

Fruit and vegetable retailer faces court for alleged \$130K underpayments, false records

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A Melbourne business operator is facing court for allegedly providing false records to the Fair Work Ombudsman and for underpaying more than \$130,000 to two workers.

Stephen Fanous is the director of A & S Wholesale Fruit and Vegetables, which trades as Parkmore Fruit and Vege Market and Melbourne MarketPlace and operates a range of retail fruit and vegetable and flower stores across Melbourne shopping centres. The Fair Work Ombudsman has initiated proceedings against the company, Mr Fanous, and operations manager Etherah Louli.

It is alleged the company paid inadequate hourly rates, including flat rates of pay, while underpaying two workers \$132,956 between February, 2012 and December, 2014. One of these workers, employed as a manager at a retail fruit and vegetable business in the Chirnside Shopping Centre, was allegedly underpaid \$114,977.

The Fair Work Ombudsman claims that this employee, who was from a non-English speaking background, was underpaid for all the 130 hours per fortnight he worked on average, including being paid just \$10 per hour in cash for all hours after the first 76.

It is alleged that the records in relation to this employee's work were so sub-standard, inspectors had to reconstruct time records using toll information from the company vehicle he travelled in for work purposes.

The second worker, a qualified florist, was allegedly underpaid for her work at retail florist businesses operated by the company at shopping centres in Fountain Gate, Parkmore and Dandenong.

It is alleged another worker, aged 17 when she began at the Chirnside business, was paid \$10 per hour for all hours worked. The teenager's total underpayments were unable to be calculated due to the company's alleged non-compliant recordkeeping.

It is alleged the company, A & S Wholesale Fruit and Vegetables Pty Ltd, kept false or misleading records in relation to the manager as they did not record any hours worked in excess of 76 hours per fortnight or any details of the cash payments. The company also allegedly provided a payroll record to the Fair Work Ombudsman which gave a false work commencement date for one worker.

Fair Work Ombudsman Natalie James said the agency used a range of evidence to calculate the alleged underpayments including toll records from work vehicles to reconstruct work schedules.

"We take matters very seriously when we come across examples of employers falsifying records, or failing to keep required records which compromise our ability to determine a worker's entitlements," Ms James said.

"We know that younger workers and workers from migrant backgrounds can be more vulnerable in the workplace as they are often reluctant to make complaints and may not be aware of their rights.

"We recently launched a new app, Record My Hours, which is aimed at helping people, particularly young and migrant workers, to protect themselves by making the process of keeping a work diary much easier through the use of modern smartphone technology.

"This does not absolve employers from their record-keeping obligations, but it will provide employers 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 Fair Work Ombudsman will seek orders for penalties against the company, Mr Fanous and Ms Louli, and rectification for the \$132,956 in wages owed.

"For the first time, we are also seeking Court orders requiring a business to place notices on its premises providing employees with information on how to access and download the Record My Hours app," Ms James said.

The Fair Work Ombudsman alleges that Mr Fanous was involved in the contraventions relating to the false and misleading records and the underpayments, while Ms Louli was involved in one of the false or misleading record contraventions as well as breaches for failure to keep records.

The company faces penalties of up to \$51,000 per contravention, while Mr Fanous faces maximum penalties of up to \$10,200 per contravention and Ms Louli \$5100 per contravention.

The matter is listed for a directions hearing in the Federal Circuit Court in Melbourne on 3 August 2017.

The case which saw record penalties of more than \$532,000 handed down against an Albury cafe owner and his company earlier this year included findings of false records being used (see [Record penalties of \\$532,000 in FWO cashback case \(http://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/february-2017/20170208-rubee-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/february-2017/20170208-rubee-penalty)).

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.

Tools and resources available on the website include templates for time-and-wages sheets and pay slips.

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