

## Marine services company faces court for allegedly underpaying overseas worker

NOTE 21 November 2018: The allegations made by the Fair Work Ombudsman in this matter were dismissed in November 2018 by the Federal Circuit Court, which found that Sierra Fleet Services Pty Ltd was not the employer of the worker referred to in the media release below.

9 September 2014

An Australian marine services company is facing legal action for allegedly underpaying a Jamaican national more than \$44,000 in just 10 months.

The Fair Work Ombudsman has commenced legal proceedings against Sierra Fleet Services Pty Ltd and the company's general manager Harold Van Haltren.

The Jamaican engineer was in Australia on a maritime crew visa and later a 457 visa when he was employed in May, 2012.

Sierra Fleet Services employed the worker on a full-time basis to undertake various repairs and maintenance on vessels docked in Brisbane.

The company allegedly made only one payment of less than \$5000 to the employee for 10 months' work.

The Fair Work Ombudsman says that under his employment contract and Australia's Ports Harbours and Enclosed Water Vessels Award 2010, the employee was entitled to be paid almost \$50,000.

The worker was allegedly underpaid a total of \$44,902 in minimum wages, overtime pay and annual leave entitlements.

Fair Work inspectors discovered the alleged underpayments when they investigated a complaint from the employee.

Record-keeping and pay slip laws were allegedly also breached.

Fair Work Ombudsman Natalie James says the large amount of money over a short period, the involvement of a vulnerable overseas worker and the failure to rectify the alleged underpayment were significant factors in the decision to litigate.

"Inspectors made extensive efforts to resolve the matter before legal proceedings were commenced, but were not able to secure sufficient co-operation from this employer," she said.

Mr Van Haltren faces maximum penalties of between \$6600 and \$10,200 per contravention and Sierra Fleet Services faces maximum penalties of between \$33,000 and \$51,000 per contravention.

The Fair Work Ombudsman is also seeking a Court order for the company to back-pay the worker in full.

A directions hearing is listed in the Federal Circuit Court in Brisbane on October 30.

Following an investigation by the Department of Immigration and Border Protection, Sierra Fleet Services was recently barred from being a business sponsor of overseas workers for a period of five years.

Since July 1, 2013, the Fair Work Ombudsman has had an expanded role to monitor 457 visa-holder sponsorship obligations.

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 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 on our [Language help pages \(www.fairwork.gov.au/language-help/default\)](http://www.fairwork.gov.au/language-help/default) at [www.fairwork.gov.au/languages](http://www.fairwork.gov.au/languages).

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

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.

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](https://twitter.com/NatJamesFWO) (http://twitter.com/NatJamesFWO) , the Fair Work Ombudsman [@fairwork\\_gov\\_au](https://twitter.com/fairwork_gov_au) (http://twitter.com/fairwork\_gov\_au) or find us on Facebook [www.facebook.com/fairwork.gov.au](http://www.facebook.com/fairwork.gov.au) (http://www.facebook.com/fairwork.gov.au) .

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Contact the Translating and Interpreting Service (TIS) on 13 14 50

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Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

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