

Stevedore industry on notice over wage deductions for unlawful industrial action

8 November 2014

Patrick Stevedores Holdings Pty Ltd will write to its employees in Fremantle, Western Australia, putting them on notice that they will not be paid if they take unlawful industrial action in the future.

A similar letter will be sent to the Maritime Union of Australia (MUA) as part of an agreement Patrick has struck with the Fair Work Ombudsman after the company admitted it paid 160 employees who took unprotected industrial action.

Patrick has admitted it contravened section 474 of the Fair Work Act by making payments to employees who engaged in unlawful industrial action in November and December last year.

Section 474 of the Act makes it unlawful for an employer to make payments to employees for certain periods of unprotected industrial action. Section 475 also makes it unlawful for a person to accept or ask an employer to make a payment for those periods of industrial action.

As part of an Enforceable Undertaking with the Fair Work Ombudsman, Patrick has also agreed to implement improved monitoring of productivity and organise and pay for workplace relations training for its Fremantle employees so they understand their obligations under the Fair Work Act.

Enforceable Undertakings were introduced by legislation in 2009 and the Fair Work Ombudsman has been using them to achieve strong outcomes against companies that breach workplace laws without the need for civil court proceedings.

On December 4, 2013, Patrick made an application to the Fair Work Commission (FWC) to stop unprotected industrial action occurring at its Fremantle terminal.

The Application alleged that:

- from 19 November 2013, there was a significant decrease in the number of container movements per crane gang, and this represented more than a 50 per cent decrease in productivity;
- the MUA had organised employees to reimpose productivity limitations, including to reduce the average productivity and by reinstating a cap of approximately 200 container movements; and
- the economic loss resulting from the industrial action was about \$600,000.

On December 5, the FWC heard the application and required employees who were MUA members and the MUA itself to cease the industrial action. A final order was made on December 19.

The MUA subsequently appealed, but the appeal was dismissed on January 31 this year.

In its appeal decision, the FWC noted that there was an apparent failure by Patrick to cease paying or make deductions in respect of employees who had engaged in the industrial action - and reiterated the importance of the legislative provisions.

The Fair Work Ombudsman subsequently commenced discussions with Patrick and later determined that the company had contravened the Act.

Fair Work Ombudsman Natalie James says the Agency did not believe it was in the public interest for it to seek retrospective deductions from the wages of those workers who engaged in unlawful action.

However, Ms James said it was important to remind Patrick that an employer who chooses not to deduct wages from workers who take unlawful industrial action threatens the integrity of the legislation.

“Section 474 is an important part of the regime intended to prevent the occurrence of non-protected industrial action,” she said.

“For this reason we have entered into this Enforceable Undertaking with Patrick to put the stevedore industry on notice – as inaction on our part would only encourage repeated use of such industrial action as a pressure tactic when industrial disputes arise.

“We use Enforceable Undertakings where we have formed a view that a breach of the law has occurred, but where the employer has acknowledged this and accepted responsibility and agreed to co-operate with us and fix the problem.

“Many of the initiatives included in EUs help to build a greater understanding of workplace responsibilities, motivate the company to do the right thing and help them avoid the same mistakes again.

“It also means we can resolve matters more speedily than if we proceed down a path towards litigation, often achieving outcomes, such as training sessions for senior managers, which are not possible through the Courts.”

Copies of all Enforceable Undertakings are available on the [Fair Work Ombudsman website \(www.fairwork.gov.au/\)](http://www.fairwork.gov.au/) at www.fairwork.gov.au.

Employers and employees seeking assistance with workplace issues can visit the Fair Work Ombudsman website or call the Fair Work Infoline on 13 13 94. An interpreter service is available on 13 14 50.

Ms James says the Fair Work Ombudsman is making compliance easier for businesses by continually building on the information available on its website.

“Equipping people with the information they need helps to create fair and productive workplaces, as well as ensuring a level playing field for all.”

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](https://twitter.com/NatJamesFWO) (<http://twitter.com/NatJamesFWO>), the Fair Work Ombudsman [@fairwork_gov_au](https://twitter.com/fairwork_gov_au) (http://twitter.com/fairwork_gov_au) or find us on Facebook www.facebook.com/fairwork.gov.au (<http://www.facebook.com/fairwork.gov.au>).

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Download:

- [Patrick Stevedores Holdings Pty Ltd Enforceable Undertaking \(DOCX 317.3KB\) \(www.fairwork.gov.au/ArticleDocuments/837/enforceable-undertaking-patrick-stevedores-holdings.docx.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/837/enforceable-undertaking-patrick-stevedores-holdings.docx.aspx) ([PDF 1.4MB\) \(www.fairwork.gov.au/ArticleDocuments/837/enforceable-undertaking-patrick-stevedores-holdings.pdf.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/837/enforceable-undertaking-patrick-stevedores-holdings.pdf.aspx)

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