



Menu



Court imposes big fine for MUA's contempt

Thursday, December 20, 2018, 12:24pm

Victoria's Supreme Court has lobbed a \$120,000 contempt fine against the CFMMEU for pre-amalgamation MUA leaders' speeches to picketers at a Melbourne container terminal, finding the union made a calculated decision that its interests would be well served by flouting "no go" orders.

In conduct described by Supreme Court Justice Michael McDonald as "contumacious" and in "deliberate defiance" of a 100-metre exclusion zone at the container terminal, MUA officials told picketers in December last year that it was "important" to defy the injunction to escalate its dispute (see [Related Article](#)).

Along with MUA Victorian branch secretary Joe Italia and WA branch secretary and national president Chris Cain, national secretary Will Tracey told picketers at the time, "we will see how the company escalates this and whether they get us in court for contempt".

He added that "when that occurs come what may we'll address it then".

Cain said that "we don't care who fucking challenges us, whether it be governments, whether it be companies that wanna sue us, we're here today and we're here to fucking stay!"

VICT sought fine of up to \$1.5 million

The union initially applied to have the contempt application by the Victorian International Container Terminal's (VICT) stayed as an abuse of process, but in September this year it admitted the conduct and submitted that any penalty should not exceed \$40,000.

VICT, meanwhile, sought between \$1 million and \$1.5 million, saying anything less "would fall short of what's necessary to vindicate the authority of the court".

The employer further argued that because the MUA has since amalgamated with the CFMEU, the court should consider both unions' prior findings of contempt and numerous proceedings in which they have been held liable to pay civil penalties for breaching IR legislation.

Noting courts had made seven findings of contempt against the CFMEU and only one against the MUA prior to the amalgamation, Justice McDonald said that only the MUA's prior contempt conviction was "relevant to the question of specific deterrence".

Nor did he find prior non-contempt related convictions to be relevant.

In setting \$125,000 as an "appropriate penalty", Justice McDonald found that although the CFMMEU's conduct did not warrant a conviction for criminal contempt, it "constituted a very serious civil contempt".

"The conduct in contempt was engaged in by three senior officials of the MUA in deliberate defiance of the court's order of 12 December 2017.

"Although the duration of the offending conduct was brief and out of the public eye, it nevertheless constituted a serious civil contempt," Justice McDonald said, adding that it "struck at the heart of the administration of justice".

"The MUA made a calculated decision that its industrial interests in its dispute with VICT would be well served by defying the orders of the Supreme Court of Victoria," he said.

Justice McDonald found the decision to defy the orders "was made by the three officials, confident that the union would readily be able to meet the expense of any penalty imposed by the court".

Further, the judge concluded that it was a "calculated decision that the risk of financial penalty for engaging in conduct in contempt of court was simply a cost of doing business".

In contrast, Justice McDonald said VICT had "vindicated the public interest in upholding the rule of law" by pursuing the CFMMEU over the conduct.

Indemnity costs will nevertheless leave VICT "out of pocket"

While VICT told the court that the contempt proceeding had cost it about \$500,000 or \$600,000, Justice McDonald indicated that it might find itself significantly out of pocket.

"I have not ordered the defendant to pay VICT's costs on a full indemnity basis," he said, adding that VICT's "entitlement to costs will be subject to scale".

"Consequently, it is unlikely that VICT will be able to fully recoup the legal expenses it has incurred."

The stevedore alleged the pickets and blockades started after the company refused to allocate shifts to an MUA delegate because he did not have a Maritime Security Identification Card (see [Related Article](#)).

The union argued VICT targeted the worker because he was a union member.

The picket ended after his reinstatement.

[VICT v CFMMEU \[2018\] VSC 794 \(19 December 2018\)](#)

[HOME](#)

[SEARCH](#)

[PRINT](#)

[TOP](#)

RELATED CONTENT

[Unions and officials in contempt of anti-blockade order: VICT](#)

[VICT picket set to end after delegate returned to payroll](#)

[Court makes representative order to halt waterfront "community protest"](#)

[VICT targets protesters through representative action](#)

LATEST JOBS

Industrial Officer

Senior Employee Relations Specialist

Team Member, Industrial Relations

Workplace Integrity Manager

Senior Advisor – Wage Inspectorate Victoria

