

Adelaide restaurant faces court

Note: The Fair Work Ombudsman has withdrawn the allegation that the respondents failed to comply with a Notice to Produce. The Fair Work Ombudsman has also withdrawn all allegations against Mr Mingang Du.

25 February 2020

The Fair Work Ombudsman has commenced legal action in the Federal Circuit Court against the operators of “Gyoza Gyoza”, a restaurant specialising in Japanese cuisine in the Adelaide CBD.

Facing Court is CNL Group Pty Ltd which operates the restaurant under a franchise agreement, its sole director Yu Bing Li, and its chef/manager, Mingang Du.

Fair Work Inspectors commenced an investigation into CNL as a result of requests for assistance from two former Japanese waitresses on working visas.

The Fair Work Ombudsman alleges that CNL paid the two employees rates as low as \$12 per hour from April to August 2018 in breach of the Restaurant Industry Award 2010.

Both Mrs Li and Mr Du are also alleged to be involved in the failure to pay minimum rates, weekend penalties and loadings for work after 10pm.

Mrs Li is alleged to have intentionally hindered and obstructed inspectors by physically blocking an inspector from viewing time and wage records during a site visit last year, and then removing that record from the premises.

CNL is also alleged to have provided false and misleading pay records to inspectors, failed to comply with a Notice to Produce, and failed to provide payslips in breach of the Fair Work Act.

Mrs Li is alleged to be involved in providing false records to inspectors, not complying with a Notice to Produce, and the pay slip contraventions.

Fair Work Ombudsman Sandra Parker encouraged migrant workers to report any concerns.

“The alleged conduct affected visa holders who can be particularly susceptible to workplace exploitation as they can be scared of losing their jobs and visas, or are not familiar with Australia’s workplace rules. Visa holders have the same workplace rights as any other worker.”

“This action should serve as a warning to all businesses that our inspectors must be allowed to carry out their important duties to help protect employees and the system,” Ms Parker said.

In total, it is alleged that CNL underpaid the two employees a total of \$10,517.43, which has largely been repaid.

The FWO is seeking declarations against CNL, Mrs Li and Mr Du, repayment of the remaining underpaid wages, and civil penalties.

In relation to the alleged contraventions, CNL faces maximum penalties of \$63,000 per breach, while Mrs Li and Mr Du face a maximum penalty of \$12,600 per breach.

A directions hearing has been listed in the Federal Circuit Court in Adelaide for 26 March 2020.

Employers and employees seeking assistance can visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94. An interpreter service is available on 13 14 50.

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Call through the National Relay Service (NRS):

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