

Queensland labour-hire operator slammed for “appalling and egregious treatment” of visa-holders

28 March 2017

A Queensland labour-hire company and its director have been penalised \$227,300 for deliberately exploiting vulnerable foreign workers after luring them to Australia with a string of false promises.

Twenty-two seasonal workers from Vanuatu were underpaid \$77,649 over just seven weeks when they were employed to pick fruit and vegetables at sites in the Lockyer Valley, Sunshine Coast and Bundaberg areas.

Maroochy Sunshine Pty Ltd has been penalised \$186,000 and its sole director, Emmanuel Bani, a further \$41,300 in the Federal Circuit Court in Brisbane following legal action by the Fair Work Ombudsman.

In his judgment, Judge Michael Jarrett described Bani’s “appalling treatment” of the workers as having deprived them of the appropriate basic living standards expected in Australia and causing a “profound impact” upon them and their families.

“The offending conduct was clearly designed to exploit this group of vulnerable workers,” Judge Jarrett said.

The workers were recruited by Bani as fixed-term employees on special class 416 visas as part of Australia’s Seasonal Worker Programme in July 2014 after they attended a workshop with Bani in Vanuatu in May 2014.

Judge Jarrett said Bani had promised the workers higher wages than they could have hoped to have earned at that time in Vanuatu and each worker travelled to Australia in response to Bani’s offer at considerable expense.

Bani required each of the employees to fund the costs of obtaining a visa, airfares to Australia, a medical check-up and a police check.

Many of the workers took out loans with the National Bank of Vanuatu to cover these costs.

“The promises made to the employees by Mr Bani... were for the most part false. Most received no wages while in Australia and had to endure appalling treatment by Mr Bani,” Judge Jarrett said.

Under the terms of the Seasonal Worker Programme and his agreement with the employees, Bani was obliged to provide each of the workers with at least 30 hours of work each week and weekly wages of more than \$500.

However, Maroochy Sunshine and Bani paid 13 of the 22 workers nothing at all while they worked in Australia. The others were given individual cash payments of between \$50 and \$300.

The Fair Work Ombudsman began investigating Maroochy Sunshine after receiving a referral from the Department of Employment, which was responsible for administering the Seasonal Worker Programme.

Acting Fair Work Ombudsman Michael Campbell says the investigation discovered serious exploitation, which was evidenced by the Court ordering near maximum penalties.

“The experience endured by these workers was particularly harrowing,” Mr Campbell said.

“One of the workers gave evidence that working for Bani’s company was like “slavery times” and that he had “never before experienced working a full day without even a cup of tea and only being fed tomatoes”.

“Workers were sometimes forced to work entire days harvesting produce without any food or drink and for no pay.

“In addition, the workers spent much of their time in remote and isolated transient accommodation, sometimes sleeping in a bus on the side of the road or on chairs in a bedroom owned by a friend of Bani,” Mr Campbell said.

The Court heard that Bani would get angry and scream if workers asked him about their pay, sometimes threatening to call police and have the workers thrown in jail.

The Court held that Bani, in addition to underpaying the men, also underpaid annual leave entitlements and breached pay-slip and frequency-of-pay laws, and knowingly failed to comply with a Notice to Produce.

The Court has also ordered Maroochy Sunshine to back-pay the workers their outstanding entitlements of \$77,649. In the event that

the company does not make the back-payment, the Court has ordered that the penalty imposed on Bani go towards partially rectifying the underpayment of the workers.

The Seasonal Worker Programme helps to contribute to the economic development of participating countries, while also offering approved Australian employers in the horticulture industry the ability to employ workers from selected Pacific Island countries and Timor-Leste when they cannot find enough local labour to satisfy seasonal demand.

“Seasonal workers have the same rights at work as other employees in Australia – they are covered by the minimum wage and condition entitlements under the Fair Work Act. Using vulnerabilities to exploit workers is completely unacceptable,” Mr Campbell said.

“Those employers in the labour-hire and horticulture industries who source migrant workers for seasonal work need to understand that compliance with workplace laws is not optional and that underpaying workers will result in hefty penalties,” he said.

The Fair Work Ombudsman’s Harvest Trail Inquiry was launched in 2013 in response to ongoing requests for assistance from employees in the horticulture sector, persistent underpayments and confusion among growers and labour-hire contractors about their workplace obligations.

The Inquiry involved Fair Work Inspectors making field trips and conducting audits in growing regions around the country, meeting with growers, labour-hire contractors, hostel operators, seasonal workers, industry bodies, local councils, unions and other relevant stakeholders. The findings and outcomes of the Inquiry are due to be released later this year.

Employers and employees seeking assistance regarding their workplace rights and obligations can visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94. An interpreter service is available on 13 14 50 and information on the website is translated into 27 different languages.

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