

# **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

**HANSEN YUNCKEN  
MELBOURNE UNIVERSITY  
NEUROSCIENCE PROJECT  
PARKVILLE**

**-and-**

**CFMEU**

**RE: REVIEW OF DECISION NO. 052-2009  
DATED 18 AUGUST, 2009**

**MULTI STOREY ALLOWANCE**

**2ND SEPTEMBER 2009**

## **DECISION**

**This matter relates to an application made by Hansen and Yuncken for a review of the above decision in accordance with the provisions of clause "6.0 - Decisions of the Disputes Panel" as contained in the Victorian Building Industry Disputes Panel Charter.**

**Notwithstanding the non-attendance of the Union, (who subsequently apologised) the Chairman determined that the matter should proceed as the applicant seeking the review was in attendance and therefore in a position to present such "new evidence" as to enable the Panel to proceed to a finding in the matter.**

Management provided the Panel with detailed documentation relating to building permit(s) for the construction of this 4 basement level carpark and ground floor along with a decision of the then "Western Australian Commissioner Halliwell ref. Industrial Information Bulletin Vol. 29 No. 11 - Building Trades Award 1966 - Judgement 21/11/1974.

In reviewing this matter, the Panel has also given consideration to an A.I.R.C. decision by Commissioner Palmer 987/1996 dated 31 July 1996 relied on by management. That decision dealt with a claim for the payment of multi storey allowance for a number of buildings to be linked by aerial walkways. Essentially the buildings were 4 levels and no rooftop plant rooms qualified to be seen as additional floor levels.

Another building with a void level beneath one end of the ground floor was deemed not to qualify. Consideration was also given to an enclosed toilet and shower facility in a sunken area of the ground floor in another building and it was also seen not to qualify. Hence no building was more than 4 floors.

The Palmer C. 1996 decision specifically referred to an A.I.R.C. decision made by Griffin C. No. 53 of 1983 particularly relating to employees experiencing the disabilities. The Panel has considered the Griffin C. decision which examined the clause in some detail. In that case the Commission found that there were 6 buildings, only one of which was 5 storeys or more and therefore was in receipt of the allowance, whilst 3 other buildings which were specifically linked to the 5 storey qualifying building (although not qualified in their own right) qualified by virtue of their attachment.

Griffin C. stated -

*"... this is consistent with previous decisions of the Commission where buildings of less than 5 storeys have attracted multi storey allowance if*

*connected to or integrated with a building which attracts the allowance by application of award provisions”.*

Griffin C. stated that other buildings (with height less than 5 storeys) and not linked in any way to the eligible building did not qualify for payment.

Griffin C. went on to say -

*“It is clear that the allowance is expressed to deal with disabilities experienced on a multi storey building and to provide payment for all employees on the site of that building. That award does not say that the allowance applies to all employees on a site where there are multiple buildings, even if one of those building attracts the allowance.*

*There is an established line of decisions which have extended multi storey allowance to integrated and connected buildings or to sections of sites where work clearly incidental to construction of a multi storey building has been carried-out but neither of these conditions applies across this whole project”.*

(Our emphasis)

The Halliwell C. decision that management provided was superseded because of changes made to the Federal Award in August 1979 as referred to in the Griffin C. decision when it was stated -

*“For the Unions, Mr Rothman traced the history of the multi storey allowance in the major building awards, laying particular emphasis on the changes in August 1979 when the allowance became payable, as he said, to ‘all people on the site from the time of earthworks’ “.*

Having considered the material presented, the Panel makes the following findings:-

- Building permits provided by Hansen and Yuncken reflect an actual construction value of approximately \$15 million.
- The overall building when complete was at all times known to be an 11 storey building with a project value of approximately \$90 million and the "Parkville Carpark Concept Brief" provided by management supports this contention when it stated in the Introduction that -

*"The carpark forms the base for the new Parkville Neuroscience Development to be constructed on the site in Royal Parade bounded by Genetics Lane to the north, Medical Road to the east and the Micro Biology/Pharmacy building to the south"*

and further -

*"... the project is proposed to be constructed as an early works package to the main building".*

and further -


*"The basement carpark structure will be designed to accommodate the proposed multi level building above. It must efficiently transfer the loads from the 'science' structural grid to a 'carpark' structural grid in the basement. It is necessary to transfer these loads via a transfer structure at the First Floor".*

- Clearly, if a 4 storey building which is linked to an adjacent multi storey building results in multi storey allowance being paid then a 4 storey building underneath with a further 7 storey building above would qualify

in a similar way given that they are inextricably linked. This finding would be consistent with the Griffin C. decision of July 29, 1983 and also the 1979 Award variation as quoted, that the allowance becomes payable to all persons on site from the time of commencement of earth works. This adds further weight to the Panel's earlier decision in which it is stated that the allowance is paid irrespective of whether disabilities are experienced or not.

The trigger for the payment of the multi storey allowance is whether the project involves a building which when complete is 5 storeys or more, not the actual experiencing of the disability. If the building when complete is going to be 5 storeys or more then the payment applies from the commencement of the project and includes any lesser building which is linked to or forms part of the integrated and connected building.

For all of these reasons the Panel cannot uphold the grounds for review and therefore endorses the earlier decision of the Panel.



**BOB MERRIMAN**  
**CHAIRMAN**



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



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

*DATED THIS*

**2ND**

*DAY OF*

**SEPTEMBER**

**2009**

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**-and-**

**CFMEU**

**RE: CLAIM FOR MULTI-STOREY ALLOWANCE**

**18 AUGUST 2009**

**052-2009**

## **DECISION**

This matter relates to a claim by the Union for the payment of Multi-Storey Allowance in accordance with clause 24 of the Company's EBA and as a consequence Clause 24.4 of the National Building and Construction Industry Award 2000 (NBCIA).

Following direction from the Chairman, Panel members visited the project on 22 July 2009 and consulted with the parties relating to the nature of the works.

Management advised that their works consisted of four basement levels and ground floor including provision for lifts and service, shafts etc - to the value of \$15 million. They further advised that seven additional storey levels were to be added which were currently out to tender with an approximate value between \$90 and \$100 million. They further advised that a contract was expected to be finalised in the near future and that the existing fixed crane, site accommodation and toilets etc were expected to remain in situ for the use of the successful tenderer.

The Conference was adjourned on the basis that it would proceed to a formal Panel hearing at a date to be finalised.

Following a postponement, the hearing proceeded on 14 August, 2009 and the Panel was advised that another contractor had been awarded the ongoing works.

Management advised that the initial works had been completed on 7 August, 2009.

The Union submitted that the overall works constituted a single project and the provisions of clause 24.4 of the NBCIA clearly supported the argument that the recently completed in-ground works were subject to the payment of multi-storey allowance.

Relevant sub-clauses of the multi-storey Award provisions are: -

24.4.2(a) For the purposes of this award, a multi-storey building is a building which will, when complete, consist of five or more storey levels. **Complete** means the building is fully functional and all work which was part of the principal contract complete.

**24.4.2(b) For the purposes of this clause, a storey level means structurally completed floors, walls, pillars or columns, and ceiling (not being false ceilings) of a building, and shall include basement levels and mezzanine or similar levels (but excluding half floors such as toilet blocks or store rooms located between floors.)**

The submission of the union was that the project met the Award criteria in that the overall structure constituted a single building and the client / developer had chosen to “micro manage” by splitting the principal contract into two. They (the Union) submitted that the end result is clearly to achieve a complete building consisting of eleven storeys including basement parking. In these circumstances the Union submitted that employees engaged on the initial works should be paid multi-storey allowance whilst engaged on the project.

Management on the other hand submitted that their works constituted a single project which did not attract the allowance or disabilities comprehended by the multi-storey provisions and that the claim should be made on the successful tenderer whose future works could qualify for the payment of an allowance as defined in the multi-storey allowance provisions.

The Panel has carefully considered the respective submissions of the parties and makes the following observations -

- It is clear that the totality of the works will result in a single structure.
- It is clear that the client / developer has chosen on this occasion to engage separate principal contractors to construct parts of a whole.
- It is apparent that the two elements of the works are continuous and that some of the existing infrastructure will be utilised going forward.
- The multi-storey allowance provisions provide that if a building is to consist of 5 or more storey levels when complete then the allowance is



payable from the commencement of the project, irrespective of whether disabilities are experienced or not.

In considering whether the whole of the works constitute a single project, the Panel refers to a decision of Deputy President Ives in matter (C2006/2767) dated 21 September 2006.

When considering what constitutes a project, DP Ives said:-

“... in my view a project is an enterprise or undertaking that is ‘carefully planned’ and has a clearly established entity or entities that exercise control over its development.”

Having considered all of the evidence presented, the Panel has been persuaded to the view that all of the works do in fact constitute a single project and are consistent with the view put forward by DP Ives. In these circumstances the Panel finds that the multi-storey allowance (currently 43 cents per hour) should apply from the commencement of works on the overall project which includes the work of both principal contractors, namely Hansen & Yuncken and Multiplex.

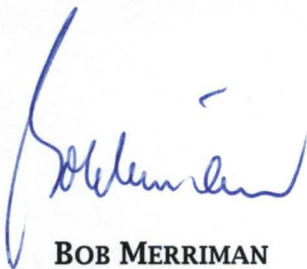
The Panel members have extensive experience in the industry, however they hold a different view to the submissions made by the Masters Builders Association of Victoria (MBAV). It is clear that the MBAV’s understanding is genuinely held and firmly believed.

The particular clause has been in existence for many many years and has had a very simple application i.e. if a building project when completed is to consist of five or more storey levels, then from day one of the project, the allowance is paid. This is despite the fact that the disabilities may not occur for some months until the building reaches five storeys. Equally, if a sub-

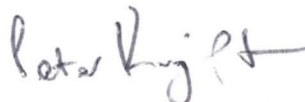
contractor performs a task at level three and four of a building which when complete is five storeys or more, those employees may not experience the disabilities however, they are paid the allowance because the building when complete will be five storeys or more.

The Panel has not known for the allowance to be applied in the way contended by the MBAV.

Admittedly it is most unusual for a single building to have two consecutive principal contracts and if there had been a single principal contract there would be no argument as to the payment of the allowance. However the test is the number of storey levels when the building is complete and fully functional.



**BOB MERRIMAN**  
**CHAIRMAN**



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



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

DATED THIS

18

DAY OF

August

2009