

Union and national labour-hire company to pay \$802,000 after denying couple employment

NOTE: On appeal, the amount of compensation the MUA was ordered to pay was reduced by the Federal Court to \$330,000.

31 March 2015

The Maritime Union of Australia (MUA) and a national labour-hire company have been ordered to pay \$802,500 in fines and compensation for their part in denying employment to non-union members.

The decision by the Federal Court in Perth follows legal action by the Fair Work Ombudsman against the MUA and Skilled Offshore (Australia) Pty Ltd.

The Court has imposed a penalty of \$79,200 against the MUA and ordered it to pay \$723,300 in compensation to a married Perth couple who were denied employment as a result of not being able to obtain MUA membership.

The Court found that Skilled Offshore (Australia), previously called Offshore Marine Services Pty Ltd (OMS), implemented a practice whereby membership of the MUA was a prerequisite for employment.

It found that this practice led to OMS telling the couple that in order to secure employment as stewards they would have to obtain membership with the MUA.

The MUA, with the knowledge of OMS' employment practices, subsequently refused the couple's applications for MUA membership.

This ensured the jobs they were applying for at OMS were instead given to existing MUA members. The couple never obtained employment with OMS.

Skilled Offshore (Australia) has been ordered to pay the MUA one third of the compensation owed to the couple for its role in denying them employment.

The Fair Work Ombudsman initiated legal action against both Skilled Offshore (Australia), then known as OMS, and the MUA in June 2011.

In May, 2012, OMS was fined \$7500 by the Federal Court after admitting its contraventions in the case. The MUA denied liability from the outset, deciding to defend the allegations.

Justice John Gilmour found that the MUA's conduct "involved its blatant use of illegitimate industrial action power to bully OMS" into refusing to employ the couple.

Under workplace laws it is unlawful for an employer to refuse to employ a person based on whether the person is a member of a union.

Justice Gilmour found that the MUA's actions deprived the couple of the opportunity to gain well paid employment "at a critical time of their lives" and that OMS "succumbed" to union threats of industrial action, even though it wanted to employ the couple.

He noted that "engaging in conduct with an intention to enforce a closed shop" on the Western Australian waterfront was "objectively serious".

"The penalties must be sufficient to deter the MUA from engaging in further unlawful conduct of this type," he said.

Fair Work Ombudsman Natalie James says the Court's decision sends a strong message that enforcing a 'closed shop' is completely unacceptable in today's workplace environment.

"Employees have the right to join or not join a union and this should not have any bearing on their ability to seek paid employment," Ms James said.

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