



Federal Court of Australia

District Registry: Victoria

Division: Fair Work

No: VID523/2014

AUSTRALIAN BUILDING AND CONSTRUCTION COMMISSIONER

Applicant

CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION and others named in
the schedule

Respondent

ORDER

JUDGE: JUSTICE WHEELAHAN

DATE OF ORDER: 20 September 2019

WHERE MADE: Melbourne

PENAL NOTICE

TO: THE CONSTRUCTION, FORESTRY, MARITIME, MINING AND ENERGY UNION, AND THEO THEODOROU

IF YOU (BEING THE PERSON BOUND BY THIS ORDER):

- (A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR**
- (B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER REQUIRES YOU NOT TO DO,**

YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY OR OTHER PUNISHMENT.

ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER MAY BE SIMILARLY PUNISHED.



THE COURT DECLARES THAT:

Mr Theodorou

1. The second respondent, an officer of the first respondent acting in that capacity for the purposes of section 363(1)(b) of the *Fair Work Act 2009* (Cth) (**the Act**), contravened:
 - (a) section 345 of the Act on 23 October 2013 by knowingly making a false or misleading representation about the workplace rights of Monark Industries Pty Ltd (trading as Hughes Demolition) (**Hughes Demolition**);
 - (b) section 349 of the Act on 23 October 2013 by knowingly making a false or misleading representation about Hughes Demolition's obligation to comply with a request by the first respondent to make an enterprise agreement;
 - (c) section 340 of the Act on 15 November 2013 by threatening to organise or take industrial action against Hughes Demolition because Hughes Demolition had not exercised its workplace right to make an enterprise agreement;
 - (d) section 343 of the Act on 15 November 2013 by threatening to organise or take industrial action against Hughes Demolition with intent to coerce Hughes Demolition to exercise its workplace right of making an enterprise agreement; and
 - (e) section 348 of the Act on 15 November 2013 by threatening to organise or take industrial action against Hughes Demolition with intent to coerce Hughes Demolition to engage in industrial activity by complying with a request by the first respondent to make an enterprise agreement.

The CFMEU

2. The first respondent, by the conduct of the second respondent in the first declaration and by operation of section 793 of the Act, contravened:
 - (a) section 345 of the Act on 23 October 2013 by knowingly making a false or misleading representation about the workplace rights of Hughes Demolition;
 - (b) section 349 of the Act on 23 October 2013 by knowingly making a false or misleading representation about Hughes Demolition's obligation to comply with a request by the first respondent to make an enterprise agreement;



- (c) section 340 of the Act on 15 November 2013 by threatening to organise or take industrial action against Hughes Demolition because Hughes Demolition had not exercised its workplace right to make an enterprise agreement;
 - (d) section 343 of the Act on 15 November 2013 by threatening to organise or take industrial action against Hughes Demolition with intent to coerce Hughes Demolition to exercise its workplace right of making an enterprise agreement; and
 - (e) section 348 of the Act on 15 November 2013 by threatening to organise or take industrial action against Hughes Demolition with intent to coerce Hughes Demolition to engage in industrial activity by complying with a request by the first respondent to make an enterprise agreement.
3. The first respondent, by the conduct of either the second respondent or Mr Shaun Reardon and by operation of s 363 of the Act, contravened:
- (a) section 345 of the Act in late October 2013 by knowingly making a false or misleading representation about the workplace rights of Hughes Demolition; and
 - (b) section 349 of the Act in late October 2013 by knowingly making a false or misleading representation about Hughes Demolition's obligation to comply with a request by the first respondent to make an enterprise agreement.

Mr Silvestro

4. The fourth respondent, an employee of the third respondent, on 19 November 2013 contravened:
- (a) section 340 of the Act by preventing Hughes Demolition's workers from commencing work at the appointed time and for a number of hours thereafter because Hughes Demolition had not exercised its workplace right to make an enterprise agreement; and
 - (b) section 354 of the Act by discriminating against Hughes Demolition by preventing its workers commencing work at the appointed time and for a number of hours thereafter its employees were not covered by an enterprise agreement.



Mr Darker

5. The fifth respondent, an employee of the third respondent, on 15 November 2013 contravened:
- (a) section 340 of the Act by threatening to organise or take industrial action against Hughes Demolition because Hughes Demolition had not exercised its workplace right to make an enterprise agreement;
 - (b) section 343 of the Act by threatening to organise or take industrial action against Hughes Demolition with intent to coerce Hughes Demolition to exercise its workplace right of making an enterprise agreement; and
 - (c) section 348 of the Act by threatening to organise or take industrial action against Hughes Demolition with intent to coerce Hughes Demolition to engage in industrial activity by complying with a request by the first respondent to make an enterprise agreement.

Mr Dwyer

6. The sixth respondent, an employee of the third respondent, on 15 November 2013 contravened:
- (a) section 340 of the Act by threatening to organise or take industrial action against Hughes Demolition because Hughes Demolition had not exercised its workplace right to make an enterprise agreement;
 - (b) section 343 of the Act by threatening to organise or take industrial action against Hughes Demolition with intent to coerce Hughes Demolition to exercise its workplace right of making an enterprise agreement; and
 - (c) section 348 of the Act by threatening to organise or take industrial action against Hughes Demolition with intent to coerce Hughes Demolition to engage in industrial activity by complying with a request by the first respondent to make an enterprise agreement.



Harris Interiors

7. The third respondent, by the conduct of the fourth respondent in the fourth declaration and by operation of s 793 of the Act, on 19 November 2013 contravened:
 - (a) section 340 of the Act by preventing Hughes Demolition's workers from commencing work at the appointed time and for a number of hours thereafter because Hughes Demolition had not exercised its workplace right to make an enterprise agreement; and
 - (b) section 354 of the Act by discriminating against Hughes Demolition by preventing its workers commencing work at the appointed time and for a number of hours thereafter its employees were not covered by an enterprise agreement.
8. The third respondent, by the conduct of the fifth respondent in the fifth declaration and by operation of s 793 of the Act, on 15 November 2013 contravened:
 - (a) section 340 of the Act by threatening to organise or take industrial action against Hughes Demolition because Hughes Demolition had not exercised its workplace right to make an enterprise agreement;
 - (b) section 343 of the Act by threatening to organise or take industrial action against Hughes Demolition with intent to coerce Hughes Demolition to exercise its workplace right of making an enterprise agreement; and
 - (c) section 348 of the Act by threatening to organise or take industrial action against Hughes Demolition with intent to coerce Hughes Demolition to engage in industrial activity by complying with a request by the first respondent to make an enterprise agreement.
9. The third respondent, by the conduct of the sixth respondent in the sixth declaration and by operation of s 793 of the Act, on 15 November 2013 contravened:
 - (a) section 340 of the Act by threatening to organise or take industrial action against Hughes Demolition because Hughes Demolition had not exercised its workplace right to make an enterprise agreement;
 - (b) section 343 of the Act by threatening to organise or take industrial action against Hughes Demolition with intent to coerce Hughes Demolition to exercise its workplace right of making an enterprise agreement; and
 - (c) section 348 of the Act by threatening to organise or take industrial action against Hughes Demolition with intent to coerce Hughes Demolition to engage in



industrial activity by complying with a request by the first respondent to make an enterprise agreement.

THE COURT ORDERS THAT:

Change of name of the first respondent

1. Pursuant to r 8.21(1)(d) of the *Federal Court Rules 2011* (Cth), the name of the first respondent be amended to “Construction, Forestry, Maritime, Mining and Energy Union”.

Penalties imposed on CFMEU

2. The first respondent pay to the Commonwealth of Australia a penalty of \$18,000 in respect of its contravention of section 345 of the *Fair Work Act 2009* (Cth) as declared in paragraph 2(a) of the Declarations.
3. The first respondent pay to the Commonwealth of Australia a penalty of \$18,000 in respect of its contravention of section 345 of the *Fair Work Act 2009* (Cth) as declared in paragraph 3(a) of the Declarations.
4. The first respondent pay to the Commonwealth of Australia a penalty of \$36,000 in respect of its contravention of section 343 of the *Fair Work Act 2009* (Cth) as declared in paragraph 2(d) of the Declarations.

Penalties imposed on Mr Theodorou

5. The second respondent pay to the Commonwealth of Australia a penalty of \$3,600 in respect of his contravention of section 345 of the *Fair Work Act 2009* (Cth) as declared in paragraph 1(a) of the Declarations.
6. The second respondent pay to the Commonwealth of Australia a penalty of \$5,400 in respect of his contravention of section 343 of the *Fair Work Act 2009* (Cth) as declared in paragraph 1(d) of the Declarations.



Penalties imposed on Harris Interiors

7. The third respondent pay to the Commonwealth of Australia a penalty of \$10,800 in respect of its contravention of section 340 of the *Fair Work Act 2009* (Cth) as declared in paragraph 7(a) of the Declarations.
8. The third respondent pay to the Commonwealth of Australia a penalty of \$6,300 in respect of its contravention of section 343 of the *Fair Work Act 2009* (Cth) as declared in paragraph 8(b) of the Declarations.
9. The third respondent pay to the Commonwealth of Australia a penalty of \$6,300 in respect of its contravention of section 343 of the *Fair Work Act 2009* (Cth) as declared in paragraph 9(b) of the Declarations.

Penalty imposed on Mr Silvestro

10. The fourth respondent pay to the Commonwealth of Australia a penalty of \$1,450 in respect of his contravention of section 340 of the *Fair Work Act 2009* (Cth) as declared in paragraph 4(a) of the Declarations.

Penalty imposed on Mr Darker

11. The fifth respondent pay to the Commonwealth of Australia a penalty of \$1,450 in respect of his contravention of section 343 of the *Fair Work Act 2009* (Cth) as declared in paragraph 5(b) of the Declarations.

Penalty imposed on Mr Dwyer

12. The sixth respondent pay to the Commonwealth of Australia a penalty of \$1,575 in respect of his contravention of section 343 of the *Fair Work Act 2009* (Cth) as declared in paragraph 6(b) of the Declarations.

Times for payment

13. The penalties in orders 2-4 and 7-12 above are to be paid to the Commonwealth of Australia within 28 days.
14. The penalties in orders 5 and 6 above are to be paid to the Commonwealth of Australia within 60 days.



Personal payment order

15. The second respondent pay the penalties in orders 5 and 6 above (Penalties) personally in that he not, whether before or after the payment of the Penalties:
- (a) seek to have or encourage the first respondent in any way whatsoever, directly or indirectly, to pay to him or for his financial benefit in any way whatsoever, any money or financial benefit referable to the payment of the Penalties, whether in whole or in part; and
 - (b) accept or receive from the first respondent in any way whatsoever, any money or financial benefit referable to the payment of the Penalties, whether in whole or in part.


Costs

16. There be no order as to costs.

THE COURT DIRECTS THAT:

17. The applicant serve these orders on:
- (a) the first respondent in accordance with r 10.04 of the *Federal Court Rules 2011* (Cth); and
 - (b) the second respondent in accordance with r 10.01 of the *Federal Court Rules 2011* (Cth).

Date that entry is stamped: 20 September 2019.


Registrar



Schedule

No: VID523/2014

Federal Court of Australia

District Registry: Victoria

Division: Fair Work

Respondent	JASON DWYER
Second Respondent	THEO THEODOROU
Respondent	HARRIS HMC INTERIORS (VIC) PTY LTD (ACN 130 177 614)
Respondent	CARMELO SILVESTRO
Respondent	SHANNE DARKER
Respondent	JASON DWYER

ASSISTED DISPUTE RESOLUTION

Applicant	DIRECTOR OF THE FAIR WORK BUILDING INDUSTRY INSPECTORATE
Respondent	CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION