

**IN THE FEDERAL CIRCUIT COURT OF
AUSTRALIA
AT MELBOURNE**

FILE NO: (P)MLG2306/2013

**FAIR WORK OMBUDSMAN
APPLICANT**

**OZSTAFF CAREER SERVICES (ACN 147 550
865)
FIRST RESPONDENT**

**TRAVICE BLOM
SECOND RESPONDENT**

**ALESSANDRO LINOSSI
THIRD RESPONDENT**

ORDER

BEFORE: JUDGE BURCHARDT

DATE: 12 February 2016

MADE AT: MELBOURNE

APPEARANCES: by Ms Dowsett of Counsel appearing on behalf of the Applicant,
Mr McDougall of Counsel appearing on behalf of the First and Second Respondents and
Mr McKenny of Counsel appearing on behalf of the Third Respondent.

THE COURT DECLARES THAT:

1. The First Respondent has contravened:

- a. Section 323(1)(a) of the *Fair Work Act 2009* (“the FW Act”), by deducting the Administration Fee Deduction from the wages of the 102 Employees listed in Schedule 1 of the amended Statement of Claim and thereby failing to pay them in relation to the performance of work in full during the Audit Period;
 - b. Section 323(1)(a) of the FW Act, by deducting the Meal Deduction from the wages of 44 Employees named in Schedule 1 of the amended Statement of Claim and thereby failing to pay them in relation to the performance of work in full for the pay periods ending 15 April 2012, 22 April 2012 and 24 March 2013;
 - c. Regulation 3.44(1) of the *Fair Work Regulations 2009* (“the FW Regulations”), by failing to ensure that the records that the First Respondent is required to keep under regulations 3.33(1)(b) and 3.33(1)(c) of the FW Regulations were not false or misleading to the First Respondent’s knowledge;
 - d. Regulation 3.44(4) of the FW Regulations, by altering records that the First Respondent was required to keep under the FW Regulations; and
 - e. Regulation 3.44(6) of the FW Regulations by Regulations by making use of the First Payment Records knowing that the entries of the net payment and omission of the Administration Fee Deduction in payslips for the 17 Employees in Schedule 2 were false and misleading.
2. The Second Respondent was involved in each of the contraventions by the First Respondent set out in declaration (1)(a)-(e) above.
 3. The Third Respondent was involved in:
 - a. The contravention by the First Respondent in declaration (1)(a) above in the period from 4 February 2013 to 12 May 2013;

- b. The contravention by the First Respondent in declaration (1)(b) above in respect of Meal Deductions that occurred in the pay period ending 24 March 2013; and
- c. Each of the contraventions by the First Respondent set out in declaration (1)(d) to (e) above.

THE COURT ORDERS THAT:

- 4. The evidence in chief of witnesses called in the hearing on penalty, other than any person subpoenaed to give evidence, be given by way of affidavit.
- 5. The Applicant is to file and serve any affidavit material on which it wishes to rely on the issue of penalty on or before 22 April 2016.
- 6. The Second and Third Respondents are to file and serve any affidavit material on which they wish to rely on the issue of penalty on or before 20 May 2016.
- 7. The Applicant is to file and serve any affidavit material in reply and an outline of submissions on the issue of penalty on or before 17 June 2016.
- 8. The Second and Third Respondents are to file and serve an outline of submissions on the issue of penalty on or before 8 July 2016.
- 9. The Applicant is to file and serve any outline of submissions in reply on or before 22 July 2016.
- 10. The parties are to give each other written notice of the witnesses they require to attend for cross-examination on or before 19 August 2016.
- 11. Each party is to serve any objections to the admissibility of another party's affidavits on or before 19 August 2016.
- 12. Any response to those objections is to be served on or before 23 August 2016.
- 13. The matter be set down for a penalty hearing at 10.15 am on 26 August 2016.

14. The parties have liberty to apply.

By the Court

JUDGE BURCHARDT

DATE ENTERED: 15 February 2016