

Court upholds Compliance Notice

9 March 2020

The Federal Circuit Court has confirmed a Compliance Notice issued by the Fair Work Ombudsman to a transport company operating in NSW, after the company applied to have the notice reviewed by the Court.

The Compliance Notice required the company, Hana Express Group Pty Ltd (Hana Express), to back pay \$110,359 to three employees who were involved in loading and delivering tyres at various locations in Sydney and Newcastle.

The business must now back pay the employees in full.

The Compliance Notice was issued in April 2018 after an inspector formed a belief that Hana Express had contravened the Road Transport and Distribution Award 2010, following requests for assistance from the employees.

In response to the Compliance Notice, Hana Express paid the employees \$1716 in relation to overtime, but sought to review contraventions alleged in the notice that Hana Express had failed to provide the employees with an opportunity to take breaks and did not pay the relevant penalty when meal breaks were delayed.

Under the Fair Work Act, where an employer asks the Court for a Compliance Notice to be set aside, they must prove that the employer did not commit the contraventions alleged in the Compliance Notice, or that the Compliance Notice does not comply with certain requirements set out in the Fair Work Act.

In seeking a review by the Court, Hana Express argued that the business did allow the employees to take breaks, but the court rejected this. Judge Driver also found that particular criticisms made by Hana Express about the inspector's investigation were "unwarranted and inconsistent."

Fair Work Ombudsman Sandra Parker welcomed the court's decision.

"Under the Fair Work Act, inspectors can issue a Compliance Notice if they form a belief that an employer has breached certain workplace laws. They are an important tool to recover unpaid wages for workers and resolve pay issues without the time and expense involved with court proceedings."

"Employers have a right to seek a review of our enforcement tools but then the onus is on the employer to convince the court that they have not contravened workplace laws. Hana Express is now required to pay back the lawful entitlements owed to their employees," Ms Parker said.

Failing to comply with a Compliance Notice carries a maximum penalty of \$31,500 for a company and \$6,300 for an individual.

Know a company that is doing the wrong thing but don't want to get involved? Anonymous reports can be made to the Fair Work Ombudsman [online \(https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-us-keep-workplaces-fair\)](https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-us-keep-workplaces-fair) .

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.

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