

Court fines labour hire company over “no union ticket, no start” policy

18 May 2012

Note: Reference to prosecution in this media release is a general reference to the FWO commencing proceedings for the imposition of civil penalties and should not be taken to be a reference to criminal proceedings.

The Federal Court has fined a national labour-hire company which says it adopted a "no-ticket, no-start" policy in Western Australia "to keep industrial peace".

Justice John Gilmour has found the company's conduct displayed "complete disregard" for both the law and individual rights.

He imposed a penalty of \$7500 against Offshore Marine Services (OMS) Pty Ltd following an investigation and prosecution by the Fair Work Ombudsman.

The Fair Work Ombudsman initiated legal action against both OMS and the Maritime Union of Australia (MUA), but after OMS signed an Agreed Statement of Facts admitting its contraventions, the Federal Court is hearing the case in two parts.

The MUA is defending the proceedings, which have yet to be tried. A directions hearing is listed for September 20.

Justice Gilmour has delivered a 16-page judgment dealing with the Fair Work Ombudsman's allegations against OMS, which supplies staff to work on offshore vessels in the oil and gas industry.

He found OMS breached workplace law by requiring that membership of the MUA was a pre-requisite for employment - and that a married Perth couple who were refused employment in 2009 because they were not MUA members had been "discriminated against and treated unfairly".

It is unlawful under freedom of association provisions of the Fair Work Act for an employer to refuse to employ a person because they are not a member of a union.

In his written judgment, Justice Gilmour says: "The (couple) were denied employment as a result of the refusal of OMS to employ them because they were not members of the MUA."

Justice Gilmour found that: "OMS accepts that its conduct was deliberate in the sense that it consciously had a practice of only employing members of the MUA.

"The respondent (OMS) submits that there is no suggestion that the practice was designed for the purpose of breaching the law, but rather it was a practice designed to keep industrial peace.

"I give this submission no weight. The means of maintaining its stated object of industrial peace was to deliberately breach the law.

"I find that the conduct of OMS, in effect, displayed a complete disregard towards the freedom of association provisions and protections contained in Commonwealth employment laws, as well as a complete disregard for the individual rights of the (couple).

Justice Gilmour said: "OMS is a 'large sized' successful and well-resourced business having dedicated human resources staff. It was clearly able to obtain competent legal advice about its obligations as an employer under Commonwealth laws and the importance of compliance".

Justice Gilmour said a financial penalty was required to ensure "general deterrence" and ordered that a fine of \$7500 be paid by OMS within 30 days.

Employers or employees seeking information and advice should visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94.

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