

Court action over alleged \$143,000 underpayment of Adelaide trolley collectors

26 February 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 Fair Work Ombudsman has launched a prosecution against three individuals and a national supermarket chain, alleging four Adelaide trolley collectors were underpaid more than \$143,000.

The four respondents to the prosecution are:

- Adelaide man Ahmad Hamid Mohammed Al Hilfi, a sole trader;
- Sydney man Nidal Albarouki, owner of trolley collecting companies Starlink International Group Pty Ltd and Starlink Operations Group Pty Ltd;
- Sydney man Louis 'Clency' Ferriere, general manager of the Starlink companies; and
- National company Coles Supermarkets Australia Pty Ltd.

The Fair Work Ombudsman alleges each of the respondents is culpable for four trolley collectors at the West Lakes shopping centre being underpaid a total of \$143,558.

The trolley collectors - four Indian males in their 20s who spoke limited English - were allegedly underpaid between October, 2009 and July, 2011.

Coles allegedly contracted the Starlink companies to provide trolley collecting services at West Lakes.

Starlink companies, through Mr Albarouki and Mr Ferriere, allegedly sub-contracted the service to Mr Al Hilfi.

Mr Al Hilfi allegedly employed the trolley collectors on a casual basis and paid them as little as \$7.34 an hour.

The Fair Work Ombudsman says they should have received more than \$16 an hour for normal hours of work and up to \$34 an hour for some overtime, weekend and public holiday work.

The four were allegedly underpaid \$61,048, \$45,795, \$20,096 and \$16,619.

The Fair Work Ombudsman alleges that Mr Albarouki and Mr Ferriere knew that the sub-contracting prices Starlink companies paid to Mr Al Hilfi would result in - or would be likely to result in - Mr Al Hilfi undercutting minimum wage rates.

Similarly, Coles allegedly knew that under the contracting prices it paid to the Starlink companies, it was not feasible to provide the required trolley collecting services without undercutting minimum wage rates.

A Statement of Claim lodged in the Federal Court also alleges that Coles had reason to believe - or at least suspect - as early as 2009 that Mr Al Hilfi was underpaying the trolley collectors employed at West Lakes.

Court documents allege that Coles was wilfully blind to the underpayments and did not take action to prevent them.

Coles allegedly did not terminate its contract with the Starlink companies until July, 2011.

It is the second time the Fair Work Ombudsman has taken legal action against a company because a contract entered into allegedly did not allow for proper wages to be paid.

"In cases where we believe breaches of workplace laws have occurred, we are committed to scrutinising the commercial processes behind those breaches and holding any involved parties to account," Fair Work Ombudsman Nicholas Wilson said.

"Turning a corporately-sanctioned 'blind eye' to outsourced work that is performed by another enterprise using contractors on below-award rates of pay may expose enterprises up the procurement chain to liability.

"All parties should undertake due diligence when outsourcing work to contracted workers, particularly to lowest-cost providers, to ensure lower costs are attributable to efficiencies in the business and not due to the potential exploitation of workers on below-award

rates."

Mr Wilson said the large amount allegedly involved and the vulnerability of the workers were also decisive factors in the decision to prosecute.

The Fair Work Ombudsman's first prosecution alleging a contract not allowing for proper wages to be paid also involved alleged underpayment of Adelaide trolley collectors (for details, see: [Adelaide trolley collectors allegedly underpaid \\$165,000 – two companies to face court \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2011-media-releases/august-2011/20110814-south-jin\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2011-media-releases/august-2011/20110814-south-jin)).

The Fair Work Ombudsman is seeking penalties against Mr Al Hilfi, Mr Albarouki, Mr Ferriere and Coles in relation to multiple alleged underpayment-related breaches of the Fair Work Act.

The individuals face maximum penalties of \$6600 per breach and Coles faces maximum penalties of \$33,000 per breach.

The Fair Work Ombudsman is also seeking a Court Order for Mr Al Hilfi to rectify the alleged underpayments and additional penalties against Mr Al Hilfi for allegedly failing to issue pay slips and keep proper employment records.

The Starlink companies were placed into voluntary administration in December last year, which prevents the Fair Work Ombudsman from prosecuting them.

Employers or employees seeking assistance should contact the Fair Work Infoline on 13 13 94 or visit www.fairwork.gov.au.

A free interpreter service is available on 13 14 50 and information on the website is translated into 27 different languages.

The Fair Work Ombudsman has also recently launched 14 Online videos to assist foreign workers understand their workplace rights and entitlements.

The short videos - available at www.youtube.com/fairworkgovau (<http://www.youtube.com/fairworkgovau>) - are presented by native speakers of Mandarin, Cantonese, Indonesian, Serbian, Arabic, Dari, Farsi, Khmer, Korean, Spanish, Vietnamese, Thai and Turkish. There is also an English version.

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Fair Work Online: 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

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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