

## Carwash operator fined over ‘deliberate and calculated’ underpayment of young staff

7 August 2014

The operators of a chain of Sydney carwash outlets have been fined a total of \$90,000 after an investigation by the Fair Work Ombudsman found they had underpaid hundreds of workers.

Handing down its penalty today, the Federal Court in Sydney found there had been no remorse for what it labelled “deliberate and calculated” conduct.

More than 350 employees, mostly young workers from non-English speaking backgrounds, were short-changed more than \$177,000.

Justice Robert Buchanan found that the employees were “particularly vulnerable” and “the employer took advantage of that circumstance”.

He fined Crystal Carwash Cafe Pty Ltd, which operates outlets throughout Sydney, a total of \$70,000.

The company’s director and part-owner Anthony Sahade has been penalised a further \$10,000.

Justice Buchanan also imposed a \$10,000 fine against Peter Khouri, who was responsible for the company’s payroll and administrative functions.

The Court found the two had “direct and major responsibility” for the underpayments.

The underpaid car-washers worked at locations including Bondi, Brookvale, Chatswood, Coogee, Gladesville, Merrylands, Mosman, Northbridge, Rose Bay, Rushcutters Bay and Strathfield.

Fair Work Ombudsman Natalie James says the penalty signals to employers that exploitation of vulnerable overseas employees is a serious matter that is not being tolerated by the Courts.

“The small number of employers in Australia who are inclined to deliberately rip off vulnerable overseas workers need to get the message loud and clear that it is unacceptable and there will be consequences,” Ms James said.

Many of the employees were paid a flat rate of \$13 an hour, leading to significant underpayment for overtime work, for which they were entitled to receive more than \$21 an hour, as well as underpayment of their minimum hourly rate.

The underpayments occurred between January and September, 2010. They have since been rectified.

Laws relating to keeping of employment records were also breached.

Justice Buchanan found the “payment of a flat rate amount to employees regardless of Award entitlements, particularly overtime entitlements, was deliberate and calculated”.

A series of different labour-hire companies purported to employ the workers at the time of the underpayments.

The Fair Work Ombudsman alleged the labour-hire companies and the purported arrangements were a “sham” – and the respondents later admitted Crystal Carwash Café Pty Ltd was the true employer, for the purposes of the proceedings.

Justice Buchanan found that “the contraventions were deliberate and part of a pattern of conduct designed to avoid liability under workplace laws” and that “the respondents have shown a lack of remorse or contrition”.

He found that “the establishment of the supposed labour hire companies concealed the true position and rendered enforcement of Award obligations more difficult”, saying the business practice had no legitimate purpose and was an aggravating feature of the case.

Justice Buchanan gave little weight to respondents’ attempts to minimise the seriousness of their conduct on the basis that the underpayments had been rectified, saying back-payments were made only after Fair Work inspectors had begun to investigate and when it must have been apparent that resistance was probably futile.

He noted the respondents were unco-operative during the Fair Work Ombudsman’s investigation, denying inspectors access to premises, refusing to produce certain records and declining to participate in a record of interview.

Justice Buchanan also gave little weight to the respondents’ submission that consideration should be given to their co-operation and

admissions during the subsequent Court proceedings.

“The respondents have acted principally from self-interest rather than from any particular desire to assist the administration of justice. I see no evidence of contrition,” he said.

Justice Buchanan found that general and specific deterrence were important, saying the penalties should deter non-compliance with the law and discourage the respondents from further conduct of the same kind.

The underpayments, as well as the record-keeping contraventions, were serious. “Although it cannot be conclusively determined that properly kept records would have revealed further evidence of underpayment, it is nonetheless a significant factor in considering the appropriate penalty,” he said.

In 2012, the Fair Work Ombudsman secured penalties against the former manager of Kingsford Carwash Pty Ltd - which operates the Crystal Car Wash and Cafe at Kingsford, in Sydney – over the underpayment of dozens of young, foreign workers (see: <http://www.fairwork.gov.au/About-us/news-and-media-releases/2012-media-releases/December-2012/20121218-kingsford-penalty> ([www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/december-2012/20121218-kingsford-penalty](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/december-2012/20121218-kingsford-penalty)) ).

Employers or employees seeking assistance can contact the Fair Work Infoline on 13 13 94 or visit [www.fairwork.gov.au](http://www.fairwork.gov.au).

A free interpreter service is available on 13 14 50 and information on the website is translated into 27 languages.

The Fair Work Ombudsman has recently announced a review of the wages and conditions of overseas workers in Australia on the 417 Working Holiday Visa (see: <http://www.fairwork.gov.au/about-us/news-and-media-releases/2014-media-releases/august-2014/20140804-working-holiday-entitlements-review> ([www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/august-2014/20140804-working-holiday-entitlements-review](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/august-2014/20140804-working-holiday-entitlements-review)) ).

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