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**CASENOTE: *Jewell v Magnium Australia Pty Ltd* [2025] FedCFamC2G 676 (15 May 2025)**

The Applicant (also '**Employee**') was an engineer, employed as Chief Technology Officer by Magnium Australia ('**Employer**'). The Employee was dismissed from that employment on 21 April 2023. The Applicant sued the Employer and his supervisor, for relief including for general protections and non-payment of accrued entitlements.

On 20 February 2025, Judge Champion of the Federal Circuit and Family Court of Australia (Division 2) ('**Court**') found[1] three contraventions of the *Fair Work Act* 2009 (Cth) ('**FW Act**'), limited to accrued entitlements. No liability was found for the general protections allegations.

**Background –liability**

On 21 April 2023 the Employer dismissed the employee. Judge Champion of the Court heard the trial, finding that the amounts outstanding were:

(a) payment in lieu of notice $13,326 (gross of taxation);
(b) untaken annual leave $32,805 (gross); and
(c) pay $26,653 (gross),
making a total of $72,784.

By the trial, the liability for accrued entitlements was admitted, and the issue as to the late payment entitlements. Magnium addressed the entitlements: first, paying on 2 May 2023 amounts for notice and annual leave; on 18 July 2023 paying the redundancy entitlement. Initially, the Employer alleged that it was a 'small business' employer and exempt from paying for redundancy. When the Employee challenged this assertion, it paid the redundancy monies.

On 3 August 2023 the Employer paid the Employee a further amount of $7,978. Magnium submitted that the payment of the latter amount of $7,978 was an overpayment. The reason advanced for the overpayment was complicated by payroll calculations – including that (at the date of termination) the Employer owed the Employee some ordinary-time wages.

Magnium identified no authority affecting the calculation of penalty by virtue of the overpayment. Judge Champion did not take into account the putative over-payment when considering penalties.

*Calculation of penalty*

His Honour considered authorities such as Kelly v Fitzpatrick,[2] (per Tracey J) and ABCC v Pattinson,[3] in synthesising the facts relating to the contravening conduct, which were summarised in this way:

- nature and extent of the conduct;
- the nature and extent of any loss or damage sustained;
- similar previous conduct (if any);
- the size of the business enterprise;
- whether the breaches were distinct or arose out of the one course of conduct;

[1] [2025] FedCFamC2G 201 ('**liability judgment**').
[2] [2007] FCA 1080.
[3] Australian Building and Construction Commissioner v Pattinson (2022) 274 CLR 540; [2022] HCA 1.

- whether senior management was involved in the breaches;
- if the party committing the breach has exhibited contrition or had taken corrective action; and
- the need for compliance with minimum standards and specific and general deterrence.

In considering these factors, which included the admissions of misconduct, no previous contraventions (amongst other factors) Judge Champion concluded that the appropriate penalty was:

(a) a penalty of $6,200 as to the notice contravention;
(b) a penalty of $6,200 as to the non-payment of the accrued and unused annual leave; and
(c) a penalty of $6,200 as to the redundancy entitlement.

Orders were made accordingly.

**Rationale of the decision**

This decision gives a practical demonstration of how penalties are calculated in the limited 'Dorsch' situation,[4] where the liability is admitted; and the question is confined to late payment of entitlements. There are two other issues arising: one is policy and another is legal.

On the policy front, this position of considering penalty in considerable detail is the result of the expansion of the penalties regime by the Work Choices legislation. Prior to that legislation, penalties were confined to relatively few breaches or contraventions – Work Choices expanded the civil penalties regime, and the FW Act adopted that approach, to the many provisions which we have now.

On the legal point, the calculation of penalty demonstrates that an early 'plea' or admission has the effect of limiting penalties. The total penalties ordered by Judge Champion were relatively modest, at 7.5% of the maximum available to his Honour. It is not only highly likely, but virtually a certainty, that if Magnium had continued to dispute liability for amounts owed then the position would have been significantly different: in such a case, those penalties would have been ordered at a much higher level, to remove the discount for contrition and to reinforce the policy positions in respect of specific and general deterrence.

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June 2025

[4] Dorsch v HEAD Oceania Pty Ltd (Penalty) [2024] FCA 484, per Raper J. Note also [2024] FCAFC 133, per Snaden, Hatcher and Shariff JJ, dismissing the appeal from Raper J's first instance decision.