



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Mountain Bread Pty Ltd (ABN 49080471423)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Mountain Bread Pty Ltd (Mountain Bread) for the purposes section 715 of the *Fair Work Act 2009 (Cth)* (**FW Act**).

Commencement of Undertaking

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

Background

4. Mountain Bread is a family owned and operated company which began manufacturing flat bread in Brunswick Victoria in 1997;
5. Mountain Bread currently operates a flat bread manufacturing facility in Reservoir, Victoria;
6. Mountain Bread engages employees to work on production lines to produce various varieties of flat bread;
7. [REDACTED] (the **Employee**) of Mountain Bread requested assistance from the FWO on 30 March 2015;
8. Mountain Bread employed the Employee on a casual basis as a Bakery Assistant from 26 June 2013 to 18 March 2015 (the **Employment Period**);
9. The Employee was paid \$16.50 per hour as a casual employee for the Employment Period;
10. During the Employment Period, the Employee's terms and conditions of employment were governed by the *Food, Beverage and Tobacco Manufacturing Award 2010* (**Food Manufacturing Award**) and the FW Act;
11. The Employee's duties at Mountain Bread included working on the production line, packaging and storing of finished bread products and observing quality control of the product. The duties were consistent with the classification of a level 1 employee for the first three months of her employment and a level 2 thereafter;

Contraventions

12. The FWO has determined, and Mountain Bread admits, that:
 - (a) Mountain Bread contravened Section 45 of the FW Act by failing to comply with the following provisions of the Food Manufacturing Award in respect of the Employee; specifically:

Wages

 - (i) Clause 13.1 of the Food Manufacturing Award by failing to pay the required casual minimum wages;

Overtime Penalty Rates

- (ii) Clause 33.1 of the Food Manufacturing Award by failing to pay the required overtime penalties for work performed outside the spread of ordinary hours;

Saturday Overtime Penalty Rates

- (iii) Clause 33.6 of the Food Manufacturing Award by failing to pay the required overtime penalties for work performed outside the spread of ordinary hours on a Saturday;

Weekend Penalty Rates

- (iv) Clause 30.2(e) of the Food Manufacturing Award by failing to pay the required Saturday and Sunday loading;

Public Holiday Rates

- (v) Clause 30.2(f) of the Food Manufacturing Award by failing to pay the required Public Holiday loading;

Paid Meal Breaks

- (vi) Clause 33.9(c) of the Food Manufacturing Award by underpayment of the 20 minute rest break;

(collectively, the **Contraventions**).

13. As a result of the Contraventions, the Employee was underpaid a total of \$22,646.29 (gross).

14. On 14 August 2015 Mountain Bread advised the FWO that the underpayment had been rectified.

Undertakings

15. For the purposes of section 715 of the FW Act, Mountain Bread undertakes to:

Rectify Underpayments

- (b) in relation to any future Requests for Assistance received by the FWO from employees or former employees of Mountain Bread alleging contraventions of Commonwealth workplace laws or instruments occurring prior to the execution of the undertaking, Mountain Bread will:
 - (i) use all reasonable endeavours to resolve the request, including rectifying any identified contraventions, within 60 days of being notified by the FWO of the request for assistance;
 - (ii) where a request for assistance has been resolved, provide the FWO with evidence of resolution; and
 - (iii) where a request for assistance has not been resolved by agreement with the requester within the period specified in subparagraph 14(b)(i), report to the FWO about the nature of the complaint and the steps taken to try to resolve it;

FWO My Account Registration

- (c) Mountain Bread undertakes to:
 - (i) within 7 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 and provide to the FWO the Mountain Bread 'My Account' registration number.

- (ii) within 21 days of the execution of the Undertaking, demonstrate to a FWO Officer through My Account at www.fairwork.gov.au, knowledge of the Food Manufacturing Award minimum pay rates, overtime rates and Saturday, Sunday and Public Holiday penalty rates.

Workplace Notices

(d) Mountain Bread undertakes to:

- (i) within 28 days of the Commencement Date, place a notice (**Workplace Notice**) within the workplace in a location which is accessible to all persons employed and provide a copy of the Workplace Notice and photographic evidence of its display to the FWO on the day it is posted;
- (ii) the Workplace Notice must use the terms set out in Attachment A in English and in Chinese and in be printed in A3 size, such Workplace Notice to remain in place for a total period of 7 consecutive days; and

Apology

(e) Mountain Bread undertakes to:

- (i) within 7 days of the Commencement Date, send an apology to the Employee in the terms set out in Attachment B, signed on behalf of Mountain Bread (**Apology**); and
- (ii) provide a copy of the Apology sent by Mountain Bread to the FWO on the day it is sent.

Future Workplace Relations Compliance

(f) Mountain Bread undertakes to:

- (i) ensure compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the FW Act, the National Employment Standards and the Food Manufacturing Award;
- (ii) implement systems and processes to ensure ongoing compliance with the obligations referred to in subparagraph 14(h)(i) above, including obligations relating to rates of pay, loadings, penalties, taxation, superannuation and record keeping; and
- (iii) provide to the FWO, within 28 days of the Commencement Date, details of systems and processes implemented in satisfaction of the undertakings in subparagraphs 14(h)(i) and (ii) above;

Self-audits and Reporting

(g) have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist, at Mountain Bread's expense, an audit (**Audit**) of its compliance with Commonwealth workplace laws and instruments, including but not limited to the FW Act and the Food Manufacturing Award, in respect of pay, conditions and record keeping in relation to all of Mountain Bread's employees on the terms set out below:

- (i) The Audit is to be conducted twice over a period of twelve months according to the following schedule:
 - (A) an Audit of the first complete pay cycle following 1 December 2015, which is to be finalised and details of the methodology used to conduct the audit and a copy of the certified report provided to the FWO within 28 days of the last day of the pay cycle;
 - (B) an Audit of the first complete pay cycle following 1 July 2016, which is to be finalised and details of the methodology used to conduct the audit and a copy

of the certified report provided to the FWO within 28 days of the last day of the pay cycle;

- (ii) upon request by FWO, provide within 7 days of receiving such request a copy of all documents provided to the auditor for the purpose of undertaking an Audit;
- (iii) in the event that an Audit discloses contraventions of any applicable Commonwealth workplace laws or instruments, to rectify all such contraventions and provide evidence of rectification to the FWO within 14 days of receipt of the Audit results by Mountain Bread;

Workplace Relations Training

(h) Mountain Bread undertakes to:

- (i) within 90 days of the Commencement Date, implement a training program (**Training**) so that:
 - (A) all persons responsible for human resource, recruitment or payroll functions for or on behalf of Mountain Bread; and
 - (B) all other persons responsible, either directly or indirectly, for Mountain Bread's compliance with Commonwealth workplace laws and instruments, including all of Mountain Bread's officers and directors,

are made aware of Mountain Bread's obligations under Commonwealth workplace laws and instruments;
- (ii) provide training material to participants in the Training including material on:
 - (A) compliance with the FW Act, Fair Work Regulations, and the Food Manufacturing Award;
 - (B) employer obligations in respect to record keeping and pay slips; and
 - (C) how to access FWO resources to calculate rates of pay.
- (iii) ensure the Training is conducted by an accredited workplace trainer, such person or organisation to be approved in advance by the FWO and paid for by Mountain Bread;
- (iv) within 7 days of the Training being conducted, provide the FWO with evidence of attendance at the Training (including the name and position of all attendees and the date on which the Training was attended); and
- (v) for a period of 12 months following the Commencement Date, ensure that Training is conducted in the manner prescribed by subparagraphs 14(j)(i) to (v) above in relation to any person who acquires responsibilities that include human resource, recruitment or payroll functions for or on behalf of either of Mountain Bread, within 28 days of the person acquiring such responsibilities.

Acknowledgements

16. Mountain Bread 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 Mountain Bread;
- (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 Mountain Bread 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, Mountain Bread may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

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

M. KADAMANI
(Signature of director)

(Signature of director/company secretary)

Michael Kadamani


(Name of director/company secretary)

20-8-2015
(Date)

(Date)

in the presence of:

in the presence of:


(Signature of witness)

(Signature of witness)

LAURA DOBSON.
(Name of witness)

(Name of witness)


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


Executive Director – Steven Ronson

21 August 2015.
(Date)

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:


(Signature of witness)

PIA MORGAN
(Name of Witness)