

Melbourne cleaning operator penalised \$144,000

25 September 2018

The Federal Circuit Court has ordered David Leslie Hinchcliffe to pay \$25,000 and his company Davdot Pty Ltd to pay \$119,000 for underpaying three casual employees, two of whom were migrant workers, following legal action by the Fair Work Ombudsman.

The three employees performed cleaning duties at various hotels at which Davdot Facilities Services held cleaning contracts. Davdot admitted to underpaying them a total of \$10,428 between October 2015 and August 2016.

The underpayments occurred despite the Fair Work Ombudsman previously conducting investigations involving Mr Hinchcliffe and his company from 2011.

The Court found Davdot and Mr Hinchcliffe underpaid the employees, failed to make any payments for various periods of employment, did not make and keep employee records, did not provide payslips to the workers, and failed to comply with a notice to produce records or documents.

Most of the underpayments related to a South Korean worker underpaid \$8,294 for work performed at two hotels in Melbourne. The worker was in Australia on a bridging visa until becoming a permanent resident on 1 February 2016.

Fair Work Ombudsman Sandra Parker said the substantial penalties served as a warning for employers who fail to act on advice about workplace laws.

“All employers have a clear obligation under Australia’s workplace laws to pay correct wages and entitlements and rectify areas of concern the Fair Work Ombudsman raises with them. If companies do not improve compliance with workplace laws, we are clearly prepared to take court action that can lead to heavy financial penalties,” Ms Parker said.

“The underpayment of overseas workers is particularly serious as they may be more vulnerable and unaware of their workplace rights, face language barriers or are reluctant to complain. We encourage any workers with concerns about their wages or entitlements to contact the Fair Work Ombudsman,” Ms Parker said.

Judge Grant Riethmuller noted the respondents had “a history of non-compliance”, having been involved in two small claims proceedings in the Federal Circuit Court where declarations and orders were made against them.

In his judgment, Judge Riethmuller accepted the evidence of the Fair Work Ombudsman that the respondents “were clearly on notice as to their obligations and have therefore deliberately ignored that advice”.

Judge Riethmuller said the underpayments were “very significant to two of the employees (given their income levels)”. The underpayments were rectified by Davdot after the legal proceedings began.

In addition to the penalties, Judge Riethmuller made orders for Mr Hinchcliffe and his company to pay interest on the workers’ back-payments, sign-up to the My Account portal, complete online courses for employers, commission an external audit of its pay practices and rectify any underpayments discovered.

Employers and employees 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.

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