

Business owner fined \$42,000 for underpaying husband and wife restaurant employees

15 April 2014

The former owner of a restaurant in Perth has been fined more than \$42,000 for deliberately underpaying two migrant workers almost \$80,000.

The workers, a husband-and-wife from Malaysia and China who spoke limited English, were employed as a cook and a kitchen hand.

They were underpaid a total of \$78,054 between March, 2006 and December, 2007 for work performed at the Venezia restaurant on Pier Street in Perth's CBD.

Following an investigation and litigation by the Fair Work Ombudsman, Vincenzo Salvatore Todaro, who formerly owned and managed the restaurant, has been fined a total of \$42,240.

The WA Industrial Magistrates Court-imposed penalty is 80 per cent of the available maximum.

Magistrate Dianne Scaddan has ordered Todaro pay the penalty to his two former staff to partially rectify the underpayments.

The two employees were employed at Venezia restaurant through VST Pty Ltd, a company operated by Todaro.

They successfully sued VST in 2010, securing Orders in the WA Industrial Magistrates Court for outstanding entitlements to be back-paid.

In 2010, the Court found that the pair had regularly been paid less than \$10 an hour, resulting in them being underpaid hundreds of dollars a week.

However, VST ceased trading shortly afterwards, leaving the two unable to secure back-payment.

Ownership of Venezia restaurant was transferred to a new company, also owned by Todaro - VCR Pty Ltd.

The initial Court ruling that Todaro was personally involved in the underpayments enabled the Fair Work Ombudsman to obtain a penalty against him.

Magistrate Scaddan found there had been no contrition or co-operation on Todaro's part.

"He has, at all stages of the process, been recalcitrant in his attitude to the court process," she said.

"The 2010 decision and the current proceedings demonstrate a complete lack of regard by the Respondent for any court processes or for any Court Orders."

Magistrate Scaddan observed: "There is an irresistible inference to be drawn that the purpose of VST ceasing to trade and having VCR take over the operation of the same restaurant was to escape the obligations to pay the entitlements owed. Mr Todaro, by reason of the position he held in both companies, must have known what he was doing."

She found the contraventions "serious and at the upper end of the spectrum in terms of the deliberate nature of them and their ongoing detriment to people who are properly categorised as vulnerable employees."

Magistrate Scaddan said a substantial penalty needed to be applied to recognise the "seriousness and the deliberateness of the breach".

"General deterrence needs to reflect that this was not a situation whereby an employer had made an honest mistake about their obligations," she said.

Magistrate Scaddan said the penalty needed to have some impact upon other like-minded people involved in the hospitality industry.

"The nature of the hospitality industry often involves vulnerable people, because they may be less skilled workers, having had less formal education and certainly the pay scales involved demonstrate that they are perhaps not as well paid as in other industries," she said.

"And for all of those reasons that often puts people in the hospitality industry in a lesser bargaining position to the people who

employ them."

Employers or employees seeking assistance can contact the Fair Work Infoline on 13 13 94 or visit www.fairwork.gov.au

A free interpreter service for those from non-English speaking backgrounds is available by calling 13 14 50 and information about workplace laws is translated into 27 different languages on the website.

The Fair Work Ombudsman has a suite of online resources to assist workers who speak limited English as part of its Culturally and Linguistically Diverse strategy, including YouTube videos in 14 languages.

NB - The largest penalty awarded by the Courts in a matter initiated by the Fair Work Ombudsman is \$343,860 - delivered against a Perth cleaning company and its manager in September, 2013.

In that case, the Court found they had deliberately underpaid six cleaners - including five overseas workers from Taiwan, Hong Kong, New Zealand and Ireland - and as well as the penalty, ordered that the employees be reimbursed more than \$22,000 in underpaid wages.

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