

Court fines restaurant \$72,000 over exploitation of foreign worker

5 April 2012

The operators of a suburban Melbourne restaurant have been fined \$72,000 for exploiting a cook recruited from India.

The Federal Magistrates Court imposed the penalty following an investigation and litigation by the Fair Work Ombudsman.

Taj Palace Tandoori Indian Restaurant Pty Ltd, which operates a restaurant of the same name on Nicholson Street, Footscray, has been fined \$60,000.

Restaurant manager and part-owner Nathi Singh Rawat, of Sydenham, has been fined a further \$12,000.

The restaurant sponsored the cook, an Indian man in his 30s who spoke little English, to come to Australia on a 457 work visa.

He was paid a flat rate of \$752 a week, often working 60 to 70 hours, including nights and weekends.

The cook was underpaid his minimum hourly rate, shift allowances, annual leave entitlements and penalty rates for overtime, night, weekend and public holiday work.

Over a 10-month period in 2008-9 he was underpaid a total of \$24,217.

Federal Magistrate Grant Riethmuller found that the employee was vulnerable and it was likely that his ability to understand and exercise his rights would have been hampered.

"A feature of Australian society that is particularly attractive to immigrants from around the world is the industrial law system that attempts to ensure fair wages and working conditions for employees," Federal Magistrate Riethmuller said.

"The employee in this case was more vulnerable than the average Australian worker as his visa was conditional upon his employment, and he came from a country where wages and working conditions are very poor.

"In the context of this case, it appears that this was simply an exploitation of a foreign worker."

The Fair Work Ombudsman first investigated the matter when the employee lodged a complaint in 2009.

The restaurant back-paid the employee's outstanding entitlements in 2010.

Fair Work Ombudsman Nicholas Wilson says the penalty illustrates that the Courts are taking a dim view of employers who exploit their staff.

"We treat cases involving the exploitation of vulnerable foreign workers very seriously," he said.

The Fair Work Ombudsman also found that restaurant had failed to keep proper employment records and issue pay slips to the employee.

In his judgment on the case, Federal Magistrate Riethmuller re-iterated the importance of employers complying with their obligations.

"The need to ensure compliance, particularly with respect to vulnerable workers, such as those on work visas, those who come to Australia without strong language skills, and those with little education, is crucial to a just society and the avoidance of exploitation," he said.

"Proper pay slips allow employees to understand how their pay is calculated and therefore easily obtain advice.

"Pay slips provide the most practical check on false record-keeping and underpayments and allow for genuine mistakes or misunderstandings to quickly be identified.

"Without proper pay slips, employees are significantly disempowered, creating a structure within which breaches of the industrial laws can easily be perpetrated."

Employers or employees seeking assistance should contact the Fair Work Infoline on 13 13 94 or visit www.fairwork.gov.au.

A free interpreter service is available on 13 14 50 and information on the website is translated into 27 different languages.

The Fair Work Ombudsman has also recently launched 14 Online videos to assist foreign workers understand their workplace rights and entitlements.

The short videos - available at www.youtube.com/fairworkgovau  (<http://www.youtube.com/FairWorkGovAu>) - are presented by native speakers of Mandarin, Cantonese, Indonesian, Serbian, Arabic, Dari, Farsi, Khmer, Korean, Spanish, Vietnamese, Thai and Turkish. There is also an English version.

Free documentation available on the Fair Work Ombudsman's website includes timesheet and pay slip templates and a self-audit check list.

The website has a number of tools and resources, including PayCheck Plus and an Award Finder, to help business-owners calculate the correct pay for their employees.

An 'Industries' section on the website provides extra, specialised information for employers and employees in the retail, cleaning, clerical, hair and beauty, security, horticulture, fast food, vehicle and hospitality industries.

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Fair Work Online: www.fairwork.gov.au

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Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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