

VBIDP

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

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DIAMOND VALLEY MOBILE CRANE

-and-

CFMEU

RE: ALLEGED TERMS OF ENGAGEMENT

21 AUGUST, 2009

053-2009

DECISION

This matter has been the subject of a number of proceedings before the Panel since first being notified in March 2009.

The main issue in contention is the question of was there an employment relationship, and if so is there underpayment to industry funds and other entitlements contained within the EBA.

Management claimed that the 2005-2008 EBA presented by the Union was not valid as it had been signed by a close relative of management who had no authority to authorise such a document.

Management further claimed that they had not received from the Union any details of monies allegedly owed to their member. Were such a document available, management would then respond accordingly.

The Union for its part advised the Panel that for this to occur they would require copies of all payment records in relation to their member for a detailed accurate claim to be made.

Management agreed to the Union's request in relation to payroll records and undertook to provide the information without delay with a view to resolving the matter at hand by negotiation between the parties.

The Panel received a further notification of dispute from the Union on 7 August 2009, to address the matters not yet resolved. A further hearing was set down on 14 August 2009.

The Panel was of the understanding since the last hearing that the matter had been proceeding towards settlement.

It was with some dismay that there was no attendance by management at the hearing of 14 August, 2009 with all the parties having been duly notified. Of further concern was a statement by the Union that the promised payment

records had not been forthcoming as previously agreed to by management at the last hearing on 15 May, 2009.

In addition, the Union claimed that it had written to management on 15 July 2009 with a detailed claim of entitlements owed to its member based on the rates and allowances contained in the 1998 - 2000 EBA between the Company and the Union which has never been terminated. At the time of the hearing no information was forthcoming in response to the Union's correspondence of the 15 July 2009.

There is no doubt that the employer did not assist the hearing process by its actions. The Panel has a fundamental responsibility to determine disputed matters relying upon the material put before it.

Given the evidence provided at the hearings, the Panel finds that the 1998 - 2000 EBA between the Company and the Union has passed its nominal expiry date, but it has not been terminated and therefore its conditions continue.

The Panel also finds:-

- That there was an employer/employee relationship between Rick Stebbing and the Company.
- That Rick Stebbing was made redundant on 20 March 2009.

- In line with the terms and conditions of the 1998 - 2000 EBA between the Company and the Union the following underpayments have occurred:

- \$18,720 Superannuation
- \$17,976.30 Redundancy
- \$20,520 Annual Leave
- \$3,500 Annual Leave 17-½%
- \$10,262 Public Holidays

Given our finding that an employee/employer relationship did exist and with the 1998 - 2000 EBA continuing to be operational, it is the firm view of the Panel that the underpayments described above should be paid.



**BOB MERRIMAN
CHAIRMAN**



**PETER KNIGHT
PANEL MEMBER**



**BILL DAVIS
PANEL MEMBER**

DATED THIS

21

DAY OF

August

2009