

Darwin restaurant operator taken to court

9 December 2019

The Fair Work Ombudsman has commenced proceedings in the Federal Circuit Court against the owner of the now-defunct 'Bar.B.Q Tonight NT' restaurant.

Facing court is the company that operated the restaurant, FMS Holdings, and the company's sole director, Mr Rana Ali Hassan.

The workplace regulator alleges FMS Holdings and Mr Hassan breached the Fair Work Act by failing to comply with a Compliance Notice requiring the company to back-pay a cook.

Fair Work Inspectors conducted an investigation into FMS Holdings following a request for assistance from the cook, who was a migrant worker in the country on a 457 visa.

The FWO issued a compliance notice to FMS seeking payment of \$15,833.31 in relation to the employee's minimum wage, late night, weekend and public holiday penalty rates, split shift allowances, annual leave and annual leave loading on termination and minimum notice of termination or payment in lieu of notice under the Restaurant Industry Award 2010 and the Fair Work Act 2009.

After the FWO issued the Compliance Notice in June, FMS Holdings and Mr Hassan initially agreed to a repayment plan to rectify the underpayments. However just \$1,250 of the outstanding amount was repaid.

Fair Work Ombudsman Sandra Parker said Compliance Notices are an important regulatory tool to help underpaid workers receive their lawful entitlements promptly.

"Under the Fair Work Act, inspectors can issue a compliance notice if they have a reasonable belief that an employer has breached workplace laws. Businesses that fail to act on these notices face court-imposed fines as well as the initial back-payment bill."

"The Fair Work Ombudsman is cracking down on underpayments in the restaurant industry and we urge all employers to check that their staff are being paid correctly before we come knocking. Any workers with concerns should contact us," Ms Parker said.

The FWO is seeking penalties against FMS Holdings and Ms Hassan. The company faces a maximum penalty of \$31,500, while Mr Hassan faces a maximum penalty of \$6,300.

The FWO is also seeking a Court Order requiring the company to rectify the underpayments in full, plus interest.

A directions hearing has been listed in the Federal Circuit Court in Darwin for 19 February 2020.

Know a workplace that isn't doing the right thing but don't want to get involved? [Report \(https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/anonymous-tipoff\)](https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/anonymous-tipoff) it to us anonymously – in your language.

The FWO has developed [new interactive tools \(www.fairwork.gov.au/find-help-for/fast-food-restaurants-cafes\)](http://www.fairwork.gov.au/find-help-for/fast-food-restaurants-cafes) for the fast food, restaurant and café sector to make it easier to access information about key workplace entitlements.

Employers and employees can visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94 for free advice and assistance about their rights and obligations in the workplace. A free interpreter service is available on 13 14 50.

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