

Shop owners admit to excessive use of work trials

14 May 2015

Two shop assistants were subjected to an unwarranted number of work trials by a NSW retail business, a Fair Work Ombudsman investigation has found.

A junior employee undertook numerous work trials over 12 days and was paid the equivalent of just \$3.30 an hour.

The former Fancy Fruits retail shop at Thirroul, in the Illawarra region, paid the then 17-year-old just \$80 for almost 25 hours' work undertaken in May last year.

Another 21-year-old shop assistant was paid just \$150 for seven work trials over 22 hours in September, 2013.

The former owners of Fancy Fruits, Mario and Mirna Tamer, have admitted they often used unpaid trials as part of their recruitment process.

Mr Tamer told the Fair Work Ombudsman he usually gave shop assistants \$20 per trial to cover their expenses, but was not aware he was required to pay wages.

The workers raised concerns about underpayment with Mr Tamer, but he ignored their queries, advising them to 'wait for a text message' about their next shifts.

The Fair Work Ombudsman commenced an investigation last September after receiving requests for assistance from the two shop assistants.

Both workers left Fancy Fruits after contacting the Fair Work Ombudsman for help.

Fancy Fruits ceased trading on November 28 last year. The store continues to operate, but with new owners and under a different name.

Fair Work Ombudsman Natalie James says the two former shop assistants had worked multiple shifts, performing work for which they had received only partial payment.

Fair Work inspectors determined that the two should have been classified as employees and were entitled to receive the appropriate wages for the time they worked.

"We also concluded that the number and length of the unpaid trials were inappropriate for retail positions," Ms James said.

Under the General Retail Industry Award 2010, the two sales assistants should have received casual hourly rates ranging from \$13.48 to \$22.46.

As part of the investigation, inspectors conducted an audit of all Fancy Fruits employees to ensure that they were being paid their correct entitlements.

The audit concluded that three other shop assistants had been underpaid their casual loading by amounts ranging from \$1.31 to \$4.40 an hour.

Collectively the five shop assistants were underpaid a total of \$4435 between September 2013 and October 2014.

Individual underpayments ranged from \$250 to \$1552.

Mr and Mrs Tamer also failed to keep appropriate employee records and issue payslips.

"Employers need to be aware that they are at risk of breaching workplace laws if they use trials as a source of cheap labour," says Ms James.

"There is nothing wrong with trialling a new employee to test their suitability, however any period beyond what is reasonably required to demonstrate the skills needed must be paid at the appropriate rate of pay.

"In most circumstances, a trial should be limited to one or two hours on a single day. Additional hours are likely to be viewed as an employment relationship."

Following discussions with the Fair Work Ombudsman, Fancy Fruits has reimbursed all outstanding entitlements and signed an Enforceable Undertaking (EU).

As part of the EU, Mr and Mrs Tamer have agreed that if they engage any employees in future, all reasonable steps will be taken to ensure they comply with relevant workplace laws.

They will complete all educational courses available to employers at www.fairwork.gov.au and register for the Fair Work Ombudsman's My Account self-help tool.

The couple will also employ an external professional to do a retrospective audit of Fancy Fruits' compliance with workplace laws and report back to the Fair Work Ombudsman.

Enforceable Undertakings were introduced by legislation in 2009 and the Fair Work Ombudsman has been using them to achieve strong outcomes against companies that breach workplace laws without the need for civil court proceedings.

"Many of the initiatives included in EUs help to build a greater understanding of workplace responsibilities, motivate the company to do the right thing and help them avoid the same mistakes again," Ms James says.

"It also means we can resolve matters more speedily than if we proceed down a path towards litigation.

"Equipping people with the information they need encourages and empowers employees and employers to resolve issues in their workplace and build a culture of compliance, ensuring a level playing field for all."

Employers and employees seeking assistance with workplace issues can visit the Fair Work Ombudsman website or call the Fair Work Infoline on 13 13 94.

An interpreter service is available on 13 14 50.

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>).

Sign up to receive the Fair Work Ombudsman's media releases direct to your email inbox at www.fairwork.gov.au/mediareleases (www.fairwork.gov.au/mediareleases).

Download:

- [Fancy Fruits Enforceable Undertaking \(DOCX 136.6KB\) \(www.fairwork.gov.au/ArticleDocuments/837/fancy-fruits-enforceable-undertaking.docx.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/837/fancy-fruits-enforceable-undertaking.docx.aspx) ([PDF 1.4MB\) \(www.fairwork.gov.au/ArticleDocuments/837/fancy-fruits-enforceable-undertaking.pdf.aspx\)](http://www.fairwork.gov.au/ArticleDocuments/837/fancy-fruits-enforceable-undertaking.pdf.aspx)

Media inquiries:

Nicci de Ryk, Senior Media Adviser

Mobile: 0466 522 004

nicci.deryk@fwo.gov.au (<mailto:nicci.deryk@fwo.gov.au>)

Page reference No: 5332

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

