

**Form F10 Application for the Commission to Deal with a Dispute in
Accordance with a Dispute Settlement Procedure**

*Fair Work Act 2009, s.739.**

FAIR WORK COMMISSION

Commission use only

Commission Matter No.:

Applicant

Name:	Construction, Forestry, Mining & Energy Union (CFMEU), Northern Mining & NSW Energy Union		
	ABN: <i>[If applicable]</i>		
Address:	67 A Aberdare Road		
Suburb:	CESSNOCK	State: NSW	Postcode: 2325
Contact person:	Mr Keenon Endacott – Industrial Research Officer		
Telephone:	02 4990 7600	Mobile:	[REDACTED]
Fax:	02 4991 1595	Email:	kendacott@cfmeunsw.org.au

Respondent(s) (Party/Parties with whom the Applicant is in dispute)

Name:	Chandler McLeod		
	ABN: <i>[If known]</i>		
Address:	Shop 6, Singleton Plaza, 52-56 John Street		
Suburb:	SINGLETON	State: NSW	Postcode: 2330
Contact person:	Ms Laura Lewis, Branch Manager - Singleton		
	<i>[If known]</i>		
Telephone:	02 6571 4711	Mobile:	[REDACTED]
Fax:	02 6571 4070	Email:	

1. What is the industry of the employer?

[Specify industry.]

Coal Mining Industry

2. Relevant instrument:

The dispute is referred to the Commission pursuant to a dispute settlement procedure in:

• **Name of instrument:**

[Also include any ID/Code No. if known.]

Black Coal Mining Award 2010

• **Type of instrument:**

[Tick the appropriate box.]

☒ modern award;

☐ enterprise agreement (made under the *Fair Work Act 2009* after 1 July 2009);

☐ workplace agreement (made under the *Workplace Relations Act 1996* after 26 March 2006);

- ☐ certified agreement (made under the *Workplace Relations Act 1996* on or before 26 March 2006);
- ☐ AWA, ITEA or an individual preserved state agreement;
- ☐ contract of employment or other written agreement with a procedure for dealing with disputes in relation to the NES or a safety net contractual entitlement;
- ☐ other (please specify):

Please **attach** a copy of the dispute settlement procedure.

(Clause 9 Dispute Resolution)

3. Clauses to which the dispute relates:

[List and attach the clause(s) in the relevant instrument (and, if also relevant, the NES) to which the dispute relates.]

- Clause 10, Types of Employment
- Clause 20, Hours of Work
- Clause 24, Annual Leave
- Clause 24, Personal / Carer's Leave

4. What is the dispute about?

[Using numbered paragraphs, set out a description of what the dispute is about, including by reference to the clauses set out above.]

1. The dispute concerns the failure of the Respondent to appropriately provide terms and conditions as required by all of the abovementioned clauses of the Black Coal Mining Award 2010.
2. This Application specifically concerns an employee, [REDACTED] who commenced employment with Chandler McLeod, working at the Mt Arthur Coal Mine, on [REDACTED].
3. [REDACTED] does not have an Enterprise Agreement that regulates [REDACTED] terms and conditions of employment. The Employee is employed to work a full time roster for the Respondent at the Mt Arthur Coal Mine. The Mt Arthur Coal Mine is a coal mining operation and the persons employed in the coal mining industry's terms and conditions are regulated by the Black Coal Mining Industry Award 2010.
4. During the employment of [REDACTED] at Mt Arthur Coal Mine for the Respondent, [REDACTED] has not been provided Annual Leave, Personal / Carer's Leave and other conditions of employment that is to be afforded to permanent employees.
5. [REDACTED] falls within the classification of a Mineworker under schedule A, Production & Engineering employees of the Award.
6. On 10 February 2015, the Respondent ceased providing [REDACTED] work. The Respondent has informed [REDACTED] and the CFMEU that they have not dismissed [REDACTED] but are not providing [REDACTED] with any work.
7. As a Schedule A classification of employee under the terms of the Black Coal Mining Award 2010, [REDACTED] working on a full time roster is a full time employee. Accordingly, [REDACTED] is required to be given full time hours of work, accrue Annual Leave, Personal / Carer's Leave and other entitlements afforded to full time employees.

8. The Respondent has in excess of 100 employees working at the Mt Arthur Coal Mine and they are depriving those employees of the conditions that should be afforded to full time employees.

5. Does this application relate to a refusal by an employer of a request by an employee for flexible working arrangements?

[] Yes
[X] No

6. Does this application relate to a refusal by an employer of a request by an employee for extension of unpaid parental leave?

[] Yes
[X] No

7. Relief sought:

[If the Commission has a power of arbitration, specify the determination(s) sought.]

We seek the assistance of the Fair Work Commission in conciliation to resolve the dispute and should the matter not resolve in conciliation, by arbitration if the employer consents.

We seek that [REDACTED] and others who may also be affected be classified and treated in accordance with their lawful minimum entitlements under the Black Coal Mining Industry Award 2010.

8. Steps already taken under dispute settlement procedure:

[Set out, in chronological order, the steps already taken (if any) under the dispute settlement procedure.]

1. There has been discussions between the CFMEU and the Respondent where the Respondent has confirmed that all persons are engaged as casual employees.
2. The CMFEU has raised with the Respondent in email communications that there is no capacity to employ casual employees under Schedule A of the Award, only Schedule B.
3. The email communications between the CFMEU and the Respondent has occurred on the following dates: 20 February 2015, 23 February 2015 and 25 February 2015, a copy of which is attached.
4. [REDACTED] has raised that [REDACTED] should be provided with full time work or be paid for not being provided with that work. It has also been raised on behalf of [REDACTED] at [REDACTED] request through the CFMEU that [REDACTED] is to be treated as a permanent employee not a casual as per the terms and conditions of the Black Coal Mining Award 2010.
5. The Respondent is currently ignoring the emails from the CFMEU and not reclassifying the employees to permanent and treating them as permanent employees as required.

Date:	26 February 2015
Signature:	[REDACTED]
Name:	Keenon Endacott
Capacity/Position:	Industrial Research Officer

Service requirements