

Outback homestead operator penalised in Court after 17 workers underpaid \$23,000

2 May 2018

The operators of a remote Northern Territory homestead have been penalised a total of \$56,766, after ignoring pay advice and underpaying more than a dozen backpackers from overseas.

David Mayne Pty Ltd, which trades as the Barkly Homestead, has been penalised \$48,320 after admitting to underpaying the 17 employees a total of \$23,753.

In addition, homestead manager and company shareholder Andrew Mayne has been penalised \$8446.

The penalties, imposed in the Federal Circuit Court in Alice Springs, are the result of legal action by the Fair Work Ombudsman.

The Barkly Homestead offers accommodation, a restaurant and a roadhouse on the Barkly Highway, about 210 kilometres east of Tennant Creek.

Fair Work Ombudsman inspectors conducted a proactive audit of the business as part of a regional campaign that involved audits of 38 businesses in the Alice Springs and Barkly regions of the Northern Territory.

Inspectors found that David Mayne Pty Ltd had paid 17 workers at the Barkly Homestead a flat rate of \$19.21 for all hours worked between October 2015 and April 2016.

The workers were engaged on a full-time basis, mostly as cleaners and waiters, and most were overseas workers in Australia on 417 working holiday visas.

They worked an average of 48 hours per week, leading to significant underpayment of their weekday overtime rates.

Under the Hospitality Industry (General) Award 2010 at the time, they were entitled to \$27.71 an hour for each of the first two hours of overtime and \$36.94 for additional overtime thereafter.

Some workers were also variously underpaid a broken shift allowance and Sunday and public holiday penalty rates.

Underpayments of individual workers ranged from \$623 to \$3763.

The workers were back-paid in full last year, save for three who have not been located.

The Fair Work Ombudsman is holding the back-payments for the three workers as it attempts to locate them.

The underpayments occurred despite David Mayne Pty Ltd having obtained advice from an industrial relations specialist that detailed how it could go about lawfully paying employees an annualised salary according to the Hospitality Industry (General) Award 2010 or, alternatively, pay employees the prescribed penalty and overtime rates under that Award.

The Fair Work Ombudsman submitted in Court that the company ignored both options – and also failed to seek advice from the Fair Work Ombudsman or the Australian Hotels Association, which it was a member of - and instead chose to short-change its employees for its own benefit.

Mr Mayne claimed in Court that he had simply overlooked the company's obligations due to pressure of work in the business.

However, Judge Tony Young said he "had some difficulty accepting that the breaches were the result of inadvertence".

"I consider that the underpayments were the result of at least recklessness, and by that I mean I am satisfied that there was a deliberate failure to inquire about and implement the provisions in the employee contracts that required the application of the award in relation to overtime rates," Judge Young said.

Judge Young noted the matter involved the underpayment of workers from overseas and said that "a message needs to be given that these workers are as entitled to the same protection of minimum standards as an Australian worker".

Judge Young also found that there was a need to deter employers in the hospitality industry from contravening workplace laws.

"There is evidence of a high incidence of underpayment of entitlements in the hospitality industry and I consider that the underpayment of minimum standards, or the failure to comply with minimum standards, undermines the safety net that is one of the objects of the (Fair

Work) Act,” Judge Young said.

“Another factor is that underpayments provide a competitive advantage for an underpaying employer and, to that extent, it upsets the level playing field and disadvantages enterprises that comply with minimum standards.”

Judge Young also ordered Mr Mayne to register with the Fair Work Ombudsman’s online My Account portal and complete all education courses for employers.

Fair Work Ombudsman Natalie James says the outcome of the matter sends a message to employers that they have a lawful obligation to obtain information and advice about lawful minimum pay rates and to follow that advice.

“We appreciate that the workplace relations system can seem complex and hard to navigate, particularly for time-poor small and family businesses,” Ms James said.

“However, there has never before been so much freely available information to assist small business owners to understand and comply with their obligations.

“Ignoring advice about minimum lawful pay rates and short-change employees’ basic minimum entitlements is completely unacceptable conduct.

“Employers also risk facing enforcement action if we find significant compliance issues at their business and they cannot demonstrate that they have made a concerted effort to understand and comply.”

Ms James says that with the wealth of free educational material available at www.fairwork.gov.au – including in 40 different languages – there is no excuse for businesses making blatant non-compliance errors.

The Fair Work Ombudsman has also recently launched a Small Business Showcase - www.fairwork.gov.au/smallbizshowcase (<http://www.fairwork.gov.au/smallbizshowcase>) - which is a virtual hub providing a wealth of resources for small business owners seeking information about their workplace obligations.

Resources available include the Pay and Conditions Tool (PACT), which provides advice about pay, shift, leave and redundancy entitlements and there are templates for pay slips and time-and-wages records.

Employers and employees can also seek assistance by contacting the Fair Work Infoline on 13 13 94. Small business callers can opt to receive priority service via the Small Business Helpline.

Ms James says the matter also serves as another reminder that visa holders in Australia are entitled to the same lawful minimum rates that apply to all employees in Australia.

“It is not possible for an employer to ‘contract out’ of their lawful obligation to pay any employee overtime and penalty rates,” she said.

“We are actively seeking to dispel the myth that it’s OK to pay overseas workers a ‘going rate’ that undercuts the lawful minimum wage rates that apply in Australia.”

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