

Truckies get \$374,000 back-pay

17 January 2018

Ten truck drivers who worked for an Adelaide transport company have been back-paid a total of \$374,000 following successful legal action by the Fair Work Ombudsman.

The drivers' minimum wages and a range of other entitlements were underpaid between 2007 and 2009 by Largs North-based Atkins Freight Services, which transports bulk petroleum products into the Northern Territory, NSW and Western Australia.

After an investigation and legal action by the Fair Work Ombudsman, the Industrial Relations Court of South Australia penalised the company a total of \$93,000 and, in addition, ordered it to back-pay the 10 truck drivers their outstanding wages, plus superannuation and interest totaling \$374,487.

However, after Atkins Freight Services lodged an appeal, the company paid approximately \$468,000 to the Court, which held the funds in trust pending the outcome of the appeal.

After dismissing the appeal, the Federal Court made orders late last year allowing for the money to be released from trust and paid to the truck drivers.

The truck drivers have now received back-payments ranging from \$8,012 to \$91,566.

In dismissing the appeal, the Federal Court rejected Atkins Freight Services' argument that the compensation payable to two of the drivers should be reduced because it had entered into Deeds of Release with drivers prior to the Fair Work Ombudsman commencing legal action.

Justice Richard White found that the Fair Work Ombudsman was not bound by the Deeds of Release between the company and the drivers. He found that because there was no genuine legal dispute between the company and the drivers at the time the Deeds were signed, the Deeds were an attempt to contract out of the company's obligation to pay the drivers their minimum Award entitlements.

Justice White also rejected Atkins Freight Services' arguments relating to a third driver the company claimed was covered by a Collective Agreement during the underpayment period.

Fair Work Ombudsman Natalie James said the case highlights that her Agency has the ability to recover lawful minimum entitlements owed to employees, even where employers attempt to unlawfully contract out of their obligations to pay them by entering into Deeds of Release.

"We carry out enforcement work in the public interest. Any private arrangements that employers make cannot prevent the Fair Work Ombudsman from taking appropriate action, in accordance with our enforcement and compliance and litigation policies. It is important that employees know they can always seek our assistance," Ms James said.

"We will take enforcement action and seek penalties and full back-payment of entitlements in situations where we believe doing so will change employer behaviour and build a culture of compliance."

Employers and employees seeking assistance can visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94.

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