

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

No: (P)VID210/2008

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

CARLO INSERRA and ORS
Fourth to 805th Respondents

ORDER

JUDGE: Justice Marshall

DATE OF ORDER: 14 April 2008

WHERE MADE: Melbourne

UPON THE APPLICANT BY ITS COUNSEL UNDERTAKING:

A: To submit to such order (if any) as the Court may consider to be just for the payment of compensation, to be assessed by the Court or as it may direct, to any person, whether or not a party, adversely affected by the operation of the interlocutory order made hereunder or any continuation, with or without variation, thereof, and

B: To pay the compensation referred to in (A) to the person there referred to.

THE COURT ORDERS THAT:

1. Until trial of the proceeding or further order:



- (a) 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)*.
- (b) the First Respondent take all steps necessary and available under its rules to attempt to ensure that the 2nd to 805th Respondents, other than those in respect of whom the Notice of Discontinuance dated 14 April 2008 has been filed (**the Employee Respondents**) insofar as any remaining respondents are members of the First Respondent, cease engaging in industrial action and make themselves available for work, consistently with those persons remaining members of the First Respondent.
- (c) the Employee Respondents and each of them 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)*.
- (d) the Employee Respondents and each of them 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**).
- (e) Without limiting the scope of order (c) or (d), the Employee Respondents and each of them be restrained from:
- (i) 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
 - (ii) 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 failure or refusal 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.
2. Service of this order be permitted on the First Respondent by serving an original or copy (including a facsimile copy) of the order by facsimile transmission on the solicitors of the First Respondent.
 3. Service of this order be permitted on the 2nd to 805th Respondents, other than those in respect of whom the Notice of Discontinuance dated 14 April 2008 has been filed, by:
 - (a) sending a copy (including a facsimile copy) of the Order by Express Post to the person's residential address as disclosed by the records kept by the Applicant; or
 - (b) sending a copy (including a facsimile copy) of the Order by courier to the person's residential address as disclosed by the records kept by the Applicant.
 4. Liberty to apply be reserved to all parties on 24 hours notice to seek any variation or discharge of these orders.
 5. The trial of the matter in the proceeding be otherwise adjourned to 10.00 am on 7 May 2008, with 8 May 2008 and 9 May 2008 reserved.
 6. The matter be referred to the Victorian District Registrar to arrange a mediation between the parties.
 7. In the event that the matter does not settle at the conclusion of the mediation and if appropriate, the Registrar conduct a case management conference immediately following the mediation to consider the most economic and efficient means of

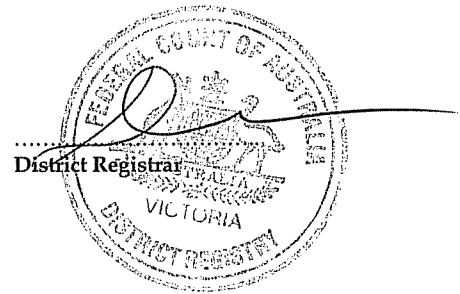


bringing the proceedings to trial and of conducting the trial, at which conference the Registrar may give further directions.

8. On or before 5.00pm on 21 April 2008, the Applicant file any affidavits on which it intends to rely in the trial of the proceeding.
9. On or before 5.00pm on 2 May 2008, any Respondent file any affidavits on which it intends to rely in the trial of the proceeding.
10. At or before 12.00noon on 6 May 2008, the Applicant file any affidavits in reply on which they intend to rely in the trial of the proceeding.
11. The trial will be by affidavit.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

Date entered: 14 April 2008



TAKE NOTICE

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, that you are liable to imprisonment or to sequestration of property if:

- (a) where the Order requires the person (whether an individual or corporate entity) bound to do an act within a specified time, the person bound refuses or neglects to do the act within that time; or
- (b) where the Order requires the person (whether an individual or corporate entity) bound to abstain from doing an act, the person bound disobeys the Order.

David Roach, Jason Sherwood and the Fourth to 805th Respondents, other than those in respect of whom the Notice of Discontinuance dated 14 April 2008 has been filed, that you

are liable to imprisonment or to sequestration of property if:

- (c) where the Order requires the person (whether an individual or corporate entity) bound to do an act within a specified time, the person bound refuses or neglects to do the act within that time; or
- (d) where the Order requires the person (whether an individual or corporate entity) bound to abstain from doing an act, the person bound disobeys the Order.

Date that entry is stamped:

14 APR 2008

