1 On 18 November 2005 I published reasons for judgment in this proceeding; see Communications, Electrical, Elect onic, Energy, Information, Postal, Plumbing & Allied Services Union of Australia v ACI Operations Pty Ltd [2005] CA 1662.
On that day the Court ordered the reinstatement of Mr Colin Williams and deferred consideration of penalty and co pensation pending the receipt of written submissions.
These reasons for judgment should be read together with the reasons for judgment published on 18 November 2005.
Penalty

2 The following observations made in the previous judgment are relevant to penalty:

• Mr Pillen's refusal to accept the existence of a dispute; [16]
• The decision to conduct the stop work meeting at the time it was held arose from Mr Pillen's refusal to acknowled e the existence of a dispute; [17]
• It would have been more appropriate, notwithstanding the above point, to hold the meeting at lunchtime; [53]
• The "overbearing and provocative" manner in which Mr Minniti spoke to Mr Williams; [24]
• The different treatment accorded to other employees who had taken strike action but were not disciplined; [29], [4]
• The failure to engage the disciplinary code suggested strongly that Mr Gillholme and Mr Minniti were keen to be r d of Mr Williams; [37]
• That Mr Williams' status as team coordinator did not affect the decision to terminate him; [38], [43]
• The breach of s 298K of the Act was blatant and serious; [51], [71]
• "ACI desired to be rid of Mr Williams, who it saw as an active shop steward ... who had given it some grief on ind strial issues.
" [52]

3 Counsel for ACI submitted that the decision to terminate Mr Williams was made in response to what Mr Gillholm and Mr Minniti understood was Mr Williams' conduct.
Counsel also contended that it was action which Mr Gillholme and Mr Minniti believed they were entitled to take un er the Act.
The decision was opportunistic and not premeditated, counsel submitted.
4 Even if it is accepted that the decision was an opportunistic one, it was nonetheless unlawful and, in the circumsta ces set out in the previous judgment, it constituted a blatant and serious breach of the Act.
I do not accept the submission that the termination of Mr Williams flowed from a failure to appreciate the scope of s 298L(1)(a).
Mr Gillholme and Mr Minniti are both experienced in industrial relations.
They should not have been in any doubt about the illegality of their conduct.
5 I reject the contention that Mr Minniti's reaction to Mr Williams' putting the telephone down showed that Mr Minn ti was merely reacting to provocation rather than acting in deliberate defiance of the Act.
Mr Minniti had the opportunity to put a considered recommendation to Mr Gillholme.
The recommendation was not a spur of the moment decision.
6 Mr Williams' failure to hold the meeting at lunchtime should be considered as only a minor mitigating factor.
To class it as a major mitigating factor would reward Mr Pillen's even more inappropriate conduct in failing to accep the existence of a dispute.
7 I further reject the submission that Mr Williams' status as team co-ordinator was "an ameliorating circumstance".
Such a contention is inconsistent with the reasons for judgment of 18 November 2005, in which the Court found that Mr Williams' status as a team coordinator was not a basis for his termination.
8 I agree with the submission of counsel for ACI that the Court should not take into account the breach of the discipl nary code, in itself.
However, as counsel for the Union submitted, adherence to the code may have avoided the situation which ACI now finds itself in as a result of its summary dismissal of Mr Williams.
9 An examination of the relevant facts shows that two senior industrial relations managers, in important roles, made decision to terminate the employment of an active shop steward, whose industrial representation of the members of

he Union working at ACI had displeased them.
In the circumstances, a penalty in the high range of those available is appropriate, but for the matters set out below.
10 I now turn to the other factors relevant to the question of penalty as discussed by Branson J in Construction, Fore try, Mining & Energy Union v Coal & Allied Operations Pty Ltd (No 2) (1999) 94 IR 231, as foreshadowed at [79] i the previous judgment.
11 There is no evidence that ACI has previously contravened Pt XA of the Act, or any predecessor provision.
That is a mitigating factor.
12 Given that Mr Williams has been reinstated and that ACI has been admonished for its conduct in the 18 Novemb r 2005 judgment, there are no continuing consequences in respect of ACI's conduct.
13 The protection of industrial freedom of association and, in this case, freedom of representation, has been upheld b the reinstatement order.
14 The maximum penalty available to the Court is 300 penalty units or $33,000, see s 298U(a)(i) of the Act and s 4 A(1) of the Crimes Act 1914 (Cth).
15 Having regard to the totality of the above matters I consider that a mid-range penalty is appropriate and set the pe alty at $16,500.
16 There is no reason why the penalty should not be paid to the Union; see Finance Section Union v Commonwealth Bank of Australia [2005] FCA 1847 at [71] , per Merkel J and s 356(b) of the Act.
Compensation

17 The Union does not currently press for an order for the payment of compensation to Mr Williams.
Counsel for the Union informed the Court that ACI has, since 18 November 2005, agreed to make adjustments neces ary to ensure Mr Williams' financial position is restored.
However, counsel noted that the agreement between the parties had not been fully implemented and submitted that t e Court should defer consideration of compensation to allow the agreement to be implemented.
18 It is preferable to allow sufficient time to elapse to permit the parties' agreement to take effect.
I will place the onus on the Union to re-agitate this issue within 28 days of these reasons for judgment, failing which there will be no order made under s 298U(c) concerning compensation and the file will be closed.
Should the Union wish to re-agitate this issue the Court will convene a directions hearing at 10.15 am on 14 March 2 05 to deal with that aspect of this proceeding.
Orders

1.
Pursuant to s 298U(a)(i) of the Workplace Relations Act 1996 (Cth) a penalty of $16,500 be imposed on the respond nt for its contravention of s 298K(1)(a) of the Act for the prohibited reason referred to in s 298L(1)(a) of the Act.
2.
Pursuant to s 356(b) of the Act the penalty be paid to the applicant.
3.
The applicant have liberty to apply to the Court within 28 days of the date of this order, for an order requiring the res ondent to pay to Mr Colin Williams an amount by way of compensation as the Court thinks appropriate.
4.
In the event of liberty to apply under Order 3 not being availed of in the time permitted, the Court will make no orde for compensation.
I certify that the preceding eighteen (18) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Marshall.
Associate:

Dated: 16 January 2006

Counsel for the Applicant: Dr C Jessup QC with Mr S Moore

Solicitor for the Applicant: CEPU

Counsel for the Respondent: Mr F Parry SC with Mr C O'Grady

Solicitor for the Respondent: Clayton Utz

Completion of written submissions: 9 December 2005

Date of Judgment: 16 January 2006