

Court imposes \$142,000 penalty after restaurant operators refuse to back-pay nine workers

31 July 2015

The former operators of a Bendigo restaurant who repeatedly short-changed their employees have been fined a total of \$142,000 following legal action by the Fair Work Ombudsman.

Sona Peaks Pty Ltd, which previously operated the Curry Garden Indian Restaurant in Victoria's Goldfields region, has been fined \$118,650.

The Federal Circuit Court in Melbourne has also imposed a further penalty of \$23,715 against the company's sole director and part-owner, David Peter Anderson.

The penalties are the result of an investigation and legal action by the Fair Work Ombudsman in relation to nine casual and part-time employees who were underpaid \$11,201 between October, 2012 and September, 2013.

The Court has also ordered Sona Peaks to back-pay the workers their outstanding entitlements in full.

It is the second time the Fair Work Ombudsman has secured Court-issued penalties in relation to underpayments at the Curry Garden Indian Restaurant.

Earlier this year, Sona Peaks and Anderson were fined a total of \$15,500 for refusing to back-pay another employee who was owed more than \$5000.

Fair Work Ombudsman Natalie James says the Court has made it clear that recalcitrant employers who repeatedly underpay their staff will face serious financial consequences.

"We are happy to resolve cases of inadvertent underpayments co-operatively with employers – but we will not tolerate cases of repeated and blatant underpayments by employers who refuse to take corrective action," Ms James said.

In the latest case, the underpayments were the result of the employees - a cook and eight waiting staff - being paid flat rates as low as \$10.50 an hour.

Three teenagers and an Indian international student were among the underpaid employees.

The lawful minimum hourly rates were \$13.56 to \$14.87 for the junior employees and \$15.96 to \$17.49 for the adult employees, with additional penalty rates payable for weekend, public holiday and night work.

Record-keeping obligations were also breached.

Sona Peaks and Anderson continued to underpay the employees despite numerous warnings and the earlier Court action.

Judge John O'Sullivan found that the case involved deliberate underpayments of vulnerable workers and said the penalties imposed should deter others from similar conduct.

In his judgment, Judge O'Sullivan said that Anderson and Sona Peaks were "abundantly aware of their obligations and the consequences of a breach" and found they had shown no contrition.

The Fair Work Ombudsman discovered the underpayments as part of a proactive audit conducted as part of the second wave of the Agency's National Hospitality Industry Campaign.

Ms James said employers should be aware that the Fair Work Ombudsman treats underpayments of young workers and overseas workers particularly seriously because they can be vulnerable if they are not fully aware of their entitlements or reluctant to complain.

The case comes as the Fair Work Ombudsman notes a rising number of requests for assistance coming from visa holders working in Australia

In August last year, the Fair Work Ombudsman commenced a national review of the wages and conditions of overseas workers in Australia on the 417 working holiday visa after receiving allegations that some unscrupulous operators were exploiting backpackers.

Employers and employees seeking assistance can visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94.

Overseas workers can call 13 14 50 if they need interpreter services.

Information on the website to assist people from culturally and linguistically diverse backgrounds has been translated into 27 languages. The website also contains fact sheets tailored to overseas workers and international students.

The Agency has produced videos in 14 languages and posted them on YouTube to assist overseas workers understand their workplace rights in Australia.

Improving compliance in the hospitality industry is also a focus of the Fair Work Ombudsman.

The Fair Work Ombudsman revealed last month that the second wave of its National Hospitality Industry Campaign recovered more than \$1.2 million for 2752 underpaid food service workers at 456 restaurants, cafés and catering companies nationally.

This included more than \$386,000 being recouped for 698 employees in Victoria alone.

Ms James says the Fair Work Ombudsman is committed to helping employers to understand and comply with workplace laws, but operators also need to make an effort to get the basics right in the first place.

She urged hospitality businesses to use the online tools and resources available to them free of charge at www.fairwork.gov.au/hospitality

NOTE: The Curry Garden Indian Restaurant is now being operated by new owners who had no involvement in the breaches detailed in this media release.

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