



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

DOWNER EDI ENGINEERING POWER PTY LTD
(DOWNER)

ORBOST GAS PLANT UPGRADE

RE: LIVING AWAY FROM HOME ALLOWANCE IN NOTICE PAY

16 DECEMBER 2019

024-2019

RECOMMENDATION

[1] The CFMEU notified a dispute on 20 November 2019 alleging incorrect calculation of compensation in lieu of notice of termination (Notice Pay) for employees who are employed under the *Downer EDI Engineering Power Pty Ltd/AMWU/AWU/CFMEU Metal Engineering On-Site Construction Agreement 2017-2020*.

[2] The Panel convened a Conference of the parties on 28 November 2019 and issued a Statement which is to be read in conjunction with this Statement.

[3] The Panel convened a further Conference of the parties on 5 December 2019.

[4] The matter was unable to be resolved. The Panel directed that final written submissions summarising the position by each of the parties and any further evidence upon which they rely, would be filed *no later than 5.00pm on 12 December 2019*. In the event any new matters are raised by the submissions, the parties will be given an opportunity to reply, otherwise the Panel will proceed to issue its Decision in the matter.

[5] Both parties filed written submissions on 12 December 2019. These submissions confirmed the previous outline of the parties position in respect to the matter. There being no new matters of substance raised the Panel does not consider it necessary to seek further replies from either party and the Panel has proceeded to reach a conclusion in the matter.

[6] It is clear that the drafting of the relevant clause is not as clear as it might have been had the parties specifically included or excluded Living Away from Home Allowance (LAHA) in Notice payments. We have no submissions from either party as to their intentions in this regard at the time of making the agreement. We are familiar with other arrangements in place in the region where LAHA has been included in notice payments and whilst we note the provisions are somewhat different to this Agreement we do not accept the drafting of this Agreement reflected an intention either way in relation to this matter.

[7] We note that there had been some dialogue between the parties on site on this Project where references were apparently made to the immediate prior experience and practice at other Projects which may have led to an expectation of similar treatment, that is, the LAHA would be included in notice payments. It was only later in the Project that it became clear that this was not the case.

[8] It is also acknowledged that Downer has paid one week of the relevant LAHA in the notice payments to employees, and that from its perspective, this payment was made in a sign of ‘good faith’ in addition to Downer’s obligations under the Agreement. The Panel understands


that should LAHA be payable for notice periods, most employees would receive an additional week given the relevant periods of service.

[9] Having regard to all the circumstances in this matter the Panel considers that a final Determination as to the intention of the parties and/or the meaning of the words in the relevant clause is not presently the best way of resolving the controversy for this particular Project. Rather, the Panel at this juncture has decided to issue a Recommendation to the parties.

[10] The Panel recommends that to resolve the dispute in relation to this Project only, the parties agree that Downer pays the relevant LAHA for each week of notice in lieu that is paid to an employee, up to a maximum of two (2) weeks.

[11] With respect to the application of the clause in relation to other works and Projects, the parties are encouraged to settle the application in relation to those works prior to them commencing, in order to avoid any further controversy, and, it is suggested the clause is clarified to remove any doubt as to the intention in any renegotiated Agreement.

[12] The parties are required to confer and to notify the Panel and the other party no later than **5.00pm on Tuesday 17 December 2019** as to whether or not the party is prepared to accept and abide by the Panel's recommendation in para [10].



Peter Parkinson
Chairman



Daniel Hodges
Panel Member



Tony Cordier
Panel Member