



RTBU NSW LOCO DIVISION NEWSFLASH

14 December 2022

IMPORTANT NOTICE TO PACIFIC NATIONAL BULK AND COAL EMPLOYEES

PAYMENTS DURING PERIODS OF PROTECTED INDUSTRIAL ACTION

Pacific National have once again proved to their employees that they are the employer of choice, but only if the decision is to pick the most incompetent large corporation on the planet.

The Union has become aware that Pacific National has been incorrectly withholding pay from employees who bravely participated in Industrial Action on 24 and 25 November 2022. Members will recall this industrial action was taken in response to Pacific National's divisive and underhanded selective lock-out, which itself was a dummy-spit in response to PN being required to follow basic rail safety rules.

We trust this was a mistake, but Pacific National has so far been slow to respond to employee requests to resolve these issues. It's also interesting that PN has found several different ways to ultimately make the same mistake of underpaying its employees.

The Union acknowledges that members do not receive pay whilst engaged in protected industrial action pursuant to s 470(1) of the FW Act – however s470 does not allow the employer to underpay people for work they have *actually* performed.

The proper way that deductions should be calculated:

1. If you missed one or more shifts, those shifts are not credited to your duty cycle;
2. Periods of leave occurring during the period of industrial action are still credited to the duty cycle in the usual way;
3. An RDO is not a missed shift and has no effect on payment;
4. If you missed shifts, and even though it is not credited to your duty cycle you still work 152 hours, there is no further deduction of wages;
5. If you missed shifts, and because it is not credited to your duty cycle you do not work 152 hours, the value of that missed shift(s) can be deducted from what you otherwise would have been paid, as long as this does not result in you being paid less than the hours you *actually* worked.

There is a question about how long a shift **would have been** had it been worked for the purpose of calculating a deduction. Such numbers should be calculated as follows:

1. **For an advised shift**, the actual duration of the shift as advised at the time it was refused;

2. **For a Blank Line shift**, 7.6 hours unless an applicable shift limit indicates it would have been shorter.

Pacific National's dodgy calculations have included the following:

1. Deduction in wages for being on an RDO during the PIA period and not actually rostered to work;
2. Deducting amounts higher than the hours actually rostered;
3. Deducting amounts higher than 7.6 hours for blank line rostering;
4. Automatically deducting the equivalent of the maximum shift limit, despite shifts of this duration not being rostered;
5. Deductions for turning down shifts, despite members subsequently working the shift once the PIA ended.

These dodgy calculations have resulted in significant underpayments. For example, the Union is aware of one member that worked over 147 hours in the relevant duty cycle but was only paid for 136 hours – resulting in a significant underpayment of over 11 hours for *work actually performed*.

Wage theft cannot be tolerated in any circumstances.

If you believe that you have been underpaid as a result of protected industrial action on 24 and 25 November 2022, please complete a notification of dispute form that provides details of:

1. Whether you refused shifts on 24 and 25 November 2022;
2. The duration of the Shifts missed;
3. Your total hours actually worked in the relevant duty-cycle;
4. Details of any periods of leave in the relevant duty-cycle;
5. The total hours PN had paid you for;
6. Your estimate of how many hours you believed PN has underpaid you.

A prefilled Notification of Dispute Form is enclosed with this newsflash, please record the above information in the blank fields of the form

Please provide your completed Dispute Notification to our office by emailing newcastle@rtbu-nsw.asn.au

The Union will keep a record of all instances of underpayment and submit these disputes to PN on behalf of affected members.

If you have any questions please get in touch with your delegate or organiser.

SCHEDULE 2: NOTIFICATION OF DISPUTE OR GRIEVANCE

To: **KATE ALAM & ORS**

Date: **DECEMBER 2022**

Insert name of manager to whom notice is given

I hereby give notice that I wish to invoke the dispute settlement process in clause A 32 of the Pacific National Bulk Rail NSW 2018 Enterprise Agreement. The details of this dispute are as follows:

The Decision I wish to dispute is:

NOVEMBER 2022 PROTECTED INDUSTRIAL ACTION UNDERPAYMENTS.

The person who made the decision is: **PAYROLL/WORKPLACE RELATIONS**

The date the decision was made is (if known): **DECEMBER 2022**

The reasons I wish to dispute the decision are:

UNDER PAYMENT OF WAGES PURSUANT TO EA AND FW ACT

Your name: Position:

Signed: Contact No: **C/ RTBU 02 9264 3400**

Please complete the following,

- 1. Did you refuse a shift on 24th November _____ 25th November _____ (Yes or No)
- 2. The duration of the Shifts missed _____ (Hours and Mins)
- 3. Your total hours actually worked in the relevant duty-cycle _____ (Hours and Mins)
- 4. Details of any periods of leave in the relevant duty-cycle; _____
- 5. The total hours PN had paid you for; _____ (Hours and Mins)
- 6. Your estimate of how many hours you believe PN has underpaid you. _____

Any other comments or information:

