

# CHAIRMAN

## VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

**CHAIRMAN: BOB MERRIMAN**

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ISIS PROJECTS P/L

ARKANA PROJECT  
(CNR LONSDALE AND FOSTER  
STREETS, DANDENONG)

-and-

CFMEU

RE: CLAIM FOR SITE ALLOWANCE

059-2009

### DECISION

21 September 2009

This matter relates to a claim by the Union for the payment of a site allowance from the above contractor contracted to undertake fit-out works to the value of approximately \$950,000 on two levels of a multi-level building.

The fit-out works are located within a recently completed major construction consisting of two buildings - one of seven levels and one of four levels interconnected by a multi-level car park - which have a construction value of \$23 million.

The Union submitted that all employees engaged on the major construction had been in receipt of the \$2.40 site allowance (in accordance with Appendix C of the 2008 -

2011 EBA) and that the principal contractor still had a presence on the project thus creating a continuity of works from construction through to fit-out. He advised that the fit-out contractor had a presence on site in June 2009 installing protective wall and floor coverings being preparatory works for the actual fit-out for the tenant being the Department of Human Services - Specialist Children Services.

It was submitted that whilst the principal contractor had handed over the building to the owner - Deal Corporation who had in turn entered a lease with the Department of Human Services, the fact remained that due to the continuity of building trades on site and particularly ongoing works in the seven level structure such an arrangement had created a total project value of \$23 million plus \$1 million (approx.) and therefore employees engaged in the fit-out works should not be disadvantaged.

It was the Union's belief that this scenario was consistent with the fit-out of shop tenancies in a shopping complex undertaken by a different contractor and therefore in their submission it followed that a similar approach was appropriate in the case before the Chairman and that employees should also not be disadvantaged.

In their submission Management stated that the building works had reached practical completion on 11<sup>th</sup> June 2009 and that ISIS had attended the project on the 24 June, 2009 merely to install wall and floor protection prior to returning to the project to commence actual fit-out works on the 4<sup>th</sup> August 2009.

Management strongly contended that the fit-out was of a "stand alone" nature and the tenancy fit-out contract was directly with the Department of Human Services who in turn had established a lease with the building owner and therefore there was absolutely no connection with the original principal contractor.

In supporting their "stand alone" argument Management referred to the definition of a project as found by DP Ives in A.I.R.C - Bovis Lend Lease matter (C2006/2974) dated 28 December 2006 when he stated in his decision at para. 30: -

*"... a project is an enterprise carefully planned to achieve a particular result, that has clearly established entity or entities that exercise control over its development and that has a scope sufficiently definable that any given point in time to enable its proper definition and costing for the purpose of determining the appropriate".*

Management stated that based on this definition, the Union's claim must fail as clearly the scope of works and the entities referred to earlier were defined and independent.

Management discounted the presence of the original principal building contractor being on site as this was a normal situation relating to ongoing defect rectification and also that the Union proposition in adding the fit-out value to the original project value also highlighted the separation of the contracted works.

For these reasons Management submitted that the claim should be rejected.

I have carefully considered all aspects of this matter including the observations made by Panel members during the course of a site visit and inspection on 9 September, 2009.

My findings are as follows:

- The contemplated works do not fit into typical 'shell and core' fit-outs or works similar to those undertaken in a shopping centre. The mechanical services and fire protection (subject to modification) ceilings and floor coverings etc. were installed under the terms of the principal contractor's original contract and are fully operational which is not typically the case.

- The separation of contracts and scope of works is clearly defined and therefore consistent with the DP Ives decision. There was no control by Deal Corporation on the works being performed and therefore they were not part of the original two building enterprise.
- The works are representative of typical post construction ongoing and repeated fit-outs undertaken throughout the commercial sector which are seen to be of a 'stand alone' nature which is consistent with established guidelines.
- In an earlier matter number 038-2009 involving works associated with a Medical Centre at Caroline Springs I determined the following:-

*"It goes without saying that unspecified works which may be undertaken will not attract the Town Centre allowance, and that the allowance would certainly not apply to future refurbishment works other than initial fit outs on existing specified buildings".*

For these reasons I dismiss the Union's claim in this matter.



**BOB MERRIMAN**  
CHAIRMAN

**DATED THIS                      21                      DAY OF                      SEPTEMBER                      2009**