

Court imposes penalties after on-the-spot fine ignored

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The operators of an Adelaide business have been fined a total of \$6460 after failing to pay an \$850 on-the-spot fine for not issuing pay-slips to two overseas workers.

The Industrial Relations Court of SA has imposed the penalties after the Fair Work Ombudsman commenced legal proceedings.

Legal action followed the failure by Dragon Tea House Pty Ltd and its sole director Xia Xu Zhou to pay an Infringement Notice.

The Notice was issued after Fair Work inspectors found pay-slips were not issued to two employees at the Chinese restaurant they previously ran on Pulteney Street.

Dragon Tea House restaurant was audited last year as part of regular monitoring activity of employers who recruit staff on 457 skilled worker visas.

Pay-slips were not being issued to a restaurant manager on a 457 visa and a front-of-house employee on a student visa, both from China.

Under the Fair Work Act, employers must provide employees with pay-slips within one working day of paying their wages.

Fair Work Ombudsman Natalie James says inspectors determined that an Infringement Notice imposing an \$850 on-the-spot fine was a proportionate response to the workplace contravention.

However, the fine was not paid by the due date.

In response, the Industrial Relations Court has handed down a \$5100 penalty against Dragon Tea House and a further \$1360 penalty against Zhou for her involvement.

Industrial Magistrate Stephen Lieschke found that Zhou had deliberately contravened workplace law and had tried to deceive and mislead Fair Work inspectors about whether pay-slips were issued.

He noted that the provision of accurate pay-slips was fundamental to employees understanding and checking their wages.

The affected employees were “vulnerable foreign workers who were in a poor position to check they were not being cheated out of their lawful minimum wages”.

Industrial Magistrate Lieschke also found that an absence of pay-slips hindered the important compliance efforts of the Fair Work Ombudsman and it was important to deter other business operators from similar conduct.

“General deterrence is also important because this type of contravention is difficult to detect, especially with vulnerable workers, and is a fundamental breach of the National Employment Standards,” he said.

It is the second time the Fair Work Ombudsman has secured Court penalties solely in relation to pay-slip contraventions after an on-the-spot fine was ignored.

Last month, the Industrial Relations Court of SA imposed penalties of \$3500 and \$1500 respectively against Adelaide company Mobizone Pty Ltd and its part-owner Raymond Kebbe after they failed to pay a \$550 on-the-spot fine issued by the Fair Work Ombudsman.

Mobizone had issued pay-slips to an Indian telecommunications technician on a 457 visa infrequently, and only when he asked for them.

Ms James says Court the rulings should serve as a reminder to other employers that ignoring the Fair Work Ombudsman “won’t make us go away”.

She says Fair Work inspectors identify contraventions of workplace laws at thousands of businesses nationally each year and resolve the vast majority by working co-operatively with employers and assisting them to put systems in place to ensure they comply in future.

However, in cases of repeated or blatant breaches of record-keeping or pay-slip laws, Infringement Notices are an enforcement option that the Agency will use as a deterrent and to promote a culture of compliance.

Ms James says employers should be aware that the Fair Work Ombudsman is willing to initiate legal proceedings where Infringement Notices are subsequently ignored and the Agency believes it is in the public interest to do so.

“We place a high importance on enforcing compliance with pay-slip obligations, because when employees don’t receive them, it undermines their ability to understand how their wages have been calculated and to check they’ve received their minimum lawful entitlements,” she said.

“It is particularly concerning when vulnerable overseas workers are not provided with pay-slips, because they are often not fully aware of their rights and entitlements under Australian workplace laws.”

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.

Small business people calling the Infoline can opt to receive priority assistance.

Helpful online resources include tools to assist business owners and employees 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.

The My Account tool allows users to save tailored information such as pay rates and conditions of employment specific to your circumstances. You can log into My Account and view your saved information at any time. You can also submit an enquiry Online and read our response to your enquiry.

Ms James says the Fair Work Ombudsman supports compliant, productive and inclusive Australian workplaces by providing practical advice that is easy to access, understand and apply.

“Equipping people with the information they need encourages and empowers employees and employers to resolve issues in their workplace and build a culture of compliance,” she said.

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