

Restaurant underpaid South Korean backpacker

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A 24-year-old South Korean backpacker working in a Brisbane restaurant was underpaid more than \$2200 in just seven weeks, an investigation by the Fair Work Ombudsman has found.

The employee was in Australia on a 417 working holiday visa and took a casual job at a Sushi Train restaurant in the northern suburb of Aspley.

After receiving a request for assistance from the employee, Fair Work inspectors found he had been paid a flat hourly rate as low as \$14, which was below the minimum required under the Restaurant Industry Award 2010.

When advised that the pay rate was unlawful, the employer - MK Train Pty Ltd – claimed the employee had agreed to \$14 an hour, as it was better than the \$10 cash-in-hand he was getting previously at another restaurant.

However, Fair Work Ombudsman Natalie James says it is not lawful for an employer to pay below minimum entitlements, even if the employee agrees.

“Businesses cannot arbitrarily decide what pay rate they will provide to their employees without reference to lawful minimum rates,” she said.

A restaurant where the employee worked previously is also now under investigation.

The case is not the first time MK Train has come to the attention of the Fair Work Ombudsman. It was previously required to back-pay \$1819 to an employee in March.

As a result of its latest contraventions, the company has entered into an Enforceable Undertaking with the Fair Work Ombudsman.

It was required to fully reimburse the former employee \$2281 for work performed between April and June this year.

Further, it posted a workplace notice advising other employees of its contraventions, giving a commitment that such behavior will not occur again.

MK Train must commission an independent audit of its compliance with workplace laws next year and provide the findings to the Fair Work Ombudsman.

The company has also set up a personalised account at the Fair Work Ombudsman’s free My Account portal at www.fairwork.gov.au to save information about minimum pay rates and other workplace laws that apply to its workplace.

Ms James says the matter highlights that employers are responsible for ensuring they are aware of the lawful minimum pay rates that apply to their employees and paying them accordingly.

“Successful compliance actions such as this one help us to create a level playing field for employers who are doing the right thing and complying with lawful minimum pay rates,” she said.

Enforceable Undertakings were introduced by legislation in 2009 and the Fair Work Ombudsman has been using them to achieve strong outcomes against companies that breach workplace laws without civil court proceedings.

“We use Enforceable Undertakings where we have formed a view that a breach of the law has occurred, but where the employer has acknowledged this and accepted responsibility and agreed to co-operate with us and fix the problem,” Ms James said.

“Many of the initiatives included in EUs help to build a greater understanding of workplace responsibilities, motivate the company to do the right thing and help them avoid the same mistakes again.

“It also means we can resolve matters more speedily than if we proceed down a path towards litigation, often achieving outcomes, such as training sessions for senior managers, which are not possible through the Courts.”

Copies of all Enforceable Undertakings are available on the Fair Work Ombudsman website at www.fairwork.gov.au.

Employers and employees seeking assistance should visit the website or call the Fair Work Infoline on 13 13 94. An interpreter service is available on 13 14 50.

Ms James says the Fair Work Ombudsman is making compliance easier for businesses by continually building on the information available on its website.

The Fair Work Ombudsman has recently announced a review of the wages and conditions of overseas workers in Australia on the 417 Working Holiday Visa (see [Fair Work Ombudsman to review entitlements of overseas visa-holders on working holidays media release \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/august-2014/20140804-working-holiday-entitlements-review\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/august-2014/20140804-working-holiday-entitlements-review)).

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- [MK Train Pty Ltd Enforceable Undertaking \(DOCX 116.9KB\) \(www.fairwork.gov.au/ArticleDocuments/837/mk-train-pty-ltd-enforceable-undertaking.docx.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/837/mk-train-pty-ltd-enforceable-undertaking.docx.aspx) (PDF 2MB) (www.fairwork.gov.au/ArticleDocuments/837/mk-train-pty-ltd-enforceable-undertaking.pdf.aspx)

Media inquiries:

Tom McPherson, Media Adviser

Mobile: 0439 835 855

tom.mcpherson@fwo.gov.au (mailto:tom.mcpherson@fwo.gov.au)

Page reference No: 5059

Contact us

Fair Work Online: 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

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

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