

Company fined almost \$50,000 for applying duress to Hunter Valley workers

20 February 2014

A national company that deliberately breached workplace laws when it applied duress to three employees to get them to sign workplace agreements has been fined \$49,550, in the Federal Circuit Court in Sydney.

Toyota Material Handling (NSW) Pty Ltd has received the penalty as the result of an investigation and legal action by the Fair Work Ombudsman.

Judge Kenneth Raphael found that the company breached the duress provisions of workplace laws when it applied pressure to three service technicians it employed at an aluminium smelter at Kurri Kurri, just west of Newcastle in the NSW Hunter Valley.

Toyota Material Handling employed the workers under Australian Workplace Agreements (AWAs) on a permanent rotating shift basis at the site after it secured a contract to provide all servicing and repair activity of plant and equipment at the site.

In 2009, Toyota Material Handling sought to replace the AWAs the workers were employed under with more site specific Individual Transitional Employment Agreements (ITEAs).

Judge Raphael found that the company pressured the employees to sign the ITEAs by telling them they would be rostered off their continuous shift work positions if they did not sign.

Judge Raphael found that the consequence of being rotated off shift work would include a "substantial loss of earnings" of between \$500 and \$600 a week.

The three workers signed the ITEAs, with Judge Raphael noting that "all three employees deposed to concerns about the effect of not signing upon their families".

Judge Raphael found that the effect of Toyota Material Handling's conduct was to leave the three employees with "no real choice".

"This was the intention of Toyota Material Handling; and the conduct was unconscionable or illegitimate," Judge Raphael said.

In his penalty judgment on the case released today, Judge Raphael said that "a duress contravention is by its very nature deliberate".

Judge Raphael also found that the company breached laws relating to required procedures for executing workplace agreements, including allowing employees seven days to consider agreements and providing information statements.

The company also breached workplace laws in 2006 when it made a false or misleading declaration to the Office of the Employment Advocate that an employee had received an information statement before signing a workplace agreement and that the employee had received the agreement 14 days before signing it.

Judge Raphael said that in determining penalty he took into account that Toyota Material Handling had a "human resources team and a lawyer with dedicated responsibility for compliance".

"A company with a human resources department and lawyers on staff should be well aware of its obligations," Judge Raphael said.

"And non-compliance with those obligations, whilst possibly not deliberate, is certainly negligent."

Judge Raphael also said that Toyota Material Handling had "not accepted responsibility for its conduct or shown contrition".

"Given the large number of employees on the payroll of TMH it is important that the company understand its obligations and that it appreciates that if it contravenes the relevant workplace laws, it will be subjected to penalties for doing so," Judge Raphael said.

Judge Raphael said the penalties should "provide a wake-up call to the company and ensure that the management, including HR, understands and implements the industrial laws governing the workplace".

"In regard to general deterrence it should be seen that a large company such as this should not be immune from penalty, or have one imposed with such a light touch that others be encouraged to view contraventions as a reasonable cost of doing business," Judge Raphael said.

Fair Work Ombudsman Natalie James says the decision sends a clear message to employers to ensure they negotiate lawfully with employees in an environment free of duress and illegitimate pressure.

"The breaches in this case were very serious because they involve employees being denied the opportunity to properly consider proposals relating to their employment and make a decision that is their own best interest," Ms James said.

Employers and employees seeking assistance can visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94. A free interpreter service is available by calling 13 14 50.

Media inquiries:

Ryan Pedler, Assistant Media Director

Mobile: 0411 430 902

ryan.pedler@fwo.gov.au (<mailto:ryan.pedler@fwo.gov.au>)

Page reference No: 2605

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.