

\$100,000 penalty follows ‘particularly disturbing behaviour’ involving vulnerable Chinese chef

9 January 2015

The operators of a Tasmanian take-away restaurant have been fined a total of \$100,000 after engaging in ‘particularly disturbing behaviour’ in relation to a vulnerable foreign chef.

Launceston husband and wife Priscilla Li Peng Lam and David Wing Leong Lam - who own and manage Dave’s Noodles in the Launceston CBD – have each been fined \$15,000 after admitting a Chinese chef at their restaurant was underpaid \$86,118.

The couple’s company, ECFF Pty Ltd, has been penalised a further \$70,000 and ordered to fully rectify the underpayment of the chef, who has so far been back-paid only \$50,000.

The Lams are also the franchisors of Dave’s Noodles outlets in Hobart, Burnie, Kingston, Moonah and Mowbray.

The fines and back-payment order, imposed by the Federal Circuit Court, are the result of legal action by the Fair Work Ombudsman.

The Fair Work Ombudsman investigated after the chef – who the Lams sponsored to come to Australia on a 457 work visa – lodged a complaint with the assistance of an interpreter.

Fair Work inspectors found the chef, aged in his 40s, had been paid flat weekly wages ranging from \$804 to \$913 between 2008 and 2011 based on a 38-hour week, despite being required to work 60 hours a week.

The situation resulted in underpayment of the chef’s minimum hourly rate and penalty rates for overtime, night, weekend and public holiday work.

Judge Norah Hartnett described the contraventions as “a very substantial underpayment of basic entitlements over an extended period of time”.

Judge Hartnett also found that the underpayments were “significantly aggravated” by the Lams creating false time-and-wages records showing that the chef had worked 38 hours a week and providing the false records to Fair Work inspectors.

“The creation of false time and wages records by the respondents was particularly disturbing behaviour, worthy of significant reprimand,” Judge Hartnett said.

Judge Hartnett said the conduct occurred in circumstances where the chef - who is now an Australian citizen - was a “vulnerable person” who was “highly reliant on the respondents to remain in Australia”.

“The employee was directed by (Mr and Mrs Lam) to sign those time and wages books at intervals of around three to four months on the basis that they were needed for immigration purposes,” Judge Hartnett said.

Fair Work Ombudsman Natalie James says the penalties reflect the Court’s concern about underpayment of vulnerable foreign workers and attempts to mislead Fair Work inspectors.

“The small minority of employers who are inclined to contravene the rights of vulnerable workers should be aware that they can face significant financial consequences for such behaviour,” Ms James said.

“Successful litigations such as this also help to create a level playing field for the majority of employers who are committed to doing the right thing by their employees.”

Ms James says the Fair Work Ombudsman places a high priority on protecting the workplace rights of overseas workers, who can be vulnerable if they are not fully aware of their rights or are reluctant to complain.

Employers and employees seeking assistance can visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94. People can also call 13 14 50 if they need interpreter services.

The Fair Work Ombudsman supports compliant, productive and inclusive Australian workplaces.

Free tools and resources on the website include:

- an [online learning centre \(www.fairwork.gov.au/how-we-will-help/online-learning-centre\)](http://www.fairwork.gov.au/how-we-will-help/online-learning-centre) that has interactive courses to teach businesses and workers skills and strategies to help them at work,
- [fact sheets \(www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/default\)](http://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/default) about the minimum rights and obligations of businesses and workers, including information on the National Employment Standards, record-keeping and pay slips,
- [best practice guides \(www.fairwork.gov.au/how-we-will-help/templates---guides/best-practice-guides/default\)](http://www.fairwork.gov.au/how-we-will-help/templates---guides/best-practice-guides/default) to help small to medium-sized businesses with implementing best practice workplace policies and procedures,
- [templates \(www.fairwork.gov.au/how-we-will-help/templates---guides/templates-and-guides\)](http://www.fairwork.gov.au/how-we-will-help/templates---guides/templates-and-guides) that simplify the work in keeping employment records
- calculators to help:
 - work out modern award pay rates
 - understand annual and personal leave entitlements
 - calculate payment based on hours entered into a shift calculator, and
 - work out entitlements when ending employment.
- [My account \(https://www.fairwork.gov.au/my-account/registerpage.aspx\)](https://www.fairwork.gov.au/my-account/registerpage.aspx) which allows our information and resources to be saved for future use.

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

Sign up to receive the Fair Work Ombudsman’s media releases direct to your email inbox on our [Media releases page \(www.fairwork.gov.au/about-us/news-and-media-releases/default\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/default) .

Media inquiries:

Ryan Pedler, Assistant Media Director

Mobile: 0411 430 902

ryan.pedler@fwo.gov.au (mailto:ryan.pedler@fwo.gov.au)

Page reference No: 5151

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

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

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.