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Zinifex, the former operator of a Hobart zinc smelter, has been ordered to pay \$15,000 for applying duress to force labour hire employees to sign an AWA that removed their overtime penalties.

Labour hire companies Skilled Group Limited and TESA Group Pty Ltd supplied workers to the [Lutana smelter](#) (now owned by [Nyrstar](#)) under a deal which allowed the labour suppliers to pass on any wage increases to Zinifex.

The Tasmanian Industrial Commission in September 2005 ruled that the State Zinifex award applied to the labour hire companies. This had the potential to substantially increase Zinifex's labour costs, as the labour hire employees worked 12-hour shifts on a three-days-on, three-days-off regime.

Under the Zinifex award, the labour hire workers became entitled to overtime payments for any hours beyond eight a day.

This prompted the labour hire companies, "with the knowledge of and approval of Zinifex", according to Justice Peter Heerey, to offer the labour hire employees AWAs that didn't pay overtime.

Managers then pressured three labour hire employees to sign the AWAs, by threatening that they would not receive further work if they continued under award conditions.

The three employees subsequently signed the individual contracts.

The same manager made similar threats to a Skilled employee, outlining a "little scenario" in which an employee refused to sign an AWA "and I'll put it this way, we will not be needing his services anymore and we won't be ringing him for work".

The manager said labour was already costing \$90,000 a month "and there is no way that I am going to pay another \$40,000 under the Award".

Justice Heerey accepted that in both instances there was a "significant power disparity" between the superintendent of electrolysis and the labour hire employees.

He ordered the company to pay a \$10,000 penalty for the duress against the three employees and \$5,000 for the duress against the Skilled employee.

Justice Heerey decided there was no need for a penalty that provided specific deterrence, after taking into account that the duress wasn't the result of a "deliberate policy", the company's industrial history (a "long history" of collective bargaining and no use of state of federal individual statutory agreements) and the fact that it was no longer connected to the smelter.

The Workplace Ombudsman prosecuted the case.

[Smith v Zinifex Australia Limited \(No 2\) \[2008\] FCA 1836 \(5 December 2008\)](#)

- Zinifex early this year unsuccessfully challenged the WO's ability to bring the case (see [Related Article](#)).

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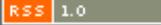
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