



VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

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**EALWIN PTY LTD
(EASTLINK)**

CFMEU

RE: WORKING ON RDO – 15/10/2007

FRIDAY, 12 OCTOBER 2007

103-2007

DECISION

On 10 October 2007 the Panel was notified by the CFMEU of a dispute concerning Ealwin Pty Ltd intention to work on the agreed rostered day off – 15 October, 2007.

Following this notification the Panel advised the parties of a hearing at 2:45 pm on 11 October 2007.

Attached to the Union's notification was a letter to the Union from Gayle Cachia, Payroll/IR Officer of the Company which outlined the Company's requirement, quoting from the Company's EBA with the Union, specifically clause 35.

On 11 October 2007 at 1.05 pm the Panel received a communication from the General Manager of the Company Mr Tom Rozenbids advising that they would not be attending the hearing stating that the Agreement was currently being assessed as to Code Compliance and Prohibitive content before being put to employees for a vote. The communication also stated

“Although it is in the process of registration it remains unregistered at this stage. Hence we do not believe the VBIPD have jurisdiction to make a binding determination in relation to this matter until such time that our Agreement is successfully and officially registered with the Workplace Authority”.

Given the Panel’s obligation under its Charter and having formerly received a dispute notification, the hearing did occur at 2.45 pm on 11 October 2007.

The Union tabled the original letter from the Company dated 8 October 2007, and the Union’s response of 9 October 2007. The Union’s letter claimed that the notification of the 8 October 2007 was not in accordance with clause 35. The Union’s letter further advised that they were therefore in dispute with the Company and confirmed their readiness to follow the dispute settling procedure and also their readiness for discussions in accordance with that procedure.

The Union also presented a copy of the facsimile message from General Manager, Tom Rozenbilds and strongly rebutted that letter by producing a document signed by the Company’s Managing Director, Mr Laurence Eales dated 21 December 2006 going to the application and operation of the Agreement.

The Union detailed the fact that the Company has applied the Agreement both as to wages and conditions and on three previous occasions acted in accordance with clause 35 and confirmed to the Panel that on each occasion that the matter had been resolved in accordance with that clause.

The Panel is aware that Agreements in similar terms to Ealwin Pty Ltd Agreement have been found to be compliant and not to contained prohibitive content and notes this point.

If the Panel accepts Mr Rozenbilds’ written advice that the Agreement is yet to be registered with the Workplace Authority there is very clear evidence of the existence of a common law contract which has been applied involving the Company and its employees who are represented by the Union and have been represented in previous discussions on the question of the RDO calendar.

Turning to the letter of Gayle Cachia of 8 October 2007 clearly that advice falls short of the requirements of the clause and the Panel issued a decision on 18 September 2007 which detailed the requirements under this clause following consultation with the key negotiating parties to the industry foundation agreement and also discussion with the author of the clause the former Vice President of the Industrial Relations Commission Iain Ross.

The following is the quotation from the earlier Panel decision which importantly contained the advice from the Masters Builders Association of Victoria to its members.

“Clause 34.5.4 is the relevant Clause and in recent times the Panel has been required to examine this clause in detail and that process involved a Conference with the negotiating parties to the original EBA 2005-2008 and with their consent a discussion occurred with the person who drafted the original clause to ascertain its proper application.

Following this further consultation with the former Vice-President of the Australian Industrial Relations Commission, Iain Ross who drafted the specific clause, the Panel issued a decision which outlined the process to be followed. Following that decision the MBAV, issued the following advice to its members.

Following the Disputes Panel’s reasoning, any employer requiring work to be performed on a Scheduled RDO under EBA 2005-2008 would:

- *Ensure that the requirements set out for working on a scheduled RDO under clause 34.5.4(b) exist;*
- *Consult with effected employees*
- *Notify the CFMEU in writing at least 5 working days prior to the scheduled RDO of the Company’s requirement to work on the RDO – including the type of work to be performed by the Company and the reason/s why such work is to be carried out consistent with clause 34.5.4(b)*

- *Work the scheduled RDO.*

[Note each employer needs to notify, it is not sufficient for the head contractor to notify on behalf of the said project.]

If the CFMEU disputes the Company's ability to work on the scheduled RDO, it can notify the Disputes Panel of the dispute. Where the dispute is notified within 24 hours of the provision of the Company's written notification – the matter is to be determined prior to work being performed on the scheduled RDO. Provided the Company is able to demonstrate that it has complied with Clause 34.5.4(b), the Disputes Panel will confirm the employer's right to work on the scheduled RDO in question."

It is against this background that the Panel on Friday 14 September, 2007 resolved the dispute notification regarding Egan Plant Hire ensuring that the parties' obligations under their EBA were observed. Given the facts in this matter, to meet their obligations, Egan were unable to offer work to their employees on this particular day, September 17, 2007.

Clearly when comparing the advice to the Union given on the 8 October by the Company it does not meet the requirement of the clause as determined by the Panel nor the advice given by the MBAV.

It is the Panel's majority view that the correct application of clause 35.5.4(b) have not been met and consistent with that clause the status quo should be maintained which is the adherence to the agreed RDO calendar


BOB MERRIMAN
CHAIRMAN


BILL DAVIS
PANEL MEMBER

DATED THIS

12

DAY OF

October

2007