



9 April 2020

Members –

Queries about redundancies and stand downs and the proposed EA

A number of Members have asked questions about redundancies and stand downs. A number of you are concerned about this in light of the COVID-19 pandemic and its economic impact.

You have asked us what impact the proposed EA has on this.

Thank you to those Members who have contacted us to find out the facts. There is a lot of misinformation out there! We have sought legal advice and the answers to your questions are below.

Is my job less secure under the proposed EA?

No.

Nothing in the proposed EA makes your job less secure. The proposed EA and MoU, make your job more secure. This is important, especially now.

As always, please call or email us if you have questions.

Can Metro employees be made redundant?

Yes, this is possible.

The current EA and the proposed EA are the same when it comes to redundancies. The provisions of the current EA dealing with redundancies have not changed in the proposed EA.

The circumstances in which an employee can be made redundant and severance pay entitlements are set out in clause 2.4 of the current EA. Exactly the same Redundancy provisions are in clause 2.5 of the proposed EA. This clause applies to all employees – Rail Divisions and Drivers.

Under both the current EA and the proposed EA, Metro can make an employee redundant if the job is no longer required to be done. Metro must consult with employees about any proposed redundancies. It is simply not true that the current EA stops Metro from making employees redundant in some circumstances.

However, the proposed EA has a new Sustainable Employment clause (clause 3.30). This clause is for Rail Divisions employees. Under the proposed EA, Metro commits to job security for permanent employees (full time and part time). If the proposed EA is voted up, this clause means that Metro must consider changes to roles and duties, reskilling and retraining as alternatives to redundancies. This provides better safeguards for employees than the current EA.

The truth is that no enterprise agreement can completely stop redundancies.

Can Metro stand down employees?

Yes.

Stand downs are different to redundancies. A stand down means the employment relationship doesn't end.

In the part of the current EA for Rail Divisions employees, there is a clause about stand downs (clause 3.27). It says that Metro can stand down employees if there is no work for them to do. This clause does not give

employees any additional rights or entitlements to what the Fair Work Act says. Section 524 of the Fair Work Act does the same thing.

Metro can stand employees down under the Fair Work Act. They can under the current EA. They will be able to under the proposed EA because that is what the Fair Work Act says.

The stand down clause in the current EA says that if alternative duties are offered by Metro to Rail Divisions employees as an alternative to stand downs, your rate of pay remains the same. But that it is the legal situation in any event, regardless of the EA. Metro can't unilaterally reduce your rate of pay.

The union agreed to remove this clause for the proposed EA because it in fact gave employees no more legal rights than they have anyway.

In the part of the current EA for Drivers, there is also a clause about stand downs (clause 4.5). The same clause is in the proposed Agreement, unchanged.

To give members more certainty about stand downs during the current pandemic, the RTBU negotiated an MoU with Metro early this week.

The MoU confirms the legal situation that Metro can stand down employees if there is no work for them to do.

However, the MoU provides for extra protections during any stand down. This applies equally to all part time and full time staff, both Rail Divisions employees and Drivers. The extra protections include:

- Employees who are stood down will have continuity of service;
- Employees who are stood down are entitled to take accrued leave (sick and annual leave);
- Employees who are stood down due to the pandemic will be able to use their sick leave and all but 20 days of their annual leave. After that, employees will be entitled to 10 days paid Pandemic Leave;
- During the pandemic, Metro must take steps to avoid stand downs by temporarily changing rosters, tasks and duties of employees.

Strictly speaking, the MoU may or may not be legally binding. But it is signed by Metro's Chief Operating Officer who expressly declared in her YouTube video put up yesterday that Metro will abide by it. We expect Metro to honour the MoU, and the RTBU will take whatever action is necessary if they don't!

What is JobKeeper?

Last night (8 April 2020) the Federal Parliament changed the Fair Work Act to make it easier for employers to stand down workers during the COVID-19 pandemic.

It also made it easier for an employer to unilaterally change employees' duties and hours. These changes apply for a period of 6 months (30 March until 28 September 2020).

Workers who are stood down or have their hours reduced under this new scheme will receive the \$1,500 JobKeeper payment per fortnight (as a minimum).

If Metro is eligible for the JobKeeper scheme, they can stand down employees according to these new provisions of the Fair Work Act and pay them the Job Keeper payment. Metro can do this under the current EA. They will also be able to do this under the proposed EA, if voted up.

Luba Grigorovitch
Branch Secretary