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CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION (CFMEU)

and

PREMIER CRANES AND RIGGING PTY LTD (PREMIER)

**RE: ALLEGED INCORRECT PAYMENT OF SITE ALLOWANCE
WESTGATE TUNNEL PROJECT**

4 SEPTEMBER 2019

018-2019

DETERMINATION

[1] The CFMEU notified a dispute on 22 August 2019 alleging incorrect payment of Site Allowance for work performed on the Westgate Tunnel Project pursuant to the “*Premier Cranes & Rigging Pty Ltd and the CFMEU (Victorian Construction and General Division) Rigger/Steel Erector Enterprise Agreement 2016-2018*” (the Rigger/Steel Erector Agreement).

[2] The Panel convened a Conference of the parties on 27 August 2019 and issued a Statement which is to be read in conjunction with this Determination. The parties acknowledged their familiarity and understanding of the Panel’s Determination in Matter No. 008-2018 dated 20 July 2018 that dealt with the same Project. A copy was also provided to the parties.

[3] The Panel conducted a Hearing on 3 September 2019.

[4] There is no dispute that the Rigger/Steel Erector Agreement applies to the matter in dispute.

[5] The substantive issues in dispute here are no different to the matters in dispute in Matter No. 008-2018 which were determined by the Panel. In that matter Premier was not party to the dispute notification. As will become clear, Premier seeks to distinguish their position on other grounds.

[6] The Panel invited submissions from each of the parties on the following matters:

- 1. Is there anything that is so substantively different to the findings made by the Panel in Matter No. 008-2018 that the Panel should reach a different conclusion as to scope, quantum of site allowance and operative date, should it proceed to a Determination in this matter?; and*
- 2. Any other relevant matter.*

[7] The CFMEU submitted that the circumstances of Premier on the Project were no different to other contractors and that the Panel should reach the same findings and conclusions for Premier that it did for others in Matter No. 008-2018.

[8] Premier spoke to its written submission identified as *Exhibit P.1*. Whilst Premier made no submissions to demonstrate any substantive differences between the works and scope conducted by it to the works and scope considered in Matter 008-2018, it argued some relief ought be provided Premier for what it says was in effect an acceptance by the CFMEU that a site allowance of \$5.40 per hour should be paid on the Project. It argued that an allowance of \$5.40 per hour should apply or if the Panel was to find a higher amount should apply, it should be operative from the date of Determination.

[9] The Panel has carefully considered all of the submissions that have been made.

[10] It is clear from the evidence that Premier had paid its employees covered by the Enterprise Agreement a quantum of site allowance somewhat consistent with the quantum determined by

the Panel in Matter 008-2018 from commencement on site in August 2018 through to March 2019 when it then stopped paying a site allowance of \$9.20 per hour. From the evidence before the Panel, advice provided to Premier from the CFMEU delegate seems to have created some misunderstandings in the first instance. This arose in relation to the application of another unrelated Premier Enterprise Agreement, being the *Premier Cranes & Rigging Pty Ltd and the CFMEU Mobile Crane Hiring Industry Enterprise Agreement 2016-2019* ('the Mobile Crane Agreement') and the Rigger/Steel Erector Agreement that is applicable here. Premier engage employees separately under both agreements and conduct works with these employees from time to time on the Project pursuant to those agreements. Both agreements treat the matter of site allowance quite differently. Indeed, a site allowance as such is not applicable under the Mobile Crane Agreement. This is where the confusion or misunderstanding has arisen. To be clear, there is no dispute over the application of the Mobile Crane Agreement.

[11] For a period, Premier stopped paying a site allowance altogether to its employees covered by the Rigger/Steel Erector Agreement and then commenced paying a site allowance of \$5.40 per hour in May 2019. Premier stated "*at the time, the CFMEU agreed this was acceptable*". The CFMEU denies this was the case and states that "*the matter was still in dispute.*" Given the circumstances of this Project and the evidence before the Panel, we are not convinced that any such understanding was reached. Whilst we accept that there was a clear misunderstanding as to the application of the Rigger/Steel Erector Agreement and poor communication, the parties have on their own admissions acknowledged that the matter has remained unresolved since May 2019. The Panel notes that either party could have referred the matter to the Panel then, rather than await an application from the CFMEU to be filed 3 months later. The Panel makes the point that having identified that a dispute existed, the CFMEU itself should have acted promptly to notify the matter to the Panel at that time. The failure to bring the matter to the Panel for resolution, given the particular circumstances of this Project and the known and acknowledged Determination in Matter No. 008-2019, however should not, in this case, weigh against the employees receiving their entitlements pursuant to the Agreement, both in terms of quantum and operative date.

[12] Accordingly, the Panel finds that no party has made any submissions that in any way has identified anything that is so substantively different to the findings made by the Panel in 008-2018 such that it alters the Panel's findings in that matter in respect to the relevant considerations for site allowance in this matter. The Panel finds that the same issues arise for Premier in so far as the application of the applicable Enterprise Agreement, the scope of the Project, the value of the Project and the quantum of the site allowance, as found and determined by the Panel by majority in Matter No. 008-2018.

[13] Accordingly the Panel by majority determines that the Project scope, site allowance quantum and operative dates determined by majority in Matter No. 008-2018 will apply to Premier. Premier is therefore required to implement the terms of this Determination expeditiously, including the making of retrospective payments where applicable.

[14] To be clear, the Panel determination is that a site allowance of \$8.90 per hour shall be applicable with effect from 1 January 2018 for any works undertaken on the Project on or after this date under the Rigger/Steel Erector Agreement. The indexation of the site allowance is to be effected on 1 October each year by the CPI (All groups, Melbourne) movement for the preceding period July to June in each year. Accordingly Premier is required to make the necessary payment adjustments retrospectively to the relevant employees from their commencement of works on the Project. The site allowance quantum of \$8.90 shall be indexed with effect from 1 October 2018 and each October thereafter.



Peter Parkinson
Chairman



Tony Cordier
Panel Member