

VBIDP

VICTORIAN BUILDING INDUSTRY DISPUTES PANEL

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DECISION

060-2006

**BECTON
ESPLANADE APARTMENTS ST KILDA**

ALL UNIONS

ISSUE RE OCCUPATIONAL HEALTH AND SAFETY

WEDNESDAY 26TH APRIL 2006

During the course of hearings on the 11th and 12th of April, 2006 the Panel was advised of an incident which occurred on March 27th, 2006 when a concrete sawing operative cut through an electrical cable in a concrete slab resulting in a loss of power to the site.

As a consequence employees were relocated and a Worksafe Inspector attended the site. Handwritten directions (in accordance with Section 120 Of the Occupational Health & Safety Act 2004) were provided to Management on the evening of 27th March with an Entry Report issued at 8:24am on 28th March. Subsequently a Prohibition Notice was also issued.

A further concern was that no Job Safety Analysis had been developed for the task that caused the incident.

On the morning of 28th March a period of 1 ½ hours loss of production time was incurred whilst a site inspection was undertaken by the Safety Committee together with the electricians performing the necessary duties to obtain an Electrical Compliance Certificate. Discussions with Management were also occurring.

Apparently no written Worksafe documentation was provided to the Safety Committee before 8:00am and additional concerns were raised relating to non-complying power boards and tagging.

In determining this matter the Panel refers to
Clause 16. PROCEDURE FOR DEALING WITH SAFETY ISSUES OR INCIDENTS
of the parties EBA which states in part -

*" This procedure shall be followed in good faith and without unreasonable delay.
If an issue is not settled by observance of this procedure, or if the procedure is
disregarded by either party, the matter may be submitted to the Building Industry Disputes
Panel or AIRC for resolution.*

*Nothing in this Agreement shall take precedence over the Occupational Health & Safety
Act 2004 (as amended)."*

The Worksafe Entry Report issued by Inspector De Graves states as follows;

*"Section 115(2) of the Occupational Health and Safety Act of 2004 (OHSA 2004);
Places obligations on the person to whom a prohibition or improvements notice(s)
is issued.*

*If that person is an employee, he or she must give a copy of the notice to the
employer. Otherwise, and for an employer given a copy of a notice issued to
an employee, the person must:*

- bring the notice to the attention of all persons whose work is affected by the notice,*
- give a copy to each Health and Safety representative who represents employees
whose work is affected by the notice; and*
- display a copy of the notice in a prominent place at or near the workplace or part of
the workplace where the affected work is being performed...*

*Concerns were raised by the above elected health and safety representative's (H.S.R's)
that they were not availed copies of the entry report and notices in a "timely" manner,
while I have not confirmed the HSR's concerns the above section of the OHSA 2004 is
mandatory and not discretionary and MUST be adhered to. "*

On this occasion the requirements as outlined above of the Occupational Health and
Safety Act (based on the submissions of the parties) have not been fulfilled by
Management and, given the serious nature of the incident which occurred on March 27th,
2006 employees were entitled to be fully and expertly informed to allay their fears as to
imminent risk, remedial work which had been undertaken, whether the site was safe to
work and process which would be undertaken to prevent any reoccurrence in the future.

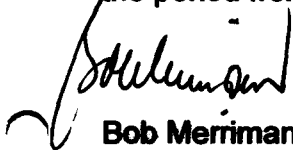
The Panel further notes that the direction issued by the Inspector Raymant late on the
28th March was a direction issued under section 120 of the OH&S Act 2004. Section 120
states as follows;

" 120 Power to give direction

(1) An inspector may give a direction (either orally or in writing) to a person at a workplace if the inspector reasonably believes that it is necessary to do so because of an immediate risk to the health or safety of any person."

The Panel concludes that on the material before it and the three reports from OH&S Inspectors that the employees had reasonable concern as to their imminent risk.

Therefore the employees were not involved in " building Industrial action " as defined by Section 36 of the Building and Construction Industry Improvements Act 2005 and hence the period from start up to 8:30am on March 28th 2006 should be treated as time worked.


Bob Merriman

Chairman


W. R. Davis


P. W. Knight

Dated this

26 day of March 2006