



**IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
FAIR WORK DIVISION**

NO VID 637 OF 2009

FAIR WORK OMBUDSMAN

Applicant

DATASEND AUSTRALIA PTY LTD

First Respondent

PHILIP GRAY

Second Respondent

GRAHAM BERRY

Third Respondent

ORDER

JUDGE: Justice North

DATE OF ORDER: 9 April 2010

WHERE MADE: Melbourne

Upon reading the Statement of Agreed Facts and the Joint Submissions on Penalty filed by the parties on 7 April 2010,

THE COURT DECLARES BY CONSENT THAT:

1. The First Respondent:
 - a. contravened section 792(1)(a) of the *Workplace Relations Act 1996* (WR Act) by dismissing Hawker for reasons which included reasons prohibited by section 793 of the WR Act, namely:
 - i. that Hawker was or proposed to become a member of the Australian Manufacturing Workers Union (AMWU);
 - ii. that Hawker was entitled to the benefit of the *Graphic Arts General Award 2000* (Award) or the Australian Fair Pay and Conditions Standard (AFPCS); and
 - iii. that Hawker had made a complaint to the then Office of Workplace Services (OWS), being a body having capacity under the WR Act to seek the observance of his rights under that Act.

Filed on behalf of the Applicant by:
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- b. contravened section 792(1)(a) of the *WR Act* by dismissing Kniese for which included reasons prohibited by section 793 of the *WR Act*, namely
 - i. that Kniese was entitled to the benefit of the Award or the AFPCS; and
 - ii. that Kniese had made a complaint to the OWS, being a body having capacity under the *WR Act* to seek the observance of her rights under that Act.
- c. contravened section 792(1)(b) of the *WR Act* by injuring Hawker in his employment for reasons which included reasons prohibited by section 793 of the *WR Act*, namely:
 - i. that Hawker was or proposed to become a member of the AMWU;
 - ii. that Hawker was entitled to the benefit of the Award or the AFPCS; and
 - iii. that Hawker had made a complaint to the OWS, being a body having capacity under the *WR Act* to seek the observance of his rights under that Act.

2. The Second Respondent:

- a. contravened section 792(1)(a) of the *WR Act* by being knowingly concerned in the contravention of the First Respondent in dismissing Hawker for reasons which included reasons prohibited by section 793 of the *WR Act*, namely:
 - i. that Hawker was or proposed to become a member of the AMWU;
 - ii. that Hawker was entitled to the benefit of the Award or the AFPCS; and
 - iii. that Hawker had made a complaint to the OWS, being a body having capacity under the *WR Act* to seek the observance of his rights under that Act; and
- b. contravened section 792(1)(b) of the *WR Act* by being involved in the contravention of the First Respondent in injuring Hawker in his employment for reasons which included reasons prohibited by section 793 of the *WR Act*, namely:
 - i. that Hawker was or proposed to become a member of the AMWU;
 - ii. that Hawker was entitled to the benefit of the Award or the AFPCS; and
 - iii. that Hawker had made a complaint to the OWS, being a body having capacity under the *WR Act* to seek the observance of his rights under that Act.

3. The Third Respondent:



- a. contravened section 792(1)(a) of the WR Act, by being knowingly concerned in the contravention of the First Respondent in dismissing Hawker for reasons which included reasons prohibited by section 793 of the WR Act, namely:
 - i. that Hawker was or proposed to become a member of the AMWU;
 - ii. that Hawker was entitled to the benefit of the Award or the AFPCS; and
 - iii. that Hawker had made a complaint to the OWS, being a body having capacity under the WR Act to seek the observance of his rights under that Act.

- b. contravened section 792(1)(a) of the WR Act, by being knowingly concerned in the contravention of the First Respondent in dismissing Kniese for reasons which included reasons prohibited by section 793 of the WR Act, namely:
 - i. that Kniese was entitled to the benefit of the Award or the AFPCS; and
 - ii. that Kniese had made a complaint to the OWS, being a body having capacity under the WR Act to seek the observance of her rights under that Act.

- c. contravened section 792(1)(b) of the WR Act by being involved in the contravention of the First Respondent in injuring Hawker in his employment for reasons which included reasons prohibited by section 793 of the WR Act, namely:
 - i. that Hawker was or proposed to become a member of the AMWU;.
 - ii. that Hawker was entitled to the benefit of the Award or the AFPCS; and
 - iii. that Hawker had made a complaint to the OWS, being a body having capacity under the WR Act to seek the observance of his rights under that Act.

THE COURT ORDERS BY CONSENT THAT:

1. Pursuant to s 807(1)(a) of the WR Act, the First Respondent pay to the Consolidated Revenue Fund of the Commonwealth a penalty of \$25,000.00 in respect of the three contraventions of the WR Act.
2. Pursuant to s 807(1)(a) of the WR Act, the Second Respondent pay to the Consolidated Revenue Fund of the Commonwealth a penalty of \$4,000.00 in respect of the two contraventions of the WR Act.
3. Pursuant to s 807(1)(a) of the WR Act, the Third Respondent pay to the Consolidated Revenue Fund of the Commonwealth a penalty of \$6,000.00 in respect of the three contraventions of the WR Act.
4. The penalties in orders 1-3 be payable on or before 9 May 2010.



5. The proceedings are otherwise dismissed with no order as to costs.

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Deputy District Registrar

Date that entry is stamped: