

Sydney transport company penalised \$89,000

7 August 2019

The Fair Work Ombudsman has secured a penalty of \$89,250 in the Federal Circuit Court against Sydney transport company Eagle Tours Pty Ltd after it misclassified bus drivers as independent contractors.

Following requests for assistance, Fair Work Inspectors found that four bus drivers were paid flat rates of \$22 an hour, despite working 12-hour shifts and weekends. Inspectors also found that three of the drivers had been misclassified as contractors, rather than employees.

Under the Passenger Vehicle Transportation Award, the Eagle Tours drivers were entitled to receive as much as \$38.94 an hour on weekends and \$48.68 on public holidays.

The flat rates resulted in underpayment of their casual loadings, overtime rates, and penalty rates for weekend, public holiday, night and early morning work.

Between November 2012 and February 2014, the four drivers were underpaid a total of \$46,012, with individual amounts ranging from \$7,982 to \$15,960.

Fair Work Ombudsman Sandra Parker said that the regulator is cracking down on companies that misclassify employees as independent contractors.

"If employers misclassify employees as independent contractors to avoid their lawful obligations or to pay employees low flat rates that undercut the minimum wage, they face serious consequences such as court action, hefty back-payment bills and penalties," Ms Parker said.

Judge Robert Cameron rejected Eagle Tours' submission that the breaches were due to a lack of awareness of its obligations under workplace laws.

"All the relevant actions were intentional and not accidental. They were, for present purposes, deliberate," Judge Cameron said.

Judge Cameron said there was a need to impose a penalty to "discourage other businesses from believing that all bus drivers may be hired as contractors regardless of the true nature of their engagement."

Eagle Tours operates bus hire and coach charter services, which included a shuttle bus service for Transport Sydney Trains' employees at the time of the contraventions. The four workers have been back-paid in full.

Employers and employees seeking assistance can visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94. An interpreter service is available on 13 14 50.

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