

Transport company faces court for alleged driver underpayments

6 January 2020

The Fair Work Ombudsman has commenced legal action against a Queensland transport company for allegedly misclassifying four drivers as independent contractors, when they were in fact employees, and underpaying them \$63,803.

Facing the Federal Circuit Court is Boske Road Transport Pty Ltd, which engages drivers out of its main depot in the Brisbane suburb of Slacks Creek to deliver packages.

The Fair Work Ombudsman alleges Boske purported to engage the four delivery drivers as independent contractors for various periods between March 2016 and August 2018. The workers drove vans owned by the company, wore company uniforms and were required to work at days and times set by the company.

Fair Work Inspectors commenced an investigation into the company after receiving requests for assistance from the employees.

The FWO alleges that the drivers were underpaid as they were in fact employees covered by the Road Transport and Distribution Award 2010, and for one worker in relation to a period of long-distance work, the Road Transport (Long Distance Operations) Award 2010.

For example, it is alleged three of the workers were underpaid hourly overtime rates and public holiday rates, and not paid for any annual or personal leave. The long-distance driver, who had the largest alleged underpayment, was also allegedly underpaid through failures to pay for loading and unloading duties and to meet a cents-per-kilometre entitlement.

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 and pay flat rates that undercut entitlements, they face serious consequences such as court action, hefty back-payment bills and penalties,” Ms Parker said.

“Businesses who need information on whether an employment relationship exists should contact us.”

Alleged underpayments of individual drivers ranged from \$7,460 to \$32,486.

In addition to penalties, the Fair Work Ombudsman is seeking court orders requiring the company to rectify all underpayments with interest and pay all related superannuation entitlements.

A first directions hearing is listed in the Federal Circuit Court in Brisbane for 22 May, 2020.

Employers and employees can visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94 for free advice and assistance about their rights and obligations in the workplace. A free interpreter service is available on 13 14 50.

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