



**Australian Government**  
**Office of Workplace Services**

**IN THE MAGISTRATES' COURT  
OF VICTORIA  
AT MELBOURNE  
INDUSTRIAL DIVISION**

**BETWEEN**

**ZELJKO KOVACEVIC (A WORKPLACE INSPECTOR APPOINTED PURSUANT TO  
SECTION 167(2) OF THE WORKPLACE RELATIONS ACT 1996)**

Plaintiff

and

**GLENRIDGE PTY LTD**

Defendant

**TRANSCRIPT OF HEARING 21 FEBRUARY 2007**

Magistrate Kate Hawkins  
For the plaintiff: Luke Connolly  
For the defendant: Nick Gill

**DISCLAIMER: THIS IS AN UNEDITED EXCERPT OF THE ABOVE HEARING.  
NUMBERING HAS BEEN ADDED FOR EASE OF REFERENCE ONLY.**

- HER HONOUR: 1. I'm going to make a decision now I was just about to. I am in a position to give an oral decision now. I am aware the office in the past has asked for a written decision.
- LUKE CONNOLLY: 2. Yes, Your Honour, but that can be done in due course; it doesn't have to be today.
- HER HONOUR: 3. It can also, you can obtain a copy of my oral reasons and have those transcribed. I think that given the volume and a specific need to have them as written decisions that can be done.
- LUKE CONNOLLY: 4. Oh just one moment, Your Honour. That's very suitable, Your Honour, thank you.
- HER HONOUR: 5. Now, Mr Gill, I go through a process of work determining what penalty ought to be applicable in these types of cases by reference to sorts of considerations that judges in the Higher Courts in particular, the Federal Court have set out as to the sorts of considerations that a court should take into account in determining penalty. Firstly, I determine how many breaches of the award or the relevant industrial instrument have been found. This is one breach of the relevant industry sector minimum wage order.
6. Now I note specifically that this is, if you like, the bottom safety net for people who are employed in a very broad range of industries. It's the absolute bottom level that someone can be paid. So I'm not dealing with someone whose been paid well above the minimum standard, it's the absolute minimum standard. I think I'm correct in that aren't I Mr Connolly.
- LUKE CONNOLLY: 7. Yes you are.
- HER HONOUR: 8. So, what I see is conduct of an underpayment of some \$7,000 to someone who is on the bottom level, bottom rung over quite a long period - 2½ years. That's a lot of money for someone who is not earning a whole lot and that is a very significant feature of this sort of breach in conduct that I take into account in determining what penalty might be applicable. This is what's called "general deterrence". Part of the considerations I must give to determining penalty is: one is to deter this company - you specifically - from doing this sort of thing again in the future.
9. Now, I'm satisfied you're no longer trading so that's not a very large consideration in breaching penalty, however there's another principal that I must give significant weight to, and that's what's called "general deterrence" - to send a message to other employers in the community that strict adherence to these

minimum wage orders, or whatever relevant industrial instrument governs the wages for employees in that area, that it's not an adequate excuse to just ignore those obligations.

10. Specific attention must be given to paying people - particularly those who are really at the bottom of the, on the bottom level, of payment - some perhaps in the weakest bargaining positions - the amount that they're required to pay at law. So, that's what's called "general deterrence" and I place significant weight in the penalty that's imposed on you because of that factor.
11. Now, I do take into account that you've been most co-operative with the Office of Workplace Services since these proceedings were issued. You could have avoided this completely had you been co-operative a little bit earlier, when this matter was taken up with you, but I note that once proceedings were issued you've been in communications with them. I treat as very significant the fact that you and your father have turned up today - that is a strong expression of and the fact that you've paid the underpayment to the worker, so you've made good the damage if you like and you've turned up to face the music today, so that I accept as a very strong indication of your acknowledgment of your responsibilities in relation to this matter.
12. I take into account that you're not alleged to have previously breached either the *Workplace Relations Act* or any other legislation that governs or regulates workplaces - whether workplace safety or the like - and I take into account the factors that the cases have discussed: in that it's a very small family company, senior levels of management have been involved in working out what to pay. The circumstances in which the breach has taken place; that you say there are other non-wage like factors or benefits; that's not an excuse for underpaying but it is a factor I note.
13. I treat this as one course of conduct although it occurred over a period of time. I don't see it as a deliberate breach but rather a wilful disregard of not paying any attention to finding out what obligations were rather than just sort of ignoring it. And these are the sort of factors which have been set out by both the superior courts but other, the Federal Magistrates Court and indeed I've referred to them in previous cases dealing with these sorts of breach type proceedings.
14. For your information, I imposed a penalty on a company of \$33,000 last week it was for, in different circumstances and a greater number of breaches and the increased penalty provisions but there are very substantial fines being handed

down for these sorts of breaches. A Magistrate in Canberra handed down one, if I can recall correctly, one for \$50,000 and one for \$36,000. I think I heard reported in the press there was another one this week.

- LUKE CONNOLLY: 15. Yes, Your Honour, there was Power Juice that was handed down which was in the, it was certainly in the \$30,000-\$40,000, Your Honour.
- HER HONOUR: 16. So, I think that's reflective - that judges and courts - that there is a recognition that there is an important need to send a message to the community that employers, whilst Work Choices does give a great degree of flexibility in how the workforce is regulated, that these legal requirements to pay wages must be treated very seriously and not dealt mere lip service by the judiciary, alright.
17. For those reasons, I consider that by virtue of your acknowledgment of responsibility and those sorts of factors that I've indicated, that a significant from the maximum penalty of say \$10,000 ought to be given to you and I agree with Mr Connolly that a figure in the order of 20% of the maximum is the appropriate penalty that ought be imposed on you, on the company rather. Accordingly, and I will tidy up the form of order, I will impose an order, I will withdraw that, impose a penalty of \$2,000 upon the company for Breach of the *Cultural and Recreational Services Industry Sector Minimum Wage Order Victoria 1997* with a stay of one month and I will direct that that penalty be paid into consolidated revenue. Alright. Is there anything further?
- LUKE CONNOLLY: 18. No thank you Your Honour.
- NICK GILL: 19. No, Your Honour, thank you. .
- HER HONOUR 20. Those reasons, if it's required, can be obtained by the Registrar - can burn a copy of the recording of my decision and that can be transcribed
- LUKE CONNOLLY: 21. Thank you, Your Honour; I will have my instructing solicitor chase it up. Thank you.
- HER HONOUR: 22. They are destroyed within 3 months so make sure that request is not delayed.
- LUKE CONNOLLY: 23. Your Honour we have those cases for you.
- HER HONOUR: 24. Thank you.