

“Belligerent” company director fined over failure to produce employment records

28 September 2012

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

The Court found that Jack Craig Garber, of Mirrabooka, had shown “a consistent unwillingness to co-operate with the Fair Work Ombudsman.”

The Court also 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”.

Federal Magistrate Toni Lucev said 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,” FM Lucev said in a 22-page decision released in Perth this week.

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.

The penalty, 40 per cent of the maximum possible penalty of \$13,200, is payable no later than October 26.

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

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 the Nerd Group in late 2009 following a complaint from a female staff member that she had not been paid for some hours worked.

In his written judgment, FM Lucev says: “The powers conferred on Fair Work inspectors, which are designed to provide the Fair Work Ombudsman with means to investigate and enforce compliance with minimum legislated standards and industrial instruments are impaired by a failure to comply with a Notice to Produce (NTP).”

He went on: “By failing to provide the records as requested, Nerd Group and Garber engaged in conduct undermining the utility and effectiveness of the relevant legislative provisions.

“In this case, the failure to provide the records involved a course of conduct which was serious, deliberate and not limited in time, because the records have not been produced.”

FM Lucev noted that deliberate conduct warranted a more significant penalty than conduct which was not deliberate, and observed that there had been a lack of contrition and corrective action and virtually no co-operation with the Fair Work Ombudsman.

“This is an appropriate case for a meaningful measure of general deterrence insofar as employers ought not to 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 powers under the Fair Work Act,” FM Lucev said.

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Media inquiries:

Penny Rowe, Media & Stakeholder Relations
0457 924 146
Penelope.Rowe@fwo.gov.au

Page reference No: 3851

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