

## Mildura company and director fined almost \$50,000 for underpaying over six years

21 February 2014

The operators of a Mildura company who failed to apologise to an employee who was underpaid over six years have been fined almost \$50,000 in the Federal Circuit Court in Melbourne.

Mildura Battery Company Pty Ltd, which operates a wholesale battery business, has been penalised \$39,270 and company director Michael John Marquick has been fined a further \$7854.

Judge Frank Turner handed down the penalties in Melbourne this week following legal action initiated by the Fair Work Ombudsman.

Judge Turner also instructed the company to fully rectify a \$66,580 underpayment - the large majority of which remains outstanding - and to pay additional interest of \$3230.

The Court has given Marquick and Mildura Battery Company until March 17 to back-pay the worker all outstanding entitlements and to May 19 to pay the penalty.

The employee, a store worker aged in his 30s, was underpaid between 2007 and 2013, primarily because he was paid flat rates of \$11.08 an hour for ordinary time and \$13.85 an hour for overtime.

He was entitled to receive up to \$17.63 for ordinary hours and up to \$26.45 for overtime. The employee's annual leave entitlements were also underpaid.

The Court found that the underpayments were initially "careless", rather than deliberate, but noted they continued after the Fair Work Ombudsman identified the contraventions, describing the ongoing conduct as "deliberate or negligent in the extreme".

In his written decision, Judge Turner said Mildura Battery Company and Marquick had not apologised directly to the employee and had not displayed "a suitable and credible expression of regret" to the employee, who had suffered "grave" loss.

"He deposes that it was a struggle to pay his bills on time, at one stage his car broke down and he could not afford to fix it; at times he had to ride a bicycle to get around," Judge Turner said. "The effect on his life has been profound."

Fair Work Ombudsman Natalie James says Fair Work inspectors made extensive efforts to secure voluntary back-pay, but could not secure sufficient rectification action from the employer.

"We will not hesitate to take legal action, where it is in the public interest, to enforce compliance and ensure employee entitlements are protected," Ms James said.

"This employer has now been issued with a significant penalty, in addition to an order to fully rectify the underpayment and pay additional interest.

"Successful legal actions such as this also benefit employers who are complying with workplace laws, because it helps them to compete on a level playing field."

Marquick told the Court that if a high penalty was imposed, Mildura Battery Company may go into liquidation, resulting in two employees losing their jobs and the underpaid employee potentially being unable to recover his entitlements.

However, Judge Turner labelled this submission "inappropriate", noting that "the root cause of those possible repercussions is the failure by the respondents to comply with the law".

Judge Turner observed a need for both specific and general deterrence. "Penalties must be imposed that will act to prevent further breaches, he said.

"The Court does not find that the penalties will be crushing or oppressive. They are an appropriate response to the conduct that led to the breaches."

Judge Turner dismissed the respondents' submission about media coverage of their breaches in the Sunraysia Daily newspaper when legal action was announced last year.

He accepted the Fair Work Ombudsman's submission that embarrassment suffered as a result of the publicity flowing from an

enforcement action is one of the prices to pay, or an inevitable consequence of their conduct.

Judge Turner was also critical of the respondents' offer to back-pay the employee over five years. "The Court finds that offer to be absurd, and questions the genuineness of any contrition," he said.

Judge Turner found the respondents were "not prioritising the rectification of the underpayments over their other financial interests".

"That lack of corrective action shows that the respondents have learnt little of their need to comply with statutory requirements and to obtain authoritative advice," he said.

"The respondents cannot say 'we cannot afford to pay and will go into liquidation if a heavy penalty is imposed'."

Judge Turner found that to allow businesses to operate in that way would create a category of underpaid workers who were being exploited to subsidise inefficient or otherwise unprofitable business operations.

Employers and employees seeking assistance can visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or contact the Fair Work Infoline on 13 13 94. A free interpreter service is available by calling 13 14 50.

Media inquiries:

Ryan Pedler, Assistant Media Director

Mobile: 0411 430 902

[ryan.pedler@fwo.gov.au](mailto:ryan.pedler@fwo.gov.au) (<mailto:ryan.pedler@fwo.gov.au>)

**Page reference No: 2604**

## Contact us

Fair Work Online: [www.fairwork.gov.au](http://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.