

Queensland security company fined over deliberate underpayments

27 March 2014

The owner-operators of a security business in regional Queensland have been penalised a total of \$67,040 for deliberately underpaying a security officer more than \$40,000.

Rodney Lynn Harris - the owner-manager of Bundaberg-based security services business RPO Security - has been fined \$12,640.

The Federal Circuit Court has imposed a further penalty of \$54,500 against Harris' private company, Bundaberg Security Pty Ltd.

Judge Michael Jarrett also ordered Harris and his company to fully rectify the worker's outstanding entitlements.

The penalties and back-payment order follow legal action by the Fair Work Ombudsman.

The litigation followed a finding that a casual security officer at RPO Security was underpaid a total of \$40,394 between 2007 and 2010.

The employee, aged in his 30s, performed duties including security patrols, escorting people to cars and taking cash to a bank safe.

He often worked three days a week and regularly worked night shifts for a flat rate of \$900 a fortnight.

This resulted in underpayment of his minimum hourly rate, casual loadings, night shift allowance and penalty rates for Sunday, public holiday and overtime work.

Fair Work inspectors discovered the underpayments when they investigated a complaint lodged by the employee.

Contraventions of laws relating to the issue of pay slips were also identified.

Judge Jarrett said Harris and his company had been made aware of their obligations to pay correct wages.

He noted that they had been advised to undertake a review of compliance with workplace laws during previous investigations for the underpayment of wages to employees.

Harris and his company "must have consciously decided to continue contravening the relevant provisions" in relation to the affected employee.

"I accept that the conduct of the first respondent was deliberate," Judge Jarrett said. "It appears to have been more than merely reckless.

"The penalties must bring home to these respondents that contravention of the industrial laws, particularly those of such a base nature as the present contraventions, are serious."

Judge Jarrett found that the breaches represented a serious failure to afford an employee basic minimum entitlements over a significant period and there was a need for the penalty to be imposed to have a deterrent effect generally.

"Employers should be left in no doubt that the withholding of such basic entitlements from employees is not something tolerated by the community," he said.

Judge Jarrett also found that there was a need to send a message to security industry employers specifically that "harsh penalties will apply if they contravene the workplace laws".

The Court found that there was no evidence of contrition and Harris and his company did not admit the extent of the underpayment without the initiation of the Fair Work Ombudsman's legal proceedings.

Fair Work Ombudsman Natalie James said failure to rectify the underpayment, despite efforts by Fair Work inspectors to resolve the matter voluntarily, was a key factor in the decision to commence legal proceedings.

"This employer had previously been warned about the importance of paying employees their full lawful entitlements, which makes the substantial underpayment of this employee completely unacceptable," Ms James said.

"Legal actions such as this also benefit employers who are complying with workplace laws because it helps them compete on a level

playing field."

Ms James says her Agency is committed to improving compliance in the security industry and ensuring that its many vulnerable workers - including migrants, international students and young workers - receive their minimum entitlements.

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, the Agency conducted a follow-up campaign, auditing 392 security businesses nationally, and found a significant boost in compliance to 75 per cent.

Employers and employees seeking assistance can visit 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.

Online resources include PayCheck Plus and an Award Finder to assist employers to calculate the correct pay rates for their employees. An 'industries' section on the website provides specialised information for employers and employees in a range of industries, including security.

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