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CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION

and

PROBUILD CONSTRUCTIONS (AUST) P/L

VARIOUS PROJECTS

RE: SHIFT WORK

**PART 5 HOURS OF WORK AND RELATED MATTERS APPLICATION OF
CLAUSES 33, 34, 36, & 37**

8 February 2017

020-2017

Statement

[1] The CFMEU notified a matter on 21 October 2016 concerning the application of Shift Work provisions.

[2] In particular the union sought the Panel's assistance with regard to the interaction between the *Probuild Constructions (Aust) Pty Ltd, Its Employees and the CFMEU (Victorian Construction and General Division) Enterprise Agreement 2016-2018* (the Agreement) and the incorporated *Building and Construction General On-Site Award 2010* (the Award) as it relates to work performed outside the span of ordinary daily hours.

[3] The Panel conducted Conferences with the parties on 9 November, 2016 and 1 February 2017.

[4] The union explained that whilst there was not an outstanding dispute with the employer, it was concerned to bring the matter to attention in order to avoid the likelihood of disputes arising in the future.

[5] The primary issue concerned whether or not early morning works, principally arising through concrete pours, should be compensated as a shift as defined under the Agreement, a broken shift as defined under the Award, or as an early start – whereby the time worked outside the span of ordinary daily hours is overtime.


[6] The union and Probuild acknowledged that there are inconsistencies in the various instruments which potentially meant a determination of the correct application was not possible given the differing treatment by the instruments of the provisions and the extent to which the Agreement terms prevail to the extent of that inconsistency.

[7] The parties acknowledged that some circumstances had arisen which required a solution to early morning works, particularly around concrete pours, and that arrangements had been agreed between the union and various employers to deal with it, in terms that seemed to the Panel to be fair and pragmatic under the circumstances.

[8] A clear methodology for every scenario however is difficult to determine given the state of the terms in the instruments, in particular the Award. It was further noted by the parties that these difficulties would not have arisen to the same degree had the Award retained the same definitions with respect to shift work as its predecessor, the *National Building and Construction Industry Award 2000*.

[9] It was therefore noted that an alternative solution might potentially be achieved by the industry parties in the event that they were of a mind to do so, by reaching an agreed position and seeking the assistance from the Fair Work Commission to provide clarity in the Award in this regard. The Panel recommends this as a way to resolve the matter and that the union and the MBAV commence steps to action this accordingly.

[10] In the meantime any party is at liberty to refer any similar concerns to the Panel for assistance and guidance.



Peter Parkinson
Chairman



Daniel Hodges
Panel Member