

## Record penalties and landmark Order making businessman personally liable for back-payments

20 June 2016

A federal judge has imposed record penalties and a precedent-setting Court Order for a businessman to personally back-pay employees following a case involving the "calculated and deliberate" underpayment of security guards on the Gold Coast.

The penalties, totalling more than \$308,000, are the highest achieved by the Fair Work Ombudsman in Queensland.

Businessman Owen Ivor Jennings has been penalised \$51,400 and his company Step Ahead Security Services Pty Ltd has been penalised a further \$257,000.

The Fair Work Ombudsman initiated legal proceedings against Jennings and his company for underpaying eight security guards a total of \$22,779 over just three months in 2014.

Handing down his decision on Friday, Federal Circuit Court Judge Michael Jarrett issued an Order for Jennings to back-pay the money.

Acting Fair Work Ombudsman Mark Scully says that in situations where individual business owners and directors are directly responsible for underpaying employees, the Agency will seek Court Orders against them.

"Unfortunately, there are some rogue business operators who think they can short-change their staff and get away with it by liquidating their companies and hiding behind a corporate veil ... so they should think again, as we will seek to hold them to account at every available opportunity," Mr Scully said.

"We are committed to building a culture of compliance with workplace laws in Australia and creating a level playing field for employers who are doing the right thing and meeting their workplace obligations."

The Fair Work Ombudsman sought an Order for Jennings to be personally liable for the outstanding employee entitlements after presenting evidence that a back-pay Order against Step Ahead Security Services could not be enforced because the company has been wound-up.

The Agency also revealed that previous investigations into underpayment allegations against one of Jennings' former security companies were thwarted when the company was deregistered.

Jennings is a consultant to a new company, Tweed Coast Security Pty Ltd.

Judge Jarrett noted that Jennings was "the sole director of two previous companies offering security services that were each wound up, the second one in circumstances where there were complaints of outstanding remuneration owed to employed security guards that were not pursued following the employer's deregistration."

He also noted that Jennings was now operating a fourth security company out of the same premises previously used by Step Ahead Security Services.

The Fair Work Ombudsman has referred the matter to the Australian Securities and Investments Commission (ASIC).

Judge Jarrett found that Jennings had ignored warnings from the Fair Work Ombudsman to pay his employees correctly, and instead paid flat rates which undercut the terms and conditions of the Security Services Industry Award.

He found there had been "calculated and deliberate conduct which plainly amounts to a blatant disregard for Australia's workplace laws and the rights and entitlements of ... employees."

"Employers should be in no doubt that they have a positive obligation to ensure compliance with the obligations they owe to their own employees under the law. That seems to be particularly necessary in the security services industry," Judge Jarrett said.

The Court found that for two of the security guards, being underpaid had "impacted upon them being able to maintain stable living arrangements and their ability to meet their financial commitments".

Judge Jarrett said neither Jennings nor his company had expressed any contrition for their actions, noting that "there is no statement of regret or apology".

The underpayments occurred despite the Fair Work Ombudsman issuing Jennings and security businesses he has operated with multiple warnings in the context of investigating underpayment allegations from at least 13 employees dating back to 2006.

This included the Fair Work Ombudsman issuing contravention letters, compliance notices and a formal letter of caution.

In an effort to discourage further contraventions, Judge Jarrett ordered that 25 per cent of Jennings' penalty be suspended ... to be activated if he is involved in underpaying employees again within the next five years.

Judge Jarrett also imposed an injunction restraining Jennings from underpaying security industry workers in future.

The injunction means that Jennings could potentially face contempt of court proceedings for any further underpayments proven in Court.

Mr Scully says improving compliance in the security industry continues to be a focus for the Fair Work Ombudsman, which has recovered more than \$520,000 for underpaid security workers nationally in the past three years, with payment of flat rates below lawful minimums a persistent issue.

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