



Chairman: Peter Parkinson
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CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION

and

KANE CONSTRUCTIONS PTY LTD

WERRIBEE VETERINARY SCHOOL PROJECT

RE: ALLEGED SHAM CONTRACTING

27 JUNE 2018

010-2018

STATEMENT No. 2

[1] The CFMEU notified a dispute on 31 May 2018 concerning an allegation of sham contracting occurring on the Werribee Veterinary School Project where Kane Constructions Pty Ltd (Kane) is the principal contractor. The Panel issued a Statement on 8 June 2018 which is to be read in conjunction with this Statement. The Statement required a number of actions to be undertaken by the parties.

[2] A further Conference was held with the parties on 27 June 2018. The sub-contractor alleged to be involved, Man Coatings Pty Ltd, was invited by both Kane and the Panel to participate, but it failed to attend or provide any notification.

[3] The CFMEU provided confidential information to the Panel as to the status of the alleged worker's ABN details. Kane reaffirmed its earlier advice that the ABCC was undertaking a formal investigation into the allegation following Kane's referral.

[4] Based upon the material presently before the Panel it is not possible to reach a concluded view as to whether or not sham contracting exists in this particular case. The Panel outlined the constraints upon it proceeding with the audit steps outlined in sub clause 15.4 (e) in particular given the "worker" was not engaged directly by Kane. The Panel made a number of observations in this regard.

[5] The parties addressed questions from the Panel concerning what further processes might be reasonable to provide enhanced vigilance consistent with the obligations arising under the Enterprise Agreement concerning Sham Contracting. Arising from this discussion, Kane undertook to consider further whether its pre-award process for lawfully informing itself as to the compliance by sub-contractors could be in any way enhanced and what obligations and remedies for non-compliance by its sub-contractors are provided by its standard contracts, for this purpose. Kane undertook to provide relevant example extracts from its standard contracts to the Panel for its information.

[6] Whilst the Panel notes that the CFMEU's claim of the existence of sham contracting has not yet been established in this instance, and there is no question that Kane has met its obligations under the Enterprise Agreement in relation to this matter, the parties nevertheless acknowledged that a wider industry focus on the issue of sham contracting would be of benefit to the industry. The Panel recommended that further life be given to the commitment of the industry parties, as provided in sub-clauses 69.4 and 69.5 of the Enterprise Agreement ie:

“ 69.4 Eradication of sham contracting in the building and construction industry

(a) The parties commit to participating and supporting industry based initiatives for the eradication of sham contracting.”

69.5 *Industry Working Party*

(a) *The Parties will support the establishment of an industry based working party of employers, unions and government with a view to the development and establishment of programs to achieve the objectives outlined above.”*

[7] The Panel will keep the file open pending further advice from Kane as to the investigation underway by the ABCC and convene any further conference requested by either party should it be warranted.

[8] As a foot note to this Statement, following the Conference, the Chairman contacted and spoke with the Managing Director of Man Coatings Pty Ltd. He claimed that he was not engaging in sham contracting practices and that he regularly engaged 8 independent contractors who held themselves out to perform work for a range a companies, as far as he knew, and that he had only one employee. He said he took out insurance with the RACV for his contractors. He said he would be prepared to respond to any specific questions the Panel may seek to ask of him. He said he had not as yet been contacted by the ABCC in relation to any matter concerning the work with Kane. He referred to an enquiry made by the Fair Work Australia some 3 years ago which he said found nothing untoward.

[9] The Panel will monitor the progress of the ABCC’s investigation, as informed by Kane.



Peter Parkinson
Chairman



Tony Cordier
Panel Member



Daniel Hodges
Panel Member



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KANE CONSTRUCTIONS PTY LTD

WERRIBEE VETERINARY SCHOOL PROJECT

RE: ALLEGED SHAM CONTRACTING

8 JUNE 2018

010-2018

STATEMENT

[1] The CFMEU notified a dispute on 31 May 2018 concerning an allegation of sham contracting occurring on the Werribee Veterinary School Project where Kane Constructions Pty Ltd (Kane) is the principal contractor. Kane attended the Conference in the capacity of assisting the disputes resolution process as provided in sub-clause 15.4(f) of the Enterprise Agreement [*Kane Constructions Pty Ltd and the CFMEU (Victorian Construction and General Division) Enterprise Agreement 2016-2018*].

[2] The Panel convened a Conference of the parties on 8 June 2018.

[3] The allegations concern the engagement by a painting sub-contractor to Kane of a person whom the union alleges is engaged unlawfully as an “independent contractor”.

The CFMEU alleges the person is paid a flat rate of \$40.00 per hour from which the person is required to make his own arrangements for superannuation and insurances and has been so engaged by the sub-contractor continuously for 3 and a half years. It submits that the person is an employee, not an “independent contractor”. The CFMEU noted that the person was reluctant to participate directly in the Conference.

[4] The parties have had prior discussions regarding the allegations and to its credit Kane has referred the allegations to both the ABCC and the FWO. Kane has also raised the matter with the sub-contractor who has advised Kane it is compliant. The FWO has advised Kane that it will only deal with the matter if the affected person makes representations to it. The CFMEU has been advised by FWO similarly. Kane understands that the ABCC is proceeding with an investigation into the matter.

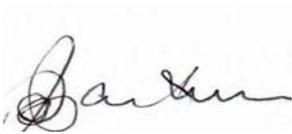
[5] The Panel has recommended the following steps in relation to this matter, which were accepted by the parties.

Agreed Steps:

1. The CFMEU will endeavour to provide further specific details as to the allegations such that the Panel and Kane can be better informed as to the facts concerning the engagement of the person as to whether or not the person has been legitimately engaged as an independent contractor or whether it is apparent that the contract is a sham in the sense adopted by the Enterprise Agreement. The Panel proposes that such details are to be provided **no later than 15 June 2018**.
2. Kane will enquire further as to the state of progress of the investigation being conducted by the ABCC and inform the Panel and CFMEU. The Panel proposes this be provided **no later than 15 June 2018**.
3. That the parties consider further processes that might be reasonable to adopt to provide enhanced vigilance consistent with the obligations arising under the Enterprise Agreement concerning Sham Contracting.

4. That a further Conference of the parties be conducted before the Panel, providing an opportunity for the relevant sub-contractor to attend (such attendance will be requested by Kane) unless events emerge from the foregoing such that the matter is settled.

[6] The Conference referenced in Step 4 above will be held on **Thursday 21 June 2018 at 10.00am at the Panel's premises.**



Peter Parkinson
Chairman



Tony Cordier
Panel Member



Daniel Hodges
Panel Member