

VBIDP

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL
CHAIRMAN: BOB MERRIMAN

26 QUEENSBERRY STREET,
CARLTON SOUTH VIC 3053
TEL: 03 9639 1322 FAX: 03 9639 2490
dboard@vbidb.org.au

IN THE MATTER OF:

WESTFIELD DESIGN AND CONSTRUCTION P/L

BAY CITY PLAZA, MALOP STREET, GEELONG

-and-

CFMEU

CEPU

RE: OCCUPATIONAL HEALTH AND SAFETY MATTER

TUESDAY, 26 FEBRUARY 2008

011-2008

DECISION

On 8 February 2008 the Panel attended the project to conduct a hearing relating to an incident involving the breakdown of the emergency evacuation alarm system on the project.

During the course of submissions, the Panel was advised that at 7:10 am on February 4, 2008, a Scissor Lift cut an alarm system wire which caused damage and activated the alarm in another area. During the course of inspection/testing of the system, it was revealed that two of the six sirens on site had failed to operate and that the system could not be heard in a number of areas

The Safety Committee including Westfield Management subsequently informed the employees of the circumstances of the incident and further investigations were undertaken including the

commencement of rectification. Employees were kept informed and a test of the siren took place at 9:00 am. Further tests were undertaken and a further report back meeting took place at approximately 9:45 am. A decision was taken that the failed system constituted a health and safety risk and workers withdrew from the work place to seek alternative work.

The Panel was advised that some employees remained on site, some employees were relocated to other sites and the remainder could not be relocated.

During the course of the day, rectification works were undertaken by the designated sub-contractor, such work put the emergency alarm system out of action across the whole site. This work was completed by 8:00 pm however an agreed secondary evacuation system was in place by 4.30 pm to allow the normal night shift to commence works at 5:30 pm.

Employee representatives submitted that there was no alternative other than to seek alternative employment due to the principal contractor being unable to provide a safe working environment which in turn constituted an immediate risk.

Management acknowledged that the system was inadequate, was of a generic nature and had not been operating to an acceptable standard and had since taken all steps to upgrade the system to an acceptable level.

Management's Association Representative submitted that the meeting of employees took an independent decision to withdraw labour, that there was no immediate risk at the time of the withdrawal of labour and that Management had not been properly involved in the process.

It is important to note that the full workforce returned to normal productive work on February 5, 2008 as part of a recommendation of the Site Safety Committee following the rectification works.

Having heard the submissions of the parties the matter was adjourned to enable the Panel to consider the matter.

As a consequence of that consideration, the Panel requested the involvement of a Worksafe Inspector to participate in a site inspection to provide an opinion of the incident.

A Conference and an inspection took place on 21 February 2008 in the company of the involved parties and as a consequence the Worksafe Inspector undertook to provide a written report relating to the incident. This report was provided to the parties during the afternoon of the 21 February 2008.

In his "Entry Report" the Inspector concluded in the following terms:

"In my opinion following my enquires of the original evacuation system appeared to be ineffective and the subsequent rectification upgrade actions of the developer for the Westfield redevelopment site highlighted the inadequate assessment of the sites requirements previously, employees and contractors should be provided a effective alarm system to ensure adequate warning and effective evacuation of the work area in the case of an emergency.

In accordance with section 75(4)(b) of The Act, I determined that there was reasonable cause for employees to be concerned for their health and safety".

The Panel acknowledges the prompt assistance of the Worksafe Inspector.

The Panel, having considered the submissions of the parties and the report of the Worksafe Inspector, accepts the view that the employees on the morning of the incident did in fact hold "reasonable concern for their health and safety". Their action did not fall within the definition of 'building industrial action' as outlined in subclauses (a), (b), (c) or (d) of Clause 36 - Definitions of the "Building and Construction Industry Improvement Act 2005".

Their action falls within subclause (g) of clause 36 which states "building industrial action does not include":-

"(g) action by an employee:

- (i) the action was based on a reasonable concern by the employee about an imminent risk to his or her health or safety; and
- (ii) the employee did not unreasonable fail to comply with a direction of his or her employer to perform other available work, whether at the same or another workplace, that was safe for the employee to perform".

Further, Section 75(4) of the Occupational Health and Safety Act referred to by the Worksafe Inspector and outlined earlier concludes by saying "an employee who, as a result of an issue arising, does not work for any period pending its resolution but will otherwise be entitled to be paid for that period continues to be entitled to be paid for that period".

The site in question is a very large site employing some 250 employees working for a number of different employers across a range of trades and non-trade activities associated with the project. What is common is that there was no emergency alarm system once work commenced around 9:45 am to put in place a new effective alarm system.

There is clear evidence that around 50 workers were relocated to another site and a large number were advised by their employer that there was no alternative employment and that they should go home. In respect to a further number of employees it is unclear what consultation may or may not have occurred. A number of employees were required to remain on site to performed tasks associated with the installation of the new alarm system. However, what is clear is the workforce was ready, willing and available to work and to be relocated.

Specifically dealing with Westfield a number of employees were required to assist in the rectification process and the remainder, following discussion with a line supervisor, were sent home.

Therefore those employees who communicated with their respective supervision and who did comply with the direction of their employer have not taken building industrial action as defined and therefore should not be deducted in any way.


BOB MERRIMAN
CHAIRMAN


PETER KNIGHT
PANEL MEMBER


BILL DAVIS
PANEL MEMBER

DATED THIS

26

DAY OF

February

2008