

Former Sydney restaurant operators penalised

30 October 2020

The Fair Work Ombudsman has secured court penalties of \$119,200 against the former operators of the Blue Moon Restaurant in western Sydney who underpaid an Indian employee more than \$150,000.

The Federal Circuit Court has ordered Rekha Thakadiyal Joseph to pay penalties of \$63,600 and Jijo Thiruvankavil Esahac to pay penalties of \$55,600. The two owned and operated the Indian restaurant at Wentworthville as a partnership. The employee was engaged on a 457 skilled work visa.

The operators employed the worker to work at the restaurant between December 2013 and April 2016, on a contractual salary of \$54,000. Ms Joseph, on behalf of the partnership, set up a bank account, opened in the employee's name, and deposited amounts consistent with his contractual salary, more than \$1600 per fortnight, into the account.

However, for the majority of the worker's employment, Ms Joseph and Mr Esahac maintained overall control of the account, retaining the bank card and making transactions reducing the account's funds. During this period the employee was paid cash-in-hand wages equating to only \$400 to \$450 per week, despite generally working 11-12 hours per day, six days per week, firstly as a kitchen hand and then as a cook.

The employee – who lived with the respondents for most of his employment – was underpaid \$153,352, including for underpayment of ordinary hourly rates, overtime rates, and penalty rates for weekend and public holiday work owed under the Restaurant Industry Award 2010. There were also underpayments of various leave entitlements.

Ms Joseph and Mr Esahac also breached workplace laws by keeping false or misleading records and failing to issue pay slips. Ms Joseph provided false documentation and information to the FWO.

Fair Work Ombudsman Sandra Parker said attempts to disguise the underpayment were unacceptable.

"Visa holders must receive the same minimum pay rates as every other employee in Australia and employers who blatantly underpay migrant workers will be found out. We will continue to take legal action to protect workplace rights, particularly where it involves vulnerable workers," Ms Parker said.

"In addition, fast food, restaurant and cafe sector employers are on notice that enforcing workplace laws in the sector is a priority for the agency this year. Any workers with concerns should contact us."

Ms Joseph and Mr Esahac also breached laws relating to cash-back arrangements by requiring the employee to repay part of his wages towards the end of his employment.

Judge Douglas Humphreys said the conduct of the respondents was "particularly egregious, given that this was a clearly planned course of conduct which took place over a number of years and involved an extremely vulnerable employee. The Court considers the conduct of the [respondents] in exploiting, apparently, a member of their own ethnic community to be particularly concerning".

"Those in the fast food, café and restaurant sector must understand that wage theft will not be tolerated by this Court. Wage theft is pernicious... it not only robs the worker concerned, but also financially disadvantages those decent and honest businesses who pay award rates of remuneration."

The underpayments were rectified in August this year – more than four years after the worker's employment ended. The Court ordered the respondents to pay interest on the back-payments.

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