

## \$121,000 penalty imposed for “outrageous exploitation of a young person”

13 February 2018

Michael Patrick Pulis, a business operator who told his employee to “seriously, f\*\*k off...” when the worker asked when he would receive money owed to him, has been penalised \$21,500.

Judge Grant Riethmuller also penalised Mr Pulis’ company, Pulis Plumbing Pty Ltd, a further \$100,000 after a plumber’s labourer, who was 20 years old at the time, was underpaid by \$26,882 over just three months.

Judge Riethmuller described the conduct as “outrageous exploitation of a young person”, adding that the behaviour was “such to arouse much emotion” and “nothing short of avarice”.

The worker was underpaid when he was employed by Pulis Plumbing to perform work in the Melbourne, Geelong and Bendigo areas between September and December, 2014.

Mr Pulis and his company told the employee he was being hired as a second-year apprentice, but never formally signed the employee up as an apprentice.

Mr Pulis and his company also paid the employee an apprentice rate of \$12.18 an hour, despite knowing they were lawfully obligated to pay the employee much higher rates because they had not signed him up to an apprenticeship.

Noting that the Fair Work Ombudsman had previously advised Mr Pulis that labourer rates must be paid if an apprenticeship arrangement is not registered, Judge Riethmuller found that the underpayment of the employee was deliberate.

Under the applicable Enterprise Agreement, the employee should have been paid rates of \$37.08 for ordinary hours and up to \$74.16 for overtime work.

Leave and termination entitlements, and meal and travel allowances, were also underpaid.

Judge Riethmuller said the employee had been paid only a fifth of what he was entitled to, and that there had been no “credible expression of regret” from Mr Pulis.

The employee was back-paid only after the Fair Work Ombudsman commenced legal action.

Judge Riethmuller found that, despite the employee working 10 to 12 hours a day and never being counselled about his attitude or work practices, Mr Pulis told him after three months that his skills and attitude were not to a second-year apprentice’s standard. When the employee later texted Mr Pulis asking when he would be paid the outstanding wages owed to him, Mr Pulis responded by saying “Seriously, f--- off. When I’m ready”.

“The conduct is worse than simply underpaying an employee who has had difficulty obtaining work elsewhere, as the respondents also held out the lure of an apprenticeship to this young man: a particularly significant career and life goal for a young person who is not academically inclined. The amount of the underpayment, in comparison to the payments actually made, is significant.”

Judge Riethmuller noted that Mr Pulis had previously been an apprentice and had engaged apprentices prior to employing the employee in this case.

“Remarkably, five of his previous apprentices were employed for less than 100 days,” Judge Riethmuller said.

Judge Riethmuller said an apprenticeship is a training arrangement where the apprentice ought to be able to rely upon the employer for mentoring and training.

“In this sense, the employer is in a position of trust with respect to the apprentice,” Judge Riethmuller said.

“A further loss on the part of the employee in this case is that the time working for the respondents cannot be counted against his apprenticeship because of the failure to sign and lodge the appropriate documentation.”

Mr Pulis and his company also breached record-keeping and pay-slip laws and failed to comply with a Notice to Produce records issued by a Fair Work inspector.

Judge Riethmuller relied on the employee’s diary entries to determine the hours he had worked and said: “In a case such as this, I

would have been prepared to accept even generalised estimates from the employee as to his hours”.

“I also note that the FWO has recently released an application for smart phones called 'Record My Hours' to assist employees in a practical way to keep records from which they may verify their payslips are correct,” Judge Riethmuller said.

Judge Riethmuller also noted that the Fair Work Act has recently been amended so that “in future, if the employer fails to keep timesheets and provide payslips the employer has the burden of disproving an employee’s claim about hours worked and payments made.”

Fair Work Ombudsman Natalie James said the conduct could only be described as deliberate.

“It is simply unacceptable to exploit any worker in such a way and the conduct is even more abhorrent when you consider the response the worker received for doing nothing more than asking for what he was lawfully entitled to,” Ms James said.

The Fair Work Ombudsman’s ‘Record My Hours’ smartphone app ([www.fairwork.gov.au/tools-and-resources/record-my-hours-app](http://www.fairwork.gov.au/tools-and-resources/record-my-hours-app)) is aimed at tackling the persistent problem of underpayment of vulnerable young workers by using geofencing technology to provide workers with a record of the time they spend at their workplace. The app can be downloaded from the App Store and Google Play.

New resources aimed at better equipping young workers and apprentices to stand up for their rights in the workplace were recently released through a partnership between the Fair Work Ombudsman and the Foundation for Young Australians.

Six new videos available on the Fair Work Ombudsman’s YouTube channel [☞](https://www.youtube.com/user/FairWorkGovAu) (<https://www.youtube.com/user/FairWorkGovAu>) address issues commonly experienced by young workers and provide tips for dealing with workplace concerns.

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

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