

Fremantle restaurant penalised for “disregard” of law

21 September 2020

The Fair Work Ombudsman has secured a total of \$21,924 in penalties in Court against the operators of the Soma Kitchen restaurant in Fremantle, Western Australia.

The Federal Circuit Court has imposed a \$18,270 penalty against the company that operated the restaurant, Soma Kitchen Pty Ltd, and a \$3,654 penalty against the company’s director, Mr Giancarlo Daniele.

The penalties were imposed in response to Soma Kitchen Pty Ltd and Mr Daniele breaching the Fair Work Act by failing to comply with a Compliance Notice requiring the company to calculate and back-pay entitlements owing to one of its former employees.

The Court has also ordered Soma Kitchen to comply with the Compliance Notice, including by back-paying the worker’s outstanding entitlements in full, plus interest.

Fair Work Ombudsman Sandra Parker said businesses that fail to act on Compliance Notices face significant court-imposed penalties in addition to having to back-pay any underpaid staff.

“We make every effort to secure voluntary compliance with Compliance Notices but where they are not followed, we are prepared to take legal action to ensure workers receive their lawful entitlements,” Ms Parker said.

“Employers also need to be aware that improving compliance in the fast food, restaurant and café sector continues to be a priority for the Fair Work Ombudsman.”

A Fair Work Inspector investigated Soma Kitchen after the affected worker lodged a request for assistance last year. The worker alleged he had been paid just \$200 for approximately 146 hours of work.

The inspector issued Soma Kitchen a Compliance Notice after forming a belief the worker had been underpaid.

Judge Christopher Kendall found that when the inspector contacted Mr Daniele to follow up with him about the Compliance Notice, Mr Daniele stated that the Notice was “sitting on my desk to action. I might do it today.”

Judge Kendall said Mr Daniele and Soma Kitchen had shown a “complete disregard for their legal obligations” and shown “no contrition, taken no corrective action and have demonstrated a lack of cooperation throughout the entire period in which the (FWO) has been engaging with them”.

Judge Kendall said that non-compliance with a Compliance Notice “not only undermines the fundamental purpose of [the relevant Fair Work Act] section (i.e., to avoid litigation and encourage efficiency in the resolution of any identified shortcomings by employers), it also inhibits Fair Work Inspectors and the [FWO] from carrying out their roles and functions in relation to enforcing the legislation.”

Judge Kendall said the Court was not required to consider the underlying contraventions that caused the Compliance Notice to be issued.

More than 50 per cent of the Fair Work Ombudsman’s litigations filed in 2018-19 involved businesses in the fast food, restaurants and cafe sector.

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. Free targeted advice and resources for the fast food, restaurant and café sector are available at www.fairwork.gov.au/frac (www.fairwork.gov.au/frac)

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