VBIDP

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL
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MERIDIAN CONCRETE PTY LTD
CSR PROJECT – YARRAVILLE

-and-

CFMEU

RE: APPLICATION OF ALTONA ALLOWANCE

112-2008

FRIDAY, 19 DECEMBER 2008

DECISION

This matter relates to an application by the Union in relation to the correct application of the Altona "all purpose allowance" payable in accordance with Clause 27.2 – "Amounts Payable in addition to site allowance".

The Panel was advised that the issue in contention centred on the words "all purpose" and their specific meaning and application.

During the course of their submissions, the Union stated that the words had very clear intent and had historically retained this intent over a period of near 50 years. The phrase "all purpose" is clearly acknowledged by industry participants and the application is supported in case law by various industrial tribunals.

The specified allowance should be included in the hourly rate for the purpose of calculating overtime and other penalty rates. This application clearly differentiated from the application of building industry site allowances which were traditionally paid on a flat hourly rate basis.

The Panel's conclusion is that the phrase "all purpose" requires any such allowance to be included in the hourly rate thereby ensuring that it applies to all calculation including overtime, shift premiums etc.

In justifying this conclusion, the Panel relies upon of the Western Australian Industrial Commission in Court Session (Commission) which is recorded at 25 of the Australian Industrial Law Review of 14 January 1981. That decision was dealing with the alteration of the "district allowances" which had been paid as a stand alone amount. This allowance was subsequently amended by consent to be part of the "all purpose" rate. The Commission in detailing the meaning of "all purpose" rate confirmed it "as rendering an allowance subject to compounding in calculation of lost time and overtime".

Further, the Commission recorded that when the National Building Trades (Construction) Award was extended to Western Australia that employers consented to the inclusion of district allowances in the wages clause of the Federal award and

made no attempt to argue that the allowances should be excluded from the wages for the purpose of calculation of lost time and overtime despite having had the right to do so expressly reserved to them. Subsequent variations to this allowance continue the prescription of the allowance in the wages clause.

This decision clearly reaffirmed the meaning of "all purpose" distinguishing it between an allowance that is not included in the wage rate therefore it stands alone as a single payment as distinct from an allowance which is included in the wage rate and therefore applies for all payments made under and award or agreement. Such an allowance has been commonly referred to as an all purpose allowance as distinct from a flat rate allowance.

In the matter before the Panel, the Enterprise Bargaining agreement in clause 27.2(a) refers to the Altona Area allowance and specifically states that it is to be paid as an all purpose allowance.

The members of the Panel whose individual experience in the industry spans some three decades had always understood the distinction between all purpose as distinct from a flat rate allowance or even an allowance which is paid for each hour worked and what we have determined in this decision is consistent with our knowledge and the history of the application of the specific clause "all purpose".

It is a surprise that this matter has been bought to the Panel given its long history as one would have expected that the principal contractor on this project could have assisted the sub-contractor as to the proper application of this specific clause and this advice in the Panel's view would in no way be in breach of the Building and

Construction Industry Improvement Act 2005 (No. 113, 2005) and could well have avoided misunderstanding and potential conflict on this site.

Finally, in relying on the Panel's understanding and history on this issue, we take comfort from the quotation relied upon on the Federal Court of Australia in decision by his Honour Mr Justice Ryan. In P&O Services Pty Ltd –v- ALHMWU (1999) FCA 1129 wherein it is stated –

> "Where the circumstances allow the court to conclude that a clause in an award is the product of a history, out of which it grew to be adopted in its present form, only a kind of wilful judicial blindness could lead the court to deny itself the light of that history, and to prefer to peer unaided at some obscurity in the language. "Sometimes" McHugh J said in Saraswati –v- The Queen (1991) 172 CLR 1 at 21, *the purpose of legislation "can be discerned only be reference to the history of the legislation and the state of the law when it was enacted".* Awards must be in the same position."

For all these reasons the Panel determines that the phrase "paid an all purpose allowance" requires the allowance to be incorporated in the wage and therefore applies to all payments that are made in accordance with the Agreement.

BOB MERRIMAN
CHAIRMAN

PETER KNIGHT
PANEL MEMBER

BILL DAVIS
PANEL MEMBER