



Australian Government
Workplace Ombudsman

UNDERTAKING

DATED *15 January* **2009**

FROM

Ozone Manufacturing Pty Ltd

ACN 008 006 433

To

The Commonwealth of Australia
(as represented by the Office of the Workplace Ombudsman)

Concerning

**Contravention of clause 38 of the Notional Agreement Preserving
State Awards derived from the *Metal Industry (SA) Award***

UNDERTAKING

THIS UNDERTAKING is given to the Commonwealth of Australia (as represented by the Office of the Workplace Ombudsman (WO)) by Ozone Manufacturing Pty Ltd ACN 008 006 433 of 496 Churchill Road KILBURN SA 5084 (Ozone).

BACKGROUND:

1. Ozone is, and was at all material times,
 - 1.1 a body corporate under the Corporations Act 2001 (Cth);
 - 1.2 a constitutional corporation within the meaning of section 4(1) of the Workplace Relations Act 1996 2006 (Cth) (WR Act);
 - 1.3 an employer within the meaning of section 6(1) of the WR Act.
2. At all material times, Ozone operated in the manufacturing industry of pollution technology and air purification.
3. Ozone is bound by the Notional Agreement Preserving State Awards derived from the Metal Industry (SA) Award (the NAPSA).

Particulars

- 3.1 The Metal Industry (SA) Award (the Metals Award) was an award of the Industrial Relations Commission of South Australia, pursuant to the Industrial and Employee Relations Act 1994 (SA).
- 3.2 Immediately prior to 27 March 2006, Ozone employed at least one employee whose terms and conditions of employment were governed by the Metals Award.
- 3.3 From 27 March 2006, the Metals Award became a NAPSA pursuant to Clause 31 of Schedule 8 of the WR Act, and became binding on Ozone pursuant to clause 32 of Schedule 8 of the WR Act.
4. At all material times from on or about 6 April 2005, Ozone was the employer of [REDACTED]

Particulars

- 4.1 [REDACTED] commenced employment with Ozone on a casual basis on or about 6 April 1995.
- 4.2 From on or about 6 September 1995, [REDACTED] was continuously employed by Ozone on a permanent full-time basis until on or about 23 April 2007.
5. At all material times from 27 March 2006, the terms and conditions of [REDACTED] employment with Ozone were governed by the NAPSA.

Particulars

- 5.1 At all material times Ozone employed [REDACTED] to perform work to which the NAPSA applied.
- 5.2 [REDACTED] was employed by Ozone to perform duties as an assembler for the period from on or about 6 April 1995 to in or about March 1996.
- 5.3 From in or about March 1996 until in or about the year 2000, [REDACTED] was employed by Ozone as a Storeperson.
- 5.4 From in or about the year 2000 to 23 April 2007, [REDACTED] employment title was Store Manager, and his duties included the following in respect of goods partly or wholly manufactured:
 - (a) accepting delivery and unpacking goods received by Ozone;
 - (b) sorting or checking goods received by Ozone for quantity, type or size;
 - (c) distributing goods and arranging for the holding of goods in containers or compartments or at other locations on-site by Ozone;
 - (d) establishing or maintaining up-to-date records of the goods held on-site by Ozone;
 - (e) assembling or collecting goods held on-site by Ozone to satisfy orders, requisitions or schedules;
 - (f) checking goods before despatch by Ozone for quantity, type or size;
 - (g) making and marking wooden containers such as boxes or crates for goods to be despatched by Ozone;
 - (h) packing goods as and where appropriate (not being repetitive packing by process worker or labourer in a standard container or containers in which such goods are ordinarily sold);
 - (i) handing over goods to the person(s) authorised to receive them;
 - (j) the completion of any document or record and forklift driving in connection with any of the foregoing functions.
- 5.5 On 21 February 2007 Ozone changed [REDACTED] employment title to "Logistics Manager". His employment duties remained unchanged.
6. The Respondent terminated [REDACTED] employment with Ozone on or about 23 April 2007 for the reason of redundancy.

Particulars

- 6.1 On or about 23 April 2007, Ozone's then Production Supervisor, [REDACTED], directed [REDACTED] to come into his office.
- 6.2 [REDACTED] complied with that direction and attended the Production Supervisor's office.
- 6.3 At that meeting, the Production Supervisor told [REDACTED] that his employment was terminated due to restructuring of Ozone's organisation.

- 6.4 The Production Supervisor offered [REDACTED] 4 weeks' notice upon termination of his employment, which [REDACTED] accepted.
- 6.5 By letter dated 23 April 2007, the Production Supervisor confirmed to [REDACTED] that:
- (a) [REDACTED] employment was terminated with immediate effect;
 - (b) "The reason for [his] termination is restructuring of Ozone's organisation."
- 6.6 The Respondent no longer required [REDACTED] job to be done by anyone following the termination of [REDACTED] employment.
- 6.7 On or about 23 April 2007, Ozone redistributed the duties formerly performed by [REDACTED] amongst three of its other existing employees, named Messers [REDACTED]
7. As at 23 April 2007, Ozone employed 15 or more employees.

Particulars

- 7.1 The Respondent employed 17 employees, including [REDACTED] as at 23 April 2007.
8. In accordance with the NAPSA, upon termination of his employment for the reason of redundancy, Ozone was obliged to provide [REDACTED] with:
- 8.1 notice of four weeks or payment in lieu of notice in accordance with clause 38 of the NAPSA; and
 - 8.2 severance pay of twelve weeks' pay in accordance with clause 38 of the NAPSA.

Particulars

- (a) At the date that Ozone gave [REDACTED] notice of termination of his employment [REDACTED] had completed more than eleven years but less than twelve years of continuous service with Ozone.
9. In accordance with the NAPSA, on or about 23 April 2007, Ozone paid [REDACTED] in lieu of four weeks' notice upon termination of his employment.

CONTRAVENTION:

10. In contravention of clause 38 of the NAPSA, on termination of his employment for the reason of redundancy, Ozone failed to pay [REDACTED] the twelve weeks' severance pay to which he was entitled.

Particulars

- 10.1 On or about 23 April 2007, Ozone paid [REDACTED] for:
- (a) accrued but untaken annual leave and long service leave, and
 - (b) wages for work performed by [REDACTED] for Ozone in the period from 18 April 2008 to 23 April 2008 inclusive.
- 10.2 The Respondent did not pay [REDACTED] any amount by way of severance pay upon termination of his employment by reason of redundancy.

11. The amount of severance pay that the Respondent was obliged to pay to [REDACTED] was \$6,862.80 gross.

Particulars

- 11.1 Under clause 38 of the NAPSA the Respondent was obliged to pay 12 weeks' pay. "Week's pay" was defined by the NAPSA to mean the ordinary time rate of pay.
- 11.2 From 27 March 2006 [REDACTED] ordinary time rate of pay was determined by an Australian Pay and Classification Scale (APCS) pursuant to the WR Act. Pursuant to sections 204 and 208 of the WR Act the terms of the APCS that covered Solly were derived from the Metals Award, including the Metal Award's provisions determining basic periodic rates of pay for the different classifications of work. The classification applicable to [REDACTED] under the Metals Award was Wage Group C11. As at 27 March 2006 the APCS that covered [REDACTED] entitled him to a basic periodic rate of pay of \$14.33 gross per hour pursuant to section 182(1) of the WR Act.
- 11.3 Pursuant to a decision of the Australian Fair Pay Commission the rate provisions of the APCS were increased by \$0.72 per hour with effect from 1 December 2006. Consequently from 1 December 2006 the APCS that covered [REDACTED] entitled him to be paid a basic period rate of pay of \$15.05 gross per hour. That entitlement was equivalent to a weekly rate of pay of \$571.90 gross for a 38 hour week.
- 11.4 For the purpose of calculating [REDACTED] entitlement to severance pay under the NAPSA, a "week's pay" within the meaning of clause 38 of the NAPSA was \$571.90 gross. [REDACTED] was entitled to 12 weeks' worth of \$571.90 gross which totalled \$6,862.80 gross.
12. Ozone agrees that all of the matters set out in paragraphs 1 to 11 inclusive hereof are true and correct.

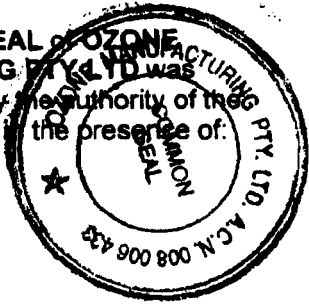
1. UNDERTAKING

OZONE MANUFACTURING UNDERTAKES that in consideration of the WO agreeing to discontinue civil penalty proceedings against Ozone for having contravened the NAPSA as detailed in this Undertaking, as evidenced by the WO's acceptance of this Undertaking endorsed at the foot hereof,

Ozone Manufacturing will:

- (a) make payment within 7 days of the Execution of this Undertaking to [REDACTED] in the sum of:
- i. \$6,862.80 gross by way of severance pay, and
 - ii. \$1251.43 gross by way of interest.
- (b) ensure that Ozone complies with its minimum payment obligations arising under the WR Act in the future;
- (c) ensure that each member of its management team as at the date of the Execution of this Undertaking and as at any date within the period of 90 days after the Execution of this Undertaking, undertakes at least 2 hours of self-funded training with an accredited workplace relations trainer addressing the minimum payment obligations arising under the WR Act, with copies of the receipts for payment and participant

THE COMMON SEAL of OZONE
MANUFACTURING PTY LTD was
hereunto affixed by the Authority of the
Board of Directors in the presence of:



(Signature of Secretary/Director)

(Name of Secretary/Director in Full)

(Signature of Director)

(Name of Director in Full)

ACCEPTED by the **OFFICE OF THE WORKPLACE OMBUDSMAN**

Dated: *29th* January 2009

NICHOLAS WILSON
WORKPLACE OMBUDSMAN