



ORDER

Fair Work Act 2009
s.418—Industrial action

DP World Sydney Limited

v

Construction, Forestry, Maritime, Mining and Energy Union
(C2018/2434)

Stevedoring industry

DEPUTY PRESIDENT BULL

SYDNEY, 9 MAY 2018

Pursuant to s.418(1) of the *Fair Work Act 2009*, the Fair Work Commission (Commission) orders as follows.

1. TITLE

This order shall be known as the DP World Sydney Limited - Industrial Action Order No. 1 of 2018 (the Order).

2. APPLICATION

This Order applies to work and employment regulated by the *DP World Sydney Enterprise Agreement 2015* (the Agreement).

3. PARTIES BOUND

The parties bound by this Order are:

3.1 DP World Sydney Limited.

3.2 Employees of DP World Sydney Limited who are employed at the Port Botany terminal whose work and employment are regulated by the Agreement and are employed as Variable Salary Employees (VSE's) and have purported to exercise a right under the Agreement to make themselves unavailable to be allocated for work commencing on 10 May 2018.

3.3 The Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU), including its office-holders and those of its delegates who are employees of DP World Sydney Limited at the Port Botany terminal.

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

- 4.1 The CFMMEU and its delegates who are employees of DP World must stop organising and not organise any industrial action involving any of the DP World VSE's of the kind described in Order 4.2.
- 4.2 Each VSE must stop engaging in industrial action in the form of refusing to make themselves available for allocation to work commencing on 10 May 2018 and must not engage in industrial action being a failure or refusal to perform any work, ban on the performance of work, or failure or refusal to attend for work at the DP World Port Botany terminal on 10 May 2018.
- 4.3 For the purposes of this Order, the expression "industrial action" does not include the following:
- (a) protected industrial action within the meaning of s.408 of the *Fair Work Act 2009*;
 - (b) action or conduct by a VSE that is authorised or agreed to by or on behalf of DP World Sydney Limited; or
 - (c) action by a VSE if:
 - (i) the action was based on a reasonable concern by the VSE about an imminent risk to their health or safety; and
 - (ii) the VSE did not unreasonably fail to comply with a direction of their employer to perform other available work, whether at the same or another workplace that was safe and appropriate for the VSE to perform.
- 4.4 The CFMMEU must take all reasonable steps necessary and available to it under its Rules, or otherwise, to immediately advise VSE's who are its members subject to this Order and Port Botany delegates subject to this Order of the above.

5. SERVICE OF ORDER

DP World Sydney Limited is required to serve this Order upon:

- VSE's who have purported to exercise a right under the Agreement to make themselves unavailable to be allocated for work commencing on 10 May 2018; and
- the CFMMEU and The National Secretary Maritime Union of Australia Division, CFMMEU by way of email; and
- by placing a copy of this Order on the notice boards usually used by DP World Sydney Limited for the purposes of communicating with the VSE's.

6. TERM AND DATE OF EFFECT

This Order shall come into effect immediately and shall continue in force until 6 am on 11 May 2018.



DEPUTY PRESIDENT

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