FEDERAL MAGISTRATES COURT OF AUSTRALIA

FAIR WORK OMBUDSMAN v AUSTRALIAN WORKERS UNION, NEW SOUTH WALES *[2010] FMCA 744*

INDUSTRIAL LAW – Penalty hearing – consideration of matters to be taken into account – where parties are agreed that two infringements constitute one course of conduct – where parties submit penalties should be in lower range – whether contrition was shown at an appropriate time – whether breaches of other industrial legislation should be taken into account.

Workplace Relations Act 1996 (Cth) (repealed) ss.420, 508, 826(2)
Fair Work Act 2009 (Cth)
Building and Construction Industry Improvement Act 2005 (Cth)

CFMEU v Coal and Allied Operations Pty Ltd (No 2) (1999) 94 IR 231
Stuart-Mahoney v CFMEU (2008) 177 IR 61
Alfred v Wakelin (No 1) [2008] FCA 1455
Alfred v Wakelin (No 4) [2009] FCA 267
Temple v Powell [2008] FCA 714
FWO v Transport Workers Union of Australia [2010] FCA 768
Carr v CEPU & Anor [2007] FMCA 1526
Bluescope Steel (AIS) Pty Ltd v AWU NSW (No 2) [2004] NSWIRComm 145

Applicant:	FAIR WORK OMBUDSMAN
Respondent:	AUSTRALIAN WORKERS UNION, NEW SOUTH WALES
File Number:	SYG 3140 of 2009
Judgment of:	Raphael FM
Hearing date:	27 September 2010
Date of Last Submission:	27 September 2010
Delivered at:	Sydney
Delivered on:	1 October 2010

REPRESENTATION

Counsel for the Applicant:	Mr M White and Ms F Ramsay
Solicitors for the Applicant:	Clayton Utz
Counsel for the Respondent:	Mr A Hatcher
Solicitors for the Respondent:	Maurice Blackburn

ORDERS

(1) The Respondent should pay penalty of $8,800.00 for breach of clause 23 of Schedule 8 of the *Workplace Relations Act 1996* (Cth) (WRA).

(2) The Respondent should pay penalty of $3,300.00 for breach of s.508 of the WRA.

(3) Penalties should be paid to the Crown pursuant to s.841(a) WRA.

FEDERAL MAGISTRATES COURT OF AUSTRALIA AT SYDNEY

SYG 3140 of 2009

FAIR WORK OMBUDSMAN
Applicant

And

AUSTRALIAN WORKERS UNION, NEW SOUTH WALES
Respondent

REASONS FOR JUDGMENT

Introduction

1. This matter came before me for hearing on penalty on 27 September 2010. The applicant read affidavits of Messrs Larcombe, Williams and Armstrong and of Ms Smithers. The respondent read the affidavit of Mr Gillespie. Ms Smithers was cross-examined upon her affidavit. The parties have provided the Court with an agreed statement of facts and with helpful written submissions. The application had been commenced on 24 December 2009. The resolution of the substantive issue had taken place following mediation. In the result, three infringements of the Act were admitted, the first being by operation of s.826(2) of the *Workplace Relations Act 1996* (Cth) (repealed) (the "Act"), a contravention of clause 23(1) of Schedule 8 of the Act on 13 February 2009, the second by operation of s.826(2) of the Act, a contravention of clause 23(1) of Schedule 8 of the Act, on 16 February 2009 and the third being a contravention of s.508(1) of the Act on 30 June 2009. The parties agreed that the first two contraventions formed a continuous course of conduct and should be penalised as if they were

a single course of contravention. The respondent has entered into enforceable undertakings with the applicant that its relevant organiser, Mr Gillespie, would attend a training course conducted by an accredited workplace trainer approved by the applicant dealing with (a) the rights and responsibilities of right of entry permit holders under the *Fair Work Act 2009* (Cth) and (b) industrial action under the *Fair Work Act*. Mr Gillespie has attended that training course. It is submitted by both parties that the relevant range which the Court should adopt for the purpose of considering a penalty is the lower range corresponding to penalties between $3,300.00 and $9,900.00.

The facts and circumstances of the infringements

2. The infringements took place at Boral's Dunmore quarry in the Illawarra. Mr Gillespie was at all material times the Branch Secretary of the Port Kembla Branch of the AWU NSW and a permit holder under the Act in respect of permits issued to him which gave him right of entry in certain circumstances to the Boral premises. Mr Gorman was the Branch President of the Port Kembla Branch of the AWU NSW and was also a permit holder. Employees at the Dunmore Quarry were parties to an industrial agreement known as the Dunmore Agreement. In early February 2009 a dispute arose between the Boral employees and Boral in respect of what the employees and the AWU NSW considered to be a developing workplace practice where Boral supervisers who were not bound by the Dunmore Agreement performed work ordinarily performed by Boral employees. On 13 February 2009 Mr Gorman entered the Boral site and advised Boral that he proposed to hold a stop work meeting. Prior to Mr Gorman's entry onto the site he did not provide Boral with an entry notice of at least 24 hours. He failed to cooperate with the Boral management in relation to the meeting which was held at a time other than at the employee's meal times or other breaks without Boral's agreement. After the meeting had been held the employees ceased attending work for the rest of the day, constituting strike action on the part of those employees and "*industrial action*" for the purposes of s.420 of the Act.

3. On 16 February 2009 Mr Gillespie entered the Boral site and organised a similar stop work meeting which had a similar result in that the employees ceased working thereafter in a manner that constituted strike

action and industrial action for the purposes of s.420 of the Act. On 23 June 2009 a Mr Downs, another AWU NSW delegate from the Dunmore quarry, informed Boral that the AWU intended to have a stop work meeting on 30 June 2009 at 9.30 am to discuss ongoing negotiations between Boral and the AWU with respect to a new workplace agreement. There was correspondence and discussions between Boral and various members of the AWU concerning the proposed stop work meeting in which Boral resisted the holding of the meeting and the AWU insisted that it should take place. Eventually;

> "At approximately between 9 am to 9.20 am on Tuesday 30 June 2009 Gillespie attended the Boral site to hold the Proposed Meeting with the Boral employees. Prior to the meeting, Gillespie had a discussion with Williams [of Boral] during which:
>
> (a) Gillespie advised Williams that if he (Boral) needed particular employees not to attend the Proposed Meeting to keep the water cart, sales loader and weighbridge going, Gillespie could arrange for these employees to do so, but however, Boral had to pay all employees who attended the Proposed Meeting..." [Agreed Statement of Facts [44]]

The holding of the stop work meeting itself did not constitute unlawful industrial action because at that time the industrial agreement between the Boral employees and Boral had expired. But Mr Gillespie's conversation with Mr Williams constituted a claim on an employer to make a payment to an employee in relation to a day in which an employee engaged in industrial action contrary to s.508 of the Act. As a result of the unlawful industrial action taken in February Boral lost production at the quarry and was caused disruption and inconvenience at the Dunmore quarry site. The total loss of production was approximately 5,552 tonnes in two days. Employees were required to work overtime to make up the shortfall and complete orders and there was unnecessary downtime on machinery and equipment. Coal production within the Illawarra is a competitive business and industrial action, particularly strikes, has a deleterious effect upon a coal producing company.

Penalty considerations

4. There have been a number of authorities which set out what I will describe as "*non-exhaustive range of matters*" relevant to determining penalty in unlawful industrial action proceedings. The applicant in the

instant case refers to those considered by Branson J in *CFMEU v Coal and Allied Operations Pty Ltd (No 2)* (1999) 94 IR 231 at 232 [7-8] whereas the respondent refers to those considered by Tracey J in *Stuart-Mahoney v CFMEU* (2008) 177 IR 61. Other cases in which these matters have been considered outside the Federal Magistrates Court are *Alfred v Wakelin (No 1)* [2008] FCA 1455; *Alfred v Wakelin (No 4)* [2009] FCA 267 and *Temple v Powell* [2008] FCA 714. As the respondent notes:

> "These matters should not be treated as "*a rigid catalogue of matters for attention*"; the overriding principle is for the Court "*to fix penalty which pays appropriate regard to the circumstances in which the contraventions have occurred and the need to sustain public confidence in the statutory regime which imposes the obligation*"; Australian Ophthalmic Supplies Pty Ltd v McAlary-Smith (2008) 165 FCR 560 at [91] per Buchanan J."

5. The matters I propose to take into account in the instant matter are the following:

The circumstances in which the relevant conduct took place including whether the conduct was undertaken in deliberate defiance or disregard of the Act

6. The first two infringements took place during the existence of a workplace agreement when an unauthorised stop work meeting led to a more serious withdrawal of labour. The respondent submits that the actions were taken in defence of the employment conditions of its membership which it claims were being put at risk by the actions of the company utilising non-agreement managerial staff to undertake tasks defined by the agreement. The respondent argues that this type of activity makes the conduct less serious than activity associated with action motivated by a desire to secure better wages and conditions; *FWO v Transport Workers Union of Australia* [2010] FCA 768 at [27] per Besanko J. I am of the view that this is a matter which should be taken into account but I believe it would already have been by the acceptance of both parties that the penalties in this case should be in the lower range. I do not think any further discount is appropriate. The third infringement is claimed by the respondent to have been effected during the course of negotiations for a legal stop work meeting. The respondent points out that the request for payment was refused and that

it is not suggested that any further industrial action was considered or did take place because of the refusal. I think it is appropriate that these matters should be taken into account.

Whether the nature and extent of any loss or damage sustained as a result of the breaches

7. The applicant has filed three affidavits from Boral management which indicate the disruptions that the two February stop work meetings caused to customers waiting for deliveries and the loading of trucks. They also refer to the loss of production and the necessity to arrange for special security for the sites when the workforce was on strike. The affidavits are not able to provide the Court with any assistance as to the financial loss, although reference is made to the necessity to work overtime to make up for lost production. I take into account that no payment was made for the days upon which the labour force did not work. I am satisfied that, within the context of a lower range offence, the disruption was significant.

Whether there has been similar previous conduct by the respondent

8. There is a dispute between the applicant and the respondent as to what "*similar conduct*" means. The respondent cites the views expressed by Lucev FM in *Carr v CEPU & Anor* [2007] FMCA 1526 at [22]:

> "The applicant submitted that in setting penalty the Court ought to take account of non-BCII Act civil penalty contraventions, at least where they relate to the taking of industrial action. On that basis the breaches of the WR Act and the TP Act set out above were said to be relevant to setting penalty. That arguably common sense approach is not supported by the case law. Albeit part of a non-exhaustive list of factors when set out in *Coal & Allied Operations*, the consideration for penalty purposes of prior civil penalty breaches appears to be restricted to like contraventions of the Act which has been found to be breached. In *Leighton Contractors* the Supreme Court of Western Australia in fixing penalty for unlawful industrial action in contravention of s.38 of the BCII Act was referred to eight proceedings against the CFMEU over the previous six years. The Supreme Court said those contraventions were "of a different nature than the contraventions now being considered and did not involve contraventions of the [BCII] Act." Having referred to the approach of the Federal Court in *Coal & Allied Operations* as the "correct approach" the Supreme Court said it "is not appropriate to consider all contraventions of any industrial legislation by any Branch of the first defendant [the CFMEU] anywhere in Australia"

> and that it "is inappropriate to take account of ... contraventions of different legislation." It therefore appears that the relevant civil penalty contraventions for present purposes are any prior contraventions of the BCII Act, of which there are none by either the CEPU or Mr Harkins. Therefore, any contravention by the CEPU of other laws concerning industrial action is not to be taken into account by the Court. The CEPU it is to be treated for present purposes as a first time contravener. Mr Harkins is a first time contravener."

The respondent has referred me to the consideration of this aspect by Dowsett J in *Temple v Powell* (supra), a later case in which his Honour said at [64]:

> "The respondents submitted that "... prior contraventions of industrial legislation per se should not be taken into account when assessing prior conduct. What should be relevant is prior breaches of provisions which contain the same elements in the case under consideration." I do not accept that proposition. On the criminal side, it has never been suggested that only previous convictions for offences similar to that charged are relevant to sentence. Rather, a sentencing court looks to the general record of conduct of the relevant offender, his or her attitude to the law as disclosed by such conduct, apparent attempts at rehabilitation and similar considerations. Repeated conduct of a particular kind may lead to an identified need to provide some particularly persuasive form of deterrent against similar future misconduct."

9. The respondent points out that Mr Gillespie who was involved in the second strike action and the request for payment infringement was involved in proceedings brought by Bluescope Steel for contravention of an enterprise agreement; *Bluescope Steel (AIS) Pty Ltd v AWU NSW (No 2)* [2004] NSWIRComm 145 per Boland J. And the AWU NSW was also involved in *Alfred v Wakelin (No 4)* (supra) which involved breaches of the *Building and Construction Industry Improvement Act 2005* and the *Workplace Relations Act.* Although I accept that Lucev FM was proceeding on the basis of Supreme Court of Western Australia authority, I believe there is much to be said for the views expressed by Dowsett J set out above. I would put more emphasis on Mr Gillespie's involvement in the *Bluescope Steel* case than I would on his Union's involvement in *Alfred v Wakelin (No 4)* but at the same time would note that it was five years between the Bluescope infringement and the ones currently being considered. I think that the existence of previous penalties should be reflected in that part of the range which the Court determines is appropriate.

Whether the breaches were properly distinct or arose out of the one course of conduct

10. It is accepted that the two February infringements arose out of one course of conduct and that the June infringement was entirely separate.

The size of the business enterprise involved

11. It is notorious that Boral is a substantial Australian business.

Whether senior management was involved in the breaches

12. Senior management was not involved.

Whether the party committing the breach has exhibited contrition

13. In its written submissions the respondent provided the following statement which was repeated by its counsel at the hearing upon the instructions of the Acting Branch Secretary who was present in Court;

> "The AWU NSW expresses its regret that, in seeking to prevent the prospect of its members' work being performed by non-members, it organised industrial action on 13 and 16 February 2009 which by disrupting normal work caused inconvenience to the company. The AWU NSW further regrets that by trying on 30 June 2009 to negotiate an arrangement to have a stop-work meeting proceed on a basis which minimised disruption to Boral and ensured employees would be paid, it contravened the WR Act."

This form of words has been used by the TWU in *Fair Work Ombudsman v Transport Workers Union of Australia* (supra) where Besanko J said:

> "I think that is an expression of contrition."

14. The applicant in the instant case suggested that perhaps this was no more than a repetitive formulation which intended to justify the action by reference to the grounds of the workplace dispute. The respondent denied this indicating that it was appropriate that the nature of the dispute was identified in the apology. The respondent also points out that Mr Gillespie agreed to and has now attended remedial training. The respondent argues that it was not appropriate for it to make this

indication of contrition any earlier or in any other place than the Court itself. I am not too sure about that. I agree that contrition should be shown in the face of the Court but that does not prevent it being shown elsewhere and at an earlier time. I believe that the respondent has formulated its apology in a manner which it believes is acceptable to a Court in these circumstances but I would not discount the penalty any further by reason of the contrition shown.

Whether the party committing the breach has taken corrective action

15. Mr Gillespie has attended appropriate training which the Court hopes will be effective.

Whether the party committing the breach has cooperated with the enforcement authorities

16. Ms Smithers filed an affidavit recounting her dealings with Mr Gillespie. She was cross-examined upon the document to mitigate any suggestion that Mr Gillespie had acted unreasonably toward the FWO in the course of its investigation. I am satisfied that Mr Gillespie's conduct was not uncooperative to the extent that it might have hindered the investigation and that there may well have been instances of the parties being at cross-purposes. I would not place a premium on any penalty because of Mr Gillespie's conduct.

The need to ensure compliance with minimum standard by provision of an effective means for investigation and enforcement of employee entitlements

17. I do not believe this is a relevant consideration in the instant case.

The need for specific and general deterrence

18. This is always an important consideration. In the instant case, noting that Mr Gillespie and the Union itself have been involved in previous contraventions of admittedly other legislation of a similar type, the penalty should be such as to discourage it from repeating the infringements.

Amount of penalty

19. I was provided with a very helpful catalogue of previous decisions by the respondents which I take the opportunity to publish as a schedule to these reasons for the enlightenment of my colleagues. These decisions are of course not binding but only informative. In making my decision I must take into account the factors adumbrated above and the totality principle which requires me to reduce the penalties if the aggregate is excessive having regard to the totality of the conduct. My consideration of the relevant factors leads me to conclude that whilst the penalty is in the lower range for the clause 23 Schedule 8 infringements, those infringements should be treated seriously. In respect of those infringements I would impose a total of 80 penalty units or $8,800.00. In respect of the s.508 infringement, I regard this as less serious and would impose 30 penalty units or $3,300.00. Penalties should be paid to the Crown pursuant s.841(a).

I certify that the preceding nineteen (19) paragraphs are a true copy of the reasons for judgment of FM Raphael FM

Associate: 

Date: 1 October 2010

Schedule

Examples of Civil Penalties for Unlawful Industrial Action

***Building and Construction Industry Improvement Act*, s 38, 43 and 44.**

Maximum penalties: $110,000 for a body corporate, $22,000 for an individual.

Leighton Contractors Pty Ltd v CFMEU (2007) 164 IR 375

Union (late admission of contraventions; 18 contraventions; no previous contraventions of the same character; agreed penalty): $90,000 total (5% of available maximum, but note that contraventions were treated as related).

State union (late admission of contraventions; five contraventions; agreed penalty): $30,000 total (5% of available maximum, but note that contraventions were treated as related).

Individual (late admission of contraventions; 16 contraventions; agreed penalty): $30,000 total (9% of available maximum, but note that contraventions were treated as related).

Hadgkiss v Aldin [2007] FCA 2068

Numerous individuals (no previous contraventions; contraventions admitted; contraventions extending over a number of days treated as part of single course of conduct as thus as a single contravention in each case):

$3,000 plus $6,000 suspended for six months (total amount 41% of maximum; non-suspended amount 14% of maximum); OR

$2,500 plus $5,000 suspended for six months (total amount 34% of maximum; non-suspended amount 11% of a maximum).

NOTE: additional penalties were imposed for breach of s 127 orders - see below.

Carr v CEPU & Anor [2007] FMCA 1526

Union (treated as having no previous contraventions; contraventions admitted): $11,000 (10% of maximum).

Individual (no previous contraventions; contraventions admitted): $8,800 (40% of maximum; Lucev FM said at [37]: "*The penalty imposed on Mr Harkins, at forty percent of the maximum penalty, is at the upper end of the range of penalty which might be imposed upon a person with no prior breaches where co-operation and contrition are shown, and notwithstanding the seriousness and effect of the contraventions*").

Furlong v Australian Workers Union [2007] FMCA 443, (2007) 162 IR 171

Union (no previous contraventions; contraventions admitted; additional contravention of s 178 WR Act treated as part of single course of conduct): $40,000, of which half to be suspended for six months (total 36% of maximum for BCII Act contravention; non-suspended amount 18%).

Individuals: (no previous contraventions; contraventions admitted): $4,000 (18% of maximum).

Stuart Mahoney v CFMEU (2008) 177 IR 61

Union (previous contraventions; contraventions admitted, contravention of s 43 in addition to s 38 contravention): $20,000 for s 38 contravention (18% of maximum); $35,000 for s 43 contravention (32% of maximum).

Individual (no previous contraventions; contraventions admitted): $2,000 for s 38 contravention (9% of maximum), $6,000 for s 43 contravention (27% of maximum), but note that both penalties were suspended for 12 months.

Temple v Powell (2009) 169 FCR 169

Union (admitted contraventions, previous contraventions): $12,000 (11% of maximum).

State Union (admitted contraventions, previous contraventions): $12,000 (11% of maximum).

Individual (admitted contraventions, previous contraventions): $2,500 (11% of maximum).

NOTE: there were also penalties imposed under ss 170MN and 178 of the WR Act.

Alfred v Wakelin (No. 1) [2008] FCA 1455

Union (previous contraventions; late admission of contraventions): $8,000 (7% of maximum).

Individual (no previous contraventions; late admission of contraventions): $1,100 (5% of maximum).

Alfred v Wakelin (No 4) [2009] FCA 267

Unions (penalties assessed as if for one union and then divided between two related union entities; two contraventions penalised; unions treated as having "good prior records"; contraventions not admitted): total $25,000 for first contravention (23% of maximum); total $11,000 for second contravention (10% of maximum).

Individual (did not appear in the proceedings): $5,000 for first contravention (23% of maximum); $2,200 for second contravention (10% of maximum).

NOTE: the respondents were also separately penalised for contraventions arising under the WR Act.

Duffy v Construction, Forestry, Mining & Energy Union (No 2) [2009] FCA 299

Union (previous contraventions, contraventions not admitted): $5,500 (5% of maximum).

Cozadinos v Construction, Forestry, Mining and Energy Union [2010] FCA 48

Union (previous contraventions, contraventions admitted; contraventions of s 38 and 43 of the BCII Act but as part of single course of conduct and subject to single maximum penalty): $40,000 total (36% of maximum).

Individual (previous contraventions; contraventions admitted; contraventions of s 38 and 43 of the BCII Act but as part of single course of conduct and subject to single maximum penalty): $5,000 (23%).

Construction, Forestry, Mining and Energy Union v Williams [2009] FCAFC 171

Union (previous contraventions; contraventions not admitted; two contraventions treated as single course of conduct subject to maximum penalty for one contravention): total of $35,000 (32% of maximum).

Individual (previous contraventions; contraventions not admitted; two contraventions treated as single course of conduct subject to maximum penalty for one contravention): total of $7,500 (34% of maximum).

Stuart v CFMEU [2010] FCAFC 65

Union (previous contraventions, contravention of Sections 38 and 44(1) admitted, penalties in dispute): $25,000 (11.4% of the maximum penalty).

NOTE: At first instance Justice Gray imposed a penalty of $5000 (2.3% of the maximum penalty). The full Federal Court held that Justice Gray had not given sufficient weight to deterrence, and had mischaracterised the contraventions as "relatively minor."

White v CFMEU & Anor [2010] FMCA 693

Union (previous contraventions, contraventions of s38 admitted, penalties in dispute): $38,500 (35% of the maximum penalty).

Individual (previous contraventions, contravention of s38 admitted, penalties in dispute): $7,700 (35% of the maximum penalty).

ABCC v CFMEU (no 2) [2010] FCA 977

Union (previous contraventions, contraventions of s38 admitted, penalties in dispute): $40,000 (36% of maximum penalty)

Individual (previous contraventions, contraventions of s38 admitted, penalties in dispute): $8,000 (36% of maximum penalty)

Hardwick v Australian Manufacturing Workers' Union [2010] FCA 818

Party	Penalty	Percentage of maximum penalty	Provision of BCII Act Contravened	Comment
AMWU	$15,000	13.64%	S44(1)	The contraventions of the Act were admitted by the respondents, and the penalties agreed to between the parties. Justice Gordon accepted the
AWU	$14,000	12.73%		
CEPU	$11,000	10.00%		
CFMEU	$9,000	8.18%		

Mr Warren	$5,000	22.73%		agreed penalties, but noted that they were "at the lower end of the permissible range". Mr Parker, the CFMEU, and the AMWU had relevant previous convictions for contravention of the BCII Act.
Me Lee	$6,000	27.27%		
Mr Mooney	$4,000	18.18%		
Mr Parker	$3,500	15.91%		

Williams v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union [2010] FCA 754

Party	Penalty	Percentage of maximum penalty	Provision of BCII Act Contravened	Comment
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	$35,000	31.82%	s 38	Settlement terms were handed up on the first day of trial. The Respondents did not consent to, but did not oppose the Court finding that the alleged contraventions had been committed. The settlement terms included penalties that all parties agreed were within the appropriate range. Justice Jessup imposed penalties in accordance with the proposed penalties. Justice Jessup did not make reference to any previous contraventions of the BCII Act committed by the Respondents.
	$45,000	40.91%	s 44	
	$60,000	54.55%	s 43	
	$11,000	10.00%	s 44	
	$60,000	54.55%	s 43	
	$11,000	10.00%	s 44	
	$65,000	59.09%	s 43	
	$11,000	10.00%	s 44	
Construction, Forestry, Mining and Energy Union	$36,000	32.73%	s38	
	$55,000	50.00%	s44	
	$70,000	63.64%	s43	
	$17,500	15.91%	s44	
	$70,000	63.64%	s43	
	$17,500	15.91%	s44	
	$40,000	36.36%	S38	
	$10,000	9.09%	s43	
	$50,000	45.45%	s44	
	$70,000	63.64%	s43	
	$17,500	15.91%	s44	
	$60,000	54.55%	s43	
	$14,500	13.18%	s44	
	$85,000	77.27%	s43	
	$25,000	22.73%	s44	
	$85,000	77.27%	s43	
	$25,000	22.73%	s44	
	$85,000	77.27%	s43	
	$25,000	22.73%	s44	
Mick Powell	$5,000	22.73%	s38	
	$12,000	54.55%	s44	
	$7,000	31.82%	s43	

	$2,000	9.09%	s44	
	$12,000	54.55%	s43	
	$2,000	9.09%	s44	
	$12,000	54.55%	s43	
	$2,000	9.09%	s44	
Tony Mavromatis	$6,000	27.27%	s 38	
	$12,000	54.55%	s 44	
	$7,000	31.82%	s 43	
	$2,000	9.09%	s 44	
Gareth Stephenson	$7,000	31.82%	s 43	
	$2,000	9.09%	s 44	
	$10,000	45.45%	s 38	
	$2,000	9.09%	s 43	
	$7,000	31.82%	s 44	
	$10,000	45.45%	s 43	
	$2,000	9.09%	s 44	
	$12,000	54.55%	s 43	
	$2,000	9.09%	s 44	
	$14,000	63.64%	s 43	
	$3,000	13.64%	s 44	

Penalties under s 178 of the *Workplace Relations Act* for breach of orders under s 127

BHP Steel (AIS) Pty Ltd v CFMEU [2000] FCA 1908

Union (no identified previous contraventions; contraventions not admitted; two interlocking contraventions): $2,200 in total (11% of maximum for two contraventions, the maximum being $10,000 for each contravention).

Metropolitan Fire and Emergency Services Board v United Firefighters' Union of Australia (2005) 148 IR 242

Union (no previous contraventions; contraventions not admitted): $2,500 (8% of the maximum of $33,000).

Individual (no previous contraventions; contraventions not admitted): $500 (8% of $6,600 maximum).

Hadgkiss v Aldin [2007] FCA 2068

Individuals:

$250 plus $750 suspended for six months (total 15% of $6,600 maximum; non-suspended amount 4% of a maximum); OR

$300 plus $600 suspended for six months (total 14% of a maximum; non-suspended amount 5% of a maximum).

NOTE: Gilmour J would (at [111]) have imposed a penalty of $3,000, of which $2,000 would have been suspended for six months), but for the admissions of contravention of s 38 of the BCII Act - see above (total amount 45% of maximum; non-suspended amount 15% of maximum).

Penalties under s 494 (1) of the *Workplace Relations Act*

Fair Work Ombudsman v Transport Workers' Union of Australia [2010] FCA 768

Union (contraventions of s494(1) admitted, penalties agreed between the parties, Respondent had not been found liable for similar contraventions) : $35,000 (53% of the maximum penalty).