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CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION
(CFMEU)

and

ADCO CONSTRUCTION PTY LTD (ADCO)
and DELTA PTY LTD (DELTA)

RE: DISPUTE CONCERNING RECTIFICATION OF SAFETY HAZARD

PROJECT - KEW RECREATION CENTRE, 383 HIGH STREET, KEW

001-2023

18 January 2023

STATEMENT

[1] The CFMEU notified a dispute on 16 January 2023 concerning the Rectification of a Safety Hazard provisions of the applicable Enterprise Agreements and requested a Site Inspection by the Panel in the first instance.

[2] The applicable Enterprise Agreements are:

- *ADCO Group Limited, ADCO Constructions Pty Ltd and the CFMEU (Victorian Construction and General Division) Builder Enterprise Agreement 2020 – 2023 (ADCO Agreement)*

- *Delta Pty Ltd T/as Delta Group and the CFMEU (Victorian Construction & General Division) Subcontractors Demolition Enterprise Agreement 2020 – 2023 (Delta Agreement)*

[3] The Panel conducted a site inspection together with representatives of the parties on 18 January 2023. The Panel appreciates the assistance of ADCO and the parties in facilitating same.

[4] The Project is the construction of the new Kew Recreation Centre at 383 High Street Kew by ADCO on behalf of the City of Boroondara.

[5] The Project commenced in early 2021. On 20 October 2022 a section of the steel roof structure that had been under construction, collapsed late at night when no personnel were on site. No substantive work has proceeded since, and works are about to get underway to remove the collapsed steel structure and associated works (relevant work) in order that construction can recommence.

[6] ADCO has engaged Delta to undertake the relevant work together with its own personnel and other sub-contractors.

[7] It is understood that the relevant work to be undertaken will be for a presently anticipated period of some 4-5 weeks following which normal construction work will resume pending a yet to be settled construction plan. It is not presently anticipated that any other works will be conducted on the site until the relevant work is complete.

[8] The Dispute concerns the application of Sub clause 59.11 (Delta Agreement) and Sub clause 60.11 (ADCO Agreement) which are in identical terms as follows:

"Where, because of the existence of a safety hazard, a site has been stopped for a defined period of time and Employees sent off site by agreement between Site Managers and any combination of Union Official/s, Health and Safety Committee, those people who remain on site to do rectification work will be paid at the rate of double time for all such work."

[9] The Dispute is about whether or not the relevant work that is about to commence is considered “Rectification of a Safety Hazard” as provided for in the Subclauses of the Agreements and be paid at double time rates.

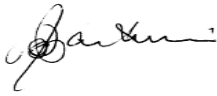
[10] At the conclusion of the site inspection the Panel determined that the matter would proceed as follows:

1. Each party (CFMEU, ADCO and Delta) to file brief written submissions on the following matters for receipt by the Panel, copied to all parties, **no later than 5.00pm on Tuesday 31 January 2023:**

- a. The intention of the parties as to the application of relevant Sub clause and the circumstances under which the Sub clause was intended to have application, and, in addition, the intended rationale as to why double time is provided for under such circumstances. The Panel notes that the CFMEU intends to also rely upon expert witness evidence to be presented at the Hearing for whom the employer parties will have the opportunity to cross examine.
- b. The effect, if any, of the effluxion of time between the incident that gave rise to the necessity of the relevant works and the commencement of the relevant works, has on the application of the Sub clause.
- c. The custom and practice in the industry as to the application of the Sub clause in circumstances where rectification of a safety hazard has been required, by providing actual examples and how the clause was applied or not applied as the case may be.
- d. Any other relevant matter that the party wishes.

2. A Hearing will be conducted on **Thursday 2 February 2023 at 1.00 pm** at the Panel’s premises Unit 1 233 Cardigan Street, Carlton.

[11] The Panel notes that it has been sufficiently appraised as to the incident itself and the proposed scope of the relevant works such that the Panel does not require further submissions or material from the parties in this regard.



Peter Parkinson
Chairman



Tony Cordier
Panel Member



Adrian Ziccone
Panel Member