



UNPROCEDURAL ACTION USE OF NAECI PROCEDURES

Introduction

Unprocedural action is damaging to projects, costly for clients, contractors and NAECI employees. Every effort needs to be made to avoid it and when it occurs, a speedy resolution of the cause needs to be found.

In most cases unprocedural action is easily identified and accepted by both trades unions and employers as such. Access to NAECI procedures for any recovery of monies lost by those taking part is prohibited by the NAECI.

There have been occasions however where the parties do not agree with each other that the failure to work as required was for the reason of unofficial industrial action i.e. unprocedural action. This guidance is issued to clarify how such situations should be dealt with.

Guidance

- In exceptional circumstances, where there is a disagreement about access to NAECI procedures following a failure to work as required, the trades unions can bring a claim to get a determination as to whether or not the reason was industrial action or a legitimate refusal to work.
- In the first instance the trades unions should submit their application to the Executive Chairman who will consult the principals of the NJC Executive Committee for a decision on whether or not the claim can be brought.
- Should it be allowed to go forward, and is successful, then the substantive claim can be taken through the NAECI procedures.

To date where there has been a disagreement, it has been relative to health and safety issues where it has been alleged that to work as required would be unsafe.

- Where there is an identified safety risk the impact is normally restricted to the immediate place of work and if it is thought necessary to mitigate the risk by refusing to attend work, having regard for Section 3 of the NJC Guide to Health, Safety & Welfare; then that course of action would only involve those employees directly affected. To be clear, other employees of the same or other companies not directly affected should continue to work as normal.
- In reaching a decision Panels will rigidly follow the guidance currently in Section 3 of the NJC Guide to Health, Safety & Welfare; Cessation of Work on Health and Safety Grounds. (Attached).

3: CESSATION OF WORK ON HEALTH AND SAFETY GROUNDS

- (a) If individuals are exposed to **an imminent risk of serious personal injury** (see NOTE below) or their work is generating such risk for others, they can and shall stop carrying out the work that gives rise to it until such time as the risk is no longer imminent and serious.

NOTE:

'Imminent' means a risk that is immediate ie unless the work stops now people are being put at serious risk.

'Serious' means something that could reasonably be expected to cause death or a major injury requiring urgent hospital treatment, or involves critical health risks such as direct personal exposure to damaged asbestos insulation.

- (b) Individuals who stop carrying out any activity genuinely exposing them or others to an imminent risk of serious personal injury will not be liable to any disciplinary action as a result.
- (c) If an individual stops an activity because he has a reasonable belief that it poses serious and imminent danger, he must report the matter to his supervisor or manager without delay as a matter of urgency and remain on site in a safe place.
- (d) If an individual reports an imminent risk of serious personal injury the employer will investigate and resolve the matter without delay as a matter of urgency.
- (e) If an individual encounters risk that does not present an imminent risk of serious personal injury, he should not stop work but take appropriate precautions and report the matter to his supervisor or other appropriate manager which should be dealt with in accordance with established procedures.