

\$41,200 penalty for former transport operator over deliberate underpayment of truck drivers

14 June 2016

The Federal Circuit Court has penalised the former operator of a transport company which underpaid 12 of its casual drivers more than \$143,000.

Judge Justin Smith imposed a total penalty of \$41,208 against Woolgoolga man Sumerdeep Singh, including a penalty for record-keeping contraventions that is 90 per cent of the maximum.

Singh's former company, Sumer Bagri Pty Ltd, previously delivered groceries on the NSW North Coast.

The Fair Work Ombudsman was unable to take legal action against the company after it went into liquidation.

Sumer Bagri delivered groceries ordered online under a contract it had with Linfox Australia Pty Ltd, which had been contracted by Woolworths Ltd.

The contract price paid by Woolworths to Linfox and the sub-contract price paid by Linfox to Sumer Bagri was well above the amount required for Singh to pay minimum employee entitlements.

However, after investigating a complaint from a driver, the Fair Work Ombudsman found 12 employees had been short-changed a total of \$143,600 over three years.

Singh, himself a former delivery driver, admitted the underpayments.

He also acknowledged withdrawing \$45,000 from Sumer Bagri's accounts to pay a deposit on a house, which the Court viewed as significant given none of the drivers had been paid what they were owed.

The Court heard that Singh doctored his employee records in an effort to cover-up the underpayments.

He even created records showing he was driving at a time he was actually in India.

Judge Smith ordered that the penalty be paid to the truck drivers to partially rectify their underpayments, which were not paid before the company went into liquidation.

He found that Singh's contraventions were "serious" and "deliberate".

"Mr Singh ... deliberately falsified records to avoid being caught ..." Judge Smith said.

He noted that it was a serious matter to undermine the efficacy of the powers given to the Fair Work Ombudsman.

"... there is no excuse for deliberately falsifying records in order to deceive inspectors ... and so divert them from their duty," Judge Smith said.

"It is central to the Ombudsman's functions that there be a reliable way of determining whether the minimum conditions of employment are being maintained. That way is to keep accurate records."

Acting Fair Work Ombudsman Mark Scully says the decision against Singh shows how seriously the Courts are treating the conduct of those who seek to profit at the expense of their employees.

Mr Scully says the Agency is prepared to hold company directors to account for their actions in the event that companies are wound up.

While both Woolworths and Linfox had no involvement in the contraventions, Mr Scully says better oversight of their supply chain may have avoided the significant underpayments.

"Outsourcing is a legitimate business arrangement - but in our experience, in highly competitive markets, it also increases the risk that workers will be underpaid, sometimes quite deliberately," he said.

"Businesses at the top of the supply chain should maintain a level of control and oversight that enables them to be confident that the workers at their worksites and in their supply chains are receiving their full lawful entitlements."

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