

Two Subway franchisees in court

13 April 2021

The Fair Work Ombudsman has commenced legal action in the Federal Circuit Court against the operators of two Subway outlets in Adelaide.

Facing court are Hutt Nominees Pty Ltd, which is the franchisee of the Subway outlet on Jetty Road in Glenelg, and McNeill Investments Pty Ltd, which is the franchisee of the Subway outlet in the Bayside Village Shopping Centre in Glenelg. Also facing court is Adelaide man Jason Matthew Hood, who is a director of both companies.

The regulator investigated after receiving requests for assistance from two former employees of Hutt Nominees and one former employee of McNeill Investments.

A Fair Work Inspector issued three Compliance Notices to Hutt Nominees and one to McNeill Investments in September 2020 after forming a belief that the employees had been underpaid entitlements for various periods between August 2017 and October 2019.

The inspector had formed a belief that the employees had been underpaid entitlements under the Fast Food Industry Award 2010, including minimum rates for ordinary hours, casual loadings, penalties, a special clothing allowance and annual leave entitlements on termination of employment.

Two of the employees were young workers, aged 17 and 18 when they commenced employment.

The FWO alleges Hutt Nominees and McNeill Investments, without reasonable excuse, failed to comply with the Compliance Notices, which required them to calculate and back-pay the workers' outstanding entitlements. McNeill Investments also allegedly breached workplace law by failing to comply with a Notice to Produce records or documents issued by a Fair Work Inspector in October 2019.

Mr Hood was allegedly involved in both companies' failures to comply with the Compliance Notices.

In line with the FWO's proportionate approach to regulation during the COVID-19 pandemic, the FWO made several attempts to secure voluntary compliance before commencing legal action.

Fair Work Ombudsman Sandra Parker said the regulator would continue to enforce workplace laws and take businesses to court where lawful requests are not complied with.

"Compliance Notices are important tools used by inspectors to deal with apparent contraventions of the Fair Work Act or industrial instruments, most typically Modern Awards," Ms Parker said.

"Where employers do not respond to or comply with these Notices, we will take appropriate enforcement action to protect employees. A court can order a business to pay penalties for not complying with such a Notice, in addition to back-paying workers as appropriate. Any employees with concerns about their pay or entitlements should contact us for free assistance."

The FWO is seeking penalties against McNeill Investments, Hutt Nominees and Mr Hood. In relation to the alleged Compliance Notice breaches, the companies face maximum potential penalties of \$33,300 and Mr Hood faces a potential penalty of up to \$6,660. In relation to the alleged Notice to Produce breach, McNeill Investments faces a maximum potential penalty of \$63,000.

The regulator is also seeking a court order for the companies to take the action required by the Compliance Notices, including calculating and rectifying underpayments in full for the employees, plus superannuation. A directions hearing is listed in the Federal Circuit Court in Adelaide on 24 May 2021.

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