



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Addictive Entertainment and Tours Pty Ltd (ABN 49 104 999 108)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Addictive Entertainment and Tours Pty Ltd (ACN: 104 999 108) (**Addictive Entertainment**) for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Commencement of Undertaking

2. This undertaking comes into effect when:
 - (a) the Undertaking is executed by Addictive Entertainment; and
 - (b) the FWO accepts the Undertaking so executed.
3. Upon the commencement of this Undertaking, Addictive Entertainment undertakes to assume the obligations set out below.

Background

4. Addictive Entertainment operates a tour company which runs bus tours to various destinations within Victoria.
5. Mr George Josevski has been the sole Director and Secretary of Addictive Entertainment since 5 June 2003.
6. Between 7 June 2013 and 7 May 2014 (**the Employment Period**), Addictive Entertainment employed [REDACTED] (**the Complainant**) on a casual basis as a tour bus driver.
7. The Complainant worked between 1 to 2 shifts per week with each shift commencing at 6.15 am and finishing at around 9.00 pm. The Complainant worked weekdays and weekends.
8. During the Employment Period, the Complainant's terms and conditions of employment were governed by the FW Act and the *Passenger Vehicle Transportation Award 2010* [MA000063] (**the Modern Award**).
9. During the Employment Period, the Complainant was paid a flat rate of \$265.00 per day.
10. The above daily rate of pay was insufficient to meet the minimum hourly rates of pay and penalty rates as specified in the Modern Award. Specifically, the daily flat rate did not adequately meet the Modern Award entitlements to a casually loaded rate of pay, overtime rates, Saturday penalty rates, Sunday penalty rates and Public Holiday penalty rates.
11. Addictive Entertainment underpaid the Complainant a total of **\$3,935.18 (gross)**.

Contraventions

12. The FWO has determined, and Addictive Entertainment admits, that Addictive Entertainment contravened:
 - (a) Section 45 of the FW Act by failing to comply with the following provisions of the Modern Award:
 - (i) Clause 10.5 by failing to pay the Complainant the correct casual loading.
 - (ii) Clause 23.1 by failing to pay the Complainant overtime.
 - (iii) Clause 23.2 by failing to pay the Complainant Saturday penalty rates.
 - (iv) Clause 23.2 by failing to pay the Complainant Sunday penalty rates.

- (v) Clause 23.4 by failing to pay the Complainant Public Holiday rates.

Undertakings

13. For the purposes of section 715 of the FW Act, Addictive Entertainment undertakes to:

Rectify Underpayments

- (a) pay the amount of \$3,935.18 less taxation to the Complainant arising from the Contraventions within 28 days of the execution of this Undertaking.
- (i) within 28 days of the execution of this Undertaking, provide evidence of payment to the FWO.

FWO My Account Registration

- (b) within seven (7) days of the execution of this Undertaking, register with the FWO 'My Account' portal at www.fairwork.gov.au and complete the profile, minimum rates and Award options.
- (i) within 14 days of the execution of the Undertaking provide to the FWO the Addictive Entertainment 'My Account' registration number.
- (ii) within 28 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a FWO Fair Work Inspector via www.fairwork.gov.au 'My Account' the current Modern Award minimum rates of pay including overtime, Saturday, Sunday and Public Holiday penalty rates of pay.

Future Workplace Relations Compliance

- (c) ensure compliance at all times and in all respects with applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the Modern Award and the FW Act, by developing systems and processes to ensure ongoing compliance with those requirements;
- (d) provide the FWO, within 28 days of the execution of this Undertaking, written details of the systems and processes implemented in satisfaction of the undertaking in paragraph 13(c) above, designed to ensure ongoing compliance.

Workplace relations training

- (e) within three months of the execution of this Undertaking, organise and ensure training is provided to all persons who have managerial responsibility for human resource, recruitment or payroll functions (**Training**);
- (f) 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 Modern award;
- (g) ensure the Training is conducted by an accredited workplace trainer, such person or organisation to be approved by the FWO and paid for by Addictive Entertainment;
- (h) 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;
- (i) provide evidence of attendance at the Training to the FWO within 7 days of the Training being provided (including the name and position of all attendees and the date on which the training was attended)

Self – audits and reporting

- (j) have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at the expense of Addictive Entertainment), no earlier than 11 calendar months but not later than 12 calendar months of the execution of this undertaking, an audit of its compliance with

Commonwealth workplace laws.

- (k) provide to the FWO within 14 days of each finalised Audit being provided to Addictive Entertainment, details of the methodology used conduct the Audit and the outcomes of the Audit.
- (l) the audit is to include the one (1) full single pay period after the commencement of the eleventh month of the execution of this undertaking;
- (m) in the event an Audit disclosed contraventions of any applicable Commonwealth workplace law and/or instruments, rectify all such contraventions within 14 days of the Audit being provided to Addictive Entertainment including rectification of any and all underpayments to employees;
- (n) provide evidence of rectification of the contraventions to the FWO within 14 days of the Audit being provided to Addictive Entertainment.

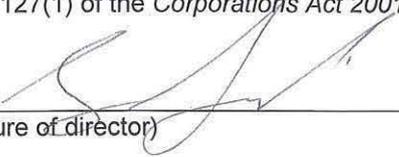
Acknowledgements

14. Addictive Entertainment acknowledges that:

- (a) the FWO may make this Undertaking available for public inspection, including by posting it to its website at www.fairwork.gov.au (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
- (b) the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
- (c) the FWO may issue a media release in relation to this Undertaking and from time to time, publicly refer to the Undertaking and its terms;
- (d) the admissions made in the Undertaking may be relied upon by the FWO in respect of any future decision about enforcement action to be taken in relation to any future non-compliance with Commonwealth workplace relations obligations by Addictive Entertainment;
- (e) 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 in this Undertaking;
- (f) if the FWO considers that Addictive Entertainment has contravened any of the terms of this this Undertaking 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;
- (g) consistent with section 715(3) of the FW Act, Addictive Entertainment may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by Addictive Entertainment and Tours Pty Ltd (ACN: 104 999 108) in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

(Signature of director/company secretary)

GEORGE JOSEFSKI

(Name of director)

(Name of director/company secretary)

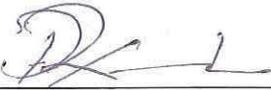
2/10/14

(Date)

(Date)

in the presence of:

in the presence of:



(Signature of witness)

(Signature of witness)

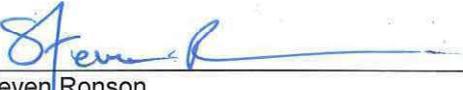
DONALD GRAHAM RHODES

(Name of witness)

(Name of witness)

2/10/2014

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



Steven Ronson
Executive Director
Dispute Resolution and Compliance

7 OCTOBER 2014

(Date)

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness)

PIA MORGAN

(Name of Witness)