

\$81,000 in penalties after Perth security company offers “lame excuse” for underpaying guards

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A Perth security company has been penalised in Court for underpaying its guards more than \$200,000, with a Judge saying the company’s claim that it thought overpaying in relation to minimum rates would “counteract” other rates of pay was a “lame excuse”.

A penalty of \$81,270 has been imposed against Rockingham-based Sureguard Security Pty Ltd in the Federal Court, as a result of legal action by the Fair Work Ombudsman.

In addition to the penalty, the company has back-paid 22 security guards a total of \$205,408 it underpaid them between December, 2014 and January, 2016.

Underpayments of individual workers ranged from \$227 to \$20,174.

The Fair Work Ombudsman discovered the underpayments when it conducted a self-initiated audit of Sureguard Security in 2015 as part of proactive campaign in Perth’s southern suburbs.

Fair Work inspectors found that Sureguard guards - including 13 who performed permanent night work - were paid flat hourly rates of between \$21.50 and \$24 for static guard work and \$25 for patrol work.

This led to the guards being underpaid their minimum hourly rates, casual loadings, overtime pay and penalty rates for night, weekend and public holiday work under the Security Services Industry Award.

In his judgment on the matter, Justice Michael Barker dismissed Sureguard’s submission that it thought paying flat rates above lawful minimum rates for ordinary hours would counteract the different rates of pay for other periods as “at best, a misunderstanding of the law, but a lame excuse”.

Justice Barker accepted that there may have been no blatant design to circumvent the law but found that there was no real excuse for the contraventions, which occurred without any regard for the award requirements.

“[Sureguard’s] suggestion that its relevant employees were ‘not third world workers’ and so cannot be classed as ‘vulnerable workers’ is, in my view, only of passing relevance,” Justice Barker said.

“Fair work conditions are not created on the basis that an employer can opt out of complying with them if it considers it has a pliant workforce. There are a myriad of reasons why employees may not object to or make complaints about their terms and conditions and the satisfaction of award rates. It does not necessarily mean they are not vulnerable and are not concerned about under-award payments. In this case, casual employees were particularly at risk.”

Justice Barker also ordered Sureguard to commission workplace relations training for its managers.

Sureguard back-paid the guards after the Fair Work Ombudsman commenced legal action.

However, Fair Work Ombudsman Natalie James said it was praise worthy that, in the face of genuine financial difficulties for Sureguard, the company’s director sold personal assets to rectify the underpayments and did not liquidate the company to try to avoid having to comply with back-pay orders, as some unscrupulous employers have done in the past.

“In the past, we have made referrals to other enforcement agencies, such as the Australian Tax Office and the Australian Securities and Investment Commission, where we believe company operators have stripped company assets to avoid complying with Court orders, leaving workers being unable to recover entitlements owing to them,” Ms James said.

“We have not had to take such action in this case and credit is due for the director’s actions in paying the workers the money owed to them.”

Ms James says the case sends a message that ignorance of the law is no excuse for underpaying workers basic minimum entitlements.

“We have been highlighting the issue of payment of flat rates leading to underpayments of security guards for a number of years now,” Ms James said.

“The outcome of this matter sends a clear message to security industry employers that claiming ignorance of this issue as an excuse for underpaying workers simply won’t wash.”

Ms James says the case also serves as another reminder that it is not possible for employers to ‘contract out’ of their obligation to pay an employee the minimum lawful rates that apply to their employment position.

The Fair Work Ombudsman’s online tools and resources can also assist employers to determine their applicable Award, as well as classification and pay rates, allowances, overtime and penalty rates.

The [Pay and Conditions Tool \(PACT\)](https://calculate.fairwork.gov.au/) (<https://calculate.fairwork.gov.au/>) provides advice about pay, shift, leave and redundancy entitlements and there are templates for pay slips and time-and-wages records.

Ms James said improving compliance in the security industry will continue to be a focus for the Fair Work Ombudsman.

Employers and employees seeking assistance can visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94. An interpreter service is available by calling 13 14 50.

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