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CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION (CFMEU)

and

MATANIEL LAURATE PTY LTD
T/AS CAREY CIVIL CONTRACTORS (CAREY)

AND

CONNOR CONCRETE & FORMWORK PTY LTD (CONNOR)

RE: ALLEGED NON PAYMENT OF WEEKEND PENALTY RATES

1 NOVEMBER 2019

022-2019

STATEMENT

[1] The CFMEU notified a dispute on 24 October 2019 alleging nonpayment for employees having to complete online site inductions from home over the weekend in relation to their employment for works on the Metro Tunnel Project, Melbourne.

[2] The applicable Enterprise Agreements are:

(i) Mataniel Laurate Pty Ltd *T/as Carey Civil Contractors and the CFMEU (Victorian Construction and General Division) Enterprise Agreement 2016-2018* (the Carey Agreement), and

(ii) Connor Concrete & Formwork Pty Ltd and the CFMEU (Victorian Construction and General Division) Enterprise Agreement 2016-2018” (the Connor Agreement).

[2] On 27 October 2019 Carey informed the Panel that it had reached a settlement with the CFMEU on the matters in dispute. The Chairman sought and obtained advice from the CFMEU that it anticipated it would be in a position to confirm that a settlement had been reached at the scheduled Conference.

[3] The Panel conducted a Conference of the parties on 30 October 2019 at which the CFMEU confirmed that it had settled the dispute with Carey. Carey is hereby formally removed from the Dispute. The Conference proceeded in relation to Connor.

[4] There is no dispute that employees of Connor, having been engaged by Connor to perform work on the Metro Tunnel Project pursuant to its contract with the CYP JV, are required to complete an ‘induction’ by way of an online internet based programme away from the workplace. The induction is required by CYP to be completed prior to attendance of employees on site, the arrangements for which are set out in its “CYP Portal User Manual Subcontractor”, available on line date 25 October 2018. The Panel was advised that there is no due diligence undertaken as to who actually completed these inductions and whether the content was comprehended and understood by the employee. This raises some flags for concern.

[5] Both parties confirmed that all subcontractor employees are required to complete such an induction. The CFMEU informed the Panel that to its knowledge all subcontractor employees are paid at overtime rates for this requirement, save for Connor and until recently Carey. The CFMEU noted that whilst its notification referred to ‘weekend penalty’ rates this was not necessarily applicable in all cases.

[6] It was explained by the parties that the induction is not a general orientation but rather a project specific induction which deals with OH and S matters relevant to the

Project, Indigenous Relationships amongst other matters, relevant to the requirements of the JV and the Project.

[7] Based on the information provided, it is apparent to the Panel that there is no capacity for the employer or the JV to adequately satisfy itself that these types of inductions are properly undertaken and completed by the relevant employee. The Panel notes with some concern that the extent to which reliance is placed upon the completion of the induction for the purposes of assuring adequate awareness of the content on the matters covered by the induction must be doubtful. In this regard the Panel would encourage the relevant and responsible parties to ensure a proper basis of confirmation and assessment. Ideally it seems that a better approach would be to conduct inductions, particularly those dealing with OH and S and workplace matters on site and with adequate due diligence.

[8] As to the question of entitlement to payment by employees for the time spent undertaking such inductions off site, it is clear from the relevant applicable instruments, both the Award and the Connor Agreement, that the employee undertaking the induction is entitled to be paid. There is adequate case law and commentary including advisory material online by the Fair Work Ombudsman in relation to this. From the information provided, it appears that most employers have elected to pay for the inductions in relation to Metro Tunnel Project at overtime rates.

[9] The Panel for present purposes has recommended that the parties in this matter apply arrangements that are consistent with the Enterprise Agreement. The parties indicated they would accept the recommendation. The induction is a requirement established by the CYP JV in order for work to be conducted on the Project under its management and properly it is a cost of engaging labour for the conduct of work which ought be met by the Project.

[10] The Panel encourages the parties to adopt its recommendation and also urges the relevant parties to review the adequacy of inductions of this type to ensure appropriate due diligence and adequate preparedness to attend to on site activities present no greater risk as a consequence of the induction being undertaken off site.

[11] The Panel notes that specific provision could also be incorporated into Enterprise Agreements to unequivocally deal with such matters and urges the parties that may be comprehending new Enterprise Agreements to include this in their deliberations such that clarity and good practice might prevail.



Peter Parkinson
Chairman



Tony Cordier
Panel Member



Daniel Hodges
Panel Member