

Sushi operator penalised for “deliberate and calculated” exploitation of Korean workers

29 May 2017

A sushi-outlet operator, and the corporation of which he was the sole director and shareholder, have been penalised a total of \$136,250 for the “deliberate and calculated” exploitation of young Korean workers and using false records to try to cover it up.

Dai Il Kang – the sole director and shareholder of companies which formerly owned and operated the Sushi Kuni outlet at Redcliffe, in Brisbane, and the Sushi Kuni outlet at Ballina, in northern NSW – has been penalised \$36,250 and his company EJ Group International Pty Ltd has been penalised a further \$100,000.

The penalties, imposed in the Federal Circuit Court in Brisbane, are the result of the Fair Work Ombudsman taking legal action after five employees at the two outlets were underpaid a total of \$29,166.

In addition to the penalties, Judge Michael Jarrett ordered Kang and his company to make back-payments to the employees.

Four of the underpaid employees were Korean nationals who spoke limited English and were in Australia on student and 417 working holiday visas at the time. The other employee was an Australian citizen. Most of the employees were young workers, with four aged 26 or younger.

Fair Work Ombudsman inspectors discovered the underpayments at the Ballina outlet during a proactive audit.

Inspectors discovered that two Korean employees and one Australian employee at the Ballina outlet received flat payments equating to rates of between \$10 and \$13.33 per hour for 10-to-12 hour shifts, resulting in a total of \$19,308 in underpayments between January and August, 2015.

After receiving requests for assistance from workers, inspectors later discovered that two Korean employees at the Redcliffe outlet had been paid the same flat rates, resulting in a \$9,858 underpayment between December, 2015 and March, 2016.

The flat rates led to underpayment of the minimum hourly rates, weekend penalty rates, overtime rates and casual loadings employees were entitled to under the Restaurant Industry Award.

Some of the employees were also underpaid annual leave entitlements.

Employees at the Redcliffe outlet were underpaid even after inspectors informed Kang of his obligations and put him on notice to comply as part of the audit relating to the Ballina outlet.

During the investigation, Kang and his company also knowingly provided inspectors with false time-and-wages records that purported to show employees were receiving much higher rates than was actually the case.

Judge Jarrett said the case involved “contraventions of minimum standards of the most fundamental kind, being the payment of minimum wages and penalties”.

He described Kang’s actions as “deliberate and calculated” and said Kang had clearly placed his own financial interests ahead of that of the employees.

Judge Jarrett also found that Kang had shown a lack of remorse and had had “difficulty accepting that corrective action was required”.

Judge Jarrett noted Kang had told inspectors during the investigation: “Actually the problem is because the business is not doing that much money. If I had to pay the amount to Australian award I’d rather close my business”.

Judge Jarrett said it was “of some moment” that Kang sold the Ballina sushi outlet in 2016 and transferred or withdrew approximately \$165,670 from the account of the personal company he operated the outlet through, Ballina One Sushi Pty Ltd. Kang placed the company into external administration in July 2016, about five weeks after the Fair Work Ombudsman wrote to Kang informing him that the company owed money to employees who had been underpaid.

Judge Jarrett also said the provision of false records to inspectors could “only be seen as deliberate, particularly serious and a calculated attempt to mislead the Fair Work Ombudsman in the course of their investigation”.

Fair Work Ombudsman Natalie James says the penalties imposed send a message that exploiting overseas workers is serious conduct that will not be tolerated.

“I want to make it clear 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,” she said.

“We treat cases involving underpayment of overseas workers particularly seriously because we are conscious that they can be vulnerable due to a lack of awareness of their entitlements, language barriers and a reluctance to complain.

“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,” Ms James said.

Persistent underpayment matters involving Korean visa-holders [prompted the Fair Work Ombudsman to reach out to the Korean business community \(http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/september-2016/20160919-group-k-eu-release\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/september-2016/20160919-group-k-eu-release) .

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 on the website is translated into 30 different languages.

Resources on the website include a Pay and Conditions Tool (PACT) that employers can use to determine the pay rates applicable to their employees, including base pay rates, allowances, overtime and penalty rates.

In recognition that some employees are reluctant to complain about their workplace issues, the Fair Work Ombudsman now has an “Anonymous Report” function to allow the community to report potential workplace breaches. Intelligence can be provided confidentially at www.fairwork.gov.au/tipoff (<http://www.fairwork.gov.au/tipoff>) .

The Fair Work Ombudsman has released the ‘Record My Hours’ app aimed at tackling the persistent problem of underpayment of young workers and migrant workers around the country. The app, which equips workers with a record of the time they spend at their workplace by using geofencing technology to register when they arrive at work and when they leave, is available for download from iTunes or Google Play stores.

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Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

Need language help?

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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