



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

(as represented by the Office of the Fair Work Ombudsman)

and

Couriers Please Pty Ltd (ABN: 76 006 144 734)

ENFORCEABLE UNDERTAKING

PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**) by Couriers Please Pty Ltd (ABN: 76 006 144 734).

BACKGROUND:

2. Couriers Please Pty Ltd (**Couriers Please**) is a parcel delivery business with nationwide coverage across Australia and delivers over 18 million parcels yearly. It is a fully owned subsidiary of Singapore Post (**SingPost**).
3. In September 2018, Couriers Please notified the FWO that they had identified non-compliance with the *Road Transport & Distribution Industry Award 2010* (**Transport Award**) involving non-payment of a 20-minute meal break to freight handling and depot staff (**Employees**) performing shift work.
4. At the time, Couriers Please employed 110 freight handling and depot staff across Australia except Tasmania, Northern Territory and Canberra.
5. Couriers Please admits that it contravened section 45 of the FW Act from January 2010 when the Transport Award came into effect, to September 2018 by contravening clause 24.9 – meal breaks (paid 20 minute meal break) of the Transport Award.
6. The contravention occurred when Couriers Please implemented an electronic payroll system in 2010.
7. The contravention affected 245 current and former Employees, totalling \$382,065.41 in underpayments. \$361,073.87 has been back paid to 204 Employees with \$20,991.54 still to be paid to the remaining 41 former Employees.

COMMENCEMENT OF ENFORCEABLE UNDERTAKING

8. This Undertaking comes into effect when:
 - a) the Undertaking is executed by Couriers Please; and
 - b) the FWO accepts the Undertaking so executed.

ENFORCEABLE UNDERTAKING

9. Upon the execution of this Undertaking and for the purposes of section 715 of the FW Act, Couriers Please undertakes the following:

Rectify underpayments

- a) Within 28 days of the execution of this Undertaking, report on attempts to locate former affected Employees that have not yet been back-paid;
- b) If any of the Employees cannot be located, within 35 days of the execution of this Undertaking, make application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Commonwealth Revenue Fund. Couriers Please will complete and return the required documents supplied by the FWO within any specified timeframes;

FWO My account registration

- c) Within 21 days of the execution of this Undertaking:
 - a. register with the FWO My account portal at www.fairwork.gov.au/register and complete the My account profile, including information about the business and award/agreement coverage, through this portal;
 - b. using the FWO Pay Calculator, calculate relevant minimum pay rates (and penalty rates where necessary) and save these calculations to your My account;
 - c. provide to the FWO the 'My account' Customer Registration Number (CRN);
- d) Within 28 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to an officer of the FWO, knowledge of the use of My account, including saving information within My account from the website and relevant FWO online tools. Couriers Please will demonstrate how saved information is used to contribute toward your compliance with workplace obligations including payment to employees of the correct minimum pay rates and public holiday penalty rates;
- e) Within 28 days of the execution of the Undertaking, subscribe to the FWO's subscription service and provide evidence to the FWO of the subscription:
 - a. Subscribe to the FWO's 'Subscribe to email updates' function available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates>;
 - b. Choose the relevant State/s and industry, selecting information updates on the following options:
 1. pay rates and entitlements;
 2. new products and resources;
 3. about us and our work;
 4. updates in my industry; and
 5. tailored information that's relevant to me;

Workplace relations systems and processes

- f) Ensure that it complies at all times and in all respects with the FW Act, the *Fair Work Regulations 2009* (Cth) and the Transport Award;

- g) Provide the FWO, within 60 days of the date of execution of this Undertaking, details of systems and processes already in place or to be implemented to comply with paragraph 9(f) above. Without limitation, such systems and processes relating to:
 - a. Ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty and overtime rates and allowances;
 - b. Keeping accurate and complete records to ensure employees receive their correct wages and entitlements;

Workplace relations training

- h) Within 150 days of the execution of this Undertaking, organise and ensure training is provided to all State Managers, Operations Managers, Depot Supervisors and Administration Managers (**Training**);
- i) Ensure the Training relates to compliance with applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act and the Transport Award;
- j) Ensure the Training is conducted by a workplace trainer, such person or organisation to be approved by the FWO and paid for by Couriers Please;
- k) Provide the training materials to be used in the Training to the FWO no later than 14 days before the Training is to be conducted;
- l) Provide evidence of attendance at the Training to the FWO within seven days of the Training being provided (including the name and position of all attendees and the date on which the training was attended);

FWO Online Training

- f) Within 60 days of the execution of this Undertaking ensure that all persons responsible for management, recruitment, payroll and human resources complete all education courses designed for employers available on the FWO online learning centre via <http://www.fairwork.gov.au/how-we-will-help/online-training> and provide certificates of completion to the FWO as per **Attachment A**;

Audit Activity

- m) At its own expense, Couriers Please must cause to have performed by an independent expert, approved by the FWO in writing, audits of Couriers Please compliance with all Commonwealth workplace laws and instruments (**Audits**), including but not limited to clause 24.9 of the Transport Award;
- n) The Audits will review the pay and conditions of 10% of all freight and depot employees; and
- o) Will ensure that the following requirements are met:
 - i. First Audit for the period 16 December 2019 – 19 January 2020 is to be finalised and a report on the outcomes of the audit is to be provided to the FWO by 27 March

2020. The report must include details of Couriers Please's compliance or non-compliance with clause 24.9 of the Transport Award;
- i. Second Audit for the period 14 December 2020 – 15 January 2021 is to be finalised and a report on the outcomes of the audit is to be provided to the FWO by 26 March 2021. The report must include details of Couriers Please's compliance or non-compliance with clause 24.9 of the Transport Award;
 - ii. Third Audit for the period 20 December 2021 – 21 January 2022 is to be finalised and a report on the outcomes of the audit is to be provided to the FWO by 28 March 2022. The report must include details of Couriers Please's compliance or non-compliance with clause 24.9 of the Transport Award;
- p) 21 days prior to the Audit due dates, as specified above, Couriers Please will provide for the FWO's approval, details of the methodology to be used to conduct the Audit;
- q) In the event an Audit discloses contraventions of any applicable Commonwealth workplace law and/or instruments, rectify all such contraventions within 14 days of each of the finalisation dates specified in paragraph 9(o) above, including rectification of any and all underpayments to employees and provide evidence of rectification to the FWO;
- r) If requested, provide the FWO with all records and documents used to conduct the audit, including any working documents, within 14 days of such a request;
- s) If any employee(s) identified as having underpayments owing to them cannot be located, within 60 days of each of the finalisation dates specified in paragraph 9(o) above, make application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Commonwealth Revenue Fund. Couriers Please will complete and return the required documents supplied by the FWO within any specified timeframes;

Matters notified to the FWO

- t) Where the FWO receives a request for assistance from an employee or former employee of Couriers Please regarding non-compliance with the relevant award or legislative requirement the FWO will, at its discretion and subject to the below paragraph regarding serious non-compliance, notify Couriers Please and its officers and provide relevant details;
- u) Where a matter is notified to Couriers Please it will co-operate with the FWO to ensure compliance. This includes:
 - i. Determining an appropriate outcome for the matter within 45 days of notification to Couriers Please; and
 - ii. Advising the FWO of their determination and actions in relation to the matter including:
 - 1. the reasons for the determination and any compliance issues identified;

2. the details of any Underpayments and amounts rectified;
 3. steps taken to address compliance issues identified, including for any similarly affected employees; and
 4. if any matter remains unresolved, the steps taken by Couriers Please to facilitate the resolution of any such matter;
- v) The FWO reserves the right to investigate any allegations;
- w) The FWO may advise Couriers Please of any active investigations the FWO is undertaking. If this is the case Couriers Please undertakes to:
- a. Provide all requested employment records and other documentation to the FWO relevant to the investigation;
 - b. Assist with any subsequent requests for information relevant to the investigation, including participation in any formal records of interview; and
 - c. Co-operate in FWO's investigative processes;

Public Notice

- x) Place a public notice (**Public Notice**) in the Saturday edition of The Age and The Australian newspapers within 28 days of, but not prior to, the FWO publishing a Media Release on its website in respect of this Undertaking. The Public Notice must:
- i. Bear the name of Couriers Please;
 - ii. Contain the logo of Couriers Please;
 - iii. Appear within the first five pages of the newspapers;
 - iv. Be at least 10 cm x 8 cm in size;
 - v. Contain wording in the form of **Attachment B**;
- y) Provide a copy of the Public Notice to the FWO within seven days of the publication of the Public Notice;

Workplace Notice

- z) Within 28 days of the execution of this Undertaking, cause to be displayed within workplaces where Couriers Please freight and depot workers work; a notice in the form of **Attachment B** to this Undertaking (**Workplace Notice**) and provide photographic evidence of its display and the location of the notice in the workplace. The Workplace Notice must be:
- i. Printed in at least A3 size and is clearly displayed;
 - ii. In a location to which all employees who work at Couriers Please have access;
 - iii. In a manner which is reasonably capable of drawing attention of all employees to the Workplace Notice (for example, by placement on a staff noticeboard);
 - iv. For a period of 28 continuous days;
- aa) At the end of the period of 28 days provide confirmation to the FWO that the Workplace Notice has been continuously displayed for the required period;

Website Notice

- bb) Couriers Please will place a (**Website Notice**) on the home page of its website within 28 days of, but not prior to the FWO publishing a Media Release on its website which will:
- i. be in the form of the Website Notice set out at **Attachment B**;
 - ii. be displayed in at least size 10 font; and
 - iii. remain on the website for a continuous period of 28 days;
- cc) Couriers Please will provide evidence of the placement of the Website Notice to the FWO on the date it is published;

Contribution Payment

- dd) Within 30 days of the execution of this Undertaking, make a contribution payment of \$50,000.00 to the Consolidated Revenue Fund and provide evidence of the payment to FWO.

Reporting

- ee) Couriers Please will notify the FWO of any changes of circumstances that could potentially impact on Couriers Please ability to comply with the undertakings contained in this Undertaking, as soon as it becomes aware of such circumstances. Such circumstances shall include but not be limited to:
- i. Sale or potential sale of the business, or part of the business;
 - ii. Change of or change in details of company directors, or other officeholder positions;
 - iii. Change in engagement of workers, for example engaging contractors, labour hire or family members in lieu of employees;
 - iv. Couriers Please or its Directors opening any new establishments or businesses, or acquiring any existing businesses establishments, whether alone or in partnership with another entity;
 - v. Ceasing or an expectation of ceasing to trade; or
 - vi. Business going in to administration or liquidation.
- ff) In the event that there are any events or circumstances described in 9(ee) above, required to be reported to the FWO, Couriers Please will provide any documentation or other evidence requested by the FWO to confirm the event/s that have transpired.

Employee Reporting

- gg) Every six months from the date of execution of this Undertaking, for a period of two years Couriers Please will report to the FWO on all depot and freight employees that worked for Couriers Please during the previous six months. Couriers Please will complete the signed declaration at **Attachment C** that includes the employee names, start dates and finish dates (where relevant), the status of employment and the

classification under the Award. Couriers Please will also make the declaration in **Attachment D** that employees have received their minimum entitlements under the FW Act and the Transport Award, that Couriers Please has made superannuation payments on behalf of the Employee and has submitted PAYG tax withholding to the Australian Taxation Office;

NO INCONSISTENT STATEMENTS

10. Couriers Please:

- a) must not; and
- b) must ensure that each of its officers, employees or agents, do not, make any statement, orally or in writing or otherwise imply anything that is inconsistent with admission or acknowledgements contained in this agreement.

ACKNOWLEDGEMENTS

11. Couriers Please acknowledges that:

- a) The FWO may;
 - i. make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
 - ii. release a copy of this Undertaking (and any of the Attachments hereto) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - iii. issue a media release in relation to this Undertaking;
 - iv. from time to time, publicly refer to the Undertaking (and any of the Attachments) and its terms; and rely upon the admissions made by Couriers Please in this Undertaking in respect of decision making concerning any future non-compliance with Couriers Please workplace relations obligations.
- b) Consistent with the Note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out herein;
- c) Consistent with section 715(3) of the FW Act, Couriers Please may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- d) If Couriers Please contravenes any of the terms of this Enforceable Undertaking:
 - i. The FWO may apply to any of the Courts set out in section 715(6) of the FW Act, for orders under section 715(7) of the FW Act; and
 - ii. This Enforceable Undertaking may be provided to the Court as evidence of the admissions made by Couriers Please in this Undertaking, and also in respect of the question of costs.

Executed as an Undertaking

EXECUTED by Couriers Please Pty Ltd in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

Paul William Coutts

(Name of director)

7.11.19

(Date)

in the presence of:



(Signature of witness)

Ms Linda Hoon
Group General Counsel &
Group Company Secretary

(Name of witness)



(Signature of director/company secretary)



(Name of director/company secretary)

7.11.19

(Date)

in the presence of:

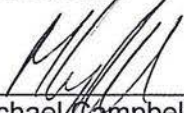


(Signature of witness)

JOHN VENETSANOS

(Name of witness)

ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the *Fair Work Act 2009* on:



Michael Campbell, Deputy Fair Work
Ombudsman - OPERATIONS

Delegate for the FAIR WORK
OMBUDSMAN

in the presence of:



(Signature of witness)

28/11/2019

(Date)

LOUISE CATU

(Name of Witness)

Attachment A

TRAINING RESOURCES UTILISED FROM THE FAIR WORK OMBUDSMAN WEBSITE

I, _____ (Enter name and position in the organisation)

have undertaken the following tools:

Completed online courses* including:

- Difficult conversations in the workplace – manager course date _____ completed: _____

- Hiring employees date completed: _____
- Managing employees date completed: _____
- Managing performance date completed: _____
- Diversity and discrimination date completed: _____
- Workplace flexibility date completed: _____
- Record-keeping and pay slips date completed: _____

** Please provide printout of the Statement/Certificate of Attainment for each course completed*

Viewed Videos including:

- Welcome to fairwork.gov.au date completed: _____
- Finding information for your industry date completed: _____
- My account date completed: _____
- Introduction to the Pay and Conditions Tool date completed: _____
- PACT – Award classifications date completed: _____
- PACT – Pay summary date completed: _____
- PACT – Penalty rates date completed: _____
- PACT – Allowances date completed: _____
- PACT – Award Coverage

date completed: _____

Read Factsheets including:

- Role of the Fair Work Ombudsman date completed: _____
- Contractors and employees – what’s the difference? date completed: _____

Read information on the following:

• ***Pay Overview***

- Minimum wages Page Ref No. _____ date completed: _____
- Penalty rates & allowances Page Ref No. _____ date completed: _____

• ***Leave Overview***

- Annual leave Page Ref No. _____ date completed: _____
- Sick & carer’s leave Page Ref No. _____ date completed: _____

• ***Ending Employment Overview***

- Notice & final pay Page Ref No. _____ date completed: _____
- Unfair dismissal Page Ref No. _____ date completed: _____

• ***Employee Entitlements Overview***

- Types of employees Page Ref No. _____ date completed: _____
- National Employment Standards Page Ref No. _____ date completed: _____

• ***Awards & Agreements Overview***

- Awards Page Ref No. _____ date completed: _____

- Date and signature: _____

Attachment B –Notices

Contravention of Fair Work Act by Couriers Please Pty Ltd

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) following a voluntary self-disclosure by Couriers Please Pty Ltd in September 2018 that it contravened the Fair Work Act 2009 and the Road Transport and Distribution Award 2010 by failing to pay freight and depot employees performing shift work a 20 minute paid meal break.

Couriers Please Pty Ltd admitted to FWO that this contravention occurred and has taken steps to rectify the underpayments including entering into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au). Couriers Please has committed to a number of measures to ensure contraventions do not occur again including training and regular audits.

Couriers Please Pty Ltd expresses its sincere regret and apologises for the oversight which resulted in the contravention. Furthermore, Couriers Please Pty Ltd gives a commitment that such conduct will not occur again and that it will comply with all requirements of the Commonwealth workplace relations laws in the future.

Use the following passage in Public Notices

If you worked for Couriers Please Pty Ltd and have queries or questions relating to your employment, please contact 02 8282 4291. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

Name and position of person providing the information: _____

Signature of person providing information: _____

Date: _____

Name of witness: _____

Signature of Witness: _____

Date: _____