

Court action follows failure to back-pay

9 July 2014

The Fair Work Ombudsman has commenced legal proceedings against the former operators of two food retail outlets in Albury, regional NSW.

Facing court is Barry Scott Distributors Pty Ltd, which formerly operated the Thurgoona Takeaway fish and chip shop and The Rim and Wheel Diner.

Also facing court action is the company's sole director and owner, Ian Andrews.

Documents lodged with the Federal Circuit Court allege Mr Andrews and his company have breached workplace laws by failing to reimburse three employees found to have been underpaid more than \$17,000.

It is the Agency's second litigation against Barry Scott Distributors and Mr Andrews.

Last year, the Fair Work Ombudsman commenced court action alleging three other employees at Thurgoona Takeaway were underpaid more than \$60,000 in 2011-2012.

In the latest proceedings, the Fair Work Ombudsman claims another cook employed at Thurgoona Takeaway was short-changed \$12,970 between 2011 and 2013.

It also alleges that two cooks employed at The Rim and Wheel Diner were underpaid a total of \$4490 last year.

One of the Rim and Wheel staff was allegedly paid nothing for two weeks' work.

Neither business is now trading.

Fair Work inspectors discovered the alleged underpayments after receiving requests for assistance from the former employees.

The Fair Work Ombudsman issued three formal Compliance Notices in January this year requiring the underpayments to be rectified in full within 21 days.

Despite numerous undertakings given by Mr Andrews that this would happen, only \$400 was paid to one employee, the Fair Work Ombudsman alleges.

By law, employers must comply with a Compliance Notice issued by Fair Work inspectors or make a court application for a review if they seek to challenge it.

The Fair Work Ombudsman has previously commenced legal proceedings against a number of businesses which have failed to respond to its Compliance Notices.

"In this case, inspectors made extensive efforts to try to resolve the matter by agreement, but were not able to secure sufficient co-operation," Fair Work Ombudsman Natalie James said today.

The Agency is seeking Court Orders for Barry Scott Distributors to pay the employees all entitlements allegedly owed, plus interest.

It also wants Court Orders requiring Mr Andrews to undertake formal training on employer obligations under the Fair Work Act and to provide written, public apologies to his former staff. A directions hearing is scheduled for September 10 in the Federal Circuit Court in Sydney.

Fair Work inspectors identify underpayments at thousands of businesses nationally each year and resolve the vast majority by working co-operatively with employers, guiding them through the back-payment process and assisting them to put systems in place to ensure they pay their staff correctly in future.

However, if employers refuse to co-operate, Fair Work inspectors will consider enforcement action, including issuing formal Compliance Notices, which lawfully require employers to take prompt action.

"It is important for employers to understand that when a Compliance Notice is issued, the Fair Work Ombudsman is simply seeking to recover wages that should have been paid in the first instance - we are not seeking to be punitive," Ms James said.

However, the Fair Work Ombudsman is willing to initiate legal proceedings where Compliance Notices are subsequently ignored and

the Agency believes it is in the public interest to do so.

“Enforcing Compliance Notices is fundamental for maintaining the integrity of Australia’s workplace laws,” Ms James said.

“Fair Work inspectors are increasingly issuing Compliance Notices in cases where employers with contravention issues refuse to co-operate and we will consider follow-up action if they are ignored.”

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.

Helpful online tools include PayCheck Plus and an Award Finder to assist business owners and employees determine the correct award and minimum wages for their industry, templates for pay slips and time-and-wages records and a range of fact sheets on workplace entitlements.

The website provides extra, specialised information for employers and employees in a range of industries, including retail, horticulture, road transport, accommodation and hospitality, cleaning, clerical, vehicle, electrical, fast food, building and construction, hair and beauty, joinery, metal manufacturing, social and community services, plumbing and security.

Dedicated resources for small businesses, including a Fair Work Handbook and tips for new employers about hiring staff, are available on the website.

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