

## More than \$150,000 in penalties for “deliberate” underpayment of café and deli staff

15 November 2017

The former operators of a café and a delicatessen in Western Australia's South-West have been penalised more than \$150,000 for deliberately underpaying employees, after eight workers were found to have been short-changed a total of \$20,036.

The penalties, imposed in the Federal Circuit Court, are the result of the Fair Work Ombudsman initiating legal proceedings relating to the Dalycious Delicatessen at Dalyellup and the Hidden Gem café at Bunbury.

Married WA couple Gemma and Mark Gumley have been penalised \$12,000 and \$3,000 respectively and Mr Gumley's company Koojedda Carpentry Pty Ltd, which formerly operated the delicatessen and the café at Bunbury, has been penalised \$139,995. The company's penalties were imposed in respect of 14 different contraventions. Mr Gumley was involved in two of these and Ms Gumley was involved in all but one of the company's contraventions.

As Koojedda Carpentry is no longer trading, has no known assets and is unlikely to back-pay the workers, Judge Antoni Lucev ordered that the Gumleys' individual penalties be paid to the workers to help rectify the underpayments.

All eight underpaid workers performed work at the Hidden Gem café, with two staff, both chefs, also performing some work at the Dalycious Delicatessen. Both businesses ceased trading last year.

One of the chefs was from India and was in Australia on a 457 skilled regional sponsored work visa.

The eight employees variously performed between two and 16 weeks of work between June 2013 and September 2014.

Six of the employees were not paid at all for various period of work performed. One employee aged 19 was paid less than half of her lawful entitlements, not being paid for approximately 5 weeks of her 11 week employment period and receiving between \$14.06 and 19.69 per hour when she was paid.

The company also contravened workplace laws by failing to provide employees with payslips on a regular basis and by failing to provide any documents in response to Notices to Produce issued by the Fair Work Ombudsman.

As a result, the Fair Work Ombudsman largely had to rely on employees' own records, bank accounts and the limited payslips provided to establish the underpayments.

Acting Fair Work Ombudsman Kristen Hannah said the agency took the Gumleys to court as this was not the first time agency had dealt with the couple, having secured in back-payments for workers previously.

“Business operators who continue committing breaches laws after intervention from the Fair Work Ombudsman are engaging in a pattern of behaviour that clearly needs to be dealt with through serious enforcement action,” Ms Hannah said.

“Operators ought to be warned; Fair Work Inspectors do follow-up checks on businesses and those who choose to ignore our advice can expect to face court.”

In his judgment, Judge Lucev noted the compliance history and found that the underpayment of the eight employees admitted in the proceedings was deliberate.

“This conduct has the characteristic of wilful disregard, of deliberateness, rather than reckless disregard, and particularly so with respect to those of the Employees who were not paid at all for various periods,” Judge Lucev said.

“Those employers who fail to comply with minimum obligations gain an unfair competitive advantage over those employers who do comply with their workforce obligations.

Judge Lucev also said that “it is now almost notorious that there are significant pockets of non-compliance in relation to the payment of wages and entitlements, either at all or correctly, in the restaurant and hospitality industry.

“The Court notes that there was evidence in these proceedings as to the significant activity undertaken by the Fair Work Ombudsman in endeavouring to deal with and ensure that employers paid employees in the restaurant and hospitality industry their correct wages and entitlements.”

Ms Hannah said the underpayment of young and overseas workers was a concerning aspect of the case.

“We treat matters involving underpayment of young and overseas workers particularly seriously because we know they can be vulnerable due to a lack of awareness of their entitlements, a reluctance to complain and language barriers,” she said.

“The wealth of free advice and educational material on our website – including in 30 different languages – and availability of our small business helpline means there is no excuse for mistakes.”

Employers and employees can seek assistance at [www.fairwork.gov.au](http://www.fairwork.gov.au) or contact the Fair Work Infoline on 13 13 94. A free interpreter service is available on 13 14 50.

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