

Bendigo transport company fined \$60,200 for underpaying casual truck driver

4 December 2010

A Bendigo transport company with a history of underpaying its employees has been fined a total of \$60,200 following a prosecution by the Fair Work Ombudsman.

Stewarts Transport & Logistics Pty Ltd has been fined \$43,500 and the company's owners, Pamela and Rodney Stewart, a further \$8700 and \$8000 respectively.

The penalties were imposed by the Federal Magistrates Court in Melbourne after the Stewarts admitted they were responsible for their company underpaying a casual truck driver \$3228 over two months last year.

Pamela Stewart also failed to keep proper records for the employee or issue him with payslips.

The driver was usually paid a flat rate of \$18 an hour, but was entitled to at least \$20.64 for ordinary hours and up to \$34.67 for overtime.

Delivering her judgment, Federal Magistrate Heather Riley found the Stewarts had "showed a serious and deliberate disregard for their obligations".

The Court heard that the Fair Work Ombudsman (and its predecessor agencies) had received 11 complaints against the company over a seven-year period, seven of which were substantiated.

"It is very significant that seven previous complaints relating to underpayment of wages and failure to keep the required records have been established against the respondents over a period of seven years," Federal Magistrate Riley said.

"It means that the respondents had been alerted to the need to take more care in the calculation of wages and the keeping of records.

"The fact that the respondents underpaid wages yet again can only mean that they either do not care about whether they paid (the complainant's) wages he was entitled to by law, or they deliberately decided not to pay him the wages they were required by law to pay him.

The Court found that while the \$3228 underpayment was not "large in absolute terms", it was about 30 per cent less than the worker should have been paid, and that was "a very significant shortfall".

Federal Magistrate Riley noted that back-payment to the worker had only been made after "concerted efforts" by the Fair Work Ombudsman from September, 2009 until July, 2010 and "only in the context of a prosecution being imminent."

Federal Magistrate Riley found that the Stewarts had "accepted the allegations made against them because they saw no realistic alternative".

"I consider that they paid (the complainant) his outstanding wages, albeit 10 months late, because they perceived that the penalties imposed on them would have been very much greater if they had not paid the money.

"I do not regard the respondents' acceptance of the allegations or the payment of the outstanding wages as evidence of genuine contrition".

Federal Magistrate Riley noted there had been "no hint of an apology and no sign of regret" from Pamela Stewart when, during a telephone conversation with a Fair Work Ombudsman lawyer, she had said if she ever saw the complainant again "she would kill him and she would spit on him in the street".

"I do not accept that the respondents have shown any genuine contrition for the breaches they have committed in relation to (the complainant). On the contrary, the evidence shows that (Pamela Stewart) at least has considerable contempt for (the company's) employees and their lawful entitlements."

The Court heard that in a telephone call to a Fair Work Ombudsman lawyer in July, Pamela Stewart described the company's employees as "morons"

Federal Magistrate Riley said: "There is no evidence that (the Stewarts) have apologised to (the complainant) or conveyed to anyone any regret ... their admissions and their payment of the outstanding amount in my view are no more than an attempt to minimise the consequences for themselves.

"Compliance with all aspects of the law is not optional. It is essential.

"Where wages are concerned, the consequence of not complying with the relevant law is a direct and immediate impact on one or more individual workers."

She also noted that "proper records and payslips are essential for the convenient investigation of potential breaches of wage regulations and the enforcement of employee entitlements."

Federal Magistrate Riley said: "It is necessary for the court, on behalf of our community generally, to mark its disapproval of the respondents' conduct to discourage similar conduct in others."

Fair Work Ombudsman Executive Director Michael Campbell says the penalty sends a clear message that employers cannot get away with deliberately breaching workers' rights, and that underpaying staff is bad business.

"This employer tried to cut costs by short-changing an employee, but has now been saddled with significant fines, on top of back-paying the employee," he said.

"Successful prosecutions such as this also benefit employers who are complying with workplace laws because it helps them to compete on a level playing field."

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