

Red flag for restaurant as almost \$200,000 in penalties imposed for deliberate underpayments

21 February 2018

The operators of a Melbourne restaurant have been hit with nearly \$200,000 in penalties, after a Judge ruled they deliberately underpaid workers.

Abdul Hafeez Bilwani, who previously owned the Red Salmon restaurant at the Westfield Knox shopping centre in Wantirna, has been penalised \$29,500 and his company Finn Fish Pty Ltd has been penalised an additional \$163,000.

The penalties, imposed in the Federal Circuit Court, are the result of an investigation and legal action by the Fair Work Ombudsman.

Thirteen employees at the Red Salmon restaurant, including six young workers under 21, were underpaid a combined \$26,707 over a period of just three-and-a-half months in 2015.

Workers were paid flat rates which failed to meet the minimum hourly rate for 11 of the workers. The flat rates were also not enough to meet weekend, overtime, night and public holiday penalty rates under the Restaurant Industry Award 2010.

Casual loading, shift allowances and annual leave entitlements were also underpaid.

The employees missed out on between 16.95 and 38.22 per cent of their minimum entitlements. They have now been back-paid in full.

Bilwani and his company also contravened workplace laws by failing to keep proper employment records and failing to comply with a Notice to Produce pay records.

Judge Grant Riethmuller said the underpayments were a “significant imposition upon workers who are earning low rates of pay”.

“Claims that [Bilwani] took ‘a genuine interest in’ his ‘staff’s wellbeing and personal development’ are hollow when one considers there were significant underpayments involved in this case,” Judge Riethmuller said.

“Goodwill does not pay employees’ rent and food bills.”

Judge Riethmuller said Bilwani and his company had previously had “extensive dealings” with the Fair Work Ombudsman since 2003 and had been put on notice of the need to pay employees’ lawful minimum entitlements.

“The respondents must have been well aware of their obligations under the Award,” Judge Riethmuller said.

“Whilst the respondents say the bookkeeper, external accountant and restaurant manager were responsible for operational matters and financial compliance, it is difficult to conclude that the contraventions were not deliberate decisions taken in the operation of the business.”

“I am not persuaded that the respondents have demonstrated remorse or contrition, particularly having regard to the approach of [Bilwani] in attempting to deflect blame to other staff when he was clearly the controlling mind of the business.”

Judge Riethmuller also said it was “important to ensure that penalties are at a level to ensure that it is uneconomic for employers to engage in such conduct”.

Fair Work Ombudsman Natalie James says the substantial penalties reflect the seriousness of the contraventions.

“We have no patience for business operators who fail to respect the law and ignore our advice,” Ms James said.

“We go to great lengths to promote compliance in Australian workplaces. We have a dedicated small business helpline, targeted education campaigns and a wealth of resources freely available.

“There is simply no excuse when operators, as in this case, underpay staff when they have already been put on notice,” Ms James said.

Ms James said addressing underpayment of young workers in the restaurant industry would continue to be a key focus for her agency.

“We have commenced more than 25 legal actions against restaurant industry operators over the past two years, which means the restaurant sector has accounted for about a quarter of our legal actions over this period,” she said.

“We will continue to scrutinise the restaurant sector closely and employers should be aware that we treat cases involving underpayment of young workers particularly seriously because we are conscious that they can be vulnerable due to a lack of awareness of their entitlements and a reluctance to complain.”

Employers and employees can seek assistance at www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94. A free interpreter service is available on 13 14 50.

Resources on the website include a [Pay and Conditions Tool \(PACT\) \(https://calculate.fairwork.gov.au/\)](https://calculate.fairwork.gov.au/) that employers can use to determine the pay rates applicable to their employees, including base pay rates, allowances, overtime and penalty rates.

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 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.

The Fair Work Ombudsman’s Anonymous Report function enables workers to report potential workplace breaches, without being identified. The tool can be accessed at <https://www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem/workplace-help-in-other-languages/report-a-workplace-issue-in-your-language>. (www.fairwork.gov.au/workplace-problems/fixing-a-workplace-problem/workplace-help-in-other-languages/report-a-workplace-issue-in-your-language)

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Media inquiries:

Matthew Raggatt, Senior Media Adviser

Mobile: 0466 470 507

matthew.raggatt@fwo.gov.au (<mailto:matthew.raggatt@fwo.gov.au>)

Page reference No: 8076

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

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