

Penalties for underpayments in Cairns

17 July 2020

The Fair Work Ombudsman has secured \$86,000 in penalties in the Federal Circuit Court against the operators of two food outlets in northern Queensland for deliberately underpaying 18 workers, including teenagers.

The Court imposed a \$70,000 penalty against Mashnicisa Pty Ltd, which operated the Buenavista Kuranda café at Kuranda, north-west of Cairns, and the 'Donut Joint' outlet in the Cairns suburb of Smithfield.

The Court also imposed a \$16,000 penalty against company owner Maurice Arias. In addition, the Court has ordered Mashnicisa Pty Ltd and Mr Arias to back-pay the employees, plus interest.

Fair Work Ombudsman Sandra Parker announced this week that improving workplace compliance in the fast food, restaurant and cafe sector continues to be a priority in the year ahead.

"Employers are on notice that they must pay all employees according to Australia's lawful minimum pay rates and we will continue to take action to protect young workers, who can be particularly vulnerable if they are not aware of their workplace rights," Ms Parker said.

"We will enforce the law in a proportionate matter during the COVID-19 pandemic but will not hesitate to take action in response to deliberate and egregious non-compliance, particularly where vulnerable workers are involved."

Fair Work Inspectors investigated after receiving requests for assistance and found that 18 employees, including 11 juniors aged between 15 and 18 years old, were underpaid a total of \$13,913.63 over a period of about three months in 2018. Individual underpayments range from \$37.09 to \$6034.26.

One worker was paid nothing for approximately four weeks' work, while others were generally paid 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.

One of the workers gave evidence that the underpayment left him unable to purchase university textbooks and a laptop for studying, while another gave evidence that she fell behind on her bills, including her credit card and loan payments, rent and household bills.

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 the FWO with false or misleading payroll documents. They also failed to provide new employees with a Fair Work Information Statement and breached record-keeping laws.

Judge Michael Jarrett found that the underpayments were deliberate, the use of false records demonstrated a "dishonest intention" on Mr Arias's part and said he was not satisfied Mr Arias and his company had indicated an acceptance of wrongdoing or made a suitable credible expression of regret.

Judge Jarrett said there was a need to impose a penalty to deter others from similar conduct.

"It is important to send a message to other employers working within the fast food industry that non-compliance with the minimum standards, including the payment of overtime and penalty rates to junior staff, will not be tolerated," Judge Jarrett said.

The Court also ordered Mr Arias and his company to commission independent audits of their compliance with the Fair Work Act 2009 and Fast Food Industry Award 2010 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.

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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