

Record penalties of \$532,000 in FWO cashback case

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Record penalties of \$532,000 have been ordered in a case involving the exploitation of five workers at a café in regional NSW. Two of the workers were Indian cooks who were coerced into paying back portions of their wages under threat of violence, dismissal and withdrawal of support for their visas if they refused.

Fares Ghazale, the former owner-operator of the Canteen Cuisine café in Albury, has been penalised \$88,810 and his company Rubees Enterprises Pty Ltd has been penalised a further \$444,100, in the Federal Circuit Court.

The total \$532,910 in penalties is the largest ever achieved as a result of a Fair Work Ombudsman legal action.

The previous record penalties of \$408,348 were secured by the Fair Work Ombudsman against a Brisbane 7-Eleven store, in a case which also involved exploitation of overseas workers.

Fair Work Ombudsman Natalie James says the record penalties send a clear message that there are serious consequences for deliberately exploiting overseas workers in Australia.

“These record penalties are a big blow in the fight to stamp out deliberate exploitation of overseas workers in Australia,” Ms James said.

“The minority of rogue employers in Australia intent on preying on the vulnerability of overseas workers should be warned that we will do everything in our power to pursue you and hold you to account.

“Business models built around blatant exploitation of overseas workers are completely unacceptable. They create an uneven playing ground for the majority of business owners who do the right thing and tarnish the reputation of business in Australia,” Ms James said.

The Federal Circuit Court found that Ghazale, who operated Canteen Cuisine café until it closed in 2014, was involved in multiple breaches of workplace laws in relation to the two Indian workers, including coercion, adverse action, underpayment of minimum lawful entitlements and providing false records. Three Australian employees were also underpaid their minimum entitlements.

The workers, aged in their late 20s, were employed as cooks. The employees faced having to leave Australia within 28 days if Ghazale withdrew support for their visas.

One of the workers had been sponsored by Ghazale’s company on a 457 skilled worker visa and he was in Australia with his Indian wife, who was dependent on his visa to stay in Australia.

The second worker was on a bridging visa while his application for a 457 visa was pending.

Ghazale promised the two workers annual salaries in excess of \$50,000 for a 38 hour week when he recruited them.

However, the workers were generally paid flat rates of \$1000 and \$830 respectively for working 60 hours per week, including nights and weekends, which was less than the minimum wage and penalty rates they were entitled to under Australia’s Restaurant Industry Award 2010.

In addition to short-changing the workers, soon after commencing employment, Ghazale told the workers they would be allowed to keep only a fraction of their wages each week – which would ultimately result in them being left with as little as \$6 an hour.

Ghazale coerced the workers into going to a local ATM to withdraw cash and repaying him large amounts of their wage by threatening to withdraw his support for their visas if they refused.

The employee being sponsored on the approved 457 visa was required to repay Ghazale \$11,050 over a period of several months in amounts ranging from \$450 to \$940 a week.

When the employee complained to Ghazale about the cash-back scam, Ghazale threatened to “contact Immigration” if the employee refused to hand over the cash.

The employee gave affidavit evidence that Ghazale told him: “If anything happens to my business, I will kill you. If you complain to anyone, I will kill you and cancel your visa”.

Similarly, Ghazale coerced the second Indian employee into repaying him \$10,680 in cash through weekly repayments ranging from \$360 to as much as \$2000 one week.

When the employee complained to Ghazale that he was taking advantage of him, Ghazale responded by threatening to withdraw support for the employee's pending 457 visa application.

The employee later told Ghazale he could no longer afford to pay money back, to which Ghazale responded by shouting at the employee and demanding he repay \$500 cash each week if he wanted to get the visa.

The employee gave affidavit evidence Court that at one point during this exchange, Ghazale dragged him by the collar and attempted to punch him. The matter was reported to Albury police.

After the incident, the cook continued working at the café and continued providing cash to Ghazale.

The combination of the cashback scheme and underpayment of minimum entitlements resulted in the two employees being underpaid \$32,063 and \$28,858, respectively. Ghazale and his company also underpaid the minimum wages and entitlements of three Australian citizens employed at the café. A waitress was underpaid \$11,273, a cook \$8946 and an apprentice cook \$6766. The Indian employees gave affidavit evidence that the underpayments left them struggling to meet their most basic expenses, including buying groceries.

One of the employees gave evidence that he had to borrow a mattress from friends because he could not afford to buy furniture and that he lost significant amounts of weight due to stress. He could also not afford to buy clothes or go out socially.

Ghazale and his company also contravened workplace laws by knowingly providing false time-and-wages records to Fair Work inspectors and failing to issue pay slips.

The Fair Work Ombudsman's investigation of the matter was initially sparked by a request for assistance from one of the Australian employees.

In total, the two Indian and three Australian workers were underpaid \$87,909.

In addition to the penalties, the Federal Circuit Court has ordered Ghazale and his company to back-pay the five workers in full. In the event that this order is not complied with due to insolvency, the Court has ordered that part of the penalties imposed be paid to the workers to rectify the underpayments.

In his judgment, Judge Tom Altobelli found that the treatment of the Indian employees was "grossly exploitative" and described the conduct as "highly aggravating and extremely serious" and "particularly saddening".

"(Ghazale) exploited his position of power to extract significant sums from each of the employees, and in effect, pay them wages as low as \$6 an hour. It is also highly aggravating that (Ghazale) used violence, and threats of violence, to obtain the repayments," Judge Altobelli said.

Judge Altobelli found that the cashback scheme was part of a "deliberate strategy of deceit to hide the ongoing contraventions of workplace laws" and that Ghazale had "deliberately exploited the imbalance of power between sponsor and visa holder in order to achieve financial gain".

Judge Altobelli said that "the disparity between the promised annual salary and the amounts in fact paid demonstrates the particular cruelty of the minimal payments" to the two Indian workers and found that there was no evidence of any contrition or remorse expressed by Ghazale or his company.

Judge Altobelli found that the treatment of the Indian workers was "an affront to the minimum employment standards that all employees should be able to expect to receive in Australia" and that it was "important to send a message to employers of migrant workers in Australia that the failure to afford the Australian safety net of minimum entitlements to migrant workers will not be tolerated".

"The Court should send a message to Australian employers that there is a single set of workplace protections in Australia that provide a safety net to all employees, regardless of their visa status," he said.

Judge Altobelli also found that there was a need for general deterrence in the hospitality industry, describing the hospitality industry as being "notorious for non-compliance".

Ms James says the record penalties imposed should also send a message that exploitative cashback arrangements will not be tolerated.

"Any employer who tells an employee that they have to pay part of their wages back, or spend their wages in particular ways, is breaching work laws," Ms James said.

"I am concerned that cashback schemes are being utilised by unscrupulous operators in an attempt to get around record keeping laws and disguise serious underpayment of wages.

“The current laws prohibit an employer ‘requiring’ an employee to spend any part of their wages, where the requirement is unreasonable. Employee co-operation or other independently verifiable material is necessary to prove this. We welcome the Government’s commitment to strengthen the laws prohibiting ‘cash-back’ arrangements.”

Ms James says workers who find themselves in this situation should document what is going on by making their own records and contact the Fair Work Ombudsman for free advice and assistance.

“We welcome any information from workers and members of the public about exploitative cashback arrangements,” she said.

Ms James says addressing exploitation of overseas workers in Australia has long been a priority for the Fair Work Ombudsman.

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

Employers and workers can visit www.fairwork.gov.au or phone the Fair Work Infoline on 13 13 94.

Information to assist people from culturally and linguistically diverse backgrounds has been translated into 27 languages and is available on the website.

The Agency also has fact sheets tailored to overseas workers and international students on the website and YouTube videos in 14 languages to assist workers to understand their workplace rights.

Links to Fair Work Ombudsman media releases relating to the previous record penalty against the 7-Eleven operator, the National Hospitality Campaign and the Inquiries and Compliance Partnerships aimed at addressing exploitation of overseas workers are available in the Fair Work Ombudsman’s media centre at www.fairwork.gov.au/about-us/news-and-media-releases (<http://www.fairwork.gov.au/about-us/news-and-media-releases>)

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Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

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For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

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