

Second company director fined over failure to produce employment records

4 October 2012

The Federal Magistrates Court has fined a second Perth company director who refused to provide staff employment records to the Fair Work Ombudsman.

The Court found that Antonino Rechichi, of Waterloo Street, Joondanna, had deliberately refused to provide the records for more than nine months, despite warnings of potential financial penalties.

The records were only supplied after the Fair Work Ombudsman commenced legal proceedings against Rechichi and his company, Finetune Holdings Pty Ltd.

Proceedings against Finetune Holdings, which formerly operated Rechichi Architects at Northbridge, were stayed after the company went into liquidation.

In his 42-page decision handed down on Tuesday, Federal Magistrate Toni Lucev imposed a penalty of \$1650 against Rechichi, saying his conduct had “undermined the utility and effectiveness” of the law.

Under the Fair Work Act, employers must comply with requests from the Fair Work Ombudsman to provide employment records relating to employees and former employees.

The Fair Work Ombudsman requested employment records from Rechichi’s company late in 2009 after receiving a complaint from an employee that he had been underpaid.

The Fair Work Ombudsman did not make any application to the Court alleging any underpayment of wages and no such finding was made by the Court.

In respect of the failure to produce documents, FM Lucev found that “contrition came late” to Rechichi and that his “contrition appears somewhat imperfect; made of necessity and in the face of a fear of an impending penalty, or at least a bowing to the inevitable, rather than being truly contrite”.

A penalty was required to mark disapproval of the conduct in question, but also to act as a warning to others not to engage in similar conduct, he said.

“A primary objective of penalties is deterrence. In imposing civil penalties, deterrence is therefore a significant consideration. It is assumed that an appropriate penalty will act as a deterrent to others who might be likely to offend,” FM Lucev said.

“Employers ought not be impressed with the idea that they can avoid the requirement to produce documents upon request by the Fair Work Ombudsman or fail to co-operate with Fair Work inspectors lawfully exercising their powers under the Fair Work Act”.

Last week, FM Lucev also imposed a penalty against Jack Craig Garber, of Mirrabooka, for failing to produce employment documents to the Fair Work Ombudsman.

See: [“Belligerent” company director fined over failure to produce employment records \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/september-2012/20120928-nerd-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/september-2012/20120928-nerd-penalty)

In that case, FM Lucev noted that Garber had “belligerently expressed threats of legal action” at the Fair Work Ombudsman and had shown no “credible regret or a real willingness to facilitate the course of justice”.

He found that Garber’s conduct “stifled” the Fair Work Ombudsman’s ability to conduct a proper investigation into complaints by two of his employees.

“Such conduct undermines the objects and purposes of the Fair Work Act,” he said.

Garber was sole director and secretary of Nerd Group Australia Pty Ltd, which operated a computer retail and repair business at Malaga trading as the “Nerd Shop”.

After finding that Garber had deliberately refused to comply with Fair Work Ombudsman requests to provide employment documents, Federal Magistrate Lucev imposed a penalty of \$5280.

Initially, the Fair Work Ombudsman also commenced proceedings against Nerd Group Australia Pty Ltd, but the action ceased when the company went into liquidation.

The Fair Work Ombudsman requested employment records from the Nerd Group in late 2009 following a complaint from a female staff member that she had not been paid for some hours worked.

Employers or employees seeking information on workplace issues 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.

Follow the Fair Work Ombudsman on Twitter [@fairwork_gov_au](https://twitter.com/fairwork_gov_au) (http://twitter.com/fairwork_gov_au) or find us on [Facebook](https://www.facebook.com/fairwork.gov.au) (<https://www.facebook.com/fairwork.gov.au>) .

Media inquiries:

Penny Rowe, Media & Stakeholder Relations

0457 924 146

Penelope.Rowe@fwo.gov.au

Page reference No: 3839

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.