

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Australian Institute of International Understanding Limited v Mitsui [2021] QSC 346

Supreme Court of Queensland, Martin J, 1 December 2021

Nonprofit company seeks compensation from director for breach of duties.

Key words: Employment, Queensland, Fiduciary Duty, Director, Compensation

1. The Australian Institute of International Understanding Limited (AIIU) is a not-for-profit company. It operates a business of offering cultural exchange programs, primarily between Japan and Australia, for students aged between 15 and 18.
2. Mr Mitsui was a director of AIIU between 4 April 2005 and 15 April 2015. During that period, he was also employed as Managing Director and, separately, as General Manager of the plaintiff.
3. AIIU terminated Mr Mitsui's employment for a "serious breach" of his obligations under the employment contract and "serious misconduct" in 2015.
4. AIIU sought common law or equitable damages for breach of contract and breach of fiduciary duties, monies had and received, and compensation under s 1317H of the [Corporations Act 2001](#) (the Act).
5. Mr Mitsui counterclaimed for unpaid long service leave, annual leave, reimbursement of health insurance payments and underpayment of salary. He was self-represented.
6. AIIU admitted that Mr Mitsui was entitled to unpaid long service leave.
7. The Court found that (at [52]):

Mr Mitsui was dissatisfied with the way he felt he was being treated and took it upon himself to increase his "remuneration" by authorising extra payments to himself and by purchasing goods for himself on the company credit card. None of the payments the subject of this action were properly authorised, and Mr Mitsui either knew that or did not care. By requiring other employees to make those payments, he improperly used his

position to gain an advantage for himself. Likewise, he improperly used his position by making unauthorised purchases on the credit card.

8. This constituted a breach by Mr Mitsui of s 182 of the Act, which provides:

182 Use of position – civil obligations

Use of position--directors, other officers and employees

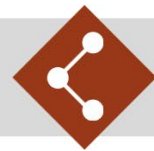
- (1) A director, secretary, other officer or employee of a corporation must not improperly use their position to:
- (a) gain an advantage for themselves or someone else; or
 - (b) cause detriment to the corporation.

Note: This subsection is a civil penalty provision (see section 1317E).

9. AllU was entitled to an order under s 1317H that it be compensated for the damage suffered by it.

10. The Court ordered judgment for AllU in the sum of \$195,721.50, taking into account the sum of \$15,339.98 for unpaid long service leave.

IMPLICATIONS



In 2015 Mr Mitsui had a meeting with the chair of AllU in which the chair proposed that Mr Mitsui's position change from Managing Director to General Manager and that his salary be reduced from \$59.83 an hour to \$54.39 an hour. Mr Mitsui opposed this reduction, but he was effectively given no choice.

The Court noted that (at [64]):

I accept that Mr Mitsui was put in a very difficult position. If he refused to accept the reduction in pay, he would have been dismissed. He took the practical approach – he kept his job – because he had no choice. Mr Mitsui did not have the benefit of representation at trial, and there are arguments he might have advanced, which would have resulted in him being successful on this part of his counterclaim.

The perils of self-representation ought to be carefully considered before embarking on litigation.

VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QSC//2021/346.html>

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