

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

No. U02984705

BETWEEN

**INSPECTOR KERRY SHACKLOCK (a workplace inspector appointed
pursuant to section 167(2) of the *Workplace Relations Act 1996*)**

Plaintiff

AND

QUICK STEP PTY LTD (A.C. N 115 195 689)

Defendant

ORDERS

1. The Defendant pay to Consolidated Revenue an aggregate penalty of \$12,000.00 for breaches of the *Security Employees Victorian Common Rule Award 2005* between November, 2005 and March, 2006, made up as follows:
 - An aggregate penalty of \$10,000 in respect of breaches of clauses 24.1.1, 24.1.2, 26.7.2, 18.2.1, 23.2.1, 23.2.2 and 23.2.3 relating to the minimum rates of pay;
 - A penalty of \$2,000 in respect of the breaches of clause 27.6.1 (but treated as a single breach by reason of s.178(2) of the Act) in respect of the pro rata annual leave provision.

2. Payment of the pecuniary penalty in order 1 to be made within 30 days.

REASONS FOR DECISION

- 1 The Defendant, Quick Step Pty Ltd employs casual staff to work in the Victorian security industry. On 17 August, 2004 the *Security Employees (Victoria) Award 1998* was declared a common rule for the security industry in Victoria by the Australian Industrial Relations Commission with effect from 1 January, 2005. From that date, Quick Step Pty Ltd was bound by the terms of the *Security Employees Common Rule Award 2005 (the Common Rule Award)* with respect to its employees.
- 2 Quick Step Pty Ltd has approximately 50 casual security staff on its books. Subject to availability, certain numbers of those casual security staff are offered work when Quick Step is engaged, by way of sub-contract, to provide security services to larger security firms. Under one such sub-contract, Quick Step Pty Ltd agreed to provide security services to Chubb Security Personnel Pty Ltd during the Commonwealth Games in March, 2006. Three employees (Farah on 26 March, Singh between 18 March and 26 March and Tawfik between 10 March and 26 March) were employed by Quick Step Pty Ltd to perform this security work. Under another sub-contract with Secure Corp Pty Ltd, Quick Step Pty Ltd employed another employee (Gupta between 1 November, 2005 and 17 January, 2006) to undertake security work.
- 3 At all relevant times, Quick Step Pty Ltd was an employer for the purposes of s.178 of the pre-reform *Workplace Relations Act 1996 (Cth) (the Act)*. The employment of the employees during those periods was subject to the Common Rule Award.
- 4 The Plaintiff, Ms Kerryn Shadlock is an inspector employed by the Commonwealth in the Office of Workplace Services. On 19 December, 2006 she issued proceedings under the Act claiming the Defendant underpaid, or failed to pay, the employees \$3,353.47 in entitlements under

the Common Rule Award and seeking the imposition of pecuniary penalties for breaches of the Common Rule Award.

- 5 Following the institution of these proceedings, Quick Step Pty Ltd paid to the employees their outstanding entitlements. This decision relates only to the question of what, if any, penalty should be imposed on the Defendant pursuant to section 178 of the Act.
- 6 The Common Rule Award breaches, which are admitted by Quick Step Pty Ltd, comprise:

Wages

- (a) clause 24.1.1 (ordinary hours on Saturday), read in conjunction with clause 12.4.2, by underpaying Gupta, Singh and Tawfik a total of \$475.82;
- (b) clause 24.1.2 (ordinary hours on Sunday) read in conjunction with clause 12.4.2, by underpaying the four employees a total of \$940.49;
- (c) clause 26.7.2 (public holidays) by underpaying Gupta \$61.93;
- (d) clause 18.2.1(a) (shift work on Mondays and Fridays) read in conjunction with clause 12.4.2 by underpaying Gupta, Singh and Tawfik a total of \$598.51;
- (e) clause 23.2.1 (overtime Mondays to Fridays) by underpaying Singh and Tawfik a total of \$418.89;
- (f) clause 23.2.2 (overtime on Saturdays) by underpaying Tawfik \$165.81;
- (g) clause 23.2.3 (overtime on Sundays) by underpaying Tawfik \$117.35; and

Annual leave

- (h) clause 27.6.1 (pro rata annual leave) by underpaying the employees a total of \$574.67.

7. In light of the admissions made in both the Defence filed by the Defendant and the Agreed Statement of Facts filed in this matter, I find the breaches proved.
8. It is not contested that there have been 8 separate and distinct breaches of the Common Rule Award with each separate obligation to be regarded as a “term” for the purposes of s178 of the Act: see Gibbs v. The Mayor, Councillors and Citizens of the City of Altona (1992) 37 FCR 216 per Gray J.
9. I accept however, that by reason of s178(2) of the Act, where the breaches have occurred in respect of more than the one employee of Quick Step Pty Ltd, such breaches arose out of the same course of conduct and, for the purposes of s178, are taken to constitute a single breach of the provision. I am therefore required to determine an appropriate penalty for eight distinct breaches of the Common Rule Award. The applicable maximum penalty for a corporation for each breach is \$33,000.00, giving a total maximum penalty of \$264,000.00.

Considerations applicable to penalty

10. The Court’s attention was drawn to the principal objects of the Act as detailed in s.3, including “... *[ensuring] the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment*”. I accept the submission made on behalf of the plaintiff that Part VIII of the Act dealing with penalties and other remedies for contraventions of awards and orders is a provision designed to promote and give effect to this particular object.
11. It is also relevant to the Court’s consideration of penalty to note that the Parliament did, in August, 2004 significantly increase the maximum penalty under s. 178 of the Act for corporations from \$10,000 to \$33,000. Clearly, this is a legislative indication of the importance to be attached to award compliance and that compliance with award obligations are serious matters and are not to be treated lightly.

12. Numerous authorities have set out the range of considerations to which regard may be had in determining whether particular conduct calls for the imposition of a penalty, and the quantum of any penalty to be imposed.¹ The Court was referred to the considerations set out by Mowbray FM in particular.²

Nature and Extent of the Conduct

13. The underpayments affected four casual employees, each reliant on a minimum wage. The underpayments occurred over a relatively short period: one day only in respect of Mr Farah, between one and two weeks in March 2006 in respect of Singh and Tawfik and between 1 November, 2005 and 17 January, 2006 in respect of Mr Gupta.
14. On behalf of the Defendant it was submitted that the Court should take into account that the sole director of the Quick Step Pty Ltd, Mr Saluni was completely ignorant of his obligations with respect to his staff. It was also said that Mr Saluni was overwhelmed by the volume of work at the relevant time, being responsible for all matters relating to the administration of the company at the time, including the payment of wages.
15. Whilst I accept that Mr Saluni did not deliberately set out to avoid his obligations towards his staff, I do not consider that ignorance of award obligations is a matter to which I should give much weight. The obligations imposed by the Common Rule Award are serious. I heard that Quick Step Pty Ltd had been operating in the security industry in Victoria for four years and that Mr Saluni had worked in the industry for some time prior to this. In this context it is surprising that Mr Saluni would have no knowledge of the existence of an award applicable to employees in the security industry. However, even if he did not, it was incumbent upon him as the director of the

¹ See for example *TPC v. CSR Lt* [1991] ATPR52,135 at 52152-52,153; *NW Frozen Foods Pty Ltd v ACCC* (1996) 71 FCR 285 at 291-29; *CFMEU v Coal & Allied Operations Pty Ltd (No 2)* [1999] FCA 1714 at [7-8]; *TCFUA v Lotus Cove Pty Ltd* [2004] FCA 43 at [46 – 47].

² *Flattery v The Italian Eatery t/as Zeffirelli's Pizza Restaurant* [2007] FMCA 9 and *Mason v Harrington Corporation Pty Ltd* [2007] FMCA 7.

employing company to make the relevant enquires to ensure he was not, even inadvertently, underpaying his staff. As stated by Gray J in Electrical Trades Union of Australia v. Sims Products Pty Ltd (referred to in City of Altona)

".. it is necessary for all parties to awards to be aware that the obligations in them are part of the law of the land and must be obeyed. The particular obligations in this case have important consequences for the employees concerned and breaches of them were likely to have far reaching effects."

16. This is also a case where the underpayment of wages to casual staff reliant upon a minimum wage would have a significant impact, even over a short period.

Similar previous conduct

17. No previous contraventions of the Act or other workplace legislation are alleged against the Defendant. I have taken this into account in determining penalty.

Size of the Company

18. It is not disputed that Quick Step Pty Ltd is a small business and that this is a relevant consideration for the Court.

Demonstration of Contrition, corrective action and co-operation

19. In this case, the defendant has rectified the underpayments, albeit some two months after proceedings were issued, and as is apparent from the agreed Statement of Facts filed in this matter, was co-operative with the Plaintiff in resolving the claims made on behalf of the employees. These are matters the Court has taken into account in determining penalty.

20. I also consider it relevant that Quick Step Pty Ltd has since engaged a full-time accountant and perhaps more significantly, become a member of an

employer organisation, VECCI, to receive advice and assistance in relation to its industrial obligations towards staff. The Court has heard that with the assistance of VECCI, the defendant now has a collective employment agreement with its employees, underpinned by the award.

Deterrence

21. There is no doubt that the general deterrence is an important consideration for the court in imposing penalties under the Act.

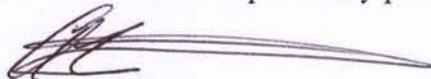
Discretion and Totality

22. In determining penalty, it is clear that general sentencing principles, such as totality, apply.

23. Counsel appearing for the Plaintiff conceded that that in the circumstances of this case, a low to mid-range penalty would be appropriate. I agree. I also accept that the obligations imposed by the award provisions overlap in this case and that, accordingly, an aggregate penalty is appropriate and just in the circumstances. Having taken into account all the factors set out above, I consider that a just and appropriate aggregate penalty is \$12,000 made up as follows:

- An aggregate penalty of \$10,000 in respect of breaches of the clauses relating to the minimum rates of pay;
- A penalty of \$2,000 in respect of the breaches (but treated as a single breach by reason of s178(2) of the Act) of the annual leave provision.

24. I order that the pecuniary penalty be paid into Consolidated Revenue.



AJ CHAMBERS

Magistrate

18 May, 2007