TAFE member removal allowance win



By Mario Schmidt
and the SSTUWA Legal Services Team



The SSTUWA recently discovered that a regional TAFE college had been unlawfully demanding repayment of the initial cost of moving to the regional location from employees who resigned prior to completing two years of service.

The college in question relied upon an internal policy requiring repayment of their initial move to the region and had employees sign an agreement about the policy to receive their owed entitlement.

The college later sent an invoice to at least two SSTUWA members seeking reimbursement of part of the removal allowance.

The SSTUWA insisted the college withdraw the demand for payment and remove the offending provision of the policy on the basis that:

(a) The removal allowance is an entitlement under subclause 76.1 of the TAFE Lecturer's General Agreement 2019 (TAFE Agreement);

(b) The policy contravened the Industrial Relations Act 1979 (WA) because it required employees to repay an entitlement under an industrial agreement, which amounts to contracting out contrary to section 114 of the IR Act.

The college agreed with the SSTUWA's position and withdrew the demand for payment from the two members in question.

It subsequently conducted an audit going back to 2015 and as a result, reimbursed 11 employees.

The college assured us they would no longer enforce the offending provision under the current policy and plans to publish its new policy in 2023.

We are now working to identify any other members who may have repaid any removal allowance amounts believing the policy was lawful.

Although the college in question has carried out a review to identify and rectify any previous situations where members repaid the allowance, there may be members in other colleges who are affected by a similar policy or whom the review did not identify.

If you have been asked to repay, or have repaid, removal allowance or another entitlement under the TAFE Agreement, we ask that you contact Member Assist or your TAFE organiser as soon as possible.

We will raise this directly with your employer to seek rectification, and if that is unsuccessful, refer the matter to the SSTUWA's Legal Services Team for action.

Authorised by Sally Dennis, General Secretary, The State School Teachers' Union of W.A.
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