

30k penalty for breach of IFA, 22 September 2011

In the first prosecution of its kind, the Federal Court of Australia (FCA) has penalised the Australian Shooting Academy Pty Ltd and its managing director \$30,000 for failing to ensure that the Individual Flexibility Arrangements (IFAs) met the requirements of the Modern Award.

The Australian Shooting Academy Individual Flexibility Arrangement failed to identify the terms of the Amusement, Events and Recreation Award 2010 (the Modern Award) that were to be varied and as a result, the FCA found that the company had failed to ensure that the IFA met the various requirements of clause 7.4 of the Modern Award. This breach contravened s 45 of the *Fair Work Act 2009* (Cth) (the FW Act).

The company was found by the FCA to have adopted a “ham-fisted approach to the negotiation of IFAs” which forced employees to sign IFAs which denied them penalty rates and other entitlements. This was evident when the company breached s 340(1) of the FW Act when it injured an employee (Mr Swanson) during the course of his employment and then altered his position to his prejudice by failing to offer him any further work because he had a workplace right. The court also heard further evidence of how the company threatened to dock rostered shifts.

The company was penalised \$25,000 for its actions and the managing director, \$5,000. In addition to the penalties, Mr Swanson was awarded approximately \$7,000 in compensation. The FCA held that the company and its managing director could have been penalised \$99,000 and \$19,800 respectively but that the court had considered their cooperation with the Fair Work Ombudsman when determining the amounts.

Fair Work Ombudsman v Australian Shooting Academy Pty Ltd & Anor [2011] FCA 1064 (6 September 2011)