



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

Reddot Brewhouse (AUST) Pty Ltd (ABN: 29 164 201 843)

and

Kah Hoe Ng

ENFORCEABLE UNDERTAKING

PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman by:
 - (a) Reddot Brewhouse (AUST) Pty Ltd (ACN: 164 201 843) (**Reddot**); and
 - (b) Mr Kah Hoe Ng (**Mr Ng**)pursuant to 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 Reddot and Mr Ng; and
 - (b) the FWO accepts the Undertaking so executed (as evidence by the FWO's endorsement below).
3. Upon the commencement of this Undertaking (the **Commencement Date**), Reddot and Mr Ng undertake to assume the obligations set out at paragraph 18.

BACKGROUND:

4. In mid-2014, Reddot commenced operating a brewery business located in Truganina, Victoria, trading as Reddot Brewhouse (the **Brewery**).
5. Mr Ng admits and agrees that, at all material times, he:
 - (a) was principally responsible for the direction and management of Reddot operations;
 - (b) was the person who set the pay rate for the Employee; and
 - (c) by reason of the matters set out in subparagraphs (a) to (b) was responsible in a practical sense for ensuring that Reddot complied with its legal obligations.
6. The FWO commenced an investigation in June 2015, (the **Investigation**) after it received a Request for Assistance (**RFA**) regarding allegations of underpayments by Reddot to its former employee identified in Schedule A (the **Employee**).
7. The Employee was a foreign national, invited to work in Australia by Reddot, and

promised visa sponsorship by Reddot to remain in Australia for a period of four years.

8. Reddot employed the Employee between 2 March 2015 and 23 May 2015 (the **Employment Period**). Reddot terminated the employment of the Employee and did not proceed with visa sponsorship for the Employee.
9. During the Employment Period, the Employee's terms and conditions of employment were governed by the FW Act and the *Manufacturing and Associated Industries and Occupations Award 2010* (the **Modern Award**).
10. The Investigation determined that the Employee was employed on a full time basis.
11. The Employee's duties in the Brewery included those of a first class welder pursuant to the installation of the Brewery's plant equipment. The FWO determined the Employee was classified as an *Engineering/Manufacturing Tradesperson Level 1 - C10* under the Modern Award.
12. At all relevant times, Reddot paid the Employee a base rate of pay for all hours worked, including evening work, weekends and public holidays.
13. The FWO has determined Reddot failed to pay the Employee the following entitlements:
 - (a) the required minimum rate of pay for every hour the Employee worked;
 - (b) the required penalty rates for work performed on Saturdays, Sundays and Public Holidays;
 - (c) the required overtime rates for additional hours worked in excess of ordinary hours;
 - (a) the payment of annual leave upon the Employee's termination of employment;
 - (b) the payment of annual leave loading on any accrued annual leave upon the Employee's termination; and
 - (c) a payment in lieu of notice upon the Employee's termination.
14. The FWO determined that Reddot also deducted monies from the Employee's wages in circumstances where those deduction were not permitted.

CONTRAVENTIONS

15. The FWO has determined, and Reddot and Mr Ng admits, that Reddot and Mr Ng contravened:

(a) section 45 of the FW Act, which states a person must not contravene a term of a modern award. Those contraventions of the Modern Award were as follows:

- Underpayment of base hourly rate (cl. 24.1);
- Underpayment of overtime rates (cl. 40.1);
- Underpayment of Saturday, Sunday and Public Holiday penalty rates, (cl. 40.7 and 36.2);
- Failure to pay the Employee at least fortnightly (cl. 34.1); and
- Underpayment of annual leave loading upon termination (cl. 41.5(b)(i)).

(b) section 44 of the FW Act which states a person must not contravene a provision of the National Employment Standards (NES). Those contraventions were as follows:

- Underpayment of annual leave upon termination (s 90(2));
- Failure to pay the Employee in lieu of Notice of Termination (s 117(2); and

(c) section 535 of the FW Act which mandates that an employer must make and keep employment records in a form prescribed by the FW Regulations.

16. The FWO has determined and Mr Ng admits, that he was involved in the contraventions listed above within the meaning of section 550(a) and (c) of the FW Act.

ENFORCEABLE UNDERTAKING

17. Upon the commencement of this Undertaking and for the purposes of section 715 of the FW Act, Reddot and Mr Ng undertake the following:

Rectify the underpayments

- (a) Within 14 days of the execution of this Undertaking, rectify the contraventions identified in the Letter of Findings through payment of the total underpayment of \$20,260.69 (gross) to the Employee.

- (b) Provide proof of such payment to the FWO on the day the payment is made.

Future Workplace Relations Compliance

- (c) Take all reasonable steps to ensure that any entities in which Mr Ng holds the role of Director, including Reddot, comply at all times, in respect to applicable Commonwealth workplace laws and instruments, including but not limited to the modern awards, FW Act and *Fair Work Regulations 2009* by developing systems and processes to promote ongoing compliance with those requirements.
- (d) 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 17(c) above. Without limitation, such systems and processes relating to:
- a. Ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty rates and overtime rates;
 - b. Issuing payslips to employees within 1 working day of payment;
 - c. Keeping accurate and complete records to ensure employees receive their correct wages and entitlements.

FWO My Account Registration

- (e) 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.
- (i) Within 14 days of the execution of the Undertaking provide to the FWO the (Reddot) 'My Account' registration number.
 - (ii) Within 21 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a FWO Officer via www.fairwork.gov.au 'My Account' current (*Manufacturing and Associated Industries and Occupations Award 2010 and Food, Beverage and Tobacco Manufacturing Award 2010*) minimum pay rates and relevant penalty rates ie Saturday, Sunday Shift and Public Holiday Penalty rates.

Apology

- (f) Send a letter of apology (**Apology Letter**) to the Employee, via the FWO, in the form of **Attachment B** to this undertaking within 14 days of the execution of this Undertaking.
- (g) The Apology Letter is to be provided to the FWO in the first instance. The FWO will then forward the Apology Letter the Employee on behalf of Reddot and Mr Ng.

Audit activity

- (h) Cause to have performed by an accounting professional (for example a Certified Practising Accountant) or an employment law specialist, at Reddot's expense, audits of its compliance with all Commonwealth workplace laws and instruments (**Audits**), relating to the pay and conditions of all employees according to the following schedule:
 - (i) an Audit of the first complete pay cycle following 1 November 2016, which is to be finalised within 28 days of the last day of the pay cycle;
- (i) Provide to the FWO, by 1 December 2016, details of the methodology used to conduct the Audit and the outcomes of the Audit;
- (j) In the event an Audit discloses contraventions of any applicable Commonwealth workplace law and/or instruments, rectify all such contraventions by 15 January 2017 of the Audit being provided to Reddot including rectification of any and all underpayments to employees;
- (k) Provide evidence of rectification of the contraventions to the FWO by 15 January 2017.

Public Notice

- (l) Place a public notice in the Saturday edition of Fairfax Media's *The Age* (**The Age**) within 28 days of the execution of this Undertaking which:
 - a. Bears the name and logo of Reddot;
 - b. Appears within the first 10 pages of *The Age*;
 - c. Must be in the size of 8cm x 10cm; and

- d. Is in the form of **Attachment C**

Provide a copy of The Age Public Notice to the FWO on the day of publication of the Public Notice;

Workplace relations training

- (m) Within 60 days 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**);
- a. 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 modern awards;
 - b. Ensure the Training is conducted by an accredited workplace trainer, such person or organisation to be approved by the FWO and paid for by Reddot;
 - c. 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;
 - d. 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)
 - e. For a period of 1 year from the execution of this Undertaking, ensure that training is conducted in the manner prescribed above in relation to any new or existing employees who, after the commencement of this Undertaking, acquire managerial responsibilities that include human resources, recruitment or payroll functions on behalf of Reddot;

Workplace Notice

- (n) Within 14 days of the execution of this Undertaking, cause to be displayed a notice in the form of Attachment C to this Undertaking (**Workplace Notice**):
- a. For a period of 28 days, at 70 Foundation Road Truganina Victoria;
and
 - b. Ensure that the Workplace Notice is printed in at least A4 size and is clearly displayed:
 - i. in a location to which all employees who work at Reddot have access;
 - ii. 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); and
- (o) Provide evidence to the FWO of the placement of the Workplace Notice within seven days of its placement.

Broader community workplace relations education

- (b) Reddot undertakes to:
- (i) make a donation of \$500 within 60 days of the Commencement Date to 'Migrante-North Association of Filipino Migrant & Workers Incorporated' (ABN: 62 523 920 469) to fund education about workplace rights under the FW Act; and
 - (ii) provide proof of the payment referred to above to the FWO on the day of the payment being made.

NO INCONSISTENT STATEMENTS

19. Reddot and Mr Ng:

- (i) must not; and
- (ii) 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 admissions or acknowledgements contained in this agreement.

ACKNOWLEDGEMENTS

20. Reddot and Mr Ng acknowledges that:

- a) This Enforceable Undertaking is given by and accepted by the FWO pursuant to section 715 of the FW Act;
- b) The FWO may;
 - (i) make this Enforceable 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 Enforceable 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 Enforceable Undertaking;

- (iv) from time to time, publicly refer to the Enforceable Undertaking (and any of the Attachments hereto) and its terms; and
 - (v) rely upon the admissions made by Reddot and Mr Ng set out above in respect of decision making concerning any future non-compliance with Reddot and Mr Ng's workplace relations obligations.
- c) Consistent with the Note to section 715(4) of the FW Act, this Enforceable Undertaking does in no way derogate from the rights and remedies available to any other person arising from the conduct set out herein;
- d) Consistent with section 715(3) of the FW Act, Reddot and/or Mr Ng may withdraw from or vary this Enforceable Undertaking at any time, but only with the consent of the FWO; and
- e) If Reddot and/or Mr Ng 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 Reddot and Mr Ng above, and also in respect of the question of costs.

Attachment B – Letter of Apology

Sent via the FWO

RE: Your Employment with Reddot Brewhouse (AUST) Pty Ltd

Dear <Employee Name>

I am writing to apologise on behalf of Reddot Brewhouse (AUST) Pty Ltd for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (FWO) determined that Reddot Brewhouse (AUST) Pty Ltd had contravened the *Fair Work Act 2009* by:

- failing to pay you the correct minimum hourly rate of pay for time worked Monday to Friday;
- failing to pay you the required penalty rates for work performed on Saturdays, Sundays and Public Holidays.
- failing to pay you the required overtime rates for additional hours worked in excess of ordinary hours;
- deducting monies from your wages in unpermitted circumstances;
- failing to make a payment to you in lieu of notice of termination; and
- failing to pay to you the payment of annual leave and annual leave loading upon termination of employment.

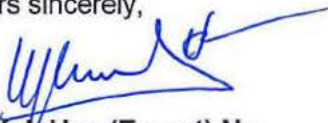
Regrettably, the investigation determined that you were affected by the above contraventions. Reddot Brewhouse (AUST) Pty Ltd is taking steps to remedy the contraventions, including by rectifying amounts that you have been underpaid and changing workplace practices. You will be provided with a pay slip regarding any payments.

Reddot Brewhouse Pty Ltd (AUST) have formally admitted to the FWO that they did not comply with its obligations under Commonwealth workplace relations laws and it 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 we have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

Reddot Brewhouse Pty Ltd express its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact Ernest Ng on <xxxxxxxxxx>.

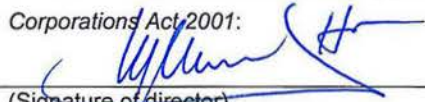
Yours sincerely,



Mr Kah Hoe (Ernest) Ng
Director, Reddot Brewhouse (AUST) Pty Ltd

Executed as an undertaking

EXECUTED by Reddot Brewhouse (AUST) Pty Ltd (ACN: 164 201 843) in accordance with section 127(1) of the Corporations Act 2001:



(Signature of director)

(Signature of director/company secretary)

Ng Kah Hoe

(Name of director)

(Name of director/company secretary)

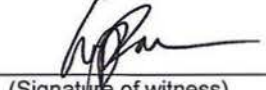
17th December 2015

(Date)

(Date)

in the presence of:

in the presence of:



(Signature of witness)


(Signature of witness)

Shy Pui Bi

(Name of witness)

(Name of witness)

EXECUTED by Mr Kah Hoe Ng:



(Signature of Kah Hoe Ng)

(Date)

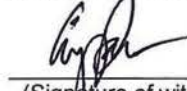
17th December 2015

(Date)

(Date)

in the presence of:

in the presence of:



(Signature of witness)

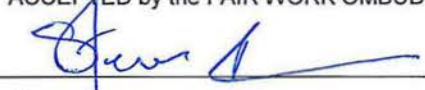
(Signature of witness)

Shy Pui Bi

(Name of witness)

(Name of witness)

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




Steven Ronson

20 JANUARY 2016.

(Date)

Executive Director
Dispute Resolution and Compliance
Delegate for the FAIR WORK OMBUDSMAN

in the presence of:


(Signature of witness)

PIA MORGAN

(Name of Witness)