

Hobart café operators in court

1 April 2021

The Fair Work Ombudsman has commenced legal action in the Federal Circuit Court against the operators of a Hobart café.

Facing court are Welvin and Kevin Pty Ltd, which operates the Salamanca Wharf Café, company director Mr Zhi Zhi Tan and company majority shareholder and manager Mr Qingxiang (Kevin) Meng.

The regulator investigated the café during an auditing activity targeting Hobart food precincts (www.fairwork.gov.au/about-us/news-and-media-releases/2021-media-releases/april-2021/210401-hobart-food-precincts-audits-media-release).

A Fair Work Inspector issued a Compliance Notice to Welvin and Kevin in July 2020 after forming a belief five employees were underpaid minimum wage rates and penalty rates for weekend and public holiday work under the Hospitality Industry Award 2010 between December 2018 and March 2020.

One of the employees, from Nepal, was a visa-holder at the time and four of the other employees were young workers, aged 17 to 19.

The FWO alleges the company without reasonable excuse, failed to fully comply with the Compliance Notice, which required it to pay the workers' outstanding entitlements. Mr Tan and Mr Meng were allegedly involved in the breach.

In line with the FWO's proportionate approach to regulation during the COVID-19 pandemic, the FWO made several attempts to secure voluntary compliance before commencing legal action.

A breach of record-keeping laws by Welvin and Kevin is also alleged. Mr Meng was also allegedly involved in that breach.

Fair Work Ombudsman Sandra Parker said the regulator would continue to enforce workplace laws and take businesses to court where lawful requests are not complied with.

"Compliance Notices are important tools used by inspectors to deal with apparent contraventions of the Fair Work Act or industrial instruments, most typically Modern Awards," Ms Parker said.

"Where employers do not respond to or comply with these Notices, we will take appropriate enforcement action to protect employees. A court can order a business to pay penalties for not complying with such a Notice, in addition to back-paying workers as appropriate."

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

The FWO is seeking penalties against Welvin and Kevin Pty Ltd, Mr Tan and Mr Meng. The company faces a penalty of up to \$33,300 for the alleged Compliance Notice breach and a penalty of up to \$66,600 for the alleged record-keeping breach.

Mr Tan and Mr Meng each face a penalty of up to \$6,660 for the alleged Compliance Notice breach and Mr Meng a penalty of up to \$13,320 for the alleged record-keeping breach.

The regulator is also seeking a court order for the company to take the action required to fully comply with the Compliance Notice, which includes rectifying remaining underpayments in full for the employees, plus superannuation and interest. A directions hearing is listed in the Federal Circuit Court in Hobart on 6 May 2021.

Employers and employees can visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94 for free workplace advice. A free interpreter service is available on 13 14 50.

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