

Record WA penalties of more than \$500,000 for systematic exploitation of overseas workers

5 December 2017

The Fair Work Ombudsman has secured a total of \$510,840 in penalties against rogue cleaning operators in Perth, with a Judge slamming them for their “deliberate”, “repeated” and “systematic” exploitation of vulnerable overseas workers.

Catherine Paino-Povey has been penalised \$77,400, her husband Mark Povey has been penalised \$72,240 and the contract cleaning company they operate, Commercial and Residential Cleaning Group Pty Ltd, has been penalised \$361,200.

The penalties were imposed in the Federal Circuit Court in relation to the exploitation of three Taiwanese workers.

They are the highest penalties secured by the Fair Work Ombudsman in a legal action in WA and the third highest penalties secured by the Agency in any case nationally.

They come after the Fair Work Ombudsman secured penalties totalling \$343,860 in 2013 against Ms Paino-Povey and another cleaning company she operated with Mr Povey for deliberately exploiting local and overseas workers in Perth.

In his judgment on the most recent case, Judge Antoni Lucev criticised Ms Paino-Povey and Mr Povey, saying they were jointly responsible for managing the operations of both Commercial and Residential Cleaning Group and the company penalised in 2013 and that the exploitation of workers in both cases “demonstrate similar circumstances and a similar mode of operation”.

The three overseas workers exploited in the most recent case were all Taiwanese women in Australia on 417 working holiday visas.

In relation to the three employees, Judge Lucev said: “It is open to infer that the Respondents’ actions towards the employees formed part of a deliberate business strategy to engage vulnerable employees, refuse to pay them during their first few weeks of employment, refuse to pay them their full entitlements when they fell due... and then refuse to pay outstanding wages owed to the employees on the termination of the employment relationship.”

“Beyond the inherent seriousness of the Respondents’ failure to afford the employees basic minimum employment entitlements in the form of regular wages and entitlements, there are significant aggravating factors in this case, including the deliberate and repeated nature of the respondents’ conduct, the prior similar conduct and the vulnerability of the employees,” Judge Lucev said.

The three workers were underpaid a total of \$11,511 for various periods of cleaning work performed between June, 2012 and April, 2013.

One of the workers was paid just 34 per cent of what she was entitled to for two months’ work. She gave evidence that because of the underpayments, totalling \$5106, she had to borrow money from a friend and only ate one meal a day to be able to pay her rent.

Another worker was paid nothing for three days’ work despite being lawfully entitled to a minimum of \$569. She gave evidence that she needed the money to pay for her rent and expenses and felt she had been taken advantage of as an overseas worker.

The third worker was paid only about half of what she was entitled to over a three-month period, resulting in a total underpayment of \$5836.

The underpayments remain outstanding and, in addition to the penalties, Judge Lucev has ordered full-back-payment of the workers.

Judge Lucev also found that they had shown “no contrition” and displayed “no evidence of corrective action” and “no cooperation with the Court or the regulator”.

Noting that there was evidence Ms Paino-Povey and Mr Povey might be continuing to operate in the cleaning industry, Judge Lucev found there was a need to impose penalties that deterred them from future contraventions.

“The Respondents have failed to show any form of contrition or intention to alter their behaviour which suggests a lack of responsibility for their actions, and that the likelihood of further contraventions is high,” Judge Lucev said.

Fair Work Ombudsman Natalie James says repeated and blatant exploitation of vulnerable overseas workers is abhorrent conduct that will not be tolerated.

“It is extremely frustrating to encounter such callous, recidivist exploitative conduct in the community,” Ms James said.

“The outcome of this case sends a clear message to operators that there are serious consequences for exploiting vulnerable workers. Lawful minimum pay rates apply to all employees in Australia and they are not negotiable.

“Those employers who think they can profit from blatant exploitation of vulnerable workers need to get the message that we are committed to pursuing you to the full extent of the law to ensure you receive the punishment you deserve.

“It is clear that others share our frustrations with the courts increasingly ordering larger penalties, particularly in cases involving the exploitation of vulnerable workers.

“Now that the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 has come into effect, penalties available for serious conduct are now significantly higher than were previously available to be imposed in matters such as this one - and we will not hesitate to seek maximum penalties from the courts when it is in the public interest,” she said.

Ms James says the Fair Work Ombudsman would continue to conduct proactive compliance and enforcement activity aimed at addressing non-compliance issues within the cleaning industry nationally.

Employers and employees can visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94 for free advice and assistance about their rights and obligations in the workplace.

Small business operators can opt to receive priority service and a free interpreter service is available on 13 14 50.

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