

*This decision
was incomplete
and amended*

VBIDP

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

CHAIRMAN: BOB MERRIMAN

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*Bob Merriman
23/1/08
(after 11.12.2007)*

**KANE CONSTRUCTIONS PTY LTD
VARIOUS PROJECTS**

CFMEU

**RE: ALLEGED BREACH OF CHRISTMAS
CLOSEDOWN PROVISIONS OF EBA**

DECISION

Friday, 21 December 2007

The Panel was notified of a dispute on 20 December 2007 by the CFMEU (the Union) alleging that Kane Constructions Pty Ltd (the Employer) were proposing to work during the Christmas close down, contrary to their EBA.

The parties were notified on 20 December 2007 of a hearing set down for 11:00 am on Friday 21 December 2007. The Panel and the Union were then advised by the Employer and the MBAV (Masters Builders Association of Victoria) that Kane employees were not working during the Christmas close down and therefore a dispute did not exist.

Despite this advice, the Union requested that the matter be heard and this was confirmed to all parties early Friday morning for a hearing at 11:00 am as earlier planned.


No: 1266 and that plastering, refurbishing and finishing work would occur commencing on 2 January and concluding on the 13 January 2008.

The Union submitted that if this occurred then the Employer would have employees working in a range of duties including supervision, first aid, traffic control, induction and labouring. This position is consistent with the Employer's letter to the Union dated 1 November 2007 wherein it is stated that Kane support staff would be required.

If these services were not provided by the Employer then the Union further submitted that the Employer would be in breach of their EBA as to Clause 16 and Appendix H together with not fulfilling their obligations under the Occupational Health & Safety Act and the Code of Practice.

The Panel has considered the material put before it and finds that if the Union's contention as outlined in their submission does in fact occur, then the Employer either is not fulfilling his obligation under Clause 36 or if work is performed by sub-contractors without the Employer's support staff then the EBA and other Acts and legal obligations will not be fulfilled.


Bob Merriman
Chairman


Bill Davis
Panel Member


Peter Knight
Panel Member

Date this

21

day of

December 2007

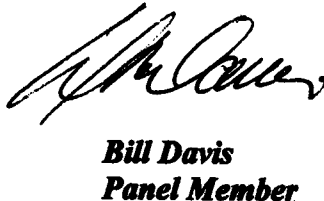
At the hearing, which was not attended by the Employer or the MBAV, the Union detailed various sites which were of concern and then specifically alleged that Kane Constructions were going to operate at the Crown Casino Site Job No: 1266 and that plastering, refurbishing and finishing work would occur commencing on 2 January and concluding on the 13 January 2008.

The Union submitted that if this occurred then the Employer would have employees working in a range of duties including supervision, first aid, traffic control, induction and labouring. This position is consistent with the Employer's letter to the Union dated 1 November 2007 wherein it is stated that Kane support staff would be required.

If these services were not provided by the Employer then the Union further submitted that the Employer would be in breach of their EBA as to Clause 16 and Appendix H together with not fulfilling their obligations under the Occupational Health & Safety Act and the Code of Practice.

The Panel has considered the material put before it and finds that if the Union's contention as outlined in their submission does in fact occur, then the Employer either is not fulfilling his obligation under Clause 36 or if work is performed by sub-contractors without the Employer's support staff then the EBA and other Acts and legal obligations will not be fulfilled.


Bob Merriman
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Originally Dated

21 day of December 2007