

## Record WA fine against construction company which paid Chinese nationals just \$3 an hour

31 May 2011

A Western Australian construction company which recruited tradesmen from China and paid them less than \$3 an hour has been fined \$123,000.

The Federal Court in Perth imposed the penalty today against Kentwood Industries Pty Ltd following an investigation and prosecution by the Fair Work Ombudsman.

The company's managing director and part-owner, Jian Yang Zhang, a Chinese national who has resided in Perth, was fined a further \$24,600.

Justice Neil McKerracher ordered Kentwood to back-pay the workers a total of \$242,000 plus interest of about \$65,000.

The Court also ordered the company to pay the Fair Work Ombudsman's legal costs.

Fair Work Ombudsman Executive Director Michael Campbell says the penalty is the highest the Agency has secured in WA, reflecting the seriousness of Kentwood's exploitation of vulnerable employees.

The Chinese workers were underpaid amounts ranging from \$28,000 to \$69,000.

The five were qualified and experienced tradesmen recruited from China by Zhang and his agents to work in Australia on 457 visas, sponsored by Kentwood.

They worked on residential construction projects in Perth, a Chinese Garden of Remembrance in Kalgoorlie and a Chinese Temple at the Springvale Cemetery in Melbourne.

While four of the men were in Melbourne, they stayed with other Kentwood employees in a house rented by Kentwood, living two-to-three to a bedroom and sometimes having to sleep on the floor.

They variously worked as labourers, carpenters and joiners, tilers, bricklayers, plasterers, renderers, welders and performing loading and unloading duties.

The tradesmen worked up to 11 hours a day, six to seven days a week without rostered days off and were not paid penalty rates or annual leave entitlements.

They were individually paid amounts ranging from \$7502 to \$12,405 - or less than \$3 an hour - for between nine and 14 months' work in 2006-07.

One worker did not receive his first pay for five months and three others had to wait three months before receiving their first pay.

"This type of behaviour is completely unacceptable to every decent Australian and deserves complete condemnation," Mr Campbell said.

Four of the workers paid up to \$A2500 to secure their jobs with Kentwood and have their 457 visas arranged for them.

The Fair Work Ombudsman and the Department of Immigration and Citizenship (DIAC) started investigating Kentwood and Zhang in February, 2007 after one of the workers lodged a complaint about his pay and conditions.

Soon after the Fair Work Ombudsman first contacted Kentwood, Zhang asked three of the workers to sign sham statements that they had worked no more than 40 hours a week. They refused.

Zhang immediately sacked one of the workers after he queried his entitlements and the others ceased working for Kentwood in July, 2007 when DIAC suspended the company from sponsoring 457 visa workers.

The workers found new sponsors and worked in Australia until last year, when they returned to China.

Justice McKerracher described the case a "serious course of sustained and conscious underpayment" to the "severe detriment of a vulnerable group of low paid employees".

He said there was a need to impose a penalty that deterred others from similar conduct.

“Given the vulnerability of subclass 457 visa migrant workers in the Australian community, general deterrence is particularly important,” he said.

“Failure by employers to comply with Commonwealth workplace laws in relation to migrant workers can result not only in exploitation of vulnerable workers, but can also give the non-compliant employer an unfair comparative advantage against competing Australian businesses and workers operating lawfully.”

After hearing evidence from the five Chinese workers at trial, Justice McKerracher said it was clear Zhang was “the hands and brain” of Kentwood and that Zhang knew the employees were vulnerable and highly reliant on Kentwood while in Australia.

“The employees were not fluent in English and had not previously worked in Australia,” Justice McKerracher said.

“It is reasonable to infer they had limited knowledge, if any, as to how to exercise their rights under relevant industrial instruments and standards.”

Kentwood paid the employees about one-fifth of their statutory minimum remuneration entitlements.

Justice McKerracher said the underpayments caused the employees to experience significant financial hardship and there was a need to deter Zhang and Kentwood from further breaches.

“Although it appears Mr Zhang no longer resides in Australia, Kentwood continues to conduct business in Australia and Mr Zhang remains a director of Kentwood,” he said.

Justice McKerracher said Zhang had been employing Chinese nationals to work in Australia since 2005 and had operated his construction business in WA for about nine years.

“The task of the Court is to fix penalties which pay appropriate regard to the circumstances in which the contraventions have occurred and the need to sustain public confidence in the statutory regime which imposes the obligations,” he said.

Mr Campbell said the Fair Work Ombudsman took a particularly dim view of companies which sought to exploit vulnerable workers.

“Foreign workers have the same rights as any other worker and employers tempted to short-change people because they are from a non-English speaking background and don’t necessarily understand those rights should look at the series of hefty penalties the Fair Work Ombudsman has secured for such conduct - and think again,” he said.

The highest-ever penalty achieved by the Fair Work Ombudsman was \$288,000 against Adelaide cleaning company Saya Pty Ltd, which underpaid two vulnerable workers - an 18-year-old female and a newly-arrived migrant from Iraq - less than \$4000.

Other penalties achieved by the Fair Work Ombudsman for breaches of foreign workers’ rights include:

- \$150,000 against the former operators of two 7-Eleven stores in Melbourne and Geelong for deliberately underpaying six international students almost \$90,000,
- \$183,400 against Melbourne restaurant operator Penang Kayu Nasi Kander Pty Ltd and company co-owner Poh Meng Hong for underpaying a Malaysian chef more than \$75,000,
- \$85,750 against WA construction company Hanssen Pty Ltd (the previous highest penalty in WA) for breaching the workplace rights of fifteen 457 visa holders from the Philippines and Ireland, and
- \$43,425 against two companies and a director involved with Perth’s Shimizu Japanese restaurants for underpaying dozens of staff, including young foreign workers with limited English.

The Fair Work Ombudsman’s website - [www.fairwork.gov.au](http://www.fairwork.gov.au) - now provides information about workplace rights in more than 26 languages.

Any worker concerned they’re being treated unfairly should call the Fair Work Infoline on 13 13 94.

A free interpreter service is available on 13 14 50.

Decision: [Fair Work Ombudsman v Kentwood Industries Pty Ltd \(PDF 136.9KB\) \(www.fairwork.gov.au/ArticleDocuments/757/Fair-Work-Ombudsman-v-Kentwood-Industries-Pty-Ltd.pdf.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/757/Fair-Work-Ombudsman-v-Kentwood-Industries-Pty-Ltd.pdf.aspx)

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Fair Work Online: [www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Infoline: 13 13 94

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Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

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