

Overseas worker recruited as restaurant manager, but employed as chef and underpaid \$45,000

3 December 2015

An employee recruited from Malaysia to work as a restaurant manager in regional Queensland was employed as a cook and short-changed more than \$45,000 in a little over a year.

The 25-year-old regularly worked seven days a week at Toowoomba's Ni Hao Chinese Restaurant for as little as \$617 a week before he sought help from the Fair Work Ombudsman.

Restaurant owner David Zhou sponsored the employee on a 187 visa under the Regional Sponsored Migration Scheme to work as full-time restaurant manager on an annual salary of \$45,000 plus superannuation.

However, he was instead given the job as a cook.

Mr Zhou declined to participate in a Record of Interview with the Fair Work Ombudsman to explain why, or the underpayment of wages.

However, records kept by the employee between November 3, 2013 and January 18, 2015, allowed Fair Work inspectors to calculate the employee's entitlements.

As a cook, the worker should have been paid under the Restaurant Industry Award and received a total of \$98,482 for the period, instead of the \$52,678 he was actually paid.

He was short-changed his hourly rate, overtime, evening, weekend and public holiday penalty rates, split shift allowances and annual leave entitlements.

The bulk of the underpayment was for unpaid overtime.

The restaurant also failed to issue the worker with a Fair Work Information Statement when he started, as required under the National Employment Standards.

Further, the business did not keep adequate staff records or issue pay-slips.

Mr Zhou has fully reimbursed his former employee all outstanding wages and entitlements and provided a written apology expressing "sincere regret" for the conduct.

At the request of the Fair Work Ombudsman, he has signed an Enforceable Undertaking (EU) aimed at encouraging behavioural change and future compliance with workplace laws.

The EU requires that Ni Hao Chinese Restaurant Toowoomba Pty Ltd and Mr Zhou:

- Engage an external accounting professional to conduct audits of employee entitlements for November, 2015 and July, 2016,
- Register with the Fair Work Ombudsman's online tool My Account and demonstrate capability to inspectors, subscribe to email alerts and employer newsletters, and
- Implement systems and processes to ensure future compliance with workplace laws.

Fair Work Ombudsman Natalie James says the Agency treats very seriously exploitation of vulnerable overseas workers.

"Employers simply cannot undercut the minimum lawful entitlements of their employees based on what they think the job may be worth or what the employee is happy to accept," she said.

Fair Work Ombudsman inspectors have recently been back to strawberry farms in Caboolture as part of the Agency's ongoing Harvest Trail work.

Inspectors returned to the region after audits in 2013 found that more than 150 pickers and packers had been underpaid over \$134,000.

"We have returned to the region to ensure that local employers have acted on the information provided and are meeting their obligations," Ms James said.

A three-year Harvest Trail initiative by the Agency's Regional Services Team has been reviewing compliance within the fruit and vegetable growing industry across Australia as a result of persistent complaints and underpayments in the horticulture sector.

"We know workplace laws can be complicated for the uninitiated, but we ask businesses to use the tools and resources that we provide for them," Ms James said.

"We are committed to helping employers understand and comply with workplace laws, but operators need to make an effort to get the basics right in the first place."

She encouraged employers who had any uncertainty about whether their workplace practices to visit the website at www.fairwork.gov.au or phone the Fair Work Infoline on 13 13 94.

An interpreter service is available by calling 13 14 50 and information on the website is translated into 27 languages.

Small business can opt to be put through to a small business helpline, which has now assisted more than 250,000 callers since it was established.

The Fair Work Ombudsman recently introduced a Pay and Conditions Tool (PACT), which provides advice about pay, shift, leave and redundancy entitlements. Free templates for pay slips and time-and-wage-records are also available on the website.

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](https://twitter.com/NatJamesFWO) (<http://twitter.com/NatJamesFWO>), the Fair Work Ombudsman [@fairwork_gov_au](https://twitter.com/fairwork_gov_au) (http://twitter.com/fairwork_gov_au) or find us on Facebook www.facebook.com/fairwork.gov.au (<http://www.facebook.com/fairwork.gov.au>).

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Download:

- [Ni Hao Chinese Restaurant Toowoomba Pty Ltd Enforceable Undertaking \(DOCX 162.6KB\)](http://www.fairwork.gov.au/ArticleDocuments/884/enforceable-undertaking-ni-hao-chinese-restaurant-toowoomba-pty-ltd.docx.aspx) (www.fairwork.gov.au/ArticleDocuments/884/enforceable-undertaking-ni-hao-chinese-restaurant-toowoomba-pty-ltd.docx.aspx) (PDF 2.6MB) (www.fairwork.gov.au/ArticleDocuments/884/enforceable-undertaking-ni-hao-chinese-restaurant-toowoomba-pty-ltd.pdf.aspx)

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Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

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Hearing & speech assistance

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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