

Transport company penalised \$41,600 over underpayment of three drivers

16 February 2016

The operators of a Victorian transport company have been penalised a total of \$41,600 for underpaying three truck drivers.

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

The Court has imposed a \$34,500 penalty against Openica Logistics Pty Ltd and a further \$7100 penalty against its director/secretary, Vladimir Taseki.

Openica Logistics operates from Dandenong South and primarily provides an interstate service for transporting cars, caravans, boats, motor homes and machinery.

Mr Taseki was involved in Openica Logistics underpaying three truck drivers a total of \$69,175 between 2010 and 2012.

The individual underpayments were \$45,291, \$16,422 and \$7461.

The employees, all aged in their 50s, were underpaid living away from home allowances and two were not paid casual loading.

One driver was also not paid for all kilometres driven.

Further, the company failed to make a copy of an employee's records available for inspection and copying upon request, as required under the Fair Work Regulations.

Fair Work Inspectors discovered the breaches when they investigated requests for assistance lodged by employees.

The employees were back-paid in full only after the Fair Work Ombudsman commenced legal proceedings.

Handing down his decision, Judge Grant Riethmuller said the underpayments were significant, particularly in the context of wages for truck drivers.

"There is no evidence that the respondents took any particular steps to ensure compliance with their obligations under the Award," he said.

"It is apparent that they were aware that there were Awards.

"Given the overall number of employees involved in this business, the importance of compliance with the Award was a significant issue warranting careful attention by the employer."

On the non-payment of the living away from home allowance, Judge Riethmuller noted that it had been a feature of the relevant Award since 1963 and was intended to compensate drivers for the cost of being away from home on a regular basis and for extended periods and not being provided with suitable accommodation.

"The respondents point out that the sleeper cabs in the trucks were assessed by Work Safe as sufficient for fatigue management, although, clearly, requiring the driver to sleep in a cabin is an imposition beyond normal arrangements one would expect for an employee, for example a motel room," Judge Riethmuller said.

"It is clear that the living away from home allowance is intended to compensate a driver for these conditions."

Fair Work Ombudsman Natalie James says the Court's decision sends a message that businesses can expect to face tough penalties and enforcement measures for serious or repeat contraventions of their workplace obligations, or where they refuse to co-operate with the Agency.

"In cases where there is evidence there has been a deliberate disregard to meet these obligations we can, and will, strongly consider using the enforcement measures available to us."

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 on 13 14 50.

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