

Regional transport company faces Court action over alleged sham contracting

12 July 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 the operators of a NSW transport business, alleging they were involved in sham contracting activity and the underpayment of seven workers by more than \$43,000.

Facing court is Happy Cabby Pty Ltd, a Newcastle-based company primarily engaged in transporting passengers to the Sydney international and domestic airport terminals.

Also facing court is the company's sole director Graeme Thomas Paff, of Nords Wharf, just south of Newcastle.

Mr Paff was allegedly involved in Happy Cabby breaching the sham contracting provisions of workplace laws by knowingly misclassifying seven bus drivers as independent contractors.

The Fair Work Ombudsman alleges the correct classification for the drivers was as casual employees, for reasons including that Happy Cabby owned the buses they drove, had a high degree of control over their work and determined how much they would be paid.

Court documents allege that despite Happy Cabby requiring the drivers to have Australian Business Numbers (ABNs), the drivers were not conducting businesses in their own right.

Sham contracting allegedly led to the drivers being underpaid \$43,812 in employee-related entitlements - including minimum wages and penalty rates for weekend, overtime, public holiday and early/late work - between January and November, 2011.

The largest alleged individual underpayment is \$18,758.

Workplace laws relating to keeping employment records and issuing pay slips were also allegedly contravened.

The alleged breaches were discovered last year during the Fair Work Ombudsman's national auditing campaign focusing on sham contracting.

Fair Work Ombudsman Nicholas Wilson says sham contracting is a serious matter because it can lead to workers being denied their rightful workplace rights and entitlements.

The Fair Work Ombudsman alleges Mr Paff was involved in Happy Cabby committing several breaches of workplace laws. Mr Paff faces maximum penalties of up to \$6600 per breach and the company faces maximum penalties of up to \$33,000 per breach.

The Fair Work Ombudsman is also seeking a Court Order for Happy Cabby to rectify the alleged underpayment of the workers. A directions hearing is listed for July 27 in the Federal Magistrates Court in Sydney.

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.

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Contact us

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

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