

Petrol operators allegedly underpaid visa holders

25 September 2020

NOTE: On 16 August 2019, the Fair Work Ombudsman amended its Statement of Claim to withdraw (in relation to both Sinpek Pty Ltd (in liquidation) and Kamaldeep Singh) the alleged contravention of section 712 of the Fair Work Act 2009 for failure to comply with a Notice to Produce Records or Documents. From that date onwards, the reference in the below media release to “failure to fully comply with a Notice to Produce employment records” was no longer alleged. A decision on penalty was handed down on 20 January 2020. This decision is on appeal and is currently before the Federal Court.

www.fairwork.gov.au/twitter 8 October 2018

The Fair Work Ombudsman has taken legal action against the former operators of a petrol station on the NSW Central Coast who allegedly underpaid two migrant workers over \$50,000.

Kamaldeep Singh and his wife Uma Singh face the Federal Circuit Court in relation to alleged conduct at a Metro Petroleum petrol station they formerly operated on the Pacific Highway in Doyalson. Mr Singh’s company, Sinpek Pty Ltd, also faces court.

The Fair Work Ombudsman alleges that Sinpek failed to pay minimum rates to two workers for ordinary hours; penalty rates for overtime, weekend and public holidays; shiftwork loadings; and various leave entitlements under the Vehicle, Manufacturing, Repair, Services and Retail Award 2010.

The workers were Indian nationals from non-English speaking backgrounds, who were employed by Sinpek as console operators. Mr Singh was also born in India.

It is alleged that from May 2015 to August 2016, Sinpek underpaid the male employee \$28,157 and the female employee \$24,607.

Further, it is alleged that Sinpek twice breached the Fair Work Act’s prohibition on unreasonable requirements to pay an employer money relating to performance of work.

The male employee was allegedly required by Sinpek to cover the loss from a customer who drove off without paying for fuel. The same employee was also allegedly required to pay part of Sinpek’s income tax payments relating to his work for Sinpek.

The two workers were on bridging visas and applying for Regional Sponsored Migration Scheme visas through Sinpek, prior to having their jobs terminated in August 2016.

The Fair Work Ombudsman also alleges that Sinpek failed to provide the workers payment in lieu of notice for termination, failed to fully comply with a Notice to Produce employment records, and breached record-keeping and pay slips laws.

Fair Work Ombudsman Sandra Parker said inspectors investigated Sinpek after receiving requests for assistance from migrant employees.

“The Fair Work Ombudsman prioritises matters involving the alleged underpayment of visa workers as they can be particularly vulnerable in the workplace and reluctant to complain. These vulnerabilities can unfortunately be exacerbated when the employer is from the same cultural background as the affected workers,” Ms Parker said.

“All employers must pay migrant workers the minimum wage rates that apply to all workers across Australia. Any workers who are concerned about their wages or entitlements should contact the Fair Work Ombudsman.”

Sinpek faces penalties of up to \$54,000 per breach and up to \$27,000 for record-keeping and pay slip breaches, while Mr and Mrs Singh face penalties of up to \$10,800 per breach and up to \$5,400 for record-keeping and pay slip breaches.

Employees and employers can seek assistance at www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94. A free interpreter service is available on 13 14 50. The matter is listed for a directions hearing in the Federal Circuit Court in Sydney on December 21.

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NOTE: Sinpek Pty Ltd no longer owns or operates the Metro Petroleum petrol station in Doyalson. The Fair Work Ombudsman makes no allegations against the current operator.

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

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