

Director fined \$11,000 over ‘seriously reckless’ employment practices

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The former sole director of a retail company has been fined \$11,000 after the Federal Magistrates Court found he presided over “seriously reckless” employment practices.

The Fair Work Ombudsman took legal action against Raymond James Bird in May last year, alleging he had been centrally involved in a \$41,000 underpayment of 25 casual sales assistants, some who were paid nothing at all.

Bird was manager and sole director of Clevedon Australia Pty Ltd, which operated gardening retail outlets in NSW, Queensland and the ACT until it went into liquidation last year.

The underpaid employees, including six juniors aged under-21, worked as shop assistants at temporary stalls in shopping centres selling gardening tools and products.

In his judgment handed down on Friday, Federal Magistrate Matthew Smith noted that Bird’s initial response to the Fair Work Ombudsman’s investigation “was to stall and avoid the inspectors’ inquiries” and that he had left Australia for New Zealand after his company went into receivership.

Describing Clevedon’s contraventions of workplace law as “very serious”, Federal Magistrate Smith said there was “a significant need for substantial penalties to carry a deterrent message, both to Bird and to other managers of similar businesses”.

“The picture which emerges from the evidence is of the exploitation of a large group of desperate unskilled job-seekers ...” Federal Magistrate Smith found.

“There is some evidence that the ignoring of Award entitlements was a conscious and deliberate policy adopted by Bird ... clearly he was, at least, responsible for employment practices in relation to wage-fixing which were seriously reckless as to observance of the legal entitlements of employees”.

Federal Magistrate Smith went on: “The evidence of the experiences of some of the unpaid employees leaves me with a firm impression that some local managers in Clevedon’s business had no intention of paying the people they engaged, conscious that the departures of those who were not paid would readily be filled from an accessible pool of job-seekers circulating within the shopping centres where Clevedon operated.

“It is not clear whether Bird held the same attitude and whether he encouraged his local managers to exploit the employees in this cynical manner ... however, clearly (he) was responsible for the general employment practices of Clevedon which allowed this to happen.”

Federal Magistrate Smith said Bird should at least have instituted and supervised employment practices which did not allow it to happen, finding that his failure to do so showed “a very serious dereliction of his responsibilities as the managing director of the corporate employer”.

The Court accepted the Fair Work Ombudsman’s submissions that 16 staff in NSW had been underpaid \$25,700, nine in Queensland had been underpaid \$14,900 and two in the ACT had been underpaid over \$1000.

The employees worked at locations including:

- NSW: Sydney (including Brookvale, Carlingford, Chatswood, Hornsby, North Ryde, Castle Hill, Marickville, Bankstown, Penrith, Miranda, Wetherill Park), Erina, Tuggerah, Bateau Bay, Cessnock, Newcastle and Coffs Harbour.
- ACT: Canberra (Belconnen, Tuggeranong and Woden).
- QLD: Noosa, Toowoomba, Ipswich and Bundaberg.

Part of the \$11,000 penalty imposed on Bird - which must be paid within 28 days - includes \$700 for failing to keep proper staff records and \$700 for failing to provide pay slips to employees within one day of their wages being paid.

Fair Work Ombudsman Nicholas Wilson says his Agency initiated legal action because of the significant amount involved and the employer’s failure to rectify the matter.

It was unable to prosecute Clevedon Australia after it went into liquidation.

Mr Wilson says the penalty illustrates the dim view that courts are taking of employers who seek to cheat their staff of their lawful entitlements.

Employers or employees seeking assistance should visit www.fairwork.gov.au.

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