HSE MEETING 11TH OCTOBER 2012

HEALTH & SAFETY IN DOCKS

(REPEAL OF DOCKS REGULATIONS)

Jane Willis HSE (Chair)

Helen Smith HSE

Stephen Williams HSE

Vincent Joyce HSE

Hugh Robertson TUC & HSE Board Member

Andy Green Unite

Richard Steele PSS

**Contact VJ re inaccesible documents**

The meeting commenced with Jane Williams (JW) recapping on the current position, being that the HSE board were not minded to repeal Docks Regulations at the present time as there were concerns that work on its replacement was incomplete. JW stated that Docks Regulations were out of date and had been superceded by other regulations, and that this meeting had been called in order that a way forward could be found so that the HSE board could be presented with proposals at its next meeting in December.

We were reminded that the HSE were instructed to reduce regulation by 1/3 as part of the Governments ‘Red Tape Challenge’ and that the final decision to repeal Docks Regulations lay with the minister.

We argued that the repeal would create a number of issues for employers and the industry which hadn’t been fully considered. Regulation 11 (1) allows dockworkers to drive and operate machinery being imported/exported without specific training as all that is required under Docks Regulations was authorisation from the employer, without this regulation the Road Traffic Act (RTA) would apply and all such imports/exports would cease unless an individual held the appropriate full licence.

Stephen Williams (SW) stated that this particular issue could be dealt with by issuing guidance, he believed that all the issues which would arise from the repeal could be resolved by issuing guidance which would lay down good practice, and that he would instruct his inspectors to use this as the industry standard and expec t employers to follow it.

We stated that good practice is only followed by good employers, in addition ‘expecting’ employers to adopt these standards is far weaker, the ACoP compels employers to adopt the standards as it is an absolute duty, you shall, you must, you will. I argued that guidance was extremely weak and that employers were not explicitly required to follow any guidance SW stated that he had prosecuted using guidance, I challenged SW on this and reminded him that he would have to prosecute under the HASAWA and Regulation, not guidance alone.

We argued that SW was wrong and that it was more likely to have been used as supportive evidence. Hugh Robertson (HR) reminded all present that the ACoP held special legal status as employer had to show that they had met the requirements of the ACoP or exceeded it, and that the guidance had no special status.

We asked whether all employers were members of PSS and whether members of PSS were compelled to adopt the PSS guidance, Richard Steele (RS) responded that not all employers were members and that there was no obligation on members to follow their guidance.

We raised with HSE the growing use of agency workers and the increase in the number of agencies supplying labour to the port industry and that these employers were not inclined to adopt any form of guidance and that only the ACoP which had specific requirements and the strength to compel these company’s to act would suffice to keep all workers in the industry safe.

We argued that the ACoP was accesible and was regularly used by safety reps and workers in the docks to influence health and safety on the ground. In addition that any move to guidance would lead to a fragmentation of the advice and support which the ACoP provides and will make it far harder for our members to act.

SW said that the HSE would draw up a signpost document to enable workers in the docks to find the specific guidance they may need. We argued that the current ACoP provides all the information needed in a single document, and that fragmenting it would be a backwards step and make the docks a more dangerous place.

SW said that he wanted to see the Dock industry mirror the construction industry, as they had all come together and agreed to work together on health and safety. He was particularly impressed with certain companies who had set themselves a target of no fatalities and no serious injuries. We asked SW to name those companies who had not set themselves this target?

Hugh Robertson stated that while the Lofstedt Review identified Docks Regulations as being out of date, the review did not identify the ACOP as being out of date.

Stephen Williams (SW) advised the meeting that the PSS guidance was around 50% complete and that the majority of this was badged by the HSE, that which was not was because it exceeded the standards expected.

We argued that the Approved Code of Practice (ACoP) was still current and had a great deal of valuable information and instruction. That this also carried legal weight and was regularly used in the workplace by our members to remind employers of their legal duties. When the ACoP was used by safety reps and our members in this way, they were able to exert real influence on health and safety in the docks. If the ACoP were to be lost and replaced with guidance, this would fatally undermine the ability to exert this influence in the workplace and health and safety would sharply deteriorate. The guidance route did not have the strength our members needed, only the ACoP was strong enough to empowers them to challenge their employers and prevent bad practice.

In response to a direct to RS of PSS regarding their view of the ACOP, the response was vague. PSS stated they were OK with the ACoP but it was legalistic and out of date in some areas. PSS felt that the guidance route would deal with this matter and could be developed further to provide real guidance for the whole industry (they would not be drawn into making a statement on keeping the ACoP). We said that PSS had undertaken some good work and that its work had a place but only with the ACOP still in place, without it then it was not strong enough to be of use to our members.

The commitment of PSS to improving health and safety was questioned after a senior figure amongst the port employers attempted to undermine the review process by trying to block AG from attending the review meeting, and that this indicated that PSS were not fully ‘on board’ with health and safety as there actions sent out a different message

PSS senior member refusing time off to attend the meeting

HR reminded everyone that there are central pillars to good Health &Safety, and from the workers point of view they need the ACOP to empower them, to challenge without fear the practices in the workplace, he said that the Approved Code of Practice (ACOP) could sit beneath another set of regulations such as the Management Regulations.

SW gave three options which could be considered by HSE

1. Retain the ACOP
2. Have a Code of Practice (not approved) and the PSS guidance
3. PSS guidance alone with a signpost document

We have stated that Unite will not support any removal of the ACOP and will not support a move towards a guidance only situation. We reminded SW that the HSE strategies and programmes only looked a few years into the future and that the decisions made about docks health and safety will have implications for decades and this is what we must all consider and accept. Removing the ACoP does not provide us the tools to do our jobs and damage health and safety in the ports and not improve it. We reminded those present that Docks had been reclassified as low risk, SW tried to argue that it was only lower risk than what it had been before and that the HSE strategy which included inspection programmes and the guidance would deal with this.

SW was keen to stress that there is a current docks health and safety strategy, an intervention programme, the PSS guidance and a proposed conference which would bring all the leaders within the industry together, and that this would deal with all the concerns, and that the Unite position did not take this into account.

The HSE Board requires a united position from the HSE, PSS and Unite, the review group cannot go to the board with disagreement between the parties involved. There is to be a further meeting of the review group in November to resolve the impasse so that a unified position can be presented to the next HSE board meeting in December.

Conclusion and Recommendation

What is clear is that there are many elements within HSE that are opposed to keeping the ACoP and driving the guidance agenda, they are resisting any form of specific legal health and safety requirements in the dock industry. This position appears to be supported by PSS who have a clear aim of self regulation, but they are not making their views public at this time.

It was very clear that SW wants to remove Docks Regulations and the ACOP at any cost, but he is aware that a tri-partite decision on this is required so it is likely that HSE & PSS will seek us to make a compromise, we should be mindful that HSE may approach us to run a trial using only guidance with a later review point on its success. Such a route would in my opinion result in the permanent loss of the ACoP and we will never be able to be recover it at a later stage, thereby causing irreparable damage to health and safety in the docks and our members.

My recommendation to the National Committee is that Unite should continue to resist all attempts to scrap the ACoP in order to retain some form of regulation which has teeth and can be easily accessed and used by our members in the workplace.