



Fair Work

OMBUDSMAN

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

COURT NUMBER A10604474

BETWEEN

FAIR WORK OMBUDSMAN

Plaintiff

GRENPRO PTY LTD

First Defendant

AARON MICHAEL GRENNAN

Second Defendant

TRANSCRIPT OF HEARING: 3 NOVEMBER 2010

Magistrate: Franz Holzer
For the Plaintiff: Ms Fiona Pickett
For the Defendants: no appearance

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

- HIS HONOUR:
1. In this proceeding the Fair Work Ombudsman brings a proceeding against Grenpro Pty Ltd as the First Defendant, and Aaron Michael Grennan as the Second Defendant.
 2. That was done by way of a complaint filed on or about the 2nd of March 2010, and the relief that was sought was in the nature of declarations, firstly in respect of alleged contraventions of subregulations 19.20(1), (2) and (3) of the *Workplace Relations Regulations 2006 (WR Regulations)*, and subsection 712(3) of the *Fair Work Act 2009 (FW Act)* and, further, penalties in respect of those breaches pursuant to regulation 14.4 of the WR Regulations, and section 546 of the FW Act.
 3. The proceeding relates to the employment of an employee by the name of Luke Young, who was a casual employee between October 2008 and January 2009, an employee at a business operated by the First Defendant by the name of Chaffey Restaurant in Deakin Avenue, Mildura, and at all material times a business of which the Second Defendant was the principal officer and director. Underpayments were identified in respect of that employment, which have led in the final analysis to an underpayment order of some \$1,831.00 gross.
 4. The matter comes before me by way of a penalty hearing only, orders were made on by this court on the 8th of September at which this date was fixed, and I'm satisfied that the two Defendants have had ample opportunity to attend or participate should they have chosen to, and they have not done so today.
 5. So Ms Pickett, on behalf of the Plaintiff, brings this penalty hearing before me, and she does so supported by a Statement of Agreed Facts which are dated the 1st of October 2010, and also submissions, which in the normal fashion of the Fair Work Ombudsman have been both comprehensive and of great assistance to me and of the court. Ms Pickett also relies upon an Affidavit sworn by herself on the 29th of October 2010, which sets out, in particular, a number of communications that she has had with Mr Grennan, the Second Defendant, and which illustrate the opportunities Mr Grennan has had to actively participate in this penalty hearing.
 6. The principles in these cases are well known, and they are set out comprehensively in the material relied upon by the Plaintiff, I won't recite those. In essence though it's said on behalf of the Plaintiff that there are

four key factors, which are of particular relevance and concern to the Fair Work Ombudsman in this case.

7. They are the nature and extent of the conduct of concern and the loss and damage that's been caused, the financial circumstances of the Defendant as far as they are relevant, the level of contrition and corrective action taken by the two Defendants, and fourth and finally the question of both specific and general deterrence in the facts and circumstances of this case.
8. It is fair to say that the level of participation, and indeed the level of contrition and corrective action has been one prompted at all times by the Plaintiff. It seems to me both with respect to the initial failure to provide the pay slips and also, and perhaps more relevantly in the context of this proceeding, the failure to comply to with the Notice to Produce dated the 17th of November 2009, there has been a fully abject lack of performance and compliance with the requirements of the Fair Work Ombudsman of a sort that leads me to conclude that the submissions that have been made in respect of penalty are entirely appropriate and entirely justifiable.
9. Amongst that analysis is the recognition that at various times, particularly during 2009, a number of inspectors of the Plaintiff's office have engaged or sought to engage with both Grenpro and Mr Grennan, with a very limited degree of success, particularly of those attempts which have been made by Inspector McCauley.
10. In the event it's said when one does the analysis, having regard to the established principles, that the court is left with the possibility of maximum penalties once having grouped the relevant breaches, which lead to totals of \$38,500 in respect of the First Defendant, and some \$7,700 in respect of the Second Defendant in terms of the maximum penalties which would otherwise be available to the court today.
11. In the submission of the Plaintiff is this falls for determination at the low to mid-range level of those maximum penalties. Between 20% and 40% is said to be the appropriate range of penalty in these cases before me.
12. In my view the appropriate penalty, applying all the principles, is a level of 25%, that seems to me to strike an appropriate and fair balance having regard to the principles that the authorities demand of me, and that mathematically leads to the conclusion in respect of the First Defendant a penalty of \$9,625 is appropriate and will be ordered, and in respect of Mr Grennan, the Second Defendant, a figure of \$1,925 in respect of him for

his breaches.

13. I propose to make declarations having considered the evidence and the submissions of Ms Pickett, consistent with the application and those set out in paragraph two of the Agreed Statement of Facts. Those declarations have been usefully set out in a proposed draft of finding and order, which has been handed to me with today's date on it by Ms Pickett.
14. I formally make [findings] as follows. That:
 - a. between 3 October 2008 and 4 January 2009 the First Defendant, Grenpro Pty Ltd, contravened subregulation 19.20(1) of the WR Regulations in respect of Mr Young;
 - b. between the same dates, the 3rd of October 2008 and the 4th of January 2009, the First Defendant contravened subregulation 19.20(2) of the WR Regulations in respect of Mr Young;
 - c. between the same dates, 3rd of October 2008 and the 4th of January 2009, the First Defendant contravened subregulation 19.20(3) of the WR Regulations in respect of Mr Young;
 - d. that the First Defendant contravened subsection 712(3) of the FW Act;
 - e. the Second Defendant, Mr Grennan, was involved in and by operation of section 728 of the *Workplace Relations Act 1996* (**WR Act**) contravened the various subregulations to which I've already referred in findings 1, 2 and 3 [paragraphs 14a, 14b and 14c]; and
 - f. Mr Grennan was involved in and, by operation of section 550 of the FW Act, contravened subsection 712(3) of the FW Act referred to in finding 4 [paragraph 14d].
15. And accordingly orders will be made as follows. That:
 - a. pursuant to section 841(a) of the WR Act, the First Defendant, Grenpro Pty Ltd, pay into the consolidated revenue fund of the Commonwealth, a penalty of \$9,625;
 - b. pursuant to section 841(a) of the WR Act, the Second Defendant, Mr Aaron Grennan, pay into the consolidated revenue fund of the Commonwealth, a penalty of \$1,925; and
 - c. payment of penalties referred to in orders 1 and 2 [paragraphs 15a and 15b] be made – I think I'll change the suggested period from 30 days to 90 days – I think that's in all circumstances appropriate, particularly given what I've heard about the circumstances of the

First Defendant and of the Second Defendant, such as they are known.

16. I will otherwise endorse the minutes with those amendments made with today's date and I'll otherwise release to the Plaintiff at their request, a transcript of today's hearing and of the orders that have been made for publication, if required and if deemed appropriate by the plaintiff as part of their policy obligations.

17. I think that deals with all four matters, is there anything else I've forgotten Ms Pickett?

Ms Pickett:

18. No your Honour.

HIS HONOUR:

19. Thank you very much for your assistance, I'm sorry you've had a long wait.

Ms Pickett:

20. Thank you, your Honour.

HIS HONOUR:

21. I will make orders in terms of those which I have announced now in court.

22. I will place the proposed orders that I've made on file Ms Pickett, I'll obviously release to you for copying through my clerk, those if you wish to take a copy with you.

23. Thank you very much for your assistance and also for those with whom you've worked and have attended at Court, thank you.

Ms Pickett

24. If your Honour pleases.

END OF TRANSCRIPT