



FAIR WORK
COMMISSION

INTERIM ORDER

Fair Work Act 2009

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

Patrick Stevedores Holdings Pty Limited

v

Maritime Union of Australia, The

(C2013/4565)

PATRICK TERMINALS ENTERPRISE AGREEMENT 2012

(ODN AG2012/5576) [AE894673]

Stevedoring industry

VICE PRESIDENT WATSON

MELBOURNE, 31 MAY 2013

Application to stop alleged proposed industrial action at the Patrick Terminal at Port Botany, Sydney.

1. TITLE

This order shall be known as the *Patrick Stevedores Holdings Pty Limited – Port Botany – Industrial Action Interim Order No.1 of 2013*.

2. APPLICATION

This order applies to work and employment regulated by the Patrick Terminals Enterprise Agreement 2012 (the Agreement).

3. PARTIES BOUND

The parties bound by this order are:

- 3.1 Patrick Stevedores Holdings Pty Limited (Patrick);
- 3.2 The Maritime Union of Australia (MUA); and
- 3.2 Officials, delegates, employees and agents of the MUA (MUA Representatives); and
- 3.3 employees of Patrick who are members of the MUA or are eligible to be members of the MUA and who are employed at the Patrick Stevedores Holdings Pty Limited terminal at Port Botany in the State of New South Wales (Port Botany Employees)

3.4 The MUA and MUA Representatives must comply with clauses 4.1 to 4.4 of this Interim Order.

3.5 The Port Botany Employees must comply with clause 4.5 of this Interim Order.

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

4.1 Until further order, the MUA and the MUA Representatives must:

- (a) not engage in any unprotected industrial action at Port Botany;
- (b) immediately stop organising any unprotected industrial action involving any of the Port Botany Employees; and
- (c) not organise, aid, abet, direct, procure, induce, advise, authorise or encourage any Port Botany Employee to engage in unprotected industrial action.

4.2 The MUA must prepare the following written notice which must be signed by an authorised official of that organisation in the following terms (Written Notice):

“Fair Work Australia has issued an Interim Order under section 420 to stop or prevent industrial action until further order.

The Interim Order is called the Patrick Stevedores Holdings Pty Limited – Port Botany – Industrial Action Interim Order No.1 of 2013.

The Interim Order requires that there be no unprotected industrial action at Port Botany (including but not limited to bans, limitations and restrictions on the performance of work) until further order by:

- *the MUA;*
- *officers, employees, agents and delegates of the MUA (**MUA Representatives**); or*
- *employees of Patrick Stevedores Holdings Pty Limited (**Patrick**) at its terminal at Port Botany in the State of New South Wales (**Port Botany**) who are members or eligible to be members of the MUA and are employed pursuant to the Patrick Terminals Enterprise Agreement 2012 (**Port Botany Employees**).*

The Interim Order also prevents the MUA and MUA Representatives from aiding, abetting, counselling, procuring, authorising, directing,

organising or encouraging any unprotected industrial action by Port Botany Employees until further order.

The Interim Order applies to:

- *the MUA and MUA Representatives; and*
- *Port Botany Employees.*

Accordingly, any direction, advice or authorisation by the MUA to members of the MUA employed by Patrick to engage in industrial action at Port Botany which is not protected is withdrawn and such action must stop or not occur. Those members should perform work in the manner in which it is usually performed, without any form of ban, limitation or restriction on the performance of work and without any threat to ban, limit or restrict the performance of work.

- 4.3 The Secretary of the MUA (or his or her authorised delegate) must provide a copy of the Written Notice to Darren Perry of Herbert Smith Freehills on facsimile number (02) 9322 4000 by 6:00pm, Friday 31 May 2013.
- 4.4 The MUA must take all steps necessary and available under its rules to:
- (a) advise the MUA Representatives and each of the Port Botany Employees who are members of the MUA of the terms of this Interim Order by giving the Written Notice to each of the MUA Representatives and Port Botany Employees who are members of the MUA ; and
 - (b) ensure that its delegates and those Port Botany Employees who are members of the MUA comply with this Interim Order.
- 4.5 Each Port Botany Employee must, until further order:
- (a) immediately stop engaging in, or threatening to engage in, unprotected industrial action;
 - (b) while this Interim Order is in force, be available for work, and perform work, as required by Patrick; and
 - (c) not continue, recommence or organise any unprotected industrial action during the period of operation of this Interim Order.

5 DEFINITION OF UNPROTECTED INDUSTRIAL ACTION

5.1 For the purposes of this Interim Order, the expression “unprotected industrial action” means:

- (a) a failure or refusal by Port Botany Employees to attend for work or a failure or refusal to perform any work at all by Port Botany Employees who attend for work, including a failure or refusal to perform reasonable overtime;
- (b) a ban, limitation or restriction on the performance of work by a Port Botany Employee, or on the acceptance of or offering for work by a Port Botany Employee;
- (c) the performance of work by a Port Botany Employee in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work by a Port Botany Employee, the result of which is a restriction or limitation on, or a delay in, the performance of work; and/or
- (d) the aiding, abetting, counselling, procuring, authorising, directing, organising or encouraging of any person to whom this Interim Order applies to engage in the conduct referred to in paragraphs (a) to (c) above.

5.2 For the purposes of this Interim Order, the expression “unprotected industrial action” does not include:

- (a) protected action;
- (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:
- (d) the action was based on a reasonable concern by the employee about an imminent risk to his or her health or safety; and
- (e) 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.

6 SERVICE OF THE INTERIM ORDER

Without limitation as to other means of service, it will be sufficient service of this Interim Order on the Employees if 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 order shall come into effect at 3.00pm on Friday, 31 May 2013 and shall cease to have effect at such time as a further order is made or at a time specified by that order.

