



INTERIM ORDER

Fair Work Act 2009
s.418—Industrial action

Patrick Stevedores Holdings Pty Ltd

v

Construction, Forestry, Maritime, Mining and Energy Union
(C2018/1970)

DEPUTY PRESIDENT BULL

SYDNEY, 14 APRIL 2018

s.418 application - interim order issued by consent pursuant to s.420(2).

Having concluded that the Commission cannot determine the application for an order under s.418 of the *Fair Work Act 2009* (the Act) within 2 days of the application having been made, and being satisfied such an order is not contrary to the public interest, pursuant to s.420(2) of the Act, the Fair Work Commission orders as follows.

1. TITLE

This Interim Order shall be known as the *Patrick Stevedores Holdings Pty Limited - Port Botany - Industrial Action Interim Order No. 1 of 2018* (the Interim Order).

2. APPLICATION

This Interim Order applies to work and employment regulated by the *Patrick Terminals Enterprise Agreement 2016* (the Agreement).

3. PARTIES BOUND

The parties bound by this Interim Order are:

- 3.1 Patrick Stevedores Holdings Pty Limited (Patrick);
- 3.2 The Construction, Forestry, Maritime, Mining and Energy Union of Australia (CFMMEU);
- 3.3 All officers and employees of the CFMMEU, and those of its delegates who are Port Botany Employees (CFMMEU Representatives);
- 3.4 Employees of Patrick:
 - (a) who are members, or eligible to be members, of the CFMMEU;

(b) who are employed at Patrick's terminal at Port Botany in the State of New South Wales (Port Botany Terminal); and

(c) whose work and employment are regulated by the Agreement

(the Port Botany Employees).

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

4.1 Each Port Botany Employee must stop engaging in a failure or refusal to perform any work, ban on the performance of work, or failure or refusal to attend for work at the Port Botany Terminal, between 5:30 am on 14 April 2018 and 5:30 am on 15 April 2018.

4.2 The CFMMEU and each CFMMEU Representative must stop organising and not organise any industrial action involving any of the Port Botany Employees of the kind described in 4.1.

4.3 Each Port Botany Employee must not engage in a failure or refusal to perform any work, ban on the performance of work, or failure or refusal to attend for work at the Port Botany Terminal, between 5:30 am on 18 April 2018 and 5:30 am on 25 April 2018.

4.4 The CFMMEU and each CFMMEU Representative must not organise any industrial action involving any of the Port Botany Employees of the kind described in 4.3.

4.5 For the purposes of this Interim 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 Port Botany Employees that is authorised or agreed to by or on behalf of Patrick; or

(c) action by a Port Botany 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, that was safe and appropriate for the employee to perform.

4.6 The CFMMEU must take all reasonable steps necessary and available to it under its Rules, or otherwise, to immediately advise Port Botany Employees who are its members of the above Orders.

5. SERVICE OF INTERIM ORDER

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

5.1 a copy is sent by email transmission to:

The National Secretary
Maritime Union of Australia Division, CFMMEU
muano@mua.org.au
paddy.crumlin@mua.org.au

5.2 a copy of this Interim Order is placed on the notice boards usually used for the purpose of communicating with Port Botany Employees.

6. TERM AND DATE OF EFFECT

This Interim Order shall come into effect immediately and shall continue in force until final determination of the application.



DEPUTY PRESIDENT

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