



PENALTIES IMPOSED FOR UNDERPAYMENTS, SHAM CONTRACTING

ABCC v Rapid Formwork Constructions Pty Ltd & Anderson

The Federal Magistrates Court in Canberra has imposed penalties totalling \$25,500 on Rapid Formwork Constructions Pty Ltd and its Director Kevin Anderson, for engaging two workers on 'sham contracting' arrangements and breaching the relevant awards.

During proceedings the respondents also agreed to back-pay the two workers a total of \$6816 in unpaid wages and entitlements.

The case is the second successful sham contracting decision for the ABCC, and only the third time that sham contracting has been proven by any party.

"Sham contracting occurs when an employer misrepresents what should be a contract of employment, as a contract for service, disguising an employee as an independent contractor," said Acting ABC Commissioner Brian Corney.

"Legitimate contracting is vital to the industry, but sham contracting denies workers their full entitlements, puts decent employers at a competitive disadvantage, and is used by some employers to dodge tax liabilities.

"This is why today's decision is important, and why the ABCC is conducting an Inquiry into sham contracting in the building and construction industry."

In a statement of agreed facts presented to the Court, the respondents admitted telling workers that they were required to get an ABN before they could be properly paid, and making statements indicating it was a way to avoid having the workers paid wages.

The workers were employed exclusively by Rapid Formwork Constructions, and their tasks, hours of work and meal breaks were determined by the company.

Rapid Formwork Constructions also supplied tools, materials, safety equipment, uniforms and expendable items such as nails.

"The workers were young and had no experience in the building and construction industry, meaning they were easily convinced that obtaining an ABN to work was required," said Acting ABC Commissioner Corney.

"As workers become more aware of their rights and entitlements, it is becoming harder for dodgy employers to convince workers they will be somehow better off under contracts of service.

"During the proceedings, the respondents recognised their actions were unlawful and co-operated fully with the ABCC.

"Today's decision should give employers in the building and construction industry cause to review their own practices to ensure they are compliant with Commonwealth workplace laws."

Media contacts

Jessica Kendall

07 4041 8724 / 0403 344 186

Jessica.Kendall@abcc.gov.au

Simon O'Dea

03 8509 3080 / 0413 248 398

Simon.ODea@abcc.gov.au