

Japanese restaurant short-changed Korean visa-holder \$6000 in just five months

8 December 2015

A Korean visa-holder employed at a Japanese restaurant in Sydney was paid a flat rate of just \$16.50 an hour, an investigation by the Fair Work Ombudsman has revealed.

The employee was short-changed more than \$6000 between August 31, 2014 and February 1, 2015 when he worked at Tenkomori Ramen House on George Street in the CBD.

When the employee was first engaged, the restaurant was owned by Kaby Holdings Pty Ltd and operated by director Ben York Hung Yau.

However, in November, 2014, the restaurant changed hands and is now owned and operated by Tenkomori Ramen Pty Ltd and sole director Mr Koji Aoki.

Mr Aoki was formerly a part-owner of Kaby Holdings Pty Ltd.

Investigations by the Fair Work Ombudsman found that the employee was firstly short-changed \$3049 by Kaby Holdings Pty Ltd and then underpaid a further \$3290 by Tenkomori Ramen Pty Ltd.

The employee did not receive the correct minimum hourly rate, shift loadings for evening work, penalty rates for weekends and public holidays or overtime.

Kaby Holdings had previously received a Letter of Caution from the Fair Work Ombudsman in September, 2013, over concerns about its failure to pay minimum hourly rates and applicable penalty rates.

As a result of the latest contraventions, both companies have been asked to sign Enforceable Undertakings (EUs) with the Fair Work Ombudsman aimed at encouraging behavioural change and future compliance with federal workplace laws.

While Mr Yau is no longer associated with the Tenkomori Ramen House restaurant, his company Kaby Holdings has other businesses.

Both Mr Yau and Mr Aoki have co-operated with the Fair Work Ombudsman and agreed to reimburse all outstanding wages and entitlements.

Further, they will bring in external, independent professionals to audit their workplace compliance in 2016 and implement systems and processes to ensure their future compliance, including registering with the Agency's online tool My Account.

Fair Work Ombudsman Natalie James says inspectors are increasingly finding employers from non-English speaking backgrounds who have little or no understanding of their workplace obligations or the seriousness of non-compliant behaviour.

"Migrant employers simply cannot undercut the minimum lawful entitlements of their employees based on what they think the job may be worth, what the employee is happy to accept, what other businesses are paying, or what the job may pay in their country of origin," she said.

Last month, Federal Circuit Court judge Stewart Brown cautioned employers who underpay vulnerable overseas workers that they risk tarnishing Australia's reputation internationally.

"Employers in the hospitality industry need to know that they cannot exploit backpackers or other itinerant employees and expect that their behaviour, if detected by authorities, will not attract a significant penalty," Judge Brown said.

The Court imposed penalties totalling \$73,000 against the former owner-operators of a café in Darwin which had underpaid two Taiwanese workers in Australia on the 417 working holiday visa.

Ms James encouraged employers who had any uncertainty about their workplace practices to visit 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.

"While we have always had a strong focus in relation to visa-holders, we now give these vulnerable employees priority through our

specialist Overseas Workers' Team (OWT), which was established in July, 2012, in recognition that overseas workers can be vulnerable to exploitation or require specialist assistance," Ms James said.

In August, the Fair Work Ombudsman launched a program to foster new relationships with international student bodies and multicultural communities to ensure migrant workers, overseas workers, international students and employers are aware of their workplace rights and responsibilities.

Community Engagement Officers have been appointed to establish meaningful, ongoing relationships and have been trained to ensure they can work sensitively and productively with multicultural groups.

"We have been participating in discussion groups, meetings and community events to gain a better understanding of the needs of these communities," says Ms James.

"By engaging with intermediaries and networks that these communities already use and trust, we hope to increase their awareness about their workplace rights and responsibilities," she says.

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Media inquiries:

Lara O'Toole, Media Adviser

Mobile: 0439 835 855

lara.otoole@fwo.gov.au (<mailto:lara.otoole@fwo.gov.au>)

Page reference No: 5689

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

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