



INTERIM ORDER

Fair Work Act 2009

s.418 - Application for an order that industrial action by employees or employers stop etc.

s.420 - Interim orders etc.

Hastings Deering (Australia) Limited

v

"Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)- Queensland Branch; "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)

(C2021/1407)

HASTINGS DEERING (AUSTRALIA) LIMITED ENTERPRISE AGREEMENT 2018

Manufacturing and associated industries

COMMISSIONER SPENCER

BRISBANE, 15 MARCH 2021

Alleged industrial action at Hastings Deering (Australia) Limited Rockhampton site – Interim Order.

INTRODUCTION

[1] It has been determined that in accordance with s.420 (1), the Commission as currently constituted, cannot determine this s.418 application within two days after the application is made. The application was made at 1:00pm Monday, 15 March 2021 and cannot be determined within two days after the application is made (or by midnight on the 17th of March 2021). Accordingly, the following Interim Order is made.

1. TITLE

This Interim Order shall be known as the Hastings Deering Rockhampton Interim Order (the Interim Order).

2. APPLICATION

This Interim Order applies to work and employment regulated by the Hastings Deering (Australia) Limited Enterprise Agreement (the Agreement).

3. PARTIES BOUND

The parties bound by this Interim Order are:

3.1 Hastings Deering (Australia) Limited ABN 49 054 094 647 (**HDAL**);

3.2 any employees of Hastings Deering (Australia) Limited (the Company) who are;

- a) members, or eligible to be members of the AMWU; and
- b) perform work at the Rockhampton site; and
- c) engaged in work which is regulated by the Agreement.

4. INDUSTRIAL ACTION MUST STOP, NOT OCCUR AND NOT BE ORGANISED

4.1 All persons and organisations bound by this Interim Order must:

- (a) stop and not commence, engage in, or threaten to engage in any industrial action;
- (b) immediately stop organising any industrial action involving any of the Employees;
- (c) not organise, aid, abet, direct, procure, induce, advise, authorise or encourage any Employee to engage in industrial action; and
- (d) not facilitate any industrial action by any Employee.

DEFINITION OF INDUSTRIAL ACTION

4.2 For the purposes of this Interim Order, “industrial action” means:

- (a) the performance of work by an Employee in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work by an Employee, the result of which is a restriction or limitation on, or a delay in, the performance of the work;
- (b) a ban, limitation or restriction on the performance of work by an Employee or on the acceptance of or offering for work by an Employee; and
- (c) a failure or refusal by Employees to attend for work or a failure or refusal to perform any work at all by Employees who attend for work;

But does not include:

- (d) protected industrial action within the meaning of section 408 of the Fair Work Act 2009 (Cth);
- (e) action by employees that is authorised or agreed to by or on behalf of his or her employer; or
- (f) action by an employee if:
 - (i) the action was based on a reasonable concern by the employee about an imminent risk to his or her health or safety; and
 - (ii) the employee did not unreasonably fail to comply with a direction of his or her employer to perform other available work, whether at the same or another workplace, which was safe and appropriate for the employee to perform.

5. SERVICE OF INTERIM ORDER

It will be sufficient service of this Interim Order upon the parties bound by this Interim Order if:

- a) a copy of this Interim Order is sent by email to each of the National Secretary of the AMWU and the State Secretary of the AMWU;
- b) a copy of this Interim Order is placed on noticeboards usually used by HDAL for the purposes of communicating with the Employees; and
- c) HDAL makes all reasonable efforts to email its Employees a copy of the interim Order or if email is not available, telephone its Employees and advise them orally of the interim Order.

6. PUBLICATION OF THE INTERIM ORDER

The AMWU must take all reasonably practicable steps necessary and available to it under its rules, or otherwise, to:

- a) immediately advise its members (including its delegates) engaged in connection with work for HDAL that:
 - (i) any industrial action must not be engaged in, or threatened;
 - (ii) any industrial action must not be organised, aided, abetted, directed, procured, induced, advised, authorised, encouraged or facilitated; and
 - (iii) any direction, advice or authorisation by it to the Employees to engage in industrial action is withdrawn;

ensure that its delegates comply with this Interim Order.

As soon as practicable after becoming aware of the making of this Interim Order, the AMWU must:

- (a) post a copy of the Interim Order on the Facebook page entitled “AMWU Qld & NT”;
- (b) post a copy of this Interim Order prominently on the front page of the internet site of the AMWU (www.amwu.org.au);
- (b) tweet a copy of this Interim Order prominently on the AMWU account “@theamwu”;
- (d) send a text message to all Employees for whom the AMWU has a mobile telephone number, to the following effect:

“The FWC has made an Interim s.418 Order, binding employees so that they stop industrial action about HDAL. The Interim Order requires that any industrial action, by any employee must not be engaged in, or threatened. Further, any industrial action must not be organised, aided, abetted, directed, procured, induced, advised, authorised, encouraged or facilitated and any direction, advice or authorisation by Employee/s to engage in industrial action is withdrawn. Please see www.amwu.org.au for further details.”
- (e) email a copy of the Interim Order to all Employees for whom the AMWU has an email address.

As soon as practicable after the making of this Interim Order, HDAL must:

- (f) send a text message to all Employees for whom HDAL has a mobile telephone number, to the following effect:

“The FWC has made an Interim s.418 Order, binding employees so that they stop industrial action about HDAL. The Interim Order requires that any industrial action, by any employee must not be engaged in, or threatened. Further, any industrial action must not be organised, aided, abetted, directed, procured, induced, advised, authorised, encouraged or facilitated and any direction, advice or authorisation by Employee/s to engage in industrial action is withdrawn. Please see www.amwu.org.au for further details.”

TERM AND DATE OF EFFECT

[2] This Interim Order shall come into effect at 5:30pm on 15 March 2021 and shall cease to have effect at 5:30pm on Monday 22 March 2021, unless an Order is revoked on written communication by the Applicant that the application is withdrawn or by the Union that the alleged industrial action is withdrawn.



COMMISSIONER

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