



DECISION

Fair Work Act 2009
s.424—Industrial action

Re Svitzer Australia Pty Limited (B2022/1726)

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT CROSS
DEPUTY PRESIDENT EASTON

SYDNEY, 18 NOVEMBER 2022

Suspension or termination of protected industrial action – endangering life etc – acting on Commission’s own initiative.

[1] On 14 November 2022, Svitzer Australia Pty Ltd (Svitzer) gave notice to the bargaining representatives pursuant to s 414(5) of the *Fair Work Act 2009* (Cth) (FW Act) of employer response action in the form of an indefinite lockout of all harbour towage employees covered by the *Svitzer Australia Pty Limited National Towage Enterprise Agreement 2016* commencing at midday AEDT on 18 November 2022. This notice has caused the Commission, on its own initiative, to consider making an order under s 424(1) of the FW Act to suspend or terminate protected industrial action by Svitzer.

[2] We conducted a hearing in relation to this matter on 17 November 2022. Having heard the evidence and submissions of the bargaining representatives, the Minister and other interested parties, we make the following findings:

- (1) The lockout of its employees which Svitzer proposes to commence later today constitutes protected industrial action that is threatened, impending or probable. Section 424(1)(b) is therefore engaged.
- (2) We are satisfied that Svitzer’s intended lockout threatens to endanger the welfare of the Australian population or part of it. This finding engages s 424(1)(c).
- (3) We are satisfied that Svitzer’s intended lockout threatens to cause significant damage to the Australian economy. This finding engages s 424(1)(d).

[3] As a consequence of the above findings, we are required under s 424(1) to make an order suspending or terminating Svitzer’s protected industrial action. We consider that the appropriate course is to make an order suspending Svitzer’s protected industrial action for a period of six months. The effect of this order under the FW Act will be that no party will be able to take protected industrial action for the period of the suspension: s 413(7)(a).

[4] An order giving effect to this decision will be issued in conjunction with this decision. We will publish our full reasons for this decision in due course.



VICE PRESIDENT

Appearances:

S Wood KC with *D Ternovski*, counsel, for Svitzer Australia Pty Limited.

M Gibian SC with *P Boncardo*, counsel, for The Maritime Union of Australia.

E White, counsel, with *A White*, counsel, for The Australian Maritime Officers' Union.

O Fagir, counsel for The Australian Institute of Marine and Power Engineers.

Y Shariff SC with *T Sebbens*, solicitor, for the Hon Tony Burke MP, Minister for Employment and Workplace Relations.

J Sefton for Port Botany Operations Pty Limited and Port Kembla Operations Pty Limited.

K Winter for DP World Melbourne Limited, DP World Sydney Limited, DP World Fremantle Limited, DP World Brisbane Pty Limited, DP World Logistics Australia Limited and DP World Australia Logistics Limited.

J de Flamingh, solicitor, for Qube Ports Pty Ltd.

D Perry, solicitor, for Patrick Stevedores Holdings Pty Limited.

D Pearson, solicitor, for Port of Melbourne Operations Pty Ltd.

Hearing details:

2022.

Sydney with video links to Melbourne and Brisbane using Microsoft Teams:
17 November.

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