FEDERAL MAGISTRATES COURT OF AUSTRALIA

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20 September 2012

Fair Work Ombudsman
Attn: Danielle Wilkinson
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MNG Lawyers
Level 1, 268 Keilor Road
NORTH ESSENDON VIC 3041

Dear Sir/Madam

MLG852/2011 – FAIR WORK OMBUDSMAN v TURBO CAFÉ WATERGARDENS

Please find enclosed, amended judgment and orders made by Federal Magistrate O'Dwyer 6 September 2012.

Yours sincerely

Gail Car

Associate to Federal Magistrate O'Dwyer

21 SEP 2012

IN THE FEDERAL MAGISTRATES COURT OF AUSTRALIA AT MELBOURNE

FILE NO: (P)MLG852/2011

FAIR WORK OMBUDSMAN
APPLICANT

TURBO CAFÉ WATERGARDENS PTY LTD
FIRST RESPONDENT

DOMENIC VERSACE
SECOND RESPONDENT

ORDER

BEFORE: FEDERAL MAGISTRATE O'DWYER

DATE: 6 September 2012

MADE AT: MELBOURNE

UPON APPLICATION BEING MADE TO THE COURT Mr Vallence appearing for the APPLICANT and Mr Biviano appearing for the RESPONDENT

THE COURT DECLARES THAT:

(1) The First Respondent contravened:

(a) Section 182(1) of the *Workplace Relations Act 1996* (WR Act), and Item 5 of Schedule 16 of the *Fair Work Act (Transitional Provisions and Consequential Amendments) Act 2009* (the Transitional Act) by failing to pay the Employee the guaranteed basic periodical rates of pay as required in the preserved Australian Pay and Classification Scale derived from the *National Fast Food Retail Award 2000.*

(b) Section 185(2) of the WR Act and Item 5 of Schedule 16 of the Transition Act by failing to pay the Employee a guaranteed casual loading in addition to her actual basic periodic rate of pay as

required in the preserved Australian Pay and Classification Scale derived from the *National Fast Food Retail Award 2000.*

(c) Section 45 of the *Fair Work Act 2009* (Cth) (FW Act) by failing to pay the Employee the minimum wage pursuant it Items A.2.3 of Schedule A of the *Fast Food Industry Award 2010.*

(2) The Second Respondent was involved in each of the contraventions specified in paragraph 1 above within the meaning of s.728(1) of the WR Act and s.550(1) of the FW Act.

THE COURT ORDERS THAT:

(1) Pursuant to s.719(1) of the WR Act and s.546(1) of the FW Act that the First Respondent pay an aggregate penalty of ~~($39,000)~~ $26,4000 in respect of the contraventions referred to in Declarations 1(a) to 1(c) above.

(2) Pursuant to s.719(1) of the WR Act and s.546(1) of the FW Act that the Second Respondent pay an aggregate penalty of ~~($7,920)~~ $5,280 in respect of the contraventions referred to in Declarations 1(a) to 1(c) above.

(3) Pursuant to s.841(a) of the WR Act and s.546(3)(a) of the FW Act that the penalties imposed on the First and Second Respondents be paid into the Consolidated Revenue fund of the Commonwealth.

(4) The payment of penalties referred to in orders (1) and (2) above be made within 90 days of this order.

By the Court

FEDERAL MAGISTRATE O'DWYER

DATE ENTERED: 6 September 2012

Varied pursuant to Rule 16.05 (2)(e) of the Federal Magistrates Court Rules 2001

FEDERAL MAGISTRATES COURT OF AUSTRALIA

FAIR WORK OMBUDSMAN v TURBO CAFÉ WATERGARDENS PTY LTD & ANOR *[2012] FMCA 794*

INDUSTRIAL LAW – civil penalties – breaches of industrial instruments specifying minimum entitlements.

Fair Work Act 2009, s.45, s.546(1), s.546(3)(a), s.550(1), s.557(2)
Fair Work (Transitional Provisions and Consequential Amendments) Act 2009, Schedule 16, Item 5
Workplace Relations Act 1996, s.182(1), s.185(2), s.719(1), s.719(2), s.728(1),s.841(a)

Fast Food Industry Award 2010, Schedule A, Item A.2.3
National Fast Food Retail Award 2000

Fair Work Ombudsman v Turbo Café Point Cook Pty Ltd & Anor [2012] FMCA 795
Flattery v Italian Eatery t/as Zeffirelli's Pizza Restaurant [2007] FMCA 9
Kelly V Fitzpatrick (2007) 166 IR 14
Mason v Harrington Corporation Pty Ltd t/as Pangaea Restaurant & Bar [2007] FMCA 7
Mornington Inn Pty Ltd v Jordan [2008] FCAFC 70
Plancor Pty Ltd v Liquor, Hospitality and Miscellaneous Union (2008) 171 FCR 357
Ponzio v B & P Caelli Constructions Pty Limited (2007) 158 FCR 543
Rajagopalan v BM Sydney Building Materials Pty Ltd [2007] FMCA 1412
Fair Work Ombudsman v Contracting Plus Pty Ltd & Anor [2011] FMCA 191

Applicant:	FAIR WORK OMBUDSMAN
First Respondent:	TURBO CAFÉ WATERGARDENS PTY LTD
Second Respondent	DOMENIC VERSACE
File Number:	MLG 852 of 2011
Judgment of:	O'Dwyer FM

Hearing date:	5 April 2012
Date of Last Submission:	5 April 2012
Delivered at:	Melbourne
Delivered on:	6 September 2012

REPRESENTATION

Counsel for the Applicant:	Mr Vallence
Solicitors for the Applicant:	Office of the Fair Work Ombudsman
Counsel for the Respondents:	Mr Biviano
Solicitors for the Respondents:	MNG Lawyers

THE COURT DECLARES THAT:

(1) The First Respondent contravened:

(a) Section 182(1) of the *Workplace Relations Act 1996* (WR Act), and Item 5 of Schedule 16 of the *Fair Work Act (Transitional Provisions and Consequential Amendments) Act 2009* (the Transitional Act) by failing to pay the Employee the guaranteed basic periodical rates of pay as required in the preserved Australian Pay and Classification Scale derived from the *National Fast Food Retail Award 2000.*

(b) Section 185(2) of the WR Act and Item 5 of Schedule 16 of the Transition Act by failing to pay the Employee a guaranteed casual loading in addition to her actual basic periodic rate of pay as required in the preserved Australian Pay and Classification Scale derived from the *National Fast Food Retail Award 2000.*

(c) Section 45 of the *Fair Work Act 2009* (Cth) (FW Act) by failing to pay the Employee the minimum wage pursuant it Items A.2.3 of Schedule A of the *Fast Food Industry Award 2010.*

(2) The Second Respondent was involved in each of the contraventions specified in paragraph 1 above within the meaning of s.728(1) of the WR Act and s.550(1) of the FW Act.

THE COURT ORDERS THAT:

(1) Pursuant to s.719(1) of the WR Act and s.546(1) of the FW Act that the First Respondent pay an aggregate penalty of ~~($39,000)~~ $26,4000 in respect of the contraventions referred to in Declarations 1(a) to 1(c) above.

(2) Pursuant to s.719(1) of the WR Act and s.546(1) of the FW Act that the Second Respondent pay an aggregate penalty of ~~($7,920)~~ $5,280 in respect of the contraventions referred to in Declarations 1(a) to 1(c) above.

(3) Pursuant to s.841(a) of the WR Act and s.546(3)(a) of the FW Act that the penalties imposed on the First and Second Respondents be paid into the Consolidated Revenue fund of the Commonwealth.

(4) The payment of penalties referred to in orders (1) and (2) above be made within 90 days of this order.

FEDERAL MAGISTRATES COURT OF AUSTRALIA AT MELBOURNE

MLG 852 of 2011

FAIR WORK OMBUDSMAN
Applicant

And

TURBO CAFÉ WATERGARDENS PTY LTD
First Respondent

DOMENIC VERSACE
Second Respondent

REASONS FOR JUDGMENT

Introduction

1. This proceeding was heard in conjunction with *Fair Work Ombudsman v Turbo Café Point Cook Pty Ltd & Anor* [2012] FMCA 795 (the related proceeding) as the Second Respondent, Domenic Versace was common to both and the issues considered relate to similar breaches of workplace relations legislation at two cafés. Whilst the cafés were owned by different legal entities, they were conducted, to all intent and purposes, by the Second Respondent who was the sole Director, Secretary and share holder of both corporate entities involved.

2. In respect of this proceeding, it concerned an employee by the name of Ms Natasha Talevski (the Employee) and in respect of the related proceeding it concerned an employee by the name of Ms Och.

The facts and circumstances in respect of both employees are similar, save that the Employee was underpaid by amounts totalling $4,776.43, whilst Ms Och was underpaid by an aggregate amount of $5,682.35.

3. This proceeding relates to the fixing of appropriate penalties in respect of the admitted breaches committed by the First and Second Respondents.

4. I have had the benefit of written submissions on the part of the Applicant and the Respondents and a Statement of Agreed Facts, as well as oral submissions at the hearing.

The Agreed Facts

5. The First Respondent admits to contravening the following provisions in respect of the Employee:

   a) Section 182(1) of the *Workplace Relations Act 1996* (WR Act), and Item 5 of Schedule 16 of the *Fair Work Act (Transitional Provisions and Consequential Amendments) Act 2009* (the Transitional Act) by failing to pay the Employee the guaranteed basic periodical rates of pay as required in the preserved Australian Pay and Classification Scale derived from the *National Fast Food Retail Award 2000.*

   b) Section 185(2) of the WR Act and Item 5 of Schedule 16 of the Transition Act by failing to pay the Employee a guaranteed casual loading in addition to her actual basic periodic rate of pay as required in the preserved *Australian Pay and Classification Scale derived from the National Fast Food Retail Award 2000.*

   c) Section 45 of the *Fair Work Act 2009* (Cth) (FW Act) by failing to pay the Employee the minimum wage pursuant it Items A.2.3 of Schedule A of the *Fast Food Industry Award 2010.*

6. The First Respondent admitted the above contraventions which resulted in an underpayment to the Employee totalling $4,776.43.

7. The Second Respondent admits his involvement, within the meaning of s.728(1) of the WR Act and s.550(1) of the FW Act, in contravening the WR Act and the FW Act as set out in paragraph 5 above.

Background

8. The First Respondent conducted a takeaway food café called Turbo Café located in the food court of Watergardens Shopping Centre, store no.74, 399 Melton Highway, Taylors Lakes. The Employee was employed by the café from mid November 2008 until about 3 January 2010.

9. The Second Respondent was the sole Director of the First Respondent, was its Secretary and also its only shareholder. He admits to having the ultimate responsibility, direction and management of the First Respondent and its operations, including in respect of the Employee and her wages and conditions of employment. The Second Respondent admits to the fact that he was aware of the First Respondent's obligations to pay the Employee certain minimal entitlements set by industrial instruments and that he was the person who hired the Employee on behalf of the First Respondent.

10. The Employee was paid a flat hourly rate of $13.98 which was in breach of the applicable industrial instrument by which she was entitled to varying amounts during the period of her employment under the applicable industrial instruments. With the failure also to pay the applicable casual loading, the underpayment of wages has been calculated, and agreed, at $4,776.43.

Submissions

11. In support of the Applicant's submissions I was referred to the Statement of Agreed Facts and also the affidavit of Ms Kirsty Ford, a Fair Work Inspector who deposed that she searched the Nexus database and found that companies with which the Second Respondent was involved were the subject of three previous complaints for underpayment of employees.

12. One such complaint related to an employee Ms Attard who was underpaid by $7,900, which underpayment was rectified on 6 November 2009. Another complaint related to an employee, Mr Gelsomino, which complaint was made in relation to alleged non-payment for time worked, annual leave and personal leave and which was lodged on 27 September 2010.

13. The written submissions of the Applicant sets out what is now trite law and a well-followed and accepted approach to the determination of appropriate penalties.[1] There is no need to repeat that for the sake of this judgment. It is to be noted, however, that the maximum penalty for each breach of either the WR Act or the FW Act is $33,000 in respect of a body corporate and $6,600 in respect of an individual.

14. On the facts agreed, there are clearly (~~three~~) two breaches of the relevant industrial instruments (although the breaches were committed multiple times over the period of the employment). But the grouping of those multiple breaches does condense to a total of three grouped breaches and the Respondents are entitled to the benefit of s.719(2) of the
WR Act and s.557(2) of the FW Act in relation to those repeated breaches. The principle contention of the Respondents, however, was that all breaches should be grouped as one only. With this contention I cannot agree and I find the Applicant's grouping is proper and the way the penalties should be calculated.

15. As a consequence the maximum penalties that can be imposed in respect of this matter are:

    a) (~~$99,000~~) $66,000 on the First Respondent and (~~$19,800~~) $13,200 on the Second Respondent.

Relevant Factors in respect of setting penalty

16. Federal Magistrate Mowbray in *Mason v Harrington Corporation Pty Ltd t/as Pangaea Restaurant & Bar* [2] set out a non-exhausted list of factors which have potential relevance in setting penalty. I shall address each one of those under separate headings below.

Nature and extent of conduct

17. The Respondents admit that the Employee was employed on a fulltime basis, paid a flat rate $13.98 per hour for all the hours she worked. It is admitted as a consequence she was underpaid $4,776.43

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1 See *Mason v Harrington Corporation Pty Ltd t/as Pangaea Restaurant & Bar* [2007] FMCA 7

2 Supra at [26] – [59].

18. The Applicant contends that this failure to provide basic and important entitlements under the workplace relations legislation is serious. Particularly when regard is had to the purpose of the legislation; namely, to provide a safety net which ensures adequate minimum entitlements to employees, particularly those who are vulnerable or in low income roles. The Applicant also contends that the legislation is also designed to provide an even playing field for all employers with regard to employment costs.

19. It is said that contravention on these fundamental entitlements undermines the workplace relations regime as a whole and displays a disregard for the Respondents' statutory obligations. The First Respondent, and indeed, the Second Respondent who is the controlling mind of the First Respondent and who was intimately involved in the management of the First Respondent's business, admits to knowing that there was an obligation to pay the minimum pay under industrial instruments; knew how much was actually being paid to the Employee, but did not either make due inquiry to find out her entitlement, or alternatively, knowingly did not comply with the obligation to make the correct payment.

20. Accordingly, the Applicant submits that in those circumstances both Respondents showed a complete disregard of the First Respondent's obligation to pay the Employee her minimum entitlements in accordance with the law. There is nothing to indicate that the contraventions would not have continued but for the intervention of the Applicant. The weight, in my view, to be attached to this aspect of the Respondents' conduct is significant and the contentions of the Applicant in this regard are soundly put.

Nature and extent of loss or damage

21. I am also in agreement with the Applicant's contention that the gross underpayment of $4,776.43 is not insignificant, taking into consideration that the Employee was reliant on the minimum terms and conditions of employment. It is also noteworthy that the First Respondent's failure to pay correct wages and entitlements when they became due and payable gave the benefit of the underpayment to the First Respondent over a long period of time.

Similar previous conduct

22. A significant aspect in this regard is that the Respondents had notice of their obligations as far back as November 2009, but they failed to properly comply with those obligations in the employment of the Employee even after such notice. The previous complaints, in my view, establish a recurring pattern of contravening behaviour over a relatively significant span of time. I am in agreement with the Applicant's contention that the contravening conduct in respect of the Employee is not isolated or discreet and shows a general disregard by the Second Respondent of the need to comply with Commonwealth workplace law.

Size of business

23. The Applicant, and indeed the Court, has not been provided with any details as to the size of the business, the number of employees employed by the business at the relevant time and the Respondents' financial position, either in respect of the period where the contraventions occurred or up to the current date. Be that as it may, the Applicant does concede that it is not likely that the business was large. However, the Applicant contends that no discount should be afforded because of the size of the business and relies upon the following statement by Tracey J in *Kelly V Fitzpatrick*[3]:

> *No less than large corporate employers, small businesses have an obligation to meet minimum employment standards and their employees, rightly, have an expectation that this will occur. When it does not it will normally be necessary to mark the failure by imposing an appropriate monetary sanction. Such a sanction must be imposed at a meaningful level.*

24. Further, in that regard, the Applicant also relies on *Rajagopalan v BM Sydney Building Materials Pty Ltd*[4] where it was stated at [27]:

> *Employers must not be left under the impression that because of their size or financial difficulty that they are able to breach an award. Obligations by employers for adherence to industrial instruments arise regardless of their size and such a factor should be of limited relevance to the Court's considerations of penalty.*

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3 (2007) 166 IR 14; [2007] FCA 1080 at [28]
4 [2007] FMCA 1412 at [27]

25. The Applicant contends that should I be of the view that the First Respondent's businesses (which is inclusive of the Point Cook business in respect of the related proceedings) were small and that they may have been experiencing financial difficulties. Any weight to be given to these factors must be balanced, however, with the weight to be attributed to the objective seriousness and deliberateness of the contravening conduct, and the need to impose sufficiently meaningful and deterrent penalties.

Deliberateness of the breaches

26. At the very least, in my view, the evidence demonstrates the Respondents' underpayment of the Employee was reckless, if not deliberate or intentional. When regard is had to the earlier notice given to the Respondents of obligations arising in respect of workplace laws as early as November 2009, and that the Second Respondent was also a Director of another company that was subject to previous complaints relating to underpayment and non-payment of wages or entitlements, I am of the view that he must have known the need for him to be diligent and precise in determining the minimum entitlements set by appropriate industrial instruments applying to the Employee's employment.

27. The Respondents became aware of their obligations to the Employee in early November 2009 but continued to commit the contraventions. When made aware of the seriousness of the contraventions, and the possibilities of penalties that could be imposed, they still, nonetheless, committed contraventions. In my view, the conduct in all of the circumstances of this case, and the circumstances, to which regard must also be given, includes what happened at the related proceedings, the conduct amounts to something more than reckless.

Involvement of senior management

28. As already indicated, the Second Respondent was intimately involved in the hiring of the Employee, the setting of her wages and had the responsibility for the management and conduct of the First Respondent in relation to the hiring and firing of employees generally, but the Employee in particular.

Contrition, corrective action, cooperation with authorities

29. Under this head, the Applicant speaks in strong terms of the lack of any evidence of remorse on the part of the Respondents, that corrective action was significantly delayed, and further, that cooperation with the Applicant was minimal. The Applicant highlights that the Respondents were provided with ample opportunity to participate in the investigation or rectification of underpayments prior to litigation, but chose to provide limited assistance. Support of that conclusion is the Second Respondent's non-response to an offer to participate in an investigation and the fact that First Respondent did not rectify the underpayments in the timeframe required by the amended contravention notice which was issued by the Applicant on 30 March 2011.

30. The Respondents failed to provide the Applicant with any evidence that other staff who continued to be employed by the First Respondent were being paid in accordance with appropriate industrial instruments. The lack of cooperation and evidence in that regard, the Applicant contends, demonstrates a lack of regard for the seriousness of the contraventions, the gravity of the proceedings before the Court and, I would add, an acknowledgement of the seriousness of the obligations imposed upon employers to comply with workplace relations legislation.

31. It is however accepted that, after some delay, the Respondents did cooperate in the production of a Statement of Agreed Facts which in turn lessened the cost and shortened the length for the determination of the litigation. However, the Applicant does highlight a lack of timely response to settling the Statement on the part of the Respondents.

32. Despite that apparent cooperation and the saving of the public purse in shortening the litigation process, the Applicant resists any significant discount arising as a consequence. The Applicant, in that regard, relies upon the comments of Stone and Buchanan JJ in *Mornington Inn Pty Ltd v Jordan*[5] when they said:

> *... the benefit of such a discount should be reserved for cases where it can be fairly said that an admission of liability:*

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5 [2008] FCAFC 70 at [74] - [78]

> *(a) has indicated an acceptance of wrongdoing and a suitable credible expression of regret; and/or*
>
> *(b) has indicated a willingness to facilitate the course of justice.*

33. In a similar vein, the Applicant also relies upon the statement of Federal Magistrate Burnett in *Fair Work Ombudsman v Contracting Plus Pty Ltd & Anor*[6] where he said:

> *Although the applicant concedes that the respondents have admitted liability and could be said to have cooperated by partaking in the investigation, at least in a limited fashion; particularly by engaging in the record of interview process; by providing some necessary records and, by signing the agreed statement of facts, although that itself was only agreed on the day of trial and, of course, only after some delay, the applicant says that the court should not be too anxious to afford the respondent a significant discount for its admission and conduct.*
>
> *In considering whether or not a discount should be applied, I have regard to the observations of Branston J in Mornington Inn Pty Limited v Jordon [5] where her Honour said:*
>
> > *'The rationale for providing a discount for early plea of guilty in a criminal case does not apply neatly to a case such as the present, where a civil penalty is sought and the case proceeds on pleadings. Nevertheless, in our view, it should be accepted, for the same reasons as given in Cameron, that a discount should not be available simply because a respondent has spared the community the cost of a contested hearing. Rathe r the benefit of such a discount should be reserved for cases where it can fairly be said an admission of liability (a) has indicated an acceptance of wrongdoing and suitable and credible expression of regret and/or (b) has indicated a willingness to facilitate the course of justice.'*
>
> *In my view, this is a case where neither of those qualities can be demonstrated and, accordingly, I do not consider that any discount ought to be provided in this instance on this basis.*

34. The Court is not aware of the Respondents making any expression of regret, remorse or apologising to the Employee and it is hard to find, in the circumstances of this case that there is evidence of genuine

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6 [2011] FMCA191 at 125-127

contrition and corrective workplace practices. I am of the view, as urged upon me by the Applicant, that the admission of liability and acceptance of the inevitable outcome of the case against the Respondents, and accordingly the weight to be attributed to the admissions made, ought to be limited to the consideration of the time and cost impact only. Accordingly the discount that should be attributable to this aspect of the conduct of the Respondent is limited, and no more than 10 per cent.

Ensuring compliance with the minimum standards

35. Workplace relations laws are there to protect an employee by providing an effective safety net of minimum terms and conditions. These are considered important objectives of the legislation which in turn is reflected in the significant increase in maximum penalty to apply to breaches of the legislation that came into effect in August 2004. They are substantial penalties and the courts have reflected the need for ensuring compliance through the imposition of significant penalties where breaches have been proved.

General and specific deterrents

36. I, like the Applicant, am of the belief that there is a strong need for both general and specific deterrents in respect of this case.

Specific deterrents

37. The observations of Gray J in *Plancor Pty Ltd v Liquor, Hospitality and Miscellaneous Union*[7] are pertinent in this particular case:

> *Specific deterrence focuses on the party on whom the penalty is to be imposed and the likelihood of that party being involved in a similar breach in the future. Much will depend on the attitude expressed by the party as to things like remorse and steps taken to ensure that no future breach will occur.*

38. In this particular case I am satisfied that the Second Respondent, as a Director of the First Respondent, also as a Director of the First Respondent in the related proceedings, has a record of non-compliance with workplace relations laws as demonstrated by the previous

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7 (2008) 171 FCR 357 at [37]

42. In determining the appropriate penalty by way of a general deterrent it is not, in my view, appropriate to significantly discount a penalty because a Respondents' enterprise is small in size or it is facing financial difficulties. It is incumbent upon the court to show the community's disapproval of the conduct and fix penalty which serves as a warning to others.

43. There is a need, in my view, to send a message to the community at large, including small employers, that the correct entitlements of employees must be paid and that steps must be taken by employers (of all sizes) to actively ascertain and comply with minimum entitlements. Compliance should not be seen as the bastion of the large employer with human resources staff and advisory consultants behind them.

Instinctive synthesis test

44. It is appropriate to evaluate the aggregate penalty to determine whether it is a proportionate response to the conduct which led to the contraventions, so that the penalties imposed are not oppressive or crushing. In this regard it is appropriate to give recognition to the fact that the Second Respondent in this proceeding is also the Second Respondent in the related proceeding, and therefore, in particular, consideration should also be given to the aggregate penalty he will suffer as a consequence of these breaches and the other breaches admitted in the related proceedings. The penalties should therefore, in aggregate, not be oppressive.

Conclusion

45. The Applicant recommends a penalty set towards the mid range of the scale, being 30 – 40% of the maximum penalty, to be an appropriate response to the Respondents' conduct. On that basis, the First Respondent would attract a penalty between ~~($29,700)~~ $19,800 and ~~($39,600)~~ $26,400, and the Second Respondent would attract a penalty between ~~($5,940)~~ $3,960 and ~~($7,920)~~ $5,280.

46. For the reasons set out above, but in particular the conduct of the Second Respondent in his failure to comply with workplace relations obligations, even when alerted to them, his lack of demonstrable

contrition, the lengthy time over which the breaches persisted, the committal of similar breaches by another company of which he was the controlling mind and where he was intimately involved in the hiring and management of paying wages, attracts the higher end of the suggested range of penalty.

47. Accordingly, orders are made that will see a penalty of ~~($39,000)~~ $26,400 imposed on the First Respondent and ~~($7,920)~~ $5,280 on the Second Respondent.

I certify that the preceding forty-seven (47) paragraphs are a true copy of the reasons for judgment of O'Dwyer FM

Associate:

Date: 20 September 2012