

Casual employee allegedly threatened with sack over request for vehicle allowance

22 October 2012

A casual employee who pursued a vehicle allowance when using his own motor vehicle in the performance of his duties was told he “should not expect a good outcome and may be fired for causing trouble,” according to documents filed in the Federal Magistrates Court in Brisbane.

The Fair Work Ombudsman has commenced legal proceedings against the Tuscan Landscape Company Pty Ltd, which distributes landscape supplies to retailers in Queensland, NSW and Victoria.

Also facing Court over allegations of adverse action against the employee is Tuscan’s northern regional manager Steven Commons and the company’s Queensland state manager Matthew Thompson.

The Fair Work Ombudsman’s Statement of Claim alleges that, while the employee - a merchandiser - was required to use his own motor vehicle to drive to, from and between various work sites, he was not paid an allowance to do so, when he was actually entitled to a rate of 74 cents a kilometre.

The employee allegedly raised the issue of a vehicle allowance three times with his employer and was refused each time. He was allegedly told he was not entitled to an allowance but if he wanted to claim for the use of his vehicle, he should keep a log book and claim it back on his tax.

After receiving advice from the Fair Work Info line on applicable vehicle allowances, the employee allegedly raised the issue again with Mr Thompson, who allegedly responded that he would speak to his superiors, but that the employee “should not expect a good outcome” and if he pursued the matter, “may be fired for causing trouble”.

It is alleged that Mr Thompson subsequently advised the employee that Tuscan would not pay him a vehicle allowance and his only option was to keep a log book and claim the expense back on his tax.

After learning that the employee had lodged a complaint with the Fair Work Ombudsman over the matter, Mr Thompson allegedly phoned the employee and used words to the effect that if he “kicked up a fuss the big bosses probably would not be happy and would say just sack this guy”.

Further, it is alleged that Mr Commons subsequently advised the company’s senior bookkeeper that if Tuscan was required to pay the employee a vehicle allowance, he would reduce the employee’s hours of work or prohibit him from using his motor vehicle for work-related purposes.

Court documents allege that Tuscan and the employee subsequently agreed to resolve the complaint however, in the course of negotiations Mr Commons telephoned the employee and allegedly said words to the effect that if the employee was not satisfied with a proposed outcome then he and the company should “go their separate ways”.

During this period it is alleged that Tuscan ceased to engage, or offer to engage, the employee for casual employment and, when the employee inquired about his employment status was informed that his hours would return to normal after his claim was resolved.

It is alleged that by ceasing to engage or offer to engage the employee for casual employment, Tuscan breached the general protection provisions of the Fair Work Act.

It is further alleged that threatening the employee that his employment would cease if he pursued his workplace right to a vehicle allowance contravened the Act.

The Fair Work Ombudsman alleges that as a result of the contraventions, and his failure to work for the company again, the employee has suffered non-economic loss and damage including stress and anxiety and hurt, humiliation and inconvenience.

The Fair Work Ombudsman is seeking penalties against Tuscan, Mr Commons and Mr Thompson. The maximum penalty per breach is \$33,000 for the company and \$6600 each for Mr Commons and Mr Thompson.

The Agency is also seeking a Court order for compensation for the employee.

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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