

Penalties for former grocery store operators

4 November 2020

The Fair Work Ombudsman has secured \$121,000 in penalties in court against the former operators of a grocery store in the Melbourne CBD for paying migrant workers as little as \$10 per hour, despite having been put on notice of workplace laws.

The Federal Circuit Court has imposed a \$90,000 penalty against Jenni International Pty Ltd, which previously operated the Dae Bark Mart Asian grocery store in Flinders Street, and a \$31,000 penalty against the company's former owner-operator, Jordan Shan.

Mr Shan and Jenni International underpaid two employees from South Korea – both aged in their mid-20s and in Australia on working holiday visas - a total of \$13,997 over a period of less than four months in 2016.

In addition to the penalties, the Court has ordered Mr Shan and the company to rectify the underpayments in full, plus interest.

The underpayments occurred despite the Fair Work Ombudsman having put Mr Shan on notice of Commonwealth workplace laws in 2015.

Fair Work Ombudsman Sandra Parker said employers that deliberately underpay vulnerable workers even after being put on notice should expect to face legal action.

"Employers are on notice that they must pay all workers according to Australia's lawful minimum pay rates or risk significant financial penalties. We prioritise matters involving vulnerable workers, especially if we think breaches are deliberate," Ms Parker said.

"All workers have the same rights regardless of nationality or visa status. Any worker concerned about their rights can contact us for free advice and assistance."

Fair Work inspectors investigated after the two underpaid employees lodged requests for assistance. One of the employees, engaged full-time, worked six or seven days a week with duties including ordering and stacking stock. The other was a part-time cashier.

The employees were paid flat rates of \$10 to \$12.50 per hour, despite being entitled to \$19.44 for ordinary hours and penalty rates of \$24.30 to \$48.60 under the General Retail Industry Award 2010, at the time. Annual leave entitlements were also underpaid.

Judge Alister McNab said the underpayments were significant and deliberate and that Mr Shan and the company had not exhibited contrition.

"The conduct of the Respondents was deliberate and involved a number of employees where the underpayment of their entitlements was significant. The underpayment of entitlements also occurred where (Mr Shan) is a highly educated person and had previously occupied a senior position as an Associate Professor of Applied Economics at Victoria University," Judge McNab said.

Judge McNab said the penalties imposed are "a strong disincentive for small businesses to engage in similar conduct".

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