



Chairman: Peter Parkinson
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CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION
(CFMEU)

and

SKINNER COMMERCIAL CARPET SERVICES PTY LTD
(SKINNER)

RE: ALLEGED NON PAYMENT OF EBA ENTITLEMENTS

003-2022

29 June 2022

STATEMENT

[1] The CFMEU notified a dispute on 22 June 2022 alleging that Skinner had failed to comply with its obligations under the Enterprise Agreement in relation to its member, Mr. R. Cucanic.

[2] The alleged applicable Enterprise Agreements are:

- *Skinner Commercial Carpet Services Pty Ltd and CFMEU (FFTS Branch) Enterprise Bargaining Agreement 2006*
- *Skinner Commercial Carpet Services Pty Ltd and CFMEU (FFTS Branch) Enterprise Bargaining Agreement 2009*

- *Skinner Commercial Carpet Service Pty Ltd and CFMEU (FFTS Branch) Enterprise Agreement 2012*
- *Skinner Commercial Carpet Services and CFMEU Enterprise Agreement 2016*
- *SKINNER COMMERCIAL CARPET SERVICES PTY LTD and the CFMEU (Victorian Construction and General Division) Flooring Enterprise Agreement 2019-2021*

[3] The Panel conducted a video Conference of the parties on 29 June 2022.

[4] Prior to the Conference Skinner had filed material dated 27 June 2022.

[5] Central to the alleged dispute is whether or not Mr. Cucanic was at any relevant time an employee pursuant to any applicable Enterprise Agreement.

[6] It is clear from the material provided to the Panel to date and from the Conference that there is no prospect of settlement.

[7] Skinner also challenges the jurisdiction of the Panel to deal with the matter. In this regard the Panel has confirmed that should it be persuaded that Mr Cusanic was at any relevant time an employee of Skinner pursuant to any applicable Enterprise Agreement, then it is satisfied it has jurisdiction to proceed to deal with the matter.

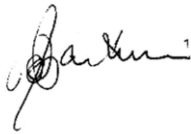
[8] In proceeding, the Panel considers that the circumstances of this matter warrants written submissions from the parties, and in particular for the submissions to address the principles underpinning whether or not Mr. Cusanic was or was not an employee pursuant to any relevant Enterprise Agreement.

[9] Accordingly the Panel issues the following directions:

1. That the CFMEU file written submissions and any evidence to the Panel in support of its allegations, copy to Skinner, no later than 5.00pm on Wednesday 13 July 2022;

2. That Skinner files its response to 1. no later than 5.00pm Wednesday 27 July 2022;
and
3. That should it wish to do so, the CFMEU provides any further response to 2. No
later 5.00pm Wednesday 3 August.

[10] Shortly after 3 August 2022 the Panel will issue a further Statement as to any next steps, including the setting down of a Hearing if it considers necessary, or issue a Decision or Determination in the matter.



Peter Parkinson
Chair



Tony Cordier
Panel Member



Adrian Ziccone
Panel Member



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CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION
(CFMEU)

and

SKINNER COMMERCIAL CARPET SERVICES PTY LTD
(SKINNER)

RE: ALLEGED NON PAYMENT OF EBA ENTITLEMENTS

003-2020

6 September 2022

STATEMENT NO. 2

[1] The CFMEU notified a dispute on 22 June 2022 alleging that Skinner had failed to comply with its obligations under the Enterprise Agreement in relation to its member, Mr. R. Cucanic.

[2] The Panel conducted a video Conference with the parties and issued a Statement on 29 June 2022. The Panel issued further Directions on 23 August 2022 which amongst other things required that a Hearing be conducted on 5 September 2022.

[3] Various written submissions had been filed and correspondence issued to the Panel by or on behalf of the parties prior to the Hearing on 5 September 2022. Skinner did not participate in the Hearing, having advised the Panel it did not intend to do so for the reasons set out in its solicitor's correspondence dated 1 and 2 September 2022. The Panel had confirmed with all parties that it would "*proceed with the Hearing as scheduled and will determine the matter based upon the material submitted and the evidence before it*".

[4] At the Hearing on 5 September 2022, the Panel addressed the matters referenced in its Directions of 23 August 2022, however, given witness Mr. Nigel Skinner did not attend the Hearing as had been directed by the Panel, the Panel was not able to obtain any clarification of his Witness Statement dated 3 August 2022. The CFMEU also addressed the matters that had been referred to in submissions and correspondence received by the Panel from solicitors on behalf of Skinner.

[5] The Panel heard further from the CFMEU and obtained further evidence from witness Mr. Richard Cucanic in relation to his Witness Statement dated 20 July 2022.

[6] Based upon the material before it, and having regard to the evidence that the matter before the Panel had been agitated by the CFMEU during his engagement by Skinner, the Panel reaffirmed its view in relation to jurisdiction, as provided for in its Statement of 29 June 2022 at paragraph [7], "*that should it be persuaded that Mr Cucanic was at any relevant time an employee of Skinner pursuant to any applicable Enterprise Agreement, then it is satisfied it has jurisdiction to deal with the matter.*"

[7] It is the question of whether or not Mr Cucanic was an employee in the terms set out in [6] that the Panel still needs to determine, and, to be clear, is a matter which it is yet to determine.

[8] In this regard further to the material and evidence presented at the Hearing, including the taxation records of Cucanic Investments Pty Ltd for the period from 2016 to 2021

(*Exhibit C1*), the CFMEU agreed to review whether any further materials could be provided to the Panel as to the period of engagement of Mr Cucanic by Skinner. In this regard the Panel considers any separate taxation filing in Mr Cucanic's name would be of assistance to it, as would any filings for years prior to 2016 for both Mr Cucanic and Cucanic Investments Pty Ltd.


[9] The Panel noted the CFMEU's submission that according to the Statutory Declaration filed by Skinner to the Fair Work Commission for the 2016 Enterprise Agreement, ten (10) "employees" had voted in the relevant ballot. As yet it has not been able to assist the Panel in relation to the 2019 Enterprise Agreement. The Panel wishes to satisfy itself as to the application of the Agreements alleged to be applicable to floor laying by Skinner, and voted on, noting the Witness Statement of Mr Nigel Skinner states "*The Company engages sub contractors to carry out all floor laying work*".

[10] The Panel also noted that the CFMEU had not made any submissions of substance as to remedy, in the event that the Panel was to find Mr Cucanic was an employee for any of the relevant period.

[11] The Panel will allow the CFMEU to file any further submissions in relation to the above matters if it intends to proceed with its application and Skinner will be provided the opportunity to respond.

[12] The Panel requires the CFMEU to provide any further submissions no later than 5.00pm Tuesday 20 September 2022. Any response sought to be made by Skinner is required to be provided no later than 5.00pm Tuesday 27 September 2022.

[13] The Panel remains available to assist the parties in resolving the matter should they wish to participate in any conciliation to that end and the Panel encourages the parties to confer.



Peter Parkinson
Chairman



Adrian Ziccone
Panel Member



Tony Cordier
Panel Member