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**COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY,
INFORMATION,
POSTAL AND PLUMBING AND ALLIED SERVICES UNION OF AUSTRALIA
(PLUMBING & PIPE TRADES EMPLOYEES UNION) (PPTEU)**

And

SITC PTY LTD AND SHIVAY AUSTRALIA PTY LTD

RE:ALLEGED TERMINATION OF EMPLOYMENT AND UNDERPAYMENTS

22 JUNE 2018

009-2018

STATEMENT No. 2

[1] The PPTEU notified a dispute on 22 May 2018 concerning the alleged termination of two (2) employees from Shivay Australia Pty Ltd, having been employed previously by SITC Pty Ltd, a company the union alleges is a related company for the purposes of transfer of business under the Fair Work Act 2009 (FW Act). The dispute allegedly arises pursuant to the Enterprise Agreement *SITC Pty Ltd and CEPU – Plumbing Division Victorian Branch Lagging Enterprise Agreement 2015 -2-019*.

[2] The Panel convened a Conference of the parties on 1 June 2018 and issued a Statement. That Statement is to be read in conjunction with this Statement.

[3] The Panel had previously directed the parties to undertake certain actions and a further Conference was held on 22 June 2018 for a report back. The Employer was represented by the MBAV.

[4] Based upon the submissions made by the PPTEU it would appear that the work being performed by the two employees in question at the time of their termination of employment from SITC Pty Ltd and subsequent immediate employment by Shivay Australia Pty Ltd (a company owned by the father of the Directors of SITC) on 18 February 2018 was substantially the same that had been undertaken with SITC. Should it ultimately be found that a transfer of business has occurred for the purposes of the FW Act, the terms of the SITC Enterprise Agreement would therefore continue to apply to their employment with Shivay Australia Pty Ltd as a transferring instrument. To date, nothing has been submitted by the Employer to suggest otherwise.

[5] In relation to the alleged underpayment of wages, superannuation, allowances and other matters pursuant to the applicable Enterprise Agreement, from the date of their employment with SITC (one employee from November 2014 and the other from December 2017), it appears clear to the Panel that there have been underpayments and a non-compliance with the Enterprise Agreement, and these underpayments appear to be substantial. The Panel notes however, that this matter is complicated by the fact that various statutory declarations and terms of settlement have been signed by employees in relation to the matter, with questions raised by the PPTEU as to their legitimacy.

[6]The MBAV, on behalf of the Employer, confirmed that in relation to Superannuation for at least 3 months of the period in question, the details provided to it by SITC, confirmed shortfalls in payments of at least half of the requisite amounts pursuant to the applicable Enterprise Agreement and in one case only one quarter of the requisite amount had been paid. The MBAV on behalf of the Employer advised it was still

working through the information with the Employer to identify how these shortfalls can be rectified.

[7] The PPTEU advised that it had filed applications in relation to the termination of employment of the 2 employees and that these matters would be the subject of conciliation before the FWC shortly.

[8] Based upon the material presently before it, the Panel concludes that it is likely that there has been a significant underpayment of entitlements to the employees from the commencement of their employment until their termination of employment on 18 May 2018.

[9]The Panel notes that the MBAV on behalf of the Employer is attempting to establish the precise details of the shortfall. In absence of any further material from the Employer the Panel is in a position to proceed to seek further evidence from the employees and the Employer, in order to determine the mater.

[10] However , the Panel notes that proceedings in the FWC that are scheduled shortly will most likely traverse these same grounds and it is considered a waste of resources to duplicate these activities by the Panel proceeding at this juncture. The initial observations by the Panel may even assist the parties in resolving the matters before the FWC.

[11] Accordingly, we have proposed, and the parties have accepted, that in the first instance, the matters before the FWC should proceed with the parties unhindered by further proceedings before the Panel, and at the conclusion of those proceedings, should either party wish, the matter can come back before the Panel for Determination of any unresolved matters.

[12] In the meantime we encourage the parties to confer in an endeavour to settle all of the matters, particularly in light of the further detail as to underpayments being pursued with the Employer by the MBAV.



Peter Parkinson
Chairman



Daniel Hodges
Panel Member



Tony Cordier
Panel Member



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PLUMBING AND PIPE TRADES EMPLOYEES UNION

And

SITC PTY LTD AND SHIVAY PTY LTD

**RE:ALLEGED TERMINATION OF EMPLOYMENT AND
UNDERPAYMENTS**

1 JUNE 2018

009-2018

STATEMENT

[1] The PTEU notified a dispute on 22 May 2018 concerning the alleged termination of two (2) employees from Shivay Pty Ltd having been employed previously by SITC Pty Ltd, a company the union alleges is a related company for the purposes of transfer of business under the Fair Work Act 2009. The dispute allegedly arises pursuant to the Enterprise Agreement *SITC Pty Ltd and CEPU – Plumbing Division Victorian Branch Lagging Enterprise Agreement 2015-2019*.

[2] The Panel convened a Conference of the parties on 1 June 2018. SITC Pty Ltd was represented by the MBAV.

[3] SITC Pty Ltd had earlier been involved in Determination Number 022-2018 in which some reference to the two named employees in this matter was made. The Chairman asked if the employer had complied with its undertakings in relation to that Determination. The MBAV advised that whilst the employer had not yet fully complied with the payments it had agreed to make by the relevant due dates, it had sought alternative arrangements with the union. The union confirmed that this was the case and further noted that it had filed proceedings in the Federal Court in relation to this matter the previous day. The Chairman reminded the employer of the undertakings it had made to the Panel and to the obligation of the employer to comply.

[4] In relation to the latest dispute there are 2 matters in dispute before the Panel:

1. The union alleges that the terms of the SITC Enterprise Agreement should have continued to apply up until the termination of employment of the 2 employees on 17 May 2018 on the basis of the connection of the 2 companies. The union alleges the work being performed by the 2 employees was identical and for the same client.
2. The union alleges that for the whole of their employment the 2 employees were underpaid in terms of the entitlements of the SITC Enterprise Agreement, one from November 2014, the other from December 2017, in respect of wages, allowances, superannuation and other conditions. As an indication of this the union alleged that one employee had a shortfall in superannuation contributions of approx. \$22,000 and the other \$15,000 for the period of their employment.

[5] A third matter potentially in dispute is the termination of employment of the 2 employees to which the union has reserved its rights and is not presently before the Panel.

[6] In relation to both matters, the Panel directs the parties as follows:

1. To enquire further as to the relationship, if any, between the 2 companies, including the formal records relevant thereto and also details of the contractual arrangements that existed in relation to the work performed by the 2 employees immediately before their termination from SITC Pty Ltd and immediately after their employment with Shivay Pty Ltd. with the relevant principal to whom each company was contracted. The Chairman reminded the parties that Kal Thaker had previously told the Chairman that he had been a Director of SITC Pty Ltd. and performed activities for both SITC and Shivay.
2. To enquire as to the terms and conditions actually paid to both employees for the period in question. In this regard the MBAV is to seek to obtain the relevant details from its client for review by it and the union and to complete its analysis of the materials available to it, including pay slips and other relevantly available records. The parties are directed to meet to discuss these matters without delay with a view to establishing the facts and to seek to resolve this matter.
3. The parties are to report back to a further Conference before the Panel on **Friday 22 June 2018 at 10.00am** at the Panel premises.

[7] Either party is to notify the Chairman at the earliest opportunity in the event that there is a failure to comply with any of these directions.



Peter Parkinson
Chairman



Daniel Hodges
Panel Member



Tony Cordier
Panel Member