

Sham contracting arrangement results in penalty for Melbourne bike courier service

14 November 2017

The Fair Work Ombudsman has secured a total of \$72,000 in penalties against two companies after deliberate sham contracting activity resulted in a bicycle courier in Melbourne being underpaid more than \$7000.

Z Transport Pty Ltd and another company, Boxbay Pty Ltd, have each been penalised \$36,000 in the Federal Circuit Court in Melbourne.

Z Transport is owned by Victorian man Vincent John Smits. Boxbay is owned by Queensland man Peter Maurice Fitzgerald. No contraventions were found in respect of Mr Smits or Mr Fitzgerald.

Z Transport specialises in delivering products for various clients and Boxbay provides services, including labour, to Z Transport pursuant to an agreement between the companies.

The Fair Work Ombudsman investigated the companies after a bicycle courier, aged in his late 20s, lodged a complaint.

Fair Work Inspectors found that the courier was treated as a contractor, despite Z Transport and Boxbay being aware that his correct classification was as an employee.

The courier was paid a low contract rate based on the jobs he performed - but as an employee, he was entitled to receive employee entitlements under the Road Transport and Distribution Award, including minimum wages and leave entitlements.

This resulted in the courier being underpaid \$7641 between February and November, 2013.

The Fair Work Ombudsman subsequently commenced legal action and Boxbay admitted in Court that it contravened sham contracting laws when it engaged the courier as a contractor to perform duties for Z Transport. Z Transport admitted being involved in that contravention.

Boxbay also admitted underpaying the courier and contravening pay slip laws, and Z Transport admitted being involved in those contraventions.

The courier gave evidence that the underpayment had made it difficult for him to live week to week and resulted in him incurring significant credit card debt to cover everyday living expenses. He was back-paid shortly after the Fair Work Ombudsman commenced legal action.

In his judgment, Judge Grant Riethmuller found that the contraventions were deliberate because in 2012, the Fair Work Ombudsman had provided Z Transport and Boxbay with "significant material" explaining that the correct classification for their bicycle couriers was as employees, not contractors.

"I am persuaded that the contravention in this case was deliberate and made in circumstances where the true position had clearly been provided to the respondents by the FWO in 2012," Judge Riethmuller said.

"This is not a case where the events that transpired occurred either by accident, error, negligence or even recklessness."

Acting Fair Work Ombudsman Kristen Hannah says the Agency has a low tolerance for employers who engage in sham contracting arrangements.

"Disguising an employment relationship by unlawfully classifying workers as independent contractors is a devious way to avoid providing employees with their correct entitlements," Ms Hannah said.

"Employers ought to be warned that they cannot simply ignore our advice. We have a range of materials available in multiple languages and a dedicated small business helpline."

"There has never been more information freely available than there is today – the time for excuses is over," Ms Hannah said.

Any employers or workers who have any uncertainty about whether practices at their workplace, including use of contractors, are appropriate can visit the Fair Work Ombudsman website at www.fairwork.gov.au.

Employers and employees seeking assistance can also contact the Fair Work Infoline on 13 13 94, with small businesses being able to

opt to receive priority service.

A free interpreter service is available on 13 14 50 and information and helpful materials on the website are translated into 30 different languages.

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Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

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For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

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