



**VICTORIAN BUILDING INDUSTRY DISPUTES PANEL**  
**CHAIRMAN: BOB MERRIMAN**

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**HUNTINGDALE MOBILE CRANES**

**ST. KILDA TOWN HALL PROJECT**

**-and-**

**CFMEU**

**RE: ALLEGED BREACH OF CLAUSE 44.3**  
**2005-2008 EBA**

**WEDNESDAY 23 JANUARY 2008**

**006-2008**

**DECISION**

This matter relates to a claim by the Union that the above named Contractor had breached the provisions of their EBA by performing productive work on the above named project on Wednesday, 9 January 2008, which constituted part of the industry close down period.

The Union submitted that prior to the Christmas close down (21 December 2007) there had been no discussion and certainly no agreement to perform work which is a fundamental requirement of clause 44.3 of the Victorian Mobile Crane Hiring EBA 2005-2008. (This Agreement specifically embraces the official building industry calendar which covers the building and construction industry).



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**ADDENDUM TO DECISION  
006 - 2008 DATED WEDNESDAY 23 JANUARY 2008**

**HUNTINGDALE MOBILE CRANES  
ST. KILDA TOWN HALL PROJECT  
-and-**

**CFMEU  
RE: ALLEGED BREACH OF CLAUSE 44.3  
2005-2008 EBA**

**006A-2008**

*Thursday, 29 April 2021*

In the final paragraph of the decision 006-2008, whilst finding that the Company had not complied with its EBA obligations regarding the performance of work on an RDO, the Panel went on to say:–

“This position had occurred as a direct result of the request made by Kane Constructions who are well aware of the requirements of the Agreements following the earlier matters in December”.

The Panel wishes to place on record a further reason supporting this conclusion and finding which is: ....

In giving evidence during the course of the hearing, the Management representative advised that the Company had received a phone call on 9 January from a Kane site management representative “Colin Gray”, who extended an apology for not having specifically advised that at the time of the request for the provision of a crane and employee on site, Huntingdale Cranes were not advised of the limitation that had been placed on the performance of work on the RDO - 9 January 2008.

*Bob Merriman  
Chairman*

*Peter Knight  
Panel Member*

*Bill Davis  
Panel Member*

*Dated this day*

*of*

*2008*

Reference was made to a decision of the Panel relating to various Kane Constructions jobs which was dealt with on 21 December 2007.

In that decision (118-2007 – Kane Constructions – Various Projects), the Panel concluded that the performance of work by EBA covered employees on an RDO during the shutdown period without prior agreement provided by the respective EBAs (Clause 44.3, in this case) would constitute non-compliance within such agreements.

Management (Huntingdale Mobile Cranes) advised that a request was made by the principal contractor (Kane Constructions) to an office person requesting the provision of a mobile crane with support crew to attend the project on 9 January 2008, without indicating that the project had no agreement to perform productive work. On that basis the crane was provided as requested, and work was performed on the day in question.

The Management representative advised that he was aware of his obligations with regard to the EBA and the need to have an agreement to work on the day in question, however, he had been on leave, and the office person had simply responded to a request and had assumed that this action was in order.

Having considered the matter, the Panel notes Management’s own admission that they (the Company) had not conformed with the requirements of the EBA and in all the circumstances the Panel forms the clear view that by working on the day in question the Company has not complied with its obligation regarding the performance of work on an RDO during the course of the Christmas close down period. This position had occurred as a direct result of the request made by Kane Constructions who are well aware of the requirements of the Agreements following the earlier matters in December.

**BOB MERRIMAN**  
**CHAIRMAN**

**PETER KNIGHT**  
**PANEL MEMBER**

**BILL DAVIS**  
**PANEL MEMBER**

**DATED THIS**

**DAY OF**

**2008**