



Chairman: Peter Parkinson
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CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION

and

MEMBREYS TRANSPORT & CRANE HIRE UNIT TRUST

RE: ALLEGED FAILURE BY THE EMPLOYER TO APPLY CLAUSE 35 OF THE AGREEMENT RELATING TO SHIFT WORK WHICH DOES NOT CONTINUE FOR AT LEAST 5 SUCCESSIVE DAYS.

6 SEPTEMBER 2017

016-2017

STATEMENT

[1] The CFMEU notified a dispute on 8 August 2017 regarding an alleged failure by the Employer to correctly apply the provisions of Clause 35 of the applicable Enterprise Agreement concerning shift work which does not continue for at least 5 successive days. (*Membreys Transport and Crane Hire Unit Trust and the CFMEU Mobile Crane Hiring Industry Enterprise Agreement 2011-2015*)

[2] The parties were encouraged by the Chairperson to engage in discussions with a view to resolving the matter. Upon further notification by the CFMEU that the parties had been unable to resolve the matter, the Panel convened a Conference of the parties on 6 September 2017. The Employer was represented by AI Group.

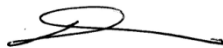
[3] It became apparent as a result of the various submissions and views as to the intent of the relevant clause, in particular sub-clause 35.2 of the Enterprise Agreement, and when considered in light of the applicable Award, that the sub-clause was potentially open to various conclusions as to the application of it, in the circumstances presented to the Panel.

[4] Consequently, the Panel directed that the parties make further written submissions no later than 5.00pm on 13 September 2017 on the intent of the sub-clause and any other relevant considerations having regard to the matters raised in the Conference, Including submissions as to the practice in the crane hire industry on the scenarios presented.

[5] Upon receipt of the submissions the Panel will advise the parties as to a further Conference if required.



Peter Parkinson
Chairman



Daniel Hodges
Panel Member



Tony Cordier
Panel Member



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MEMBREYS TRANSPORT & CRANE HIRE UNIT TRUST

**RE: ALLEGED FAILURE BY THE EMPLOYER TO APPLY CLAUSE 35 OF THE
AGREEMENT RELATING TO SHIFT WORK WHICH DOES NOT CONTINUE
FOR AT LEAST 5 SUCCESSIVE DAYS.**

17 OCTOBER 2017

016-2017

STATEMENT NO: 2

[1] The CFMEU notified a dispute on 8 August 2017 regarding an alleged failure by the Employer to correctly apply the provisions of Clause 35 of the applicable Enterprise Agreement concerning shift work which does not continue for at least 5 successive days. (*Membreys Transport and Crane Hire Unit Trust and the CFMEU Mobile Crane Hiring Industry Enterprise Agreement 2011-2015*)

[2] Following a Conference on 6 September 2017, the Panel issued a Statement requiring written submissions which were received from both parties on 13 September 2017.

[3] The CFMEU then sought a further Conference before the Panel which was held on 17 October 2017. The Employer was represented by the AI Group.

[4] The difficulty in this matter is the rather unusual drafting of the provisions in the Agreement dealing with penalty for such night shift work, a feature which has existed for some time. Nevertheless the submissions of the parties as to the intent of the parties are not sufficiently persuasive, such that the Panel could rely to determine the matter absolutely. It is clear that varied practices exist in the industry, and even the Employer acknowledges it has applied a different practice.

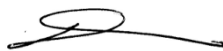
[5] The parties have acknowledged an intention to reconvene Enterprise Bargaining negotiations. The Panel notes that given the CFMEU's position that the current clause is "poorly drafted", it seems to the Panel the most suitable outcome is for the parties to use such negotiations as an opportunity to clear this matter up, by providing clarity as to the application of such work in any successor Agreement.

[6] In the meantime the Panel has recommended, and the parties have accepted, that a review of employee pay records occur to confirm the Employer's stated practice as to both payment and no work on the day prior or the day after such night shift .

[7] Noting the various submissions and also the practices referred to by Rob Graauwmans for the CFMEU concerning some other employers in the Mobile Crane Hiring Industry, the Panel suggests that there may be merit in the parties meeting to consider whether or not a change to the current Employer practice, in advance of Enterprise Agreement negotiations, is possible.



Peter Parkinson
Chairman



Daniel Hodges
Panel Member



Tony Cordier
Panel Member