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CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION (CFMEU)

and

LIQUID ROCK CONSTRUCTION PTY LTD (Employer)

RE: ALLEGED FAILURE BY EMPLOYER TO RETURN EMPLOYEE TO WORK

27 MARCH 2018

004-2018

RECOMMENDATION

[1] The CFMEU notified a dispute to the Panel on 22 March 2018 concerning the alleged failure of the employer to return an employee to work in accordance with employee's medical specialist's advice and the employer recommended medical practitioner's advice. The dispute arises pursuant to *Liquid Rock Constructions Pty and the CFMEU Building and Construction Industry Enterprise Agreement 2011-2015 (AE891444)*.

[2] A conference of the parties was conducted by the Chairman on 27 March 2018.

[3] The CFMEU attended with its member the subject of the Dispute. The Employer was represented by its Health and Safety Officer. There was no issue that the Dispute was properly before the VBIDP.

[4] The circumstances of the Dispute arise as a consequence of the employee suffering a medical condition which on the evidence before the Chairman resulted in a necessary temporary absence from work. Medical advice provided for a graduated return to work from 18 December 2017, followed by the employer seeking an opinion from its nominated medical specialist to which the employee fully cooperated resulting in a recommended return to work programme on 26 February 2018, together with another medical adviser confirming a return to work as of 23 February 2018.

There is no evidence before the Chairman that contradicts the available medical advice or recommendations and the representative of the Employer is not aware of any.

[5] Nevertheless the Employer has hitherto refused a return to work by the employee absent a “full clearance” from the employee’s medical practitioner. Consequently the employee has now exhausted all sick leave accruals and is being denied accrued leave as a consequence.

[6] It became apparent during the Conference that there is nothing of substance that stands in the way of a return to work by the employee on the programme as recommended by the Employer’s nominated medical practitioner. An issue in relation to the extent to which transport might be constrained is easily and reasonably resolvable as discussed; indeed given the effluxion of time this may no longer be relevant. This can be clarified with the Medical practitioner immediately and easily. On this basis the Chairman recommends that the Employer take immediate steps to return the employee to work on this basis without further delay.

[7] The Chairman also recommends to the parties that they jointly review the restitution of sick leave for a period and for the accrual of leave during this period to also be reviewed with the object of settling this aspect of the Dispute as well. In addition an enquiry of Incolink may provide some assistance to these circumstances.

[8] Having regard to the recommendations in paragraphs [6] and [7] the parties are encouraged to settle the dispute urgently and to engage in further dialogue accordingly.

[8] The parties are requested to inform the Chairman by 5.00pm Thursday 29 March 2018 as to the status of the Dispute.

[9] In absence of a settlement either party is at liberty to seek further intervention by the VBIDP.



Peter Parkinson
Chairman