



Federal Court of Australia

District Registry: Victoria

Division: Fair Work

No: VID334/2019

**AUSTRALIAN BUILDING AND CONSTRUCTION COMMISSIONER**

Applicant

**AUSTRALIAN WORKERS UNION** and another named in the schedule

Respondent

**ORDER**

**JUDGE:** JUSTICE BROMBERG

**DATE OF ORDER:** 28 July 2021

**WHERE MADE:** Melbourne

**THE COURT DECLARES THAT:**

1. On 31 October 2018, the Second Respondent (**Kelly**) organised employees of OneSteel Reinforcing Pty Ltd (**OneSteel**), who were employed at 180 Browns Road, Noble Park, Victoria (the **Site**), to take industrial action that day in contravention of s 46 of the *Building and Construction Industry (Improving Productivity) Act 2016* (**BCIIP Act**) (**the 31 October 2018 s 46 Kelly Contravention**).
2. By operation of ss 94(1)(a) and 95(1)(b) of the BCIIP Act, the First Respondent (**AWU**) has contravened s 46 of the BCIIP Act in respect of the 31 October 2018 s 46 Kelly Contravention (**the 31 October 2018 s 46 AWU Contravention**).
3. On 1 November 2018, Kelly organised employees of OneSteel to take industrial action at the Site that day in contravention of s 46 of the BCIIP Act (**the 1 November 2018 s 46 Kelly Contravention**).
4. By operation of ss 94(1)(a) and 95(1)(b) of the BCIIP Act, the AWU has contravened s 46 of the BCIIP Act in respect of the 1 November 2018 s 46 Kelly Contravention (**the 1 November 2018 s 46 AWU Contravention**).
5. On 31 October 2018, Kelly, at a meeting at the Site with OneSteel management, in contravention of s 475(2) of the *Fair Work Act 2009* (**FW Act**), made a request that OneSteel pay its day shift employees for their shift that day in circumstances where



those employees had taken industrial action for the majority of that shift (**the 31 October 2018 s 475(2) Kelly Contravention**).

6. By operation of s 793(1) of the FW Act, the AWU has contravened s 475(2) of the FW Act in respect of the 31 October 2018 Kelly s 475(2) Contravention (**the 31 October 2018 s 475(2) AWU Contravention**).

**THE COURT ORDERS THAT:**

1. The Second Respondent pay a penalty in respect of:
  - (a) the 31 October 2018 s 46 Kelly Contravention in the amount of \$2,700;
  - (b) the 1 November 2018 s 46 Kelly Contravention in the amount of \$2,700; and
  - (c) the 31 October 2018 s 475(2) Kelly Contravention in the amount of \$1,600.
2. The First Respondent pay a penalty in respect of:
  - (a) the 31 October 2018 s 46 AWU Contravention in the amount of \$25,000;
  - (b) the 1 November 2018 s 46 AWU Contravention in the amount of \$25,000; and
  - (c) the 31 October 2018 s 475(2) AWU Contravention in the amount of \$30,000.
3. The penalties referred to in Orders 1 to 2 be paid to the Commonwealth of Australia within 28 days.
4. The First Respondent pay compensation to OneSteel Reinforcing Pty Ltd in the sum of \$90,000 within 60 days of this order.
5. There be no order as to costs.

Date that entry is stamped: 28 July 2021

  
Registrar



**Schedule**

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Second Respondent      CRAIG KELLY