



WORD BACK



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A B C D Day Retained



CHRISTMAS 2020 AND THE RESOURCING CAMPAIGN

Yes, it's Christmas again already, following what has been and still is, a busy year for everyone. I wish it could have ended on a more positive note but the intransigence of the employer on the critical issues confronting firefighters appears to dictate otherwise.

You can access the UFUSA response to the employer's Memorandum 75/2020 issued today [here](#), reminding the CO of the protections under s 223 of the *Fair Work Act 1994* for employees taking part in industrial proceedings and in particular of the current work ban on any direction by management to remove campaign signage.

Congratulations to all members supporting the campaign and maintaining solidarity in the face of bullying and threats of disciplinary action by the same old managers who appear to know no other way. Such behaviour is aimed at undermining our campaign for the resourcing to do the job of protecting our community. We are committed to continuing to be respectful and diligent as we inform the public of the risks to which firefighters and potentially the community are being exposed. But we will not be silenced.

If you receive a request or an instruction from management to take an action contrary to the industrial campaign actions you can:

- Respectfully decline and advise that you support the union's campaign to secure much-needed additional resources for the MFS; and
- Assert and encourage that management should be supporting firefighters and the union's campaign.

FATIGUE

UFUSA members should be aware of the decision handed down on 4 December 2020 in [R v McLean \[2020\] SADC 170](#) which found a SAAS Ambulance Officer 'Not Guilty' of any criminal offences following a fatal single vehicle accident involving a South Australian ambulance.

Professor Michael Eburns (An emergency services law expert) has published a good review of this case, and the ramifications for Paramedics (indeed all shift workers) based on the Judge's comments (see [here](#)).

The article sums up the case very nicely: "*This case was about Mr McLean and what he knew and how he felt. If it carries any message it is a message to paramedics, and other shift workers, that if you feel*

too tired to drive, you have to stop driving and if that means standing down or taking an 'uninterruptible rest break' (see again Managing fatigue in country ambulance stations (November 28, 2020)) then that's what you have to do. There is nothing in this case to say 'soldiering on' when tired, either for the good of the service or the community, or to keep your job, will provide any form of defence should another ambulance officer fall asleep when driving their ambulance."

Following the decision, the ambos' union the AEA, told members it would be remiss if they did not highlight the risks of working overtime on days off that were on stark display in this trial. Lawyers for the Crown (i.e., the Government) inferred that the ambo concerned was irresponsible for working overtime on his days off, and indeed that anyone who works overtime on days off should be "resting/rejuvenating", not working; "he had taken on overtime when he could have been resting..."

It seems that firefighters are not the only emergency services workers experiencing the 'smoke and mirrors' of the employer as this is the diametric opposite of what the lawyers for the Crown said in SAET in October 2019 and February 2020. They argued then that the AEA was irresponsible for being concerned about SAAS excessive reliance on overtime being worked on days-off.

As the AEA Secretary advised members on 7 December, "It is understood that members like to help out their workmates and the community, and supplement their income, but if something untoward happens to you that might be deemed as an offence by SAPOL, they will seize your phone, examine your movements over the preceding weeks in detail, portray any home renos you have done as sinister in terms of working on days off to fund."

He went on to say that the member concerned "...saw all those attacks off with steadfast honesty but went through a very testing 4 years before justice was served. The AEA knows that the Government would have conniptions if we banned overtime, and not all members would support it. We want you to know, based on Matt's experiences, that from SAAS perspective (at the most senior level at least), you are on your own unless you win."



The UFUSA can list a growing number of cases where our members are "on your own unless you win" and it seems this is increasingly the case whether it be suffering an injury or health condition, alleged over and underpayments, bullying and harassment, driving and operating unroadworthy vehicles, and clearly members must also consider fatigue on the list. The employer's "duty of care" appears to only apply when it suits.

Members are strongly urged to contact the union immediately should such situations arise.

KANGAROO ISLAND DEPLOYMENT PAYMENTS

Since the last update in July 2020 (see Wordback No 26, [here](#)) progress has been slow and the MFS is only now finalising the audit of payments for 2020 Kangaroo Island deployments which began in February.

After 11 months of correspondence and meetings, on 22 December 2012 the Chief Officer wrote to advise that he now agrees to pay full-time members deployed to Kangaroo Island in 2020 for travelling with gear (cl 14.2.6 of the Award) as well as for incidental expenses (cl 24.12.1 of the Agreement) and that he is finalising a memorandum for distribution about how members will be able to claim these amounts.

Unfortunately, the Chief is still refusing to pay members for

- all hours actually worked on Kangaroo Island over 12 hours per day and the penalties that apply (cl 14 of the Award);
- all hours expended by retained members travelling from your home station to Adelaide for deployment (cl 32.2 of the Agreement);
- retained members' travel expenses (cl 36 of the Agreement).



We continue to press the Chief Officer for payment of these amounts.

The Chief Officer has also indicated that he will provide a copy of the audit document to Shared Services "to ensure all deployed staff are remunerated in accordance with the Award and the Agreement".

We are concerned that the Chief Officer may seek to claw back any amounts members were paid which are over and above what the Award or Agreement provided and have sought clarification from him on this matter. In the interim, because we are in dispute under the Agreement, the MFS is prohibited from processing any alleged overpayments.

The UFUSA reiterates that the MFS has no automatic right to recover payments made to workers, even if the payment is over and above what is required under the Award or Agreement; whilst employers can agree to reward workers by paying above the Award or Agreement, they can never underpay them!



If the Chief or Shared Services does attempt to seek repayments from you, we strongly urge you to get in touch with us for advice on info@ufusa.com.au.

BEST WISHES FOR THE FESTIVE SEASON

On behalf of the State Council, Shop Stewards and Staff of the UFUSA, our very best wishes to all members for the festive season.

Please stay safe and try to take time to take good care of yourself and remember to enjoy the really important things in life.

The UFUSA Office will be closed from 24 December 2020 to 1 January 2021 (inclusive). If you have an urgent matter in that period, please contact:



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We look forward to working collectively in 2021, the UN International Year of Peace and Trust which focuses on Integrity, Competence, Reliability, Accountability, and Loyalty.

Let's hope it catches on.

In solidarity

Max Adlam

Secretary