



Chairman: Peter Parkinson

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**PLUMBING AND PIPE TRADES EMPLOYEES UNION / CEPU PLUMBING
DIVISION VIC BRANCH (PPTEU)**

AND

**SUPERLAG PTY LTD (SUPERLAG)
BENDIGO HOSPITAL**

RE: LIVING AWAY FROM HOME ALLOWANCE

26 SEPTEMBER 2023

006-2023

DECISION

[1] The PPTEU notified a dispute on 25 July 2023 alleging the Company's failure to Pay the correct Living Away from Home Allowance entitlements to two of its employees.

[2] The Panel conducted Conferences with the parties by Video Conference on 2 August and 1 September 2023, issued various Directions and issued Statements on 3 August 2023 and 1 September 2023, which are to be read in conjunction with this Decision.

[3] The relevant applicable Enterprise Agreement is the *Superlag Pty Ltd and CEPU – Plumbing Division (Vic) Enterprise Agreement 2019-2023* (the Agreement).

[4] There is no dispute that the Agreement has application to this matter and that the Panel has jurisdiction to deal with the matter.

[5] As the matter progressed the PPTEU claimed that the following items were in dispute:

- 1) the amount of allowance being paid for Living Away from Home;
- 2) the payment of meal allowances;
- 3) the payment of Return Journey allowance;
- 4) the payment of Forward Journey allowance; and
- 5) Failure of Superlag to respond to a Right of Entry notification and the requisition of pay slips for its members for the previous 12 months.

[6] During the course of the Conference on 1 September 2023, the PPTEU indicated it would not press items 2) and 4), which it subsequently confirmed in writing, and Superlag agreed to provide the pay slips referenced in item 5) for the previous 6 months, which the PPTEU agreed would resolve that item. The Chair directed that the pay slips be provided as soon as possible. Superlag provided the pay slips on 4 September 2023.

[7] The parties agreed, subject to the PPTEU's confirmation that it would not press items 2) and 4), and any response by Superlag if it wished to do so no later than 5.00pm on 4 September 2023, that the Panel proceed to issue a Decision in relation to items 1) and 3). The PPTEU confirmed it would withdraw matters 2) and 4). The Panel then sought further submissions from the parties on the application of subclause AC 4.8 of Appendix C and the relationship with subclauses AC 4.5 and 4.6 in order to seek clarity as to the parties' views on the Return Journey entitlement. In this regard Superlag in its submission dated 19 September 2023 confirmed that it *"agreed that we have overlooked the return journey payments and intend to make good on these entitlements."* Consequently, the Panel is not required to rule on item 3) and expects that Superlag will affect the relevant entitlements without delay. The Panel's decision in relation to item 1) follows.

Item 1)

[8] Superlag has engaged the two employees to perform works for which it is contracted to BSA, on the Bendigo Hospital Project. One of the employees has been engaged for over 12 months, the other for approximately 3 months. Both employees reside in Melbourne and travel to the site each week. Both employees have, pursuant to sub-clause AC.1 of Appendix C of the Agreement, elected to receive an allowance referenced in Appendix C as “*Accommodation Not provided*” rather than Superlag provide the accommodation, for which a different quantum of allowance, “*Accommodation provided*”, would otherwise be required to be paid. Superlag has only paid the allowance “*Accommodation Not provided*” for 4 days of each week, rather than 5 days which the PPTEU says should have been paid, as required by the provisions of sub-clause AC1.2 of Appendix C “*Payments per day (paid for any part of the day)*”.

[9] There is no dispute that the employees work on 5 days of the week. Superlag stated that it believed that as accommodation was not required for Friday nights, as the employees return to Melbourne on Friday afternoons, it is only required to pay the relevant allowance for 4 days, not 5 days. The Panel considers that the relevant provisions of the Agreement clearly provide for the employee to make the election as to which alternative, i.e., “*Accommodation provided*”, or “*accommodation not provided*” allowance, for each day or any part of a day. Once the election is made the employee is eligible for the relevant allowance for 5 days where 5 days or part days are worked as has been the case here. It is not to the point as to whether the employee accommodates themselves for 4, 5 or even 7 nights as it is then entirely at their discretion, having elected to receive the allowance for days worked. The determinant is the number of days or part days required to be away from home. The employer is, as a consequence of the employee’s election, relieved of having to make any arrangements to provide accommodation, meals and incidentals. The Panel finds that it is not open to the employer to decline to pay the relevant allowance where a part day has been worked whether or not the employee returns to home on that day. The Panel also rejects an earlier submission of Superlag that the Return Journey provision should not apply if the full “*accommodation not provided*” allowance had to be paid for the day of the Return Journey.

It considered this amounted to double dipping. The provisions of the Agreement are clear that neither entitlement is offset by the other, they are both separate entitlements that are bound to be paid by the employer where applicable. Accordingly, the Panel decides that Superlag is required to make payment to the relevant employees of the “*accommodation not provided*” allowance for 5 days per week where 5 days or part days in the week have been worked by the relevant employee.

[10] The Panel directs that Superlag effects payment to the relevant employees of the amounts owing arising from the Panel’s decision no later than 20 October 2023 and that Superlag provides to the PPTEU its workings of the amounts owed as soon as possible. Should there be any dispute over the amounts owing, either party can seek the assistance of the Panel to resolve it.



Peter Parkinson
Chair



Tony Cordier
Panel Member



Adrian Ziccone
Panel Member