



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

DOUG EDWARDS Trading as Alfresco Pizzeria (ABN: 53 154 541 130)

Fair Work Act 2009

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Doug Edwards trading as Alfresco Pizzeria ABN 53 154 541 130 (**the Employer**) for the purpose of section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

2. The Employer is a sole trader.
3. The Employer operates the Alfresco Pizzeria in Thredbo NSW which offers both fast food take away service and in-house table service.
4. In August 2013 the Employer was subject to an audit as part of the FWO's 'Snowfields' compliance campaign which found contraventions of Commonwealth workplace laws resulting in underpayments totalling \$22,987.07 owed to 22 employees for the period 30/06/2013 – 30/09/2013.
5. The Employer accepted the findings of the audit, repaying the employees on 6th November 2013.
6. On 15 November 2013 the Employer was issued with a 'Letter of Caution' by the FWO which put the Employer on notice that if there were future contraventions by the Employer the FWO would take into consideration the Employer's audit history when determining what enforcement action would be commenced.
7. In August 2014 Alfresco Pizzeria was subject to a second FWO audit which found contraventions of Commonwealth workplace laws in relation to minimum engagement, minimum rates of pay, casual loading and weekend penalty rates. The audit determined underpayments of \$3,401.94 owed to 10 employees for the period 30/06/2014 – 30/09/2014. The **Employees** are listed separately in Attachment A.
8. The Employees were paid flat rates of pay ranging from \$11.00 to \$28.00 per hour for all work performed, including ordinary hours, hours between 10 pm – midnight, Saturday and Sunday work.
9. For the purposes of the August 2014 audit the Employer was covered by the FW Act and the *Restaurant Industry Award 2014* (the **MA**) phasing from the *Restaurants, & C. (State) Award* (the **PMA**).
10. The Employees were entitled to the following rates of pay:

Period Commencing	Classification	Casual hourly rate \$	Evening work (10pm - midnight) \$	Saturday \$	Sunday \$
01/07/2013	Level 2 17 yrs	12.99	12.99	15.63	18.72
01/07/2013	Level 2 19 yrs	17.85	17.85	21.48	23.55
01/07/2013	Level 2 20 + yrs	21.45	21.45	25.81	30.17
01/07/2013	Level 5 20 + yrs	25.07	25.07	30.17	35.27
01/07/2014	Level 2 15 yrs	11.54	13.55	13.85	13.85
01/07/2014	Level 2 17 yrs	13.85	13.85	16.62	16.62
01/07/2014	Level 2 19 yrs	19.63	21.63	23.55	23.55
01/07/2014	Level 2 20 + yrs	22.53	24.49	27.03	27.03
01/07/2014	Level 5 20+ yrs	26.09	28.05	31.31	36.52

Contraventions

11. The FWO has determined, and the Employer admits, that the Employer contravened section 45 of the FW Act by failing to comply with the following provisions of the MA;
- (a) Clause 20 and Schedule A1 of the MA by failing to pay the Employees the correct ordinary hourly rate of pay;
 - (b) Clause 13.1 and Schedule A1 of the MA by failing to pay the Employees the correct casual loading on the ordinary hourly rate;
 - (c) Clause 34.1 and Schedule A1 of the MA by failing to pay the Employees the correct Saturday and Sunday penalty rates;
 - (d) Clause 34.2 and Schedule A1 of the MA by failing to pay the Employees the correct penalty rates between 10 pm and midnight Monday to Friday
 - (e) Clause 13.2 of the MA by failing to pay the Employees the minimum daily engagement of two hours.

Commencement of Undertaking

12. This Undertaking comes into effect when:
- (a) the Undertaking is executed by the Employer; and
 - (b) the FWO accepts the Undertaking so executed.

Undertakings

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

Rectify Underpayment

- (a) within 14 days of the execution of this Undertaking pay the amounts owed to each employee, less taxation, as set out in Attachment A;
- (b) within 28 days of the execution of this Undertaking provide to the FWO evidence that payments have been made;

FWO MyAccount Registration

- (c) within 14 days of the execution of this Undertaking, register with the FWO 'My Account' portal at 'www.fairwork.gov.au' and have completed the profile, minimum pay rates and Award options through this portal. Thereafter:
 - i. within 15 days of the execution of the Undertaking provide to the FWO the Company's 'My Account' registration number.
 - ii. within 28 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a Fair Work Inspector through MyAccount, knowledge of the current *Restaurant Industry Award* minimum pay rates including evening work, Saturday, Sunday and Public Holiday penalty rates.

Future Workplace Relations Compliance

- (d) comply at all times and in all respects with the FW Act, *Fair Work Regulations 2009* (Cth) and the *Restaurant Industry Award 2010 (MA 000119)*;

Public Notices

- (e) within 28 days of the execution of this Undertaking place a notice within the workplace in a place which is accessible to all employees (**Workplace Notice**) for a total consecutive period of seven (7) days in the terms set out in **Attachment B**;
- (f) within seven (7) days of the display of the notices provide a copy of the **Workplace Notice** and provide photographic evidence of its display to the FWO;

Apology

- (g) within 14 days of the execution of this Undertaking send to the Employees an apology (**Apology Letter**) in the form of the letter set out in **Attachment C**;
- (h) within seven (7) days of the Apology Letter being sent provide to the FWO a copy of the Apology Letter and proof of it being sent to the Employees;

Self - Audit and Reporting Activity

- (i) have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at the expense of the Employer) audits of its compliance with Commonwealth workplace laws and instruments, including but not limited to the *Restaurants Industry Award 2010*, for each year in a two year period as follows:
 - i. the Employer must demonstrate compliance relating to the wages and entitlements of its employees and the Contraventions identified;
 - ii. the audits are to include each full pay period covering August 2015 and August 2016; and
 - iii. the Employer must provide a copy of each audit to the FWO within seven (7) days of the completion of each audit.

Acknowledgements

14. The Employer acknowledges that:
- (a) the FWO may make this Undertaking (including any attachments) 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 the Employer;
 - (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 the Employer 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, the Employer may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking



(Signature of Doug Edwards)

Doug Edwards

30-8-15

(Date)

in the presence of:

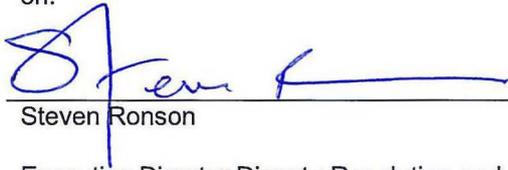


(Signature of witness)

K.B. GAUCHOIR

(Name of witness)

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

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness)

15 SEPTEMBER 2015

(Date)

FAY PILIOURIS

(Name of Witness)

Attachment A - Employees and amounts owed

Employees	Classification	Amount Owed	Period of engagement
██████████	Level 2 15 yrs	\$324.76	01/06/2014 – still employed
██████████	Level 2 17 yrs	\$23.10	29/03/2013 – still employed
██████████	Level 2 19 yrs	\$264.18	30/06/2014 – 16/08/2014
██████████	Level 2	\$514.23	20/07/2014 – 23/09/2014
██████████	Level 2	\$626.41	09/06/2014 – 21/09/2014
██████████	Level 2	\$277.91	04/07/2014 – 27/07/2014
██████████	Level 2	\$674.20	01/07/2014 – 26/09/2014
██████████	Level 2	\$63.90	17/07/2014 – 27/09/2014
██████████	Level 5	\$10.68	21/12/2008 – still employed
██████████	Level 5	\$622.57	10/06/2014 – still employed

Attachment B – Form of Workplace Notice

Contraventions of the *Fair Work Act 2009* and the *Restaurant Industry Award 2010* by Doug Edwards Trading as Alfresco Pizzeria

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Doug Edwards trading as Alfresco Pizzeria contravened the *Fair Work Act 2009* and the *Restaurant Industry Award 2010 (Modern Award)* by:

- failing to pay employees their lawful minimum hourly rates of pay for time worked Monday to Friday;
- failing to pay employees the correct casual loading on hours worked;
- failing to pay employees penalty rates for time worked on Saturdays;
- failing to pay employees penalty rates for time working on Sundays;
- failing to pay employees penalty rates for evening work after 10 pm
- Failing to engage casual workers for the minimum of two hours

Doug Edwards trading as Alfresco Pizzeria has formally admitted to FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au) committing to a number of measures to remedy the contraventions, including rectifying the underpayments to the employees affected by the contraventions and changing workplace practices.

Doug Edwards trading as Alfresco Pizzeria expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, 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.

If you worked for Doug Edwards trading as Alfresco Pizzeria and have queries or questions relating to your employment, please contact Mr Doug Edwards on [REDACTED]. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

Attachment C – Letter of Apology

Date>

<Employee Name & Address>

Dear **<Employee Name>**

I am writing to apologise on behalf of Doug Edwards trading as Alfresco Pizzeria for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that I contravened the *Fair Work Act 2009* by failing to pay casual employees the following entitlements under the *Restaurant Industry Award 2010* (MA000119):

- the correct minimum hourly rate for worked performed Monday to Friday
- casual loading for all hours worked
- penalty rates for work performed on a Saturday;
- penalty rates for work performed on a Sunday;
- evening rates for work performed after 10 pm; and
- for the minimum engagement period of two hours

The investigation determined that you were affected by the above contraventions.

I am taking steps to remedy the contraventions, including by:

- Paying you the amount that you have been underpaid (Insert amount); and
- Committing to future compliance.

I have formally admitted to the FWO that I did not comply with its obligations under Commonwealth workplace relations laws and has entered into an Enforceable Undertaking with the FWO, a copy of which is available from the FWO website at www.fairwork.gov.au. As part of the Enforceable Undertaking, I have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

I express sincere regret and apologise to you for failing to comply with our lawful obligations.

Should you have any questions, please contact me on [REDACTED]

Yours sincerely

Doug Edwards
Alfresco Pizzeria