

Melbourne rooftop bar faces court

24 January 2020

The Fair Work Ombudsman has commenced legal action in the Federal Circuit Court against the operators of a Melbourne CBD rooftop cocktail bar.

Facing court are C & H Entertainment Pty Ltd, which operates The Red Hummingbird bar, as well as a company director Don Haris Kumarage and manager Channa Dissanayake.

The Fair Work Ombudsman alleges that the company breached the Fair Work Act by failing to comply with a Compliance Notice requiring the company to calculate and back-pay alleged underpayments of a casual bar employee, and that Mr Kumarage was involved in this breach.

A Fair Work Inspector issued the Compliance Notice last year in response to a request for assistance from the worker, a British national in Australia on a 417 working holiday visa.

The Compliance Notice was issued after a Fair Work Inspector conducted an investigation and formed a belief that the company allegedly underpaid casual loading, and penalty rates for weekend, public holiday, late night and early morning hours, under the Hospitality Industry (General) Award 2010.

In addition, it is alleged the company breached record-keeping and pay slip laws and that both Mr Kumarage and Mr Dissanayake were involved in these breaches.

Fair Work Ombudsman Sandra Parker says Compliance Notices are an important tool to recover unpaid wages, and they will be enforced where they are not followed.

“Under the Fair Work Act, inspectors can issue a Compliance Notice if they have a belief that an employer has breached certain workplace laws. Where employers do not comply with our notices, a court can order them to pay penalties in addition to back-paying any affected employees.”

“The Fair Work Ombudsman takes alleged underpayments of migrant workers particularly seriously, as we know they can often be vulnerable due to their visa status, and will continue to use all its enforcement tools to ensure employers meet their lawful obligations.”

“Employers should also be on notice of increased penalties for record-keeping and pay slip breaches, reflecting the integral role record-keeping plays in a compliant business.”

The FWO is seeking penalties. For the alleged Compliance Notice breach, C & H Entertainment faces a maximum penalty of \$31,500, and Mr Kumarage up to \$6,300. For the alleged record-keeping and pay slip breaches, the company faces maximum penalties of \$63,000 per breach, and Mr Kumarage and Mr Dissanayake up to \$12,600 per breach.

The FWO is also seeking a court order requiring the company to comply with the Compliance Notice, which includes rectifying the alleged underpayments in full, plus superannuation and interest.

A directions hearing has been listed in the Federal Circuit Court in Melbourne for 2 March 2020.

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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