

## Packing company delivered \$220K penalty after “appalling greed” in underpaying migrant workers

24 March 2017

A Melbourne packing services business with a history of short-changing workers and one of its directors have been penalised more than \$220,000 for underpaying three staff, including two visa holders.

The company, trading as Rapid Pak, has been ordered to pay \$184,800 after admitting to underpaying the workers \$23,479 through a combination of insufficient hourly rates and payments based on the number of items packed, known as piece rates.

Federal Circuit Court Judge Grant Riethmuller criticised the “appalling greed” of Ingrid Hsi, of Glen Iris, one of the directors and part-owners of the company, ACC Services (Aust) Pty Ltd, who was given a penalty of \$36,960.

The two 417 working visa holders, from China and Taiwan and each aged 31 when they began with the company, were underpaid \$3776 and \$4991 across a period of just three months in 2014.

The third employee, a Chinese migrant, was short-changed \$14,792 between 2011 and 2014. Each of the workers had limited English language skills.

Acting Fair Work Ombudsman Michael Campbell said the substantial penalties were another reminder that the courts had no tolerance for the exploitation of any workers.

“This decision is another warning that employers face a major financial hit if they fail to pay the correct wages that all employees in Australia are entitled to, regardless of their visa status,” Mr Campbell said.

“We 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.”

The Fair Work Ombudsman had put ACC Services on notice of its need to comply with workplace laws after previously receiving requests for assistance from workers. Previous matters resulted in the company back-paying employees more than \$60,000.

Judge Riethmuller criticised the multi-million dollar business for failing to pay the three vulnerable workers the required minimum hourly rates, including penalty rates for weekends, public holidays and overtime.

“Given the disparity between the amount that the employees were underpaid and the profitability of the business, the conduct represents appalling greed and a considerable lack of empathy on the part of [Ms Hsi],” he said.

“[A]ll three employees were vulnerable as a result of their limited English language skills and limited knowledge of Australian workplace law.”

Judge Riethmuller said Ms Hsi, as the controller of the company, resisted the advice that the modern award applied to the business.

“Despite a number of interactions with the [Fair Work Ombudsman]’s office and the investigator in this case, the respondents persisted with the position that piece rates were appropriate and legal,” Judge Riethmuller said.

The Judge said the company and Ms Hsi had subsequently cooperated with the Fair Work Ombudsman and taken corrective action by rectifying the underpayments to the three workers and engaging an external consultant to complete an audit to ensure compliance.

However, he criticised Ms Hsi for falsely telling Fair Work inspectors that there had not been any previous contact between the company and the Ombudsman.

“Whilst I accept the willingness of the Respondents to facilitate the course of justice, and their acceptance of wrongdoing and mitigating factors, I am not satisfied that they have expressed remorse or contrition in the context of this case,” Judge Riethmuller said.

The company has been ordered to provide training to managerial staff on compliance with workplace laws.

The Fair Work Ombudsman was also successful in seeking a court injunction to prevent the company and Ms Hsi, a Chinese migrant, from breaching the modern award and the National Employment Standards in future. The injunction means each could

potentially face criminal charges of contempt for any future proven contraventions.

Fair Work inspectors investigated this matter after the three employees, two with the assistance of interpreters, lodged requests for assistance. The workers continue to live in Australia.

Mr Campbell said the case highlighted that while the Agency sought to educate employers about their obligations, it would not hesitate to take strong action against those who ignored advice.

Mr Campbell said he was also increasingly concerned about the number of employers from culturally and linguistically diverse backgrounds who are underpaying workers from within their own ethnic communities.

“I want to make it clear that the lawful obligations to pay minimum wage rates apply to all employers in Australia and they are not negotiable,” he said.

“I understand there are cultural challenges and vastly different laws in other parts of the world, but it is incumbent on all businesses operating in Australia to understand and apply Australian laws.”

In the 2015-16 financial year, 38 of the Fair Work Ombudsman’s 50 litigations (76 per cent) involved a visa holder. Sixteen of those litigations involved a 417 visa.

In 2015-16, the Fair Work Ombudsman recovered just over \$3 million for all visa-holders, with \$1.37 million of this for 417 visa-holders.

Employers and employees seeking assistance can visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or phone 13 13 94. An interpreter service is available by calling 13 14 50. The Fair Work Ombudsman’s Pay and Conditions Tool (PACT) can assist business owners to calculate pay rates applicable to their business.

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

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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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