



Employment Law - Payroll Company Liable for Client's Award Breach

Date : May 23, 2017

Employment Law - Background

The decision in *Fair Work Ombudsman v Blue Impression Pty Ltd & Ors* serves as a warning to payroll and accounting companies, as the court held an accounting company liable for its client's breaches of the *Fair Work Act*.

Employment Law - Facts

In essence:

- Blue Impressions, a Japanese restaurant chain, engaged EZY Accounting to do its data entry, bookkeeping and payroll processing for its employees
- Blue Impressions sent data to EZY Accounting who uploaded it to MYOB for calculating and processing the payroll for employees
- the relevant employees were covered by the *Fast Food Industry Award 2010*
- the employees were being paid approximately \$16.50 an hour, when they should have been receiving at least \$19.44 an hour
- the restaurant was audited by a Fair Work inspector
- it was determined that the *Fast Food Industry Award 2010* applied to the business and the Ombudsman sent a letter to Blue Impressions to that effect
- the restaurant then engaged a workplace relations specialist to provide employment related advice
- due to the audit and the specialist's advice, EZY Accounting became aware of the details of the *Fast Food Industry Award 2010* and the correct rates to be paid to employees, however, it failed to change the pay rates because they claimed they had no authority to do so
- EZY Accounting argued that it was the responsibility of its client, Blue Impressions, to ensure its employees were paid correctly
- further underpayments occurred

Employment Law - Decision

The Federal Circuit Court of Australia found:

- EZY Accounting was an accessory to its client breaching the *Fair Work Act*
- EZY Accounting had the requisite knowledge of the employment underpayments



because of the audit and because it produced workers' payslips through its payroll system, yet "deliberately shut its eyes" to what was going on

- this employment related conduct "amounted to connivance in the contraventions" by the restaurant of the *Fair Work Act* as EZY Accounting had "had at [its] fingertips all the necessary information that confirmed the failure to meet the Award obligations by [the restaurant] and nonetheless persisted with the maintenance of its (payroll) system with the inevitable result that the Award breaches occurred"
- paying less than the employment law rates in the *Fast Food Industry Award 2010* is a breach of the *Fair Work Act*
- under the *Fair Work Act* a person who is involved in a breach of the *Fair Work Act* is deemed to be in the same position as the person who actually breached the *Fair Work Act*
- a person is considered to be "involved" if they aided, abetted or procured the breach, or if they were in any way, by act or omission, directly or indirectly, knowingly concerned in, a party to, or a conspirator with others to, the breach
- EZY Accounting breached the *Fair Work Act* under these 'accessorial liability' provisions
- that is, EZY Accounting was 'involved' in the contraventions of the *Fair Work Act* by the fast food restaurant chain
- the penalty to be imposed on EZY Accounting will be determined later

Employment Law – Tips for Employers

Our **Matthews Folbigg Workplace Solutions** employment law team recommends employers:

- review this employment law decision
- seek the assistance of an employment lawyer to understand the impacts of this employment law decision
- ensure compliance with all employment laws including Fair Work Commission decisions, Awards and enterprise agreements
- understand what employment laws apply at your workplace including Awards and enterprise agreements
- penalties can apply for breaches of employment laws including Awards and enterprise agreements (which an employment lawyer can advise on)
- raise any employment law questions with an employment lawyer
- be conscious of the accessorial liability provisions of the *Fair Work Act*

Employment Law – More Information

Please call the leading employment lawyers in Parramatta, the **Matthews Folbigg Workplace Solutions** employment law team on **9635-7966** to speak with one of our employment lawyers.