

## Court penalises MUA over ‘scab’ posters

11 August 2015

The Maritime Union of Australia (MUA) and one of its officials have been ordered to pay a total of \$215,000 in penalties and compensation after distributing posters labelling as “scabs” workers who refused to take part in a strike at Fremantle Port in Western Australia.

Federal Court Justice Antony Siopis described the distribution of the posters as “an act of vengeance” which caused the affected workers to fear for the safety of themselves and their families.

The Court has fined the MUA \$80,000 and the Assistant Secretary of the union’s Western Australian branch, William Tracey, a further \$15,000.

In addition, the Court has ordered the MUA and Tracey to pay a total of \$120,000 compensation to the five workers who were labelled ‘scabs’.

The penalty and compensation orders are the result of an investigation and litigation by the Fair Work Ombudsman.

Justice Siopis found that the MUA and Tracey distributed copies of a poster entitled ‘Attention: Scabs in Fremantle’ in the inner and outer harbours at Fremantle Port on December 7 and 8, 2011 – but also noted that a copy of the poster was found displayed as late as December 15.

The poster named four individual Fremantle Port Authority employees as ‘scabs’ because they did not engage in strike action taken by the majority of Fremantle Port Authority employees from December 1 to December 3, 2011.

Justice Siopis found that a fifth Fremantle Port Authority employee who did not work during the strike action was also labelled a “scab” because he had “fraternised very briefly with those employees coming on shift who worked during the strike”.

The poster stated that the five employees had ‘turned on their colleagues’, described the employees’ behaviour as ‘treacherous’ and stated that the employees’ behaviour ‘should stand condemned by all workers in Fremantle’.

The poster stated that no one had ‘a right to SCAB’ so long as drowning or hanging was an available option and stated that those branded as scabs are ‘marked for life’.

Justice Siopis found that the conduct of the MUA and Tracey breached the adverse action provisions of the Fair Work Act.

However, he dismissed the Fair Work Ombudsman’s allegation that the conduct breached the coercion provisions of the Fair Work Act.

Justice Siopis found that Tracey and the MUAs WA Secretary, Christopher Cain, were angry after the strike in early December, 2011, failed to bring the operations of the Fremantle Port to a halt - and that Cain authorised Tracey to distribute the scab poster to “exact vengeance” on the five named workers.

“This was vindictive action taken by two senior union officials to cause emotional harm, distress and fear to a small number of individuals who had acted lawfully, but in a manner which Tracey and Mr Cain found objectionable,” Justice Siopis said.

In ordering the workers be paid compensation for the emotional distress and fear they suffered, Justice Siopis said: “Each of the five named employees experienced a continuing fear of physical harm to themselves and their family, and the fear of damage to property.”

Justice Siopis ordered that the four workers who did not participate in the strike be paid \$20,000 and that the fifth worker - who was labelled a scab despite not working during the strike - be paid \$40,000 compensation.

Justice Siopis said the fifth worker had been unable to sleep for a number of nights after he found out about the scab poster and “feared that he and his family would suffer harm at the hands of disgruntled workers”.

Justice Siopis also found that Tracey had told the worker he would not be able to work again in the maritime industry in WA and that Tracey refused to apologise when the worker sought an explanation as to why he was labelled a scab.

Justice Siopis said the penalties imposed should deter others from misusing power to harm those individuals who choose to exercise their workplace rights.

“In my view, the contraventions which occurred in this case fall into the category of an abuse of power by the powerful against the vulnerable, are serious contraventions,” he said.

Fair Work Ombudsman Natalie James says the Court’s decision sends a clear message that deliberately taking adverse action against employees is very serious conduct that will not be tolerated.

“The conduct in this matter showed a complete disregard for the workplace rights and the personal wellbeing of individual employees,” Ms James said.

“The conduct had a significant personal impact on the affected workers and the Court has clearly taken a dim view of the behaviour.”

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