

Chinese restaurant in Melbourne penalised

29 June 2021

The Fair Work Ombudsman has secured a total of \$309,750 in penalties in court in response to a migrant employee being underpaid almost \$70,000 and records being falsified at a Melbourne Chinese restaurant.

The Federal Circuit Court has imposed a \$249,000 penalty against the China Bar Buffet (Epping) Pty Ltd, which operated the China Bar Signature restaurant and China Bar Express fast food outlet in Epping.

The penalty was imposed in response to the company contravening workplace laws by underpaying a Chinese visa holder \$69,321 and knowingly making and keeping false records and providing them to the Fair Work Ombudsman during its investigation.

In addition, the company's sole director, Siak Kong Chi, was penalised \$41,250 and bookkeeper Ying Lee, of the 'China Bar Group', was penalised \$19,500, for their involvement in some of the contraventions by the company.

The company, director and bookkeeper made full admissions in relation to the contraventions alleged against them, and the parties jointly agreed to a penalty range for the admitted contraventions. The Fair Work Ombudsman also submitted in court that the significant penalties were appropriate due to the serious nature of the contraventions and because the restaurant industry has consistently been recognised as notorious for underpayment of employees, particularly vulnerable migrant workers.

Fair Work Ombudsman Sandra Parker said improving workplace compliance in the fast food, restaurant and catering sector and protecting migrant workers remain priorities for the FWO.

"The penalties in this matter send a clear message that paying low, flat rates that undercut Award entitlements and trying to mislead Fair Work inspectors is completely unacceptable conduct that will not be tolerated."

"We treat matters relating to migrant workers particularly seriously and we are also focused on taking action to improve compliance in the restaurant and fast food sector."

"All workers in Australia have the same rights at work, regardless of citizenship or visa status, and we urge any workers with concerns to contact us," Ms Parker said.

Fair Work Inspectors investigated after the employee contacted the FWO. Inspectors found the employee had regularly worked 60 hours per week as a kitchen hand at the China Bar Signature restaurant but had been paid between only \$700 and \$1060 per week.

This resulted in underpayment of the ordinary hourly rates, overtime rates, and weekend and public holiday rates the employee was entitled to under the Restaurant Industry Award 2010. Annual leave entitlements, superannuation and a split shift allowance were also underpaid.

The underpayment amount was rectified in full by the company only after FWO commenced legal action.

Inspectors were also provided with false records showing inaccurate hours of work and payments made to the employee and other employees at the China Bar Express fast food outlet.

Judge Patrizia Mercuri said she placed little weight on submissions by the company, Mr Chi and Ms Li that they did not fully understand their obligations under workplace laws and that Mr Chi's poor English created difficulty.

"(The company) not only failed to provide the employee with his entitlements, and failed to maintain accurate records which would have assisted in the investigation phase, but actually maintained records which (Mr Chi), as the directing mind and will of (the company), knew were false and misleading," Judge Mercuri said.

Judge Mercuri noted that Mr Chi remains involved in various food and beverage businesses.

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.

Information for the fast food, restaurant and café sector is available at www.fairwork.gov.au/frac (www.fairwork.gov.au/frac).

Note: Since the Fair Work Ombudsman commenced proceedings against the company and others, the company licensed out the operation of China Bar Signature restaurant to an unrelated entity. The Fair Work Ombudsman makes no allegations against the current operators of the China Bar Signature restaurant.

The Fair Work Ombudsman also makes no allegations against the unrelated entity that operated China Bar Signature for the period 19 September 2016 to 16 October 2016.

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Fair Work Online: www.fairwork.gov.au

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