



**IN THE FEDERAL CIRCUIT COURT  
OF AUSTRALIA  
AT SYDNEY**

**File No: SYG332/2016**

**AUSTRALIAN BUILDING AND CONSTRUCTION COMMISSIONER**  
Applicant

**CONSTRUCTION, FORESTRY, MARITIME, MINING AND ENERGY UNION**  
First Respondent

**CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION (NEW SOUTH  
WALES BRANCH)**  
Second Respondent

**BRIAN PARKER**  
Third Respondent

**RITA MALLIA**  
Fourth Respondent

**MICHAEL GREENFIELD**  
Fifth Respondent

**DARREN GREENFIELD**  
Sixth Respondent

**LUKE COLLIER**  
Seventh Respondent

**TONY SLOANE**  
Eighth Respondent

**ROBERT KERA**  
Ninth Respondent

**SALVATORE MANNA**  
Tenth Respondent

**FRANCIS O'GRADY**  
Thirteenth Respondent

**MARTIN WYER**  
Fourteenth Respondent



## ORDER

**BEFORE:** JUDGE MANOUSARIDIS  
**DATE:** 28 February 2020  
**MADE AT:** SYDNEY

### APPEARANCES:

Ms P Fusitua for the applicant

Mr T McCauley for the first, third, fifth, seventh, ninth and tenth respondents

No appearance by, or on behalf of, the second, fourth, sixth to eighth, and ninth to fourteenth respondents

### THE COURT DECLARES THAT:

- (1) The Third Respondent, Brian Parker, contravened:
- (a) s.343 of the *Fair Work Act 2009* (Cth) (**FW Act**) on 14 February 2015, at the Barangaroo site in Hickson Road, Sydney, by organising or taking action against De Martin & Gasparini Pty Limited (**DMG**), in that he said to a subcontractor, Nicola Titone of Prestons Contractors Pty Ltd, who said that he could not arrange for workers not to work at DMG's sites: "*We don't want to get on the wrong foot of each other*" and engaged in that conduct with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent;
  - (b) s.343 of the FW Act on 16 February 2015, at the Barangaroo Site in Hickson Road, Sydney, by organising or taking action against DMG, in that he:
    - (i) congregated outside a vehicle entrance to the Barangaroo site together with other persons, including other officials of the First Respondent, in a way that blocked vehicle access to that entry;
    - (ii) sought to negotiate an enterprise agreement on terms demanded by the First Respondent with DMG's General Manager, Louie Mazzarolo, but refused the request made by Mr Mazzarolo that he and the group of other persons blocking a vehicle entry into the Barangaroo site move out of the way;
    - (iii) told Mr Mazzarolo that the prevention of DMG's performance of work would cause more than economic harm;and engaged in that conduct with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent;



(c) s.343 of the FW Act on 17 February 2015, at the Barangaroo Site in Hickson Road, Sydney, by organising or taking action against DMG, in that he:

- (i) told Mr Mazzarolo that he was only prepared to meet with Mr Mazzarolo when subcontractors were not working at the Barangaroo Site;
- (ii) told Mr Mazzarolo that he would only be agreeing to an enterprise agreement on the terms demanded by the First Respondent and that *“we are not mucking around anymore”* and *“we will keep fighting until the end”*;

and engaged in that conduct with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent.

(2) The Fifth Respondent, Michael Greenfield, contravened:

(a) s.343 of the FW Act on 16 February 2015, at the Barangaroo site in Hickson Road, Sydney, by taking action against DMG, in that he was a part of the group of persons, including other officials of the First Respondent, who had congregated outside a vehicle entrance to the Barangaroo Site in a way that blocked vehicle access to that entry and engaged in that conduct with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent;

(b) s.343 of the FW Act on 17 February 2015, at the Barangaroo site in Hickson Road, Sydney, by taking action against DMG, in that he:

- (i) attended with the Tenth Respondent outside an entry to the Barangaroo Site, approached employees of a subcontractor, Commercial Concrete Pty Ltd (**Commercial**), and accused them of being *“scabs”*, and told them that DMG was seeking to reduce DMG employees’ wages and deprive them of penalty rates;
- (ii) told Mr Mazzarolo to sign the enterprise agreement demanded by the First Respondent and *“we will be gone”*;

and engaged in that conduct with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent.

(3) The Seventh Respondent, Luke Collier, contravened s.343 of the FW Act on 16 February 2015, at the Barangaroo site in Hickson Road, Sydney, by taking action against DMG, in that he:

- (a) together with the Third, Fifth and Ninth Respondents and other persons he was a part of the group of persons, including other officials of the First Respondent, who had congregated outside a vehicle entrance to the Barangaroo Site in a way that blocked vehicle access to that entry;



- (b) called out to a group that was blocking a vehicle entrance to the Barangaroo site and called out *"Stand on the road guys. There's not enough police to take us all away"* and shouted *"If you have any mates get them down here. Breakfast is on Sparkles"* [referring to the Third Respondent];
- (c) together with the Ninth and Tenth Respondents and other persons congregated outside a vehicle entrance to the Barangaroo site, cheered, linked arms and moved towards a truck that was seeking to enter the site to block its entry whilst some members of the group shouted *"fucking scabs"*, *"filthy dogs"*, *"fuck off"*, *"CFMEU here to stay"*, *"CFMEU"*, and was in the front rank of the group that was blocking entry;

and engaged in that conduct with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent.

(4) The Ninth Respondent, Robert Kera, contravened:

- (a) s.343 of the FW Act on 14 February 2015, at the Barangaroo site in Hickson Road, Sydney, by taking action against DMG, in that he
  - (i) congregated outside a vehicle entrance to the Barangaroo site together with other persons, including other officials of the First Respondent, in a way that blocked vehicle access to that entry;
  - (ii) when Mr Mazzarolo was arranging the induction of Commercial's employees, accused those employees of doing the work of striking DMG employees and told them they did not want to be labelled as scab labour;
  - (iii) having said that there was non-compliance with superannuation payment paperwork, said to Mr Mazzarolo, *"...you're not pouring"*;and engaged in that conduct with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent;
- (b) s.343 of the FW Act on 16 February 2015, at the Barangaroo site in Hickson Road, Sydney, by taking action against DMG, in that he:
  - (i) congregated outside a vehicle entrance to the Barangaroo site together with other persons, including other officials of the First Respondent, in a way that blocked vehicle access to that entry;
  - (ii) did not respond to a request made by Mr Blanchard, Operations Manager of Lend Lease Project Management & Construction (Australia) Pty Limited, that the group that had congregated outside the vehicle entrance move to allow a non-DMG truck to enter through that entrance;



- (iii) together with the Seventh and Tenth Respondents and other persons congregated outside that vehicle entrance to the Barangaroo site, cheered, linked arms and moved towards a truck that was seeking to enter the site to block its entry whilst some members of the group shouted "*fucking scabs*", "*filthy dogs*", "*fuck off*", "*CFMEU here to stay*" and "*CFMEU*";

and engaged in that conduct with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent;

- (c) s.343 of the FW Act on 17 February 2015, at the Barangaroo site in Hickson Road, Sydney, by taking action against DMG, in that he congregated outside a vehicle entrance to the Barangaroo site together with striking DMG employees, in a way that delayed vehicle access to that entry and engaged in that conduct with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent.

(5) The Tenth Respondent, Salvatore Manna, contravened:

- (a) s.343 of the FW Act on 14 February 2015, at the Barangaroo site in Hickson Road, Sydney, by taking action against DMG, in that he:

- (i) telephoned Mr Ciaschetti, the Operations Manager of Commercial, and told him to ensure that Commercial's employees did not carry out work for DMG at Barangaroo on that day, that was not illegal, and said "*I have looked after you in the past but you are going against me – you'll see*";
- (ii) congregated outside a vehicle entrance to the Barangaroo site together with other persons, including other officials of the First Respondent, in a way that blocked vehicle access to that entry

and engaged in that conduct with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent;

- (b) s.343 of the FW Act on 16 February 2015, at the Barangaroo site in Hickson Road, Sydney, by taking action against DMG, in that he:

- (i) congregated outside a vehicle entrance to the Barangaroo site together with other persons, including other officials of the First Respondent, in a way that blocked vehicle access to that entry;
- (ii) together with the Seventh and Ninth Respondents and other persons congregated outside a vehicle entrance to the Barangaroo site, cheered, linked arms and moved towards a truck that was seeking to enter the site to block its entry whilst some members of the group shouted "*fucking scabs*", "*filthy dogs*", "*fuck off*", "*CFMEU here to stay*", "*CFMEU*", and was in the front rank of the group that was blocking entry;



and engaged in that conduct with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent;

- (c) s.343 of the FW Act on 17 February 2015, at the Barangaroo site in Hickson Road, Sydney, by taking action against DMG, in that he:
  - (i) together with the Fifth Respondent, attended outside an entry to the Barangaroo site, approached employees of a subcontractor, Commercial whilst the Fifth Respondent accused them of being “scabs” and told them that DMG was seeking to reduce DMG employees’ wages and deprive them of penalty rates;
  - (ii) having raised safety compliance issues concerning the pump supplied by Zanet Pumping, he directed Mr Zanet to take the truck off the Barangaroo site in response to which Mr Zanet did so;

and engaged in that conduct with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent.

- (6) In respect of each of the declarations at 1 to 5 above, the conduct, actions and state of mind of each of the Third, Fifth, Seventh, Ninth and Tenth Respondents was by reason of s.363 and s.793 of the FW Act, the conduct, actions and state of mind of the First Respondent, the Construction, Forestry, Maritime, Mining, and Energy Union (CFMMEU).
- (7) The CFMMEU contravened:

*Parker contraventions*

- (a) s.343 of the FW Act on 14 February 2015 by the conduct of the Third Respondent, Brian Parker, in organising or taking action against DMG, with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent;
- (b) s.343 of the FW Act on 16 February 2015 by the conduct of the Third Respondent, Brian Parker, in organising or taking action against DMG, with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent;
- (c) s.343 of the FW Act on 17 February 2015 by the conduct of the Third Respondent, Brian Parker, in organising or taking action against DMG, with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent;

*M Greenfield contraventions*



- (d) s.343 of the FW Act on 16 February 2015 by the conduct of the Fifth Respondent, Michael Greenfield, in taking action against DMG, with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent;
- (e) s.343 of the FW Act on 17 February 2015 by the conduct of the Fifth Respondent, Michael Greenfield, in taking action against DMG, with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent;

*Collier contraventions*

- (f) s.343 of the FW Act on 16 February 2015 by the conduct of the Seventh Respondent, Luke Collier, in taking action against DMG, with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent;

*Kera contraventions*

- (g) s.343 of the FW Act on 14 February 2015 by the conduct of the Ninth Respondent, Robert Kera, in taking action against DMG, with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent;
- (h) s.343 of the FW Act on 16 February 2015 by the conduct of the Ninth Respondent, Robert Kera, in taking action against DMG, with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent;
- (i) s.343 of the FW Act on 17 February 2015 by the conduct of the Ninth Respondent, Robert Kera, in taking action against DMG, with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent;

*Manna contraventions*

- (j) s.343 of the FW Act on 14 February 2015 by the conduct of the Tenth Respondent, Salvatore Manna, in taking action against DMG, with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent;





- (k) s.343 of the FW Act on 16 February 2015 by the conduct of the Tenth Respondent, Salvatore Manna, in taking action against DMG, with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent;
- (l) s.343 of the FW Act on 17 February 2015 by the conduct of the Tenth Respondent, Salvatore Manna, in taking action against DMG, with an intent to coerce DMG to exercise or propose to exercise a workplace right in a particular way, namely to agree to a new enterprise agreement on terms proposed by the First Respondent.


**THE COURT ORDERS THAT:**

- (8) The CFMMEU pay pecuniary penalties in the sum of \$404,500 for the contraventions identified in declaration 7.
- (9) The CFMMEU pay the pecuniary penalties referred to in paragraph 8 to the Commonwealth of Australia within 28 days.
- (10) The third respondent, Mr Brian Parker, pay pecuniary penalties in the sum of \$17,000 for the contraventions identified in declaration 1.
- (11) The third respondent, Mr Brian Parker, pay the pecuniary penalties referred to in paragraph 10 to the Commonwealth of Australia within 28 days.
- (12) The fifth respondent, Mr Michael Greenfield, pay pecuniary penalties in the sum of \$13,500 for the contraventions identified in declaration 2.
- (13) The fifth respondent, Mr Michael Greenfield, pay the pecuniary penalties referred to in paragraph 12 to the Commonwealth of Australia within 28 days.
- (14) The Seventh Respondent, Mr Luke Collier, pay a pecuniary penalty of \$7,500 for the contravention identified in declaration 3.
- (15) The Seventh Respondent, Mr Luke Collier, pay the pecuniary penalty referred to in paragraph 14 to the Commonwealth of Australia within 28 days.
- (16) The Ninth Respondent, Mr Robert Kera, pay pecuniary penalties in the sum of \$21,500 for the contraventions identified in declaration 4.
- (17) The Ninth Respondent, Mr Robert Kera, pay the pecuniary penalties referred to in paragraph 16 to the Commonwealth of Australia within 28 days.
- (18) The Tenth Respondent, Mr Salvatore Manna, pay pecuniary penalties in the sum of \$22,500 for the contraventions identified in declaration 5.
- (19) The Tenth Respondent, Mr Salvatore Manna, pay the pecuniary penalties referred to in paragraph 18 to the Commonwealth of Australia within 28 days.





**DATE ENTRY IS STAMPED:** 2 March 2020



Registrar