



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

JH Enterprises (Qld) Pty Ltd (ACN 093 530 664)

and

Mr Hiroshi Taira

Section 715 ENFORCEABLE UNDERTAKING

PARTIES

1. This Enforceable Undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:
 - (a) JH Enterprises (Qld) Pty Ltd (ACN 093 530 664) trading as Sushi Go Round (the **Company**); and
 - (b) Mr Hiroshi Taira (**Mr Taira**), Director, JH Enterprises (Qld) Pty Ltd,for the purposes of section 715 of the *Fair Work Act 2009* (the **FW Act**).

COMMENCEMENT OF UNDERTAKING

2. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by the Company and Mr Taira; and
 - (b) the FWO accepts the Undertaking so executed.
3. Upon the commencement of this Undertaking the Company and Mr Taira undertake to assume the obligations set out below.

BACKGROUND

4. The Company operates a Japanese style sushi train restaurant with a take away option at, Grand Plaza, Browns Plains, Queensland. Two outlets located at Forest Lakes and Village Square, Queensland have since been closed.
5. The Company's business name, Sushi Go Round, was registered in 2009.
6. Mr Taira admits and agrees that, at all material times, he:
 - (a) was a director of the Company, having been so since 28 June 2000;
 - (b) was ultimately responsible for overall direction, management and supervision of the operations at the Company in relation to engaging staff, setting and adjusting pay rates and determining wages and conditions of employment; and
 - (c) by reason of the matters set out in subparagraphs (a) and (b) was responsible in a practical sense for ensuring the Company complied with its legal obligations.

7. In July and August 2015 the FWO received Requests for Assistance from nine employees (as set out in Attachment B) (collectively the **Employees**) relating to underpayment of base rates of pay, casual loadings, weekend and Public Holiday, late night shift and minimum shift engagement penalties.
8. The FWO conducted an investigation into the Requests for Assistance and identified contraventions of the *Restaurant Industry Award 2010* (the **Restaurant Award**), the FW Act and the Fair Work Regulations 2009 (the FW Regulations).
9. The FWO identified contraventions in respect to the Employees employed by the Company during the employment periods listed in Attachment B.
10. The Employees were all employed on a casual basis. The duties performed by the Employees included, but were not limited to food preparation, non-specialised cooking of food, sushi making, general waiting duties including cleaning of tables, receipt of monies, general cleaning and pantry duties. The Employees' classifications as determined under the Restaurant Award are contained in Attachment B.
11. The Company underpaid the Employees a total of **\$123,431.38** by failing to pay the correct minimum hourly rates of pay in accordance with the Restaurant Award. The underpayments arose as a result of underpaying base hourly rates of pay for time worked Monday to Friday as well as penalty rates for Saturdays, Sundays, public holidays and late night shift penalties. Further underpayments arose as a result of the Company not paying a casual loading and the minimum shift engagement.
12. The Company also failed to make and keep appropriate records and pay slips issued by the Company failed to include the required information.

CONTRAVENTIONS

13. The FWO has determined, and the Company and Mr Taira admit, that the Company and, because he was "involved in" the Company's contraventions within the meaning of section 550 of the FW Act, Mr Taira, contravened:
 - (a) section 45 of the FW Act, which states a person must not contravene a term of a modern award. The following clauses of the Restaurant Award were contravened:
 - Underpayment of base hourly rate (cl. 20.1 and A.2.5 of Schedule A);
 - Underpayment of casual loading (cl. 13.1 and A.5.4 of Schedule A);
 - Underpayment of weekend and public holiday penalty rates, (cl. 34.1 and

A.6.4 of Schedule A);

- Underpayment of late night shift penalties (cl. 34.2.(a)(i) and clauses A.6.4 and A.7.3 of Schedule A); and
 - Underpayment of casual minimum shift engagement, (cl. 13.2);
- (b) subsections 535(1) and 535(2) of the FW Act which prescribe that an employer must make, and keep for 7 years, employee records of the kind prescribed by the FW Regulations and the employee records must contain information as prescribed by the FW Regulations; and
- (c) subsection 536(2)(b) of the FW Act which states an employer must provide the appropriate information as prescribed by the FW Regulations on the employee's pay slip.

UNDERTAKINGS

14. Upon the commencement of this Undertaking and for the purposes of section 715 of the FW Act, the Company and Mr Taira undertake the following:

Rectify Underpayments

- (a) pay the amount of **\$41.58** outstanding to Employee [REDACTED] via electronic funds transfer arising from the determined Contraventions;
- (b) provide a pay slip to the Employee [REDACTED] within one business day of the payment being made; and
- (c) provide evidence of the payment to the FWO on the same date of the payment being made.

FWO My Account Registration

- (d) Within 14 days of the execution of this Undertaking:
- (i) register with the FWO 'My Account' portal at www.fairwork.gov.au and have completed the profile, minimum pay rates and Award options; and
 - (ii) provide to the FWO the Company's 'My Account' Customer Registration Number (CRN).
- (e) Within 14 days of the execution of the Undertaking, subscribe to the following and provide evidence to the FWO of the subscriptions:
- (i) 'General information' email alerts from the FWO relating to the Restaurant

Award, available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates>; and

- (ii) FWO's Employer newsletter for the relevant State and industry, available at <http://www.fairwork.gov.au/about-us/news-and-media-releases/newsletter>, selecting at least the following options:
 - i. pay updates;
 - ii. award updates;
 - iii. holiday updates;
 - iv. working hours and breaks; and
 - v. annual leave/sick leave.

- (f) Within 21 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a FWO Officer by using the 'Pay Calculator' in 'My Account' via www.fairwork.gov.au, that the current Restaurant Award minimum rates of pay for casual, part time and full time employees for all Levels for work performed:
 - i. Monday to Friday;
 - ii. Saturday;
 - iii. Sunday; and
 - iv. public holidays, are being correctly paid.

Public Notice

- (g) Place a public notice in the Courier Mail Newspaper Brisbane (**Public Notice**) within 28 days of, **but not prior to**, the FWO publishing a Media Release on its website in respect of this Undertaking in the terms set out in Attachment A, which:
 - (i) bears the name of JH Enterprises (Qld) Pty Ltd and Sushi Go Round;
 - (ii) must be in the size of 8cm x 10cm; and
 - (iii) is in the form of Attachment A.

- (h) Provide a copy of the Public Notice to the FWO on the day of publication of the Public Notice.

Future Workplace Relations Compliance

- (i) Ensure the Company complies at all times and in all respects with the FW Act, FW Regulations and the Restaurant Award.

- (i) In addition to the requirement to provide a Fair Work Information Statement (**FWIS**) to new employees under the FW Act, the Company will provide the FWIS in the first language (where available from the FWO website) to new employees.
- (j) Provide the FWO, within 28 days of the date of execution of this Undertaking, details of systems and processes already in place or to be implemented to comply with Commonwealth workplace laws. Without limitation, such systems and processes will include systems and processes relating to:
 - (i) ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty rates and overtime rates;
 - (ii) issuing pay slips to employees within 1 working day of payment;
 - (iii) keeping accurate and complete records to ensure employees receive their correct wages and entitlements; and
 - (iv) provide to the FWO a copy of the Acknowledgement of Receipt – FWIS referred to in paragraph 14(i)(i) for current employees employed from:
 - a. 1 July 2016 to 1 January 2017 to be provided by 1 February 2017.

Audit Activity

- (k) Cause to have performed by an accounting professional (for example a Certified Practising Accountant) or an employment law specialist, at the Company's expense, audits of the Company's compliance with all Commonwealth workplace laws and instruments (**Audits**), relating to the pay and conditions of all employees as follows:
 - (i) The Audit period of 1 – 31 October 2016 is to be finalised by 24 November 2016; and
 - (ii) The Audit period of 1 – 31 March 2017 is to be finalised by 21 April 2017.
- (l) Provide to the FWO within 14 days of each of the finalisation dates specified in subclause 14.6(a) above details of the methodology used to conduct each Audit and a report on the outcomes of each Audit.
- (m) 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 subclause 14.6(a) above, including rectification of any and all underpayments to employees and provide evidence of

rectification to the FWO.

- (n) If any Employees identified as having underpayments owing to them cannot be located, within 60 days of each of the finalisation dates specified in subclause 14.6(a) 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 Consolidated Revenue Fund. The Company will complete the required documents supplied by the FWO.

NO INCONSISTENT STATEMENTS

15. The Company and Mr Taira:

- (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 admissions or acknowledgements contained in this Undertaking.

ACKNOWLEDGEMENTS

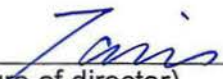
16. The Company and Mr Taira acknowledge that:

- (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 hereto) and its terms; and
 - (v) rely upon the admissions made by the Company and Mr Taira set out above in respect of decision making concerning any future non-compliance with the Company's workplace relations obligations;
- (b) Consistent with the Note to subsection 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; and
- (c) Consistent with subsection 715(3) of the FW Act, the Company may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

17. If the Company and Mr Taira contravene any of the terms of this Undertaking:
- (a) the FWO may apply to any of the Courts set out in subsection 715(6) of the FW Act, for orders under subsection 715(7) of the FW Act; and
 - (b) this Undertaking may be provided to the Court as evidence of the admissions made by the Company and Mr Taira as set out above, and also in respect of the question of costs.

Executed as an Undertaking

EXECUTED by JH Enterprises (Qld) Pty Ltd (ACN: 093 530 664) in accordance with subsection 127(1) of the *Corporations Act 2001*:



(Signature of director)

(Signature of director/company secretary)

^{solo}
Hiroshi Taiva


(Name of director)

(Name of director/company secretary)

11 / 07 / 2016

(Date)

(Date)

in the presence of:


(Signature of witness)

in the presence of:

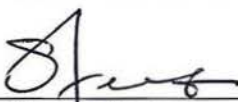
(Signature of witness)

HIDEKI SHIMIZU

(Name of witness)

(Name of witness)

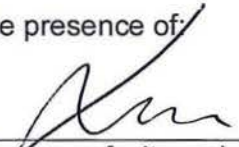
ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to subsection 715(2) of the *Fair Work Act 2009* on:



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

29 JULY 2016

(Date)

in the presence of:


(Signature of witness)

LISA-MARIE OLIVER

(Name of Witness)

FORM OF PUBLIC NOTICE

Contravention of *Fair Work Act 2009* and the *Restaurant Industry Award 2010* by JH Enterprises (Qld) Pty Ltd trading as Sushi Go Round

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) into allegations that JH Enterprises (Qld) Pty Ltd (**JH Enterprises**) contravened the *Fair Work Act 2009* and the *Restaurant Industry Award 2010* by:

1. failing to pay nine employees the correct minimum base hourly rate of pay for time worked Monday to Friday;
2. failing to pay nine employees the correct casual loading for time worked;
3. failing to pay nine employees the correct penalty rates for time worked on weekends and public holidays;
4. failing to pay one employee the relevant penalty rate for late night shifts on a Monday to Friday; and
5. failing to pay one employee the relevant penalty rates for the casual minimum shift engagement.

JH Enterprises 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 by rectifying the underpayments of \$123,431.38 less taxation to the employees affected by the contraventions. JH Enterprises expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, JH Enterprises gives a commitment that such conduct will not occur again and that it will comply with all requirements of Commonwealth workplace relations laws in the future.

If you work for, or have previously worked for, JH Enterprises and have queries or questions relating to your employment, please contact **<insert details of internal contact>**.

Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au.

Attachment B – The Employees

Name	Period of employment	Classification	Underpayments Repaid
[REDACTED]	[REDACTED]	Kitchen Attendant Grade 1	\$25,231.34
		Food & Beverage Attendant Grade 2	\$19,859.18
		Food & Beverage Attendant Grade 2	\$11,025.03
		Food & Beverage Attendant Grade 2	\$14,282.16
		Food & Beverage Attendant Grade 2	\$16,948.01
		Food & Beverage Attendant Grade 2	\$4,217.77
		Food & Beverage Attendant Grade 2	\$18,099.59
		Food & Beverage Attendant Grade 2	\$9,107.26 (\$41.58 Outstanding)
		Kitchen Attendant Grade 1	\$4,661.04