

Penalties of \$447,300 and \$223,000 back-pay ordered after workers treated as “slaves”

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The Fair Work Ombudsman has secured near-record penalties of \$447,300 against the operators of a Sydney-based cleaning company, with the Federal Court finding the company treated vulnerable employees as “slaves” under a “calculated” scheme.

Grouped Property Services Pty Ltd has been penalised \$370,000 and also ordered to back-pay \$223,244 to 49 employees it exploited between 2011 and 2013.

Rosario Pucci – the former owner-operator of the company described by the Court as being “intimately involved” in the exploitation – has been penalised a further \$74,300.

His brother Enrico Pucci, the company’s current owner and sole director, has been penalised \$3000 for his involvement in contravening the adverse action provision of the Fair Work Act that makes it unlawful to dismiss an employee for exercising a workplace right, such as inquiring about payment of wages.

Fair Work Ombudsman Natalie James said the case was one of the agency’s most complex matters.

“This matter involved dubious ‘labour hire’ arrangements, corporate structures and sham contracting arrangements that were used by a second time offender in a calculated attempt to avoid responsibility for vulnerable workers’ entitlements,” Ms James said.

In 2011, the Fair Work Ombudsman secured \$4400 in Court-issued fines against Rosario Pucci (<http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2011-media-releases/december-2011/20111219-pucci-penalty>) for his involvement in underpaying three employees – but Mr Pucci’s company Wash and Go Pty Ltd was placed into liquidation, preventing the Fair Work Ombudsman from securing penalties against it.

At the commencement of the 2014 litigation against Grouped Property Services, the Fair Work Ombudsman secured a freezing order, preventing the company from being stripped of assets or placed into liquidation, which would have frustrated back-pay orders.

In the latest litigation, the Court found Grouped Property Services deliberately exploited 51 workers, many from non-English speaking backgrounds. Most were engaged as cleaners, but some worked in clerical and other roles. They were individually underpaid amounts ranging from \$58 to \$23,474.

Grouped Property Services claimed that the 51 workers were employed by a purported labour-hire company National Contractors Pty Ltd. National Contractors was registered at the Grouped Property Services business address.

The Fair Work Ombudsman proved in Court that Grouped Property Services was the true employer of the workers and that National Contractors was merely a shell company set up by Grouped Property Services to avoid paying employees the minimum Award wages and entitlements that applied to their positions.

Instead, Grouped Property Services required workers to obtain ABNs and submit invoices for payment and then paid the workers arbitrarily determined low flat rates that undercut Award minimums – or in some instances paid them nothing at all.

Three other purported labour hire companies that had formerly been registered at the Grouped Property Services business address had previously gone into liquidation.

Ms James welcomed the judgment and the freezing orders secured against Grouped Property Services saying it ought to be a warning to others who might seek to use complicated corporate structures to avoid their lawful obligations to their workers.

“We are pleased that the court has seen through these structures and held the individuals responsible to account. The freezing orders we obtained earlier to prevent Grouped Property Services from transferring assets will also play a critical role in ensuring these workers receive their unpaid wages and the court penalties are paid,” Ms James said.

Justice Anna Katzmann described the exploitation of the 51 employees as “serious”, finding that the contraventions were deliberate and part of a “scheme”.

“It was the result of a calculated attempt to avoid paying minimum award rates and statutory entitlements,” Justice Katzmann said.

Many of these employees were foreign nationals on temporary visas. Many had limited English language skills and were unlikely to

have been familiar with Australian labour laws.

“Many, if not all, were struggling financially. Several had been unemployed for some time before securing work with the company. Some were treated by Grouped Property Services as slaves.

“On several occasions employees were dismissed for having the temerity to insist on receiving what they perceived to be their outstanding wages (substantially less than their due) before doing any more work,” Justice Katzmann said. “It is self-evident that Grouped Property Services profited from its exploitation of these employees,” Justice Katzmann said.

Justice Katzmann found that the conduct caused the employees “considerable hardship”, with some giving evidence that underpayments caused them mental, emotional and financial stress and anxiety.

“(One employee) was supporting her partner who was undergoing chemotherapy and when Grouped Property Services stopped paying her they struggled to survive,” Justice Katzmann said.

Justice Katzmann found that many workers had to borrow to meet household expenses and at least one went without food.

One international student was forced to return home because he could not meet his expenses or afford to apply for another visa, while another student could not afford furniture and was forced to quit because he could not drive to various worksites after being unable to afford to renew his car registration.

Another worker struggled to pay bills and rent.

Justice Katzmann described Rosario Pucci’s treatment of various workers as being “inexcusable”, “disgraceful”, “reprehensible” and “shameful”.

Justice Katzmann found Rosario Pucci threatened one Colombian student with deportation, forcibly removed another international student from Grouped Property Services’ office and told an Italian student who asked for outstanding wages to “kiss my a...”.

Justice Katzmann said Rosario Pucci had “a history of offending”, had been uncooperative with the Fair Work Ombudsman and shown no contrition.

Justice Katzmann found that the “deeply troubling” evidence presented by the Fair Work Ombudsman demonstrates that Grouped Property Services had last year engaged a Colombian student as a ‘contractor’ – despite the fact the student was “undoubtedly an employee” – and then gave her “the run around” for several months, before finally paying her earlier this year.

In addition to the penalties, back-pay order and injunction, the Fair Work Ombudsman also secured Court Orders requiring Grouped Property Services to commission a professional external audit of its payment practices and rectify any underpayments discovered. The company must also commission training on workplace relations laws for its managers.

The Fair Work Ombudsman also has a current application before the Federal Court for Grouped Property Services to be liable for legal costs.

The Fair Work Ombudsman has previously made one referral to the Australian Securities and Investments Commission (ASIC) in relation to the conduct by Grouped Property Services and associated companies – and Justice Katzmann ordered that her judgment be forwarded to ASIC and the Australian Taxation Office for their consideration.

Ms James says her Agency has devoted significant time, resources and legal expertise to ensure Grouped Property Services employees were back-paid their lawful entitlements and the company was held liable for completely unacceptable contraventions of workplace laws.

“Those rogue employers in Australia who think they can build businesses around the blatant exploitation of vulnerable workers need to get the message that we will pursue you to the full extent of the law, ensure you receive the punishment you deserve and destroy your unlawful business model,” Ms James said.

Ms James says the involvement of visa-holders from non-English speaking backgrounds was also an aggravating feature of the matter.

“Overseas workers can be vulnerable if they are not fully aware of their rights or are reluctant to complain, so we treat such cases very seriously,” she said.

“The penalties imposed against this rogue operator are another blow in the fight to stamp out the problem of deliberate exploitation of overseas workers in Australia.”

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