

Over \$200,000 penalties for former petrol station operators

10 February 2021

The former operators of a petrol station on the NSW Central Coast who underpaid two migrant workers must pay \$210,000 in penalties after their appeal was dismissed by the Federal Court.

The Fair Work Ombudsman obtained orders in the Federal Circuit Court last year requiring Kamaldeep Singh and his wife Uma Singh to pay penalties of \$120,000 and \$90,000 respectively for their conduct relating to a Metro Petroleum petrol station they formerly operated on the Pacific Highway, Doyalson.

Mr and Mrs Singh were the director and manager respectively of Sinpek Pty Ltd (in liquidation), which underpaid the two employees, a male and a female, a combined \$52,722 between May 2015 and their termination in August 2016. The female employee was paid nothing for her first three months' work.

The court found that Mr and Mrs Singh were involved in Sinpek's failure to pay minimum rates to the workers for ordinary hours, penalty rates for overtime, weekend and public holidays, shiftwork loadings and various leave entitlements under the Vehicle, Manufacturing, Repair, Services and Retail Award 2010.

There was also a failure to provide payment in lieu of notice for termination and record-keeping and pay slips laws were also breached.

Mr Singh was also twice involved in Sinpek's breach of the Fair Work Act's prohibition on unreasonable requirements to pay an employer money relating to performance of work. Mr Singh required the male employee to cover the loss from a customer who drove off without paying for fuel, and to pay part of Sinpek's income tax payments relating to that employee's work for Sinpek.

Sinpek entered voluntary liquidation in July 2019, about three weeks before the scheduled Federal Circuit Court liability and penalty hearing. Mr and Mrs Singh later appealed the penalty decision. The Federal Court has now dismissed the appeal.

The workers were Indian nationals from non-English speaking backgrounds, who were employed by Sinpek as console operators. Mr Singh was also born in India.

Acting Fair Work Ombudsman Jeremy O'Sullivan said the significant penalties ordered – upheld by the Federal Court – reflected the seriousness and unacceptability of vulnerable worker exploitation.

"All employees in Australia have the same rights at work, regardless of citizenship or visa status. We encourage anyone with concerns about their wages or entitlements to contact us," Mr O'Sullivan said.

The two workers were on bridging visas and applying for Regional Sponsored Migration Scheme visas through Sinpek, prior to having their jobs terminated in August 2016. The male worker was underpaid \$24,607 and the female \$28,114.

Federal Circuit Court Judge Sandy Street said the workers were vulnerable due to both their visa and economic circumstances, and that Mr and Mrs Singh "exploited those vulnerabilities knowingly, and to their own advantage and for their own benefit".

"[The employees] moved interstate under the inducements of [Mr and Mrs Singh] and... were placed in a position of threat of return to India or being deported if they failed to accommodate the exploitation by [Sinpek, Mr Singh and Mrs Singh]," Judge Street said.

"The conduct of the respondents in the circumstances of the present case is at the most serious end of the spectrum in respect of each of the contraventions."

Judge Street also referred to the placing of Sinpek into voluntary liquidation, saying this occurred "as a means to avoid meeting obligations under the [Fair Work] Act as to paying compensation and meeting penalties".

"The placing of an employer into voluntary liquidation after commencement of proceedings and so shortly [three days] after penalty submissions are filed is serious aggravating conduct warranting severe sanction [by] the Court as a matter of specific and general deterrence."

All underpayments have been rectified, with interest.

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NOTE: Sinpek Pty Ltd no longer owns or operates the Metro Petroleum petrol station in Doyalson. The Fair Work Ombudsman has no concerns with the current operator.

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