

Perth curry house operator faces Court over alleged unlawful cash-back exploitation

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A former Perth restaurant operator is facing Court for allegedly requiring a Bangladeshi worker to repay thousands of dollars of his wages - and then dismissing him because he lodged a workers' compensation claim after injuring his back at work.

The Fair Work Ombudsman has commenced legal action in the Federal Court against Perth man Sushil Kumar, who formerly owned and ran the Bricklane British Curry House in Leederville.

Also facing Court is Mr Kumar's company, Bikaner India (WA) Pty Ltd.

The Fair Work Ombudsman is asking the Federal Court to impose penalties against Mr Kumar and his company for several alleged contraventions of workplace laws and for an Order for them to rectify more than \$38,000 in alleged underpayments.

The allegedly underpaid worker is a Bangladeshi man who was sponsored by Mr Kumar's company to work as a cook at the Bricklane British Curry House on a 457 skilled worker visa.

It is alleged the cook, then aged in his late 30s, was contracted on an annual salary of \$54,000 when he was recruited from Bangladesh in 2015.

The cook allegedly generally worked six or seven days a week, often performing more than 50 hours work per week.

However, it is alleged that after paying the cook a flat rate of \$1634 per fortnight, Mr Kumar and his company required the cook to withdraw cash and pay-back \$434 of his wages.

In addition to the alleged unlawful cash-back arrangement, the Fair Work Ombudsman claims Mr Kumar also prevented the cook from returning to work following an injury sustained in the workplace.

It is further alleged that the cook sent a workers' compensation claim to Mr Kumar in June last year and Mr Kumar responded by dismissing him the following day.

Mr Kumar allegedly then contacted the Department of Immigration and Border Protection to inform them that the cook's employment had been terminated.

After being dismissed, the cook lodged a request for assistance with the Fair Work Ombudsman and an investigation was commenced.

It is alleged the dismissal contravened the Fair Work Act because it amounted to adverse action against the cook for exercising his workplace right to lodge a workers' compensation claim.

It is alleged that the unlawful cashback arrangement and the underpayment of contractual and other minimum entitlements led to the worker being short-changed a total of \$38,822.

Mr Kumar faces maximum penalties of up to \$10,800 per contravention and Bikaner India (WA) Pty Ltd faces penalties of up to \$54,000 per contravention.

Ms James says she has been concerned about the use of cashback arrangements in a number of matters nationally and it was concerning that the behaviour had allegedly now been found in such a serious matter in WA.

"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.

"We welcome the Government's commitment to strengthen laws to explicitly 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.

"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.

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 30 different languages.

Editor's note:

In June, Fair Work Ombudsman secured more than \$180,000 in penalties against a former Coffee Club café franchisee in Brisbane for contraventions including requiring an overseas worker on a 457 skilled worker visa to pay back \$18,000 of his wages through an unlawful cash-back payment.

Earlier this year, the Fair Work Ombudsman secured 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.

The Fair Work Ombudsman recently commenced legal action against the operator of a Sydney café for allegedly requiring an overseas worker to unlawfully pay-back thousands of dollars of her wages.

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 a cashback scheme.

Media releases relating to the matters are available in the [Fair Work Ombudsman's media centre](http://www.fairwork.gov.au/about-us/news-and-media-releases) (www.fairwork.gov.au/about-us/news-and-media-releases) .

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Contact us

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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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