

VBIDP

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

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GARNER & WHEELER CRANE HIRE P/L

- and -

CFMEU/FEDFA

RE: ALLEGED DISCREPANCY IN MAKE-UP PAY

MONDAY, 25 SEPTEMBER 2006

117-2001b

DECISION

This matter was initially dealt with by way of a Conference with Panel members on 26 July, 2006 which was adjourned without resolution and on the basis that the applicant (the Union) reserved their position.

Following a request from the Union, the matter was subsequently re-listed for a formal full Disputes Panel hearing on 19 September, 2006.

Essentially, the issue in dispute related to the correct application of sub-clause 17.8 – Variations in Compensation Rates of Clause 17 – Accident Make-up Pay of the Mobile Crane Hiring Award 2002 which states:-

“17.8 Variations in Compensation Rates

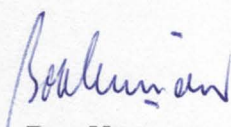
Any changes in compensation rates under the relevant legislation shall not increase the amount of accident make-up pay above the amount that would have been payable had the rates of compensation remained unchanged.”

The Union contended that this provision did not detract from the fundamental intent and obligation that irrespective of variations in workers compensation payments, the Employer is bound to pay (make-up) the difference between the weekly amount of compensation paid and the employee's appropriate rate of pay.

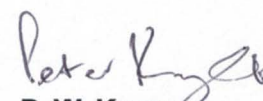
On the other hand, management's representative AIG (Australian Industry Group) contended that 17.8 - Variations in Compensation Rates, did, in fact, limit the employer's make-up contribution to the amount established at the commencement of payments and irrespective of Workers Compensation legislation variations, not increase during the period of the application of the Accident Make-up Pay clause provision.

Having carefully considered the respective submissions of the parties, the Panel holds that the applicant's view of the Award provisions is in fact, correct, and on that basis the Employer is obliged to ensure that the employee's rate of pay is "made up" to the appropriate rate (refer 17.11.1 – Definitions) during the whole of the period that the provisions apply.

In our view the reference in Clause 17.8 to "Any Change in Compensation Rates" refers to change in the legislation by way of amendments to the Act not variations that may occur because of the already prescribed variations within the legislation. Further, the specific requirement of clause 17.1.3 controlled as it is by the definition in clause 17.11.1 fully supports our view. Compensation make-up is a total figure as compared with "rates" as referred to in clause 17.8.


BOB MERRIMAN
CHAIRMAN


W. R. DAVIS


P. W. KNIGHT

DATED THIS

25

DAY OF



2006