

Chinese company fined for breaching Australian workplace law

1 September 2013

A Chinese company involved in dismantling heavy equipment at the former Mitsubishi site in Adelaide has been fined almost \$15,000 by the Federal Circuit Court for breaching Australian workplace law.

The company, a Chinese state owned enterprise, used Chinese workers between October 2009 and June 2010 to assess and supervise the dismantling and removal of a press formerly used by Mitsubishi Motors Ltd.

The Fair Work Ombudsman commenced legal action against China Sanan Engineering Construction Corporation, after investigating information received from the Department of Immigration and Citizenship (DIAC).

At the centre of the case were claims that the company was paying the workers as little as \$1.90 an hour until March 2010, when the Fair Work Ombudsman became involved.

During court proceedings, it was accepted that after the workers returned to China from Australia, they were paid wages which met Australian minimum wage requirements.

However, because the wages were paid only after the workers returned to China, Federal Circuit Court Judge, Denys Simpson, imposed a fine of \$14,850 for breaches of workplace laws related to frequency of payments, which required the company to pay wages at least monthly.

Judge Simpson said there was an onus on foreign companies to ensure they comply with Australian industrial laws.

"...the penalty must send a clear message not only to the respondent but also to other businesses or individuals who wish to send employees to Australia to work: they must inform themselves about Australian industrial laws and fully comply," Judge Simpson said.

Judge Simpson rejected an argument by China Sanan that no penalty should be imposed because the breach on frequency of payments to workers was 'technical'. Judge Simpson imposed the maximum penalty sought by the Fair Work Ombudsman even though the breach was not deliberate.

Judge Simpson also said that difficulties with language translation and cultural issues which gave rise to the issue do not '...provide any proper excuse for not taking steps to become informed about what Australian industrial laws require.'

Fair Work Ombudsman, Natalie James, said the case highlighted the importance that all companies operating in Australia needed to comply with workplace law.

"All workers with the right to work in Australia are covered by Australian workplace law," Ms James said.

"This includes entitlements to the wages and conditions set out in relevant industrial awards or agreements or the National Employment Standards plus any wage-based conditions attached to specific visa categories, such as subclass 457s.

"The Fair Work Ombudsman pays particular attention to vulnerable workers, such as foreign workers, who can be vulnerable to exploitation as they're often not aware of what their entitlements are.

"This judgement also sends a strong message to international companies that breaches of workplace law in Australia carry consequences which, apart from any monetary penalty, could affect the reputation of foreign companies in the Australian market."

Employers and employees can contact the Fair Work Ombudsman on 13 13 94 or 13 14 50 if an interpreter is required or visit www.fairwork.gov.au.

Media inquiries:

0408 491 956

media@fwo.gov.au

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.