

Court action over alleged underpayments in Cairns

14 November 2019

The Fair Work Ombudsman has commenced legal action against the operators of two food outlets in northern Queensland, alleging they underpaid 18 workers, including teenagers, a total of \$13,913.

Facing the Federal Circuit Court are Maurice Arias and his company Mashnicisa Pty Ltd, which operates the Buenavista Kuranda café at Kuranda, north-west of Cairns, and formerly operated the 'Donut Joint' outlet in the Cairns suburb of Smithfield.

The FWO alleges that 17 employees at the Donut Joint outlet, including 11 juniors aged between 15 and 18 and one Indian visa holder, were underpaid a total of \$12,045 over a period of about three months early last year. Alleged individual underpayments range from \$37 to \$6034.

In addition, it is alleged that a working holiday visa-holder employed at the Buenavista Kuranda café was underpaid a total of \$1868.

The FWO alleges that employees at the Donut Joint were generally paid flat rates that were not sufficient to cover the weekend and public holiday penalty rates, overtime rates and evening loadings they were entitled to under the Fast Food Industry Award 2010. Underpayments at the Buenavista Kuranda café allegedly occurred when the employee was not paid for all hours she worked.

Fair Work Ombudsman Sandra Parker said inspectors discovered the alleged underpayments when they investigated requests for assistance from workers.

"Young workers are particularly vulnerable to workplace underpayment as they might not know about their rights or be fearful about raising concerns with their boss. Businesses that deliberately underpay teenage and other vulnerable workers will very likely face the courts," Ms Parker said.

"Enforcing compliance with workplace laws in the fast food, restaurant and cafe sector continues to be a priority for the Fair Work Ombudsman. Employers in this sector are on notice that they must pay all employees according to Australia's lawful minimum pay rates," Ms Parker said.

It is alleged that Mr Arias and Mashnicisa Pty Ltd also breached laws by failing to comply with a Notice to Produce issued by the FWO and by providing FWO with false records. They allegedly also failed to provide new employees with a Fair Work Information Statement and breached record-keeping laws.

In relation to two workers, the FWO will rely on the new reverse onus of proof laws that require employers to disprove underpayment allegations in Court when they have failed to keep adequate records.

Mr Arias faces penalties of up to \$12,600 per contravention and Mashnicisa Pty Ltd up to \$63,000 per contravention.

The alleged underpayments are outstanding and the FWO is also seeking a court order requiring Mashnicisa Pty Ltd and Mr Arias to back-pay the employees.

The FWO is also seeking court orders requiring Mr Arias and his company to commission independent audits of their wage payment practices and provide the results to the FWO; display a workplace notice detailing employee workplace rights; and register with the My Account portal at www.fairwork.gov.au and complete the courses for employers.

A directions hearing is listed in the Federal Circuit Court in Brisbane on 7 February 2020.

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