

Restaurant operators fined \$334,000 after paying employees with pizza and soft drink

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The operators of two Melbourne restaurants who gave teenage employees pizza and soft drink instead of their correct wages have been fined a total of \$334,818 following an investigation and litigation by the Fair Work Ombudsman.

“Such a practice belongs in the dark ages,” Judge John O’Sullivan says in his decision handed down in the Federal Circuit Court.

The Fair Work Ombudsman found that 111 mostly teenage employees – one as young as 13 - had been underpaid a total of \$258,000 between 2009 and 2012 when they worked at La Porchetta franchise outlets at Pakenham and Berwick.

The companies which operate the restaurants - Bound for Glory Enterprises Pty Ltd and Zillion Zenith International Pty Ltd - have each been fined \$139,507.50.

Tecoma man Ruby Chand, the owner of both franchises, has been penalised a further \$55,803.

Judge O’Sullivan also ordered the two companies to back-pay more than \$79,000 in outstanding entitlements to those employees not yet fully reimbursed.

Judge O’Sullivan pointed to a need to specifically deter Chand and his companies from further workplace breaches.

“The contraventions themselves and the conduct of the respondents fundamentally hamstrung the ability to confirm the affected employees’ entitlements during the investigation, the co-operation was less than forthcoming,” Judge O’Sullivan said.

“In that sense I am not convinced the respondents are genuinely remorseful.”

Judge O’Sullivan noted that Chand’s companies had previously been required – in 2007, 2008 and 2009 – to back-pay underpaid employees and were warned by Fair Work inspectors of the need to pay employees their full lawful entitlements.

Fair Work Ombudsman Natalie James says the Court’s decision to impose such high penalties sends a strong message to others that exploitation of young and vulnerable workers simply won’t be tolerated.

The Fair Work Ombudsman began investigating the La Porchetta franchises after receiving a single complaint from a parent of one young staff member.

It subsequently found that 59 employees at Pakenham had been underpaid a total of \$130,195 and 52 employees at Berwick had been short-changed \$127,824.

The Court heard that Chand had claimed the employees were given half-priced pizza and soft drink, which was being ‘offset’ against their wages and entitlements.

The underpayments were also caused by employees being paid flat hourly rates that were below the minimum they were entitled to, apprentices and trainees not being paid for the minimum number of hours they were employed to work and underpayment of leave entitlements.

Underpayment of individual employees ranged from \$3 to \$25,358. There were also serious record-keeping contraventions.

The employees, part-time and casuals, were employed as cooks, kitchen attendants and food and beverage service employees. A number were engaged under training programs which enabled Chand’s companies to claim more than \$45,000 in Commonwealth benefits.

Delivering his judgment last Friday, Judge O’Sullivan observed that the nature and extent of the breaches “warrants severe sanction by way of penalty”. “I am satisfied that the conduct engaged in by the respondents was part of a systematic business practice,” he said.

“In the situation where the respondents were receiving subsidies or benefits for engaging apprentices and trainees and have admitted still not making sure that those same employees received their minimum entitlements, the irresistible inference was the conduct engaged in was part of a deliberate course of conduct by the respondents as to how the business (if it could be called that) was run.”

The Court dismissed the respondents’ submission that many of the individual underpayments were relatively small. It found that “the amounts involved may seem trifling to some but they were required to be paid to young employees for whom they were far from trifling

and for which they've had to wait".

Judge O'Sullivan also described the record-keeping contraventions as "fundamental and flagrant". "Ensuring compliance with minimum standards is an important consideration in this case," he said.

"One of the principal objects of the Fair Work Act is the maintenance of an effective safety net of employer obligations, and effective enforcement mechanisms. The failure to keep records by the respondents, which is admitted, arguably undermines and frustrates the attainment of that objective."

Judge O'Sullivan also found there was a need for general deterrence, saying the conduct "falls towards the higher end of the scale of offending conduct and undermines both the objects and enforcement of the legislation involved."

"Where the conduct involved represents such a fundamental breach of the safety net payments that are at the heart of the objects of the Fair Work Act and where the respondents are still operating, any penalty arrived at must send a clear and unambiguous message to the respondents by way of penalty to deter the possibility they will repeat the breaches," Judge O'Sullivan said.

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