



VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

CHAIRMAN: BOB MERRIMAN

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**HALL CONSTRUCTION GROUP PTY LTD
(BUILDER - KANE CONSTRUCTIONS)**

MONASH CAMPUS - BERWICK

-and-

CFMEU

RE: ALLEGED NON PAYMENT OF WAGES

11 AUGUST 2009

051-2009

DECISION

This matter relates to an incident which occurred on Tuesday 28 July 2009 at 2.00 pm when a concrete pump hose man fell from a ladder, sustained significant injuries and was subsequently hospitalised.

On Wednesday 29 July 2009, a Union representative attended the project and following agreement with the sub-contractor manager - James Hall addressed employees at a "tool box" meeting which had been underway for a period of time with management involvement.

During the meeting it was made known that Worksafe had not been advised of the accident and that little was known relating to the details of the individual concerned.

It was subsequently established that the employee was still in hospital and Worksafe advised that it was a “notifiable” incident and as a consequence they (Worksafe) attended the project that afternoon - 29 July, 2009.

Worksafe issued an “Entry Report” which contained a range of concerns relating to the circumstances and subsequent action taken by management following the accident.

It should be noted that Worksafe had issued an “Improvement Notice” on 23 July, 2009 relating to conditions on the project.

Following the Worksafe visit of the 29 July, the same inspector attended the project on the 31 July, 2009 and once again expressed concern relating to work methodology and particularly safe work methods on the project and issued an Entry Report to that affect.

As earlier advised the Union representative submitted that his involvement in the meeting of site employees held on the morning of 29 July 2009 had been fully endorsed by the sub-contractor manager referred to above, however management subsequently changed its position and indicated that the meeting was not authorised and therefore a 4 hour deduction of pay would occur. It is apparent from documentation provided to the Panel that this decision was taken following advice from the principle contractor, although the evidence before us was that such an approach had not applied to all employees.

Having considered the submissions and written documentation provided by the parties including two Worksafe Entry Reports and an Improvement Notice, the Panel must consider whether the action of the employees on the 29 July, 2009 involving their participation in the tool box meeting (initiated by and conducted by management) constituted industrial action. It is clear from the evidence that a range of uncertainties existed which led to a significant number of questions which could not be immediately answered which required further investigation.

Based on all of the evidence presented, the Panel has been persuaded that the union representative's participation in the meeting held on the 29 July, 2009 was by agreement with sub-contractor management and that the meeting was held specifically to consider matters relating to health and safety of the workforce following a serious accident, this being so, the meeting did not constitute industrial action within the meaning of Section 38 as defined in Section 36 of the Building Construction Industry Improvement Act 2005, or of the provisions of Section 420 of the Workplace Relations Act and in addition Section 507 would likewise not have application with regard to any 4 hour deduction of pay.

A number of decisions of the ABCC going to the question of industrial motivation and constitutionally connected action support this conclusion, namely -

- McFee - Bendigo Goldfields Redevelopment
- Hooker Cockram - Deference Science and Technology Organisation
- Multiplex - Melbourne Showgrounds Redevelopment

It is clear to the Panel that the tool box meeting was held as a consequence of serious health and safety concerns arising from the accident and Worksafe involvement and that industrial motivation was not a consideration. In these circumstances the deduction of 4 hours pay did not comply with the relevant Acts.



BOB MERRIMAN
CHAIRMAN

PETER KNIGHT
PANEL MEMBER

BILL DAVIS
PANEL MEMBER

DATED THIS 11TH DAY OF AUGUST 2009