

\$43,000 penalty for labour hire manager after vulnerable workers exploited at abattoir

11 May 2018

The Fair Work Ombudsman has secured \$43,000 in penalties against the former general manager of a labour hire company over the deliberate exploitation of migrant workers at an abattoir at Scone, in regional NSW.

The penalty has been imposed in the Federal Circuit Court against Zu Neng Shi, who was the general manager of labour-hire company Raying Holding Pty Ltd before it went into liquidation in 2015.

Shi was responsible for placing 10 employees of Raying Holding at an abattoir in Scone, in NSW's Hunter region, that was operated at the time by Primo Australia.

The employees were all male overseas workers and migrants from China who spoke little or no English.

Two of the workers, both full-time employees, were migrants who had become Australian citizens.

The other eight workers, all casual employees, were in Australia on short-term visas, including the 417 working holiday visa.

The employees worked as entry-level labourers in the abattoir's slaughtering, boning and despatch operations and were underpaid a total of \$41,674 between March, 2011 and July, 2013.

When Fair Work Ombudsman inspectors investigated the matter, they found Raying Holding and Shi had paid the workers flat rates ranging from \$15.50 to \$24 an hour, despite them often working more than eight hours a day.

This led to significant underpayment of their overtime rates, as under the Meat Industry Award 2010 at the time, some workers were entitled to rates of up to \$33.05 an hour for some of the overtime work they performed.

The workers were also underpaid smaller amounts for ordinary weekday work and public holiday work. The casual workers were also underpaid a casual loading.

The largest individual underpayment was \$10,257.

Despite Raying Holding back-paying the workers in full, the Fair Work Ombudsman used the accessorial liability provisions of the Fair Work Act to commence legal action against Shi for his central role in the company's exploitation of the 10 Chinese workers because of the seriousness of the contraventions and vulnerability of the workers.

At a contested trial, Shi claimed he was not knowingly involved in the underpayment of the workers because he was not aware of the applicable Award.

However, Judge Cameron dismissed Shi's claim, finding that "any ignorance on Mr Shi's part of details of the Modern Award was the result of wilful blindness on his part. I infer that he chose not to inform himself because the knowledge gained would be inconvenient."

Judge Cameron found that Shi had been involved in deliberate underpayment of vulnerable workers, saying the workers' "limited grasp of the English language" contributed to making them vulnerable.

Judge Cameron also noted that Raying Holding had organised the workers' accommodation and transport to and from the abattoir.

"These matters suggest further isolation of the Employees from the Australian community as well as an element of practical control over them by Raying Holding and, by implication, Mr Shi," Judge Cameron said.

"Such circumstances are too easy to repeat and the Court should express the law's disapproval of practices which take advantage of vulnerable workers in that way."

Judge Cameron also found that Shi was involved in contravening sham contracting laws in relation to the two full-time employees being misclassified as independent contractors and told to obtain Australian Business Numbers (ABNs).

Judge Cameron found that Shi had not displayed any contrition.

"Mr Shi has not acknowledged and taken responsibility for his unlawful conduct, misleadingly painting himself as a victim of

circumstance,” Judge Cameron said.

“He gave no indication of any steps having been taken at his direction to ensure that contraventions of the sort seen in this matter were not repeated by Raying Holding or any other business in which he had managerial responsibilities.”

Shi was also involved in contravening record-keeping and pay slip laws, with the casual employees having received no pay slips for at least eight months.

Judge Cameron found the record-keeping and pay slip contraventions were serious.

“The failure to keep proper records and to provide employees with pay slips strikes at the heart Australia’s industrial law system because it compromises employees’ ability to monitor their employers’ compliance with industrial laws and the regulator’s ability to investigate breaches of industrial laws,” Judge Cameron said.

Fair Work Ombudsman Natalie James says the outcome of the successful legal action sends a message that her Agency is prepared to hold individual managerial staff to account for their involvement in exploitation of migrant workers.

“Blatantly underpaying staff and then trying to claim ignorance of workplace laws when you are caught out is a futile strategy,” Ms James said.

“Business operators are at serious risk of facing enforcement action if we find significant compliance issues at their business that are a result of them deliberately flouting the law or failing make a concerted and genuine effort to comply.

“The wealth of free advice and educational material on our website at www.fairwork.gov.au – including in 40 different languages – and availability of our small business helpline means there is no excuse for mistakes, regardless of a business operator’s background.”

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.

“Deliberate exploitation of migrant workers is completely unacceptable conduct and we will do everything within our power to hold business managers to account when they are involved in this sort of conduct,” Ms James said.

Ms James says it is concerning that the case is another example of a business operator from a culturally and linguistically diverse background underpaying workers from within his own ethnic community.

“This case is another chance to make it clear that lawful minimum rates apply to all employees in Australia and they are not negotiable,” 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.”

Ms James says businesses should be aware that under the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017, which came into effect in September last year, new higher penalties of up to \$630,000 per contravention for a company and \$126,000 per contravention for an individual now apply in relation to serious breaches of work laws.

In addition, the maximum penalties for failing to keep employee records or issue pay slips have doubled to \$63,000 for a company and \$12,600 for an individual, and the maximum penalty for knowingly making or keeping false or misleading employee records has tripled to \$12,600 for an individual.

Ms James says businesses should also be aware that under the new laws, any unscrupulous employer tempted to try to frustrate a Fair Work Ombudsman time-and-wages audit by using false records can now face prosecution in criminal courts.

The new laws apply to conduct that has occurred since the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 came into effect in September 2017.

Employers and employees can seek assistance at www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94. Small business callers can opt to receive priority service via the Small Business Helpline and a free interpreter service is available on 13 14 50.

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 businesses 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.

The Fair Work Ombudsman’s ‘Record My Hours’ smartphone app (<https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/record-my-hours-app>) is aimed at tackling the persistent problem of underpayment of vulnerable 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.

The Fair Work Ombudsman's popular [Anonymous Report function \(https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/july-2017/20170731-migrant-worker-anon-report-tool\)](https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/july-2017/20170731-migrant-worker-anon-report-tool) , available in 16 languages other than English, allows visa-holders to report workplace concerns anonymously to the agency in their own language.

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](http://twitter.com/NatJamesFWO) (http://twitter.com/NatJamesFWO) , the Fair Work Ombudsman [@fairwork_gov_au](http://twitter.com/fairwork_gov_au) (http://twitter.com/fairwork_gov_au) or find us on Facebook www.facebook.com/fairwork.gov.au (http://www.facebook.com/fairwork.gov.au) .

Sign up to receive the Fair Work Ombudsman's media releases direct to your email inbox at www.fairwork.gov.au/mediareleases (www.fairwork.gov.au/mediareleases) .

Media inquiries:

Ryan Pedler, Assistant Director - Media

Mobile: 0411 430 902

ryan.pedler@fwo.gov.au (mailto:ryan.pedler@fwo.gov.au)

Page reference No: 8331

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.