



Chairman: Peter Parkinson
UNIT 1, 233 CARDIGAN STREET
CARLTON SOUTH VIC 3053
A.C.N. 110 263 182
TEL: 03 9348 2613 FAX: 03 9348 2714
dboard@vbidb.org.au
www.vbidb.org.au

CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION (CFMEU)

and

FLETCHERS CARPET HOLDING PTY LTD (FLETCHERS)

RE: ALLEGED NON PAYMENT OF SUPERANNUATION

21 JUNE 2019

009-2019

STATEMENT

[1] The CFMEU notified a dispute on 22 May 2019 alleging the nonpayment of Superannuation pursuant to the “*Fletcher Carpet Holding Pty Ltd t/as Choices Flooring By Fletcher and CFMEU Enterprise Agreement 2016*” (the Agreement).

[2] The Panel convened a conference of the parties on 21 June 2019.

[3] It became apparent that the substantive controversy between the parties was whether or not the personnel engaged by Fletchers to perform work falling within the scope of the Agreement are employees or contractors. The alleged matter in relation to Superannuation or other entitlements pursuant to the Agreement can only be determined once the substantive issue is resolved.

[4] The CFMEU submitted that at least in relation to one member, who was present at the Conference, that on its assessment of the relevant tests, he was an employee and therefore entitled to the terms and conditions of the Agreement. It also asserted that other personnel who had been treated as contractors by Fletchers were also employees entitled to the provisions of the Agreement. Fletchers submitted that all of its personnel were correctly engaged as contractors.

[5] Whilst the parties had conferred on a number of occasions in relation to the matter a resolution had not been reached. It was acknowledged that the detailed analysis that the CFMEU stated it had conducted in relation to the member, from which its assertion was founded, had not been provided to Fletchers.

[6] The CFMEU stated that there had been a reluctance by other personnel similarly affected to have their specific cases raised with Fletchers due to their concerns about being prejudiced as a consequence in obtaining further work from Fletchers. The Chairman sought and Lincoln Smith on behalf of Fletchers gave an unequivocal undertaking that there would be no prejudice should other personnel have this question raised.

[7] The Chairman recommended and parties accepted as follows:

- i. The CFMEU is to provide as soon as possible to Fletchers (copy to the Panel), its detailed analysis in relation to its member, and for any other members for which it is able to do so, by applying the known tests to determine whether a person is an 'employee' or 'contractor'.
- ii. Upon receipt of the analysis by Fletchers, the parties are then to promptly confer in a genuine endeavour to both agree the facts and resolve the matter. The Chairman can be available to facilitate such conference or conferences should the parties agree and request.

[8] The Panel requires that the CFMEU will advise the Panel no later than **5.00pm Friday 12 July 2019**, as to progress of the matter and as to whether or not further assistance of the Panel is required.

[9] A further question was also raised by the CFMEU as to the application of the Agreement in relation to its scope, to which the Chairman advised that this matter should properly be raised with Fletchers at the proposed conference and in the event the matter is not resolved, the present Notification could be amended to deal with that matter if it requested.



Peter Parkinson
Chairman



Daniel Hodges
Panel Member



Tony Cordier
Panel Member