slow on 2 Nov 2012 has been consistent. I am satisfied that any shortfall in the indoor work performance by Mr Johnson on 2 Nov 2012 is explained by his personal distress. **I am not satisfied that there was an appropriate basis to discipline Mr Johnson...**

Lessons from the Fair Work Decision

In the next bulletin we will cover the issues of reasonable overtime, OHS, the disciplinary action against the CEPU delegate (part of the above matter) and some guidance for delegates. The Fair Work Commission found that the delegate did nothing (deliberately) wrong, yet concluded that the disciplinary action was appropriate.

2. APSS changes - Seventeen Thousand affected!! That's every second person!!

Buried in the letter from Post answering questions posed by your CWU national office is the fact that approximately **seventeen thousand** workers are affected by Ahmed Fahour's unilateral changes to the APSS. **That's every second person!!** The **average gap** between the higher AWOTE salary and current salary is **\$8,000** - so we are not talking about small sums.

Currently 17,000 employees have their super salary adjusted up by AWOTE (Average weekly ordinary time earnings) (AWOTE is about 4% each year - 4.9% last year). Your reported salary, previously adjusted by AWOTE, won't be adjusted in the future. Your previous AWOTE adjusted salary for super will be frozen until your current salary catches up.

Current salary may be less than reported super salary because rosters changed and you stopped receiving shift penalties, higher duties, allowances or you were moved to a lower grade role. The result is your lump sum will be reduced on retirement.

One member's example: The changes to APSS will have a significant effect on my super balance. I am a mail processing controller on 30% penalty rates with some Sundays. I have 28 years service. With the 1.5% pay increases over recent years my indexed superannuation salary has grown more than actual salary.

My indexed superannuation salary is	\$84761
My FAS is	\$81094
My salary with penalty rates is	\$78,884

I have done some quick calculations for my next 3 birthdays using the 3% pay increases in the current EBA as opposed to (say) 4% indexation on my current FAS. It will take 4 years for my FAS to catch up to my current superannuation salary.

Birthday in 2016 Lump sum with AWOTE Indexation (FAS) $\$91,219 \times 14.3\% \times 31 \text{ years}$	= \$404,376
Birthday in 2016 Lump sum without AWOTE Indexation (FAS) $\$84,761 \times 14.3\% \times 31 \text{ years}$	= \$375,745

That's a difference of \$28,631 only over 3 years so I will probably have to rethink my retirement strategies, and that's if I only retain my current maximum penalty rates.

The Superannuation Trust Deed does not protect this current benefit. EBA8 has no protection of these benefits.

As one CWU member put it – “Post’s wages bill has grown below inflation over the last few years. Ahmed Fahour should be satisfied with that. It is grossly unfair that they change this rule which is there to protect benefits already earned.”

Your help is needed. We oppose this change and need details from members. Phone the pay office and ask for your salary for superannuation purposes. Ask if it is adjusted by AWOTE. Please give us your details - we can keep your name confidential. We can use your general details in our arguments. email us at cwu@cwu.org.au.

3. Medical certificates for sick leave either side of a public holiday



Australia Post continues to try it on regarding their insistence that members supply a medical certificate if taking sick leave on a day either side of a public holiday.

Your union has taken Australia Post to task in the Courts in the past and Australia Post has had to make restitution and pay costs. We will do so again if necessary.

Doctors can be difficult to make appointments with at the best of times and the extra imposition on low income workers who may well end up out of pocket, is completely unacceptable. We have advised Post that

the change is not in line with EBA8 and we will take any necessary legal action to challenge the decision.

Contact your State Branch if you have any problems initially. Your National Office will be running any cases that end up in the Courts.

4. Union organized HSR election at Townsville Mail Centre

Members at Townsville Mail Centre were not happy with Post attempting to run the recent HSR election. The members were aware of their rights as per the Work Health and Safety Act that allowed the union to conduct the election. Members contacted the National Office and after negotiations with Post it was agreed to have the union conduct the election and local union rep Michael Venn as the Returning Officer. The union has been informed that the HSR position has been filled and members are happy with the outcome.

All workplaces have the right to have their union run their HSR election. If local management tries to deny this right provided by law under the Work Health and Safety Act, contact your State Branch and the National Office for assistance. HSRs also have the right to choose who provides training. We strongly suggest HSRs be trained in union run courses.

5. 60 sub-contractor runs taken over by Post Linehaul drivers

60 runs that were previously driven by sub-contractors are now being driven by Post drivers. This is part of the recent changes made in the East Coast Linehaul routes. Also, 9 additional drivers have been employed to take on extra work resulting from the changes. Linehaul routes now go along the east coast, Brisbane/Sydney/Melbourne to Adelaide and in reverse. In the past some of these interstate routes went via inland roads.

6. New ROM materials and link available

Despite some early confusion Retail PMs should now be able to access the WFM (ROM) link in the AP Sharepoint site. The correct link is <http://share/team/RetailServices/WFMforPMs> PMs will need to access the link for information and forms on how to collect data for their Post Office. The data collected will then be able to be compared against the automatic default times in the system and adjustments made to better reflect an outlet's workload.

The ability of PMs and employees to be able to view the times allocated for their office and compare against their own data is long overdue and is the absolute minimum that should have been provided to ensure Post Offices are staffed appropriately. The next step is for PMS and employees to be able to input data into the system.

We are continuing to push for PMs and employees to input data for their own Post office into the system. We have suggested a better method to calculate the time for merchandising. The current method is hopeless, based on sales and not how long it takes to manage merchandise regardless of sales. We have also requested advice on how much time has been allocated for the new concession card for stamps and how the time was determined. As well we have requested advice on how AP will manage training on the new workbook developed as part of the financial services work. Apparently it will take about 45minutes using a self-paced module to complete the training. We have informed Post that people should not be expected to do the training in their own time.

7. May Day 2014

May Day – the international workers' day – is just around the corner.

May Day falls officially on 1 May but in Australia it is sometimes celebrated just before or after that date depending on where it falls. This year 1 May is a Thursday so in some states marches and other events to mark the day will be held on the following weekend, 3-4 May.

May Day has its origins in the fight for the 8 hour working day, particularly in the United States where in 1886 the American Federation of Labour adopted an historic resolution which asserted that "eight hours shall constitute a legal day's labour from and after May 1st, 1886".

In Chicago, strikes and large demonstrations in support of shorter working hours began on 1 May and continued for several days. But the movement was met with violent suppression, including the execution on trumped up charges of four of its leaders.

The international workers movement of the time responded by declaring that 1 May would be the day when all working people remembered that event and continued the fight for the shorter working week.

Since then May Day has provided an occasion where many issues other than working hours are brought to public attention. This year, CWU members can expect to see the union's Hands Off Aussie Post banners displayed prominently.

But at a time when Australians are spending longer and longer at work – and often not being paid for it - it is also worth remembering the basics: the fight for a decent work/life balance that May Day represents.

Check with you local Trades and Labour Council to find out what's happening in your State.



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**We welcome your comments and contributions –
send us an email and let us know what you think via cwu@cwu.org.au
Check out our webpage at www.cwu.org.au**