

VBIDP

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

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018-2006

DECISION

BECON CONSTRUCTIONS PTY LTD
PHILLIP MORRIS PLANT PROJECT
EBDEN STREET MOORABBIN

ALL UNIONS

CLAIM FOR SITE ALLOWANCE AND DEMOLITION ALLOWANCE

Friday 24th February 2006

Following a request by the Unions, Panel members visited the project on January 20th, 2006 and following a conference viewed the works. On January 31st, 2006 a hearing was adjourned to February 7th 2006 at which time submissions were heard on both claims. At that time the Chairman advised those present that the claim for an increased site allowance could not be sustained based on the current value of the project, however should the project value be increased then the rights of the Unions were reserved with regard to reopening the matter.

A further hearing occurred on February 22nd 2006.

This hearing centred on the claim for the payment of the demolition allowance to all employees on the project and the Unions claim can be best summarized as follows –

- Employees working in conjunction with the demolition contractor making safe with associated works i.e. plumbers, electricians and carpenters, have been in receipt of the allowance.

- Essentially, demolition works have been on going in some form continuously during the life of the project.
- All site employees have been interacting with the demolition contractor in an open works area under the one roof (an area of 100 metres by 70 metres) and therefore should also be in receipt of the allowance.
- That the nature of the works conformed with the guidelines for payment contained in a decision made by Senior Deputy President Williams, handed down on May 2nd, 2001 which dealt with the interpretation of the "Demolition Works" provision of Clause 10..... Specific Allowances... of the Collective Bargaining Agreement 1999-2002.

In their submission, Mgt. acknowledged that the payment had been made to specific employees working in conjunction with the demolition contractor, however they (Mgt.) strongly rebutted the Union claim for the payment to be extended to all employees on the project. Their submission can be summarized in the following terms-

- The demolition works only have a contract value of \$165,000 or 4% of a total contract value of \$4.9 million.
- As demolition works are completed in a defined area, demolition work commences in another defined area and construction work then commences in the "cleaned area".
- At no stage are building trades employees directed into demolition areas other than those specifically interacting who are already in receipt of the allowance which has since ceased.
- The claim should not be sustained as it fails to meet the elements that must be present before the allowance becomes payable under the terms of the relevant Collective Bargaining Agreement.

The Panel has carefully considered the claim and concludes that the claim must succeed or fail having regard for the provisions (earlier referred to) of the Collective Bargaining Agreement which state in part –

- "The employee must be performing work either in connection with demolition work or on demolition work,
- The employee must be performing that work alongside the employees of a demolition contractor or contractors, and

- The work must be being performed as or as part of major demolition work”

In considering these provisions the Panel refers to S.D.P. Williams Decision at (22) which states in part -

“...The circumstances in which the allowance becomes payable arise when an employee of an employer party to the agreement is required by that employer to perform such work alongside and with employees of a demolition contractor which is conducting major demolition works on the same site as the employer so that the employee in question is liable to be subject to the same disabilities as the employees of the demolition contractor.”

Having considered this interpretation the Panel concludes that taking everything into consideration including the inspection the demolition works under consideration cannot be seen as “major” and that the employees in contention are not subject to the same disabilities as the employees of the demolition contractor or performing work either in conjunction with demolition or on demolition.

In addition the Panel has also considered (24) of S.D.P Williams decision which states in part-

“...It may well be that the conditions applying on a construction site where demolition works are taking place justify the payment of a similar or equivalent allowance to all employees on the site because of the nature of the conditions on the site and the extraordinary or unusual disabilities being suffered by all employees on the site. But these are not situations that are covered by the sub-clause. They are situations that require (and often receive) a commonsense application of fairness.”

On this point the Panel concludes that no extra-ordinary or unusual disabilities were revealed either by way of submission or during the course of the site inspection. In these circumstances the commonsense application of fairness is not required.

In all the circumstances the claim for payment of the demolition allowance for those employees not in receipt of such payment cannot be upheld cannot be upheld.


Bob Merriman W. R. Davis P. W. Knight

Chairman

Dated this 24th day of February, 2006