

Chocolate café manager penalised \$27,000 for exploiting overseas workers

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The former manager of an Oliver Brown chocolate café outlet on the Gold Coast who was ‘seeing what he could get away with’ when he exploited overseas workers has been penalised \$27,200.

The Fair Work Ombudsman has secured the penalty against Steven Chung in the Federal Circuit Court after he admitted being involved in the underpayment of 12 employees at the Oliver Brown café at Surfers Paradise.

The employees were underpaid a total of \$24,575 between January and September, 2015 – and Chung was involved in the underpayments that occurred from 11 July, when he commenced as manager.

Seven of the employees were overseas workers, including five Korean nationals. Four were on 417 working holiday visas, with the others on a 457 skilled worker visa, 444 special category visa and a partner visa.

There were also four juniors among the 12 underpaid workers, including two aged 18, one aged 19 and another aged 20.

Judge Salvatore Vasta said the café “was an enterprise in which Mr Chung quite deliberately calculated to see what it was that he could ‘get away with’.”

Judge Vasta said Chung, who was responsible for hiring staff and setting wage rates, “discriminated against a number of the employees, on, it would seem, the basis either of coming from a non-English speaking background, having a visa or their youth”.

“There doesn’t appear to be any other explanation as to why there were some rates given to some people and other rates to others, except when one looks at the personal and cultural background of the workers,” Judge Vasta said.

“It would seem that a worker on a visa who came from a non-English speaking background was certainly underpaid more than a person who is a permanent resident of this country from an English-speaking background.”

The underpaid workers performed duties including washing dishes, taking orders and making drinks and desserts.

Chung used different low flat rates that resulted in workers variously being underpaid the minimum rates for ordinary hours, casual loadings, and penalty rates for weekend, public holiday, late night and early morning work they were entitled to under the Restaurant Industry Award 2010.

The largest underpayment was \$9188 of an adult Korean worker who was paid flat rates of between \$10 and \$16.48 but was entitled to receive casual rates of up to \$23.09 for ordinary hours, \$27.71 on weekends and \$46.18 on public holidays.

Other workers were underpaid amounts ranging from \$83 to \$3839.

“For persons who are on the minimum wage, such sums are quite crucial just simply to their existence and, for that reason, actions that result in their not being paid properly cannot be simply dismissed as being ‘minor infractions’,” Judge Vasta said.

Judge Vasta found that the rate of underpayment, extrapolated over the course of a year, would have resulted in underpayments in the order of \$80,000.

“For any business to be, in effect, saving \$80,000 in employee entitlements would give them a significant advantage over businesses that were mindful and respectful of their legal obligations to ensure that workers were properly paid,” Judge Vasta said.

Judge Vasta said the failure to provide pay slips to four of the workers was an “extremely serious breach of an employer’s obligations” and also showed a “level of discrimination by Mr Chung as to whom he gave pay slips and to whom he did not”.

Judge Vasta said he was “not convinced entirely” of Mr Chung’s contrition but said the former manager had, once shown the underpayment figures, cooperated with the Fair Work Ombudsman and admitted what had occurred and that it was wrong.

Fair Work Ombudsman inspectors discovered the underpayments when they conducted an audit after a worker made underpayment allegations.

The workers were back-paid in full late last year.

Fair Work Ombudsman Natalie James says the targeting of vulnerable workers with low discount flat rates was a particularly concerning feature of the case.

“We treat exploitation of overseas and young workers particularly seriously because they can be especially vulnerable if they are not aware of their rights, have language barriers or are reluctant to complain,” Ms James said.

“Migrant workers make up 6 per cent of the workforce yet they were involved in 18 per cent of the workplace disputes we assisted with in the last financial year.

“Furthermore, overseas workers were involved in nearly half (49 per cent) of the litigations we filed last year, suggesting the issues they are exposed to in the workplace are at the more serious end of the scale,” Ms James said.

Ms James says employers should be aware that the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 has now come into effect, increasing maximum penalties for conduct including deliberate exploitation of workers.

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 (<http://www.fairwork.gov.au/inlanguageanonymousreport>) .

In 2016-17, the Fair Work Ombudsman achieved penalties of more than \$4.42 million in litigations where it was held one or more of the employees was a visa-holder.

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.

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