

## Penalties imposed over threats to Indian doctor

5 October 2016

The operators of a general medical practice south of Brisbane have been penalised more than \$51,000 for subjecting an Indian-trained doctor to “appalling” treatment after he complained to the Fair Work Ombudsman.

Windaroo Medical Surgery Pty Ltd, located at Loganholme Shopping Village, has been penalised \$39,600 in the Federal Circuit Court for threatening the doctor to try to coerce him into withdrawing the complaint – and then cutting off his pay when he refused.

In addition, company director Dr Sheila Pathmanathan has been penalised \$7920 for her part in the threat and cutting-off the doctor’s pay – and fellow director Dr Tan Thi Thanh Tran has been penalised \$3960 for threatening the doctor.

The Court has also ordered Windaroo Medical Surgery and Dr Pathmanathan to jointly pay the doctor \$24,724 compensation for economic loss and distress suffered.

The penalties and compensation order are the result of legal action by the Fair Work Ombudsman.

Acting Fair Work Ombudsman Michael Campbell says the outcome of the matter sends a message that retaliating against a worker simply for exercising a workplace right is serious conduct that will not be tolerated.

“It is completely unacceptable and unlawful for an organisation to seek retribution because a worker has exercised their legal right to lodge a complaint with the Fair Work Ombudsman,” Mr Campbell said.

“We will not hesitate to take enforcement action against any organisation that unlawfully threatens and coerces workers.”

The Indian doctor came to Australia in 2009 on a medical practitioner visa to work at Windaroo Medical Surgery and lodged a complaint with the Fair Work Ombudsman in December that year after a dispute with the company.

Judge Michael Jarrett found that Dr Pathmanathan, Dr Tran and Windaroo breached a coercion provision of the Fair Work Act in February, 2010 by threatening the doctor that he would not be paid unless he withdrew his complaint.

Judge Jarrett also found that Windaroo and Dr Pathmanathan took unlawful adverse action against the doctor by ceasing payments to him a month later, after he refused to withdraw the complaint.

The doctor resigned in May, 2010 and returned to India with his young family.

Judge Jarrett described the treatment of the doctor as “appalling” and found that it had caused him distress.

Judge Jarrett said Windaroo, Dr Pathmanathan and Dr Tran knew the doctor was in “significant financial difficulty” and that withholding payments from him would “add to his financial distress”.

“It was done either in the hope that (the doctor) would relent and withdraw his complaint, or as punishment for not succumbing to the earlier coercion,” Judge Jarrett said.

Judge Jarrett described the attempt to coerce the doctor as a serious contravention.

“To coerce a person into withdrawing a complaint made to the Fair Work Ombudsman in exchange for something to which they were in any event entitled is a gross contravention of s.343 of the Act,” Judge Jarrett said.

“It is not difficult to infer that the contravention was designed with the explicit intent of avoiding scrutiny by the regulatory authority.

“The contraventions were clearly a deliberate attempt to deprive (the doctor) of his right to bring a complaint to the Fair Work Ombudsman and his right to payments under the contract for services he had with the first respondent.”

Judge Jarrett found that there had been “no expressions of regret or remorse” from Windaroo, Dr Pathmanathan and Dr Tran.

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