

## Over \$165,000 penalties for tour bus operator

14 December 2018

The Fair Work Ombudsman has secured substantial penalties against a Gold Coast tour bus business that engaged in sham contracting and underpaid two drivers more than \$43,000.

The Federal Circuit Court has ordered AVA Travel Pty Ltd to pay penalties of \$164,475 and its sole director Chin Kuen Yung to pay penalties of \$3,825.

AVA Travel admitted to sham contracting after sending three drivers a text message in September 2014 requiring them to provide an ABN. This message had the effect of converting the employees to independent contractors from 1 October 2014, and also advised that they would no longer receive superannuation.

Following an investigation by Fair Work Inspectors, AVA Travel admitted that these three workers remained in an employee relationship as they continued to perform work in the same manner and were paid the same flat hourly rate of \$20.59.

Due to this flat rate, the Court found two drivers were underpaid \$27,938.61 and \$15,538.60 after the company failed to pay minimum rates for ordinary hours and other work, including weekend hours, public holiday hours and overtime that were owed under the Passenger Vehicle Transportation Award 2010.

Judge Michael Jarrett said these were "significant sums to workers earning relatively modest incomes", and ordered AVA Travel to complete audits across multiple years of all employees (including the third driver) and others it engaged to complete work, and rectify any breaches found.

The Court found AVA Travel also breached other workplace laws, including record-keeping, pay slips and frequency of pay. Mr Yung was involved in the company's sham contracting breaches.

Fair Work Ombudsman Sandra Parker said that there was no tolerance for sham contracting in Australian workplaces.

"Companies that are involved in sham contracting apply a false label to an employment relationship, leading to workers missing out on their wages and entitlements, and providing an unfair commercial advantage over businesses following the law", Ms Parker said.

"Employers are warned that paying a flat rate undercutting minimum Award rates can quickly add up to a substantial back-payment bill, and risk significant penalties from the Court", Ms Parker said.

Judge Jarrett said: "[Three employees] each had to go without payment for months at a time, causing all three of them to rely on credit cards to pay for food, bills, loans, school fees and other household expenses. They each depose that the delayed payment of wages was a source of stress, anger and worry, as one would expect."

His Honour found the sham contracting contraventions came about "through clumsiness and inadvertence rather than anything else" and that the respondents provided significant cooperation to the Fair Work Ombudsman during its investigation and the legal action.

AVA Travel fully back-paid the two workers after the legal action began.

The Fair Work Ombudsman's proceedings against AVA Travel's operations manager Mr Terry Huang and partner firm JTH Enterprises Pty Ltd were dismissed.

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