

Court action over alleged underpayment of Chinese workers at regional NSW abattoir

13 March 2014

Ten employees at a regional NSW abattoir were underpaid more than \$41,000, the Fair Work Ombudsman has alleged.

The employees worked as entry-level laborers in the slaughtering, boning and dispatch operations at the abattoir.

Eight were casuals - Chinese nationals here on short-term visas, while the remaining two are Chinese immigrants who were employed full-time.

According to the Fair Work Ombudsman, the workers were underpaid amounts ranging from \$347 to \$10,257.

The Fair Work Ombudsman has commenced legal proceedings against labor hire company Raying Holding Pty Ltd and another individual in the Federal Circuit Court in Sydney.

Raying Holding allegedly supplied the workers to the Primo Australia Scone Abattoir, operated by Hunter Valley Quality Meats Pty Ltd.

The 10 were allegedly underpaid a total of \$41,674 for various periods of time worked between March, 2011 and July, 2013.

The Fair Work Ombudsman is seeking Court-issued penalties against both the company and another individual allegedly involved in the underpayments.

Raying Holding faces penalties of up to \$51,000 per breach and the individual faces a maximum penalty of \$10,200 per contravention.

A directions hearing is listed in Sydney for March 28.

Court documents allege that Raying Holding often required the employees to work more than 38 hours a week, but did not pay overtime penalty rates.

The employees were also variously underpaid minimum wages, casual loadings and public holiday entitlements, it is alleged.

The Fair Work Ombudsman also alleges that Raying Holding was involved in sham contracting (by representing to the two full-time employees that they were independent contractors) and breached record-keeping laws.

Fair Work inspectors discovered the alleged contraventions when they conducted an audit of the company's books following complaints from employees.

The alleged underpayments were rectified last year, however Fair Work Ombudsman Natalie James says legal action is proceeding because of the significant amount involved and because the workers were deemed to be vulnerable.

"In recognition of the fact that overseas workers can be particularly vulnerable to exploitation, or require specialised assistance, the Fair Work Ombudsman has established an Overseas Workers' Team comprising 16 Fair Work inspectors," Ms James said.

The Team provides assistance to:

- Workers in Australia on temporary visas that have work rights,
- Newly-arrived migrants who may not be aware of Australia's employment and workplace laws, and
- Newly-arrived migrants who, through their visa conditions, have committed to remain with their sponsoring employer for a period of time.

Ms James says that in 2012-13, the Fair Work Ombudsman received 2018 complaints from visa-holders alleging their workplace rights had been compromised - a 61 per cent increase on the 1250 complaints received from visa-holders in 2011-12.

More than \$1.4 million in underpaid wages and entitlements was recouped for visa-holders last financial year.

"The Fair Work Ombudsman is keen to ensure that overseas workers in Australia are treated with dignity and respect and accorded the same rights as local workers. Indeed, that is the law," she said.

"We seek to guard against employer practices that deliberately take advantage of language difficulties, lack of knowledge of the law,

unfamiliarity with government agencies and dependency created by the significant power imbalance when an overseas worker is reliant on the employer signing paperwork."

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

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 at www.fairwork.gov.au/languages (www.fairwork.gov.au/language-help/default)

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, instructed that the employees be reimbursed more than \$22,000 in underpaid wages.

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