

Perth franchisee penalised \$230,040 for repeat offending

13 November 2020

The Fair Work Ombudsman has secured its first penalties under the ‘serious contraventions’ provisions of the Protecting Vulnerable Workers laws, after a former Han’s Café franchisee in Perth underpaid vulnerable workers despite having previously faced Court for similar conduct.

The Federal Circuit Court has ordered Tac Pham Pty Ltd, the former franchisee of the Han’s Café Rockingham outlet, to pay penalties of \$191,646. The former general manager of the outlet, Cuc Thi Thu Pham, has been ordered to pay \$38,394.

The company and Ms Pham breached pay slip laws and underpaid 11 employees – including a number of young and migrant workers – a total of \$5,111 between October 2017 and April 2018. The employees were back-paid only after the Fair Work Ombudsman commenced its latest investigation.

Three of the contraventions – relating to failures to provide required information within pay slips and underpayment of both adult and junior minimum wages – met the definition of ‘serious contraventions’ under the Protecting Vulnerable Laws because of the repeat offending.

Of the total penalties ordered, 80 per cent related to these serious contraventions.

Under the laws, which came into effect in September 2017, the maximum penalties for serious contraventions are \$630,000 per breach for a company and \$126,000 for an individual, 10-times the penalties which would ordinarily apply.

Fair Work Ombudsman Sandra Parker said the new judgment highlighted the value of the serious contraventions powers in providing a significant deterrent for employers doing the wrong thing.

“We will continue to make full use of the Protecting Vulnerable Workers laws to ensure that any individuals or companies who commit serious contraventions are held to account and understand the consequences of their failures,” Ms Parker said.

There are currently three other unrelated matters before the courts nationally in which the FWO has alleged the increased maximum penalties should apply.

“Repeat offending is simply unacceptable. Employers should also be aware that we treat cases involving underpayment of young and migrant workers particularly seriously, because we are conscious that they can be vulnerable due to factors such as a lack of awareness of their entitlements and a reluctance to complain. Any workers with concerns should contact us,” Ms Parker said.

This legal action came after the Fair Work Ombudsman secured total penalties of \$45,000 in Court (www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/march-2018/20180320-hans-cafe-penalties) against Tac Pham Pty Ltd and Ms Pham in March 2018, relating to pay slip laws being breached and 22 staff being underpaid \$27,920 at the Rockingham café between December 2014 and December 2015.

FWO Inspectors discovered the breaches in this latest litigation when they investigated the business during auditing activities. The breaches in the latest litigation related to underpayment of ordinary minimum hourly rates, penalty rates, minimum shift-pay and an allowance, and regular failures to provide pay slips and to provide lawfully required information within pay slips when they were issued.

In this latest litigation the respondents admitted liability, including to the serious contraventions.

Judge Christopher Kendall said the latest litigation revealed the extent of the non-compliance by the respondents had increased, despite commitments from Ms Pham during the earlier court proceedings to improve her payroll practices.

“The respondents had no intention of changing their conduct and would have continued as they had been if the [Fair Work Ombudsman] had not intervened when it did. The fact that the respondents did not take steps to engage an external [payroll] consultant for over one year after they had said they would do so and only in response to the [FWO]’s investigation is, again, entirely unsatisfactory,” Judge Kendall said.

“Importantly, the respondents failed to comply with the most basic obligations owed to employees. Their conduct reflects a cavalier and entirely unacceptable approach to core legal obligations.”

“Some employees were more vulnerable than others and in an industry which has a high number of junior employees, the need to ensure that the rights and entitlements of those more vulnerable are met is particularly high. Employers must be deterred from

engaging in similar conduct,” His Honour said.

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