

FEDERAL MAGISTRATES COURT OF AUSTRALIA

*FAIR WORK OMBUDSMAN v MARSHALL
SECURITY SERVICE PTY LTD & ANOR*

[2009] FMCA 838

INDUSTRIAL LAW – Admitted contraventions of Workplace Relations Act – consent submissions as to penalties and declarations – orders made as sought by parties.

Workplace Relations Act 1996, s.400(5)

Applicant:	FAIR WORK OMBUDSMAN
First respondent:	MARSHALL SECURITY SERVICE PTY LTD
Second Respondent:	RAYMOND WHIKOI MARSHALL
File Number:	MLG 1545 of 2008
Judgment of:	Burchardt FM
Hearing date:	10 August 2009
Date of Last Submission:	10 August 2009
Delivered at:	Melbourne
Delivered on:	10 August 2009

REPRESENTATION

Counsel for the Applicant: Ms Kuzma

Solicitors for the Applicant: Corrs Chambers Westgarth

Counsel for the Respondents: Mr Follett

Solicitors for the Respondents: Holding Redlich

THE COURT DECLARES BY CONSENT THAT:

- (1) On or around December 2006 the First and Second Respondents contravened s.400(5) of the Workplace Relations Act 1996 (Cth) in respect of:
 - (a) Kevin John Munro
 - (b) Kerry Roy Lewis; and
 - (c) Mark Andrew Mannak

AND THE COURT ORDERS BY CONSENT THAT:

- (2) Pursuant to s.407 of the Workplace Relations Act 1996 (Cth), the First Respondent pay to the Consolidated Revenue Fund of the Commonwealth a penalty of \$21,000 in respect of the three contraventions by it of s.400(5) of the Workplace Relations Act 1996 (Cth).
- (3) The penalty in order (2) be paid by way of 12 monthly instalments of \$1,750 payable on or before the first day of each month commencing on 1 September 2009 and ending on 1 August 2010.
- (4) The proceedings be otherwise dismissed with no order as to costs.

**FEDERAL MAGISTRATES
COURT OF AUSTRALIA AT
MELBOURNE**

MLG 1545 of 2008

FAIR WORK OMBUDSMAN
Applicant

And

MARSHALL SECURITY SERVICE PTY LTD
First Respondent

RAYMOND WHIKOI MARSHALL
Second Respondent

REASONS FOR JUDGMENT

(Revised from transcript)

1. These are some short *ex tempore* reasons for judgment which I will revise from transcript in the most unlikely event that any party wishes to have formal reasons set out. It is an unusual case in a sense, because not only is there an agreed statement of facts filed on 6 August 2009, which are subject to some trivial amendments to reflect statutory changes, that the parties rely upon jointly. But – and this really is unusual – there are joint submissions on penalty filed on the same date. The parties seek orders which, *inter alia*, provide for a penalty to be imposed on the first respondent of \$21,000 in respect of the three admitted contraventions by it of s.400(5) of what was then *Workplace Relations Act 1996* (“the Act”). The orders provide for those funds to be paid into the Consolidated Revenue Fund of the Commonwealth over a period of 12 months by 12 months of instalments of \$1750 in the timetable set out in the orders.

2. I am informed today, and it is clear that it is the case, that there is not now any desire on the part of the applicant to press the matters alleged in the pleadings under s.792 of the Act. And I note that no order is sought against the second respondent in view of the circumstances of the case. The reality is that the sums proposed by way of penalty are well within the range for contraventions of this sort. In my view, they reflect a proper balancing of, on the one hand, the necessity to condemn such conduct and to provide general deterrence, and on the other hand, to reflect the particular personal circumstances of the respondents.

3. In this regard, I draw attention to the fact that it is agreed that the business which will be suffering the penalty has never been enormously profitable, and to all effects and purposes, consists, as I would apprehend the papers, of a husband-and-wife team working with various employees, but never very many, and certainly not producing significant, major financial gain. Similarly, it needs to be borne well in mind that the second respondent is, as I understand it, some 67 years old, and contemplating retirement, as indeed he is quite entitled to at that age. In all the circumstances, and bearing in mind the matters set out, both in the agreed statement of facts and the joint submissions on penalty, which I have read and accept as being valid and to the point, it is perfectly proper for me to make the orders sought, and I will make the orders sought by consent, and the declarations also sought by consent.

I certify that the preceding three (3) paragraphs are a true copy of the reasons for judgment of Burchardt FM

Associate: Ms B Evans

Date: 10 August 2009