

## Restaurant allegedly underpaid visa worker \$150k

3 October 2019

The Fair Work Ombudsman has commenced legal action against the operators of the Blue Moon Restaurant in western Sydney, alleging they underpaid an Indian worker they were sponsoring on a 457 skilled worker visa more than \$150,000.

Facing the Federal Circuit Court are Rekha Thakadiyal Joseph and Jijo Thiruvankavil Esahac, who owned and operated the Blue Moon Indian restaurant, located at Wentworthville, as a partnership.

It is alleged they sponsored an Indian worker, aged in his 20s, to work at the restaurant on a 457 skilled worker visa between December 2013 and April 2016, on a nominated contractual salary of \$54,000.

Ms Joseph, on behalf of the partnership, allegedly facilitated a bank account being opened in the employee's name and deposited amounts consistent with his contractual salary, more than \$1600 per fortnight, into the account.

However, for the majority of the worker's employment, Ms Joseph and Mr Esahac allegedly maintained overall control of the account, including retaining the bank card and making a number of transactions reducing the funds in the account.

The FWO alleges the worker was instead paid cash-in-hand wages equating to only \$400 to \$450 per week, despite generally working 11-12 hours per day, six days per week, performing various duties in the restaurant's kitchen.

Fair Work Ombudsman Sandra Parker said inspectors discovered the alleged underpayments when they investigated a request for assistance the employee lodged after his employment finished.

"The conduct alleged in this case is extremely serious and completely unacceptable in Australian workplaces," Ms Parker said.

"We will not hesitate to take legal action in response to alleged blatant breaches of vulnerable migrant workers' rights. Employers in the fast food, restaurant and cafe sector are on notice that they must pay all employees according to Australia's lawful minimum pay rates. Enforcing compliance with workplace laws in this sector is a priority for the Fair Work Ombudsman."

The employee was allegedly underpaid the ordinary hourly rates, overtime rates and penalty rates for weekend and public holiday work he was entitled to under the Restaurant Industry Award 2010. His leave entitlements were allegedly also underpaid.

It is alleged that Ms Joseph and Mr Esahac also breached laws relating to cash-back arrangements towards the end of the worker's employment by requiring him to repay part of his wages.

The FWO further alleges that Ms Joseph and Mr Esahac breached workplace laws by keeping false or misleading records and providing them to the FWO, and failing to issue pay slips.

Ms Joseph and Mr Esahac are facing penalties of up to \$12,600 and \$10,800 respectively per contravention. The FWO is seeking a court order requiring Ms Joseph and Mr Esahac to back-pay the employee, plus interest.

A directions hearing is listed in the Federal Circuit Court in Parramatta on 25 October 2019.

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