

Sushi operators hit with record penalties

18 May 2020

The Federal Court has today imposed record penalties of \$891,000 against the operators of three Hero Sushi takeaway outlets for underpaying workers and providing false records to the FWO.

HSCC Pty Ltd and HSCK Pty Ltd, which operate Hero Sushi outlets in Newcastle and Canberra respectively, have each been penalised \$225,000 and HSPF Pty Ltd, which operates a Hero Sushi outlet on the Gold Coast, has been penalised \$150,000.

In addition, company directors and owners Deuk Hee “William” Lee and Hokun “Robert” Hwang have each been penalised \$85,000, and payroll officers employed at Hero Sushi head office, Chang Seok “Tommy” Lee, Ji Won “Brian” Cho and Jung Sun “Jimmy” Kim, have been penalised \$75,000, \$16,000 and \$30,000, respectively.

The Fair Work Ombudsman took court action in [February](http://www.fairwork.gov.au/about-us/news-and-media-releases/2019-media-releases/february-2019/20190208-hero-sushi-litigation-matter) last year (www.fairwork.gov.au/about-us/news-and-media-releases/2019-media-releases/february-2019/20190208-hero-sushi-litigation-matter).

The Court found that 94 workers across the three Hero Sushi outlets were paid flat rates as low as \$12 an hour, resulting in underpayments of \$700,832.88 between April 2015 and July 2016. Many of the workers were young overseas workers, including Korean and Japanese nationals on international student and working holiday visas.

The operators also provided Fair Work Inspectors with hundreds of pages of false records across 11 separate occasions, showing inaccurate hours of work and pay rates.

The court found that each of the individuals aided and abetted or were knowingly concerned in some of the company’s breaches of workplace laws.

Fair Work Ombudsman Sandra Parker welcomed the record penalties from the court.

“The penalties imposed against Hero Sushi are the largest ever achieved as a result of a Fair Work Ombudsman litigation and demonstrate that employers who deliberately exploit vulnerable workers will face serious consequences,” Ms Parker said. “Employers need to be aware that penalties for serious falsification of records have been increased since the conduct occurred in this case and any employer engaging in this sort of conduct today can face even higher penalties and sanctions in Court,” Ms Parker said.

“This matter should serve as a warning for all businesses that underpay migrant workers, who may be particularly vulnerable if they have language barriers or be reluctant to seek help due to their visa status. Any workers with concerns about their pay should contact us.”

Fair Work Inspectors discovered the underpayments when auditing the Hero Sushi outlets at Kotara in Newcastle and Pacific Fair on the Gold Coast, and the Hero Sushi kiosk at the Canberra Centre during a proactive activity targeting sushi businesses in 2016.

The operators underpaid employees’ minimum hourly rates, casual loadings, penalty rates, overtime, clothing allowances and annual leave entitlements under the Fast Food Industry Award 2010. Superannuation was also underpaid and pay slip laws were breached. In total:

- 30 employees were underpaid \$215,066.45 at the Newcastle outlet
- 43 employees were underpaid \$293,451.26 at the Canberra outlet
- 21 employees were underpaid \$192,315.17 at the Gold Coast outlet.

HSCC Pty Ltd, HSCK Pty Ltd and HSPF Pty Ltd have back-paid all underpaid employees they have been able to locate and paid back-payment amounts for other employees to the Fair Work Ombudsman, which will hold the money in trust for the workers until it can locate them. Many employees are yet to be located, including a number who have left Australia.

In his judgment, Justice Geoffrey Flick said, “This is a case about greed and the exploitation of the vulnerable.

“Those in a position to ruthlessly take advantage of others pursued their goal of seeking to achieve greater profits at the expense of employees. In doing so, a great number of false documents were deliberately and repeatedly created with a view to concealing the fraud being perpetrated. Lies were told to cover up the wrongdoing. It was only when the “game was up” that those responsible admitted their misdeeds.”

Judge Flick said that “the quantum of the penalties to be imposed has to be such that they are not seen as simply the “cost of doing business” in the fast food industry.”

In addition to the penalties, Justice Flick also ordered the companies to display workplace notices detailing employee rights and entitlements and to commission an external audit of its compliance with workplace laws within 28 days and report the results to the Fair Work Ombudsman.

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.

Note: The Hero Sushi outlets named in these proceedings are located at Shop 1030, Westfield Shopping Centre, Cnr Park Avenue and Northcott Drive, Kotara NSW; Shop CL10, 148 Bunda Street, Canberra City ACT; and Shop K016 Australia Fair, 42 Marine Parade, Southport Queensland.

The previous record penalties secured in a Fair Work Ombudsman litigation are detailed in the media release available at: '[Record penalty of \\$660,000 for fruit market operator after refugee goes without pay for weeks \(www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/august-2017/2017-08-02-mhoney-penalty-release\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/august-2017/2017-08-02-mhoney-penalty-release)'.

To find out if the Fair Work Ombudsman is holding unclaimed monies owing to them, workers can use the [Search for unpaid wages](http://www.fairwork.gov.au/how-we-will-help/helping-the-community/search-for-unpaid-wages) page (www.fairwork.gov.au/how-we-will-help/helping-the-community/search-for-unpaid-wages) at www.fairwork.gov.au

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Contact us

Fair Work Online: www.fairwork.gov.au

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