

## \$95,000 penalty and order to back-pay staff

7 November 2014

The operators of a former fish and chip shop in Albury, NSW, have been fined a total of \$94,990 for underpaying three staff members.

Lavington man Ian Andrews - the former owner-manager of Thurgoona Takeaway, which has ceased trading - has been fined \$15,048.

His company, Barry Scott Distributors Pty Ltd, has also been penalised a further \$79,942.

In addition, the company must back-pay \$69,932 in unpaid wages and superannuation owing to three former employees.

The penalties and back-payment order were handed down in the Federal Circuit Court in Sydney following litigation by the Fair Work Ombudsman.

The three employees, including two managers and an assistant manager, were underpaid between July, 2011 and May, 2012.

They were paid a flat rate of \$1000 a week, despite usually working more than 50 hours a week and on at least one occasion, more than 100 hours in a week.

This resulted in significant underpayment of minimum hourly rates and penalty rates for weekend, public holiday and overtime work.

Judge Tom Altobelli found the underpayments were "deliberate, or at the very least reckless" and demonstrated a disregard for employer obligations.

"Penalties in this case should be imposed on a meaningful level so as to deter other employers from committing similar contraventions," Judge Altobelli said.

Fair Work Ombudsman Natalie James says employers should heed the Court's warning and strong penalty.

"This kind of blatant disregard for employee entitlements is very serious conduct and clearly will not be tolerated," she said.

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

Judge Altobelli found that Andrews and his company's "history of non-compliance" was a "significantly aggravating" factor.

The underpayments occurred despite the Fair Work Ombudsman informing Andrews and his company about the need to comply with lawful minimum pay rates in 2011, when the Agency required them to back-pay an underpaid employee.

Judge Altobelli said the Fair Work Ombudsman had been requesting Andrews and his company to back-pay the three employees for more than 18 months and it was "extraordinary" that the underpayments had still not been rectified.

Judge Altobelli found that during the Fair Work Ombudsman's investigation, Andrews and his company were provided with extensive opportunities to rectify the underpayments but failed to do so and elected not to participate in a record-of-interview.

"The respondents have provided a series of excuses for not making the payments, such as bushfires, illness and issues with overseas bank accounts," he said.

Judge Altobelli said the failure to make any superannuation payments to the employees was "particularly serious".

"Superannuation payments are designed to provide employees with security when they retire and are no longer able to earn an income," he said.

Judge Altobelli noted there was no evidence that an apology had been made to the three employees and that the Fair Work Ombudsman had received five new underpayment complaints since 2012 relating to Andrews' company, which has operated a number of businesses in the Albury area.

"In these circumstances, there is no other conclusion to be reached other than that the respondents have taken no corrective action whatsoever to rectify their contravening conduct," Judge Altobelli said.

Two of the five new complaints since 2012 were resolved by way of back-payments being made to employees.

The Fair Work Ombudsman has commenced further legal action in relation to the three other complaints - see: [Court action follows failure to back-pay \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/july-2014/20140709-barry-scott-litigation\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/july-2014/20140709-barry-scott-litigation) media release (please note: the alleged underpayments in this matter have now been rectified).

Employers and employees seeking advice or assistance should 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](http://paycheck.fwo.gov.au/PayCheckPlus.aspx) (http://paycheck.fwo.gov.au/PayCheckPlus.aspx) to assist business owners and employees to 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.

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