Win for CFMMEU against employer for breach of enterprise agreement clause related to unreasonable overtime

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Hall Payne Lawyers has won another case for the Construction, Forestry, Maritime, Mining and Energy Union (**'CFMMEU'**). Recently, the Federal Court handed down a judgment in relation to employer Hay Point Services Pty Ltd (**'HPS'**), breaching its enterprise agreement by requiring workers to perform unreasonable overtime of 455 hours a year.

Background

The *Hay Point Services Pty Ltd Enterprise Agreement 2013* contained a clause (34.1) to deal with overtime. The clause provides that HPS:

"may require an employee to work reasonable overtime, and the employee shall work such overtime as required."

HPS implemented a new roster which effectively required employees to work 455 hours of overtime per year, or 8.7 hours per week.

The CFMMEU argued that this breached the overtime clause contained within the enterprise agreement as the additional hours could not be considered 'reasonable'.

Penalty imposed

Justice Collier imposed a fine of $40,500.00 upon HPS, being 75% of the maximum penalty for a single contravention.

Employer fined $40,500.00 for breach of enterprise agreement

Justice Collier recognised the seriousness of the contravention and stated:

“To that extent, the penalty imposed should be such as to warn other employers in the position of the respondent against engaging in such conduct.”

Her Honour imposed the penalty as it should ‘reflect the seriousness of the conduct.

Her Honour Justice Collier found that HPS “ran the risk”, in implementing a new roster, that it would contravene section 50 of the *Fair Work Act 2009* (Cth) (**‘FW Act’**) and calculated a penalty accordingly. Section 50 of the FW Act provides that a person must not contravene a term of an enterprise agreement.

In doing so her Honour followed the same approach in the prior case of *CFMEU v Hail Creek Coal Pty Ltd (No 2)* [2018] FCA 480 (**‘Hail Creek’**), also won for the CFMMEU by Hall Payne Lawyers.

You can read the full judgement in *Construction, Forestry, Maritime, Mining and Energy Union v Hay Point Services Pty Ltd (No 3) [2021] FCA 282 here*.

In summary

Similarly to Hail Creek, the employer was found to have acted irresponsibly in implementing a decision that breached the enterprise agreement and, therefore, contravened section 50 of the FW Act. Hail Creek was handed a similar penalty of $45,540.00.

In both the HPS and Hail Creek cases, the judges highlighted the seriousness of the breach and that “taking the odds” is not a permissible act. If an employer does that and proves to have been wrong, it will pay the price with a heavy penalty.

In fixing the penalty to be imposed upon HPS her Honour noted that Hall Payne Lawyers had sent a letter of demand warning HPS that it would breach the enterprise agreement if it implemented the roster change. HPS went ahead regardless.

Get help from an employment lawyer

If you require assistance with a breach of enterprise agreement, please do not hesitate to contact Hall Payne Principal in Industrial and Employment Law, Luke Tiley on 07 3017 2400.

You can also contact us by phone or email to arrange your consultation; either face-to-face at one of our offices, by telephone or by videoconference consultation.

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