

Union faces Court for allegedly threatening and coercing workers who refused to strike

Note (24/12/2018): On 11 October 2018, the Fair Work Ombudsman discontinued its case against AWU official, Benjamin Davis.

1 April 2016

The Australian Workers' Union (AWU) and one of its officials are facing Court after allegedly threatening and coercing two union members after they refused to take part in a strike.

The Fair Work Ombudsman has commenced legal action in the Federal Court against the AWU and the Secretary of the AWU's Victorian branch, Benjamin Davis.

The Fair Work Ombudsman is seeking penalties against the AWU and Mr Davis and a Court Order that the AWU pay compensation to the workers, who were allegedly ostracised and humiliated as a result of their treatment by the union.

The two affected workers, a plant technician and a plant operator, were employed by Orica Australia Pty Ltd at its manufacturing plant at Deer Park, in Melbourne.

The Fair Work Ombudsman alleges the workers, who are AWU members, were targeted by the union because they exercised their right not to participate in protected industrial action at the plant on March 3 last year.

The strike was arranged by the AWU, which was negotiating with Orica Australia in relation to a new Enterprise Agreement covering Deer Park workers.

The Fair Work Ombudsman alleges that between March and September, 2015, the AWU subjected the two affected workers to unjustifiable disciplinary action and that Mr Davis was involved as an accessory.

The disciplinary action allegedly included the AWU informing the workers it was investigating charges of "gross misbehaviour" against them for not participating in the strike and that they could face fines and suspension or expulsion from the AWU if the charges were sustained.

It is alleged that as a result of the AWU's conduct, the two workers were ostracised and excluded by fellow employees who participated in the strike and suffered hurt, humiliation and distress.

The Fair Work Ombudsman alleges that one of the AWU's aims in inflicting the disciplinary action was to coerce the two workers into participating in future strikes.

The AWU wrote to the workers in September, 2015, informing them that the charges against them would not be further proceeded with.

The conduct of AWU and Mr Davis allegedly breached provisions of the Fair Work Act relating to coercion, adverse action, industrial activity and workplace rights.

The matter is listed for a case management hearing in the Federal Court in Melbourne on April 27.

Acting Fair Work Ombudsman Michael Campbell says all workers, including union members, have the lawful right to choose whether they will participate in strike action.

"It is unlawful for unions and employers to coerce or take adverse action against any worker for exercising that right," Mr Campbell said.

"Unions need to exercise caution when contemplating taking disciplinary action against a member in response to something that the member has or has not done concerning industrial activity."

In 2010, the AWU's NSW branch was penalised \$12,100 for breaches of workplace laws, including organising unlawful industrial action, following an investigation and legal action by the Fair Work Ombudsman. See [AWU fined over unlawful industrial action](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2010-media-releases/october-2010/20101001-) (www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2010-media-releases/october-2010/20101001-

[awu-penalty](#)) for more information.

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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: 6038

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

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