

Sydney café operator penalised for short-changing visa holder using cashback scheme

9 April 2018

A Sydney café operator has been penalised more than \$97,000 in the Federal Circuit Court after requiring an overseas worker to pay back thousands of dollars of her wages as part of a cashback scheme, following legal action by the Fair Work Ombudsman.

Sydney man Tibor Vertes, who runs the Bar Coluzzi @ Victoria St licensed café in the inner suburb of Darlinghurst, has been penalised \$9,720 and his company Robit Nominees Pty Ltd has been penalised a further \$87,345.

The affected worker is an Italian cook who was sponsored by Robit Nominees to work at the café on a 457 skilled worker visa.

The worker's contract stated that she would work 40 hours a week and be paid an annual wage of \$56,000.

However, the worker actually worked 54 hours each week and Robit Nominees unlawfully required her 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.

After being paid each week, Robit Nominees required the worker to pay back \$218 of her wages in cash to Vertes.

Vertes 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.

In a Statement of Agreed Facts submitted in Court, Vertes and Robit Nominees acknowledged that the worker stated she agreed to make the cashback payments because she was concerned she may lose her job and have to return to Italy.

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

Fair Work inspectors found that in addition to the cashback scheme, Robit Nominees had underpaid the worker's annual leave entitlements, overtime rates and penalty rates for weekend and public holiday work. The worker was also not issued pay slips.

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

In Court, Vertes and his company admitted contravening workplace laws and have back-paid the worker in full.

Judge Nicholas Manousaridis said the worker had been deprived of a significant amount of money over a significant period of time.

"The manner in which the Weekly Repayments were paid suggested it was a scheme established to create the false impression that [the worker] was being paid her lawful entitlements," Judge Manousaridis said.

"The scheme was implemented in relation to an employee who was vulnerable because she relied on Robit Nominees to remain in Australia."

The Fair Work Ombudsman had had previous dealings with Vertes, a qualified lawyer, when he was general counsel and director of a company regarding an alleged failure to pay an employee's entitlement on termination.

"Mr Vertes was an experienced business person and an admitted legal practitioner, it is inconceivable Mr Vertes was unaware of the legal obligations of Robit Nominees as employer to [the worker]," Judge Manousaridis said.

Judge Manousaridis said Vertes and his company had expressed no contrition.

Judge Manousaridis also found that there was "a need to send a strong message to the restaurant industry in which Mr Vertes works".

Acting Fair Work Ombudsman Kristen Hannah says the agency is prepared to take serious action against employers who blatantly exploit employees.

"We treat very seriously cases where employers take advantage of the power imbalance they have over vulnerable migrant workers by cheating the workers out of their basic, lawful minimum entitlements," Ms Hannah says.

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

Ms Hannah says the commencement of the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 has increased the maximum penalties for employers who deliberately exploit workers and has strengthened laws relating to cashback schemes.

“Employees should be aware that if their employer requires an employee to use their own money unreasonably, or makes an employee give some of their pay back to their employer or another person, this could be unlawful,” she says.

“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 Hannah says the Fair Work Ombudsman has been concerned about the use of cashback arrangements in a number of matters nationally and is committed to stamping out the exploitative practice.

“Workers who find themselves in this situation should document what is going on by making their own records and contact us for free advice and assistance.”

The Federal Circuit Court last year ordered penalties of \$532,000 (<https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/february-2017/20170208-rubee-penalty>) 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.

Employees can get help resolving workplace issues (<https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-resolving-workplace-issues>) and also report a workplace concern anonymously (<https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/anonymous-report>) on the Fair Work Ombudsman’s website at www.fairwork.gov.au.

Employers and employees seeking assistance can also contact the Fair Work Infoline on 13 13 94. A free interpreter service is available on 13 14 50 and information on the website can be translated into 40 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>).

Sign up to receive the Fair Work Ombudsman’s media releases direct to your email inbox at www.fairwork.gov.au/mediareleases (www.fairwork.gov.au/mediareleases).

Media inquiries:

Yasmin Daymond, Assistant Director - Media

Mobile: 0421 630 460

yasmin.daymond@fwo.gov.au (<mailto:yasmin.daymond@fwo.gov.au>)

Page reference No: 8239

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

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.