

Record penalty of \$660,000 for fruit market operator after refugee goes without pay for weeks

2 August 2017

Record penalties of more than \$660,000 have been awarded against the former owner of a Melbourne fruit market and his company which deliberately ignored warnings about required pay rates and did not pay a refugee worker any wages for weeks.

Abdulrahman Taleb, the former owner-operator of the Sunshine Fruit Market in Sunshine, has been penalised \$16,020 and his company Mhoney Pty Ltd \$644,000 in the Federal Circuit Court.

The total \$660,020 in penalties is the largest ever achieved as a result of a Fair Work Ombudsman litigation.

The court found a worker, an Afghani refugee who spoke little English, was paid nothing for a number of weeks in early 2012 and was later paid a flat rate of \$10 an hour to a maximum of \$120 per day for moving and stacking fruit and vegetables at the market.

He should have been paid hourly rates of about \$17 for normal hours, up to \$35 on weekends and up to \$43 on public holidays under the General Retail Industry Award 2010. The company also failed to pay overtime rates.

The company underpaid the worker a total of \$25,588 for two periods of work, each of about two months, ending in April 2012 and January 2013 respectively.

In his judgment, Judge Philip Burchardt criticised the scale of the underpayments and said Mr Taleb, the "mind and will" of the company, had been "taking advantage" of the worker.

"The underpayments were so significant that the total not paid to [the worker] was, in relative terms, enormous for such a short time. Furthermore, for some of the time [he] was simply not paid at all," Judge Burchardt said.

"I accept the submission of the [Ombudsman] that the way it worked out was that [the worker] was paid wages of between \$3.49 and \$9.29 per hour," Judge Burchardt said.

"This was an egregious underpayment. It gave the respondents an unfair advantage in the competitive retail industry."

The worker initially came to Australia as an asylum seeker and spent time in detention before being granted Australian residency and released in late 2010.

"[The worker] was a vulnerable employee in that he was a recent arrival to Australia and totally lacked fluency in English, and could reasonably be understood to be most unlikely to be aware of any entitlements at law," Judge Burchardt said.

Fair Work Ombudsman Natalie James said the record penalties should serve as a warning to employers that those who exploit workers face major financial consequences.

"These new record penalties highlight how seriously the courts take unlawful behaviour which involves workers being taken advantage of and stripped of minimum wages and entitlements," Ms James said.

"Employers who deliberately exploit vulnerable workers should be on notice that we will do everything in our power to hold you to account.

"We have no sympathy for employers, as in this case, who arrogantly ignore direct advice from my agency about their wage obligations and exploit vulnerable members of the community in order to obtain a commercial advantage."

The worker was not provided with the required meal breaks, despite sometimes working more than 12 hours a day. Mhoney also failed to pay untaken annual leave or annual leave loading on the termination of the worker's employment.

The company was found to have contravened a range of record-keeping and pay slip laws, with Judge Burchardt condemning the company's record-keeping as "chaotic and incomplete". There were no pay slips created and no superannuation paid. Payments were all in cash.

"This was not a properly and lawfully run business," Judge Burchardt said.

"It was conducted in plain breach of a number of workplace regulations."

Judge Burchardt found Mr Taleb, of Altona North, had never apologised to the worker and his contrition was "unimpressive".

In addition to the record penalties, Judge Burchardt ordered an injunction against Mr Taleb preventing him from contravening the Award and the National Employment Standards.

The injunction means Mr Taleb could face contempt of court proceedings for any further contraventions proven in court.

The Court found Mr Taleb and his company to be jointly and severally liable for rectifying the underpayments to the employee, meaning that Mr Taleb will be personally responsible for paying back the worker up to the amount of \$6,518.52 should the company fail to do so.

The previous record penalties of \$532,910 were secured by the Fair Work Ombudsman in February against the former owner-operator of an Albury cafe and his company, Rubee Enterprises Pty Ltd. That matter involved exploitation of five workers, including two visa holders.

Employers and workers can visit www.fairwork.gov.au or phone the Fair Work Infoline on 13 13 94.

Information to assist people from culturally and linguistically diverse backgrounds has been translated into 27 languages and is available on the website.

In recognition that some employees are reluctant to complain about their workplace issues, the Fair Work Ombudsman now has an "Anonymous Report" function to allow the community to [confidentially report potential workplace breaches \(https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/report-a-workplace-issue-in-your-language\)](https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/report-a-workplace-issue-in-your-language) in English and 16 other languages.

The Agency also has fact sheets tailored to overseas workers on the website and YouTube videos in 14 languages to assist workers to understand their workplace rights.

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](http://twitter.com/NatJamesFWO) , the Fair Work Ombudsman [@fairwork_gov_au](http://twitter.com/fairwork_gov_au) or find us on Facebook www.facebook.com/fairwork.gov.au .

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Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

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Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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