

\$60,000 penalty for trying to circumvent overtime payments with labour contract scheme

NOTE: On appeal the findings of contraventions detailed in this media release were set aside by a Full Court of the Federal Court due to errors with the Federal Court decision. As a result, the Full Federal Court referred the matter back for a re-trial of the same issues. The proceedings were subsequently discontinued prior to the re-trial.

8 March 2016

A fruit and vegetable farming operation in Stanthorpe, Queensland, has been penalised a total of \$60,000 for creating a scheme aimed at circumventing its workplace obligations.

The Federal Court found that the scheme was used to avoid paying overtime rates to three fruit packers and a forklift driver amounting to \$19,000.

Judge Joan Collier imposed a \$50,000 penalty against Eastern Colour Pty Ltd, SB Employments and NB Employments and a further \$10,000 penalty against Eastern Colour director Louisa Baronio.

The penalties are the result of an investigation and litigation by the Fair Work Ombudsman.

The Court heard that Eastern Colour devised a labour hire scheme which effectively traded the workers between contractors when they reached 40 hours of work so that overtime payments could be avoided.

“The unfortunate fact that the respondents themselves may feel somewhat exploited by purchasers of their produce does not mean that the respondents are excused from compliance,” Judge Collier said.

“Indeed, in this respect it can be observed that the respondents in turn exploited the lack of knowledge of the employees as to their wages entitlements.

“The evidence of Mrs Baronio that no farms paid overtime rates to their harvesting and packing staff does not mean that the employees, or indeed farm workers generally, were not entitled to receive overtime and penalty rates.”

Fair Work Ombudsman Natalie James says the outcome is pleasing as the Agency filed the matter in September, 2010, and is determined to show employers they have an obligation to comply with the workplace law in all circumstances.

“I would caution any business against taking advice to set up corporate structures for the purpose of avoiding its workplace obligations,” she said.

“In this case, the Court saw through the sham arrangement and the decision highlights that a business taking advice on this sort of anti-avoidance scheme risks a significant penalty.

“There is no simple way of avoiding paying overtime to those that are otherwise entitled to it.

“It is not acceptable for employers to take advantage of any worker with such schemes or by offering pay rates based on what other businesses pay. There are minimum pay rates, they apply to everyone and they are not negotiable for any reason.’

“I would suggest to employers that an investment in quality advice on workplace relations by reputable and appropriately qualified professionals is just as important as purchasing insurance for your business.”

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