

A 7-Eleven franchise that obtained "free labour" by systematically exploiting vulnerable international students has been ordered to pay penalties of \$150,000 and backpay of \$90,000, after a magistrate said she wanted to send a message that compliance with IR laws wasn't just the bastion of large employers with HR specialists.

Magistrate Kate Hawkins, of the industrial division of the Victorian Magistrates Court, found that franchisee Bosen Pty Ltd and its two principals had underpaid the casual employees by up to \$45,500 in a four-year period when it paid employees working day and night shifts at a flat rate at its two 24-hour 7-Eleven stores in South Yarra and Geelong and required them to work unpaid "trial periods".

She said that despite receiving basic IR training and regular updates from the [7-Eleven head office](#), the franchisee and principals failed to pay casual, shift, weekend or public holiday penalties.

Magistrate Kate Hawkins said the "training period" employees were required to work "equated to several weeks of free labour in most instances" that amounted to a "free bonus".

She added that the employers had made out they were doing a favour to the employees - whose visas restricted them to 20 hours paid work a week - by recording only half the hours they worked, "which made their payslips look like the Employees were receiving double the flat rate they actually received".

The employer's conduct was aggravated by its failure to keep time and wages records and its destruction of the records it had kept, which prevented the Fair Work Ombudsman from identifying the full extent of the underpayments and made it more difficult to recover them.

Magistrate Hawkins said the employer's conduct was "a systematic and significant exploitation of highly vulnerable workers". She noted that the principals had limited oral and written English skills and relied on their employee managers to help them translate "often out of date" information from head office about wages and conditions.

The breaches might have come about due to ignorance, she said, but the franchisee and principals were involved in multiple business operations in an English-speaking jurisdiction, and ignorance was no excuse for non-compliance. She said there was no evidence of the principals seeking advice in their native language to ensure they understood their obligations.

In setting the penalty, Magistrate Hawkins said the employer had engaged in a "deliberate and calculated campaign" to underpay employees and obtain free labour, giving it an unfair competitive advantage.

The breaches were not a result of "naive ignorance" as the employer ignored training and regular updates from 7-Eleven and "must have been wilfully blind to the well known legal obligations of every small business operator".

Compliance not just the domain of large employers

Magistrate Hawkins said there was a need to "send a message to the community at large, and small employers particularly, that the correct entitlements for employees must be paid and that steps must be taken by employers (of all sizes) to ascertain and comply with minimum entitlements (as opposed to ignoring those obligations)".

"Compliance should not be seen as the bastion of the large employers with human resources staff and advisory consultants (accountants, consultants, lawyers) behind them"

She said the starting point for the penalty should be 60% of the maximum and ordered the franchisee to pay \$120,000, the first principal \$20,000 and the second principal \$10,000.

Workplace Relations Minister Senator Chris Evans congratulated the FWO for its successful prosecution