

**TOTAL MARINE SERVICES PTY LTD AND MARITIME  
UNION OF AUSTRALIA**

**AUSTRALIAN INDUSTRIAL RELATIONS  
COMMISSION – COMMISSIONER WILLIAMS  
7 FEBRUARY 2007**

**PR975953**

**[2007] AIRC 69**

**IMMINENT RISK TO EMPLOYEES SAFETY?**

**EMPLOYMENT  
AND INDUSTRIAL  
CASE NOTE**

MARCH 2007

This decision involved a consideration of Industrial action by employees and an application under section 496 of the *Workplace Relations Act*. The relevant subsection is as follows:-

(1) *If it appears to the Commission that industrial action by an employee or employees, or by an employer, that is not, or would not be, protected action:*

- a) *is happening; or*
- b) *is threatened, impending or probable; or*
- c) *is being organised;*

*the Commission must make an order that the industrial action stop, not occur and not be organised.*

The application arose out of the refusal by the crew of the vessel *Veritas Voyager* to sail from Broome unless an inspector from the Australian Maritime Safety Authority inspected the vessel and confirmed to the crew that it was safe to sail.

The employer had taken various steps to satisfy the crew of the safety of the vessel including having electricians remain on the vessel to continue working whilst it sailed from Broome to Exmouth.

The MUA had placed a delegate on board and had recommended that the vessel sail to Exmouth and then be inspected again. Evidence was produced from the Australian Maritime Safety Authority that the employer had taken more steps than it would have recommended to have the vessel safe to sail.

The Commissioner ordered that the industrial action cease under section 496.

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The crew had relied upon section 420 where the term *industrial action* is defined and in particular that industrial action is not taking place if:

- (i) *the action was based on a reasonable concern by the employee about an imminent risk to his or her health or safety; and*
- (ii) *the employee did not unreasonably fail to comply with the 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.*

The onus of proof in this case rested with the employees. The Commissioner was satisfied that the steps taken by the owner of the vessel were more than appropriate and there was no reasonable concern about an imminent risk to health or safety.

The lessons to be learned from this case are that:

- the onus of proof lies upon the employees;
- that the employer can take various steps to overcome the imminent risk to health concerns and this had been done in this case;
- that perhaps further evidence should have been led about the prospect of electrical shocks to the employees on the way to the next port of call being Exmouth - that is in all cases it comes down to evidence.

For further information about industrial action and protected action please do not hesitate to contact our Employment and Industrial Team:

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