

Brisbane burger outlet operators allegedly exploited young overseas workers

Both corporate respondents, Miel Container Pty Ltd and HWMJ Pty Ltd, entered voluntary liquidation on 14 February 2019. On 2 July 2019, the Court made orders that each of the proceedings be dismissed after the Fair Work Ombudsman discontinued its case against the individual accessories, Sangmoon Na and Sanghoon Na.

1 November 2017

The operators of two Miel Container gourmet burger outlets in Brisbane are facing the Federal Circuit Court after 11 overseas workers were allegedly paid flat rates as low as \$10 an hour, resulting in more than \$155,000 in underpayments.

The Fair Work Ombudsman has commenced legal action against Miel Container Pty Ltd and HWMJ Pty Ltd, which operate the Miel Container outlets in the Brisbane CBD and Sunnybank, respectively.

It is alleged Miel Container Pty Ltd underpaid eight employees at the CBD outlet \$111,652.09 over a three-year period between 2013 and 2016 and that HWMJ Pty Ltd underpaid five employees at the Sunnybank outlet \$44,162.20 over a seven-month period in 2016.

Also facing Court is Brisbane man Sangmoon 'Johnny' Na, the sole director of both companies and an owner of the stores, for allegedly being involved in some underpayments, as well as record-keeping and pay slip contraventions at the two outlets.

Also facing Court is his brother Sanghoon Na, an owner and manager of the Sunnybank outlet, for allegedly being involved in some record-keeping contraventions at the Sunnybank outlet.

The allegedly underpaid employees are all South Korean nationals who were in Australia on working holiday and student visas at the time. Most spoke limited English and one junior employee at the Brisbane CBD outlet was aged as young as 19.

They were employed on a casual basis in kitchen and customer service roles.

Fair Work Ombudsman inspectors investigated after workers lodged requests for assistance.

Inspectors allegedly discovered that employees had unlawfully not been paid any wages for up to seven days of work performed during 'trial periods' and were then generally paid flat rates ranging from \$10 to \$16 an hour for all work performed.

Under the Restaurant Industry Award 2010 at the time, they were allegedly entitled to have been paid up to \$20.61 per hour for ordinary hours and higher rates for weekend, public holiday and overtime work.

Alleged underpayments of individual workers range from \$3212 to \$25,432.

Acting Fair Work Ombudsman Kristen Hannah says a decision was made to commence legal action because of the blatant nature of the alleged underpayments and the involvement of vulnerable overseas workers.

"We treat exploitation of overseas workers particularly seriously because we know they can be vulnerable if they are not fully aware of their rights, face language barriers or are reluctant to complain," Ms Hannah said.

"We are committed to actively pursuing and holding to account any employer in Australia who thinks they can get away exploiting overseas workers."

Miel Container Pty Ltd and HWMJ Pty Ltd face penalties of up to \$54,000 per contravention, while Sangmoon Na and Sanghoon Na each face penalties of up to \$10,800 per contravention.

The Fair Work Ombudsman will also seek Court Orders for full back-payment of the employees, who have been only partially back-paid to date.

In addition, the Fair Work Ombudsman is seeking Court Orders requiring the commissioning of external audits and workplace relations training; the display of workplace notices; the completion of education courses at www.fairwork.gov.au; and registration with the Fair Work Ombudsman's My Account portal and the Record My Hours app.

A further directions hearing is scheduled in the Federal Circuit Court in Brisbane on November 20.

The Fair Work Ombudsman recently published an open letter to international students to encourage them to seek free help from the agency if they experience any issues while working in Australia.

“We are seeking to raise awareness among international students that in line with an agreement between the Fair Work Ombudsman and the Department of Immigration and Border Protection, you can seek our assistance without fear of your visa being cancelled, even if you’ve worked more hours than you should have under your visa,” Ms Hannah said.

Employers and employees can visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94 for free advice and assistance about their rights and obligations in the workplace.

Small business operators can opt to receive priority service and a free interpreter service is available on 13 14 50.

The Fair Work Ombudsman’s online tools and resources can assist employers to determine their applicable Award, as well as classification and pay rates, allowances, overtime and penalty rates.

The Pay and Conditions Tool (PACT) provides advice about pay, shift, leave and redundancy entitlements and there are templates for pay slips and time-and-wages records.

The Fair Work Ombudsman recently launched its popular Anonymous Report function in 16 languages other than English, enabling non-English speakers to report potential workplace breaches in their own language, without being identified. The tool can be accessed at www.fairwork.gov.au/inlanguageanonymousreport (www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem/report-an-issue-anonymously/default) .

The Fair Work Ombudsman’s ‘Record My Hours’ smartphone app (www.fairwork.gov.au/tools-and-resources/record-my-hours-app) is aimed at tackling the persistent problem of underpayment of vulnerable young workers by using geofencing technology to provide workers with a record of the time they spend at their workplace. The app can be downloaded from the App Store and Google Play.

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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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