

CONSTRUCTION FORESTRY MINING AND ENERGY UNION NEW SOUTH WALES BRANCH



29 June 2012

Submission Number: 83
Date Received: 29/6/2012

The Secretary
House Standing Committee on Education and Employment
House of Representatives
PO Box 6021
Parliament House, Canberra ACT 2600

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By email: workplacebullying.reps@aph.gov.au

Dear Secretary

Submission to the House Standing Committee on Education & Employment Inquiry into Workplace Bullying

The Construction, Forestry, Mining and Energy Union ("CFMEU") consists of three industry-based Divisions, namely the Mining and Energy Division, the Forestry and Furnishing Products Division and the Construction and General Division, which represent members across those industries. This submission is made by the Construction and General Division of the CFMEU.

This submission is not intended to address all of the issues raised by the Terms of Reference. Instead, this submission is intended to highlight the particular problems experienced by apprentices, union delegates and employee safety representatives in relation to workplace bullying.

Apprentices

The CFMEU has received numerous complaints of workplace bullying from young apprentices working in the construction industry. On a number of occasions, the CFMEU has made complaints on behalf of these apprentices to the NSW Director of Apprenticeships and Traineeships. On two occasions, the CFMEU has succeeded in obtaining orders from the NSW Vocational Training Tribunal limiting the capacity of a particular employer to retain apprentices in the future.

Where appropriate, the CFMEU has assisted the apprentice in making complaints to the NSW Anti-Discrimination Board or the Australian Human Rights Commission. In some instances, applications, for example in respect of victimisation or unfair dismissal, have been made on behalf of apprentices in industrial tribunals. Apprentices subjected to bullying have also sometimes succeeded in making workers compensation claims. In addition, the CFMEU has made complaints to the NSW WorkCover Authority requesting an investigation of the apprentice's allegations of workplace bullying.

Often these approaches do not result in adequate or appropriate remedies for the individual concerned, or any systemic change to prevent bullying of others in the future.

Set out below are examples of complaints of workplace bullying received by the CFMEU from apprentices. The apprentices' names have been changed to protect their privacy.

Example 1 – Apprentice "Brad"

1. "Brad" was an 18 year old indentured carpentry apprentice. During Brad's first 2 weeks of work, for which he was not paid, he was "lent" out to other employers. He was required to pour concrete, dig ditches, perform gardening work, mow lawns, and work at the employer's home residence and other properties.

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2. Throughout his apprenticeship, Brad was often required to perform labouring work and menial work which was not relevant to his apprenticeship. He was not permitted to attend TAFE.
3. The employer repeatedly demanded that Brad buy expensive tools that cost in excess of the amount that Brad was earning, despite the fact that the employer was aware that Brad's family was unable to afford these tools.
4. The employer made inappropriate demands in respect of Brad's private life, for example instructing him that his girlfriend must not stay over during the week. The employer also instructed Brad that his mother could not drive him to work on Saturdays.
5. The employer made inappropriate demands about personal matters, for example instructing Brad not to bring sandwich fillings to work but to make up the sandwiches at home, and ordering him not to make telephone calls or send text messages during his break time.
6. The employer sometimes sent Brad home or instructed him not to come to work when he was not busy. He told Brad that Brad "owed" him the un-worked hours, and required him to make them up in overtime hours later.
7. The employer failed to pay Brad the minimum entitlements owed under the relevant industrial award, for example failing to pay overtime rates for Saturday work. The employer required Brad to attend for work 10 minutes before the official start time each day, and Brad was not paid for this time.
8. The employer told Brad that he was not entitled to sick leave and that if he took a sick day in his first 6 months of work he would be fired.
9. Brad was required by his employer to perform unsafe work without adequate safety equipment, for example he was required work on a ladder approximately 2 storeys high with no safety harness. The employer also required Brad to lift very heavy weights without assistance.
10. The employer verbally abused and insulted Brad, including:
 - saying to Brad that he *"sucked on the hose"*, which Brad took to mean that he smoked marijuana. Brad thought that this might be a reference to his ethnic background
 - calling Brad a *"fag"*, particularly when Brad struggled to lift heavy items
 - telling Brad he would *"smash [his] mobile phone with a hammer"*
 - telling Brad he *"smelt"*.
11. The employer said to Brad words to the effect:
 - *"Talk like a man, not like a fag."*
 - *"You are not black. If you were black you would bring in a kangaroo for lunch. I expect you will bring a kangaroo in for lunch tomorrow."*
 - *"Find all the cups or I'll knock you out."*
12. Both the employer and his wife bullied Brad, regularly shouting at him. The employer regularly threatened him with the termination of his employment. On one occasion the employer's wife said to Brad words to the effect:

"You are _____ useless."
13. The employer repeatedly requested that Brad give him a carton of beer, and threatened him with the sack if he failed to do this. Brad was also required to hand over his lunch money to pay for broken drill bits.

14. The employer terminated Brad's employment on 28 April 2008, for the stated reason that Brad had failed to buy a tool box as instructed. When the employer asked Brad to buy the tool box, Brad told the employer that his mother was going into hospital for an operation and that for at least six weeks during her absence from work convalescing, they would not have her income coming into the home, and would be living off Brad's apprentice wages, and that he did not wish to go into debt to buy a tool box.

Example 2 - Apprentice "Adam"

1. Adam was a 19 year old indentured joinery apprentice. On numerous occasions throughout the apprenticeship, the employer required Adam to perform work which was not relevant to his trade, for example performing house and yard work at his employer's residential property, cleaning the employer's car, and running errands for the employer's wife.
2. On one occasions, Adam asked the employer what size rods to use for a task. The employer said words to the effect:

The employer: *"I don't know. Figure it out for yourself. Just make them the same size as the last ones."*

Adam cut the rods to size and took them back to the employer. There was a conversation in words to the effect:

The employer: *"No, they are the wrong size."*

Adam: *"I cut them to the size you wanted me to."*

The employer got down from a ladder and shoved Adam, pushing him in the shoulder region with both hands. Adam said words to the effect:

Adam: *"Don't push me. You are not allowed to do that."*

The employer replied in words to the effect:

The employer: *"If you don't like it mate you can [] off."*

3. On another occasion, the employer requested Adam to leave his personal tools in the employer's shed, which the applicant declined to do. As Adam was explaining to the employer why he did not want to leave his tools, the employer reached over to the bench and picked up a battery drill and pointed it directly at Adam, holding it only centimetres away from Adam. Adam felt threatened by this and said words to the effect:

Adam: *"Don't threaten me with the drill."*

The employer replied in words to the effect:

The employer: *"[] off mate."*

4. On numerous occasions, The employer spoke to Adam in a derogatory and offensive fashion, and humiliated him, including making faces at him and saying words to the effect:

The employer: *"You are stupid."*

In addition, the employer often kept Adam waiting with nothing to do for periods of an hour or more.

5. On numerous occasions, the employer required Adam to work in the rain, including digging trenches in sandstone mud during heavy rain, with water up to his ankles. Adam was also required to work over a period of weeks at height with no fall protection. On a number of occasions, Adam was required to work

alone with no supervision on sites including construction sites and residential kitchens.

6. Adam's wages were regularly paid late. Adam received payslips from the employer only irregularly, often receiving payslips for a number of pay weeks at the same time. Throughout the employment, the employer did not pay any superannuation for Adam, did not pay travel allowance, and did not pay for all the time worked. On termination of his employment, the employer did not paid out Adam's accrued entitlements, including annual leave.

Example 3 – Apprentice "Philip"

1. Philip was a 20 year old indentured apprentice who was verbally abused on a daily basis by his employers. This abuse consisted of regular shouting, swearing, threats, and insulting language. On one occasion, Philip was required to dig a hole for approximately 6 hours, without a break and without food, and his employer shouted at Philip, using words to the effect:

Employer: "Come on, you _____ dumb _____ . What have you _____ done all day, you _____ piece of _____ . You are useless. Hurry the _____ up and dig."

2. On one occasion, the employer hit Philip heavily in the face with an open hand, causing Philip to fall. Fortunately his fall was broken by a work implement, and he was not seriously injured.
3. On other occasions, the employer grabbed Philip at the back of his shirt collar and threw him out of the way, verbally abusing him at the same time, saying words to the effect:

The employer: "You _____ dumb _____ Move out of the way. I'm going to whack you."

4. The employer regularly threatened Philip, saying words to the effect:

The employer: "If you don't stop [doing X] I am going to kill you. I will whack you."

5. Philip was regularly left at work unsupervised. Philip was required by the employer to work on roofs without a safety harness. He was also required to sweep asbestos roofs without a mask or appropriate protective clothing.
6. On one occasion, there was no toilet on the work site. The employer emptied the tools out of Philip's tool bucket, and defecated in the bucket.
7. Philip often worked long hours for the employer, usually at least 9 hours per day. He was not paid for overtime.
8. The employers sometimes required Philip to "shout" their lunch.
9. On 16 September 2008, Philip was working unsupervised. The employer shouted at Philip about a road saw which had been stolen from the property. The employer shouted at Philip, using words to the effect:

Employer: "You are _____ dumb. You are a _____ idiot. You don't _____ concentrate. You better _____ find it. Don't call us. _____ find it. Pack up the van. Knock on the doors. Do something. You are going to _____ pay for it too."

The employer went and spoke to a man who was standing on the street corner. Philip heard the employer saying words to the effect:

The employer: "Mate, you got a road saw for sale? You know where it's gone?"

The employer then came back over to Philip and shouted at him, saying words to the effect:

the repairs were being done underneath and at the back of the machine. When Reg turned the machine on, water spurted out. Reg was stood down and sent home because he had attempted to operate a machine which was supposed to have been tagged out. Reg was then required to attend a medical examination at the employer's doctor to determine whether he was fit for work. Reg was found to be fit for work. He was then issued with a warning for operating or attempting to operate a "tagged out" machine. The employees who had failed to tag out the machine were not subjected to any disciplinary action.

3. On another occasion, Reg was cutting "louvre" blades, and threw a glass off-cut the size of a standard envelope into a bin which was approximately 18 inches away from his hand. Reg's employer terminated his employment, on the basis that he had breached a safety rule requiring that glass not be thrown. However other employees of the employer had thrown much larger pieces of glass, requiring 2 men to lift them, into a bin which was approximately 5 foot high. The same manager who had seen Reg throw the small glass off-cut watched the other 2 employees throwing the large sheets of glass. No disciplinary action was taken against the other workers.

Conclusion

Apprentices, union delegates and employee safety representatives are conspicuous targets for workplace bullying, and require specific legal protections from workplace bullying. The CFMEU submits that any changes to the existing regulatory framework should specifically address the needs of apprentices, union delegates and employee safety representatives.

Yours faithfully

BRIAN PARKER
State Secretary