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CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION

and

MC LABOUR SERVICES PTY LTD

**RE: ALLEGED INCORRECT APPLICATION OF ENTITLEMENTS FOR
CASUALS, SPECIFICALLY CONCERNING BUT NOT LIMITED TO
ROSTERED DAYS OFF AND TRAVEL ALLOWANCES**

15 August 2017

015-2017

STATEMENT

[1] The CFMEU notified a dispute on 4 August 2017 regarding an issue concerning the engagement of casual employees and entitlements of casuals to RDO's and Fares and Travelling Allowances arising under the applicable Enterprise Agreement [*MC Labour Services Pty Ltd and the CFMEU (Victorian Construction and General Division) Labour Hire Industry Enterprise Agreement 2016-2018*].

[2] The Panel convened a Conference of the parties on 11 August 2017. The Employer was represented by AMMA.

[3] The Employer acknowledged that it had not applied the terms of the Enterprise Agreement concerning conversion of casual labour pursuant to Clause 13.4 and confirmed this had been the case since the commencement of works on the Sky Rail contract. The Panel notes that the terms of

the Enterprise Agreement are clear. The Employer confirmed that steps had recently been taken to rectify this incorrect practice.

[4] The issues concerning the taking of RDO's and the payment of Fare and Travelling allowances arise as a consequence of the incorrect application by the Employer of the accrual and taking of RDO's by employees, again the provisions of which are clearly set out in the Enterprise Agreement at Clauses 13 and 35. Except in the case of an "irregular casual employee", employees employed at the time an RDO has been agreed to be taken, are to be paid for the accrued time towards an RDO and to take the RDO off, for which Fares and Travelling Allowance and applicable Site Allowance pursuant to Sub clause 35.2 of the Enterprise Agreement are payable.

[5] The Employer accepts that it has incorrectly treated RDO's and Fares and Travelling Allowances for its employees whilst employed on a casual basis, given the ongoing nature of their employment, for which it has now corrected the application to be consistent with the Enterprise Agreement, and it has noted that it intends to now engage employees on a full time basis for this Project, save for genuine "irregular casual" work requirements. In relation to the necessary retrospective application to ensure compliance with the Enterprises Agreement, in so far as this is now practicable, the Employer advised that it is in the process of reconciling the application of the Fares and Travelling Allowance for all RDO's that have fallen since commencement of employment of all the relevant employees.

[6] The circumstances of this dispute need not have arisen. In order to avoid such circumstances the Panel reminds the Employer that by complying with the provisions of Clause 13.3 (a) it will go a long way to avoiding any doubt as to the nature of a casual employee's engagement, viz.:

"13.3 (a) A casual Employee is an Employee employed on an occasional basis and whose work pattern is not regular and systematic. When a person is engaged for casual employment the Employee will be informed in writing that the Employee is to be employed as a casual, the job to be performed, the classification level, the actual or likely length of engagement including number of hours to be worked per week, and the relevant rate of pay." [our emphasis]. In this case it is clear that the employment was intended to be full-time and ongoing for a significant period, clearly beyond the conversion process envisaged by sub-clause 13.4.

[7] In this matter the Employer has undertaken to comply with the terms of the Enterprise Agreement and to ensure actions currently underway for both conversion of casuals to full-time and to retrospectively adjust the Fares and Travelling Allowances for all relevant employees will be

completed expeditiously. In this regard it is recommended that the Employer provide appropriate evidence to the CFMEU as soon as possible to confirm same.

[8] On this basis the Panel considers the matter resolved.



Peter Parkinson
Chairman



Daniel Hodges
Panel Member



Tony Cordier
Panel Member