

Joint operation uncovers alleged exploitation of overseas workers at Melbourne restaurants

17 July 2017

The operator of two popular Melbourne restaurants is facing Court after a raid conducted as part of a joint-operation allegedly discovered employees had been underpaid almost \$31,000 over a period of just two weeks.

The employees, mostly overseas workers on working holiday and student visas, were allegedly underpaid at Tina's Noodle Kitchen in Box Hill and Dainty Sichuan, on Swanston Street in the Melbourne CBD.

The Fair Work Ombudsman has commenced legal action in the Federal Circuit Court against the restaurants' owner-operator - Melbourne man Ye Shao - and his companies, Nine Dragons Pty Ltd and Wynn Sichuan Pty Ltd.

The companies' in-house accountant Yizhu "Jessica" Ding is also facing Court for allegedly being an accessory to underpayment and record keeping contraventions.

Fair Work Ombudsman inspectors and Department of Immigration and Border Protection officers made unannounced visits to the restaurants last year as part of a joint activity.

During the visits, inspectors spoke with workers and managers and exercised their powers under the Fair Work Act to take copies of time-and-wages records stored on-site.

Fair Work inspectors allegedly found that a total of 30 employees across the two restaurants had been underpaid a total of \$30,995 during the two-week period targeted for audit in June, 2016.

It is alleged that 17 employees at Dainty Sichuan were underpaid \$18,190 and that 13 employees at Tina's Noodle Kitchen were underpaid \$12,805.

It is alleged employees were paid flat rates ranging from \$10 to \$22 an hour, despite some employees working six or seven days a week, and more than 10 hours per day.

This allegedly led to significant underpayment of the minimum hourly rates and penalty rates for weekend, public holiday, overtime and late night work the employees were entitled to under the Restaurant Industry Award 2010.

Under the Award, employees were allegedly entitled to penalty rates of more than \$40 for some hours. Record-keeping and pay slip laws were allegedly also contravened.

The companies have commenced back-paying the employees.

Acting Fair Work Ombudsman Mark Scully says a decision was made to commence litigation because of the allegedly blatant underpayment of vulnerable overseas workers.

Mr Shao and Ms Ding face maximum penalties of up to \$10,800 per contravention and Nine Dragons Pty Ltd and Wynn Sichuan Pty Ltd face penalties of up to \$54,000 per contravention.

To ensure restaurant staff are now being paid their minimum lawful entitlements, the Fair Work Ombudsman is also seeking a Court Order requiring the companies to commission a professional external audit of pay practices, and report the results to the Fair Work Ombudsman.

A directions hearing is listed in the Federal Circuit Court in Melbourne on August 28.

Mr Scully says the Fair Work Ombudsman is committed to improving compliance in the hospitality industry and focused on ensuring culturally and linguistically diverse business operators understand and comply with Australian workplace laws.

"It is not okay for employers to arbitrarily determine low, flat rates of pay. Minimum wage rates apply to everyone in Australia – including visa-holders – and they are not negotiable," Mr Scully said.

Mr Scully says managerial staff should also be aware that the Fair Work Ombudsman is prepared to take legal action against anyone allegedly involved in operating a business model that involves the exploitation of workers.

"This can include human resources and payroll officers, line managers, accountants and advisors," Mr Scully said.

In October last year, the Fair Work Ombudsman secured penalties in Court against a human resources manager in a matter involving exploitation of vulnerable workers in Melbourne - see: [penalties for 'appalling' conduct in unlawfully deducting \\$130 000 from cleaners' wages \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/october-2016/20161024-oz-staff-penalty\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/october-2016/20161024-oz-staff-penalty) .

Employers and employees seeking assistance can visit www.fairwork.gov.au

or contact the Fair Work Infoline on 13 13 94. A free interpreter service is available by calling 13 14 50.

Small businesses calling the Infoline can opt to receive priority service to assist with their inquiries.

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.

The Fair Work Ombudsman's Anonymous Report function enables members of the community to alert the Fair Work Ombudsman to potential workplace issues. Intelligence can be provided at www.fairwork.gov.au/tipoff.

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Media inquiries:

Ryan Pedler, Assistant Director - Media

Mobile: 0411 430 902

ryan.pedler@fwo.gov.au (mailto:ryan.pedler@fwo.gov.au)

Page reference No: 7473

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

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Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

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

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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