

Fruit farmer allegedly underpaid Malaysian workers and used false records

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The Fair Work Ombudsman has commenced legal action against a fruit farmer in northern Victoria for allegedly underpaying two Malaysian fruit pickers more than \$13,000 and providing false and misleading records to Fair Work inspectors.

Facing the Federal Circuit Court is Chris Zucco and his company Zucco Farming Pty Ltd, which operates a stone fruit farm at Woorinen, near Swan Hill.

The two Malaysian workers – a man aged in his early 20s and his father-in-law – were in Australia on bridging visas when they were allegedly underpaid.

After receiving requests for assistance from the two workers, the Fair Work Ombudsman investigated the Zucco Farming properties. Fair Work Ombudsman inspectors found the company had allegedly paid the two workers flat rates of between \$15.41 and \$16.77 for all hours worked to pick fruit and perform pruning, packing and cleaning duties.

Under the Horticulture Award 2010 at the time, the workers were entitled to minimum ordinary rates, including casual loading, of \$21.61 for all hours, except for public holidays when they were entitled to \$38.90 per hour.

In total, the two workers were allegedly underpaid a total of \$13,529 between August 2015 and March 2016. The company has not rectified any of the alleged underpayments.

It is alleged that Mr Zucco and his company also contravened workplace laws by knowingly providing false and misleading records to inspectors that understated the number of hours worked by the employees, which gave the appearance the two workers had been paid higher hourly rates than was actually the case.

This was allegedly despite the employees, having regularly provided records to Mr Zucco of their actual hours worked.

Fair Work Ombudsman Natalie James says legal action has been commenced because of the seriousness of the alleged contraventions.

"Allegations that records have been knowingly fabricated are very serious. If proven, this type of behaviour often indicates that operators are knowingly underpaying their workforce and using false documents in order to conceal the conduct," Ms James said.

"When employers fail to keep records or supply us with inaccurate records, it compromised our ability to determine whether workers have been paid their full lawful entitlements.

"We also treat cases involving underpayment of overseas workers particularly seriously because we are conscious that they can be vulnerable due to a lack of awareness of their entitlements, language barriers and a reluctance to complain," Ms James said.

Zucco Farming Pty Ltd faces maximum penalties of up to \$54,000 per contravention and Mr Zucco faces penalties of up to \$10,800 per contravention.

The Fair Work Ombudsman is also seeking orders for the company and Mr Zucco to be jointly liable to rectify the alleged underpayments.

Orders are also sought for the company to display a workplace notice with details including key employee entitlements under the Horticulture Award 2010 and how to access the Record My Hours app; and for the company to register with the Fair Work Ombudsman's My Account portal and complete online training and education activities.

The matter is listed for a directions hearing in the Federal Circuit Court in Melbourne on August 21.

Ms James says the case is an example of the value of workers keeping their own records, as the records kept by the two Malaysian workers played a crucial role in making it possible for the Fair Work Ombudsman to quantify the alleged underpayments and pursue legal action.

"Earlier this year we launched a new app, Record My Hours, which is particularly aimed at helping young and migrant workers to protect themselves by making the keeping of a work diary much easier through the use of smartphone technology," Ms James said.

"This does not absolve employers from their record-keeping obligations - but it provides employees with an extra layer of protection if their employer neglects their record keeping responsibilities or creates false or misleading records, as is alleged in this case."

The Record My Hours app is available for download now from iTunes or Google Play stores.

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

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