

Security company fined over underpayments

11 June 2014

The operators of a Victorian security company have been fined a total of \$147,708 for the “negligent” underpayment of four former employees, following an investigation and litigation by the Fair Work Ombudsman.

Ross Geri Pty Ltd (RGPL) - which trades as North State Security, based at Strathfieldsaye, near Bendigo - has been fined \$110,880 in the Federal Circuit Court in Melbourne.

The company’s director and owner Ross Irwin Geri has been penalised a further \$22,176 and his wife Sherie Geri, the administration manager of the company responsible for calculating employee wages, another \$14,652.

The Fair Work Ombudsman found that four casual security guards at North State Security were underpaid a total of \$89,117 between 2006 and 2011.

The underpayments were largely the result of RGPL erroneously paying the employees according to flat rates of pay listed in an agreement that did not apply, rather than according to the applicable awards.

The underpayments occurred until 2011 despite the Fair Work Ombudsman having previously formally warning RGPL and Mr and Mrs Geri in 2008 that they could not rely on the flat rates of pay in unapproved agreements and that the award applied to their employees.

The flat rates paid to employees did not meet minimum requirements for overtime rates, shift loadings, weekend and public holiday penalty rates.

The employees were also not provided with minimum shift pay, a laundry allowance or their accrued annual leave entitlements on termination of their employment.

After the receiving complaints, the Fair Work Ombudsman launched an investigation and the employees were subsequently back-paid in full.

Delivering his decision, Judge Frank Turner said the underpayments were “negligent at least” and no apologies had been made to the employees.

Judge Turner found that there was a need to impose penalties to sustain public confidence in the statutory regime, ensure compliance with minimum standards and for specific and general deterrence.

“The Court finds that by RGPL paying below the correct rates, the business has been able to achieve competitiveness above that which it could otherwise have achieved,” he said.

Judge Turner dismissed a submission that proceedings should not have been brought against Mrs Geri because she was a clerical employee.

He said Mrs Geri “appeared to have little understanding of employment law, she thought she was doing the right thing, but ignorance of the law is no excuse”.

“One reason for imposing a penalty on (Mrs Geri) is to deter her specifically from acting out of ignorance in the future,” Judge Turner said.

“A person with a duty to calculate wages and other entitlements must ascertain the applicable provisions.”

Judge Turner said that while Mr Geri did not calculate employees’ wages and entitlements, as owner and director of the company he had a responsibility to oversee Mrs Geri’s work and by failing to do so, he was involved in the breaches and should be subject to higher penalties.

Fair Work Ombudsman Natalie James says the Agency is committed to driving behavioural change and improving compliance in the security industry.

The Fair Work Ombudsman is currently partnering with the Australian Security Industry Association Ltd (ASIAL) and the United Voice union to help local government bodies around Australia ensure they comply with workplace relations laws when procuring contract security services.

In 2009, the Fair Work Ombudsman audited 302 security businesses as part of a national campaign and found that only 47 per cent were complying with workplace laws.

After undertaking a range of educative activities in conjunction with ASIAL, a follow-up campaign was conducted in 2012. Of 392 businesses audited, 75 per cent were found to be compliant.

There are a range of free tools and resources available at www.fairwork.gov.au (www.fairwork.gov.au/) to help employers comply with workplace laws.

Online tools include an Award Finder and PayCheck Plus to help employers and employees locate the applicable modern award and pay rates for their industry, employer templates for pay slips and time-and-wages records and a range of fact sheets on employee entitlements.

An 'Industries' section on the website provides extra, specialised information for employers and employees in a range of industries, including the security industry.

Employers and employees seeking further advice can visit the website or call the Fair Work Infoline on 13 13 94. A free interpreter service is available on 13 14 50.

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