

Lloyd Solicitor - Instructions. Both represented.

12pm FWC 6/7/15

Respondent Employees appearing?

Matter of Service - Steve W. - Service proved & Personal Service on Crew Members.
 - (Mr Whitesyn?)
 - Just got given statement. Need to get instructions on it.
 - Respondent must make to deal with statement.

2 July 2015 - Application filed
 - not good enough to get statement just moments before hearing.
 - procedural fairness.

Complicated Matter? No time / insufficient time to look @ proposed evidence.

Refusal to sail vessel - Not complicated -
 - Short adjournment from Applicant.
 - Order sought specific to named EEs & MCA.

2:30pm - Related Matter @ 2pm

Other Vessels & broader warehouse.
 Alexander Spint: Consultant

Calder considers if it goes to international route.

Failed to consult.

Clause (13) E.A.

If termination, then subject to consultation.
 Not until gets to consultation & implies that B.7 engages
 Not in region of status - Due to scale order respondent
 retain vessel in Australian waters.

Not its vessel & ~~is~~ no
 Respondent is not owner of vessel & not part of charter. Calder has 10yr charter.

Refining Carter is not in constitutional powers of five,

Teabag is part of E.A.
Obligation to consult.

- └ Not proposed change.
- └ Not Ratin to change.
- └ A decision
- └ Suggest exp exhibit.

- 25/5/15 Temporary license permits

Transport Recommendations. - FWE cannot direct. (AIMPE) Inter Agreement.

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Freedom of Information Act
by the Fair Work Ombudsman

ABC Media Article

6/7/15

- s. 418 Ordie to Step 1A.
- Statement of Steve Whiteside, witness statement Exhibit 1.
- [Oath - swear by bible]
- 14 Annexures.
- 8/7 Meeting proposed = 3 Unions responded, 9/7 @ 4:30pm to meet.
- Why not prepare applications when apprehended?
- Stated on weekend. Sat 4/7.
- not considered to provide it earlier
- Teekay in discussion with chapter. Letter came on a "shock" to you.
- Consultant with Teekay - long term.
- Arrived Tuesday night, 2/7, go straight to boat, to spoke to crew.
 - Mr Bartsen read to the crew.
 - "I'm as surprised as you are". Everyone is in state of shock. [Yes, first say].

= Friday - Sunday. Mr Bray, Campbell & Keen.
 All meetings on board is consultation.
 Q&A, general discussions - about 1 hour.

"Are you prepared to sail the vessel?" - paragraph 26.

- Asked on Sunday by the Master that Q2 was asked. Not spoken to the Master. Best of knowledge it hasn't been asked.
- Told no such Q2 was asked.
- Know by discussion by with Mr Barts/colleague today.

p. 27 = Meeting on Saturday. Letter by email, think after the meeting. Marked for ID = MFI 7.
 Sat. 4/7 from MUA to Teekay Shipping.
 Not answered. Regarding the answers.

Position of doubt in terms of their future = EE's.

Mr Bray directed MUA members to leave, then meeting continued after returning.
 Members - 13:48pm 5/7/15 sent email about fragile position of crew. Counselling EAP.
 Hints/link - Counselling attend ship today. Mental health & general counselling.
 12 Yrs with Gallop + P. 35 Update. Still getting instructions on statement. 10 min adjourn

Resume 3:30pm : para. 35 - not sailing until is midnight-

23:40pm 6/7/15 - proposal not made.

As soon as possible is today - if vessel is ready to sail.

It's not ready to sail today.

Reasons for not being ready to sail? - Some other problems?

Counselor is attending vessel today. No re-examination.

Nemo Article : Propendent objects by relevance. Media Report.
Accuracy of headlines.

Weight commensurate puts to it. Characteristics of what's occurring. & not direct evidence.

Quote Mr Bray.

Eg. workers have not engaged illegally.

- Comments on what might happen today.

Is IA occurring? Admission or not?

FWC to determine if IA is occurring.

"Threatened, impending or probable" - not just IA taking place.

Marginal relevance. Exhibit 2 - copy of news article from ABC, 6/7/15.
- 9:38am

Enterprise Agreement.

Exhibit 3 - letter of 4/7/15 from MUA to Teekay Shipping.

Eves did not appear - Exhibit 4 - Apologies of non-attendance

- Email comm. to FWC, 6/7/15 by named crew members of Alexander Spirit.

Mr. Grain Kelso - Counsellor giving mental health help. Health & Safety.
 - instructs me still seeing EEs in TDS.
 - Wednesday to give evidence.

Time Constraints.

Evidence need to be wanted upon? ^{five} Wednesday seem a fair way away.
 Counselling session with each EE & travel from TDS / based in Newcastle.
 Teekay had 4 days to prepare evidence.
 So MUA need to have response now ~ critical evidence by counsellor engaged by Applicant.

Interim Orders? or more practically, statement prepared by ^{early} ~~James~~ ^{James} and:
 Statement depends on doing all counselling -
 mental health = safe to sail?
 Marine orders state don't sail if OHS is in issue.
 Not in position to do a statement in advance.

Public Interest re: Interim Orders. s. 420(2) = 48 hr period,
 = Must be done in that period.

* Reasonable concern for imminent health concern / risk.

Need to have contacted EEs 1st.

Not brought forward by EEs about imminent health.

Stay on the vessel.

Counsellor to give evidence... EEs evidence not foreshadowed

IA may not meet definition of section (19).

Timing over weekend is not desirable.

Adjourned to open Tuesday.

GAVIN, Mihajla

From: LOUTSOPOULOS, Maria
Sent: Monday, 6 July 2015 4:49 PM
To: BEASLEY, Prudence
Cc: CHRISTIE, Matthew; RAJAGOPALAN, Sundar
Subject: RE: IA - Teekay [SEC=UNCLASSIFIED]

Hi Prue

Just returned from the FWC attended by Vi Lay, Lara and myself. First hearing was at midday resulting in an adjournment for 2.30pm since Teekay had provided their consultant's statement that day and the Union wanted time to review. This afternoon the FWC received an email from several of the workers with apologies for their inability to attend proceedings.

In brief, no interim order has been issued due to the FWC not making a determination within 2 days of the application being made.

Teekay's consultant, Mr Whiteside, was cross examined by the union. Mr Whiteside referred to attending the ship and the Caltex letter was read out following by an Q and A.

The matter is adjourned until 2pm tomorrow for the preparation of a statement by Mr Kelso, the Teekay appointed counsellor who is currently providing counselling services to the affected workers. The union is alluding to the matter being an OHS issue ie that the action taken by the workers is based on a reasonable concern for the imminent risk to their health. Teekay disputed as the union has not previously provided evidence to this effect (eg of workers indicating OHS concerns). Union indicated it was not safe for the ship to sail if the workers were not "in health" to sail it.

Anything else, do not hesitate to contact me.

Will keep you informed,

Thanks

Maria

Maria Loutsopoulos | FairWork Inspector – General Protections and Misclassification Team
 Operations Group
Fair Work Ombudsman

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 F 02 6276 9947

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~Please consider the environment before printing this message~

From: BEASLEY, Prudence
Sent: Monday, 6 July 2015 4:08 PM
To: LOUISOPOULOS, Maria
Subject: FW: IA - Teekay [SEC=UNCLASSIFIED]

Hi Maria

No doubt Matt, would have briefed you – but if you could provide me a quick update when you return to the office on the outcome of the FWC hearing that would be much appreciated.

Regards

Prue Beasley | A/g Director – General Protections and Misclassification Team
Operations Group
Fair Work Ombudsman

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X 74883

M 0402 858 275

F 07 3002 6841

Please note: I work from home each Thursday and available on mobile/email.

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GAVIN,Mihajla

From: BEASLEY,Prudence
Sent: Tuesday, 7 July 2015 8:03 AM
To: LOUSOPOULOS,Maria
Cc: RAJAGOPALAN,Sundar; CHRISTIE,Matthew
Subject: RE: IA - Teekay [SEC=UNCLASSIFIED]

Thank you Maria please keep me updated on how things go today.

Thankyou for the teams effort in monitoring this matter.

Regards
 Prue

From: LOUSOPOULOS,Maria <Maria.Loutsopoulos@fwo.gov.au>
Date: 6 July 2015 4:49:25 pm AEST
To: BEASLEY,Prudence <Prudence.Beasley@fwo.gov.au>
Cc: CHRISTIE,Matthew <Matthew.Christie@fwo.gov.au>, RAJAGOPALAN,Sundar <Sundar.Rajagopalan@fwo.gov.au>
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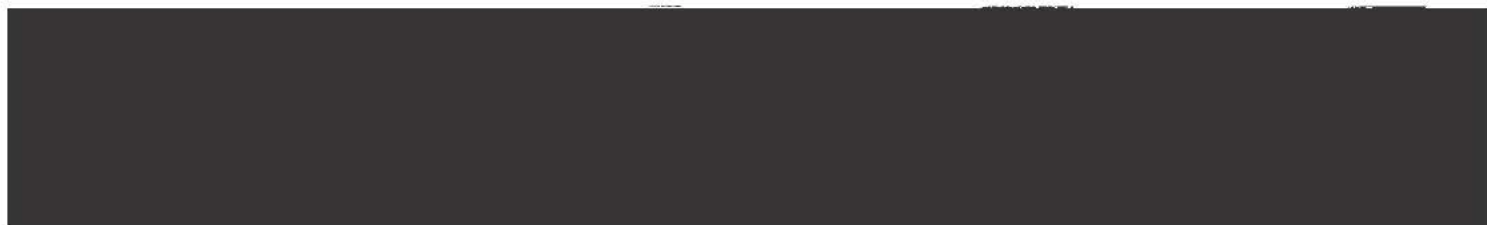
Please note: I work from home each Thursday and available on mobile/email.

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News article received by OK.

ab-grens

6/7/

15 9:35am.

U doesn't want FWC to receive it as airport article

Article talks about what is occurring on vessel +
characterisation of what occurred

Article quotes Bragg.

• Letter of 9/7 MVA letter to T/K. 6/7

• Crew sent email to FWC. - that they were
unable to attend but proceeding today.

Named crew members.

• Gavin Kelso - co-counseling service - ya to OTHAS.

- will be re-logged in Feb + cannot give
out until then.

ER said if counsel's evidence ~~the~~ does not read to
 people wait til wed + only one about belly
 whistle's evidence....

V says new order will receive counseling + be
 Koko to travel to Syd/Memphis.

Marshall says

BU says White's had more time + only stated
 saying on Sat his student

Resumption of being in early afternoon + have
 Koko's student prepared by then.

V says ship is safer to sail + would know he
 healthy to sail - in other's objection

V doesn't think by tomorrow. J'd be ready as
 Koko is busy with counsel.

ER seeking interim orders.

V says we haven't discussed public interest aspect
 of F/O.

42a(2) - if alive 48 hrs PWC cannot be made
 then PWC can be made in for interim orders.
 PWC considering calling evidence in Kuba at 2pm
 tomorrow

ER 9/11 ~~at~~ ✓

and - ~~what~~ the E. of bin 6 CE 3
 of bin 6 of 3 us in for OTTS must visit
 to their health

ER says → I didn't bring any CE to
 say OTTS concern. yeah to get 1/2 the PWC
 go against it is CE in here today

paper v E 1A not out yet diff v s 19

1/2 PWC doesn't ✓ I deny myself
 2pm focus afternoon

Witness - Gavin Kelso (by phone) on Alexander Spirit

BK - Hatter's Moving Services (rags)

Quels - B. SaSe, pd. Soil Health, etc.

1 crew had breakdown entire body + (GK) provided assistance
the crewmember (GK) he counselled him before.

- arrived in Baysport 29am yesterday (man)

- he seen ^{all} 9 crew members.

- notes taken + kept belongings on shore.

- ship has changed location to 1 part of harbor to
"free up shipping" so other vessels can berth.

• Comments + observations re: GK's mental health.

- 10 not divulged without consent. Best crewmember

CM ① - v. J/, Veli, "you sit also + the in Singapore model
in legs have jobs + jobs to go to forger workers".

- 2nd to 1st 1st 1st

- usual w/ 0. mll.

① say can lead back to n-r, (GK) See 1 H2 + of

has of - v. g. can didn't 5 L go 1 3/4

CM ② ③ d. z. u-e bar bil + bil whl.

CM ③ - not sleep well, to n-r u-e bar to-c-mat.

CM ④ - ~~just~~ loads of work + way on loaded it. ^{↑ Like} CM ⑤

THIS MORNING.

CM ⑤ - 100-ri of fail job f. f. r. emotionally sound.

CM② = OK aside to usual name to help of --

CM③ = V. J. / ① as young folks who are all L.P. for

CM④ = V. J. / upset

& as engineers & other people I see (E.K.) too.

← HR Advisor

Steve Gutman → email - update SB on counseling updates

non
issues - postpart on doing their jobs. post interview would

like to discuss with all crew how to move forward & support each other.

& other notes @ CMO's request to have been removed
to help those other cases said they had concerns keeping
their mind on the job.

① midday the ships moved to one berth to another

ORAL SUBMISSIONS (ER)

- IA is happy + organized + not protected

IA

- been on performance of work by CMO's → ratings, interest

code

- 19(16) of Act

- referred to p. 6 v. c. 19(16) v. Act

- IA is looking at - Naval pers. 416117

7 T/K is technical mg - ylt + EK v EE's

T/K Alex Spent in office, *

T/K does not v. u. with v. ylt + EK v EE's is time chartered
to collect (will 2019).

Jan Brig - post mortem Sec of MUA.

① → co. co / options for (K - v. vgl + all in no)

c) a few opt / L dpl A/S L ul - all out ul ship
enx

CKbg → is TK descending against crew by 3.35L
vhl extraction.

2/7/15 - en s. 418 opt

- D. by no end' but OHS concern.

2/7/15 → ① mg) Cuy L en opt / v A/S

- also v en so good ul ① letter copy.

- Mr. Whiteide read that letter.

- Mr. Campbell + Brag in attendance + also

see letter + application

- No evidence of OHS concern.

3/7 - At ER attend. not ul crew + incident

- Master says - are you prep? Local vgl helo

en s. 418 → proof of loss. (2nd refusal)

4/7 - MUA website. (posted by Molly DelBard)

- MUA write to Whiteide with questions. 22 g

no reference to OHS

5/7 - Meet with MUA more Campbell, etc → first

suggestion of crew being in fragile condition

5/7 - 1 week before

is aft- 5/7- no end v real- 1A th as oc- is cu rv-
ok agn.

Argut that must fail- No 1A happening

Ships as well, b mltl n. h-b- ie the crew are working

ie no end v 1A happening

CM 1, 2, 17- health impacts (anoxia)

Can't make Order against cy over members due to complexity
of 1, 2, 17.

before you grant Order 1A must be happening + can
identify the particular EEs (cannot do it here).

- If 1A is happening in real time (the MUA is ongoing) 1A.

V there is a dispute- resolution capacity ie speaking
to members, consulting with ER.

Mule release workers refused to suit vessel (not evidence
of organisation) ~~ie no evidence of 1A org~~

No 1A (if as, due to 01105)

Organisation no org.

Prin' f 1/2 hr. (4-28pm)

Right of reply by EIC.

"Organisation" → delegate also is an agent/officer of U.
ie U. officials were on vessel & fully to member.

must ask agent → MUA to prove an individual EIC
felt this.

S.O. 1984

ship & def.

MUA & MUA of MUA.

Be and' up to the IA in terms, etc.

MUA - IA also L OHS 1000.

It is a copy by MUA.

- long time ago

IA also has PIA due to C" & all signs of p.

14 v 1000.

the v all of it in a 1000 DHS.

was as much

referred → told it to a de-v-c-x.

altered to info.

IA satisfied def & v IA + a note

+ not report to

c) Order 100 p. 2.

come off the vessel. He is in the process of coming off the vessel. HR has been very good with the situation.

CM2 - Person is also distressed, worried about reemployment due to her age (50 yrs). Claimed that they felt unsafe.

CM3 - Secure, not too worried about themselves but more concerned for the others.

CM4 - Similar to the 3rd, emotions a little upset but in all was in a better state of mind and financially better off, concerned for the other members.

CM5 - Concern over financial status. Anxious, he was experienced, expected this. Emotionally sound.

CM6 - Poor sleeping habits, concerned for the wellbeing of others.

CM7 - Stressed, agitated, stressed. Worried he couldn't perform his job properly.

CM8 - Back to the first guy that he saw.

Merhan TK Counsell

Asked if he knew Steve Burtrim. Said yes.

- Read the email back to Gavin Kelso.

~~He recommended that~~

- Spoke to Mr Burtrim, agreed that CM1 would be removed from the vessel.

- Only CM1 said they couldn't carry out tasks, only about concentrating on job.

- Confirms he has experience with similar situations.

- Only found out that the vessel was moving from Birn to Derwent this morning when he was on board.

TK Counsell

Arguing that UIA is happening as a result of these instances.

Conseil

says that no evidence of employees
having concerns.

- the 1's implying that IA is unprotected
and organized by the union.

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GAVIN,Mihajla

From: RAJAGOPALAN,Sundar
Sent: Tuesday, 7 July 2015 5:50 PM
To: ROBERTSON,Greg; CHRISTIE,Matthew
Cc: LIU,Vi-Lay; LOUSOPOULOS,Maria; BEASLEY,Prudence
Subject: RE: MUA engaged in Unprotected IA in Refusing to sail a ship from Devonport [DLM=Sensitive:Legal]

Follow Up Flag: Follow up
Flag Status: Completed

Sensitive: Legal

Dear all

I am not sure whether you received a copy of the orders from Maria following conclusion of the hearing at FWC. FWC has made orders for the IA to stop. The ship is scheduled for sailing on 10 July 2015.

You will receive more information tomorrow.

Best regards

Sundar

GAVIN,Mihajla

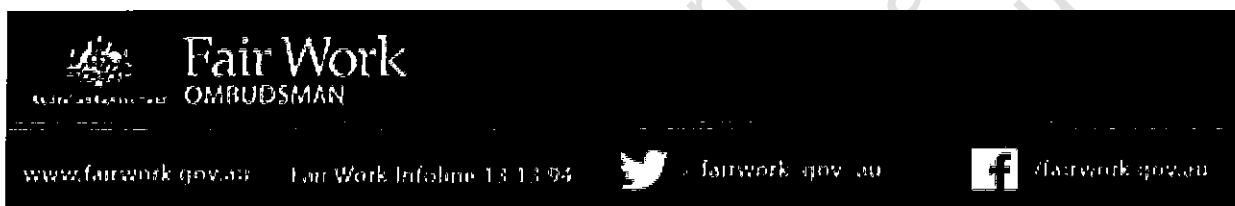
From: LOUISOPOULOS,Maria
Sent: Wednesday, 8 July 2015 8:41 AM
To: ROBERTSON,Greg
Subject: Teekay Shipping - MUA IA [SEC=UNCLASSIFIED]
Attachments: Decision Teekay v MUA.pdf; Order - Teekay v MUA.pdf

Maria Loutsopoulos | Fair Work Inspector – General Protections and Misclassification Team
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[2015] FWC 4498



FairWork
Commission

DECISION

Fair Work Act 2009

s.418 - Application for an order that industrial action by employees or employers stop etc.

Teekay Shipping (Australia) Pty Ltd

v

Maritime Union of Australia, The
(C2015/4570)

COMMISSIONER CAMBRIDGE

SYDNEY, 7 JULY 2015

Application for an Order to stop industrial action.

[1] This is the edited text of an ex tempore Decision made in transcript during proceedings held on 7 July 2015.

[2] This matter involves an application made under s. 418 of the *Fair Work Act 2009* (the Act), seeking that the Fair Work Commission (the Commission) make an Order that industrial action that is occurring be stopped and not occur

[3] Section 418 of the Act is in the following terms:

"418 FWC must order that industrial action by employees or employers stop etc.

(1) If it appears to the FWC that industrial action by one or more employees or employers that is not, or would not be, protected industrial action:

(a) is happening; or

(b) is threatened, impending or probable; or

(c) is being organised;

The FWC must make an Order that the industrial action stop, not occur or not be organised (as the case may be) for a period (the **stop period**) specified in the Order.

Note: For interim orders, see section 420.

(2) The FWC may make the Order:

(a) on its own initiative; or

(b) on application by either of the following:

[2015] FWC 4498

(i) a person who is affected (whether directly or indirectly), or who is likely to be affected (whether directly or indirectly), by the industrial action;

(ii) an organisation of which a person referred to in subparagraph (i) is a member.

(3) In making the Order, the FWC does not have to specify the particular industrial action.

(4) If the FWC is required to make an Order under subsection (1) in relation to industrial action and a protected action ballot authorised the industrial action:

(a) some or all of which has not been taken before the beginning of the stop period specified in the order; or

(b) which has not ended before the beginning of that stop period; or

(c) beyond that stop period;

The FWC may state in the Order whether or not the industrial action may be engaged in after the end of that stop period without another protected action ballot."

[4] The application has been made by *Teekay Shipping (Australia) Pty Ltd* (Teekay). The application seeks an Order against the *Maritime Union of Australia* (the MUA) and members of the MUA who are employees of Teekay.

[5] The industrial action that is the subject of the application relates to employees of Teekay who are members of the MUA, and who are allegedly refusing to perform work as directed so as to enable the vessel named *Alexander Spirit*, to sail to Singapore.

[6] The definition of industrial action is found at section 19 of the Act which is in the following terms:

"19 Meaning of *industrial action*

(1) ***Industrial action*** means action of any of the following kinds:

(a) the performance of work by an employee in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work by an employee, the result of which is a restriction or limitation on, or a delay in, the performance of the work;

(b) a ban, limitation or restriction on the performance of work by an employee or on the acceptance of or offering for work by an employee;

(c) a failure or refusal by employees to attend for work or a failure or refusal to perform any work at all by employees who attend for work;

[2015] FWC 4498

(d) the lockout of employees from their employment by the employer of the employees.

Note: In *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v The Age Company Limited*, PR946290, the Full Bench of the Australian Industrial Relations Commission considered the nature of industrial action and noted that action will not be industrial in character if it stands completely outside the area of dispute and bargaining.

(2) However, *industrial action* does not include the following:

(a) action by employees that is authorised or agreed to by the employer of the employees;

(b) action by an employer that is authorised or agreed to by, or on behalf of, employees of the employer;

(c) action by an employee if:

(i) the action was based on a reasonable concern of the employee about an imminent risk to his or her health or safety; and

(ii) the employee did not unreasonably fail to comply with a direction of his or her employer to perform other available work, whether at the same or another workplace, that was safe and appropriate for the employee to perform.

(3) An employer *locks out* employees from their employment if the employer prevents the employees from performing work under their contracts of employment without terminating those contracts.

Note: In this section, *employee* and *employer* have their ordinary meanings (see section 11)."

[7] The evidence produced during the Hearing has confirmed that the industrial action which is the subject of the application is happening or is threatened, impending, or probable or is being organised. The MUA has advanced inter alia, the proposition that the industrial action taken in this instance does not satisfy the definition of industrial action on the basis that it is action that meets the exclusion to the definition of industrial action contained in s. 19 (2) (c) of the Act.

[8] I have considered the evidence provided by the MUA upon which it has been asserted that the industrial action relates to health and safety concerns of the MUA and its members such that the action has been taken in satisfaction of the terms of s. 19 (2) (c) of the Act. Upon evaluation of the evidence, I am unable to accept that the industrial action in this instance satisfies the legislative exclusion provided by s. 19 (2) (c) of the Act.

[2015] FWC 4498

[9] The existence of what may be considered to be a legitimate concern which prompts the taking of industrial action does not render that action to be protected industrial action. Further, industrial action does not become protected industrial action because of circumstances where there may be personal psychological impacts arising from the continuation of work in accordance with the manner that work is customarily performed and without any form of restriction, limitation or delay upon the performance of work. The prospect of some adverse physiological condition does not translate into a reasonable concern about an imminent risk to health and safety.

[10] Although I may personally have great sympathy for the crew of the *Alexander Spirit*, the predicament that these individuals face is, in essence, a predicament that is broadly shared by many other Australian workers. The prospect of sailing the *Alexander Spirit* to Singapore may, for example, be contemplated in similar fashion to those vehicle manufacturing workers who assemble the final Falcon, Commodore and Camry.

[11] Consequently, the industrial action in this instance satisfies the definition of industrial action and it is not protected industrial action.

[12] Further, I do not believe that the industrial action is based on a reasonable concern about an imminent risk to health or safety. Therefore, pursuant to s 418 of the Act, the Commission must Order that the industrial action stop.

[13] The Orders [PR569058] as broadly sought by Teekay are made and issued separately.



Mr S P Meehan of Counsel, with *Mr D Lloyd* and *Ms H Martin*, solicitors from Ashurst Australia, on behalf of Teekay;

Mr S Crawshaw, SC of Counsel, with *Mr K Bolwell* on behalf of the MUA.

Hearing details:

2015.
Sydney:
July, 6 & 7.

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PR569058



FairWork
Commission

ORDER

Fair Work Act 2009

s.418 - Application for an order that industrial action by employees or employers stop etc.

Teekay Shipping (Australia) Pty Ltd

v

Maritime Union of Australia, The
(C2015/4570)

Maritime industry

COMMISSIONER CAMBRIDGE

SYDNEY, 7 JULY 2015

Application for an Order to stop industrial action.

1. TITLE

This Order will be known as the *Teekay Shipping (Australia) Pty Ltd Alexander Spirit Industrial Action Order* (the Order).

2. PERSONS BOUND AND APPLICATION OF ORDER

This Order is binding upon:

- (a) The Maritime Union of Australia (MUA), and;
 - (i) its officers; and
 - (ii) its delegates, employees and agents who come into contact with, or have responsibility for, the Employees (as described in clause 2(b)),
(MUA Representatives);
- (b) employees of Teekay Shipping (Australia) Pty Ltd (Company) who are;
 - (i) members, or eligible to be members, of the MUA; and
 - (ii) employed on the Alexander Spirit; and
 - (iii) engaged in work which is regulated by the *Teekay Shipping Australia Pty Limited Seagoing Ratings Enterprise Agreement 2011 (Agreement)*; and

PR569058

(iv) named in the Schedule

(Employees).

3. DEFINITION OF INDUSTRIAL ACTION

For the purposes of this Order, **industrial action** means any action of the following kinds:

- (a) the performance of work by an Employee in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work by an Employee, the result of which is a restriction or limitation on, or a delay in, the performance of the work;
- (b) a ban, limitation or restriction on the performance of work by an Employee, or on the acceptance of or offering for work by an Employee; and
- (c) a failure or refusal by Employees to attend for work or a failure or refusal to perform any work at all by Employees who attend for work,

but does not include the following:

- (d) protected industrial action within the meaning of s 408 of the *Fair Work Act 2009*;
- (e) action by an Employee that is authorised or agreed to by the Company; and
- (f) action by an Employee if:
 - (i) the action was based on that Employee's reasonable concern about an imminent risk to the Employee's health or safety; and
 - (ii) the Employee did not unreasonably fail to comply with a direction of the Company to perform other available work, whether at the same or another workplace, that was safe and appropriate for the Employee to perform.

4. INDUSTRIAL ACTION TO STOP OR NOT OCCUR

- (a) Each Employee must immediately stop all industrial action that is happening at the time that this Order comes into effect, and must not, recommence, engage in or threaten to engage in, industrial action while this Order is in force.
- (b) The MUA and the MUA Representatives, must stop organising, and not organise, any industrial action by any of the Employees.
- (c) The MUA must immediately, upon the service of this Order on the MUA, advise Employees who are members of the MUA, that any direction, advice or authorisation by the MUA to engage in industrial action is withdrawn and that such industrial action must cease immediately upon this Order coming into effect.

PR569058

5. SERVICE OF ORDER

Without limitation as to other means of service, it will be sufficient service of this Order:

- (a) upon the MUA and the MUA Representatives if:
 - (i) a copy of this Order is sent by facsimile or email (or otherwise provided) to the National Office of the MUA, or to an officer of the MUA who has dealings with the Company in relation to any of the Employees; or
 - (ii) a copy of this Order is handed to or read in the presence of an officer or employee of the MUA;
- (b) upon an Employee who is a member of the MUA if:
 - (i) a copy of this Order is served on the MUA as provided for in clause 5(a); or
 - (ii) a copy of this Order is placed on the notice board(s) usually used for the purpose of communicating with Employees at the workplace by 10pm on 7 July 2015; or
- (c) upon an Employee who is not a member of the MUA if:
 - (i) a copy of this Order is personally served on the Employee on or about the Alexander Spirit at any time; or
 - (ii) a copy of this Order is placed on the notice board(s) usually used for the purpose of communicating with Employees on the Alexander Spirit by 10pm on 7 July 2015.

6. TERM AND DATE OF EFFECT

This Order will come into effect from 5:00pm on 7 July 2015 and will remain in force until 11:59pm on 7 August 2015, unless varied or revoked by further Order of the Fair Work Commission.



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<Price code A>

PR569058

SCHEDULE

1. Stuart King, Chief Integrated Rating;
2. Geoffrey Bailey, Integrated Rating;
3. Jayden Bruce, Integrated Rating;
4. Varro Deacon, Integrated Rating;
5. Raymond Nolan, Integrated Rating;
6. Andrew Poynter, Integrated Rating;
7. Martin Shaliapin, Integrated Rating;
8. Joanne Kerin, Chief Caterer; and
9. Krista Grace, Chief Cook.

Released under the
Freedom of Information Act
by the Fair Work Ombudsman

GAVIN,Mihajla

From: CHRISTIE,Matthew
Sent: Wednesday, 8 July 2015 9:18 AM
To: LIU,Vi-Lay
Subject: FW: FWC Order for MUA to cease Unprotected IA [DLM=Sensitive:Legal]
Attachments: Decision - Teekay v MUA.PDF; Order - Teekay v MUA.PDF

Sensitive: Legal

Hi Vi Lay.

FYI below.

Can you please contact the both parties (Teekay and the MUA) this morning to confirm the following:

Teekay When is the ship set to sail? (date and time so we can monitor)
 MUA – Has the Order been served as per section 5 of the Order? Is the MU intending to appeal the decision?

Please record these conversations in Nexus and if you have not already done so, attach the Decision and Order.

Thanks.

Regards,

Matt Christie | Assistant Director (a/g) – General Protections and Misclassification Team
 Operations Group
Fair Work Ombudsman

T 02 9246 0463
 X 20463
 F 02 6250 4543
 E matthew.christie@fwo.gov.au

GPO Box 9887 Sydney NSW 2001 | Level 12 255 Elizabeth St, Sydney NSW 2000

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From: ROBERTSON,Greg
Sent: Wednesday, 8 July 2015 9:01 AM
To: CAMPBELL,Michael
Cc: DAVIDSON,Mark; LEAHY,Eric; DENNIS,Janine; BILDSTIEN,Craig; BEASLEY,Prudence; CHRISTIE,Matthew
Subject: FWC Order for MUA to cease Unprotected IA [DLM=Sensitive:Legal]

Sensitive: Legal

Michael,

Maria Loutsopoulos attended the Sydney FWC late yesterday afternoon and Commissioner Cambridge granted a s 418 Order that the MUA and nine named individual crew stop industrial action occurring on the Alexander Spirit in Devonport. Teekay Shipping (Australia) Pty Ltd lease the ship from Caltex.

Commissioner Cambridge was not satisfied that the MUA had raised sufficient health and safety reasons in their argument as to why the crew should not sail the ship. The MUA argued that the psychological harm suffered by the crew losing their jobs on the ship which is to be returned to Singapore and then crewed by international workers on its return was a legitimate health and safety ground.

At para 10 of the Decision Commissioner Cambridge makes some comments on his view on parallels to the manufacturing landscape

Teekay has confirmed that the company has booking with the Port Master for the ship to sail from Devonport this Friday 10th July. The Order is valid until 7 August 2015.

I have attached a copy of the Order and the Decision.

The media is reporting this morning that the MUA intends to appeal to the Full Bench of the Commission, I presume to test the health and safety argument.

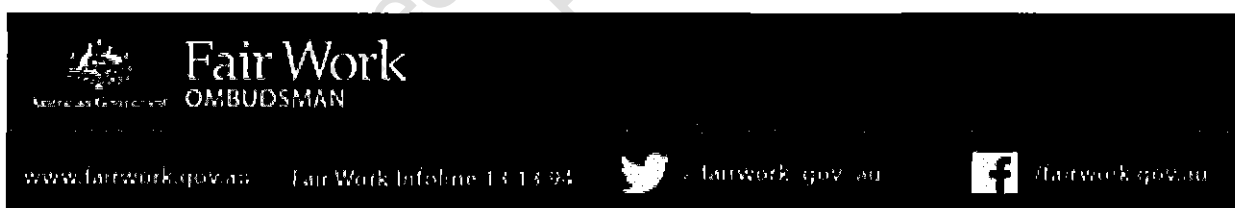
Regards

Greg Robertson | Director | General Protections and Misclassifications Team
Operations Group
Fair Work Ombudsman

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X 32998
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F 02 6264 5185

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Phone Call

General Information



Reference Number	PHN-0061-0584	Phone Number	02 9267 9134
Sender	 Vi-Lay Liu	Direction	Outgoing
Recipient	 Kristian Bolwell	Created On	8/07/2015

Phone Call Description

Activity Subtype

Subject Contact with MUA after FWC Order

Phone Call Details

Regarding	 MAT-0015-1696	Priority	Normal
Owner	 Vi-Lay Liu	Sub-Category	
Duration	10 minutes		
Due	8/07/2015 10:00 AM		
Category			

Notes

Notes

 **Title: Note created on 8/07/2015 10:43 AM by Vi-Lay Liu**

Note created on 8/07/2015 10:43 AM by Vi-Lay Liu

Edited 8/07/2015 10:47 AM by Vi-Lay Liu

8/7/15 - 10:25am, FWI Liu contacted the MUA National Office (02) 9267 9134 and was transferred to their Senior National Legal Officer - Kristian Bolwell.

Mr Bolwell advised they received the notice (FWC Order) and that it's not incumbent on the MUA to serve the Order. When asked about their intention to appeal the Decision, I was advised and quote "we're not going to give away what to do or not do".

FWI Liu confirmed Mr Bolwell is the contact person for this matter and was advised to go via the switch to contact him.

Call ended 10:31am.

GAVIN,Mihajla

From: LIU,Vi-Lay
Sent: Wednesday, 8 July 2015 10:40 AM
To: CHRISTIE,Matthew
Subject: RE: FWC Order for MUA to cease Unprotected IA [DLM=Sensitive:Legal]

Sensitive: Legal

Hi Matt,

I have sent an email to Teekay's new contact person and it has been 'read' receipted at 10:06am. I've requested the following information today:

- (1) Has the FWC Order been serviced in accordance with section 5 of the Order?
- (2) When is the Alexander Spirit scheduled to sail (date and time)?
- (3) Contact details (email, address, phone number) for the 9 employees listed in the Schedule of the Order attached.

I've also contacted the MUA and was transferred to their Senior National Legal Officer. I was advised the MUA received the Order and that they're "not going to give away what to do or not do".

Regards,

Vi-Lay Liu | Fair Work Inspector General Protections and Misclassification Team
 Operations Group
Fair Work Ombudsman

T 02 8293 4632
 X 24632
 F 02 6204 2820

I currently work part time on Monday, Wednesday, Thursday and Friday.

GPO Box 9887 Sydney NSW 2001 | Level 12, 255 Elizabeth Street, Sydney NSW 2000

The Fair Work Ombudsman welcomes feedback about your interaction with the agency and invites you to send feedback to yourfeedback@fwo.gov.au



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From: CHRISTIE,Matthew
Sent: Wednesday, 8 July 2015 9:18 AM
To: LIU,Vi Lay
Subject: FW: FWC Order for MUA to cease Unprotected IA [DLM=Sensitive:Legal]

Sensitive: Legal

Hi Vi Lay.

FYI below.

Can you please contact the both parties (Teekay and the MUA) this morning to confirm the following:

Teekay – When is the ship set to sail? (date and time so we can monitor)

MUA – Has the Order been served as per section 5 of the Order? Is the MU intending to appeal the decision?

Please record these conversations in Nexus and if you have not already done so, attach the Decision and Order.

Thanks.

Regards,

Matt Christie | Assistant Director (a/g) General Protections and Misclassification Team
Operations Group
Fair Work Ombudsman

T 02 9246 0463

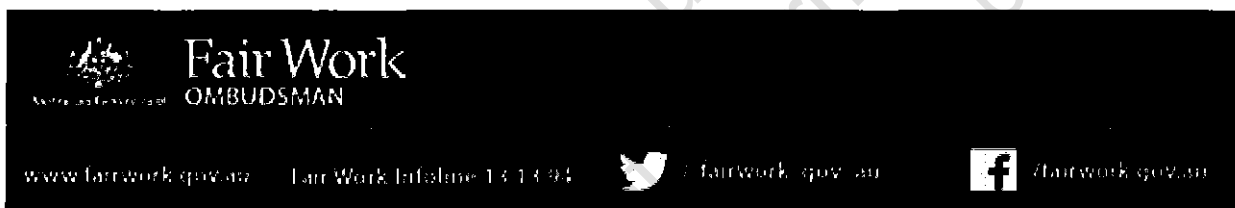
X 20463

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Sent: Wednesday, 8 July 2015 9:01 AM

To: CAMPBELL,Michael

Cc: DAVIDSON,Mark; LEAHY,Eric; DENNIS,Janine; BILDSTIEN,Craig; BEASLEY,Prudence; CHRISTIE,Matthew

Subject: FWC Order for MUA to cease Unprotected IA [DLM=Sensitive:Legal]

Sensitive: Legal

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Regards

Greg Robertson | Director| General Protections and Misclassifications Team
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GAVIN,Mihajla

From: SANDERS,Ann
Sent: Wednesday, 8 July 2015 12:19 PM
To: CHRISTIE,Matthew; BEASLEY,Prudence
Cc: RAJAGOPALAN,Sundar
Subject: RE: MUA engaged in Unprotected IA in Refusing to sail a ship from Devonport [DLM=Sensitive:Legal]

Sensitive: Legal

Thanks Matt for the update.

Regards

Ann Sanders | Senior Fair Work Inspector (a/g) - General Protections and Misclassifications Team
 Operations Group
Fair Work Ombudsman

T 03 9671 2160
 X 32160
 M 0434 669 020
 F 02 6264 5185
 E ann.sanders@fwo.gov.au

GPO Box 9887 Melbourne 3001 | 414 La Trobe St, Melbourne Vic 3001

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From: CHRISTIE,Matthew
Sent: Wednesday, 8 July 2015 10:02 AM
To: SANDERS,Ann; BEASLEY,Prudence
Cc: RAJAGOPALAN,Sundar
Subject: RE: MUA engaged in Unprotected IA in Refusing to sail a ship from Devonport [DLM=Sensitive:Legal]

Sensitive: Legal

Hi Ann.

Orders were issued yesterday and we are now contacting the parties to confirm that the service section of the Order has been complied with and whether the MUA is intending to appeal. We will also be seeking to contact all of the 9 workers individually to confirm their understanding of the Order and the consequences of failing to comply.

Our understanding is that the ship is set to sail on Friday. So we will know on Friday whether they have complied or not.

Regards,

Matt Christie | Assistant Director (a/g) – General Protections and Misclassification Team
Operations Group
Fair Work Ombudsman

T 02 9246 0463
X 20463
F 02 6250 4543
E matthew.christie@fwo.gov.au

GPO Box 9887 Sydney NSW 2001 | Level 12 255 Elizabeth St, Sydney NSW 2000

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From: SANDERS,Ann
Sent: Wednesday, 8 July 2015 9:59 AM
To: BEASLEY,Prudence; CHRISTIE,Matthew
Cc: RAJAGOPALAN,Sundar
Subject: RE: MUA engaged in Unprotected IA in Refusing to sail a ship from Devonport [DLM=Sensitive:Legal]

Sensitive: Legal

Hi there

Are there any developments for this matter?

Regards

Ann Sanders | Senior Fair Work Inspector (a/g) - General Protections and Misclassifications Team
Operations Group
Fair Work Ombudsman

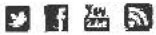
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the Act an

E-mail: Email to Teekay following FWC Order FWO:0250463

Page 1 of 1

E-mail

From  Vi-Lay Liu **Cc**
To  Vi-Lay Liu **Bcc**

Activity Subtype **Created On** 8/07/2015

Subject Email to Teekay following FWC Order FWO:0250463

7/7/15 - Mr Grant Hardie advise he is overseas and refer the matter to Mr Steve Whiteside.

8/7/15 - See attached email correspondence to Mr Whiteside in relation to FWC Order. Called him at 11:10am to confirm receipt of his response. He advised there is no meeting planned for today, but there is one with the whole crew tomorrow - at which time they would most probably schedule a sail time. Late tomorrow afternoon is the likely sail time. I requested he let me / FWO know of any development and in particular, if there is a refusal to sail. His team is currently putting together the contact details for the 9 incumbent employees named in the Schedule. It should be ready in the next couple of hours FWO will continue to monitor the situation and will attempt to advise the employees of their obligations regarding the Order. Call ended 11:12am.

8/7/15 - Mr Whiteside provided the contact details for the employees listed in the FWC Order Schedule.

8/7/15 - 4:26pm, contacted Mr Whiteside to request a copy of the MUA Appeal. He was surprised the FWO has not got a copy as yet. He will forward a copy now. While it's not stated in the Appeal, his belief is that the MUA wants the matter treated as protected industrial action based on health and safety concerns.

See attached.

Regarding  MAT-0015-1696
Owner  Vi-Lay Liu
Duration 30 minutes **Priority** Normal
Due **Reference Number** EMA-0017-3006
Category **Sub-Category**

Attachments

File Name	File Size (Bytes)
FW Alexander Spirit - Appeal by MUA against s 418 order ...	381,441
New Contact Person for Teekay Shipping - 070715.msg	38,913
RE Unprotected Industrial Action - FWC Order_080715.msg	137,217
RE Unprotected Industrial Act on FWC Order_Employee ...	147,456

GAVIN,Mihajla

From: SANDERS,Ann
Sent: Friday, 10 July 2015 3:05 PM
To: CHRISTIE,Matthew; LOUSOPOULOS,Maria; NICKL,Cresta
Cc: BEASLEY,Prudence; RAJAGOPALAN,Sundar
Subject: RE: Teekay / MUA Potential Site Visits [SEC=UNCLASSIFIED]

Hi Matt

Nathan and Jacquie have volunteered from QLD

Regards

Ann Sanders | Senior Fair Work Inspector (a/g) - General Protections and Misclassifications Team
 Operations Group
Fair Work Ombudsman

T 03 9671 2160
 X 32160
 M 0434 669 020
 F 02 6264 5185
 E ann.sanders@fwo.gov.au

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From: CHRISTIE,Matthew
Sent: Friday, 10 July 2015 2:48 PM
To: LOUSOPOULOS,Maria; NICKL,Cresta; SANDERS,Ann
Cc: BEASLEY,Prudence; RAJAGOPALAN,Sundar
Subject: Teekay / MUA Potential Site Visits [SEC=UNCLASSIFIED]
Importance: High

Hi all.

I'm sure you are all to a certain degree aware of the ongoing Teekay / MUA Industrial Action at Devonport Tasmania. An Order was issued by the FWC which was appealed by the MUA. The appeal was dismissed today and the Order still stands.

It's expected that the ship is going to be directed to sail tomorrow morning at 6:15 am (we are in the process of confirming this with Teekay) It is likely that this direction will not be complied with and we will need to commence an investigation into the noncompliance with the Order. There is also consideration being given at this time as to whether the FWO will seek an injunction against the MUA for the picket line activities (should they prevent access to the ship for any replacement crews that are engaged)

Michael Campbell has requested that we send Inspectors conduct observations (at a safe distance) so that we can report on the action. I have been in contact with the TAS RST and have confirmed the availability of one Inspector to assist. So we will probably require 3 GPMT Inspectors. Can you please talk to your teams and see who would be available if required to be in TAS on Tuesday and Wednesday next week.

Ann, I understand that the VIC team is probably not in a position to assist, so please take this email as an FYI only.

Please let me know by Monday morning who would be in a position to assist so we can start making appropriate travel arrangements.

Regards,

Matt Christie | Assistant Director (a/g) – General Protections and Misclassification Team
Operations Group
Fair Work Ombudsman

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X 20463
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