

Fines for underpayments, sham contracting

19 April 2013

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.

The operators of a regional NSW fruit and vegetable store have been fined a total of \$166,848 after engaging in sham contracting and underpaying a shop assistant more than \$60,000.

E. A. Fuller & Sons Pty Ltd - which operates a fruit and vegetable store at 995 Waterfall Way, Bellingen- has been fined \$139,040 and company director and part-owner Eric Andrew Fuller has been fined a further \$27,808.

The fines, imposed in the Federal Circuit Court in Sydney, are the result of a prosecution by the Fair Work Ombudsman.

Fuller admitted he was involved in the company underpaying five casual employees a total of \$82,475 when they worked as shop assistants at the store between 2006 and 2010.

The employees 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.

Sham contracting laws were breached in relation to two employees, aged in their 30s, who were knowingly misclassified as independent contractors.

One of these employees was underpaid \$60,827 over the three-and-a-half years she worked at the store.

The three other underpaid employees were females aged 18-to-20 at the time, including a Korean national who spoke little English. She was paid as little as \$6 an hour and was underpaid a total of \$13,928 over a six-month period.

Judge Rolf Driver said Fuller and the company had been careless and disregarded their obligations.

"There is a need to send a message to the community, and particularly employers, that employers must provide their employees with the correct entitlements and steps should be taken to understand and comply with those entitlements," Judge Driver said.

"The Court regards the sham contracting contraventions as particularly serious and recognises the damage that sham contracting can have to the Australian economy and other employers generally.

"I also accept that the Court should send a message to the retail industry in which the company operates."

Fair Work inspectors discovered the underpayments and also record-keeping breaches when they investigated complaints lodged by employees. The underpayments were subsequently rectified.

Fair Work Ombudsman Group Manager, Operations, Michael Campbell says the Court's decision sends a message that sham contracting and underpayment of vulnerable foreign and young workers will not be tolerated.

"Successful prosecutions such as this benefit employers who are complying with workplace laws because it helps them to compete on a level playing field," Mr Campbell said.

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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Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

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Call through the National Relay Service (NRS):

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