

Court slams "shameless" sham scheme

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A cleaning company that shamelessly exploited a vulnerable workforce made "inept attempts" to avoid the legal consequences when it claimed its employees were independent contractors, the Federal Court has found.

The FWO prosecuted contract cleaning business Grouped Property Services Pty Ltd (GPS) for more than 36 breaches of the Fair Work Act, including failing to pay basic employee entitlements such as minimum wages, penalty rates, annual and personal leave and superannuation.

Many of the employees were overseas nationals, including students with limited English on working visas.

When they asked about their pay, the company repeatedly ignored or rebuffed them and sometimes issued threats.

As each of the alleged contraventions affected up to 51 employees, the FWO claimed GPS had been involved in more than 580 contraventions between 2011 and 2013.

The FWO also asked the court to find that both GPS's former director and his brother, who took over as director, were involved in the alleged breaches.

GPS denied that it employed the 51 workers.

It maintained that they were independent employees engaged by a third party, National Contractors Pty Ltd, and that it hired labour from it, as well as other companies.

The former director argued that GPS was never the employer, claiming the individuals "may have been" employed by other entities, including National Contractors.

The FWO argued the labour hire arrangements were not genuine.

"Unrealistic" to describe workers as contractors

Justice Anna Katzmann said that it was "unrealistic" to describe any of the workers as independent contractors because they were "servants of GPS" and presented to the public and those utilising GPS's services as "emanations" of the company.

"In the present case the bulk of the GPS business consisted of providing services, mostly cleaning services, to other businesses."

It involved "the marshalling and direction of the labour:, principally of the cleaners. . . these individuals had little, if any, latitude over their work".

"Work practices were imposed upon them. They had no control over the allocation, manner or hours of work. They were not able to delegate their work to others. They did not supply their own equipment or materials. They did not carry their own insurances. They did not

advertise their services. There was little or no scope for bargaining either over wages or conditions," she said.

Justice Katzmann found that many of the workers were required to have ABNs, but this alone did not make them contractors, nor did the fact that they invoiced for their services.

In each instance they did so because it was a condition of their employment, she said.

National Contractors was "the last in line of a number of companies" established by GPS's former and current director that purportedly employed labour supplied to GPS.

Justice Katzmann said GPS's claim that the individuals were contractors was "disingenuous", given the close relationship between the two companies and their management personnel.

She added that the evidence "points strongly to a practice of 'phoenixing', that is to say creating new companies from the ashes of the old, with the object of defeating creditors".

Justice Katzmann said all of the evidence pointed to "the conclusion that the designation of workers as contractors was merely a device to enable GPS to avoid its legal obligations".

"I am well satisfied that each of the individuals in question was an employee and not an independent contractor.

"The way they worked and (save for the fact that some obtained ABNs on the instructions of GPS managers, were given documents to sign indicating that they were sub-contractors, and were required to submit invoices) the arrangements under which they worked were indistinguishable from the way the employed cleaners worked," she said.

Justice Katzmann found that National Contractors had none of the hallmarks of an independent business and generated little or no income, while GPS had systems in place for engaging employees, including OHS policies, interviews for prospective candidates and making offers of employment.

"The denial contained in GPS's defence that it employed any of the employees and that it holds any of the records relating to them is fatuous.

"This practice of GPS offering employment purportedly with another so-called labour hire entity appears to be longstanding and to predate the establishment of National Contractors," she said.

Employer also took adverse action: Court

GPS was also alleged to have taken adverse action against one employee for exercising workplace rights when she inquired about her pay.

The FWO claimed that GPS contravened [s340](#) when it unlawfully dismissed the employee, who had repeatedly sought payment for 15 days worked.

Justice Katzmann rejected GPS's contention that the employee had abandoned her employment.

"She merely refused to continue to work without pay. It was unlawful to require her to work without payment. It was not she but her employer who repudiated the contract. By failing to respond to any of [the employee's] earlier entreaties and then choosing to treat the employment contract as having come to an end, [GPS's former director] constructively dismissed her," she said.

Justice Katzmann directed GPS to undertake an audit of its compliance with the legislation and modern awards, including training as part of its workplace obligations.

She also restrained GPS and its former and current directors from engaging in further conduct that contravenes the Act and applicable awards.

The FWO is seeking \$327,111 in compensation from GPS, plus penalties.

Justice Katzmann said she will deal with these matters in a [case management hearing](#) set down for October 7 in Sydney.