



## Media releases

**2 August 2009**

### **Construction company paid Chinese workers less than \$3 an hour, watchdog tells Court**

The national pay protector has launched a prosecution against a Western Australian construction company for allegedly paying workers recruited from China less than \$3 an hour.

The Fair Work Ombudsman says the case is one of the most serious underpayment matters it has investigated.

The Agency has initiated legal proceedings against Kentwood Industries Pty Ltd, based in the Malaga industrial area of Perth's northern suburbs.

The workplace watchdog alleges the company deliberately underpaid five Chinese tradesmen almost \$250,000.

The men were recruited on 457 visas to work at sites in Perth, Kalgoorlie and Melbourne.

The Federal Court in Perth will hear that the non-English speaking workers put in up to 11-hour days, seven-days-a-week for less than \$3 an hour.

As well as Kentwood, the Fair Work Ombudsman is also prosecuting company director Jian Yang Zhang, of the Perth suburb of Dianella, claiming he masterminded the underpayments.

They allegedly committed 10 breaches of workplace law.

Fair Work Ombudsman Executive-Director Michael Campbell says it will be alleged that Mr Zhang and Kentwood conducted a calculated campaign of exploitation.

"This type of behaviour is completely unacceptable to every decent Australian and it deserves complete condemnation," he said.

"Employers who think they can get away with deliberately underpaying vulnerable workers have a rude shock coming."

The Fair Work Ombudsman and the Department of Immigration and Citizenship started investigating Kentwood and Mr Zhang in February 2007 after one of the workers complained about his pay and conditions.

Prosecution documents lodged in the Federal Court allege that:

- Mr Zhang recruited five qualified and experienced tradesmen from China to work for Kentwood in Australia.
- The employees worked nine to 11 hours a day, six to seven days a week. A log book kept by a supervisor indicates they worked up to 77 hours some weeks.

- The individual amounts paid ranged from \$7502 to \$12,405, or less than \$3 an hour, for between nine and 14 months' work.
- The Chinese workers were engaged on residential construction projects in Perth, a Chinese Garden of Remembrance in Kalgoorlie and a Chinese Temple at the Springvale Cemetery in Melbourne.
- They variously worked as labourers, carpenters and joiners, tilers, bricklayers, plasterers, renderers, welders and performing loading and unloading duties.
- Soon after the Fair Work Ombudsman first contacted Kentwood, three of the workers were asked to enter Mr Zhang's vehicle separately and sign a statement that they had worked no more than 40 hours a week. They refused.
- Regardless of hours worked, the Chinese employees received a monthly wage equivalent to about \$A600 in their Chinese bank accounts.
- One worker did not receive his first pay for five months. Three others had to wait three months before being paid.
- The workers paid up to \$2500 each to agents of Mr Zhang to secure jobs with Kentwood and have their 457 Visas arranged.
- A statement provided by solicitors for Kentwood and Mr Zhang claims deductions of \$18,360 to \$21,090 per worker were made from their wages to cover accommodation, food, utility, transport, management and visa application costs. The Fair Work Ombudsman alleges that these deductions were unlawful.

In addition to seeking penalties against Kentwood and Mr Zhang, the Fair Work Ombudsman is seeking a Court Order for Kentwood to back-pay the individual tradesmen amounts ranging from \$28,000 to \$69,000, plus interest.

The case is listed for mention on August 18.

Mr Campbell says Fair Work inspectors are committed to educating and assisting employers to understand and comply with workplace relations laws.

However, he warned the Agency would not hesitate to prosecute employers it believed were deliberately underpaying their staff.

Mr Campbell said employers thinking of short-changing employees from a non-English speaking background should look at the hefty penalties being dished out by the Courts, which had shown quite clearly they would not tolerate such shabby behaviour.

In May, Melbourne restaurant operator Penang Kayu Nasi Kander Pty Ltd and company co-owner Poh Meng Hong were fined \$183,400 for underpaying a Malaysian chef more than \$75,000.

The highest-ever penalty achieved by the Fair Work Ombudsman was \$288,000 earlier this year against a small Adelaide cleaning company Saya Pty Ltd, which underpaid two vulnerable workers - an 18-year-old female and a newly-arrived migrant from Iraq - less than \$4000.

"For the sake of saving \$4000 from its wages outlay, this employer now has to mop one heck of a lot of floors to make up that sort of penalty," Mr Campbell said.

Breaches of federal workplace law carry a maximum penalty of \$33,000.

Penalties achieved by the Fair Work Ombudsman for exploitation of foreign workers include:

- \$48,000 plus back-payment against Sydney labour-hire company Healthcare Recruiting Australia and its sole director Michelle Lloyd for deliberately underpaying three Filipino nurses on 457 visas more than \$15,000,

- \$85,750 against WA construction company Hanssen Pty Ltd for breaching the workplace rights of fifteen 457 visa holders from the Philippines and Ireland,
- \$30,000 plus back-payment against Canberra restaurant owner Greenstone Pty Ltd for underpaying a Chinese chef on a 457 visa \$47,000,
- \$18,200 plus back-payment against NSW restaurant operator Yoga Tandoori House Pty Ltd for underpaying an Indian worker on a 457 visa \$11,500,
- \$9000 plus back-payment against Melbourne businessman Dor Tu for his involvement in underpaying four Chinese workers \$93,000,
- \$29,800 plus back-payment against Canberra hospitality businesses Squaw Valley Pty Ltd and Telluride Pty Ltd for underpaying 141 employees, including 457 visa holders, more than \$80,000,
- \$26,730 against two directors of Adelaide company Risborg Services Pty Ltd for their involvement in underpaying 64 trolley collectors, including many with limited English skills, more than \$170,000, and
- \$6600 each against Brisbane businessmen Gregory Wayne Nicholson and David Mark Young for breaching the workplace rights of five Chinese construction workers on 457 visas.

The Fair Work Ombudsman website – [www.fwo.gov.au](http://www.fwo.gov.au) – now provides information about workplace rights in 23 languages.

In April the Agency sent fact sheets on workplace rights to more than 1000 community organisations working with migrants throughout Australia.

“Foreign workers have the same rights as any other worker in Australia and one of the best defences for a migrant worker against exploitation in the workplace is an awareness of these rights,” Mr Campbell said.

Any foreign worker concerned they're being treated unfairly should call the Fair Work Infoline on 13 13 94.

A free translating and interpreter service is available by calling 13 14 50.

The Fair Work Ombudsman promotes harmonious, productive and co-operative workplaces.

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