

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

MONASH MEDICAL CENTRE
CENTRE ROAD, EAST BENTLEIGH

KANE CONSTRUCTIONS PTY LTD

- and -

CFMEU

OCCUPATIONAL HEALTH & SAFETY
REPRESENTATIVE SUSPENDED

Thursday, 17 August 2006

108-2006

DECISION

At a hearing on August 15, 2006 notified by the CFMEU (the Union) it sought a finding by the Panel that, in accordance with Clause 10 – Disputes Resolution Procedure of the EBA with Kane Constructions Pty Ltd, that Mr Crawford be returned to “status quo” that being off site suspended on pay.

The MBAV on behalf of Kane Constructions Pty Ltd (the Company) argued that the dismissal of Mr Crawford, which occurred at 9:50 am on August 9, 2006, was in accordance with Clause 18.6.3 of the EBA and therefore concluded the matter, subject to any rights that may exist under the Workplace Relations Act before the Australian Industrial Relations Commission.

The key sequence of events is as follows:-

1. On August 1, 2006, the Company gave a letter to Mr Crawford outlining the issues of concern.
2. On August 4, 2006, the Company and the Union Organiser met and discussed various issues as to the process in this matter.
3. On August 7, 2006, the Company suspended Mr. Crawford on full pay.

4. On August 8, 2006, the Union notified the Panel of a dispute. Also on August 8, 2006, the Union wrote to the Company and amongst other things indicated that Mr Crawford would be returning to work.
5. On August 9, 2006, Mr Crawford returned to site and was dismissed at around 9:50 am and this dismissal was confirmed with reasons in a letter dated August 10, 2006. Also on August 9, 2006, the Panel representatives visited the site and the conciliation process did not resolve the issues.
6. In accordance with the Panel Charter, referred to in Clause 10 of the EBA, the matter was listed for hearing on August 11, 2006.
7. The Panel Chairperson received correspondence from the Company and the Union and various discussions followed wherein the hearing was adjourned until August 15, 2006.

The Charter under which the Panel is established and which is contained within the EBA requires the Panel to determine this matter.

The Panel has given serious consideration to what is in effect the proper application of Clause 10.2 in determining the finding of the "status quo" in this matter.

Clause 10.2(b) is the relevant sub-clause given that the issue at hand, was raised by the Company to the employee. The employee then involved his representative. Sub-clause 10.2(c) is then applicable i.e. 'the pre dispute "status quo" shall prevail while the matter is being dealt with in accordance with this procedure'.

In the Panel's view this can only mean that the "status quo" was the situation that prevailed at the time the Company raised its issues with Mr Crawford. At that time Mr Crawford was working on the site as an Occupational Health & Safety Employee Representative.

Therefore, in the Panel's view, it would be incorrect given the facts of this matter, to make a finding that the "status quo" was at a time when Mr Crawford was off site suspended on pay.

The Union's position can only be correct if the Company informed Mr Crawford on August 1, 2006 that he was being suspended on full pay to enable, a number of issues to be investigated. This did not occur as Mr Crawford was not suspended until August 7, 2006.

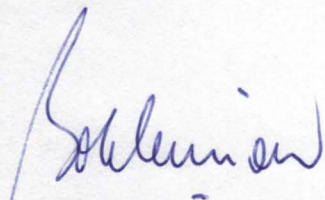
The Panel acknowledges that the application sought in this matter was a concession with a view of attempting to move the matter forward in a productive and conciliatory manner, however, given that this approach was not acceptable to the Company, the Panel is required to determine the application.

The Panel therefore, confirms its finding that the "status quo" was the position pertaining on August 1, 2006 when the matters were first raised with Mr Crawford, that is, an Occupational Health & Safety representative working on site.


The "status quo" was disturbed when the Company removed Mr Crawford from site on full pay on August 7, 2006. It could be concluded that the matter was attempted to be returned to its "status quo" when the Union in its letter of August 8, 2006 advised that Mr Crawford would be returning to work on the site at commencement time on August 9, 2006.

In our view, Mr Crawford's return to work on August 9, 2006 was a return to the "status quo". This return to work led to his dismissal pursuant to Clause 18.6.3.

The action by the Company on the morning of August 9, 2006 is not a matter for the Panel under its Charter. The Panel rejects the finding sought by the Union in this matter for the reasons outlined above.



BOB MERRIMAN
CHAIRMAN



W. R. DAVIS



P. W. KNIGHT

DATED THIS

DAY OF

2006