



Rio Tinto fined again for breach of Hail Creek enterprise agreement

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The Federal Court [recently found](#) that Hail Creek Coal Pty Ltd, a subsidiary of Rio Tinto, contravened its enterprise agreement, and therefore section 50 of the *Fair Work Act* 2009 (Cth), on 506 occasions. The breaches concerned a roster change, which was implemented by the company together with a unilateral reduction in the applicable roster allowance for employees.

Acting for the CFMEU, Hall Payne alleged that the company was not permitted by the enterprise agreement to reduce the roster allowance upon the roster change, and the Court agreed. As a consequence of its breaches, the company was fined \$45,540 and ordered to pay compensation and interest to the affected employees in the amount of \$198,341.69.

The decision is the third time that Hall Payne has successfully acted for the CFMEU and its members in Federal Court proceedings for breach of the Hail Creek enterprise agreement: the company has previously been found to have breached the enterprise agreement and fined in cases involving the employment of Michael Haylett, and the non-payment of sick leave.

The fact that those prior fines had not deterred the company from its breaches in this case was a factor which the Court relied upon in its assessment of penalty. The Court found that because of the prior breaches, the company should have taken a cautious approach to the proposed reduction in the roster allowance but instead it “took the odds” that its interpretation was correct, when it should not have done so.

The Court also criticised the company for the fact that it “...decided to reduce the roster allowance it paid for its own financial benefit, knowing that to do so would have a detrimental financial impact upon the affected employees” and took that matter into account in its assessment of penalty. As a result of the Court’s remedial orders the CFMEU members affected by the breaches will be put back in the same position as they would have been in if not for the breaches.

The outcome of the proceedings is another significant victory for the CFMEU and its members. The decision of the CFMEU to commence the proceedings has been vindicated.

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