

**IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY**

No. V of 2008

**HAWKER DE HAVILLAND
AEROSPACE PTY LIMITED
ACN: 103 165 466**

Applicant

**THE AUTOMOTIVE, FOOD, METALS,
ENGINEERING, PRINTING AND KINDRED
INDUSTRIES UNION**

First Respondent

DAVID ROACH

Second Respondent

JASON SHERWOOD

Third Respondent

AND

CARLO INSERRA and ORS

Fourth to 805th Respondents

APPLICATION



Application is made:

- (a) under section 494(5)(b) of the *Workplace Relations Act 1996* (Cth) (the Act) for injunctive and other relief in relation to contravention of section 494(1), or

Filed on behalf of the Applicant

MINTER ELLISON
Lawyers
Rialto Towers
525 Collins Street
MELBOURNE VIC 3000

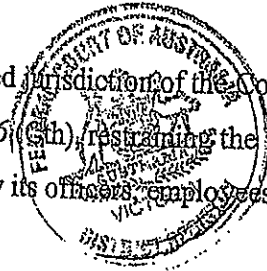
DX 204 MELBOURNE
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Facsimile (03) 8608 1172
Reference BJA MWT 40-5727314

- alternatively, under section 496(12) of the Act for injunctive and other relief in relation to contravention of section 496(10); and
- (b) in the accrued and associated jurisdiction of the Court pursuant to section 32 of the *Federal Court of Australia Act 1976* (Cth).

A. DETAILS OF CLAIM

On the grounds stated in the accompanying Affidavit, the Applicant claims:

1. An injunction pursuant to section 494(5)(b) of the *Workplace Relations Act 1996* (Cth) (the Act) that the First Respondent, whether by its officers, delegates, servants or agents or howsoever otherwise, and the Second to 805th Respondents (the **Employee Respondents**), be restrained from engaging in, organising, procuring or encouraging industrial action before the nominal expiry date of the *Hawker de Havilland Aerospace Pty Limited (Port Melbourne) Workplace Union Collective Agreement 2007* (Agreement).
2. An injunction pursuant to section 496(12) of the Act that the Employee Respondents be restrained from engaging in or organising conduct that would constitute a contravention of the Order made by Commissioner Gay on 8 April 2008 pursuant to section 496(1) of the Act, in proceeding number C2008/2390 before the Australian Industrial Relations Commission (Order).
3. The imposition of penalties pursuant to section 494(5)(a) of the Act.
4. An order that the Respondents pay compensation to the Applicant pursuant to section 495(5)(b) of the Act.
5. An injunction pursuant to the accrued and associated jurisdiction of the Court pursuant to section 32 of the *Federal Court of Australia 1976* (Cth), restraining the Respondents (and in the case of the First Respondent, whether by its officers, employees, agents or otherwise) from:
 - (a) preventing, hindering, interfering with, disrupting or interrupting free access to or egress from the Applicant's facilities at 226 Lorimer Street, Port Melbourne, Victoria (the **Premises**) by any person or vehicle;
 - (b) abusing, threatening, besetting, harassing or intimidating any person who is in the vicinity of or on the Premises;



- (c) causing, inducing, procuring, encouraging or authorising or advising any person to do or attempt to do any of the things restrained by one of the subparagraphs (a) to (b) of paragraph 5 of this Order.
6. Any other Orders as the Court may consider appropriate.

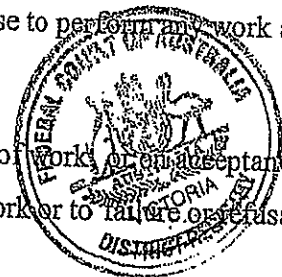
B. CLAIM FOR INTERLOCUTORY RELIEF

AND the Applicant claims by way of interlocutory relief:

7. An injunction pursuant to section 494(5)(b) of the *Workplace Relations Act 1996* (Cth) (the Act) that the First Respondent, whether by its officers, delegates, servants or agents or howsoever otherwise, be restrained from engaging in, organising, procuring or encouraging industrial action before the nominal expiry date of the *Hawker de Havilland Aerospace Pty Limited (Port Melbourne) Workplace Union Collective Agreement 2007 (Agreement)*.
8. An injunction that the First Respondent (whether by its officers, delegates, employees, members, agents or howsoever otherwise) be required to take any and all steps necessary and available under its rules to ensure that the Second to 805th Respondents (the Employee Respondents):
- (a) cease and desist from engaging in industrial action or failing to work otherwise than in accordance with the Agreement; and
- (b) make themselves available for work and perform work as the Applicant may reasonably require.
9. Without limiting the scope of order 8 the First Respondent (whether by its officers, delegates, employees, members, agents or howsoever otherwise) take all reasonable steps available to them to:
- (a) Direct its members employed at the Premises (the Members) both orally, by holding meetings, and/or in writing to lift any and all bans, limitations or restrictions on the performance of work including ceasing any and all strike action;
- (b) Advise the Members both orally, by holding meetings, and/or in writing of the following:



- (i) that the current refusal of the Members to attend for work at the Premises is not authorised or encouraged by the AMWU; and
 - (ii) that the AMWU recommends that the Members cross the picket line being engaged in by the Employees at the Premises.
10. An injunction pursuant to section 494(5)(b) of the Act, to take effect in respect of an individual Employee Respondent when these orders are personally served in accordance with the Rules upon him or her, that the Employee Respondents, be restrained from engaging in, organising, procuring or encouraging industrial action before the nominal expiry date of the *Hawker de Havilland Aerospace Pty Limited (Port Melbourne) Workplace Union Collective Agreement 2007 (Agreement)*.
11. An injunction pursuant to section 496(12) of the Act, to take effect in respect of an individual Employee Respondent when these orders are personally served in accordance with the Rules upon him or her, that the Employee Respondents be restrained from engaging in or organising conduct that would constitute a contravention of the Order made by Commissioner Gay on 8 April 2008 pursuant to section 496(1) of the Act, in proceeding number C2008/2390 before the Australian Industrial Relations Commission (**Order**).
12. Without limiting the scope of order 10 or 11, from the time that these orders are personally served in accordance with the Rules upon an individual Employee Respondent the Employee Respondents and each of them be restrained from:
- a. engaging in bans, limitations or restrictions on the performance of work, or on acceptance of or offering for work, in accordance with the terms and conditions prescribed by the Agreement; or
 - b. failing or refuse to attend for work or to fail or refuse to perform any work at all upon attending for work;
- unless the ban, limitation or restriction on the performance of work, or on acceptance of or offering for work or the failure or refusal to attend for work or to fail or refuse to perform work upon attending for work:
- a. is authorised or agreed to, in advance and in writing, by the Applicant; or
 - b. based on a reasonable concern by the Employee Respondent about an imminent risk to his or her health or safety and the Employee Respondent did not unreasonably



fail to comply with a direction of the Applicant to perform other available work, whether at the same or another workplace, that was safe for the Employee Respondent to perform.

13. An injunction pursuant to the accrued and associated jurisdiction of the Court pursuant to section 32 of the *Federal Court of Australia 1976 (Cth)*, to take effect in respect of an individual Employee Respondent when these orders are personally served in accordance with the Rules upon him or her, restraining the Respondents (and in the case of the First Respondent, whether by its officers, employees, agents or otherwise) from:
- (a) preventing, hindering, interfering with, disrupting or interrupting free access to or egress from the Applicant's facilities at 226 Lorimer Street, Port Melbourne, Victoria (**the Premises**) by any person or vehicle;
 - (b) abusing, threatening, besetting, harassing or intimidating any person who is in the vicinity of or on the Premises;
 - (c) causing, inducing, procuring, encouraging or authorising or advising any person to do or attempt to do any of the things restrained by one of the subparagraphs (a) to (b) of paragraph 3 of this Order.

DATE: 10 April 2008

Minter Ellison

MINTER ELLISON
Solicitors for the Applicant



C. NOTICE TO RESPONDENT

TO The First and to the Second to 805th Respondents

This application has been set down for the time and place stated below. If you or a legal practitioner representing you do not attend the Court at that time, the application may be dealt with and judgment may be given, or an order made, in your absence. As soon after the time mentioned as the business of the Court will allow, any of the following may happen:

- (d) the application may be heard;
- (e) directions may be given for the further conduct of the proceeding;

- (f) any application for interlocutory relief may be heard.

Before any attendance at Court, you must file an appearance in the Registry.

Time and date for hearing: 10:15a 11th APRIL 2008

Place Federal Court of Australia
Owen Dixon Commonwealth Law Courts Building
305 William Street
MELBOURNE VIC 3000

D. ABRIDGMENT OF SERVICE

Not applicable.

DATE:

10 APR 2008



an officer acting under the authority of the
DISTRICT REGISTRAR

E. FILING AND SERVICE

This application is filed by Minter Ellison for the Applicant whose address for service is:

Minter Ellison
Lawyers
Rialto Towers
525 Collins Street
MELBOURNE VIC 3000
Attention: Michael Tehan

The applicant's address is 226 Lorimer Street, Port Melbourne, VIC 3207.

It is intended to serve this application on each person listed below:

- (a) Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union at 2nd Floor, 251 Queensberry Street, Carlton South, VIC 3053; and
- (b) David Roach, Jason Sherwood, Carlo Inserra and Ors (see attached Schedule A).