

Maximum penalty and CDPP referral for labour-hire operator's "appalling" treatment of visa holder

4 September 2017

A Melbourne labour-hire operator who paid an apprentice overseas mechanic nothing for almost three months work has been hit with maximum penalties and referred to the Commonwealth Director of Public Prosecutions.

A Federal Circuit Court judge penalised Leonard Greenan, formerly of Mount Martha a total of \$10,800 after he had engaged in "appalling" conduct and shown no remorse for his actions.

Fair Work Ombudsman inspectors investigated Mr Greenan, trading as 'United Consulting' or 'United Consulting Services' after receiving an underpayment allegation from a Pakistani worker Mr Greenan had employed.

The employee, aged 29, was in Australia on a bridging visa and obtained loans in order to pay \$9,500 to Mr Greenan for a visa sponsorship service he offered but did not progress.

Mr Greenan supplied the employee to work as a mechanic at a car dealership in Richmond between January and March last year, but failed to pay the worker any wages.

The Fair Work Ombudsman issued a Compliance Notice requiring Mr Greenan to back-pay the worker a total of \$7066 in outstanding wages. The notice was not complied with.

Judge Joshua Wilson said Mr Greenan issued invoices to the dealership "allegedly for [the worker's] wages but in reality for the progressive down payment of the purchase price for an expensive Peugeot motor vehicle".

"In view of my observations that aspects of the respondent's acquisition of his car using money due to [the worker] might be criminal in nature, I have referred this case to the Commonwealth Director of Public Prosecutions," Judge Wilson said.

"I take the view that in this case the conduct of the respondent has been appalling," Judge Wilson said.

"He personally benefitted out of [the worker's] service, rather than paying [the worker], wholly antithetical to his role in placing [the worker] and his obligations under the [Fair Work Act].

"It warrants condemnation by the imposition of penalties for the brazen attitude that the respondent adopted.

"The respondent could have but failed to offer a repayment regime. He could have but failed to make any payments to [the worker].

"The only contrition exhibited by the respondent lay in his being caught. In my view, there was no real contrition in this case," Judge Wilson said.

Under the Fair Work Act, business operators must adhere to Compliance Notices or make a Court application for a review if they are seeking to challenge a Notice.

Judge Wilson also found Mr Greenan had breached record-keeping laws.

Fair Work Ombudsman Natalie James says the decision delivers a clear statement that ignoring a Compliance Notice will not be tolerated.

"We welcome the court's decision to award maximum penalties in this case," Ms James said.

"The conduct of the labour-hire employer in this case was particularly disappointing, with a vulnerable overseas worker being exploited by the very person he was reliant on and had paid for assistance.

"We know overseas workers can be more vulnerable to exploitation as they are often reluctant to complain, may have language barriers or are less aware of their rights, and we take the underpayment of these workers extremely seriously."

Employers and employees seeking assistance can visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94. An interpreter service is available by calling 13 14 50 and information on the website is translated into 30 different languages.

Resources available on the website include templates for pay slips and time-and-wages sheets and the Pay and Conditions Tool (PACT), which provides advice about pay and other entitlements.

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