



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

(as represented by the Office of the Fair Work Ombudsman)

and

Patrick Stevedores Holdings Pty Ltd
(ACN 060 462 919)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Patrick Stevedores Holdings Pty Ltd (ACN 060 462 919) (**Patrick**), of Level 4, 476 St Kilda Road, Melbourne, in the State of Victoria, for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

2. At all relevant times, Patrick was carrying on a business within the transport industry which conducted stevedoring operations, including for containerised cargo.
3. On 4 December 2013, Patrick made an application to the Fair Work Commission (**FWC**) pursuant to section 418 of the FW Act to stop unprotected industrial action occurring at the Patrick Terminal in Fremantle, Western Australia (**Application**).
4. The Application alleged that:
 - (a) from 19 November 2013, there was a significant decrease in the number of container movements per crane gang, and this represented more than a fifty percent decrease in productivity;
 - (b) the Maritime Union of Australia (**MUA**) had organised employees to reimpose productivity limitations at the Fremantle Terminal, including limitations to reduce the average productivity and by reinstating a cap of approximately two hundred container movements; and
 - (c) the quantified economic loss resulting from the industrial action was approximately \$600,000.00.
5. The significant decrease in container movements per crane gang took place over the Evening, Day and Night shifts at the Fremantle Terminal from 19 November 2013 until 31 December 2013.
6. From at least 5 December 2013, Patrick was aware that the industrial action was occurring.
7. On 5 December 2013, the FWC heard the Application and made an *ex tempore* decision on transcript ([2013] FWC 9547) and Interim Order (PR545349) commencing at 6pm Australian Eastern Standard Time on 5 December 2013. The Interim Order bound Patrick's employees who were MUA members, and the MUA itself, to cease the industrial action.
8. On 19 December 2013, the FWC heard the Application and made a decision ([2014] FWCFB 657) and a Final Order (PR545941).
9. The MUA subsequently appealed the final decision and Final Order. On 31 January 2014, the MUA's appeal was dismissed ([2014] FWCFB 657) (**Appeal Decision**). The Appeal Decision noted that there was an apparent failure by Patrick to cease paying or make deductions in respect of employees who had engaged in the industrial action on this occasion and reiterated the importance of that legislative provision.
10. At all relevant times, Patrick was aware of its obligations to comply with subsection 474(1) of the FW Act, which provides that payments are not to be made in relation to certain periods of unprotected industrial action.
11. In the period from November 2013 to January 2014, Patrick failed to make any deductions from the wages of employees who engaged in the industrial action.
12. Patrick did not write to its employees about the industrial action until 5 February 2014, after the industrial action had finished.

13. The systems Patrick put in place to monitor industrial action failed to identify those employees engaged in the industrial action for the purpose of complying with subsection 474(1) of the FW Act.

Contraventions

14. The FWO has determined, and Patrick admits, that, by reason of the matters set out in paragraphs 3 to 13 above, Patrick contravened subsection 474(1) of the FW Act.

Commencement of Undertaking

15. This Undertaking comes into effect when:
- (a) the Undertaking is executed by Patrick; and
 - (b) the FWO accepts the Undertaking so executed.
16. Upon the commencement of this Undertaking, Patrick undertakes to assume the obligations set out below with respect to the Patrick Terminal in Fremantle, Western Australia.

Undertakings

17. For the purposes of section 715 of the FW Act, Patrick undertakes to:
- (a) ensure that it complies at all times and in all respects with the FW Act and the *Fair Work Regulations 2009* (Cth);
 - (b) For a period of 1 year from the execution of this Undertaking, introduce a monitoring process which is intended to identify unprotected industrial action in the form of a productivity limitation being undertaken by specific employees at the Fremantle Terminal. The monitoring process at the Fremantle Terminal will consist of, at least:
 - (i) Implementing on-going and regular, being at least twice weekly, monitoring of shift-crane rates on a shift-by-shift basis;
 - (ii) Should monitoring outlined above at (i) indicate an unexplained decline in productivity, implement daily monitoring of shifts on a crane gang-by-crane gang basis, for the necessary duration;
 - (iii) Should monitoring outlined above at (i) and (ii) indicate an unexplained decline in productivity such that it is probable that unprotected industrial action is being undertaken, bring the matter to the attention of the executives(s) with overall responsibility for operations at the Fremantle Terminal to determine what steps are necessary to take to ensure Patrick's compliance with the FW Act.
 - (c) for a period of 1 year from the execution of this Undertaking, immediately notify the Office of the FWO in writing of any future industrial action taken by any of its employees;
 - (d) for a period of 1 year from the execution of this Undertaking, provide the office of the FWO with written evidence of its compliance with section 474 of the FW Act (or a comparable provision in any legislation which may replace it) within 21 days of any industrial action being taken by any of its employees;
 - (e) within 3 months of this Undertaking coming into effect, ensure that all management staff and all of its employees located at the Fremantle Terminal attend workplace training which concerns the rights and obligations arising under Chapter 3 Part 3-3 Industrial Action conducted by an accredited workplace trainer (who will submit the training material to the Office of the FWO not less than 2 weeks prior to the delivery of the training) at Patrick's expense;
 - (f) write to each of the employees located at the Fremantle Terminal, a letter in the form of Annexure A, explaining that:

- (i) it was unlawful for Patrick to make payment to employees in respect of the industrial action;
 - (ii) Patrick will not make payments of that kind again in the future;
 - (iii) it is unlawful to demand payments of that kind; and
 - (iv) the employees must attend workplace training conducted by an accredited workplace trainer;
- (g) write to the MUA, a letter in the form of Annexure B, explaining that:
- (i) it was unlawful for Patrick to make payment to employees in respect of the industrial action;
 - (ii) Patrick will not make payments of that kind again in the future; and
 - (iii) it is unlawful to demand payments of that kind.

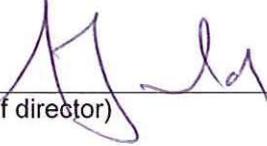
Acknowledgements

18. Patrick acknowledges that:

- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at www.fairwork.gov.au (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
- (b) the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
- (c) the FWO may issue a media release in relation to this Undertaking and from time to time, publicly refer to the Undertaking and its terms;
- (d) the admissions made in the Undertaking may be relied upon by the FWO in respect of any future decision about enforcement action to be taken in relation to any future non-compliance with Commonwealth workplace relations obligations by Patrick;
- (e) consistent with the Note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out in this Undertaking;
- (f) if the FWO considers that Patrick has contravened any of the terms of this Undertaking the FWO may apply to any of the Courts set out in section 715(6) of the FW Act, for orders under section 715(7) of the FW Act; and
- (g) consistent with section 715(3) of the FW Act, Patrick may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by **Patrick Stevedores Holdings Pty Ltd** in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)



(Signature of director/company secretary)

A. FIELD

(Name of director)

Lyndall Stojan

(Name of director/company secretary)

28/10/14

(Date)

25/10/14

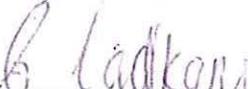
(Date)

in the presence of:



(Signature of witness)

in the presence of:



(Signature of witness)

Margaret salmon

(Name of witness)

Coleen Ladkani

(Name of witness)

USE IF BEING EXECUTED BY A DELEGATE OF THE FWO

ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the *Fair Work Act 2009* on:

Michael Campbell - Deputy Fair Work Ombudsman **5/11/14**

[Insert name and role of Delegate] (Date)

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness) **GENERAL PROTECTIONS** (Name of Witness)
Fair Work Ombudsman

GLEN ROBERTSON **5/11/14**

(Name of Witness)

USE IF BEING EXECUTED BY THE FWO

ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the *Fair Work Act 2009* on:

FAIR WORK OMBUDSMAN

(Date)

in the presence of:

(Signature of witness)

(Name of Witness)

Attachment A – Letter to Employees

Letterhead Patrick Stevedores Holdings Pty Ltd

Address and Date

Dear ***Employee name***

Unlawful payment for period of unprotected industrial action

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Patrick Stevedores Holdings Pty Ltd (**Company**) contravened subsection 474(1) of the *Fair Work Act 2009 (FW Act)* by making payments to employees for a period in which they had taken unlawful industrial action in November and December 2013.

The Company has formally admitted that it engaged in the proscribed conduct, which is reflected in an Enforceable Undertaking given by the Company to the FWO. A copy of the Enforceable Undertaking is enclosed with this letter.

The Company will not make payments of that kind again in the future.

Section 474 of the FW Act makes it unlawful for an employer to make payments to employees for certain periods of unprotected industrial action. Section 475 of the FW Act also makes it unlawful for a person to accept or ask an employer to make a payment for those periods of industrial action.

To promote awareness of rights and obligations under the FW Act, you are required to attend workplace training, which will be conducted at the Company's expense, by an accredited workplace trainer. The Company will notify you of the details of the workplace training closer to the event.

Should you have any questions in relation to this letter, please contact ***specify name and contact details for Company contact person***, or ***[insert FWO contact]***.

Yours sincerely,

Signature – CEO of Patrick Stevedores Holdings Pty Ltd

Attachment B – Letter to MUA

Letterhead Patrick Stevedores Holdings Pty Ltd

[insert MUA address and contact]

Date

Dear **[insert MUA contact name]**

Unlawful payment for period of unprotected industrial action

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) into allegations that Patrick Stevedores Holdings Pty Ltd (**Company**) contravened subsection 474(1) of the *Fair Work Act 2009* (**FW Act**) by making payments to employees for a period in which they had taken unlawful industrial action in November and December 2013.

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Section 474 of the FW Act makes it unlawful for an employer to make payments to employees for certain periods of unprotected industrial action. Section 475 of the FW Act also makes it unlawful for a person to accept or ask an employer to make a payment for those periods of industrial action.

Should you have any questions in relation to this letter, please contact *specify name and contact details for Company contact person*, or **[insert FWO contact]**.

Yours sincerely,

Signature – CEO of Patrick Stevedores Holdings Pty Ltd