

Shipping company in court for allegedly underpaying seafarers by \$255,000

NOTE (17 April 2019): In a decision on 26 March 2019, the Federal Court accepted that Transpetrol's conduct gave rise to contraventions of the Fair Work Act but dismissed the FWO's application for penalties and declarations. The Court also found that the underpayment amounts alleged by the FWO should be reduced by about half to take into account additional amounts paid by Transpetrol to the employees during their employment.

(www.fairwork.gov.au/%E2%80%9D#twitter) 8 April 2017

The Fair Work Ombudsman has commenced legal action against a Norwegian shipping company, alleging it underpaid dozens of foreign crew more than \$255,000 while they were working in Australian waters.

Facing the Federal Court in Sydney is Transpetrol TM As, which is part of a group of European companies which own ships that transport oil and petroleum products.

The Fair Work Ombudsman alleges the company underpaid 61 crew a total of \$255,042 when they were working on the MT Turmoil oil tanker in Australian waters between 2013 and 2015.

The crew were mostly Indian and Filipino nationals and included a number of young workers aged as young as 21.

The oil tanker conducted a series of coastal trading voyages in Australian territorial waters between ports in Perth, Adelaide, Burnie, Melbourne, Sydney, Brisbane, Darwin and the island of Groote Eylandt in the Gulf of Carpentaria, under charter by two Australian companies, BP Australia and Caltex.

No allegations are made against BP Australia or Caltex.

Transpetrol allegedly paid the foreign crew rates that were the equivalent of as little as \$1.25 per hour in relation to base rates, in addition to industry specific allowances and overtime amounts.

However, it is alleged that under the Fair Work Act the crew were entitled to the minimum entitlements that applied under Australia's Seagoing Industry Award and National Minimum Wage Order.

Transpetrol was allegedly obligated to pay 58 of the crew minimum hourly rates of between \$15.95 and \$30.66 and overtime rates of between \$19.94 and \$38.32 per hour under the Seagoing Industry Award.

It is alleged that the other three foreign crew members were entitled to be paid base rates of up to \$16.87 per hour under the National Minimum Wage Order.

Alleged individual underpayments of employees range from \$374 to \$10,390.

Acting Fair Work Ombudsman Michael Campbell said the agency investigated following a request for assistance from one of the crew members.

"All businesses operating in Australia need to be aware of their employees' lawful entitlements," Mr Campbell said.

"Irrespective of their country of origin, employers, workers and unions are all equal in the eyes of the law when they operate in Australian workplaces. They are entitled to the protections afforded to them, but they are equally bound by its obligations. It is fair to say that the crew in this case were especially vulnerable and the role of an independent regulator such as the Fair Work Ombudsman ensures wage justice is secured"

"The system only works if all workplace participants adhere to their obligations under the law," Mr Campbell said.

The Fair Work Ombudsman will assert in Court that the Fair Work Act extends to a temporary licenced ship for any voyages carried out under that licence after two initial voyages have been completed, provided the two initial voyages were completed within the preceding 12 months.

Mr Campbell said the 61 foreign crew members have now been back-paid in full but the decision was made to commence legal action because of the significant amount involved for vulnerable foreign workers.

The Fair Work Ombudsman is seeking Court issued penalties against Transpetrol for three alleged contraventions of the Fair Work Act. The company faces penalties of up to \$51,000 per contravention.

The Fair Work Ombudsman is also seeking a Court Order requiring Transpetrol to provide a maritime industry factsheet to its crew members when operating in Australian waters in future.

Employers and employees seeking assistance can visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94. A free interpreter service is available by calling 13 14 50.

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