

Gold Coast restaurant operators face court

19 November 2020

The Fair Work Ombudsman has commenced legal action in the Federal Circuit Court against the operators of two Chinese restaurants on the Gold Coast who allegedly underpaid a visa holder.

Facing the court is the company Fu Kang GC Pty Ltd and company directors Ms Yingchun “Christine” Wang and Mr Liangtao “Frank” Zhao, a married couple. The company operates Fu Kang Gold Coast Chinese Restaurant in Labrador and formerly operated Memory Taste of Fu Kang in Southport.

The regulator investigated after receiving a request for assistance from an employee who worked as a cook at the restaurants from July 2015 to January 2017. The court action relates to a period between May 2016 and January 2017 during which the employee maintained a diary record of the hours he worked and amounts he was paid.

The employee, a Chinese national then aged in his 20s, was sponsored by the company on a 457 skilled visa. The Fair Work Ombudsman alleges the employee worked between 22 and 87 hours per week and received cash payments of between \$200 and \$600 per week, equating to between \$2.30 and \$12.85 per hour.

It is alleged this resulted in total underpayments of \$46,555 related to failures to pay minimum ordinary hourly rates, overtime rates, and penalty rates for morning, evening, weekend and public holiday hours under the Restaurant Industry Award 2010. It is also alleged the company failed to pay the employee’s annual leave and superannuation entitlements.

The Fair Work Ombudsman alleged the company produced false and misleading documents to a Fair Work Inspector on three occasions, including records that stated the employee was paid \$862 net per week or \$26.95 per hour.

It is also alleged that the company did not issue pay slips and failed to keep employee records relating to annual leave, the amounts paid to the employee, and the hours worked by the employee.

Fair Work Ombudsman Sandra Parker said the regulator prioritises matters involving the fast food, restaurant and café industry and vulnerable workers.

“Visa holders, who we know can be vulnerable due to a range of factors including their reliance on an employer, must receive the same minimum pay rates as every other employee in Australia. We will continue to take legal action to protect workplace rights, particularly where it involves vulnerable workers,” Ms Parker said.

“Any employees with concerns about their pay or entitlements should contact the Fair Work Ombudsman for free assistance.”

Ms Wang and Mr Zhao, who are each of Chinese background, are alleged to be involved in many of the contraventions. None of the alleged underpayments have been rectified.

The FWO is seeking penalties against Fu Kang GC, Ms Wang and Mr Zhao. The regulator is also seeking a court order for Ms Wang and Mr Zhao to rectify the underpayment, undertake training in relation to their workplace obligations and engage a third party to audit the company.

The company faces a maximum penalty of \$54,000 per contravention while Ms Wang and Mr Zhao each face a maximum penalty of \$10,800 per contravention. A directions hearing has been listed in the Federal Circuit Court in Brisbane on 21 December 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. A free interpreter service is available on 13 14 50.

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