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NORTHERN TERRITORY OF AUSTRALIA

WORK HEALTH COURT

No: 21824970

WORK HEALTH AUTHORITY

and

TROPICKIST PTY LTD

and

DAVID O'BRIEN

(Sentencing remarks)

JUDGE MORRIS

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON 3 JULY 2019

Transcribed by:
EPIQ

HER HONOUR: Mr O'Brien, I am speaking to you both as director of the company and yourself. You have pleaded guilty in relation to this charge and I do give you, despite the fact that this matter has had several mentions and has been, it would seem, set for hearing at some stage it never proceeded as a hearing and you have pleaded now.

So, you are entitled to a discount on your sentence because of your plea of guilty for both of those entities and I have given you a discount of 25 per cent because of your plea of guilty.

The offence is that documents were required of you and you did not produce them without reasonable excuse. I understand from your submissions to the court that you didn't think they should have been doing a workplace investigation in the first place; however of course that is no excuse in relation to the requirement to produce the documentation.

You had your company for four years operating as a labour hire business and it would appear that some of the work that you did was in relation to organising mango picking crews. And one of the reasons that you did not produce the documentation was that it was being for at a particularly busy time and was logistically difficult for you.

The prosecutor has talked about the need for general deterrence. General deterrence is one of the principles of sentencing that I must apply and it's about sending a message to the community that these requirements are serious and that the court will deal with breaches of them in a serious way.

The regulatory system in relation to investigating work health and safety accidents is an important one for all of the Northern Territory because those investigations can of course lead to prosecutions but can also lead to changes to various workplace systems to make workplaces safety for everybody.

So that's why it is important to uphold the various requirements and it is important to send a message to everybody that when there is an investigation, whether you think there should be or not, that you comply with the requirements that you have been ordered and produced a notice to do so.

In imposing fines, and there are just fines available in relation to both of these offences as you yourself as an individual and for the body corporate, your entity, I need to take into account of course your ability to pay.

You have informed the court, and I have no reason not to believe this, that you own no property; that you are in financial stress and that you and your wife have a small residential cleaning business earning approximately \$700 a week, which is not a large amount of money. You have also informed me that the company is in receivership which would mean, I think, that the company also owes funds and was not able to continue to trade.

Taking all of those factors into account, in relation to the offence of where Tropickist the company is the defendant on file 21824936 the company on count 2 is convicted and fined \$10,000 plus \$150 in victims' levies. 28 days to organise payment and I vacate the date of 9 July on that file.

In relation to the file against you, David James O'Brien, personally on file 21824970 you are convicted in relation to count 2 and fined \$3000 plus \$150 in victims' levies. 28 days to organise payment of that fine and I vacate the date of 9 July 2019.

So, when I say 28 days to pay, Mr O'Brien, that doesn't mean that you must pay the whole fine off within that time. But, you do need to contact the fines recovery unit in the Northern Territory and make a payment plan in relation to that amount, otherwise further charges and fees will be added to that. And they have other powers as well, in relation to suspension of territory motor vehicle licenses and things like that.

Do you have any questions?

MR O'BRIEN: No.

HER HONOUR: Thank you.

We'll delete the link now.

ADJOURNED