

IT Fair Work case study

Most employers are not HR professionals, so this can lead to them creating HR risk without them even knowing it.

Case overview

The Fair Work Ombudsman has obtained record penalties against a Brisbane-based IT business and its owner for failing to comply with an order to compensate an employee who had been unfairly dismissed.

The owner operates a business that engineers, distributes, installs and services wireless technology for radio communication and has been penalised \$20,600 in the Federal Circuit Court. The company has been penalised a further \$105,000.

In 2014, the Fair Work Commission ordered the company to pay \$20,769 compensation to an engineer based in the Nowra region it found had been unfairly dismissed, and later also ordered the company to pay the employee costs of \$8,470.

After making several requests for the owner and the company to pay the compensation and costs to the worker, the Fair Work Ombudsman took legal action against them for contravening the Fair Work Act by failing to comply with the Commission's orders.

Fair Work Ombudsman Sandra Parker said that \$125,600 in total penalties is a record against an employer for failing to comply with an order to pay unfair dismissal compensation.

"The penalties obtained by the Fair Work Ombudsman send a strong message to businesses that there are serious consequences for failing to comply with Fair Work Commission Orders."

"It is fundamental for the integrity of the workplace relations system that orders are complied with and we will take legal action to ensure employees receive compensation," Ms Parker said.

In addition to imposing penalties for contravening the Fair Work Act, the Federal Circuit Court has ordered the company to pay the \$29,239 in outstanding compensation and costs to the employee, plus interest of \$5,646. The Federal Court of Australia then dismissed appeals by the company against the same orders in December 2016.

The Court has also made an order stipulating that if the company fails to pay the employee compensation and costs owed, the penalties imposed against the owner be directed to the employee to partially rectify the amounts owed.

Background

The Full Bench of the Commission dismissed appeals by the company against the compensation and costs orders in 2015. The Court has also ordered the company to pay the Fair Work Ombudsman \$2,678 in legal costs. It is the second time the Fair Work Ombudsman has secured penalties against the owner and the company. The Fair Work Ombudsman secured penalties totaling \$6,380 against the owner and the company in Court in 2011 for underpaying an employee almost \$6,000. The underpayment was rectified only after the Fair Work Ombudsman initiated legal action.

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Case facts

- Penalised \$20,600 and the company penalised a further \$105,000
- In 2014, ordered \$20,769 compensation paid to a former employee with an additional employee costs of \$8,470.
- When this was ignored, the owner was ordered to pay \$29,239 in outstanding compensation and costs to the employee, plus interest of \$5,646.
- With the owner making appeals, the Court ordered the owner to pay the Fair Work Ombudsman \$2,678 in legal costs.
- In 2011, the company underpaid an employee almost \$6,000 and were ordered to pay penalties totaling \$6,380

What they should have done

Once the owner was aware that they had underpaid employees, they should have reviewed the wages of all current staff members to ensure they were paid according to the award. Additionally, the owner needed to follow proper legislation requirements for termination. This would include proper documentation of performance management meetings.

How Happy HR would have helped this business avoid the fair work claim

A Happy HR consultant would be able to train the owner on proper performance management processes. Utilising the Happy HR platform, these meeting would be properly documented and time stamped. With our Premium Services, employers have a qualified HR consultant capable of completing Award Interpretations for each employee.

Happy HR ROI (based off a 50-person company)

Fair Work penalty = \$125,600 = An equivalent of 23 years subscription with Happy HR! Plus countless hours saved on administration and in Fair Work!