

Road Safety Bulletin



Principle Contractor Found Legally Responsible for Subcontractors Failures

Inspector Christensen v Lend Lease Engineering Pty Limited (formerly Abigroup Contractors Pty Limited) [2014] NSWIRComm 42.

Background

On 22 August 2014 the Industrial Court of NSW handed down a decision that reaffirms that a principle contractor has legal obligations to ensure that its subcontractors comply with relevant safety laws. Failing to meet these obligations makes the principle contractor liable at law for incidents involving the principles subcontractors.

At the time of the incident (fatality & injuries) Lend Lease (previously known as Abigroup) was the nominated principle contractor on a rail construction site utilising a number of subcontractors. Boom Logistics was engaged to provide mobile crane hire on site whilst Taylor Railtrack, MVM Rail and GTE provided personnel and expertise within several roles on the project.

During the lift of a large and heavy rail panel a number of unforeseen issues arose which prevented the work being completed to plan. During the subsequent discussions on how to rectify the problems a number of supervisors and labourers moved onto the panel to inspect and work on it. During the inspection a line came loose and stuck the workers causing one fatality and serious injuries to four others.

The Prosecution Allegations

The defendant (Lend Lease) failed to provide and maintain a safe system of work in relation to the tasks of lifting and installing rail panels, in that it failed to:

- ensure that there was an adequate system of communication in place between the subcontractors it had engaged at the site
- ensure that its subcontractors maintained and enforced a method of work which required that all persons working in the vicinity of a crane be clear of the range in which they could be struck by a load
- ensure that the workers did not access or walk on a load that was still under weight and
- ensure that its subcontractors confirmed that a rail panel was not under-weight before allowing and/or instructing workers to perform work on a panel.

Comments from the Court on Lend Lease Responsibilities

“Whilst I accept that other entities, in particular Boom Logistics, contributed to the detriment to safety which arose at the site on the date of the incident, those considerations (which will be taken into account in favour of the defendant) must be counterbalanced against the fact that Lend Lease was the principal contractor on the site.

Whilst it was permitted to subcontract construction work, it (Lend Lease) remained fully responsible for carrying out the construction activities specified in its contract with Australian Rail Track Corporation and for all safety issues at the site, had control over all aspects of the execution of its subcontractor's activities and was obliged to ensure all subcontractors complied with their obligations under the Act”.

Author Notes: This case highlights the importance of principle contractors actively managing their sub-contractors.

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