

## \$200,000 in penalties after overseas worker exploited and sacked by text message

27 March 2018

The former owner-operator of an Indian restaurant in Perth has been penalised more than \$200,000 after paying an overseas cook nothing for almost four months' work then sacking him by text message for taking a day of sick leave.

Simon Peter Mackenzie, who owned and ran The Curry Tree restaurant in Nedlands before it burnt down in 2014, has been penalised \$34,815 – and his company, Siner Enterprises Pty Ltd, has been penalised an additional \$174,075.

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

In addition to the penalties, the Court has ordered Mackenzie and his company to pay the exploited worker a total of \$32,661 in outstanding wages and compensation for the economic loss the worker suffered as a result of being sacked.

The worker is an Indian national, who was aged 24 and in Australia on a bridging visa when he started work as a cook at The Curry Tree in 2012 after responding to a job ad on Gumtree.

He was paid \$200 cash for his first few days of work but then worked six evenings per week for the next four months without receiving any pay.

The worker was reluctant to complain because he had hoped Mackenzie's company would sponsor him on a work visa, which would allow him to remain in Australia.

When the worker sent Mackenzie a text message saying he would not attend work because he was unwell and would provide a medical certificate the following day, Mackenzie responded with a series of text messages terminating his employment.

Mackenzie initially texted the worker saying "dont come back".

Then a short time later Mackenzie texted the worker saying "Dont expect .any sympathy,pls don't my lawyer sue you for defamation of/mycharacter. Pls return key today".

Mackenzie then sent a follow-up text stating "If you dont answer i will ring the police and say you possession of my keys to my business and I want them bak. they will come to your house and arrest you for theft".

The worker lodged a complaint after being dismissed – and the Fair Work Ombudsman commenced an investigation and then legal action.

At a contested hearing in the Federal Circuit Court, Mackenzie denied committing any contraventions of workplace laws but the Court found Mackenzie and his company had committed all contraventions alleged by the Fair Work Ombudsman.

In addition to underpayments of basic entitlements and providing false records to Fair Work inspectors, the Court found that Mackenzie and his company had contravened workplace laws that prohibit taking adverse action against an employee, such as dismissing them for accessing a workplace entitlement such as sick leave.

Judge Antoni Lucev described the contraventions as "egregious" and found that the "deliberateness of the contraventions is plainly proven".

"The conduct in relation to the termination of employment of [the worker] is, in the Court's view, more egregious because of the manner in which it was carried out," Judge Lucev said.

Judge Lucev was also highly critical of Mackenzie's conduct in Court, saying he had displayed "sheer belligerence" and directed "hostility" towards the worker and the Fair Work Ombudsman's legal representatives.

"Mr Mackenzie went so far as to suggest that (the worker) might have somehow had an involvement in events, or events which led to, the burning down of the restaurant, an assertion which was simply not the subject of any evidence whatsoever," Judge Lucev said.

Judge Lucev also found that Mackenzie had displayed no remorse, noting that Mackenzie told the court that "there will be no apology at all".

“Mr Mackenzie’s attitude as evidenced at the penalty hearing is cause for serious concern in relation to any possible future employment by him or by any company with which he is associated,” Judge Lucev said.

Judge Lucev said the penalty should deter employers in the restaurant and hospitality from similar conduct.

“The maintenance of the safety net is particularly pertinent in an industry such as the restaurant and hospitality industry where it is now almost notorious that there are significant pockets of non-compliance in relation to the payment of wages and entitlements,” Judge Lucev said.

Fair Work Ombudsman Natalie James says the Court’s decision sends a message that there are serious consequences for deliberately exploiting overseas workers in Australia.

“This case involved shameful exploitation of a vulnerable worker and the employer’s conduct in this matter thoroughly deserved the strong criticisms it received from the Court,” Ms James said.

“Migrant and overseas workers in Australia are lawfully entitled to the same minimum wages and conditions as any other worker.

“There is no place in Australia for this kind of highly exploitative and callous treatment of a young, overseas worker – and we will not hesitate to pursue any business operator who seeks to engage in this type of conduct.”

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

Ms James said addressing underpayment of 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 visa holders and young workers particularly seriously because we know they can be vulnerable due to a lack of awareness of their entitlements, language barriers and a reluctance to complain.”

Employers and employees can seek assistance at [www.fairwork.gov.au](http://www.fairwork.gov.au) or contact the Fair Work Infoline on 13 13 94. A free interpreter service is available on 13 14 50 and information on the website is accessible in 40 languages other than English.

The Fair Work Ombudsman’s ‘Record My Hours’ smartphone app (<https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/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 popular [Anonymous Report function](https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/july-2017/20170731-migrant-worker-anon-report-tool) (<https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/july-2017/20170731-migrant-worker-anon-report-tool>), available in 16 languages other than English, allows visa-holders to report workplace concerns anonymously to the agency in their own language.

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](https://twitter.com/NatJamesFWO), the Fair Work Ombudsman [@fairwork\\_gov\\_au](https://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](http://www.fairwork.gov.au/mediareleases) ([www.fairwork.gov.au/mediareleases](http://www.fairwork.gov.au/mediareleases)).

Media inquiries:

Matthew Raggatt, Senior Media Adviser

Mobile: 0466 470 507

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

## Contact us

Fair Work Online: [www.fairwork.gov.au](http://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.