

## Restaurant operator fined after attempting to 'contract out' of minimum wage rates

14 March 2013

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.

A former Canberra restaurant operator has been fined \$16,170 after using individual contracts to try to avoid paying Award wages and entitlements to staff, resulting in underpayments of more than \$50,000.

Damien Micah Trytell, who formerly operated the Mecca Bah restaurant at Manuka, in Canberra, was fined after admitting underpaying 26 employees a total of \$50,996.

Federal Magistrate, Warwick Neville, ordered that the fine go towards rectifying the underpayments of the employees, who have not received any back-pay.

The penalty was imposed as a result of a prosecution by the Fair Work Ombudsman.

The 26 employees, including 11 aged 18-to-20 at the time, were underpaid between May and December, 2009. Most worked as kitchen staff and waiters on a full-time, part-time or casual basis.

Federal Magistrate Neville said active steps had been taken to put in place a mechanism to make employees' entitlements no longer subject to Award rates.

Under the terms of invalid, unlawful individual contracts designed by Trytell, the restaurant employees were paid flat hourly rates ranging from \$15.93 to \$19.23.

This resulted in underpayment of employees' penalty rates for night, overtime, weekend and public holiday work, for which they were entitled to receive up to \$38 an hour. Some were also underpaid casual loadings and annual leave pay.

Individual employee underpayments ranged from \$65 to \$6848.

Federal Magistrate Neville said Trytell had shown "careless disregard" for his statutory obligations as an employer.

"It is a significant matter for a company or an individual to seek to contract out of its or their obligations by entering into separate agreements with each of the employees," Federal Magistrate Neville said.

"It is important for a clear message to be sent to other employers that obligations to workers cannot be avoided or otherwise attenuated in any way."

Fair Work Ombudsman, Nicholas Wilson, said the Court's decision sends a message that carelessly underpaying employees' entitlements, particularly to young staff, is a particularly serious matter.

"Young workers can be vulnerable because they are often not fully aware of their workplace rights and can be reluctant to complain, so we will not hesitate to take action to protect them," Mr Wilson said.

"Successful prosecutions such as this also benefit employers who are complying with workplace laws by paying staff correctly, because it helps them to compete on a level playing field."

Employers or employees seeking assistance should contact the Fair Work Infoline on 13 13 94 or visit [www.fairwork.gov.au](http://www.fairwork.gov.au). A free interpreter service is available on 13 14 50.

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## Contact us

Fair Work Online: [www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Infoline: 13 13 94

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Call through the National Relay Service (NRS):

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

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