

Commission of Inquiry into the CFMEU

and Misconduct in the Construction Industry

Bundle of Documents to
Statement of Michael O'Brien

Private and Confidential

9 October 2024

Sean Korostovetz
C/O CPB Contractors Pty Ltd

By Hand

Dear Sean,

RE: Suspension of your Employment / Investigation / Directions

CPB Contractors Pty Ltd (CPB) has become aware that during the course of your employment you were involved in “The Alleged Incidents”, described below.

The circumstances described in The Alleged Incidents and your involvement in those Incidents are disturbing and give rise to serious concerns in relation to your conduct in the course of your employment and, as a consequence, concerns regarding your on-going employment with CPB.

The Alleged Incidents

It is alleged that:-

1. On Friday 4th October 2024 at approximately 10:10am Workplace Health and Safety (WHS) arrived on the Albert Street site to inspect allegations by CFMEU Organisers Mr Dean Mattas, Mr Corey Taylor and yourself.
2. There was some strong debate between the CFMEU organisers, you and a Workplace Health and Safety Inspector who had attended the site.
3. During those discussions the issue of dust masks was discussed, including reference to dust suppression mask signage.
4. At 11.25am you attempted to get the Workplace Health and Safety Inspector to visit an area known as B7, but the Inspector declined as she wanted to close out the then current issue.
5. At approximately 11.45am you were observed going down to level B7 and tampering with three (3) safety signs that had been placed on a barrier so that the (3) safety signs could not be seen by workers in the area. In addition to being directly observed engaging in this conduct, shortly thereafter several workers reported that you had been seen by them interfering with safety signs in the area. The three signs that you were seen to interfere with were:-
 - Warning dust hazard wear appropriate dusk mask in this area
 - Plant operating zone
 - A list of tasks that were being carried out beyond the barrier along with contact details for supervisors in that area
6. The conduct referred to in paragraph 5 (above) is extremely serious. Interference with safety signs on a construction site or taking steps that would interfere with safety

equipment or other safety measures, is a clear breach of your duties and responsibilities as an employee, including but not limited to, your statutory duties as a “worker” under section 28 of the Work Health & Safety Act 2011 (Qld).

7. When you were confronted by a supervisor and asked whether you had engaged in the above conduct, you denied it and then walked off.
8. If you did engage in the conduct referred to above:-
 - it fundamentally calls into question the trust and confidence that sits at the foundation of the employment relationship with CPB; and/or
 - you have likely fundamentally breached your contract of employment; and/or
 - you have likely engaged in serious and wilful misconduct; and/or
 - you have likely repudiated your contract of employment with CPB; and/or
 - you have likely engaged in conduct that contravened section 28 of the Work Health & Safety Act 2011 (Qld) and in so doing you also acted in reckless disregard for the safety of your fellow workers on the CRR Project.

Investigation

Given the seriousness of The Alleged Incidents, CPB has initiated an Investigation into The Alleged Incidents (the **Investigation**).

In the circumstances, you are hereby issued with the following reasonable and lawful directions:-

1. Your licence to enter any CPB work site is hereby suspended, until further written notice. As a consequence, you are no longer permitted to enter or remain on any CPB workplace unless you are directed to do so in writing, for the purposes of the Investigation; and
2. You are to comply with any reasonable requests that might be made of you by the person nominated to undertake the Investigation, including but not limited to, attending and participating in any interviews, and answering all questions that might be asked of you in the course of the Investigation in a truthful, frank and forthright manner, consistent with your duty of fidelity and good faith to CPB; and
3. You must not communicate with any person who might potentially be a witness in the Investigation; and
4. You must keep your communications with the Investigator confidential and in all other respects comply with the confidentiality provisions set out in this letter.

(Collectively referred to as the **Directions**)

I want to stress that at this stage CPB has not formed any view in relation to The Alleged Incidents. This includes whether any disciplinary action may be warranted. If CPB considers that such action is warranted following the Investigation, you will be advised of this and be given an opportunity to respond.

Temporary Suspension

While the Investigation is being undertaken, CPB has determined that, until further written notice, you will not be permitted to attend or perform any work. During the period of his suspension, you will receive your usual remuneration.

You are reminded, that while on suspension, you remain an employee of CPB and you must comply with all reasonable and lawful directions that are communicated to you, including but not limited to the specific Directions set out above.

As a consequence, your site access and other security passes will also be temporarily suspended.

Confidentiality

You are expected to keep this matter confidential. You must not discuss or disclose The Alleged Incidents or the matter generally to any person other than your representative / support person or the Investigator, unless authorised in writing by CPB.

If you think a person may be able to provide relevant information regarding The Alleged Incidents, please let me or the Investigator know.

Victimisation

You are reminded that it is unlawful to victimise or retaliate against a person who is involved in a complaint or other workplace matter, because of their involvement. This means that you cannot victimise or retaliate against any person involved in this matter.

Similarly, it is unlawful for any person to victimise or retaliate against you as a result of your involvement in this matter. You should immediately contact me if you experience any difficulties in this regard.

If you wish to discuss any aspect of this matter, your point of contact will be Michael O'Brien, Senior IR Advisor on [REDACTED]

Finally, I confirm that you may access the CPB Employee Assistance Program if you require any support or assistance. To access the EAP, please call 1800 056 076 or visit gryphonpsych.com.au.

Sincerely,

[REDACTED]

Dominic Byrne

Precinct Manager

CBGU D&C JV

For and on behalf of CPB Contractors Pty Ltd



Subject to Legal Professional Privilege/Common Interest Privilege

Investigation Report

Inappropriate Workplace Behaviour

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Cross River Rail, Tunnels & Stations

Dated: 15 November 2024

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Michael O'Brien
CPB Contractors Pty Ltd
339 Coronation Drive
Milton, QLD 4064, Australia

1. Background

Sean Korostovetz is a CPB employee who is engaged at Albert Street Station. Sean has been employed by CPB since 4 September 2023 in the role of a Concrete Line Pump Operator.

1.1 Allegation

On 4 October 2024, the Project received complaints against Sean consisting of serious health and safety breaches. Sean was observed by several witnesses tampering with three (3) safety signs so that the signs could not be seen by workers in the area.

1.2 Timeline of Events on 4 October 2024

Time (approx.)	Details
10:10 am	<p>Workplace Health and Safety (WHSQ) arrived at the Albert Street Lot 1 site to inspect allegations raised by CFMEU organisers Dean Mattas and Corey Taylor.</p> <p>Discussions were held between the CFMEU, Sean and WHSQ regarding dust masks and dust suppression mask signs. Sean was present at this discussion which was on site.</p>
11.25 am	<p>Sean requested that WHSQ visit an area known as B7. However, WHSQ only agreed to go to that location after the original issues raised were first closed out. Shortly after making this request, Sean departed the discussion.</p>
11.45 am	<p>Sean was observed entering level B7 and tampering with three (3) safety signs so that the signs could not be seen by workers in the area.</p> <p>This behaviour was witnessed by several workers and supervision.</p> <p>The signs that Sean was seen to interfere with included:</p> <ul style="list-style-type: none">• Warnings regarding dust hazards and the requirement to wear dust masks.• Plant operating zones; and• Information regarding tasks that were undertaken within the work area in addition to contact details for supervisors.
11:50 am - 11:55 am	<p>Two (2) Rocktown employees approached Mat Anforth and advised that they had witnessed Sean turn over the dust mask sign in their work area.</p>
12:10 pm - 12:30 pm	<p>Mat Anforth confronted Sean and asked whether he had engaged in the above conduct, to which Sean provided the following response:</p> <p><i>"I would not do that."</i> <i>"Why would I do that."</i> <i>"People were bullying me."</i> <i>"People were dragging my name through the mud."</i></p>

12:16 pm	Daniel Brabrook witnessed Sean enter the B7 area and was subsequently advised by a Rocktown employee that Sean had turned over several signs. This information was reported to Mat Anforth. Dane Carlile received a call from a Rocktown employee advising he witnessed Sean flip over an exclusion zone sign in B7.
12:30 pm	CCTV captured Sean exiting the site through the turnstiles and heading towards the training room to attend the meeting with WHSQ. Sean was not present at the start of this meeting.

1.3 Additional Context

Throughout the inspection, discussions were held between WHSQ, the CFMEU organisers and Sean. The CFMEU and Sean were claiming that the Project was not meeting its obligations under the *Work Health & Safety Act 2011 (QLD)* as:

- The signs were general dust mask signs and were not sufficient for working in a high-risk silica area; and
- Workers were entering the high-risk silica area without a mask.

WHSQ disagreed with the CFMEU and was of the opinion that the dust mask signs were sufficient. Further, WHSQ advised that the Project had the correct paperwork and sufficiently trained the workers, fulfilling the required obligations.

1.4 Investigation

On 21 October 2024, Sean attended an interview to respond to the allegations. Sean advised that he did not feel comfortable conducting the interview with James Maher (Site Manager) in the room, for the following reasons:

- Sean alleges that James breached confidentiality at prestart where workers were told Sean had been stood down; and
- Sean is intimidated by James.

The Respondent provided the following response to all allegations:

“The matter is before the courts, so I will not be making a comment so as not to incriminate myself.”

On 8 November 2024, a letter requesting a written response by 3 pm, 11 November 2024 was sent to Sean Korostovetz.

On 8 November 2024, an email was received from Elliot Dagleish (CFMEU Industrial Officer), requesting an extension to respond by COB Friday 15 November 2024.

On 11 November 2024, an email response was sent to Elliot Dagleish granting an extension until 3 pm, Wednesday 13 November 2024.

On 13 November 2024, Elliot Dagleish provided a written response to the allegations, by email (Appendix 10). The response failed to provide any further substantive information.

1.5 The Findings

The following evidence was considered when determining the findings of the investigation:

- There is a direct witness (a Caledonia senior supervisor) of the incident provided a statement. There are also other reports of 2 supervisors (one from Rocktown and the other from CPB) and a CPB leading hand being contacted by workers who directly witnessed Sean flip the signs.
- Several Rocktown workers who reported seeing Sean flip the signs, requested that they remain anonymous for fear of retribution. Given the industrial environment over recent months and the Federal Court Orders obtained by CPB against the CFMEU in relation to their threatening behaviour and intimidation, this fear of retribution is not unreasonable.
- The timeline supports the findings – whereby, there was a period of time that Sean was absent from the discussions. CCTV also shows Sean leaving the site to rejoin the discussion with WHSQ.
- The argument being prosecuted by CFMEU of which Sean was actively supporting CFMEU's argument, was concerning the very dust mask signs that he is alleged to have flipped.
- Sean also requested that WHSQ go to and inspect B7, the same location where Sean is alleged to have flipped the signs.
- When Sean was asked whether he had flipped the signs, he denied this allegation.

Based on the findings of the investigation, the allegation is substantiated. The findings of the investigation support evidence that Sean's behaviour breaches his contract of employment, Project policies and procedures and Section 28 of the WHS Act, specifically exposing workers to a risk to health and safety in the workplace.

2. Scope of Investigation

An Investigator was appointed to undertake a fact-finding investigation into all aspects of the Allegations (**Investigation**) and prepare a report about all aspects of the Allegations.

3. Policies and Procedures

The following policies and procedures were considered as part of this investigation as required by the Terms of Reference.

- Work Health and Safety Act 2011 (Cth) – Section 19
- CIMIC Workplace Behaviour Policy.
- CIMIC's Code of Practice.

4. Employees subject to investigation

Employee Name	Employee title
Sean Korostovetz	Concrete Line Pump Operator/HSR Delegate

5. Investigator

Investigator's full name	Investigator's title
Michael O'Brien	Senior IR Advisor

6. Process

6.1 Interviews

As part of the investigation, the Investigator interviewed:

Name	Position	Date of interview
John Stanton	Senior Scaffold Supervisor Caledonia	8 October 2024
Mat Anforth	Senior Supervisor CPB	10 October 2024
Dane Carlile	Rocktown Patching Supervisor	10 October 2024
Daniel Brabrook	Leading Hand CPB	9 October 2024

Interview notes for all interviewees are included in the Brief of Documents.

All interviewees were offered a support person during the interviews.

6.2 Inspection – premises and documents

On 9 October 2024, the Investigator conducted a site inspection at B7, Lot 1 Albert Street Station, The Investigator reviewed the documents listed in the Brief of Documents.

7. Credibility Statement

During interviews, the Investigator assessed the credibility of each person interviewed.

Sean Korostovetz (The Respondent), Concrete Line Pump Operator

The Respondent has worked on the project since 4 September 2023 and while employed as a Concrete Line Pump Operator, holds the position of HSR Delegate.

The Respondent attended the interview with a CFMEU support person. The Respondent said he didn't feel comfortable conducting the interview with James Maher (Site Manager) in the room, for the following reasons:

- Alleges that James Maher breached confidentiality at prestart where workers were told The Respondent had been stood down.
 - The Respondent has been offered the opportunity to provide further information and documentation. Should the Respondent provide the information an investigation will be undertaken.
- The Respondent is intimidated by James.

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James Maher removed himself from the interview and Lyndon Hinrichsen (Site Manager) attended instead.

The meeting continued once all parties confirmed they were comfortable continuing.

The Respondent provided the following response to all allegations:

"The matter is before the courts, so will not be making a comment so not to incriminate myself."

In terms of character, feedback is that the Respondent is often aggressive and argumentative and confrontational when it comes to matters of interest to the CFMEU. He will at times swear at workers and staff which has been described as intimidating. The Respondent also seems to have an influence over workers when it comes to matters of the CFMEU.

It is the Investigator's opinion that the Respondent was not forthcoming with all the facts and was purposely withholding information from the investigation.

The Investigator has no reason to believe the other person interviewed has been untruthful or purposely withheld information to hinder the investigation process in any way.

8. Findings

8.1 Categories of findings and the standard of proof

The Investigator has made findings as to whether the allegations are substantiated on the balance of probabilities (that is, the civil standard of proof).

Given the serious nature of the allegations, the 'Briginshaw test' has been applied (from the case *Briginshaw v Briginshaw* (1938) 60 CLR 336). The Briginshaw test takes into account the:

- (i) seriousness of the allegation;
- (ii) inherent likelihood of the conduct occurring based on the evidence; and
- (iii) gravity of the consequences flowing from a particular finding.

There are three categories of findings – the allegation is:

substantiated – the Investigator found that it was more likely than not that the conduct occurred;

not substantiated – the Investigator found it was more likely than not that the conduct did not occur;

Unable to be substantiated – this does not mean that the conduct as alleged did not occur, but means that the Investigator was unable to determine whether the alleged conduct occurred or not (for example, because the witnesses provided conflicting information and there was no other evidence to corroborate either witness' version of events).

8.2 The findings are:

Allegation 1

On 4 October 2024, the Project received complaints against Sean consisting of serious health and safety breaches. Sean was observed by several witnesses tampering with

	<p>three (3) safety signs so that the signs could not be seen by workers in the area.</p>
<p>Response</p>	<p>On 21 October 2024, Sean attended an interview to respond to the allegations. Sean advised that he did not feel comfortable conducting the interview with James Maher (Site Manager) in the room, for the following reasons:</p> <ul style="list-style-type: none"> • Sean alleges that James breached confidentiality at prestart where workers were told Sean had been stood down; and • Sean is intimidated by James. <p>The Respondent provided the following response to all allegations:</p> <p style="text-align: center;"><i>“The matter is before the courts, so I will not be making a comment so as not to incriminate myself.”</i></p>
<p>Witness</p>	<p>The following CBGU and subcontractor personnel witnessed Sean undertaking the behaviour on 4 October 2024.</p> <ul style="list-style-type: none"> • John Stanton (Caledonia Scaffold Supervisor): <ul style="list-style-type: none"> ◦ At approximately 11:45 am, John directly witnessed Sean flip over three (3) safety signs on the TVS cells barricade, ensuring that no one could read the signs. • Mat Anforth (CPB Senior Supervisor): <ul style="list-style-type: none"> ◦ At approximately 11:50 am - 11:55 am, two (2) Rocktown employees approached Mat and advised that they had witnessed Sean turn over the dust mask sign on the barricade to their area. ◦ At approximately 12:10 pm and 12:30 pm, Mat confronted Sean and asked whether he had engaged in the above behaviour. Sean denied this and walked off. ◦ The Rocktown employees advised Mat that they wanted to remain anonymous as they were afraid of retribution. • Dane Carlile (Rocktown Supervisor): <ul style="list-style-type: none"> ◦ At approximately 12:16 pm, Dane received a call from a Rocktown employee advising that he had witnessed Sean flip over a sign on an exclusion zone. • Daniel Brabrook (CPB Leading Hand): <ul style="list-style-type: none"> ◦ Daniel witnessed Sean enter the area and was subsequently advised by a Rocktown employee

	that Sean had turned over several signs.
Finding	Based on the findings of the investigation, the allegation is substantiated.
Breach	The findings of the investigation support evidence that Sean's behaviour breaches his contract of employment, Project policies and procedures and Section 28 of the WHS Act, specifically exposing workers to a risk to health and safety in the workplace.

9. Recommendations

Due to the serious nature of the substantiated findings and the previous disciplinary action, the following actions are recommended:

1. The issue of a show-cause letter outlining the intention to terminate his employment.

If you have any questions about this Report, please contact Michael O'Brien on [REDACTED]

Michael O'Brien

Dated 15 November 2024

10. Attachments

The following documents are attached to support the allegations against Sean:

- Statement of John Stanton (Appendix 1).
- Statement of Dane Carlile (Appendix 2).
- Statement of Daniel Brabrook (Appendix 3).
- Statement of Mat Anforth (Appendix 4)
- Investigation Interview with Sean (Appendix 5); and
- Copies of the signs subject to the investigation (Appendix 13).
- Further response to allegations submitted by Elliot Dalgleish (CFMEU Industrial Officer) (Appendix 10).



18 November 2024

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Mr. Sean Korostovetz
C/O CPB Contractors Pty Ltd

By Email: [REDACTED]

Dear Sean,

Confidential workplace investigation – Show Cause Meeting

As you are aware, CPB Contractors Pty Ltd (CPB) appointed Michael O'Brien (**Investigator**) to conduct a fact-finding investigation into allegations relating to the Alleged Incidents set out in correspondence to you dated 9 October 2024.

The Alleged Incidents are set out below for ease of reference:

The Alleged Incidents

It is alleged that:-

1. On Friday 4th October 2024 at approximately 10:10 am Workplace Health and Safety (WHS) arrive on the Albert Street site to inspect allegations by CFMEU Organisers Mr Dean Mattas, Mr Corey Taylor and yourself.
2. There was some strong debate between the CFMEU organisers, you and a Work Health and Safety Inspector who had attended the site.
3. During those discussions the issue of dust masks was discussed, including reference to dust suppression mask signage.
4. At 11.25 am CPB you attempted to get the Work Health and Safety Inspector to visit an area known as B7, but the Inspector declined as she wanted to close out the then current issue.
5. At approximately 11.45 am you were observed going down to level B7 and tampering with three (3) safety signs that had been placed on a barrier so that the (3) safety signs could not be seen by workers in the area. In addition to being directly observed engaging in this conduct, shortly thereafter several workers reported that you had been seen by them interfering with safety signs in the area. The three signs that you were seen to interfere with were:-
 - Warning dust hazard wear appropriate dust mask in this area
 - Plant operating zone
 - A list of tasks that were being carried out beyond the barrier along with contact details for supervisors in that area.
6. The conduct referred to in paragraph 5 (above) is extremely serious. Interference with safety signs on a construction or taking steps that would interfere with safety equipment or other safety measures,

is a clear breach of your duties and responsibilities as an employee, including but not limited to, your statutory duties as a "worker" under section 28 of the Work Health & Safety Act 2011 (Qld).

7. When you were confronted by a supervisor and asked whether you had engaged in the above conduct, you denied it and then walked off.

The purpose of this letter is to advise that the investigation has substantiated the Alleged Incidents.

CPB considers your actions to be misconduct.

CPB considers that by your conduct:

- you fundamentally undermined the trust and confidence that sits at the foundation of your employment relationship with CPB; and/or
- you have fundamentally breached your contract of employment; and/or
- you have engaged in serious and willful misconduct; and/or
- you have repudiated your contract of employment with CPB; and/or
- you have engaged in conduct that may have contravened section 28 of the Work Health & Safety Act 2011 (Qld) and in so doing you also acted in reckless disregard for the safety of your fellow workers on the CRR Project; and/or
- you demonstrated a willingness to act in breach of your statutory obligations as a worker in breach of section 28 of the *Work Health and Safety Act 2010* (Qld) (**WH&S Act**);
- you exposed yourself and others to a risk to health and safety in the workplace;
- you exposed CPB and its officers and directors to unacceptable legal and other risks;
- you fundamentally breached your obligations to act in good faith and in the best interests of your employer in the course of your employment;
- you breached Company policies and procedures in breach of the provisions of your contract of employment;
- you breached the CIMIC Group Code of Conduct – including in particular clause 2.1 "The provision of a safe and healthy working environment for all Employees and those under the Group's care is vital"; and "You must be observant of safety issues and comply with all applicable rules, laws and regulations";
- you breached CIMIC Workplace Behaviour Policy which provides that:-
 - "All individuals are expected to "Behave in a way that creates a safe, respectful and inclusive environment and prioritises looking after the safety of others".
 - Clause 3 of the policy further states:
 - "The Group has a legal obligation to eliminate this conduct as far as possible"... and
 - "...any person found to have breached this Policy by displaying any of these behaviours may be subject to disciplinary action."
- Breached the Workplace Behaviour Policy by:-
 - Failing to comply with all applicable laws, contracts and Group policies and procedures
 - Failing to comply with all lawful and reasonable directions from your manager, supervisor and other authorised officers of the Group.

I enclose a copy of the following, as referenced above.

- Sean Korostovetz – Contract of Employment
- CIMIC Group Code of Conduct
- CIMIC Workplace Behaviour Policy.

The purpose of this letter is also to allow you an opportunity to respond to the preliminary assessment of the disciplinary that might be taken as set out below and to make any submissions that you wish to make before CPB's determined what, disciplinary action should be taken. No decision has been made or will be made in relation to disciplinary action until you have had the opportunity to respond.

Proposed disciplinary action

Based on the seriousness of the misconduct that has been identified, CPB's preliminary view is that your employment should be summarily terminated.

Opportunity to respond – Show Cause Meeting

Before making a final decision, CPB would like to give you an opportunity to respond to this letter and tell us why the proposed disciplinary action should not be taken.

You are invited to attend a Show Cause Meeting with Michael O'Brien and Lyndon Hinrichsen to provide your response.

Meeting Details:-

Date:- Thursday 21 November 2024

Time:- 2.00 pm

Location:- 110 Mary Street, Brisbane (Meet in the lobby).

In the alternative, you may elect to forgo a meeting and provide a written response. You may also elect to do both. Any written response that you wish to provide must be received by no later than the scheduled time for the commencement of the Show Cause Meeting.

We will consider your response and any other relevant information available to us before making a final decision. In the absence of any response from you, or you fail to attend the meeting, we will proceed to decide what to do next, based on the information then available to us.

Please be advised that you are entitled to bring a support person along with you to the meeting. Please advise Michael O'Brien beforehand who will be attending with you so that appropriate arrangements can be made. Michael may be contacted at [REDACTED]

Other matters

In the meantime, your employment will remain suspended on base rate until further notice.

Your obligations in relation to confidentiality continue to apply. This means you must keep the Alleged Incidents, the investigation and the outcomes, including the matters raised in this letter, confidential. However, you are able to discuss the matter with a professional advisor, provided that any such advisor also maintains confidentiality.

Finally, again a reminder that counselling and employee assistance is available to you – you are encouraged to utilise the employee assistance program on 1800 056 076, at any time.

Yours sincerely,

[REDACTED]

Dominic Byrne
Precinct Manager
CBGU D&C JV
For and on behalf of CPB Contractors Pty Ltd

MO-4

20 November 2024

Michael O'Brien
Senior IR Advisor

Dominic Byrne
Precinct Manager
CPB Contractors Pty Limited

By Email: Michael.O'Brien [REDACTED] & Dominic.Byrne [REDACTED]

RE: Sean Korostovetz - Show Cause Why Disciplinary Action Should Not Be Taken and Show Cause Meeting (written response)

Dear Mr McCann & Mr Byrne

I. BACKGROUND

1. Mr Sean Korostovetz is a member of ours. The CFMEU writes to you on his behalf.
2. Mr Korostovetz (1) denies all the allegations (alleged incidents set out in the 9 October 2024 CPB correspondence) and (2) refutes the presumed findings contained in the letter of Mr Dominic Byrne, CPB Contractors Pty Ltd, dated 18 November 2024 in relation to events of Friday the 4th of October 2024.
3. No sufficient particulars have been/were provided such as time, date, place, person, circumstances, and context to properly respond to the allegations in all of the circumstances.
4. **There was no misconduct by Mr Korostovetz as the conduct as alleged did not occur. Consequently, no misconduct as alleged by CPB can be substantiated by the employer. Hence there is no need for disciplinary action.**

5. See *Mr Andrew Hill v Peabody Energy Australia PCI Pty Ltd* [2017] FWCFB 4944, per the Full Bench, described the Commission's task under s.387(a) in the following terms:

"It is well established that in cases where an employee has been dismissed for a reason relating to conduct, the Commission must, in considering whether there is a valid reason for dismissal, be satisfied that the conduct occurred. This obligation, articulated by the Federal Court in *Edwards v Giudice*, flows from the plain wording of s.387(a), which requires the Commission to consider whether there is a *valid* reason for the dismissal. The question of whether the alleged conduct took place and what it involved is to be determined by the Commission on the basis of the evidence in the proceeding before it, to the *Briginshaw* standard. The test is not simply whether the employer believed on reasonable grounds that the employee engaged in the conduct.

6. The CFMEU would welcome a response to the matters raised in this correspondence, and in turn, an opportunity to meet with you to discuss how to resolve these issues.

II. (FURTHER) LEGAL PRINCIPLES AND ARGUMENT

A. A SINGLE OR ONE OF ACT OF INEFFICIENCY IS UNLIKELY TO ESTABLISH INCOMPETENCY

7. As CPB would be aware, ***a single or one of act of inefficiency is unlikely to establish incompetency*** and ***does not justify a sanction*** from your employer, unless it poses a grave threat to the safety of others or is gross (which it did not and was not as no such event occurred as was described by the employer).

B. MISCONDUCT

8. As to an allegation of misconduct, it is to be remembered that the standard of workplace behaviour an employer is entitled to expect is "the standard of men, not angels": see *Jupiter General Insurance v Shroff* [1937] 3 All ER 67 at [74]; *IRB v Knox* (1981) 1 IR 314 at [316].

C. SERIOUS MISCONDUCT

9. As to what amounts to serious misconduct, in *North v Television Corporation Limited* (1976) 11 ALR 599 at [609] per Smithers and Evatt JJ, said:

*“For purposes of the application of the common law principles to the facts of this case, the remarks of the Master of the Rolls in *Laws v London Chronicle (Indicator Newspapers) Ltd* [1959] 2 All ER 285 at [287] and [289] are on point.*

He said-:

“To my mind the proper conclusion to be drawn from the passages which I have cited and the cases to which we were referred is that, since a contract of service is but an example of contracts in general, so that the general law of contract will be applicable, it follows that, if summary dismissal is claimed to be justifiable, the question must be whether the conduct complained of is such as to show the servant to have disregarded the essential conditions of the contract of service.

I do, however, think (following the passages which I have already cited) that one act of disobedience or misconduct can justify dismissal only if it is of a nature which goes to show (in effect) that the servant is repudiating the contract, or one of the essential conditions; and for that reason, therefore, I think that one finds in the passages which I have read that the disobedience must at least have the quality that it is “wilful”; it does (in other words) connote a deliberate flouting of the essential contractual conditions.”

D. LEGAL TEST

10. *Briginshaw v Briginshaw* (1938) 60 CLR 336 per Dixon J at [361] – [362]:

*The truth is that, when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality...[I]t is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. **The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters “reasonable***

satisfaction” should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

E. VALID REASON

11. For a reason to be a valid reason within the meaning of s.387(a) of the Act, it must be “*sound defensible or well founded*” rather than “*capricious, fanciful, spiteful or prejudiced.*”¹
12. Furthermore, in deciding whether there was a valid reason for the employee’s dismissal, FWC must undertake an objective analysis of all of the facts of the case in determining that question.²
13. In this regard, ***the entire factual matrix*** is relevant in determining whether the termination was for a valid reason.³

F. FAIR GO ALL ROUND

14. The unfair dismissal provisions that are set out in Part 3-2 of the Act are intended to ensure that a “*fair go all round*” is accorded to both the former employer and the former employee. See s.381(2) of the Act. See also *Hill v Adult Multicultural Education Services* (2008) 171 IR 360 at [67] to [77] per Hamilton DP.
15. There can be no doubt that a consideration of the “*fair go all round*” principle applies to weigh all the factors set out in s.387 of the Act together in the balance. See *Hill v Adult Multicultural Education Services* (2008) 171 IR 360 at [72] per Hamilton DP. See also *Australian Meat Holdings Pty Ltd v McLauchlan* (1998) 84 IR 1 at [8] per Ross BP, Polites SDP and Hoffman C.

¹ *Selvachandran v Peteron Plastics Pty Ltd* (1995) 62 IR 371 at 373 per Northrop J.

² *Annetta v Ansett Australia* (2000) 98 IR 233 at [10] per Giudice J, Williams SDP, and Cribb C.

³ *Allied Express Transport Pty Ltd v Anderson* (1998) 81 IR 410 at 413 per Lee, Tamberlin and Marshall JJ.

16. As CPB would be aware, see *Laws v London Chronicle Ltd* [1959] 2 All ER 285, 'a single act of disobedience can be sufficient to justify dismissal only if it is of a nature which demonstrates that the employee was repudiating the contract or one of its essential conditions.'

17. The employee's alleged disobedience must be shown to have been wilful or deliberate. It was not.

18. Our member's action was not wilful and deliberate, nor was it done with wrongful intention, or in disobedience or inefficiency. That is, he did not engage in any intentional wrongdoing or dishonesty. The events alleged did not occur.

19. The proposed termination of employment and resulting dismissal by the Company is misguided.

20. As Gleeson CJ observed in *Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Lam* [2003] HCA 6; 214 CLR 1 at 14 [37]:

"Fairness is not an abstract concept. It is essentially practical. Whether one talks in terms of procedural fairness or natural justice, the concern of the law is to avoid practical injustice."

III. FACTUAL MATRIX in relation to the ALLEGATION

21. On Friday 4 October 2024 Mr Korostovetz arrived for work at approximately 5:30am.

22. He attended the prestart at 6:00am where it was said that the jumpform had been greencut by nightshift.

23. So Mr Korostovetz decided to go up to the jumpform to have a look as he had been raising issues for the last 8 months about silica dust being left on every surface after the greencutting had taken place.

24. Mr Korostovetz arrived on the jump at approximately 6:34am.

25. He climbed down one of the cells and there was silica dust everywhere, so he took photos to document the conduct by CPB.
26. Mr Korostovetz sent the photos to Corey Taylor and asked him for some assistance.
27. At approximately 8:30am on the same day Corey Taylor and Dean Mattas arrived at site.
28. These CFMEU officials handed James Maher their 117s and were granted access to the worksite.
29. While Mr Korostovetz, Corey Taylor and Dean Mattas were on the gantry waiting to investigate the issue on the jumpform.
30. Mr Maher said to Mr Korostovetz that *"I had better be careful with my behaviour today."*
31. All four persons then walked onto the jumpform and Mr Korostovetz proceeded to the area that was an issue and showed Corey Taylor, Dean Mattas, and John Wells (CPB Safety).
32. Mr Taylor and Mr Mattas asked Mr John Wells *"If CPB could get the workers out of the area that didn't have RPE masks on?"*
33. Mr Wells told Mr Taylor and Mr Mattas *"They wouldn't be getting any workers out of the area!"*
34. Mr Taylor and Mr Mattas decided to call Workplace Health and Safety for assistance.
35. Everybody then went down to B7 to have a look at other issues regarding the patching gear being used.

36. Once all that had finished, everyone went back up to the trading room to have a look at some documentation from CPB. But no one got to see the CPB documentary material, as around this time, workplace health and safety had arrived.
37. The CFMEU officials and delegates and HSRs then went outside the job and met up with workplace health and safety inspectors and gave them a brief overview of the issues.
38. Once workplace health and safety inspectors were given visitors passes and logged in Mr Maher again threatened Mr Korostovetz says *“You need to remember who you work for.”*
39. Everyone then went back to the jump with the workplace health and safety inspectors and the parties when we went through the issues with the officer up there,
40. A lot of discussion up there occurred between Mr Korostovetz and Mr Taylor and Mr Mattas, the workplace health and safety inspectors, Mr Wells and RockTown representatives.
41. Mr Korostovetz recalls that the WHSQ inspector said that she wanted to go to the training room before she goes down to B7. Mr Korostovetz said that he would go down there and take photos in case the plant and equipment being used down there went missing.
42. Mr Korostovetz says when he got to B7 he went over to the corner where the other HSRs were (Tristan Lyons and Mark Hawken) and they updated him on some scaffold that had been tampered with and a worker had almost fallen down the penetration.
43. Mr Korostovetz then walked around and took photos of the different items being used that were non-compliant when I noticed two scaffolders drilling into concrete without being clean shaven so he walked over to them and told them that they should get one of the guys that had been fit tested and clean shaven to drill it.

44. After that Mr Korostovetz walked away and sat on a pallet of cement bags while he looked through the photos and sent them to the Mr Taylor.
45. Mr Korostovetz then made his way down to B9 to continue taking photos of various equipment being used incorrectly then he messaged Mr Taylor to see if he should stay there or go up to the training room.
46. Mr Korostovetz says that Mr Taylor told him once he had taken the photos to come back to the training room.
47. Mr Korostovetz says as he was waiting for the hoisted go back to the training room Mr Mathew Anforth confronted him and said that someone had told him he was removing some safety signs on the gates.
48. Mr Korostovetz informed the supervisor Mr Anforth that this was a stupid false allegation and that he would never touch safety signs or do anything that would put workers at risk.
49. Mr Korostovetz was very offended that a CPB supervisor believed a CFMEU HSR would do something like that.
50. Mr Korostovetz then left and went back up to the training room.

PROPOSED SOLUTION

51. Our members' alleged action(s) on this occasion do not justify dismissal.
52. Furthermore, I note that in *Austal Ships Pty Ltd* (unreported, AIRCFB, per Ross VP, Drake DP, Dight C, 13 August 1997) the generally accepted view is 'employees are only obligated to follow directions that are both *lawful and reasonable* and refusal for non-compliance does not justify disciplinary action and/or a valid reason for dismissal.'
53. Additionally, what is reasonable is not to be determined in *vacuo*.

54. Reasonableness is a question of fact, determined by a range of factors, such as *'the express and implied terms of the contract; the nature of the employment; established custom and practice in the workplace, trade, or industry (workplace policy, procedures and guidelines); the terms of the relevant instruments (enterprise agreement), and any applicable legislation (FW Act 2009).'*'

55. In a practical sense, the limits on the obligation to comply with any CPB directive are as follows: 'promoting and maintaining harmony, productivity and safety in the workplace; ensuring that staff are not exposed to bullying, harassment or other forms of inappropriate behaviour in the context of work-related activities (even outside working hours); protecting the reputation of the employer, or an organisation (such as the CPB group as a whole) of which the employer is a part; ensuring the effective conduct of the business; and ensuring the lawful use of company property.'⁴

56. If any proposed CPB action is warranted it should be proportionate to his alleged conduct within **context in all of the circumstances**, such as either informal counselling, a letter of expectation, the issuing of a reprimand, or a warning.

57. Lastly, depending on the final outcome of these further allegations and CPB investigation, **Mr Korostovetz** says:

- a) Any dismissal would be **harsh** because of its impact on him and because it is disproportionate to his alleged misconduct and performance; and
- b) Any dismissal would be **unjust** because he is not guilty of the alleged misconduct; and
- c) There is **no valid reason** for his dismissal; and
- d) It is unclear from the relied and annexed correspondence that his alleged conduct or performance constituted a sound, defensible, and well-founded reason for any dismissal; and

⁴ *GrainCorp Operations Ltd v Markham* (2002) 120 IR 253; *Farquharson v Qantas Airways Ltd* (2006) 155 IR 22; *Rose v Telstra Corporation Ltd* (1998) 45 ALJR 3; *Streeter v Telstra Corporation Ltd* (2008) 170 IR 1; and *McManus v Scott-Charlton* (1996) 70 FCR 16; 140 ALR 625

e) Any decision to dismiss him would be ***unreasonable*** as it is based on inferences which could not have reasonably been drawn from the material before the employer.

IV. CONCLUSION

58. No disciplinary action is necessary.

59. If you hold a contrary view, then I encourage you to explain why this is so.

Your sincerely



Elliott Dalglish
Industrial Officer



28 November 2024

PRIVATE & CONFIDENTIAL

Elliott Dalgleish
Industrial Officer
CFMEU

By Email: edalgleish [REDACTED]

Dear Mr Dalgeish,

Confidential workplace investigation – Sean Korostovetz

We refer to your correspondence dated 20 November 2024, concerning the show cause letter issued to Mr. Sean Korostovetz on 18 November 2024.

We have carefully reviewed your submitted comments. However, after due consideration, we uphold the findings of our investigation and do not accept the version of events presented by Mr. Korostovetz.

As this now concludes the show cause process we will refer the matter to the decision maker for their final determination.

We will let you know the outcome in due course.

Yours sincerely,

[REDACTED]

Dominic Byrne
Precinct Manager
CBGU D&C JV
For and on behalf of CPB Contractors Pty Ltd

Ella Winlaw

From: Sanfilippo, Vince
Sent: Tuesday, 3 December 2024 4:23 PM
To: Watson, Nicole
Cc: Jensen, Natalie; Malcolm Davis
Subject: Re: Subject to Legal Privilege - Sean Korostovetz

Hi Nicole,

thanks for the comprehensive information provided.

Based on the information provide I confirm that my decision is to proceed with disciplinary action in the form of termination of employment.

Kind Regards

Vince Sanfilippo

General Manager, QLD & PNG

M [REDACTED]



From: Watson, Nicole <Nicole.Watson [REDACTED]>
Sent: Thursday, 28 November 2024 3:29 PM
To: Sanfilippo, Vince <Vince.Sanfilippo [REDACTED]>
Cc: Jensen, Natalie <Natalie.Jensen [REDACTED]>; Malcolm Davis <MalcolmDavis [REDACTED]>
Subject: Subject to Legal Privilege - Sean Korostovetz

Hi Vince

Please find attach documents relating to Sean Korostovetz investigation including:

- Our show cause letter dated 18 November 2024;
- Sean Korostovetz reply dated 20 November 2024; and
- Our reply to the Show cause response dated 28 November 2024.

Due to there being no new evidence within their show cause response, as decision maker, please review the Investigation Report and supporting documents (see also attached) in order to make your final decision regarding what, if any, disciplinary action should be taken in relation to Sean Korostovetz.

Please let me know if you require any further information.

Kind regards

Regards

Nicole Watson

Senior HR Advisor

Level 3, North Tower, 339 Coronation Drive, Milton, QLD 4064, Australia

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6 December 2024

PRIVATE & CONFIDENTIAL

Mr. Sean Korostovetz
C/O CPB Contractors Pty Ltd

Dear Sean,

RE: TERMINATION OF EMPLOYMENT

The purpose of this letter is to advise you of the conclusions of the investigation and the Show Cause process arising from Allegations relating to your conduct on 4 October 2024 as set out in the letter to you dated 9 October 2024.

As you are aware, CPB Contractors Pty Ltd (**CPB**) appointed Michael O'Brien (**Investigator**) to conduct a fact-finding investigation into the allegations relating to your conduct and as a result you were provided with a Show Cause letter dated 18 November 2024 (Show Cause Letter).

The Show Cause Letter notified you that based on the seriousness of your conduct (identified in the letter) CPB's preliminary view was that your employment should be summarily terminated. The Show Cause Letter afforded you the opportunity to respond to the Allegations and explain why the proposed disciplinary action should not be imposed.

On 20 November 2024, we received your response to the Show Cause Letter. After careful evaluation of the comments received, we found the substantiated findings of the investigation report to be upheld. This was communicated to you in our letter dated 28 November 2024, where we advised that this now concluded the show cause process and that we were transferring the matter to the decision-maker for their final consideration.

CPB has relied on all information gathered throughout the investigation process and is satisfied of the following matters:

CPB considers that by your conduct you:

- you fundamentally undermined the trust and confidence that sits at the foundation of your employment relationship with CPB; and/or
- you have fundamentally breached your contract of employment; and/or
- you have engaged in serious and willful misconduct; and/or
- you have repudiated your contract of employment with CPB; and/or
- you have engaged in conduct that may have contravened section 28 of the Work Health & Safety Act 2011 (Qld) and in so doing you also acted in reckless disregard for the safety of your fellow workers on the CRR Project; and/or
- you demonstrated a willingness to act in breach of your statutory obligations as a worker in breach of section 28 of the *Work Health and Safety Act 2011* (Qld);
- you exposed yourself and others to a risk to health and safety in the workplace;
- you exposed CPB and its officers and directors to unacceptable legal and other risks;

- you fundamentally breached your obligations to act in good faith and in the best interests of your employer in the course of your employment;
- you breached Company policies and procedures in breach of the provisions of your contract of employment;
- you breached the CIMIC Group Code of Conduct – including in particular clause 2.1 “The provision of a safe and healthy working environment for all Employees and those under the Group’s care is vital”; and “You must be observant of safety issues and comply with all applicable rules, laws and regulations”;
- you breached CIMIC Workplace Behaviour Policy which provides that:-
 - “All individuals are expected to “Behave in a way that creates a safe, respectful and inclusive environment and prioritises looking after the safety of others”.
 - Clause 3 of the policy further states:
 - “The Group has a legal obligation to eliminate this conduct as far as possible”...and
 - “...any person found to have breached this Policy by displaying any of these behaviours may be subject to disciplinary action.”
- Breached the Workplace Behaviour Policy by:-
 - Failing to comply with all applicable laws, contracts and Group policies and procedures
 - Failing to comply with all lawful and reasonable directions from your manager, supervisor and other authorised officers of the Group.

CPB considers your conduct to be serious misconduct. CPB has therefore decided to summarily terminate your employment, effective 5.00pm Friday 6 December 2024.

Your final pay will include any:

- outstanding unpaid wages owing to you up to and including the termination date;
- accrued but untaken annual leave as at the termination date; and
- accrued but untaken RDOs as at the termination date.

I would like to remind you that your obligations in relation to confidentiality continue to apply. This means you must keep the Allegations, the investigation and the outcomes, including the matters raised in this letter, confidential. You can, however, discuss the matter with a professional advisor. Any such advisor is also required to maintain confidentiality. I also wish to remind you that it is unlawful for any person to victimise or retaliate against another person as a result of their involvement in the Complaint/investigation.

We appreciate that this may be a difficult time for you and accordingly we would like to extend to you access to the Employee Assistance Program over the next month and encourage you to make contact with them on 1800 056 076 to support you through this difficult time.

Yours sincerely



Vince Sanfilippo
General Manager – QLD & PNG
CPB Contractors Pty Limited

Ella Winlaw

From: O'Brien, Michael
Sent: Monday, 9 June 2025 1:10 PM
To: Harling, Lucy
Cc: O'Brien, Michael
Subject: RE: Interim report - Mark McKean

Hello,

No problem:

- How did Mark present during the interview? I.e. did he have a calm demeanour, was he defensive, was he angry, was he cooperative?

Mark presented as calm and cooperative.

- Did you have any reason to believe he was being untruthful or withholding information?

Mark gave no reason to believe he was being untruthful or withholding information.

- What is Mark's personality like? Have there been past instances of inappropriate behaviour?

- Feedback regarding the Respondent's character suggests a history of aggressive, argumentative, and confrontational behavior, particularly concerning matters related to the CFMEU.
- There have been past incidents where Mark was found to have sworn at both workers and staff, behavior which has been described as intimidating.
- The Respondent also appears to wield influence over workers on issues pertaining to the CFMEU.

Regards

Michael O'Brien

Senior IR Advisor



Level 3, North Tower, 339 Coronation Drive, Milton, QLD 4064, Australia

M [REDACTED]
E [REDACTED]

From: Harling, Lucy [REDACTED]
Sent: Monday, 9 June 2025 12:03 PM
To: O'Brien, Michael [REDACTED]
Subject: RE: Interim report - Mark McKean

Hi Mick,

Thanks for sending this through.

Would you mind sending me some notes for a credibility statement for Mark?

Not sure if you guys do this but in our reports we add a 'credibility statement' about how the interviewer perceives the person being interviewed.

If you send me notes on the below that would be helpful:

- How did Mark present during the interview? I.e. did he have a calm demeanour, was he defensive, was he angry, was he cooperative?
- Did you have any reason to believe he was being untruthful or withholding information?
- What is Mark's personality like?
- Have there been past instances of inappropriate behaviour?

Any questions please let me know.

Thanks

Regards

Lucy Harling

HR Advisor



Level 3, North Tower, 339 Coronation Drive, Milton, QLD 4064, Australia

T + [REDACTED]
E [REDACTED]

From: O'Brien, Michael [REDACTED]
Sent: Thursday, 5 June 2025 5:04 AM
To: Harling, Lucy [REDACTED]
Cc: O'Brien, Michael [REDACTED]
Subject: Interim report - Mark McKean

Hello,

Please find my interim report of my interview with Mark on 4 June 2025. Once I receive the approved statement from Mark McKean I will send it to you.

The following details may vary slightly once I get Mark's statement.

Mark confirms the following events as accurate:

- On Tuesday, May 20th, at approximately 11:30 to 11:50 AM, Roy was exiting the elevator on Level 0.
- As Roy was exiting, Mark was entering the elevator.
- Mark requested that Roy put his gloves on.

According to Mark:

- Roy did not comply or give a thumbs up in response.

- Roy replied with a remark similar to:

"As if I am going to be told by you."

- As the elevator doors were closing, Roy said:

"Fuck off."

Mark McKean reported the incident to Andrew Docking, the Superintendent.

Andrew informed Justin Bishop (Site Manager).

Matthew Tolhurst, (Safety Advisor), witnessed the incident and said to Mark:

"I heard that."

"He can't speak to you like that."

Matthew subsequently reported this to his Manager, Andrew Skegg, (Safety Manager).

Mark mentioned that there were additional witnesses, including:

- Andrew Faulkner (Mulherin) - HSR
- Leigh Winnett (Tilecorp) - HSR
- Ryan Price (RSGX) - HSR

Afterwards, Mark proceeded to the attic for a safety walk.

Upon arrival, a member of the safety committee mentioned they had heard Roy swore at him, telling him to:

"fuck off."

Matthew confirmed:

"Yes, I heard it."

Roy approached him about the incident sometime after May 20, 2025.

- As Mark was arriving on site, Roy was standing with Senior Managers who were preparing for a site walk. Mark greeted him, saying:

"Good morning, mate, how are you?"

- Roy responded:

"I don't appreciate how you spoke to me. This is not the time or place. You need to have respect."

- Roy then followed Mark out to the turnstiles and said:

"I did not tell you to fuck off."

Mark would like to understand why previous complaints have not been investigated. He feels that the treatment he has received over the past few months has been disgraceful. The individuals involved in treating him poorly include:

- Redha Brahimi (Structures Supervisor)
- Roy Biljoen (Safety Manager)
- William Hicks (Supervisor)

An example of a concerning incident occurred on December 4, 2024:

- Outside the train station, Roy verbally abused Mark.
- A member of the public had to intervene between them.
- Roy apologised the following day.
- Roy informed Paul Winduss about the incident.
- Mark told Paul about the incident, yet Mark received no follow-up from Winduss.

Roy's behaviour has been particularly concerning:

- Roy tends to speak to others in an intimidating manner.
- He has been removed from safety meetings due to arguments, which have nearly escalated to a physical confrontation.

Mark has asked for a response to why his previous complaints have not been looked into.

Please let me know if I can be of any assistance.

Regards

Michael O'Brien
Senior IR Advisor



Level 3, North Tower, 339 Coronation Drive, Milton, QLD 4064, Australia

M [REDACTED]
E [REDACTED]

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Private & Confidential Investigation Report

Workplace Behaviour Investigation

—

CPB Contractors Pty Ltd

Dated: 26 June 2025

—

1. Background

On 21st May 2025, CBGU Cross River Rail (**the Project**) received a complaint alleging that Mark McKean (Respondent) had falsely reported that Roy Biljoen (Complainant) had sworn at him when the Respondent asked the Complainant to put his gloves on.

It is alleged that the Complainant and Respondent crossed paths on the Roma St Precinct on 20th May 2025 between 11:30-11:40am. The Complainant was exiting the goods lift on L0 and the Respondent was entering the lift. The Respondent noticed that the Complainant was not wearing gloves and said words to the effect of *“Hey Roy could you chuck your gloves on please”*.

According to the Complainant, he stopped and put his gloves on, turned to face the Respondent (who was now in the back of the lift) and said *“good job”* and gave the thumbs up with his right hand. The Respondent then turned back and proceeded to walk away as the doors to the lift closed.

According to the Respondent, when he asked the Complainant to put his gloves on, the Complainant did not comply with the request. Instead, according to the Respondent, the Complainant replied with words to the effect of *“As if I am going to be told by you”*. As the lift doors were closing, the Respondent recalls that the Complainant said *“Fuck off”*. The Respondent recalls that he reported this interaction to Superintendent Andrew Docking that day.

The Complainant lodged a complaint on 21st May 2025 alleging that the Respondent incorrectly reported an interaction between himself and the Complainant, fabricating that the Complainant swore at the Respondent which ultimately paints the Complainant in bad light.

2. Scope of Investigation

An Investigator was appointed to undertake a fact-finding investigation into all aspects of the Allegations (**Investigation**) and prepare a report about all aspects of the Allegations.

3. Policies and Procedures

The following policies and procedures were considered as part of this investigation as required by the Terms of Reference.

CIMIC Workplace Behaviour Policy – Clause 3.2 Harassment

CIMIC Code of Conduct – Section 2.2 Working with One Another

4. Employees subject to investigation

Employee Name	Employee title
Roy Biljoen (Complainant)	Senior Safety Advisor
Mark McKean (Respondent)	Non-Certified Tradesperson & HSR
Kerry Ryan (Witness 1)	Senior Safety Advisor
Peter Bennett (Witness 2)	Senior Supervisor
Niall Bonner (Witness 3)	Safety Advisor
Andrew Docking (Witness 4)	Superintendent
Justin Bishop (Witness 5)	Superintendent
Andrew Skegg (Witness 6)	Safety Manager
Phillip (Chip) Winslow (Witness 7)	Lift Operator
Matthew Tolhurst (Witness 8)	Safety Advisor
Andrew Faulkner (Witness 9)	Rigger & HSR
Leigh Winnet (Witness 10)	Labourer & HSR
Ryan Price (Witness 11)	Electrician & HSR

5. Investigator

Investigator's full name	Investigator's title
Lucy Harling	HR Advisor

6. Process

6.1 Interviews

As part of the investigation, the below individuals were interviewed:

Name	Position	Date of interview
Roy Biljoen	Senior Safety Advisor	27/05/2025
Mark McKean	Non-Certified Tradesperson & HSR	04/06/2025
Kerry Ryan	Senior Safety Advisor	30/05/2025
Peter Bennett	Senior Supervisor	30/05/2025
Niall Bonner	Safety Advisor	30/05/2025
Andrew Skegg	Safety Manager	06/06/2025

Andrew Faulkner	Rigger (HSR) - Mulherin Rigging and Cranes	18/06/25
Leigh Winnet	Labourer (HSR) - Tilecorp	18/06/25
Ryan Price	Electrician (HSR) - RSGx	18/06/25

Statements/information was also obtained from:

Name	Position	Statement Received
Andrew Docking	Superintendent	26/05/2025
Justin Bishop	Superintendent	26/05/2025
Phillip (Chip) Winslow	Lift Operator	20/05/2025
Matthew Tolhurst	Safety Advisor	23/06/2025

Interview, statements, summaries and emails for all interviewees are included in the Brief of Documents.

7. Credibility Statement

The Investigator assessed the credibility of each person interviewed.

Complainant, Roy Biljoen

The Complainant has been on the Project since 12th September 2024 and during this time has worked at the Roma St Precinct, currently working in a Senior Safety Advisor capacity.

The investigator found the Complainant to be genuine. He generally presented with a calm demeanour and was cooperative through the investigation process. The Investigator has no reason to believe the Complainant has been untruthful or has purposely withheld information to hinder the investigation process in any way.

The investigator noted an element of frustration from the Complainant in regards to similar ongoing behaviour he has witnessed and experienced from the Respondent. The Complainant made mention that he felt this is 'standard behaviour' for the Respondent and was motivated to report it in order to hold the Respondent accountable to the same workplace standards and expected behaviours as all other CPB employees.

General feedback regarding the Complainant is that, they can sometimes come across as aggressive in tone used. In other instances raised involving the Complainant, consistent feedback is that the Complainant is expected to have more situational awareness and to be able to diffuse situations rather than further escalate them.

Respondent, Mark McKean

The Respondent has been on the Project since 31st August 2023 and during this time has worked at the Roma St Precinct as a CW4 Non-Certified Tradesperson. The Respondent has been an appointed Health and Safety Representative (HSR) for the duration of this time.

The Respondent was interviewed by Senior Industrial Relations Advisor Michael O'Brien. During the interview the Respondent had a Support Person in attendance: Jospeh Pryor (CFMEU Representative). The following notes have been provided by interviewer Michael O'Brien.

The Interviewer found the Respondent to present in a calm and cooperative manner. The Interviewer has no reason to believe that the Respondent was being untruthful or withholding information that could hinder the investigation process in any way.

General feedback regarding the Respondent's character suggests a history of aggressive, argumentative, and confrontational behaviour, particularly concerning matters related to the CFMEU. There have been past incidents where the Respondent was found to have sworn at both workers and staff, behaviour which has been described as intimidating. The Respondent also appears to wield influence over workers on issues pertaining to the CFMEU.

It has been reported that the Respondent has been known to have 'vendetta's' against CBGU staff in the past and it is report that it appears that his current vendetta is against the Complainant.

Witness 1, Kerry Ryan

Witness 1 has been on the project since 2nd December 2024 and during this time has worked at the Roma St Precinct as a Senior Safety Advisor.

The investigator found Witness 1 to be genuine, presented with a calm demeanour and was cooperative throughout the investigation process. The Investigator has no reason to believe that Witness 1 has been untruthful or has purposely withheld information to hinder the investigation process in any way.

Witness 2, Peter Bennett

Witness 2 has been on the project since 13th June 2022 and during this time has worked across the Tunnel Fit Out and Roma St Precinct teams. He is currently a Senior Supervisor (Electrical) at the Roma St Precinct .

The investigator found the Witness to be genuine, presented with a calm demeanour and was cooperative throughout the investigation process. The Investigator has no reason to believe that Witness 2 has been untruthful or has purposely withheld information to hinder the investigation process in any way. It is noted that towards the end of 2023, Witness 2 was involved in interactions with Union representatives that resulted in Witness 2 taking a number of months leave. It is further noted however that upon return to work, and transfer to Roma St Precinct, no further issues have been raised.

The Investigator noted that Witness 2's initial statement was almost identical to the initial statement provided by Witness 1. During the interview, Witness 2 admitted to copying the statement of Witness 1 and changed relevant details to suit his point of view. When the Investigator asked Witness 2 why he did this, Witness 2 responded that he didn't think what he was giving a statement on was 'of great significance' and was a 'non event' so didn't spend much time on it. Witness 2 recognised that this is not best practice and confirms it would not happen again in the future.

Witness 3, Niall Bonner

Witness 3 has been on the project since 4th December 2023 and during this time has worked at the Roma St Precinct, currently in a Safety Advisor role.

The investigator found Witness 3 to be genuine, presented with a calm demeanour and was cooperative throughout the investigation process. The Investigator has no reason to believe Witness 3 has been untruthful or has purposely withheld information to hinder the investigation process in any way.

Witness 4, Andrew Docking

Witness 4 has been on the project since 9th October 2024 and during this time has worked across Southern Area and Roma St Precinct teams. He is currently a Superintendent at the Roma St Precinct.

The investigator found Witness 3 to be genuine, presented with a calm demeanour and was cooperative throughout the investigation process. The Investigator has no reason to believe Witness 4 has been untruthful or has purposely withheld information to hinder the investigation process in any way.

Witness 5, Justin Bishop

Witness 5 has been on the project since 5th April 2024 and during this time has worked across Woolloongabba and Roma St Precinct teams. He is currently a Superintendent at the Roma St Precinct.

The investigator found Witness 5 to be genuine, presented with a calm demeanour and was cooperative throughout the investigation process. The Investigator has no reason to believe Witness 5 has been untruthful or has purposely withheld information to hinder the investigation process in any way.

Witness 6, Andrew Skegg

Witness 6 has been on the project since 27th May 2024 and during this time has worked across the Testing and Commissioning and Roma St Precinct teams. He is currently a Safety Manager for the Testing & Commissioning team. At the time of the incident, Witness 6 was Acting in the Roma St Safety Manager role.

The investigator found Witness 6 to be genuine, presented with a calm demeanour and was cooperative throughout the investigation process. The Investigator has no reason to believe Witness 6 has been untruthful or has purposely withheld information to hinder the investigation process in any way.

Witness 7, Phillip (Chip) Winslow

Witness 7 has been on the project since 15th June 2020 working in the Roma St Tunnel and Precinct teams. He is currently employed as a CW2 Skilled General Labourer. Witness 7 was operating the lift at the time of the incident. The Investigator has no reason to believe Witness 7 has been untruthful or has purposely withheld information to hinder the investigation process in any way.

It is reported that while Phillip can sometimes be vocal around industrial relation matters, he does not align with union positions as a default. Rather, he is known back positions that are of most benefit to him.

Witness 8, Matthew Tolhurst

Witness 8 commenced on the Project 18th March 2024 in the position of Safety Advisor at the Roma St Precinct. At the time of the incident, Witness 8 was working out his notice period with last day on site being 23rd May 2025.

Witness 8 was identified as a Witness by the Complainant during the Complaint's initial Interview (27th May 2025) which was post Witness 8's departure from the Project. During the Witness's Exit Interview (23rd May 2025), the Witness (unprompted about this particular incident) reported that he has been witness to bullying/harassment earlier in the week where he witnessed the Respondent requesting the Complainant to put his gloves on. The Witness reported that the Complainant turned around to the Respondent and "had a go at him" and told him to "fuck off".

It is noted that Witness 8 and the Complainant had a poor working relationship. In terms of the Witness's character, feedback is that the Witness is defensive, argumentative and had not integrated well into the Safety team or wider Precinct team. Feedback is that the Complainant has a dichotomous personality that others have found difficult to connect with.

It is the investigator's opinion that the ongoing poor relationship between the Complainant and Witness 8 is important to consider when evaluating Witness 8's contributions to the investigation.

Witness 9, Andrew Faulkner

Witness 9 has been on the Project since 27th February 2023 working for a subcontractor in a HSR capacity. Witness 9 was interviewed by Senior Industrial Relations Advisor Michael O'Brien. During the interview Witness 9 had a Support Person in attendance: Zac Smith (KME Site Supervisor).

The following notes have been provided by interviewer Michael O'Brien. The Interviewer found Witness 9 to present in a calm and cooperative manner. The Interviewer has no reason to believe that Witness 9 was being untruthful or withholding information that could hinder the investigation process in any way.

In terms of character, Witness 9 has been described as a 'mouth piece' for the Respondent.

Witness 10, Leigh Winnet

Witness 10 has been on the Project since 9th December 2024 working for a subcontractor in a HSR capacity. Witness 10 was interviewed by Senior Industrial Relations Advisor Michael O'Brien. During the interview Witness 10 had a Support Person in attendance: Adam Jefford.

The following notes have been provided by interviewer Michael O'Brien. The Interviewer found Witness 10 to present in a calm and cooperative manner. The Interviewer has no reason to believe that Witness 10 was being untruthful or withholding information that could hinder the investigation process in any way.

Witness 11, Ryan Price

Witness 11 has been on the Project since 18th January 2024 working for a subcontractor in a HSR capacity. Witness 11 was interviewed by Senior Industrial Relations Advisor Michael O'Brien. During the interview Witness 11 had a Support Person in attendance: Michael Clark (RSGx Supervisor).

The following notes have been provided by interviewer Michael O'Brien. The Interviewer found Witness 11 to present in a calm and cooperative manner. The Interviewer has no reason to believe that Witness 11 was being untruthful or withholding information that could hinder the investigation process in any way.

In terms of character, it is reported that Witness 11 can be an 'agitator' especially in group settings.

8. Findings

8.1 Categories of findings and the standard of proof

The Investigator has made findings as to whether the allegations are substantiated on the balance of probabilities (that is, the civil standard of proof).

Given the serious nature of the allegations, the 'Briginshaw test' has been applied (from the case *Briginshaw v Briginshaw* (1938) 60 CLR 336). The Briginshaw test takes into account the:

- (i) seriousness of the allegation;
- (ii) inherent likelihood of the conduct occurring based on the evidence; and
- (iii) gravity of the consequences flowing from a particular finding

There are three categories of findings – the allegation is:

substantiated – the Investigator found that it was more likely than not that the conduct occurred;

not substantiated – the Investigator found it was more likely than not that the conduct did not occur;

unable to be substantiated – this does not mean that the conduct as alleged did not occur, but means that the Investigator was unable to determine whether the alleged conduct occurred or not (for example, because the witnesses provided conflicting information and there was no other evidence to corroborate either witness' version of events).

The findings are:

<p>Allegation 1</p>	<p>It is alleged that, on Tuesday 20th May 2025, the Complainant and Respondent crossed paths outside the goods lift on L0 and the Respondent asked the Complainant to put his gloves on.</p> <p>According to the Complainant, he stopped and put his gloves on, turned to face the Respondent and said: <i>“good job”</i> and gave the thumbs up with his right hand.</p> <p>It was later reported to the Complainant that the Respondent had recalled the incident to Andrew Docking (Superintendent). The Respondent reported that he asked the Complainant to put his gloves on and the Complainant allegedly replied with words to the effect of <i>“as if I am going to be told by you...fuck off”</i>.</p> <p>It is alleged that the Respondent incorrectly reported the interaction between himself and the Complainant, fabricating that the Complainant swore at the Respondent which ultimately paints the Complainant in bad light.</p>
<p>Response</p>	<p>The Respondent confirms that:</p> <ul style="list-style-type: none"> - On Tuesday 20th May at approximately 11:30am – 11:50am, he was entering the elevator while the Complainant was exiting. - He requested that the Complainant put his gloves on <p>The Respondent details that:</p> <ul style="list-style-type: none"> - The Complainant did not comply or give a thumbs up in response - The Complainant replied with a remark similar to: <i>“As if I am going to be told by you”</i> - As the elevator doors were closing, the Complainant said: <i>“Fuck off”</i> - Witness 8 said to him <i>“I heard that, he can’t speak to you like that”</i> - Witness 8 reported the incident to his Manager (Witness 6). <p>The Respondent confirms that:</p> <ul style="list-style-type: none"> - He reported the incident to Witness 4 who informed Witness 5. <p>The Respondent further recalls that, the day after the interaction:</p> <ul style="list-style-type: none"> - He crossed paths with the Complainant and the Complainant said words to the effect of: <i>“I don’t appreciate how you spoke to me. This is not the time or place. You need to have respect.”</i> - The Complainant followed the Respondent out to the turnstiles and said: <i>I did not tell you to fuck off”</i>. <p>The Complainant recalls this occurring.</p>
<p>Witness</p>	<p>Witness 1</p> <ul style="list-style-type: none"> - Confirms hearing the Respondent requesting the Complainant to put his gloves on saying words to the effect of: <i>“put your gloves on”</i> - Confirms hearing the Complainant acknowledging the request saying words to the effect of <i>“thanks for telling me”</i> - Does not recall hearing the Complainant swearing at the Respondent - Confirms that he was close enough to the interaction to be able to hear the interaction <p>Witness 2</p> <ul style="list-style-type: none"> - Confirms hearing the Respondent requesting the Complainant to put his gloves on saying words to the effect of: <i>“Can you put your gloves on”</i> - Confirms hearing the Complainant acknowledging the request saying words to the effect of: <i>“Sure no problem”</i>. - Does not recall hearing the Complainant swearing at the Respondent - Confirms that he was close enough to the interaction to be able to hear the interaction

Witness 3

- Confirms hearing the Respondent requesting the Complainant to put his gloves on.
- Does not recall hearing the Complainant swearing at the Respondent.
- Recalls that when the lift doors closed, the Respondent asked *“what’s the go with Roy being allowed to not wear gloves and we all have to wear gloves”*
- Does not recall other comments being made from the Respondent or Witness 8

Witness 4

- Confirms the Respondent called him to report interaction between himself and the Complainant
- Confirms the Respondent reported that the Complainant told him to *“fuck off”*.
- Confirms this was raised with the Complainant and that the Complainant denied the interaction occurring in the manner reported by the Respondent.

Witness 5

- Confirms the Respondent reported the interaction between him and the Complainant to Witness 4.
- Confirms he raised this with the Complainant and that the Complainant denied the interaction occurring in the manner reported by the Respondent.

Witness 6

- Confirms that on 20th May, he received feedback from Witness 8 that he had witnessed an interaction between the Complainant and Respondent
- Witness 8 reported to Witness 6 that the Respondent told the Complainant to put his gloves/glasses on. The Complainant turned to the Respondent and told him to *“fuck off”*.
- Witness 6 took an action to address this with the Complainant.
- Witness 6 raised with the Complainant retelling the feedback from Witness 8.
- Witness 6 recalls that the Complainant denied that the interaction happened as reported. The Complainant confirmed with Witness 6 that he said *“no problem”* to the Respondent and did not tell him to *“fuck off”*.

Witness 7

- Recalls a group of HSR representatives entered the lift as the Complainant, Witness 1 and Witness 2 exited the lift.
- Confirms hearing the Respondent requesting the Complainant to put his gloves on.
- Confirms the Complainant acknowledged he didn’t have his gloves on and put them on.
- Does not recall hearing the Complainant swearing at the Respondent.

Witness 8

- During Witness 8’s Exit Interview he mentioned that:
 - o he had witnessed the Respondent asking the Complainant to put his PPE on.
 - o the Complainant turned to the Respondent, and *“had a go at him and told him to Fuck off”*.

Note: the incident was not specifically raised with the Witness during the Exit Interview. Witness 8 was asked if there was any bullying or harassment in the workplace and he replied with the above example.

	<p>Witness 9</p> <ul style="list-style-type: none"> - Recalls the below interaction between the Respondent and Complainant <ul style="list-style-type: none"> o Respondent: <i>"Put your gloves on"</i> o Complainant: <i>"It's my job site, don't tell me what to do"</i> o Respondent: <i>"Everyone has to wear them"</i> o Complainant: <i>"As if I am going to be told by you"</i> - Recalls the Complainant telling the Respondent to <i>"Fuck Off"</i> as the doors to the elevator closed. - Recalls hearing Witness 8 saying <i>"I heard that"</i> <p>Witness 10</p> <ul style="list-style-type: none"> - Recalls the below interaction between the Respondent and Complainant <ul style="list-style-type: none"> o Respondent: <i>"I will get you to put your gloves and glasses on"</i> o Complainant: <i>"I won't be told by you"</i> o Respondent: <i>"I am only asking you to do what you ask everyone else to do"</i> - Recalls the Complainant telling the Respondent to <i>"Fuck Off"</i> as the doors to the elevator closed. - Recalls hearing Witness 8 saying <i>"I heard that"</i> <p>Witness 11</p> <ul style="list-style-type: none"> - Recalls the below interaction between the Respondent and Complainant <ul style="list-style-type: none"> o Respondent: <i>"Just put your gloves and glasses on"</i> - Recalls the Complainant telling the Respondent to <i>"Fuck Off"</i> as the doors to the elevator closed. - Recalls hearing Witness 8 saying <i>"I heard that"</i>
<p>Finding</p>	<p>Substantiated</p> <p>The report finds evidence to support the allegation that the Respondent incorrectly reported an interaction between himself and the Complainant, fabricating that the Complainant swore at the Respondent which ultimately painted the Complainant in bad light.</p> <p>The report finds evidence that:</p> <ul style="list-style-type: none"> - The Respondent and Complainant crossed paths when entering/exiting the lift on LO. - The Respondent asked the Complainant to put his gloves on which the Complainant did. <p>The report does not conclude that the Complainant swore at the Respondent telling him to <i>"Fuck off"</i>. It is concluded that on the balance of probabilities, and considering the above witness credibility statements, it is more likely than not that this did not occur.</p> <p>It is noted that there are differing reports from witnesses. In reaching this conclusion, the Investigator has taken into consideration the credibility statement of the Complainant, Respondent and each Witness.</p> <p>While Witness 8, 9, 10 & 11 all corroborate events as per the Respondent's statement, the Investigator notes:</p> <ul style="list-style-type: none"> - The poor relationship history between Witness 8 and the Complainant - The alignment of Witness 9, 10 & 11 towards the Respondent (all HSR's). - Statements received from Witness 9, 10 & 11 report almost the exact same wording at the point of contention suggesting elements of corroboration. <p>In reaching a conclusion, the Investigator has heavily considered statements from Witness 3 and Witness 7 as 'neutral' parties with no apparent ulterior motives or bias.</p> <p>Both Witness 3 and 7 recall the interaction between the Complainant and Respondent however do not recall the Complainant swearing at the Respondent.</p>

Breach	<p>This report provides evidence that the Respondent has incorrectly reported an interaction between himself and the Complainant, fabricating that the Complainant swore at the Respondent which ultimately paints the Complainant in bad light.</p> <p>The report concludes that having regard to the circumstances, the Respondent should have anticipated the possibility that this may have offended or humiliated another person.</p> <p>The Respondent is therefore found to be in breach of:</p> <p>Harassment</p> <p>CIMIC’s Workplace Behaviour Policy (clause 3.2) states that Harassment in the workplace that is unlawful is any type of behaviour that generally:</p> <ol style="list-style-type: none"> 1. is unwelcome or unwanted by the recipient and which offends, insults, humiliates or intimidates them; and 2. where a reasonable person, having regard to the circumstances, would anticipate the possibility that the behaviour might offend, insult, humiliate or intimidate the person being harassed. <p>CIMIC Code of Conduct – Section 2.2 Working with One Another</p> <p>Section 2.2 Working with One Another states:</p> <p><i>“The Group strives to: Create a safe, healthy, supportive and positive working environment where Employees are treated fairly and with respect. Develop and maintain a diverse and inclusive workforce. The Group does not tolerate bullying, harassment, sexual harassment, unlawful discrimination...”</i></p>
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9. Recommendations

Allegation 1 has been substantiated and therefore breached

- CIMIC’s Workplace Behaviour Policy – Clause 3.2 Harassment.
- CIMIC Code of Conduct – Section 2.2 Working with One Another

Due to the nature of the substantiated findings, the following recommendations are outlined below:

1. The Respondent is

If you have any questions about this Report, please contact Lucy Harling [Redacted]

Lucy Harling

Dated 27th June 2025

Appendix No.	Document
1	Initial Complaint – Roy Biljoen
2	Initial Interview – Roy Biljoen
3	Initial Interview – Mark McKean
4	Initial Interview – Kerry Ryan

5	Initial Interview – Peter Bennett
6	Initial Interview – Niall Bonner
7	Initial Statement - Andrew Docking
8	Initial Statement - Justin Bishop
9	Initial Interview - Andrew Skegg
10	Initial Statement - Phillip Winslow
11	Exit Interview Extract - Matthew Tolhurst

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