

Master Builders Queensland submission

Paid Agents consultation

Background

Master Builders Queensland (Master Builders) is Queensland's peak industry association for building and construction and represents the interests of over 9,800 members. We support our members to operate professional and profitable businesses that deliver superior quality outcomes to their clients.

Master Builders members pay an annual membership fee and gain access to, at no additional charge, a range of services including employment, industrial relations, and HR advice, support and assistance. One such free service that members enjoy is representation before the FWC.

Introduction

Since 1 March 2023, Master Builders has represented employers in twelve (12) matters before the FWC, made up of UD, GP and 'stop bullying' conferences. At two (2) of those matters, the applicant was represented by a Paid Agent. We have had experience before that too dealing with Paid Agents.

As such, Master Builders make this submission as an interested party who is regularly involved in matters before the FWC.

We welcome further engagement on our submission at any time, and are willing to assist the FWC in any way.

Experience with Paid Agents

In the two (2) matters where the applicant was represented by Paid Agents in the past 12 months, we experienced the following:

1. GP conference

Pre-conference

After the matter was listed for conference, the Paid Agent contacted the FWC seeking an adjournment due to them having another FWC matter at the same time, but did not provide any alternative times.

The FWC then listed the matter for later that same day, and the Paid Agent responded saying that that time was unsuitable too. The FWC refused to reschedule it further.

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Commencement of conference

The FWC was unable to contact the Paid Agent and have them join the conference, despite repeated attempts. The FWC joined the Applicant, and asked the Applicant if the Paid Agent would be appearing with them, and the Applicant responded that they did not know. The FWC chose to start the conference, and after it had commenced the FWC received an email from the Paid Agent with new contact details for the conference.

During the conference

The applicant's written application, submitted by the Paid Agent, stated that the workplace right that they were relying on was making a pay query. However at the conference this workplace right changed to a query about their work.

For their oral submission, the Paid Agent commenced by arguing that the dismissal was harsh, unjust or unreasonable, and appeared to overlook that it was a GP matter.

Despite these challenges, the matter was settled at conference.

Post conference

After the FWC drafted and distributed the Settlement Agreement, it took six (6) weeks, and the FWC following it up, to receive the signed agreement from the Paid Agent.

2. GP conference

Application

The applicant's written application, submitted by the Paid Agent, stated that the workplace right that they were relying on was making a pay query.

During the conference

When a settlement was agreed, the Deputy President specified that the payment was to be made to the applicant's bank account, the details of which the respondent had on file. The Paid Agent requested payment be made into their "trust account", however the Deputy President refused.

Post conference

The Paid Agent contacted us and requested that the employer pay into their "trust account", not the applicant's bank account. We refused, citing that the Settlement Agreement expressly stated that it was to be paid to the applicant, and the fact that the Deputy President had given verbal instructions that it was to be paid direct to the applicant.

The Paid Agent has refused to provide an executed copy of the settlement agreement due to our refusal to pay as per the Deputy President's instructions and the express terms of the settlement agreement.

We also highlight the fact that in both GP applications, the workplace right identified by the Paid Agent was making enquiries about pay. There were no specifics offered about what the query was

about or when it was made, just that queries were made. Further, in the first matter, the applicant had not completed the minimum employment period for a UD, therefore the application was a GP.

The relationship between paid agents and clients

Master Builders submit that Paid Agents, generally:

- Do not effectively manage the expectations of applicants, for example:
 - Not explaining the remedies available to an applicant, including the maximum compensation in UD's;
 - Not explaining how compensation is calculated in UD's (that is, what the maximum compensation that can be awarded is), or
 - Not explaining that if a GP matter cannot be settled at conference, it must then proceed to the Federal Court
- Not caution people or advise them on the strengths and weaknesses of their case, the prospects of success, nor the merits of the application
- Not explain what is being argued, being UD or GP
- Do not consult with the applicant on what is contained in the application prior to submission.

We get the impression that in some cases the applicant has no idea what is being argued on their behalf, what is being sought on their behalf, or even if it is a UD or GP matter (and what the difference is).

Possible options for responding to challenging paid agent conduct

Master Builders strongly support the Commission's usual terms of settlement to provide only for payment of settlement funds into a bank account belonging to the Applicant. Master Builders in fact push for this in conferences, and have been supported by Commission members in doing this, despite the loud protests of the Paid Agent.

Master Builders also support that at the beginning of any conciliation, conference or hearing involving a paid agent, the FWC Member or conciliator would explain that representation is not required in FWC proceedings, that the FWC is generally a no cost jurisdiction, and that if a monetary settlement is agreed, the FWC's standard terms of settlement provide that the respondent will pay funds directly into the bank account on record held by the applicant.

Master Builders have also promote this fact in conciliations we have participated in. We have experienced situations where a Paid Agent attempts to pressure employers we represent to settle claims for high amounts saying that if it proceeds to Hearing the employer will have to incur expensive legal fees to continue. We then have to highlight that the FWC is a low cost jurisdiction and that we appear for no additional charge through to Hearing.

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