

VBIDP

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

CHAIRMAN: SIMON WILLIAMS

26 QUEENSBERRY STREET,
CARLTON SOUTH VIC 3053
A.C.N. 110 263 182
TEL: 03 9639 1322 FAX: 03 9639 2490
dboard@vbidb.org.au

MITCHELL CONTRACTORS PTY LTD

-and-

CFMEU

RE: ALLEGED UNAUTHORISED DEDUCTIONS FROM EMPLOYEES' WAGES

28 October 2011

035-2011

DECISION

[1] On 11 October 2011, the Construction Forestry Mining and Energy Union ("the CFMEU") notified a dispute between it and Mitchell Contractors Pty Ltd ("the employer") concerning alleged unauthorised deductions from employees' wages.

[2] When the matter came on for hearing before the Panel on 19 October 2011, there was no appearance by or on behalf of the employer. It is regrettable that the employer chose neither to appear nor be represented at the hearing. By failing to appear and/or be represented, it has left itself open to the Panel reaching conclusions without the benefit of any input from it. There appeared to be no valid reason for the

employer's lack of appearance or representation and the Panel has proceeded to consider and determine the matter on the basis of the information before it.

[4] The CFMEU and the employer are parties bound by the provisions of the *P & R Mitchell Contractors Pty Ltd and the CFMEU Building and Construction Industry Enterprise Agreement 2005-2008* ("the Agreement"). [AG846377; PR968082]

[5] By virtue of Clause 6 of the Agreement, Clause 23.8 of the *National Building and Construction Industry Award 2000* ("the Award") [AP790743] is incorporated into and forms part of the Agreement.

[6] Clause 23.8 of the Award provides as follows:

23.8 Particulars of details of payment to each employee shall be included on the envelope including the payment, or in a statement handed to the employee at the time payment is made, and shall contain the following information:

- *name of the employee;*
- *classification of the employee in accordance with the award;*
- *date of payment;*
- *period covered by such payment;*
- *the ordinary hourly rate;*
- *the number of hours employed in the period at the ordinary rate;*
- *the amount of the payment made at the ordinary rate;*
- *any overtime rates;*
- *the number of hours employed at the overtime rates;*
- *the amount of the payment at overtime rates;*
- *any allowances or special rates not included in the hourly rate paid and the nature thereof;*
- *the gross amount of the payment;*
- *the net amount of the payment;*
- *the amount and purpose of any deductions made;*

- *the name, or the name and number of the fund or account into which the amount of the deduction was paid;*
- *the amount of each superannuation contribution made during the period;*
- *the fund into which the superannuation contributions were made and the employee number;*
- *the employees long service leave registration number;*
- *annual holiday payments; and*
- *payment due on termination, including payment for annual leave, rostered day off accumulation, and public holidays.*

[7] The employer is, therefore, under an obligation to provide its employees with, amongst other things, details of any deductions made from their wages and the purpose of any such deductions. According to the CFMEU, employees of the employer are not receiving any pay slips at all, let alone the required details in respect to any deductions made from their wages. Without such pay slips, it is difficult to ascertain whether if any and what deductions have been made.

[8] Further, according to the CFMEU, employees have been told by the employer that union subscriptions have been deducted and paid to the CFMEU. The CFMEU does not have any record of receiving any such payments, leaving the employees in question at risk of becoming unfinancial members.

[9] The CFMEU has produced to the Panel a copy of a letter sent to a former employee of the employer to which was attached a cheque which was said to constitute "*reimbursement of union dues which were not paid*". This supports the CFMEU's contention that deductions from employee's wages are being made by the employer.

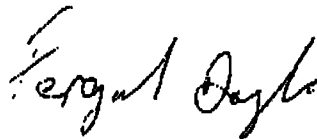
[10] On the basis of the material before it, the Panel is inclined to the view that the employer has been making deductions from employees' wages and not passing such deductions on to the relevant body. The Panel strongly recommends that, if this is the case, the employer immediately cease such practice.

[12] The Panel also strongly recommends that the employer immediately commence to comply with its obligations under Clause 23.8 of the Award. In making this recommendation, the Panel notes that the employer has similar obligations under s.536 of the *Fair Work Act 2009* ("the Act") and Regulations 3.45 and 3.46 of the *Fair Work Regulations 2009* ("the Regulations"). If the Panel's view is correct, the employer runs the risk of being prosecuted for contravention of the Agreement and/or the Act and/or the Regulations and the possibility of incurring substantial fines.

[13] Finally, the Panel recommends that the CFMEU bring this matter to the attention of the appropriate authority, it being one that has significant powers of investigation, so that any contravention and the extent of any contraventions can be ascertained.



SIMON WILLIAMS
CHAIRMAN



FERGAL DOYLE
PANEL MEMBER



LAWRENCE CROSS
PANEL MEMBER

DATE: 28 OCTOBER 2011