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**CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION**  
**(CFMEU)**

**and**

**NORRIS PLANT HIRE (GEELONG) PTY LTD (NORRIS)**

**RE: ALLEGED NON PAYMENT OF SUPERANNUATION WHILST ON**  
**LONG SERVICE LEAVE**

**21 JUNE 2019**

**007-2019**

**DECISION**

[1] The CFMEU notified a dispute on 29 April 2019 alleging the non-payment of Superannuation whilst on Long Service Leave pursuant to the “*Norris Plant Hire (Geelong) Pty Ltd and the CFMEU (Victoria Construction and General Division) Enterprise Agreement 2016-2018*” (the Agreement).

[2] The Panel convened a conference of the parties on 6 May 2019 and issued a Statement which is to be read in conjunction with this Statement.

[3] Arising from the Statement written submissions were received from the CFMEU dated 5 and 12 June 2019 and from Norris dated 7 June 2019.

[4] A further Conference and Hearing was held on 19 June 2019.

[5] There being no resolution of the matter the Panel proceeded to take final submissions from the parties.

[6] There is no dispute that the Agreement has application to the matter before the Panel. At issue is whether or not an employee, Mr. Spring, is entitled to the payment of employer Superannuation contributions pursuant to Clause 21 of the Agreement for a period of Long Service Leave that he took during 2018 for which he received payment pursuant to Clause 22 of the Agreement - Long Service Leave (Coinvest). The Panel notes that Coinvest administers the Portable Long Service Leave Scheme for the construction industry in Victoria, a scheme established by the *Construction Industry Long Service Leave Act 1997 (amended 2004)*.

[7] The Panel is satisfied that it has jurisdiction to decide the matter. The Panel has carefully considered all of the submissions made, both oral and written, and the members have also informed themselves by relevant enquiries of the industry and relied upon their own expert knowledge.

[8] The Agreement provides as follows:

*“21 CBUS SUPERANNUATION*

*21.1 The Employer shall be, and remain during the life of this agreement, a participating employer in the construction and building Unions Superannuation*

*Scheme (Cbus). No employees shall commence employment unless he/she is a registered member in Cbus.*

*21.2 The level of contributions paid on behalf of each Employee (other than an Apprentice) shall be as follows:*

	1/7/2016	1/7/2017	1/7/2018
Weekly	\$195.00	\$205.00	\$215.00

*21.3 The level of contributions paid on behalf of each Apprentice shall be:*

Level Percentage	1st Year 55%	2nd Year 70%	3rd Year 85%	4th Year 100%
From 1/7/2016	\$107.25 per week	\$136.50 per	\$165.75 per week	\$195 per week
From 1/7/2017	\$112.75 per week	\$143.50 per	\$174.25 per week	\$205 per week
From 1/7/2018	\$118.25 per week	\$150.5 per	\$182.75 per week	\$215 per week

*21.4 The above contribution rates do not limit the Employer's liability under the Superannuation Guarantee (Administration) Act 1992.*

*21.5 All superannuation contributions shall be paid monthly as required by the trust deed.*

*21.6 Where an Employee wishes to have their pay salary sacrificed for additional superannuation, the Employer will comply with the Employee's request without unreasonable delay consistent with statutory requirements. All entitlements and benefits contained in this agreement will be calculated on the pre salary sacrifice pay rate.”*

[9] Without traversing all of the matters referenced in the proceedings, the Panel is satisfied that the Agreement makes provision for the payment of a weekly rate of payment for Superannuation at sub-clause 21.2 for the period of employment including when an employee is on Long Service Leave.

[10] The Panel accepts that the Agreement sets out terms agreed between the parties, which may well be more generous than any applicable Award or other legislative minimum entitlement. This is what Enterprise Agreements generally provide. Norris submitted that the Panel should take account of the provisions of the Superannuation Guarantee (Administration) Act 1992 (SGAA) and in particular an ATO Interpretative Decision ATO ID2005/33. Whilst the Panel is not bound to follow such a decision, we consider it provides limited assistance to an Enterprise Agreement which provides for something different, more generous, as is the case here. The Panel also notes sub clause 21.4 of the Agreement which ensures that an employee cannot receive less than what is provided by SGAA. In this Agreement that is the only relevance that SGAA has. It does not in any way limit the requirement upon the employer to pay the weekly amount set out in sub clause 21.2 in our view.

[11] The Panel also notes similarly at Clause 23 Incolink, the employer is required to make payments to Incolink in relation to the employee during periods of Long Service Leave. There is no controversy over this provision. The industrial parties have bargained over the provisions of clauses 21 and 23, together with others, for many years, and indeed prior to the implementation of SGAA.

[12] Prior to the position adopted by Norris with respect to Mr Spring, the Panel is not aware of there being any controversy over employers making the prescribed contributions to CBUS during the course of a period of Long Service Leave where

the Long Service Leave arises from an entitlement under Coinvest, pursuant to similarly provisioned Enterprise Agreements. The Panel has received no submissions to the contrary in this regard.

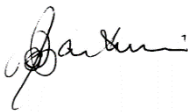
[13] Norris submitted that the period of leave for which an employee receives payment from Coinvest is “unpaid” leave and therefore there is no entitlement to the payment of any Superannuation by the employer for this period. The Agreement is clear at 21.1 that a weekly payment is to be made and in the Definition provisions of the Agreement Clause 2, “*Continuous service means the period of service of an employee notwithstanding the employee’s absence from work for any of the following reasons:*

- *annual leave, personal leave or parental leave;*
- *illness or accident up to a maximum of four weeks after the expiration of paid sick leave;*
- *any other authorised unpaid leave up to a maximum of four weeks;*
- *jury service;*
- *injury received during the course of employment and up to a maximum of 52 weeks for which the employee received worker's compensation;*
- *where called up for military service for up to three months in any qualifying period;*
- *long service leave; and*

- *any reason satisfactory to the employer, provided the employee has informed the employer within 24 hours of the time when the employee was due to attend for work, or as soon as practicable thereafter, of the reason for the absence and probable duration. (our emphasis)*

[14] The Panel accepts there is no break in service for Long Service Leave paid pursuant to the Coinvest provisions. The employee continues to be employed by the employer for this period, and for each week he/she is so employed the applicable entitlements that arise from the Agreement must be paid, including Superannuation contributions under clause 21.

[15] Accordingly the Panel finds that Norris is required to pay the relevant prescribed weekly rates set out in Clause 21.2 of the Agreement on behalf of Mr. Spring for the period of his Long Service Leave taken in 2018. Norris is required to furnish evidence to the Panel and CFMEU that the relevant contribution has been paid to Mr. Spring's CBUS account, not later than 5.00pm Friday 5 July 2019.



**Peter Parkinson**  
**Chairman**



**Daniel Hodges**  
**Panel Member**



**Tony Cordier**  
**Panel Member**