

Court upholds 'scab poster' decision against MUA

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The Full Court of the Federal Court has upheld a ruling requiring the Maritime Union of Australia (MUA) and one of its officials to pay a total of \$215,000 in penalties and compensation after labelling a group of workers as "scabs".

The MUA and the assistant secretary of the union's Western Australian branch, William Tracey, distributed posters labelling as "scabs" workers who refused to take part in a strike at Fremantle Port in Western Australia in 2011.

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'.

The Fair Work Ombudsman took legal action and, in 2014, Federal Court Justice Antony Siopis found that the distribution of the posters breached adverse action provisions of the Fair Work Act, describing it as "an act of vengeance" which caused the workers to fear for the safety of themselves and their families.

Justice Siopis penalised the MUA \$80,000 and Tracey a further \$15,000 - and ordered them to pay a total of \$120,000 compensation to the five workers who were labelled 'scabs'.

The MUA and Tracey appealed against the penalties imposed and the finding that they had breached the Fair Work Act - but Justices Richard Tracey, Robert Buchanan and Mordecai Bromberg have now upheld the finding and penalties.

The Court upheld the Order requiring the MUA and Tracey to pay \$120,000 compensation to the five workers for the emotional distress and fear they suffered.

In the majority judgment, Justices Tracey and Buchanan said: "It is sometimes thought, in the traditional union movement at least, that to label someone a scab is the worst insult that can be given. At a minimum, it is a call to shame and ostracise that person. It signifies that they have been guilty of unforgiveable, unredeemable, treachery which will blight their reputation forever. The conduct of (the MUA and Tracey) in the present case involved those traditional aims."

Justices Tracey and Buchanan also noted: "it is apparent that the intent of distributing the posters, quite apart from their natural tendency to engender fear for the personal safety of the persons concerned, and the safety of their families and even their property, was to severely diminish the standing of the targets with their fellow employees, then and in the future."

Justice Bromberg observed that: "conduct that encourages employees to regard their fellow employee as unworthy of being treated with respect and dignity, and that thereby generates emotional distress and a feeling of marginalisation which is experienced in the workplace by the target employee, is capable of being prejudicial to an advantage derived from employment, namely a safe working environment. Equally, a fear experienced in the workplace that violence will be inflicted upon that employee by a co-worker is also capable of prejudicially altering that advantage."

Fair Work Ombudsman Natalie James says the Court's decision to dismiss the appeal sends a clear message that it is a serious breach of workplace laws to vindictively target individuals simply for exercising a workplace right.

"The law protects the right of workers to choose whether to take industrial action and or not to," Ms James said.

"Punishing a worker for exercising that choice, whether that be an employer terminating or otherwise negatively impacting them in their job or a union calling for members to shame or exact vengeance against them is completely unacceptable conduct that will not be tolerated.

"The conduct involved in this matter had a significant personal impact on the affected workers and the Court has clearly taken a dim view of the behaviour, preserving compensation orders made in the workers' favour."

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