

AWU Undertaking

Federal Court of Australia
District Registry: Western Australia
Division: Fair Work

No. WAD225 of 2024

Saipem Australia Pty Ltd (ACN 000 544 507)

Applicant

The Australian Workers' Union & Another named in the Schedule

Respondents

JUDGE:

The Honourable Justice Colvin

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 that person is a party), affected by the operation of the undertaking or any continuation (with or without variation) of undertaking; and
- (b) to pay the compensation referred to in (a) to the person affected by the operation of the undertaking.

The FIRST RESPONDENT UNDERTAKES THAT:

1. Until the hearing and determination of this proceeding or further order of the Court, the First Respondent (**AWU**), whether by its officers, employees, delegates, agents or howsoever otherwise, will not organise:
 - (a) any employees of the Second Respondent (**Kuiper**) to engage in any form of Industrial Action as notified by the AWU's 'notice of employee claim action' dated 11 September 2024 on the vessel known as the Castorone (**Castorone**);
 - (b) any employees of Kuiper to engage in any other Industrial Action on the Castorone where the protected action ballot authorisation being relied upon is the ballot vote declared on 11 September 2024;
 - (c) any Particular Employees to engage in Industrial Action on the vessel known as the Castorone.

2. The AWU will forthwith:
 - (a) take all reasonable steps to bring the existence of this Undertaking to the attention of the officers and, employees of the Western Australian branch (**Branch**), and its delegates who are employed by Kuiper and perform work on the Castorone;
 - (b) notify its officers and employees of the Branch, and its delegates who are employed by Kuiper and perform work on the Castorone that any Industrial Action the subject of paragraph 1 is not authorised or encouraged by the AWU; and
 - (c) issue and distribute to its delegates who are employed by Kuiper and perform work on the Castorone and the Particular Employees, including but not limited to, by email and by posting, and maintaining for the time that this Undertaking remains in force, on the home pages of the Branch and the Offshore Alliance (<https://awu.net.au/wa/> and <https://offshorealliance.org.au/>) and the branch and Offshore Alliance Facebook pages a communication titled 'Important Message to Kuiper Employees on the Castorone – Court injunction' which:

- (i) includes a copy of this Undertaking;
- (ii) states that the Industrial Action the subject of the AWU's 'notice of employee claim action' dated 11 September 2024 is not to occur, and is not authorised by the AWU.

3. In this Order:

(a) **Particular Employees** means Kuiper employees in the following classifications who perform work on the Castorone:

- (i) Barge Welder;
- (ii) Deck Electrician;
- (iii) Deck Engineer, Mechanic;
- (iv) Tradesperson — Spacer; and
- (v) Bevel Machine Operator.

(b) **Industrial Action** means:

- (i) a failure or refusal by an employee to attend for work, or to perform any work when at work;
- (ii) a ban, restriction or limitation on the performance of work by an employee or on the acceptance of or offering for work by an employee;
- (iii) the performance of work by an employee in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work by an employee, in either case the result of which is a restriction or limitation on, or a delay in, the normal work performed on the Castorone,

but does not include:

- (A) action by an employee that is authorised or agreed to by the employer;
- (B) action by an employee if:
 - (1) the action was based on a reasonable concern of the employee about an imminent risk to his or her health or safety; and
 - (2) the employee did not unreasonably fail to comply with a 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.

Schedule

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Respondents

Second Respondent: **Kuiper Australia Pty Ltd ACN 150 058 807**

Date: 16 September 2024