

Employer lured, exploited and berated young backpackers, before leaving them stranded

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A business operator has been penalised \$71,910 after making bogus claims in job ads to lure young backpackers to a remote area of western Tasmania, before paying them as little as \$1.35 an hour and then leaving them stranded.

The Federal Circuit Court has imposed the penalty against Harold William Jackson, who formerly owned and operated Harold's Glass and Hardware and the adjacent Rhythm & Vines café-and bakery at Queenstown.

The penalty follows an investigation and litigation by the Fair Work Ombudsman.

Jackson exploited five backpackers, aged in their 20s, who travelled to Australia on the 417 working holiday visa, which is available to young people who want to holiday and work in Australia for up to two years.

To be eligible to apply for a second year, 417 visa-holders must undertake 88 days' specified paid work in a designated regional area and in certain industries in their first year.

Judge Terry McGuire described Jackson's treatment of the backpackers - who were underpaid a total of \$42,985 for various periods of time worked between July, 2013 and February, 2014 - as "calculated" and "callous".

Jackson enticed them with advertisements for hospitality jobs posted on the Gumtree website and in backpacker hostels which stated that "88 day second year work visa sign off is available".

Judge McGuire found that once the workers arrived, Jackson required most of them to do hard physical labour, extensively underpaid them, berated and yelled at them and provided them with only "basic" accommodation and facilities.

Jackson refused to sign-off on the 88-day regional work requirement for their visas and arbitrarily sacked a number of workers, leaving "these young people actually and financially stranded", Judge McGuire found.

"Significantly, the evidence before me of advertisements placed by the respondent from 2012 is indicative of a course of conduct involving workers other than these complainants," Judge McGuire said.

"It is often construed that employers rue the reluctance of young Australians to take on seasonal or similar work. I comment only that such young locals might well be aware of their basic rights and the obligations of employers when considering employment and (Jackson's) tendency to advertise in backpacker hostels was calculated accordingly."

Judge McGuire said the employees were young and for some, English was not their first language.

"The employees were vulnerable and such vulnerability was compounded by their isolated circumstances and the deliberate and at times callous nature of the Respondent's behaviour," he said.

Jackson paid one of the backpackers, an Italian woman, just \$270 for four weeks' work - the equivalent of \$1.35 an hour.

The four other backpackers - from the UK and Japan - worked for Jackson for periods ranging from one week to four months and received irregular payments equivalent to rates of between \$2.43 and \$5.38 an hour.

Under Australian workplace laws they were entitled to be paid more than \$19 an hour for normal hours and up to \$32 an hour for some weekend work.

In total, the backpackers were variously paid between just seven and 21 per cent of their lawful minimum entitlements, with individual underpayments ranging from \$1026 to \$19,097.

Jackson also contravened pay-slip and record-keeping laws.

The Fair Work Ombudsman investigated after receiving a request for assistance from one employee.

Judge McGuire found that Jackson's actions in instructing backpackers to tell Fair Work inspectors investigating that they were "volunteers", rather than employees, was evidence that his contraventions were deliberate".

"This demonstrates an understanding by the Respondent of his statutory obligations and a calculated attempt to avoid and conceal

them,” Judge McGuire said.

Judge McGuire found that Jackson “obfuscated and was uncooperative in the investigative process” and had “provided information that was contradictory and inconsistent”.

Jackson also admitted his contraventions only days before a scheduled hearing, by which time the Fair Work Ombudsman had spent significant resources flying backpackers in from overseas to be witnesses, engaging translators and preparing for a contested hearing.

“All of this incurred substantial impost on the public purse,” Judge McGuire said.

Jackson has not yet complied with a Court Order made in January to back-pay the five back-packers.

“I am told that he has made what I consider to be a token offer at restitution of \$250 per month which will do little to satisfy the losses of these young people,” Judge McGuire said.

Judge McGuire said Jackson had displayed “no evidence of contrition” and the penalty imposed, 75 per cent of the available maximum, should deter him from similar contraventions in future.

Judge McGuire said the “penalty must also act as a sufficient deterrent to those contemplating like-behaviour”.

Fair Work Ombudsman Natalie James said today the Court penalty and the Judge’s remarks made it abundantly clear that deliberate exploitation of visa-holders was serious conduct with serious consequences.

She said the Fair Work Ombudsman’s debt recovery team would investigate pursuing Jackson if the penalty and back-payment Orders are not paid.

“Young and overseas workers can be vulnerable if they are reluctant to complain or not fully aware of their workplace rights, so we place a high priority on taking action to protect their workplace rights,” Ms James said.

“It is not acceptable for an employer to take advantage of any worker, especially overseas workers who speak limited English and have limited understanding of their workplace rights.

“We have minimum pay rates in Australia, they apply to everyone, and they are not negotiable.

“Employers cannot undercut minimum wages, even if their employees offer to accept lower rates – and they must keep accurate time-and-wages records at all times.”

The Fair Work Ombudsman is conducting a national review of the wages and conditions of overseas workers in Australia on the 417 working holiday visa after receiving allegations that some unscrupulous operators were exploiting backpackers.

The Fair Work Ombudsman recovered more than \$2.2 million in underpaid wages and entitlements for 513 visa-holders from disputes completed by the Agency last calendar year – an average of \$4317 each.

The Agency received a total 1916 requests for assistance from visa-holders in 2015, or 12.6 percent of the total number lodged by all workers.

Workers on the 417 backpacker working holiday visa accounted for 807 requests for assistance last year.

Almost \$1 million of all money recovered for overseas workers last year was for 250 employees on 417 working holiday visas.

Employers and employees seeking assistance can visit www.fairwork.gov.au (<http://www.fairwork.gov.au/>) or contact the Fair Work Infoline on 13 13 94.

An interpreter service is available on 13 14 50.

Information on the website to assist people from culturally and linguistically diverse backgrounds has been translated into 27 languages.

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](https://twitter.com/NatJamesFWO) (<http://twitter.com/NatJamesFWO>), the Fair Work Ombudsman [@fairwork_gov_au](https://twitter.com/fairwork_gov_au) (http://twitter.com/fairwork_gov_au) or find us on Facebook www.facebook.com/fairwork.gov.au (<http://www.facebook.com/fairwork.gov.au>).

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Media inquiries:

Ryan Pedler, Assistant Media Director

Mobile: 0411 430 902

ryan.pedler@fwo.gov.au (<mailto:ryan.pedler@fwo.gov.au>)

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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