

Fruit and veg shop allegedly underpaid international student \$14,000

31 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.

A young international student was allegedly underpaid almost \$14,000 when she worked for six months at a fruit and vegetable store in regional NSW, the Fair Work Ombudsman alleges.

It is claimed the South Korean student, who spoke little English, was paid as little as \$6 an hour when she worked at the retail outlet on Waterfall Way at Bellingen.

The student was one of three females aged between 18 and 20 and two other employees aged in their 30s who were allegedly underpaid more than \$82,000 between December, 2006 and August, 2010.

One of the workers was allegedly underpaid a total of \$60,827 over the four-years she worked at the store.

The Fair Work Ombudsman has initiated legal action against the operators of the store in the Federal Magistrates Court in Sydney.

Facing court is E. A. Fuller & Sons Pty Ltd and company director and part-owner Eric Andrew Fuller, who manages the store.

The Fair Work Ombudsman alleges the five casual shop assistants were paid flat hourly rates, which led to underpayment of their casual loadings, annual holiday loadings and penalty rates for weekend, overtime and public holiday work.

Court documents allege that sham contracting laws were breached in relation to two workers, who were knowingly misclassified as independent contractors.

The Statement of Claim says the two should have been classified as employees, for reasons including the high degree of control their employer had over their work.

Fair Work inspectors discovered the alleged breaches when they investigated complaints lodged by the employees. Record-keeping contraventions allegedly were also discovered.

Some back-payments have been made to employees but it is alleged that almost \$64,000 in outstanding entitlements remains to be paid.

Acting Fair Work Ombudsman Mark Scully says a decision to prosecute was made because of the significant amount involved and the employer's failure to fully rectify the matter.

Mr Fuller 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 E. A. Fuller & Sons to rectify the alleged underpayments in full.

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.

Media inquiries:

Penny Rowe, Media & Stakeholder Relations

0457 924 146

Penelope.Rowe@fwo.gov.au

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

Need language help?

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

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.