

Taiwanese company penalised after paying overseas workers less than \$5 an hour

8 December 2016

A Taiwanese company that last year back-paid almost \$900,000 to a team of overseas workers it brought to Australia has now been penalised in Court for ignoring a demand to make further back-payments to two overseas workers it paid less than \$5 an hour.

Chia Tung Development Corp Ltd, which made and installed animal feed mills in regional NSW, last year entered into an Enforceable Undertaking with the Fair Work Ombudsman which involved it rectifying \$873,000 in underpayments to 43 employees.

The company underpaid the employees - 13 Chinese and 30 Filipino nationals - for work installing animal feed mills across sites at Narrabri, Manildra and Bomaderry between September 2014 and February 2015.

The Fair Work Ombudsman subsequently found that two of the Filipino nationals had also been underpaid a further total of \$61,910 for a previous period of work performed at Manildra between December 2013 and August 2014.

The Fair Work Ombudsman issued Chia Tung and its director Michael Chen-Fa Lin a formal Compliance Notice earlier this year requiring them to back-pay the workers in full.

Under the Fair Work Act, business operators must adhere to a Compliance Notice or make a Court application for a review if they are seeking to challenge a Notice.

After the Compliance Notice was ignored, the Fair Work Ombudsman commenced legal action.

The Federal Circuit Court has now imposed a \$24,300 penalty against Chia Tung and a further \$4860 penalty against Lin for failing to comply with the Compliance Notice.

The penalties imposed by the Court are 90 per cent of the possible maximums.

In addition to the penalties, the Court has also ordered the company and Lin to back-pay the two workers in full.

The two workers were in Australia on subclass 400 short-stay business visas during the December 2013-to-August 2014 period.

Chia Tung paid them a set monthly amount that equated to about \$4.90 an hour, which was only a fraction of the minimum hourly rate they were entitled to under the Building and Construction General On-Site Award.

Chia Tung also did not pay the workers' overtime or penalty rates for Sundays, public holidays and for work undertaken on a rostered day off, and failed to pay their annual leave entitlements.

Fair Work Ombudsman Natalie James says the penalties imposed should help to dispel any notion that overseas workers can be paid a 'going-rate' that is less than what the law requires.

"Overseas workers are entitled to receive the same minimum rates and entitlements that apply to all workers in Australia – and the rates are not negotiable," Ms James said.

Ms James says the conduct of Chia Tung in ignoring the Compliance Notice was particularly disappointing considering it committed to ongoing compliance with workplace laws as part of the Enforceable Undertaking entered into last year.

Ms James says the outcome of the matter also highlights that the Fair Work Ombudsman is prepared to take legal action against employers and any accessories who refuse to co-operate with Fair Work Ombudsman and fail to comply with Compliance Notices.

"This company and the director are now facing significant penalties in addition to a Court Order requiring them to back-pay the two employees in full," she said.

Employers and workers seeking advice or assistance can visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94.

An interpreter service is available by calling 13 14 50 and information on the website is translated into 27 languages.

Information about the Fair Work Ombudsman's Enforceable Undertaking with Chia Tung is available [here \(www.fair-work.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/april-2015/20150420-chia-tung-eu-presser\)](http://www.fair-work.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/april-2015/20150420-chia-tung-eu-presser) .

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Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

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

Hearing & speech assistance

Call through the National Relay Service (NRS):

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

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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