

VBIDP

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

CHAIRMAN: SIMON WILLIAMS

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TIMBER RIDGE INVESTMENTS PTY LTD T/A AUSCUT CONCRETE DRILLING AND SAWING

-and-

CFMEU

RE: SITE AND TRAVEL ALLOWANCE

16 January 2012

042-2011

DECISION

[1] On 15 December 2011, the Construction Forestry Mining and Energy Union (“the CFMEU”) notified a dispute between it and Timber Ridge Investments t/a Auscut Concrete Drilling and Sawing (“the employer”) concerning the alleged failure to comply with Schedule L of the relevant enterprise bargaining agreement in relation to the payment of site and travel allowance.

[2] The matter was heard by the Panel on 20 December 2011.

[3] The CFMEU and the employer are named as parties bound by the provisions of the *Timber Ridge Investments t/a Auscut and the CFMEU Concrete Sawing and Drilling Industry Enterprise Agreement 2001-2011* ("the Agreement") [Agreement ID: AC320378].

[4] In relation to Fares and Travel Allowance, Clause 22 of the Agreement provides as follows:

- (a) *In lieu of the basic daily excess fares and travel pattern allowance prescribed by Clause 38.1.1 of the Award, a payment per day shall be made for each day worked (including RDOs). This payment shall in no way limit or be construed as a payment in substitution for any other entitlement arising under Clause 38 of the Award.*

Payments shall be as follows:

1/3/08 \$27.90 per day

1/3/09 \$29.60 per day

1/3/10 \$30.95 per day

1/3/11 \$32.35 per day

- (b) *The cost of Citylink tolls or similar will be reimbursed for those employees who are required by their employer to use their own vehicle during working hours, but not for travel to and from work.*

[5] In relation to Site Allowances, Clause 23 of the Agreement provides as follows:

Site allowances shall be paid in accordance with the formula which appears in Appendix C, as varied by Appendix L in respect of Concrete Sawing and Drilling.

[6] However, special provisions are made in respect to a number of entitlements in Appendix L of the Agreement. Appendix L applies only to the employer "*while engaged solely in Concrete sawing and drilling, whether on Building/Construction sites, or in other sectors such as non-construction, maintenance, civil engineering, public works and the domestic housing industry*".

[7] Clause 1 of Appendix B makes provision for the payment of a single hourly "*concrete sawing and drilling allowance*" to be paid in lieu of site allowance and fares and travel allowance otherwise payable under the Agreement. It provides as follows:

Unless a higher amount is payable in accordance with Appendix C, the Company shall pay a concrete sawing and drilling allowance of \$6.06 per hour (flat hourly rate) in lieu of any site allowance and fares. This amount shall be increased according to the formula applied to Site Allowance as set out at

clauses 8 and 9 of Appendix C (i.e. this amount will remain consistent with the lowest rate of site allowance payable under clause 7.2 of Appendix C).

This allowance incorporates the daily Fares and Travelling Allowance (Clause 22 of this Agreement) and is paid as an hourly amount and added to the allowance equivalent to the base site allowance under Appendix C of this Agreement.

[8] The CFMEU contends that, by virtue of the application of Clause 1 of Appendix L, the correct concrete sawing and drilling allowance has increased since the Agreement came into operation and is now \$6.60 per hour. This contention is in turn based upon a contention that the original sum of \$6.06 per hour was calculated by taking the fares and travel allowance payable as at the commencement of the Agreement, multiplying by 5 and dividing by 36 and then adding to the sum so attained the minimum site allowance amount payable from time to time. The formula would read as follows:

$$\$29.60 \times 5 = \$148.00 \div 36 = \$4.11 + \$1.95 = \$6.06.$$

[9] The amount of \$6.06 is then to be adjusted over the period of the Agreement by increases that have occurred in the fares and travel allowance and site allowance. With the application of the formula set out in the preceding paragraph, these increases resulted in the following increases in the concrete sawing and drilling allowance:

Date	Fares and travelling allowance	Site allowance	Concrete sawing and drilling allowance
October 2009	\$4.11	\$2.00	\$6.11
March 2010	\$4.30	\$2.00	\$6.30
October 2010	\$4.30	\$2.05	\$6.35
March 2011	\$4.50	\$2.05	\$6.55
October 2011	\$4.50	\$2.10	\$6.60

[10] The employer contends that in calculating the formula set out in paragraph a divisor of 40 rather than 36 should be used. On this basis, it maintains that the correct calculation of the concrete sawing and drilling allowance as at the commencement of the Agreement was \$5.65 per hour and that subsequent increases have meant that the allowance now would be properly calculated as being \$6.14 per hour. It accepts that, from the commencement of the Agreement, it was obliged to pay an allowance of at least \$6.06 per hour and it has continued to do so.

[11] The Panel considers that, for the purposes of calculating the concrete sawing and drilling allowance, the correct divisor is 36. It is apparent that 36 was the divisor used in fixing the original allowance amount of \$6.06 per hour. There is no reason for not applying the same divisor in adjusting the allowance. The Panel therefore accepts that the CFMEU's contention is correct and that the amount of the allowance should from time to time during the course of the Agreement have been as claimed by the CFMEU.

[12] The Panel notes that, in discussions for a new enterprise agreement, industry parties have been considering a provision that would allow for annual percentage increases in the allowance rather than the semi-annual increases that now occur. Such a provision, in the Panel's view, would have substantial appeal in that its implementation would be less confusing for all concerned.



SIMON WILLIAMS
CHAIRMAN



FERGAL DOYLE
PANEL MEMBER



LAWRIE CROSS
PANEL MEMBER

DATE: 16 JANUARY 2012