

Melbourne Chinese restaurant faces Court

26 March 2019

The Fair Work Ombudsman (FWO) has commenced legal action against the former operator of a Melbourne restaurant, alleging it underpaid a migrant employee almost \$70,000 and provided false records to inspectors during the investigation.

Facing the Federal Circuit Court is China Bar Buffet (Epping) Pty Ltd, which owns the China Bar Signature restaurant and China Bar Express fast food outlet in Epping.

The FWO is also taking action against the company's sole director Siak Kong Chi and bookkeeper Ying Lee, of the 'China Bar Group', alleging they were involved in some of the company's alleged breaches of workplace laws.

It is alleged that China Bar Buffet (Epping) Pty Ltd underpaid a Chinese worker, who was in Australia on a spousal visa, \$69,321 between February 2015 and December 2016.

Fair Work Ombudsman Sandra Parker said that improving workplace compliance in the fast food, restaurant and catering sector is a priority for the Fair Work Ombudsman.

"The Fair Work Ombudsman considers all allegations of worker exploitation seriously, particularly matters involving visa holders who may be reluctant to complain. The alleged significant underpayment of a migrant worker and falsification of records in this matter warranted Court action," Ms Parker said.

"All workers in Australia have the same rights at work, regardless of citizenship or visa status, and we urge any migrant workers with concerns to contact us. We have an agreement with the Department of Home Affairs where visa holders can ask for our help without fear of their visa being cancelled," Ms Parker said.

Inspectors commenced an investigation after the employee contacted the FWO. It is alleged they found the worker had regularly worked 60 hours per week as a kitchen hand at the China Bar Signature restaurant, but had been paid between only \$700 and \$1060 per week.

This allegedly resulted in underpayment of the ordinary hourly rates, overtime rates, and weekend and public holiday rates the employee was entitled to under the Restaurant Industry Award 2010. Annual leave entitlements, superannuation and a split shift allowance were allegedly also underpaid.

The FWO also alleges that China Bar Buffet (Epping) Pty Ltd provided inspectors with false records showing inaccurate hours of work and payments for the worker and other employees at the China Bar Express fast food outlet.

China Bar Buffet (Epping) Pty Ltd faces penalties of up to \$63,000 per contravention and the maximum penalty for Mr Chi and Ms Lee is up to \$12,600 per contravention.

It is alleged that part of the underpayment is still outstanding. The FWO is seeking Court orders requiring that outstanding back-payments and superannuation are paid, and that the company commission an external audit of compliance with workplace laws and rectify any further non-compliance issues discovered.

A directions hearing is listed in the Federal Circuit Court in Melbourne on 7 May 2019.

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.

Information for the fast food, restaurant and café sector is available at www.fairwork.gov.au/frac (<http://www.fairwork.gov.au/frac>).

Note: Since the alleged underpayment contraventions, the company licensed out the operation of China Bar Signature to an unrelated entity. The Fair Work Ombudsman makes no allegations against the current operators of the China Bar Signature restaurant.

The Fair Work Ombudsman also makes no allegations against the unrelated entity that operated China Bar Signature for the period 19 September 2016 to 16 October 2016.

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