



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

**MELBOURNE PRECAST CONCRETE NOMINEES PTY LTD (MELBOURNE
PRECAST)**

RE: ALLEGED REDUNDANCIES

25 SEPTEMBER 2020

014-2020

STATEMENT

[1] The CFMEU notified a dispute on 23 September 2020 alleging a failure of the Melbourne Precast to comply with the Enterprise Agreement provisions concerning consultation and proposed redundancies at Melbourne Precast.

[2] The applicable Enterprise Agreement is the *Melbourne Precast Concrete Nominees Pty Ltd and the CFMEU (Victorian Construction and General Division) Precast Panel Enterprise Agreement 2016-2018* (the Agreement).

[2] The Panel conducted a video Conference of the parties on 24 September 2020.

[3] There had been various exchanges of correspondence and emails sent prior to the Conference which had been made available to the Panel.

[4] In short the CFMEU alleges that Melbourne Precast has failed to adequately meet the requirements of Consultation and Redundancy as provided by the Agreement. Melbourne Precast in its correspondence sought to set out its claim that it had complied.

[5] Following discussion it was confirmed that there were three (3) employees that Melbourne Precast had selected for Redundancy but had not reached a final position on either.


[6] In relation to two of the employees, it was agreed that the parties together with the employees would meet with the Chairman via a Videoconference on Monday 28 September 2020 at 10.00am to consider if all options had been adequately considered or not, and what would be the next steps. In this regard Melbourne Precast undertook to provide to the CFMEU and Panel before the Conference, preferably on 25 September 2020, details of its Selection Matrix approach and details of present overtime work being performed by the workforce. It also undertook to consider the opportunity for alternative arrangements to be proposed, in lieu of any redundancies, by utilising the purposes of JobKeeper, including various alternative approaches as explained by the Chairman. The CFMEU undertook to appraise its members of these discussions prior to the Conference.

[7] In relation to the third employee, who had previously been the subject of reinstatement, Melbourne Precast undertook that it would not proceed with the proposed Redundancy to enable a further Conference to be held before the Panel later next week, the time to be set by the Chairman.

[8] The CFMEU also raised concerns about the capacity of Melbourne Precast to meet its obligations to consult, when emails sent were not being responded to by Melbourne Precast. In this context the CFMEU also claimed that Melbourne Precast has failed to comply with a Court order in relation to the reinstatement matter. The Chairman recommended that the CFMEU send the emails again given that it was clear that the email address utilised was the correct email as also successfully utilised by the Chairman. The

Chairman also strongly recommended to Melbourne Precast that it promptly check the Order.

[9] In the meantime the Chairman encouraged the parties to endeavour to work together in order that an environment conducive to settlement prevails.



Peter Parkinson
Chairman



Tony Cordier
Panel Member



Esther Gruszke
Alternate Panel Member



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**MELBOURNE PRECAST CONCRETE NOMINEES PTY LTD (MELBOURNE
PRECAST)**

RE: ALLEGED REDUNDANCIES

30 SEPTEMBER 2020

014-2020

STATEMENT No. 2

[1] The CFMEU notified a dispute on 23 September 2020 alleging the failure of Melbourne Precast to comply with the Enterprise Agreement provisions concerning consultation and proposed redundancies at Melbourne Precast.

[2] The applicable Enterprise Agreement is the *Melbourne Precast Concrete Nominees Pty Ltd and the CFMEU (Victorian Construction and General Division) Precast Panel Enterprise Agreement 2016-2018* (the Agreement).

[3] The Panel conducted a video Conference on 24 September 2020 and issued a Statement dated 25 September 2020 which is to be read in conjunction with this Statement.

[4] A further video Conference was scheduled for 28 September, 2020 but adjourned for medical reasons to 30 September 2020, the purpose for which was to consider if all options to redundancy in relation to two (2) employees had been adequately considered or not, and what would be the next steps. Matters concerning a third employee were noted to be dealt with in a separate and later Conference.

[5] Melbourne Precast had also been required to provide various documentation which was only provided shortly before the Conference, for which the CFMEU has not had an opportunity to seek instructions from its members.

[6] The Panel noted that in relation to one employee (JW), he had decided to elect to accept a Voluntary Redundancy and accordingly this matter was resolved.

[7] In relation to the other employee (TK), it was noted that because of a pre-existing injury for which Workcover was applicable, it had been suggested that any Voluntary Redundancy, should it be accepted, might prejudice his entitlements to Workcover. The CFMEU was requested to make the necessary enquiries to determine a clear answer on this matter as it may or may not influence the outcome of the matter before the Panel.

[8] As to the selection criteria for redundancy as applied by Melbourne Precast, a copy of the relevant assessment had been provided by Melbourne Precast with appropriate redactions. The Chairman indicated that there appeared on the information provided by Melbourne Precast to be some flaws in the process in so far as the six personnel selected by management to undertake the assessment had only been provided with a limited list of employees and therefore not all employees relevant to the issue had been assessed. This might indicate an unfairness the Chairman suggested. Another flaw seemed to be that the requirements of sub clause 19.4 dealing with Seniority may have not been considered at all. The Chairman advised that both matters should be rectified. Melbourne Precast undertook to reassess all relevant employees as required. The CFMEU was invited by Melbourne Precast to provide an alternative selection criteria. The CFMEU undertook to consider same, to which the Chairman recommended this be done and if available, to be

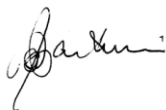
provided by early Thursday 1 October 2020, in order that there was no further delays in Melbourne Precast conducting a reassessment.

[9] The matter of the third employee (PH) affected by this matter which was to be dealt with at a later Conference was discussed. It was established that a proposal for possible settlement that had been submitted by the CFMEU via Melbourne Precast's lawyer, which had not been responded too. Melbourne Precast indicated a negative response would be forthcoming. The Chairman urged the parties to continue to explore options for settlement, notwithstanding that the matter would be the subject of the planned further Conference, should that still be required.

[10] The Chairman determined that a further tele - Conference would be set down for **Monday 5 October at 10.00am**, the purpose of which would be to:

- 1) Review the actions undertaken by CFMEU and Melbourne Precast in relation to paragraphs [7] and [8] respectively and to endeavour to reach a conclusion in relation to the employee (TK), unless the matter is resolved in advance; and
- 2) Review the discussions that might arise from paragraph [9] in relation to the employee (PH) and if necessary, endeavour to resolve the matter.

[11] In the meantime the Panel encourages the parties to settle both outstanding matters.



Peter Parkinson
Chairman



Tony Cordier
Panel Member



Esther Gruszke
Alternate Panel Member



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**MELBOURNE PRECAST CONCRETE NOMINEES PTY LTD (MELBOURNE
PRECAST)**

RE: ALLEGED REDUNDANCIES

5 OCTOBER 2020

014-2020

STATEMENT No. 3

[1] The CFMEU notified a dispute on 23 September 2020 alleging the failure of Melbourne Precast to comply with the Enterprise Agreement provisions concerning Consultation and proposed redundancies at Melbourne Precast.

[2] The applicable Enterprise Agreement is the *Melbourne Precast Concrete Nominees Pty Ltd and the CFMEU (Victorian Construction and General Division) Precast Panel Enterprise Agreement 2016-2018* (the Agreement).

[3] The Panel conducted a video Conferences on 24 and 30 September 2020 and issued Statements dated 25 and 30 September 2020, both of which are to be read in conjunction with this Statement.

[4] A further video Conference was scheduled for 5 October, 2020 for the purposes set out in the Statement dated 30 September 2020.

[5] Melbourne Precast submitted that a settlement had been reached in relation to employee (TK), however the CFMEU's instructions were that its member required further discussion with Melbourne Precast before a final position could be reached. It was anticipated that a settlement would be reached and Melbourne Precast undertook to speak with the employee accordingly and endeavour to confirm a settlement, and to advise the Panel of the outcome. The Chairman requested the CFMEU confirm should a settlement be forthcoming.

[6] In relation to the other employee (PH), the Chairman noted the further correspondence received from Melbourne Precast shortly before the Conference dated 5 October 2020. It was noted that Melbourne Precast had not adopted the proposed CFMEU selection process, as it had invited the CFMEU to provide at the Conference on 30 September 2020. The CFMEU had set out a proposed selection criteria in response to the invitation from Melbourne Precast in its email of 1 October 2020. Instead, Melbourne Precast had revised its own selection criteria, and conducted a reassessment, purporting to reflect the requirement to consider seniority, as provided for by the Enterprise Agreement.

[7] In response to questions of Melbourne Precast and the employee (PH), it was apparent to the Panel that consultation had not been adequate as was necessary pursuant to the Enterprise Agreement, particularly to consider options that might be available including JobKeeper options for which Melbourne Precast had confirmed it was eligible. It seemed that this might be acceptable to the employee.

[8] It was also acknowledged that a settlement on alternative financial terms may still be an option for the parties to discuss. In this regard the Chairman said he would be available to assist the parties, if this was desired by the parties.

[9] After hearing further from all parties the Chairman determined that he would make the following recommendations:

1. That further consultation occur directly between the parties with the employee as to the options for JobKeeper to apply to the employee and therefore avoid redundancy, or other options involving JobKeeper for a number of employees with the same ends. Melbourne Precast confirmed it was prepared to provide Job Keeper to the employee.
2. That the parties further discuss and explore the opportunity to settle the matter on alternative financial terms with the assistance of the Chairman if they so desire.
3. That concurrent with the above discussions, Melbourne Precast to apply the selection criteria as proposed by the CFMEU in its email dated 1 October 2020 to the relevant employees for a further assessment, in an objective fashion, and to provide the outcome of the assessment to the CFMEU and Panel.
4. That the Panel be advised as to the status of any settlement between Melbourne precast and employee (TK) as soon as possible.
5. That a further Conference before the Chairman be held on **Friday 9 October 2020 at 9.30am** to deal with any unresolved matters. Should the matters be resolved in advance, the parties are to advise the Panel.

The parties confirmed they accepted the above recommendations.

[Subsequent to the Conference, the Chairman was contacted by the CFMEU with a request that the Chairman facilitate discussions between the parties in regard to Recommendation 2 above. The Chairman has advised Melbourne Precast of same and Melbourne Precast has undertaken to consider this issue further and advise the Chairman of its position on the morning of 6 October 2020].

[10] The Panel encourages the parties to settle the outstanding matters without delay.



Peter Parkinson
Chairman



Tony Cordier
Panel Member



Esther Gruszke
Alternate Panel Member



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**MELBOURNE PRECAST CONCRETE NOMINEES PTY LTD (MELBOURNE
PRECAST)**

RE: ALLEGED REDUNDANCIES

12 OCTOBER 2020

014-2020

STATEMENT No. 4

[1] The CFMEU notified a dispute on 23 September 2020 alleging the failure of Melbourne Precast to comply with the Enterprise Agreement provisions concerning consultation and proposed redundancies at Melbourne Precast.

[2] The applicable Enterprise Agreement is the *Melbourne Precast Concrete Nominees Pty Ltd and the CFMEU (Victorian Construction and General Division) Precast Panel Enterprise Agreement 2016-2018* (the Agreement).

[3] The Panel conducted video Conferences on 24, 30 September and 5 October 2020 and issued Statements which are to be read in conjunction with this Statement.

[4] A further video Conference was held on 9 October 2020 for the purposes set out in the Statement dated 5 October 2020 in relation to employees TK and PH.

[5] The parties confirmed that no settlement had been reached in relation to either of the two employees that remained subject to the dispute.

[6] Following discussion, in relation to employee (TK), it was apparent that a settlement might be achieved by one of three alternatives, if they were to be confirmed in writing to TK by Melbourne Precast. The three alternatives were as follows:

1. Melbourne Precast to effect a JobKeeper Standown direction to enable TK to go on to JobSeeker payments; or
2. Melbourne Precast to offer TK Voluntary Redundancy on the same monetary entitlements as had hitherto been offered by Melbourne Precast; or
3. Melbourne Precast effect a termination of employment of TK for Redundancy on the same monetary terms as the Voluntary Redundancy offer.

[7] It was noted that Melbourne Precast had already made these three offers to TK verbally, as it also had confirmed in its written submissions to the Panel.

[8] It is also noted that Melbourne Precast had previously confirmed to the Panel that it was eligible for JobKeeper and was in receipt of JobKeeper payments and that it was open to Melbourne Precast to make such arrangements in relation to its employees.

[9] It was noted that TK has been absent from the workplace for the last week without advice to the employer. The CFMEU advised it had spoken to its member just prior to the

Conference and indicated he was prepared to further consider these three alternatives. Consequently the Chairman indicated that the three alternatives needed to be confirmed in writing promptly, such that TK could respond.

[10] Following discussion, both parties agreed with the Chairman's recommendation in relation to employee (TK), that the CFMEU would make immediate arrangements for TK to attend site by lunchtime Friday 9 October 2020 in order to receive the aforementioned three (3) alternative offers which would be made by Melbourne Precast in writing. On this basis, the Chairman made clear he expected that a decision would be reached by TK by close of business 9 October 2020, unless there were compelling reasons that meant TK could not attend site that day.

[11] In the event that the matter was not settled by close of business on 9 October 2020, the Chairman advised he would issue further Directions in relation to the dispute concerning TK.

[12] For the record, the Panel had considered all of the material that had been brought before the Panel in Conference. Whilst it could not be satisfied that the initial processes of consultation and assessment for redundancy undertaken by Melbourne Precast were adequate in so far as the Enterprise Agreement requires, it is noted that during the course of the various Conferences conducted by the Panel over the last 2 weeks it is apparent that in relation to employee (TK), he had been given some opportunity to consider his circumstances, including the advice of his union. Based upon all of the three (3) alternatives outlined in paragraph [6] being properly conveyed and confirmed in writing to TK, as had now been agreed, it is considered by the Panel that this presented a reasonable basis for settlement of the Dispute concerning employee TK.

[13] It was put by the Chairman that if Melbourne Precast considers that in the event that TK did not confirm acceptance of one of the three (3) alternatives within a reasonable time frame, then it would be at liberty to proceed with a Redundancy effected on the

terms of the monetary entitlements offered by Melbourne Precast. The parties were asked to inform the Chairman of developments.

[14] In relation to employee (PH), Melbourne Precast (TP) stated it would confirm its offer to effect a JobKeeper Standdown direction to PH without any provisos to enable him to receive JobKeeper payments and retain his employment. Melbourne Precast confirmed it would make immediate arrangements for a formal written offer of JobKeeper Stand down to be made in writing to PH by lunchtime Friday 9 October 2020. In anticipation that the offer of JobKeeper is accepted, as both the CFMEU and PH indicated it would be, that will resolve this part of the Dispute concerning PH. The Panel however for the record wishes to confirm that the provisos as had been flagged in Melbourne Precast's email of 8 October 2020 are not matters that the Panel will or is prepared to become engaged in, given these are matters for the Court, and not relevant to the settlement of these present proceedings.

[15] Immediately following the Conference, Melbourne Precast sought the assistance of the Chairman in drafting the offers it had agreed and undertaken to submit to both TK and PH in writing as set out above, which occurred, consistent with the agreements reached in Conference.

[16] A some short time later Melbourne Precast advised the Chairman that it did not consider that it could proceed with its agreement to make the offer of JobKeeper to TK. The Chairman reminded Melbourne Precast of the undertakings given in Conference and previously offered in this regard by Melbourne Precast, both verbally and in writing. The Chairman was clear that he expected Melbourne Precast to proceed as had been agreed before the Panel. The Chairman also further explained the purpose and intent of JobKeeper for which Melbourne Precast had confirmed it was receiving payments from the Commonwealth. Melbourne Precast indicated it would consider its position.

[17] During the afternoon of 9 October 2020, the CFMEU confirmed that the offer in relation to PH as set out in paragraph [10] had been complied with by Melbourne Precast and that arrangements were now in place for PH to commence on JobKeeper with effect from 12 October 2020. On this basis the Dispute before the Panel concerning PH is resolved.

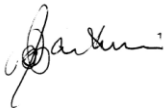
[18] In relation to TK, the CFMEU advised that contrary to the agreement made by Melbourne Precast before the Panel, the company had not complied with the undertaking to provide the three (3) alternatives as set out in paragraph [6]. The CFMEU confirmed that the alternative item 1. of JobKeeper was not offered by Melbourne Precast and it had proceeded to provide TK with only two alternatives, as per items 2. and 3. in paragraph 6. The Panel was advised that Melbourne Precast then proceeded to terminate TK on the grounds of Redundancy.

[19] The actions of Melbourne Precast by not offering TK Jobkeeper, were clearly contrary to the undertakings made before the Panel and on this basis the Panel does not in any way condone the actions of Melbourne Precast. The Panel expects that parties when making undertakings before the Panel, will honour those undertakings. To not do so, as Melbourne precast has elected to do, is considered by the Panel a failure to meet the requirements and its obligations under the Enterprise Agreement.

[20] As previously observed, based upon the material presented to the Panel, the Panel does not consider that Melbourne Precast has complied with its obligations pursuant to consultation and redundancy under the Enterprise Agreement with respect to any of the employees the subject of this Dispute. Through the dispute settling process in this matter the Disputes concerning both employees JW and PH have been resolved , but not for TK.

[21] Accordingly, the Dispute in relation to TK remains unresolved, given Melbourne Precast has acted contrary to agreement reached before the Panel.

[22] It remains now a matter for the CFMEU to advise if it seeks further assistance from the Panel in relation to the Dispute concerning TK. The file will remain open for that purpose should it be necessary.



Peter Parkinson
Chairman



Tony Cordier
Panel Member