



Friday 9 March 2018

Maximum penalty against CFMEU for flouting safety policy on NSW site

The Federal Circuit Court has imposed penalties of \$58,500 on the CFMEU and its official for encouraging workers at a NSW site to defy their employer's safety policy.

The Court found that in January 2014, CFMEU official Pomare Auimatagi encouraged workers at the University of Newcastle site to attend work wearing shorts and short sleeved shirts. This was despite the employer's safety policy requiring workers to wear long trousers and a long sleeved shirts.

The employer's policy was aimed at protecting workers from cuts, abrasions and sun exposure. The policy was consistent with the CFMEU's own published guidance on heat management and advice from Comcare, the national safety regulator.

On Friday 17 January 2014, when the project manager attempted to enforce the safety policy, about 90 workers downed their tools and refused to work for the rest of the day.

The unlawful industrial action continued the following Monday and Tuesday with a number of workers attending the site but refusing to work. The temperatures during the three days of work stoppages were around the mid-20 degrees celsius.

In the [liability judgment](#), Judge Emmett found the CFMEU official's conduct was "*nothing short of unconscionable*".

In imposing the maximum penalty on the CFMEU, the Court found the union "*demonstrated a complete disregard for obeying the law*" and that there was no evidence of "*contrition*".

Judge Emmett said the CFMEU "*has an appalling record of non-compliance and repeated contraventions*" and had "*woeful regard for lawful conduct*".

She found the conduct to be "*reprehensible*" particularly as the CFMEU was aware of the "*lawful dispute resolution paths available which they deliberately chose to ignore*".

The Court accepted the ABCC's submission that "*self-evidently, the penalties imposed in the past have not caused the [CFMEU] and its officials to comply with the [law]*".

The CFMEU was ordered to pay the maximum penalty of \$51,000 while Mr Aumitagi was penalised \$7,500.

ABC Commissioner Stephen McBurney said the conduct in the matter had put the health and safety of workers at risk.

"The company's safety policy is one most Australians are familiar with. The unlawful conduct of the CFMEU official was undertaken in defiance of that policy," Mr McBurney said.

"I am concerned about a number of aspects of this case; firstly, the actions taken to undermine a policy designed to protect workers on site, secondly the CFMEU's failure to acknowledge the consequences of those actions, thirdly the lack of remorse or contrition, and finally the history of offending referred to in the judgment of the Court."

More information is available on the [ABCC legal case summary](#) page.