

Former South Grafton abattoir operators fined \$115,200 over deliberate underpayments

20 April 2012

Note: Reference to prosecution in this media release is a general reference to the FWO commencing proceedings for the imposition of civil penalties and should not be taken to be a reference to criminal proceedings.

The Federal Court in Sydney has today found that the former operators of the South Grafton abattoir in regional NSW treated 11 of their employees "callously and with flagrant disregard for their legal rights".

The employees were denied entitlements amounting to almost \$60,000 when their jobs were terminated - an underpayment Justice John Buchanan described as "one closely approaching a worst possible case".

Following an investigation and prosecution by the Fair Work Ombudsman, Justice Buchanan today imposed a near-maximum penalty of \$115,200, which represents 97 per cent of the possible maximum of \$118,800.

The abattoir's former owner, Stuart Bruce Ramsey, has been fined \$19,200 and Ramsey Food Processing Pty Ltd - through which he formerly operated the abattoir - a further \$96,000.

Justice Buchanan found that Ramsey was responsible for his company breaching workplace laws by denying the 11 employees a total of \$57,847 in severance pay, accrued annual leave and payment in lieu of notice when their employment was terminated in 2008.

The Fair Work Ombudsman secured a Court Order late last year for Ramsey Food Processing to rectify the underpayments, and back-payment subsequently occurred earlier this year.

In his five-page judgment handed down this morning, Justice Buchanan says: "I view the present case as one closely approaching the worst possible case. The employees were treated callously and with flagrant disregard for their legal rights."

He went on: "I regard the breaches in this case as very serious. They appear to me to have involved a deliberate, calculated and systematic refusal to comply with the requirements of the Workplace Relations Act and to take advantage of the vulnerability of the complainant employees".

Further, Justice Buchanan said the conduct of Ramsey and his company was "designed, from the outset, to deny the rights of employees" and that there had been "a systematic refusal to accept or honour specific legal entitlements".

The Court found Ramsey attempted to avoid Ramsey Food Processing being legally liable for workers' entitlements by setting up a company called Tempus Holdings and purporting that Tempus Holdings employed workers and supplied them to Ramsey Food Processing to work at the abattoir in a labour-hire arrangement.

After the employment of the 11 South Grafton abattoir workers was terminated, Tempus Holdings was drained of funds and placed into liquidation in an effort to prevent the workers from recovering their termination entitlements, the Court found.

However, Justice Buchanan found that Ramsey Food Processing was the true employer of the workers and was lawfully responsible for meeting their entitlements.

Justice Buchanan said the purported arrangements were "devoid of any legal content" and were "wholly ineffective to deflect responsibility from Ramsey Food Processing".

"Everything done in the name of Tempus was, in my view, a sham. The establishment of Tempus had its origins in deceit," Justice Buchanan said. "Persons acting on behalf of Ramsey Food processing acted to frustrate, deny or defeat the entitlements of employees." Justice Buchanan also found that Ramsey was "wholly concerned in and responsible for the contraventions by Ramsey Food Processing."

Justice Buchanan also noted that in 2006, Ramsey shut down four companies he controlled to avoid paying more than \$200,000 in fines and back-payment orders imposed by the Federal Court for underpayment of \$125,000 in termination entitlements of South Grafton abattoir workers in 2002.

Fair Work Ombudsman Nicholas Wilson says the near-maximum penalty illustrates that repeated, deliberate underpayment of employee entitlements is a very serious matter that will not be tolerated by the Courts. "This case demonstrates that employers who try to use legal or corporate trickery to avoid paying staff their full entitlements will be held to account," Mr Wilson said.

"The case also serves to highlight the willingness of Fair Work inspectors to go the extra mile to conduct meticulous investigative work, in the face of firm resistance, to ensure employees receive their full lawful entitlements."

A separate - and unprecedented - Court action by the Fair Work Ombudsman against the Ramsey Group of companies secured almost \$1 million in entitlements for former workers of the South Grafton abattoir.

After Ramsey announced the closure of the South Grafton late last year, the Fair Work Ombudsman commenced action in the Federal Court over concerns that about 150 abattoir workers would not be paid entitlements owing to them, including redundancy pay and accrued annual leave and long service leave entitlements.

The Fair Work Ombudsman successfully applied to the Federal Court for Orders for Ramsey and two companies he controlled to transfer \$1.5 million to a trust account and to give the Fair Work Ombudsman access to employment documents detailing the entitlements of abattoir workers.

The court action enabled the Fair Work Ombudsman to determine what entitlements were owing to workers and to ultimately have \$985,000 of Ramsey-Group-of-companies funds released from the trust to meet those entitlements.

The court action - the first of its kind for the Fair Work Ombudsman - also enabled the Agency to ensure that significant personal leave entitlements of abattoir workers who transferred to the Northern Meat Co-operative Meat Company were recognised.

Mr Wilson said the workers were understandably very concerned their lawful entitlements would not be honoured after the closure of the abattoir was announced. "It was a fantastic result for those workers to each receive thousands of dollars owing to them just before Christmas last year.

"The commitment, determination and professional skill of the Fair Work Ombudsman staff who co-ordinated this court action was exemplary and they deserve the strongest praise for their efforts."

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