



Friday, 12 July 2024

Weekly Employment Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Employment Law

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Executive Summary (One Minute Read)

Fair Work Ombudsman v Construction, Forestry, Maritime, Mining and Energy Union (The Yatala Labour Prison Case) (No 3) (FCA) - pecuniary penalties imposed against a Union and three union officers for improper conduct while exercising rights under the *Fair Work Act 2009* (Cth)

Sawyer v Steeplechase Pty Ltd (QSC) - subcontractor employer liable for concreter's injury after construction site accident, but head contractor did not owe a duty of care in the circumstances

HABEAS CANEM

The scent on the breeze



Summaries With Link (Five Minute Read)

Fair Work Ombudsman v Construction, Forestry, Maritime, Mining and Energy Union (The Yatala Labour Prison Case) (No 3) [2024] FCA 732

Federal Court of Australia

O'Sullivan J

Employment law - Mossop Group Pty Ltd was engaged by South Australia as the head contractor for construction works relating to the redevelopment of the Yatala Labour Prison - three union officers attended the site and issued a notice of entry detailing suspected contraventions of the *Work Health and Safety Act 2012* (SA) and produced Federal and State entry permits - they made comments to senior employees of Mossop that were abusive, derogatory, and offensive - the Ombudsman sought declarations and pecuniary penalties for contraventions of s340 and s500 of the *Fair Work Act 2009* (Cth) against the Union and the three officers - held: two of the officers had contravened s500 of the *Fair Work Act* by acting in an improper manner whilst exercising rights in accordance with Part 3-4 of the Act - the other officer had contravened s340 by taking adverse action that consisted of threatening a representative of Mossop - the Union was knowingly involved in these contraventions - the parties agreed that the contravening conduct did not result in any stoppage of work at the site, nor any economic loss - certain incidents should be treated as one course of conduct and result in a single penalty nearing the maximum amount for one contravention - no respondent had expressed any contrition for their conduct - declarations made, Union ordered to pay a pecuniary penalty of about \$214,000, and the officers ordered to pay pecuniary penalties of about \$19,000, \$7,000, and \$8,000.

[Fair Work Ombudsman](#)

[From Benchmark Tuesday, 9 July 2024]

Sawyer v Steeplechase Pty Ltd [2024] QSC 142

Supreme Court of Queensland

Crowley J

Negligence - the appellant worked as a concreter for a concreting business - he claimed he injured his lower back when bending and reaching while holding a mesh sheet as he and his co-worker attempted to position it in place for a slab foundation at a residential property - he also claimed he suffered aggravation of a pre-existing depressive condition, as a consequence of his physical injury - he sued his employer and the head contractor for the project in negligence - held: the common law does not impose a duty of care on principals for the benefit of independent contractors engaged by them of the kind which they owe to their employees - however, in some circumstances, a principal will come under a duty to use reasonable care to ensure that a system of work for one or more independent contractors is safe - the Court did not consider that circumstances existed such that a duty of care of the kind and scope as pleaded by the plaintiff should be imputed against the head contractor - had the Court been required to determine contribution as between the defendants as joint tortfeasors, it would have apportioned the head contractor's liability as 10% - the employing concreter sub-contractor had



breached its duty of care - this breach of duty was a necessary condition of the occurrence of each of these injuries - the employer was liable for the plaintiffs' injuries, damage, and loss - damages assessed at about \$780,000.

[Sawyer](#)

[From Benchmark Friday, 12 July 2024]

Benchmark

INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Moody v Netchoice (SCOTUS) - Lower court decisions upholding State statutes prohibiting social media companies from moderating content posted by third parties were reversed for failure to conduct proper First Amendment analysis

Summaries With Link (Five Minute Read)

Moody v Netchoice 603 US ____ (2024)

Supreme Court of the United States

The States of Florida and Texas enacted legislation that prohibited internet platforms from moderating third-party content based on content. The Supreme Court found serious First Amendment implications that the lower courts failed to properly consider. The cases were remanded to the courts below. The Court cited to *Miami Herald Publishing Co v Tornillo*, 418 US 241 (1974), where it was held that a Florida statute requiring newspapers to offer a right of reply violated the First Amendment because it consisted of compelled speech. Compelled speech can violate the First Amendment as much as suppression of speech. The Court said that government cannot meddle in speech by claiming that it is improving the marketplace of ideas. Here, the Court concluded that states were not likely to succeed in prohibiting the platforms from enforcing the platforms' own content moderation rules. The Court said that the States' attempt to better balance the mix of viewpoints on the internet by restricting content moderation amounted to an interference with speech decisions made by the private platforms. The Court added that a State cannot prohibit speech to rebalance the speech market. Inasmuch as the content moderation practices amounted to speech decisions by the platforms, the government was not free to enact laws that infringed those private speech rights.

[Moody](#)



Poem for Friday

Iceland

By Jonas Hallgrímsson (1807-1845)

Charming and fair is the land,
and snow-white the peaks of the jokuls [glaciers],
Cloudless and blue is the sky,
the ocean is shimmering bright,
But high on the lave fields, where
still Osar river is flowing
Down into Almannagorge,
Althing no longer is held,
Now Snorri's booth serves as a sheepfold,
the ling upon Logberg the sacred
Is blue with berries every year,
for children's and ravens' delight.
Oh, ye juvenile host
and full-grown manhood of Iceland!
Thus is our forefathers' fame
forgotten and dormant withal.

Jonas Hallgrímsson was born in Iceland on 16 November, 1807. He is a revered figure in Icelandic literature, writing in the Romantic style. His love of the Icelandic people and country side and pride in the national identity comes through his poetry. He was a promoter of the Icelandic Independence Movement. He was employed for a time by the sheriff of Reykjavik as a clerk. He studied law at the University of Copenhagen. He also worked as a defence lawyer. He founded the Icelandic periodical Fjölfróðingur first published in 1835. He died on 26 May 1845, after slipping on stairs and breaking his leg, the previous day. He died of blood poisoning aged 37 years. His birthday each year is recognised as the Day of the Icelandic Language.

Ég bið að heilsa, words by Jónas Hallgrímsson, composition by Ingi T. Lárusson
<https://www.youtube.com/watch?v=6OqbfGSJDUc>

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