

CFMMEU penalised for unlawful industrial action

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Legal action by the Fair Work Ombudsman has resulted in the Construction Forestry Maritime Mining and Energy Union (CFMMEU) being penalised in Court for organising unlawful industrial action at shipping terminals in Sydney and Brisbane.

The matter relates to work stoppages that took place in August 2015 at international container terminals operated by Hutchison Ports Australia (HPA) at Port Botany, NSW and Port Brisbane, Queensland.

After a contested hearing in the Federal Court last year, Justice Jayne Jagot found that between the 7th and 14th of August 2015, the Maritime Union of Australia (MUA) - as it was then known, before becoming part of the CFMMEU - contravened the Fair Work Act by organising and being involved in unlawful industrial action taken by stevedoring and maintenance employees of HPA at the two terminals.

The industrial action, which involved a stoppage of work over 21 separate shifts, was unlawful because the MUA, the workers and HPA were covered by a current enterprise agreement that had not reached its nominal expiry date when the action took place.

Justice Jagot described the evidence of industrial action as “overwhelming” and found that the conclusion that the MUA organised and was involved in the action as “inescapable”.

Justice Jagot found that the MUA's unlawful conduct was “deliberate, strategic and co-ordinated comprising part of a ‘comprehensive strategy’ against HPA”.

Justice Jagot found that the unlawful industrial action involved the MUA establishing an “MUA Strike Fund” to facilitate donations for employees who were not working; controlling and influencing the employees; conducting a media campaign and social media campaign; and facilitating events at pickets formed at both terminals.

Justice Jagot has today penalised the CFMMEU \$38,000 for a single contravention of the Fair Work Act.

Justice Jagot found that the industrial action was part of a larger overall campaign by the MUA to pressure HPA not to proceed with proposed redundancies at the Port Botany and Port Brisbane terminals.

“The MUA was engaged in one overall concerted action to bring industrial pressure to bear on HPA not to implement the proposed redundancies at the Sydney and Brisbane terminals in a manner which the MUA considered would be in breach of the enterprise agreement, would result in the unlawful termination of around 100 employees, and destroy its own capacity to continue to function as an effective industrial organisation,” Justice Jagot said.

Justice Jagot noted that “the industrial action continued despite the Fair Work Commission having ordered to the contrary on 7 August 2015 in respect of employees, amended on 10 August 2015 to apply also to the MUA”.

Justice Jagot dismissed the Fair Work Ombudsman's application for the CFMMEU to compensate HPA for losses it allegedly incurred as a result of the unlawful industrial action.

The Fair Work Ombudsman is reviewing today's decision and considering a possible appeal, including in relation to the approach adopted in determining the maximum penalty available at law in the matter.

It is the fourth time the Fair Work Ombudsman has obtained penalties in Court in response to contraventions by the MUA and Judge Jagot found that “the cases do disclose a history of the MUA engaging in unlawful conduct to achieve its aims”.

In 2015, the MUA and one of its officials were penalised a total of \$95,000 and ordered to pay \$120,000 compensation (www.fair-work.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/august-2015/20150811-mua-scab-flyer-penalty) after distributing posters labelling as “scabs” workers who refused to take part in a strike at Fremantle Port in Western Australia.

Also in 2015, the MUA was penalised \$79,200 for its part in denying employment to two non-union members (www.fair-work.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/march-2015/20150331-mua-oms-decision-release) . In addition, the MUA was ordered to pay \$330,000 in compensation to the workers.

In 2012, penalties totalling \$36,300 were imposed against the MUA and two of its officials over separate incidents of unlawful industrial action (www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/november-

2012/20121101-mua-fine) at Fremantle and Broome, in Western Australia.

Fair Work Ombudsman Natalie James said employers, workers and unions have the right to be protected by the Fair Work Act.

“Australia has clear rules outlining the process when it comes to taking industrial action. These rules must be respected in all workplaces,” Ms James said.

“Ignoring the law and organising unprotected and unlawful action undermines our industrial relations system.”

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