

# **VBIDP**

## **VICTORIAN BUILDING INDUSTRY DISPUTES PANEL**

**CHAIRMAN: BOB MERRIMAN**  
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### **DECISION**

**024-2006**

**THIESS**  
**SYNCHROTRON PROJECT**  
**800 BLACKBURN ROAD**  
**CLAYTON**  
**ALL UNIONS**  
**ALLEGED OCCUPATIONAL HEALTH AND SAFETY MATTERS**  
**THURSDAY 16<sup>TH</sup> FEBRUARY 2006**

On January 24, 2006, the Site Safety Committee was conducting a safety walk on the project which led to the discovery of an unmanned open door to a secure area which constituted a breach of a J.S.A (Job Safety Analysis).

Union O.H & S representatives submitted that a serious breach of procedure had occurred and that Mgt. had declined to participate in taking immediate steps to eliminate the risk.

They (the Unions) stated that –

- The existing J.S.A. requirements were ignored by Mgt.
- Mgt. declined to remove personnel and isolate the area
- Non authorised personnel were working in the restricted area
- Mgt. made no attempt to prevent entry to the unauthorised area
- The unprotected work area constituted an immediate risk to all employees on the project, given similar work areas existed throughout the building

It was contended by the Unions that given the circumstances there was no alternative but to direct employee's to the sheds for induction into the new J.S.A. Mgt. claimed to have introduced, which was not produced.

The Occupational Health & Safety Committee and Mgt. subsequently did develop an acceptable J.S.A. which would ensure that all employees were protected from what they saw to be an immediate risk.

Following the development of the new J.S.A. and communication of its content with employees a return to work took place at 1.35pm.

Mgt. by way of correspondence and verbally, submitted that the incident did not constitute an immediate risk to the employees and that the assistance of WorkSafe had not been sought to adjudicate on the matter. In addition, they (Mgt.) noted that the stoppage of (1.1/2 hours) was unauthorised and of an industrial nature which contravened the Workplace Relations Act. Also that consultation had been brief, incomplete and had been overtaken by direct action.

In these circumstances they rejected the claim for payment.

The Panel having considered all of the evidence put by the parties determines that the action of Mgt. in refusing on a number of occasions to act and rectify a situation which was considered by the O.H.S Committee to be in breach of existing J.S.A's, constituted a real risk to the site workforce given the number of work locations with similar hazardous work areas.

Having been advised that a "New" J.S.A. had been developed for the work in question the workforce retired to the amenities area to await induction into the "New" procedure.

On further investigation no such J.S.A. was available at that time.

The O.H.S. Committee was then requested to and did assist Mgt. with the development of a new J.S.A. for the work in question.

Offers by the O.H.S. Committee to send employees back into the area if sections were isolated was determined by Mgt. as not necessary as the new procedure would be ready to communicate to the workforce by the completion of the meal break.

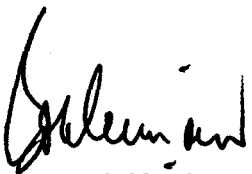
This project falls within the scope of the Building and Construction Industry Improvement Act 2005 section 36 states that it is not "building industry action" if –

"(g) action by an employee if:

- (i) the action was based on a reasonable concern by the employee about an imminent risk to his or her health or safety; and
- (ii) the employee did not unreasonably fail to comply with a direction of his or her employer to perform other available work, whether at the same or another workplace, that was safe for the employee to perform."

The Panel finds that given the existence of other similar doors and similar hazardous areas throughout the building then the workforce did have reasonable concerns regarding an imminent risk and did not fail to comply with any direction to perform other work as no direction was given in this matter.

The Panel finds therefore that the workforce should not be denied wages and conditions normally earned for the period of time in question.



Bob Merriman

Chairman



W. R. Davis



P. W. Knight

Dated this

23<sup>rd</sup>

day of February 2006