

VBIDP

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

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FRH GROUP PTY LTD
(APPLETON DOCK, ENTERPRIZE ROAD, DOCKLAND)

- and -

CFMEU

RE: ALLEGED CLAIM RELATING TO SCOPE OF WORKS

DECISION

014-2007

The matter first came before the Panel on 1 March 2007 when it became clear that the negotiating parties to the Agreement could not agree as to its application to the particular project at Appleton Dock. The disagreement centred around Clause 4 the Scope and Application clause which provides for an exclusion subclause.

On March 1, 2007, the Panel heard the submissions from the parties as to their understanding and background to the said clause and an inspection of the site occurred on 14 March 2007 together with a confirmation of the parties views.

In accordance with the Enterprise Agreement between the parties, the Panel exercises its role in respect to the resolution of this dispute.

The following two sub-clauses are the relevant provisions applicable to this dispute between the parties.

4. Scope & Application

- (v) Civil construction projects on which the principal major component of work is earthmoving, road construction, bridgework including road, rail and pedestrian bridges, rail track construction and associated works, water and waste water treatment facilities, non-farm dams and marine works including piling, cofferdams, wharves and piers, tunnelling, transmission lines, telecommunication towers, industrial subdivisions, all local government works, utility works, sporting grounds and car parks.

4.1 Exclusions

This Agreement shall not apply to Company employees on the following worksites:-

- (b) Industrial sub-divisions, racecourse works and road works (excepting those works done by Vic Roads) with a single contract value between \$2.1 million and \$4 million (except those subject to a contractual or site agreement as described in 4.1(a) as above) in which case, the Company shall pay site allowance as contained in Appendix C and travel allowance in Clause 24.

The Panel has considered all its material placed before it and is greatly assisted by the clarity and preciseness of the submissions.

It is the Panel's view that 4.1(b) specifically excludes three types of projects namely –

- * Industrial Sub-divisions
- * Racecourse Works
- * Road Works (except works done for Vic Roads)

The contract before the Panel falls in the range of subclause 4.1(b) being of \$3.3 million. Clearly the project is not an industrial sub-division and not a racecourse but could fall within the 3rd category that is road works and it is not works performed for Vic Roads.

The inspection clearly showed that a road namely Enterprize Road, was being extended to provide for a complete road surrounding the particular Dock. The work inspected not only required the completion of a road but bridgeworks including piling as the proposed new road extended for a short period over water hence the necessity for a bridge and the piling.

It is the Panel's view that 4.1(b) (the exclusion) refers to work that is identified as a project which is an industrial sub-division, a racecourse or road works exclusively.

On any reading of the sub-clauses and if one applies the principle that the specific overrides the general, sub-clause 4(v) is road construction or bridge work including a road and marine works including piling which covers all of the work in question. It is not only road works.

Having taken the view that 4.1(b) is road works exclusively and that 4(v) is to do with work which includes road construction, bridge work including a road and marine works including piling that sub-clause 4(v) specifically details the type of work being performed by the Company at Appleton Dock.

The Panel therefore decides that the exclusion clause does not apply.

It is clear that an argument could be developed that there is ambiguity and uncertainty as to the proper interpretation of Clause 4 and that the parties may wish to take whatever action is available to remove such ambiguity and uncertainty.

The Panel can only determine the issue based on the material before it, the inspection and its application of a common approach to the language used in the sub-clauses which leads the Panel to a decision already indicated that the exclusion clause does not apply to this particular work.


BOB MERRIMAN
CHAIRMAN

DATED THIS

15

DAY OF

March

2007