

## Judge says immigrant employers exploiting workers from similar background is “extremely serious”

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A Judge has imposed more than \$200,000 in penalties and issued a stinging rebuke to two migrant Asian business operators in Brisbane for their “extremely serious” conduct in exploiting five workers from a similar cultural background.

The penalties are the result of the Fair Work Ombudsman taking legal action over five overseas workers being underpaid \$148,710 at three Japanese-style food outlets trading as Teppanyaki Lovers and Nigi Nigi in the Brisbane CBD and Ku-O in Sunnybank.

Brisbane couple Lee Wee Song and Siew Lay Yeoh, who operate the outlets, have been penalised \$40,500 and \$32,400, respectively, in the Federal Circuit Court.

In addition, their companies Tsuyoetsu Pty Ltd and Taikuken Pty Ltd have been penalised \$99,000 and \$29,200, respectively.

In his judgment on the matter, Judge Salvatore Vasta singled out Song and Yeoh, Malaysian migrants, for harsh criticism over their treatment of the five workers, who were visa-holders from Taiwan and Malaysia.

“It may be said that the Respondents themselves had come from Malaysia and that the workers were Malaysian, but what that means is there is a deal of responsibility for those who are dealing as employers in Australia undertaking what is fair and just in Australia as far as compliance with the legislation. There is an obligation on them to ensure that workers from a similar culture to the employers are not exploited,” Judge Vasta said.

“It would seem that if someone from a particular culture comes to Australia and is employed by somebody else from the same background, there would be an automatic level of trust and comfort in that fact. In many ways, by not complying with the law of this country there has been an exploitation of the five workers that is extremely serious.

“The workers were minimum wage employees. The minimum wage is set in this country for a reason. It is an acknowledgment by this country that this is a sum by which every worker in the country must, at least, be paid.

“To not pay workers the minimum wage affects those workers in a far greater way than it would for workers who are ‘up the scale’. In percentage terms it is a great burden.”

The five workers were in Australia on student, bridging and partner visas when they were underpaid amounts ranging from \$13,880 to \$45,182 between November, 2011 and October, 2014.

They were paid flat rates as low as \$10 an hour, resulting in significant underpayment of the minimum hourly rates, casual loadings, shift allowances, annual leave entitlements and penalty rates for weekends, nights and public holidays they were entitled to under the applicable Awards.

Rectification payments commenced prior to proceedings being initiated and were finalised after the matter was filed in Court.

Record-keeping and pay slip laws were also contravened and laws requiring employers to inform employees of their employment category and classification were breached.

Judge Vasta did not accept the submissions from Song and Yeoh that they had very little business experience in Australia and a level of naivety about setting up a business.

“It does seem that for people with a level of naivety, they were able to set up one business and then incorporate and set up another business and then incorporate and set up a third business, so the level of naivety has to be seen in that light. There was a submission made that until the Fair Work Ombudsman came knocking on the door of (Mr Song), he did not know that there was such a thing as an Award which would dictate the rates of pay that he, as an employer, would have to pay his employees within that particular industry.

“I don’t accept that as being a true state of affairs. At the very best for (Mr Song), one could say that he was acting with a large degree of wilful blindness as to what his obligations were.”

Fair Work Ombudsman Natalie James says the judgment sends a clear message to migrant employers in Australia that exploiting overseas workers in Australia is particularly serious conduct.

"I am increasingly concerned about the number of employers from culturally and linguistically diverse backgrounds who are exploiting workers from within their own ethnic communities," Ms James said.

"I want to make it clear to that the lawful obligations to pay minimum wage rates, keep appropriate employment records and issue pay slips apply to all employers in Australia and they are not negotiable.

"Overseas workers are entitled to the same wages as Australian citizens and we are actively seeking to dispel the myth that it's OK to pay overseas workers a 'going rate' that undercuts the lawful minimum wage rates that apply in Australia.

"I understand there are cultural challenges and vastly different laws in other parts of the world, but it is incumbent on all businesses operating in Australia to understand and apply Australian laws. To that end, the Fair Work Ombudsman is here to help with free advice and resources in a range of languages."

In the 2015-16 financial year, 38 of the Fair Work Ombudsman's 50 litigations (76 per cent) involved a visa holder, and more than \$3 million was recovered for all visa-holders.

Ms James says the Fair Work Ombudsman is also committed to improving compliance in the hospitality industry. The Fair Work Ombudsman's National Hospitality Industry Campaign, finalised last year, resulted in more than \$1.2 million being recovered for underpaid employees at restaurants, cafés and catering companies throughout Australia.

Employers and employees seeking assistance can visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or contact the Fair Work Infoline on 13 13 94. An interpreter service is available by calling 13 14 50 and information to assist people from culturally and linguistically diverse backgrounds has been translated into 27 languages and is available on the website.

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