



**VICTORIAN BUILDING INDUSTRY DISPUTES PANEL**

**CHAIRMAN: BOB MERRIMAN**

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**WACO KWIKFORM LIMITED**

**-and-**

**CFMEU**

**RE: ALLEGED BREACH OF EBA DISPUTES RESOLUTION  
PROCEDURE**

WEDNESDAY 1 JULY 2009

043-2009

**DECISION**

This matter relates to a claim by the Union that two employees were terminated on 25 June 2009 without due process having been followed in accordance with the Recruitment and Termination procedures of the Enterprise Bargaining Agreement (EBA) which applies to the Company and the workers at this site.

In addition, the Panel was advised that one of the employees was a job representative who had entitlements under the Employee Representatives clause of the EBA.

Both employees were advised and terminated at the close of business on the above date.

Management submitted that a severe down turn in business had led to the need to terminate two employees out of total workforce of six (6) and that in making the decision the Company had undertaken a review which comprehended the provisions of the EBA and the man power requirements for the future. The Company stated that the selection of the two individuals had been fairly made through a standard Company process and that the Company had no alternative but to reduce its workforce.

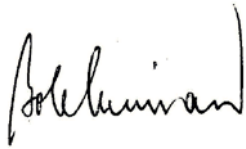
The Panel has considered the process undertaken by the Company and notes that the Employee Representatives EBA provision specifically requires that:-

"Prior to dismissal or transfer of an employee representative two day's written notice shall be given to the employee representative."

In the circumstances presented to the Panel it is clear that the requirement of this provision was not fully met and therefore the provisions of the EBA were not adhered to by the employer.

Clause 18.5 of the EBA makes provision for disputed issues to be referred to this Panel which the Union complied with.

In attempting to resolve this dispute consistent with our obligations under the EBA clause 10 and the Charter, we have heard the parties and conducted a conciliation conference. In addition to the issue raised above regarding the Employee Representative, we believe that had the Company engaged in open communication with the workforce as to their circumstances and importantly the method to be adopted for selection, including volunteers, then the dispute may not have arisen.



*BOB MERRIMAN*  
*CHAIRMAN*

*PETER KNIGHT*  
*PANEL MEMBER*

*BILL DAVIS*  
*PANEL MEMBER*

**DATED THIS            1ST                            DAY OF                            JULY                            2009**