

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Supplementary Budget Estimates 2015 - 2016

Agency - Fair Work Ombudsman

Department of Employment Question No. EMSQ15-000322

Senator Urquhart asked on 22 October 2015 on proof Hansard page 129

Question

FWO - Award for employees at Mitolo

Senator URQUHART: My final question in this area is in relation to Mitolo, a South Australian potato and onion producer, which a full bench of the Fair Work Commission found earlier this year should be paying employees under the Storage Services Award rather than the Horticultural Award, which is lower. I am advised that the Fair Work Ombudsman's view was that the employees at the site were and continue to be paid incorrectly, but that you indicated you would not assist in ensuring that the company paid its employees the legal award minimum. Is that true?

Mr Campbell: I do not know the matter off the top of my head. As I said, it is a high-volume workplace. We have probably about 1,000 matters on hand at any given time. But I am happy to take that on notice and have a look. We would look to enforce what the minimum entitlement was, irrespective of which award it was derived from. If the commission has made a particular order, we would be bound to comply with or provide advice or education along the lines of that order.

Senator URQUHART: In terms of this case: if the full bench found that they were paying under the wrong award, surely that would be where you would step in—if they continue to refuse to pay under the correct award?

Mr Campbell: I will have to take that on notice because I do not know the investigation. It is not that I am not prepared to answer your question. As I do not know the investigation, I would not be able to answer your question fully.

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Senator URQUHART: So you are not aware of this case?

Mr Campbell: No, I am not. But, as I said, I am happy to look into it.

Answer

Under the *Fair Work Act 2009* the Fair Work Ombudsman can enforce some, but not all, Fair Work Commission Orders.

Failure to comply with a Fair Work Commission Order, a notice to produce or a compliance notice represented 34 per cent of all allegations that the Fair Work Ombudsman took to court in 2014–2015. Enforcing orders and notices is important to uphold the effectiveness of Australia's workplace relations system. It's also in the public's interest to ensure Fair Work Commission Orders, such as unfair dismissal or industrial action orders, are complied with.

The decision of the Fair Work Commission in *Mitolo Group Pty Ltd v National Union of Workers [2015] FWCFB 2524* (21 April 2015) is not an order enforceable by the Fair Work Ombudsman under the *Fair Work Act 2009*.

The Fair Work Ombudsman will audit Mitolo Group Pty Ltd as part of our ongoing Harvest Trail Inquiry. This will involve an assessment of whether the business is complying with workplace laws.