

\$230k in penalties over exploitation of migrant trolley collectors at Bendigo

16 April 2018

The Fair Work Ombudsman has secured \$230,638 in penalties against a trolley collection subcontractor for exploiting two migrant workers at Bendigo, in regional Victoria, and using false records to try to cover it up.

Jobanjeet Singh has been penalised \$40,510 and his company Joban's Trolley Collection Pty Ltd has been penalised a further \$190,128, in the Federal Circuit Court.

Singh and his company underpaid two trolley collection workers a total of \$29,031 over a period of just six months in 2015, which equated to an underpayment of almost 40 per cent of their total entitlements over the period.

The penalties are the result of an investigation and subsequent legal action by the Fair Work Ombudsman.

The two workers lodged requests for assistance in 2015 during the Fair Work Ombudsman's Inquiry into the procurement of trolley collection services by Woolworths, which involved Fair Work inspectors visiting 130 Woolworths' sites across Australia.

The workers were recent migrants from Afghanistan and Pakistan aged 31 and 28. They had recently arrived as refugees and been granted permanent residency. They had limited English language skills.

Joban's Trolley Collection employed them to collect trolleys for Woolworths retail stores at the Bendigo Market Place shopping centre as part of a subcontract it had at the time with United Trolley Collections Pty Ltd. United Trolley Collection no longer holds any contracts with Joban's Trolley Collection and Joban's no longer operates at any Woolworths sites.

The Fair Work Ombudsman's investigation revealed that the two workers had been paid rates ranging from \$9.73 to \$19.32 an hour.

This resulted in underpayment of their minimum hourly rates, shift-work loadings, overtime rates and penalty rates for weekend and public holiday work.

They were also underpaid superannuation and annual leave entitlements.

The underpayments were rectified in full after the Fair Work Ombudsman commenced legal action.

During the investigation, Singh and his company knowingly provided Fair Work inspectors with false time-and-wages records that overstated the rates the two workers were paid.

While Singh gave evidence that "it was never my intention to exploit or harm the interests" of the workers, Judge Patrizia Mercuri found that Singh had "employed individuals with limited skills and knowledge of English... or capacity to enforce their rights".

Judge Mercuri rejected Singh's claims that he was "unaware" of his legal obligations and found that the contraventions were deliberate.

"His conduct in creating false records and ensuring that UTC did not become aware of his payment arrangements belies this explanation and suggests that he in fact was well aware that what he was doing was wrong," Judge Mercuri said.

Judge Mercuri found that the provision of false records to the Fair Work Ombudsman was "a deliberate act to try and minimise the respondents' contraventions of workplace laws".

Judge Mercuri said that the penalties imposed should "send a message to employers in the trolley collection industry that failure to comply with their workplace obligations will have consequences".

Judge Mercuri also found that there was a need for a penalty to deter Singh from future contraventions, noting that Singh had registered another company.

Acting Fair Work Ombudsman Kristen Hannah says the Court's decision sends a message that deliberate exploitation of vulnerable workers is completely unacceptable.

"Employers should be aware that we treat exploitation of migrant workers particularly seriously," Ms Hannah says.

"We will not hesitate to pursue any business operator who seeks to engage in this type of exploitative conduct."

Ms Hannah says employers should be aware that the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 has now come into effect, increasing the maximum penalties for conduct including deliberate exploitation of workers.

“The maximum penalties available for some serious conduct that occurs today or in the future are now significantly higher than the penalties available to be imposed in matters such as this one, where the contravening conduct pre-dates the commencement of the Act,” she says.

In 2016, the Fair Work Ombudsman released the findings of its Inquiry into the procurement of trolley collection services by Woolworths Ltd.

The Fair Work Ombudsman had constructive discussions with Woolworths following the publication of the Inquiry findings and in October last year, Woolworths Ltd entered into a Proactive Compliance Deed with the Fair Work Ombudsman that commits the company to monitoring its network of trolley services to ensure contractors at its sites are paying their workers correctly (see: [Fair Work Ombudsman compliance partnership with Woolworths a new benchmark in supply chain governance \(https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/october-2017/20171011-woolworths-pcd-trolley-collectors-release\)](https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/october-2017/20171011-woolworths-pcd-trolley-collectors-release)).

Coles became the first major supermarket chain to publicly declare it has an “ethical and moral responsibility” to stamp out exploitation of vulnerable trolley collectors when it signed an Enforceable Undertaking with the Fair Work Ombudsman in October 2014.

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 available in 40 languages other than English.

The Fair Work Ombudsman’s Anonymous Report function enables workers to report potential workplace breaches without being identified. Reports can be made in English and 16 other languages at www.fairwork.gov.au/tipoff (<http://www.fairwork.gov.au/tipoff>) .

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