

Food wholesaler penalised \$85,000 over “inexcusable” underpayment of workers

15 February 2016

A Melbourne food wholesaler has been penalised \$85,000 for "inexcusable" underpayment of migrant and overseas workers.

The penalty follows an admission by Quality Food World Pty Ltd, which operates from a warehouse at Mordialloc, that it underpaid 46 employees a total of \$149,137.

The penalty, imposed in the Federal Circuit Court, is the result of an investigation and legal action by the Fair Work Ombudsman.

The employees were mostly migrants and visa holders from non-English speaking backgrounds who performed production and packaging duties.

They were underpaid for work performed between October, 2007 and March, 2011.

The employees were variously underpaid their minimum hourly rates, public holiday pay, overtime rates and annual leave entitlements. Record-keeping laws were also breached.

Individual underpayments ranged from \$125 to \$10,218.

Fair Work inspectors investigated because requests from former employees suggested that the business may have compliance issues.

The company has now back-paid all workers it has been able to locate and will pay entitlements owing to workers it cannot find into the Fair Work Ombudsman's unclaimed wages fund.

It has also implemented a range of improvements to its employment practices.

Handing down his decision, Judge Grant Riethmuller said the company had shown "either wilful blindness or recklessness" with regard to its obligations and there had been a "systemic failure to comply with the law".

Judge Riethmuller said the underpayments occurred despite the Fair Work Ombudsman having put the company on notice in response to complaints from workers dating back to 2007.

"It is inexcusable in a situation where the business has such a large number of employees and a significant history of interaction with the Fair Work Ombudsman's office, it would not have complied with the relevant requirements," he said.

Judge Riethmuller dismissed the company's submission that it deserved credit for employing workers who may not have been able to gain other employment, saying the company's conduct "leans more on the side of exploitation of those least able to insist upon their rights, than demonstrating positive community spirit".

He said Quality Food World employees were often recruited from a migrant agency in Dandenong or through recruitment of friends and family of existing employees.

"Most of the employees were from non-English speaking backgrounds, new to Australia, and had limited knowledge of the rights and protections afforded to them under the Australian workplace laws. Some were in Australia only on student visas," he said.

"These breaches affected a group of employees least able to protect their own rights, and least able to locate and obtain employment in the community."

Judge Riethmuller found a lack of genuine contrition on the part of Quality Food World, pointing to a threat made during the Fair Work Ombudsman investigation that it would "just close the business tomorrow and sack all of the workers" if the matter went to Court.

Quality Food World has now agreed to orders requiring the company to commission workplace relations training staff for its managers, a professional audit of its compliance with workplace laws, and legal advice on implementing processes to ensure future compliance. The company must also provide its employees with information on their workplace rights.

Fair Work Ombudsman Natalie James says the Court's decision serves as a timely reminder that blatant underpayment of vulnerable workers is a serious matter and will not be tolerated.

Ms James says the Fair Work Ombudsman has a number of Inquiries underway to identify and address the structural and behavioural drivers of non-compliance in various industry networks and supply chains in which overseas workers are heavily represented.

These include a review of the wages and conditions of workers in Australia on the 417 working holiday visa, an Inquiry into allegations of systemic non-compliance within the 7-Eleven franchise network, an Inquiry into the workplace arrangements of workers cleaning 4 and 5 star hotels and a Harvest Trail inquiry into the horticulture and viticulture sectors nationally.

"The Fair Work Ombudsman will also continue to work with Taskforce Cadena, the Phoenix Taskforce and other relevant state and federal agencies to share intelligence in relation to overseas workers' rights," she said.

Visa-holders now represent about 11 per cent of the total number of employees seeking assistance from the Fair Work Ombudsman.

In the 2014-15 financial year, the Fair Work Ombudsman recouped \$1.6 million for visa-holders and filed 20 matters in Court involving visa-holders.

Employers and employees seeking 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 and helpful materials on the website is translated into 27 different languages.

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