

# V B I D P

## **VICTORIAN BUILDING INDUSTRY DISPUTES PANEL**

**CHAIRMAN: BOB MERRIMAN**

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**HEWLETT PACKARD BUILDING  
CNR BURWOOD HIGHWAY & SPRINGVALE ROAD**

**HWM CONTRACTORS (VIC) PTY LTD  
WARRANDALE INDUSTRIES PTY LTD  
MINESCO PTY LTD  
JACARANDA INDUSTRIES  
EXPO CONTI PTY LTD  
BEENAK CONSTRUCTIONS PTY LTD  
FRASER MAGEE PTY LTD**

**- and -**

**CFMEU**

**RE: ALLEGED BREACH OF CLAUSE 34.5 OF CURRENT EBA**

### **DECISION**

**008-2008**

**Friday 1 February 2008**

This matter relates to a claim made by the Union that the Principal Contractor on the above project (Bovis Lend Lease) had indicated to sub contractors that the site would be open for work on the fixed weekend constituting Saturday 26 January 2008, Sunday 27 January, 2008, Monday 28 January, 2008 – Public Holiday and Tuesday 29 January, 2008 – RDO.

The Chairman advised those present that all sub-contractors listed on the Panel notification had been formally advised of the hearing and that correspondence received from some sub-contractors was best summarised as follows:-

- *HWM Contractors* – written correspondence advising that there was no intention to work Saturday 26 January or Tuesday 29 January 2008 and that they would be unable to attend the hearing.
  - *Warrandale Industries* – written correspondence advising that there was no intention to work on coming weekend, and or vary the RDO weekend and that they had not been approached to do so by the client.
  - *Menesco Pty Ltd*– verbal advice that there was no intention to work during the period concerned although it was stated that the Principal Contractor expected sub-contractors to seek to work.
  - *Beenak Constructions* – provided a copy of correspondence sent to the Union on 24 January, 2008 seeking discussion re: working on 26 January 2008 and further stated “we have not worked on a Saturday 26 January (two days in the future) and are not in breach of the current EBA”.
  - *Jacaranda Industries*
  - *Expo Conti*
  - *Fraser Magee*
- No verbal or written advice was received from these later three sub contractors at the time of the hearing.

Following the hearing Jacaranda Industries communicated with the Panel advising their apology and indicated that they did not work.

At the outset the Panel is prepared to accept the written submissions from the four sub contractors as to their positions, however their non attendance does severely limit the process of dispute settling as provided in the EBAs. Turning to the three companies that did not appear nor communicate they certainly are not conforming to their obligations in the EBA and put themselves at risk of further proceedings.

In presenting its argument, the Union advised that there was an expectation by the Principal Contractor that the above sub contractors would be working at some stage during the period concerned.

It was strongly contended that any work would constitute a breach of Clause 34.5.4 – RDO Schedule which specifically requires a detailed process to be followed. This has not taken place on this occasion and further that no reasons for the proposal to perform work had been provided.

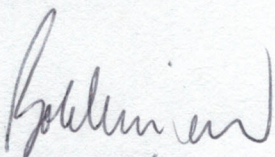
In addition, given the circumstances, the respective EBAs provide for the disputes settlement procedure to come into play which is referred to in the following terms (refer last paragraph clause 34.5.4(b)).-

“Disputes over the application of this clause will be dealt with in accordance with the disputes settlement procedure set out in clause 10 of this Agreement. If a dispute is notified within 24 hours of the provision of the written notice required by (i) hereof, then work is not to take place on the scheduled RDO until the dispute is heard and determined”.

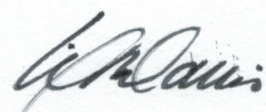
In summary the Union stated that their (the Unions) submission clearly demonstrated that the Principal Contractor and as a consequence sub contractors had displayed an intent to commit a breach of the obligations as outlined in their respective EBAs.

Having heard the Union’s submission and having considered the correspondence from some sub contractors, the Panel can only conclude that any work performed during the period concerned would constitute non compliance having regard to the time frame and the lack of the required communication.

Based on the evidence provided by the Union together with discussions with some sub contractors we have come to the conclusion that the Principal Contractor (Bovis Lend Lease) endeavoured to coerce the sub contractor employers to breach their EBAs. This is a matter of serious concern and may well be dealt with in another place. Further if the sub contractors had followed the proposal put by the Principal Contractor it can be assumed that the Principal Contractor would also not be complying with their EBA.

  
**BOB MERRIMAN**  
**CHAIRMAN**

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

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

**DATED THIS**

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**DAY OF**

February

**2008**