

Restaurateur fined, admonished by Court for “disgraceful” treatment of foreign chef

10 April 2015

The Federal Circuit Court has fined and admonished a restaurateur at Lorne, in regional Victoria, over his “disgraceful” treatment of a foreign chef.

The Israeli-born chef was underpaid more than \$4200 in less than three months in 2012 when he worked at the Saporitalia restaurant.

The Fair Work Ombudsman initiated legal action against part-owner Yoav Oren after his refusal to back-pay the chef his outstanding entitlements.

Judge Norah Hartnett has fined Oren a total of \$4590, or 90 per cent of the possible maximum penalty.

And the company which operated the restaurant at the time the chef was underpaid, Darna Pty Ltd, has been fined a further \$17,850.

In a rare move, Judge Hartnett has also ordered Oren to pay legal costs to the Fair Work Ombudsman of \$7843.

She found Oren’s conduct throughout the litigation “verged on an abuse of process” and impacted directly on the Agency’s legal costs.

Judge Hartnett said Oren had shown “a blatant disregard and contempt” for Australian workplace laws.

She also noted Oren’s “complete lack of contrition” for his behaviour, observing that he had been “almost completely unco-operative” with the Fair Work Ombudsman.

Further, Judge Hartnett found Oren had adopted an “antagonistic approach” to the litigation, which included making unfounded allegations against his former chef.

Oren had made remarks in submissions that were “at times offensive” and “expressed an intention to make the proceedings a personal conflict”.

Judge Hartnett found that Oren’s treatment of the employee was “disgraceful and continues in the unsubstantiated and appalling criticism of him to this day”.

The chef now works in Melbourne.

She found that Oren continued to show a complete lack of understanding of workplace relations law or any determination to comply with them.

“There is defiance, disbelief and aggression in place of a skerrick of contrition,” Judge Hartnett says in her 14-page written judgment.

“He has shown no remorse. He has taken no steps to ensure that no further breaches will occur.”

Judge Hartnett noted that Oren had failed to explain why ownership of the Saporitalia restaurant was transferred to a new entity ahead of Court penalties being imposed.

She also noted that he had not explained why he was winding up Darna Pty Ltd.

Judge Hartnett found that Oren’s failure to comply with Fair Work Ombudsman requests to back-pay the chef was “very serious conduct”.

“There is a need in the restaurant industry for general deterrence, in particular to other employers who have been issued with Compliance Notices,” she said.

Under the Fair Work Act, employers must respond to Compliance Notices issued by Fair Work inspectors unless they have a reasonable excuse or make a Court application to challenge the Notice.

Acting Fair Work Ombudsman Michael Campbell says the Agency prefers to resolve underpayment matters co-operatively with employers, by agreement.

However, Mr Campbell says the Fair Work Ombudsman is prepared to take action against employers who refuse to engage with the Agency.

“It is important for employers to understand that when a Compliance Notice is first issued, the Fair Work Ombudsman is simply seeking to recover wages that should have been paid in the first instance - we are not seeking to be punitive,” he said.

Fair Work Inspectors are increasingly issuing Compliance Notices in cases where employers with contraventions refuse to co-operate.

“Enforcing Compliance Notices is fundamental if we are to maintain the integrity of Australia’s workplace laws,” Mr Campbell said.

The Fair Work Ombudsman has a particular focus on ensuring that the workplace rights of foreign workers are respected.

“Foreign workers can be vulnerable if they aren’t aware of their workplace rights or are reluctant to seek assistance, so we place a high priority on ensuring they receive their full lawful entitlements,” Mr Campbell said.

The Fair Work Ombudsman supports compliant, productive and inclusive Australian workplaces. It provides practical advice that is easy to access, understand and apply.

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