

Bendigo Hungry Jack's operator penalised \$46,200 over staff underpayments

Note: Reference to prosecution in this media release is a general reference to the FWO commencing proceedings for the imposition of civil penalties and should not be taken to be a reference to criminal proceedings.

The operator of a Hungry Jack's fast food outlet at Bendigo in Victoria's Goldfields region has been penalised \$46,200 after the Fair Work Ombudsman found it had been underpaying its 180-strong workforce for more than four years.

The Federal Magistrates Court in Melbourne imposed the penalty against Chamdale Pty Ltd, which operates the Hungry Jack's outlet on the corner of High and Thistle streets in Bendigo.

Federal Magistrate Norah Hartnett found the company had underpaid 180 workers - mostly juniors, including some school-based apprentices - a total of \$104,946 between July, 2005 and December, 2009.

The largest individual underpayment was \$8218. Twenty-nine employees were underpaid more than \$1000.

The retail employees generally worked in customer service and food preparation roles and were variously employed on a full-time, part-time and casual basis.

Most of the underpayments were the result of Chamdale failing to provide the classification and pay-rate upgrades the employees were entitled to based on length of service.

This resulted in underpayment of the minimum hourly rate, overtime and public holiday penalty rates. The company also underpaid or failed to pay annual leave entitlements and a laundry allowance.

The Court noted that while Chamdale had relied upon information provided by Hungry Jacks Pty Ltd head office for its employee rates of pay, "some of those wage updates did not inform accurately or sufficiently and led to error".

Federal Magistrate Hartnett said there was a need to "send a message to the community at large, and employers particularly, that the correct entitlements for employees must be paid and that steps must be taken by employers (of all sizes) to ascertain and comply with minimum entitlements."

Taking into account the fact that Chamdale had no "priors" recorded against it for previous similar conduct, that it had undertaken to voluntarily rectify all underpayments and that it had engaged a specialist industrial relations lawyer and appointed a new payroll adviser, Federal Magistrate Hartnett imposed a penalty of 20 per cent of the applicable maximum of \$231,000.

Fair Work Ombudsman Nicholas Wilson says the penalty delivered by the Court is a reminder to employers, no matter how big or small, that underpayment of employees is a serious matter and it is important to check they are meeting their lawful obligations to staff.

"We expect those companies which employ significant numbers of young people to diligently exercise their workplace obligations and ensure staff receive their full and proper entitlements," he said.

Mr Wilson said the Fair Work Ombudsman would shortly launch a dedicated webpage to assist the franchise sector, with useful information and resources aimed at franchisors and franchisees.

The Fair Work Ombudsman has a range of educational resources available to assist employers and workers in the fast food industry to understand and comply with workplace laws.

A section of the Fair Work Ombudsman's website - www.fairwork.gov.au/fastfood - provides direct access to detailed information on workplace laws for businesses covered by the Fast Food Award 2010, including those selling meals, snacks and/or drinks primarily for take-away or in food courts.

Free documentation available includes industry-specific information about pay rates, allowances, classifications, leave entitlements, apprenticeships and traineeships, uniforms and clothing, when to pay staff and a range of other topics.

The Fair Work Ombudsman's website also has sections dedicated to the cleaning, clerical, hospitality, hair and beauty, horticulture,

retail and security industries.

Note: The Chamdale matter is unrelated to an earlier Fair Work Ombudsman investigation and prosecution of Hungry Jack's Pty Ltd for underpaying 693 of its Tasmanian staff more than \$665,000. That case resulted in Hungry Jack's Pty Ltd being fined \$100,500 in 2011.

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