

VBIDP

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

CHAIRMAN: BOB MERRIMAN
CONSTRUCTION INDUSTRY HOUSE
80 DRUMMOND STREET, CARLTON 3053
(enter via Queensberry Street)
TEL: (03) 9639 1322 FAX: (03) 9639 2490

DECISION

017-2006

L.U. SIMON BUILDERS PTY LTD

ALL UNIONS

SWANSTON & FRANKLIN STREET – CITY PROJECT

THURSDAY 16TH FEBRUARY 2006

This dispute relates to an incident which occurred on Monday February 6th, 2006, in the early AM when a screwdriver fell from an upper level of one of a two tower project into an open area of level 2

This was one of three recent incidents.

On becoming aware of the incident the tower was isolated by Mgt. and the Safety Committee and an investigation was undertaken. At approximately 11am a mass meeting of both towers occurred and work ceased.

No claim for payment was made for Monday February 6th 2006.

In addressing the claim for payment on Tuesday, February 7, 2006 - a period of 2.1/2 hours between 7am and 9.30am - the Unions strongly contended that the workers actions had, at all times been consistent with the requirements of Clause 16 - "Procedure for Dealing With Safety Issues or Incidents"

In demonstrating this fact the unions took the Panel through the provisions of 16.4.1 (in part) which relate to substantiation for a cessation of work when confronted by an immediate risk.

The Unions stated that the incident necessitated the cessation of work and as a consequence requested the attendance of a WorkSafe Inspector to attend the project in accordance with Clause 16.5 of the procedures which states:

"16.5 Inspector may be requested to attend workplace

16.5.1 If an issue is not resolved under clause 16.3, within a reasonable time, or an issue is the subject of a direction under 16.4 that work is to cease, any of the parties attempting to resolve the issue may ask the WorkSafe Victoria to arrange for an inspector to attend at the workplace as soon as practicable to enquire into the issue."

In taking this course of action the Unions stated that the provisions of sub-clause 16.3 - "Procedures for Resolving Issues" had also been complied with to the fullest extent. Those provisions state:

"16.3.2 The Resolution of the relevant issue must take into account any of the following factors that may be relevant-

- (a) whether the hazard or risk can be isolated;**
- (b) the number and location of Employees affected by it;**
- (c) whether appropriate temporary measures are possible or desirable;**
- (d) whether environmental monitoring is desirable;**
- (e) the time that may elapse before the hazard or risk is permanently corrected;**
- (f) who is responsible for performing and overseeing the removal of the hazard or risk."**

As a consequence of the Work Safe Inspectors' involvement between 7.45am and 9.45am on Tuesday February 7th, 2006, a range of initiatives were put in place which included a process of re-induction of all workers relating to the implementation and maintenance of the highest possible health and safety standards on the project.

For the reasons stated the Unions submitted that workers should be paid for the period between 7am and 9.30am on the 7th of February 2006, whilst necessary procedures were being put in place.

Mgt. submitted that whilst all necessary steps had been taken to ensure the safety of workers - primarily the isolation of the affected area, which was then followed by intensive consultation including the involvement of WorkSafe - the fact remains that there was no agreement that all workers from both towers should withdraw from productive work.

They, (Mgt.) stated that the majority of workers were not at risk, given their physical location on other areas of the project.

In addressing this matter the Panel has give consideration to the comprehensive submissions put before it and makes the following observations-

- The incident which occurred was of a serous nature and warranted the isolation of the work area involved
- The failure to relocate workers to other agreed safe work areas on the project is of concern having regard for 16.4.2 of the procedures which state-

"16.4.2 During any period for which work has ceased in accordance with such a direction, the Company may assign any Employees whose work is affected to suitable alternative work."

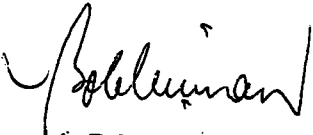
- At 7am on Tuesday February the 7th 2006 management had every right under 16.4.2 to assign employees to work in suitable alternative work areas. This did not occur because workers in non-affected areas had not returned to work.

- The situation therefore followed the procedure up and until a total work stoppage on both towers and the total work stoppage inhibited a return to productive work or the allocation of alternative work.

The Panel concludes that a significant number of workers were not at risk given their work location on the project Eg: Internal WorkForce and those working under cover.
The Panel further directs that those working in areas open to risk as determined by the WorkSafe report of the 7th of February 2006 issued by Dermot John Moody should be paid for the period in contention. However payment for other workers cannot be substantiated.

In implementing this decision the parties are directed to confer for the purpose of establishing accurate entitlements in this regard.

Should the parties require further Panel involvement then a request should be made to this end.


R.F. Merriman
Chairman

 
W. R. Davis P. W. Knight

Dated this 16th day of February 2006