

## Court penalises businessman over company's failure to pay staff

21 December 2011

The Federal Magistrates Court has penalised a Sydney business operator who deliberately underpaid five long-serving employees two years ago – including one who pleaded for his wages to buy Christmas presents for his children.

Following a prosecution launched by the Fair Work Ombudsman, Federal Magistrate Matthew Smith has imposed a penalty of \$8000 against Robert Michael Francis, who formerly owned and ran a printing company at Chippendale.

The Court found that Francis was responsible for his private company, Beaver Press Sales Pty Ltd, underpaying five print-production employees a total of \$55,145 in wages and annual leave entitlements.

One employee was owed more than \$16,000 when Francis placed his company into voluntary administration in April, 2010.

The Fair Work Ombudsman was subsequently unable to prosecute Beaver Press.

In an 18-page judgment handed down this week, Federal Magistrate Smith referred to and accepted the evidence of one employee, who had worked for Beaver Press for 21 years, about a conversation that took place in the company carpark about two weeks before Christmas, 2009.

In an affidavit tendered to the Court, the employee said he had asked Francis when he was going to receive his back wages, saying words to the effect: "I need to get my kids Christmas presents or they're not going to have a Christmas morning."

According to the affidavit, Francis replied: "Well I'm not getting any Christmas presents either you know. If you don't like it, then leave."

The Court also heard that a month earlier, in November, 2009, Francis had addressed a staff meeting at the factory, telling workers words to the effect: "People owe me money. I'm waiting on cheques to come in. Once that's happened, I'll pay a couple of people their wages a week until we're caught up. If you don't like that, you can leave."

In his judgment, Federal Magistrate Smith says that in the months before Francis took his company into administration, "wage payments appear to have been staggered, with the intent of saving the company necessary wages-expenses while seeking to benefit from the unpaid labour of some of its employees".

"The non-payments were deliberate, as was a refusal to pay them in arrears."

Further, Federal Magistrate Smith said: "I infer that that Francis had the intention of keeping the company operating with an appearance of solvency to external creditors, notwithstanding that he was unable to pay employee entitlements, which deserved prompt and priority consideration."

"I am not satisfied that he (Francis) has any acceptable excuse for conducting the financial affairs of his company so that they were unable to meet its statutory obligations to employees when they arose, or even in the course of insolvency administration," Federal Magistrate Smith found.

"Francis has had the opportunity, which he has declined to take, to appear before me in person or through a representative to establish external causes for his contravening conduct.

"He has, on the evidence before me, denied any personal responsibility and shown no remorse for the financial losses of his employees and maintains an attitude of denial.

"The basic circumstances point to a substantial level of culpability ..."

The underpaid employees have since recovered some of their entitlements through the General Employee Entitlements and Redundancy Scheme (GEERS).

However, Federal Magistrate Smith said this provided no excuse for Francis' conduct, which had caused the employees significant anxiety and uncertainty.

Fair Work Ombudsman Nicholas Wilson says the Court's commentary and financial penalty re-enforce that deliberate underpayment

of staff is a serious matter.

“It is important for us to take action against those companies and individuals who show little regard for employees’ lawful workplace rights,” Mr Wilson said.

The Fair Work Ombudsman has referred to other regulatory agencies allegations that after the appointment of liquidators to Beaver Press Sales, Francis commenced another printing business on the same premises through another company - Goodcrowd Integrated Print Communications Pty Limited – of which he is the sole director and majority owner.

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