

Sydney café operator faces Court over alleged cash-back scheme

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The operator of a Sydney café is facing Court for allegedly requiring an overseas worker to pay-back thousands of dollars of her wages as part of an exploitive cashback scheme.

The Fair Work Ombudsman has commenced legal action against Sydney man Tibor Vertes, who owns and runs 'Bar Coluzzi @ Victoria St', a licensed café in the inner suburb of Darlinghurst.

Also facing Court is Mr Vertes' company Robit Nominees Pty Ltd.

It is alleged that Robit Nominees unlawfully required an Italian cook sponsored to work at the café on a 457 skilled worker visa, to pay-back a total of \$13,952 of her wages over a 15-month period from August, 2014 until she resigned in November, 2015.

It is alleged that after being paid each week, Robit Nominees required the worker to withdraw \$218 in cash and pay it back to Mr Vertes.

Mr Vertes allegedly told the worker that his company could not afford to pay her whole salary and required the cashback payments to cover tax and superannuation contributions.

The worker lodged a request for assistance with the Fair Work Ombudsman after she resigned.

It is alleged that when Fair Work inspectors investigated, they found that in addition to the cashback scheme, Robit Nominees had underpaid the worker's minimum hourly rates, annual leave entitlements, overtime rates and penalty rates for weekend and public holiday work during her employment.

It is alleged that the unlawful cashback scheme and the underpayment of minimum entitlements led to the worker being short-changed a total of \$39,686.

The worker has now been paid in full but Fair Work Ombudsman Natalie James says legal action has been commenced because of the seriousness of the alleged conduct.

Mr Vertes faces maximum penalties of up to \$10,800 per contravention and Robit Nominees Pty Ltd faces penalties of up to \$54,000 per contravention.

The Fair Work Ombudsman is also seeking Court Orders requiring Mr Vertes to complete a range of self-education activities in the My Account portal and Online Learning Centre at www.fairwork.gov.au and for his company to conduct an assessment of its compliance with workplace laws and rectify any non-compliance issues discovered.

A date is yet to be set for the next directions hearing for the matter in the Federal Circuit Court in Sydney.

Ms James says she has been concerned about the use of cashback arrangements in a number of matters.

The Federal Circuit Court recently ordered record penalties of \$532,000 against an Albury café owner and his business in a case involving two Indian workers who were coerced into paying back large portions of their wage to their employer. The workers were threatened with violence and deportation if they refused. Read the media release [Record penalties of \\$532,000 in FWO cashback case \(https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/february-2017/20170208-rubee-penalty\)](https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/february-2017/20170208-rubee-penalty).

The Fair Work Ombudsman also is currently pursuing legal action in a matter in which an overseas worker employed as a cook on the Gold Coast was allegedly required to pay-back more than \$21,000 of her wages to her employer in an exploitive cash-back scheme. Read the media release [Cafe faces court for allegedly requiring cook to pay back wages in exploitive cash-back scheme \(https://www.fairwork.gov.au/about-us/news-media-releases/2016-media-releases/july-2016/20160722-ausinko-litigation\)](https://www.fairwork.gov.au/about-us/news-media-releases/2016-media-releases/july-2016/20160722-ausinko-litigation).

"It is hard to see a legitimate reason why an employer would require employees to be regularly paying back significant parts of their wage, and 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," Ms James said.

"Whilst current laws prohibit employers requiring employees to unreasonably spend any part of amounts payable for work, we welcome the Government's commitment to further strengthen laws to cover 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.

Ms James says employers should also be aware that exploitation of visa holders is treated particularly seriously because they can be vulnerable if they are not fully aware of their workplace rights or are reluctant to complain.

“There is no excuse for any business to underpay its staff, and visa holders are entitled to the same minimum rates as Australian workers,” she said.

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 three-year 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 or contact the Fair Work Infoline on 13 13 94. An interpreter service is available by calling 13 14 50 and information and helpful materials on the website is translated into 27 different languages.

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](https://twitter.com/NatJamesFWO) (<http://twitter.com/NatJamesFWO>), the Fair Work Ombudsman [@fairwork_gov_au](https://twitter.com/fairwork_gov_au) (http://twitter.com/fairwork_gov_au) or find us on Facebook www.facebook.com/fairwork.gov.au (<http://www.facebook.com/fairwork.gov.au>).

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