

Malaysian restaurant operators penalised almost \$300,000 after paying staff \$11 an hour

19 August 2016

The operators of an inner Sydney restaurant who relied on informal market research to set their wage rates have been penalised almost \$300,000 for deliberately short-changing their employees and using false records to try to disguise the underpayments.

Handing down the penalties this morning, Federal Circuit Court Judge Justin Smith found that the Mamak Malaysian restaurant on Goulburn Street Haymarket had deliberately ignored its workplace obligations “in order to maximise profit”.

“That approach, of course, was taken at the cost of the employees, who, in reality, funded the success of the business,” Judge Smith said at the conclusion of legal proceedings initiated by the Fair Work Ombudsman.

The Fair Work Ombudsman took legal action after an investigation revealed that six employees – five of them visa-holders at the time from non-English speaking backgrounds – were collectively underpaid more than \$87,000 when they received as little as \$11 an hour between February, 2012 and April, 2015.

Restaurant owner-operators Joon Hoe Lee, Julian Lee and Alan Wing-Keung Au have been penalised \$36,992, \$35,360 and \$35,360 respectively.*

Their company Mamak Pty Ltd has been penalised a further \$184,960.

Judge Smith said the penalties should deter other employers from similar conduct.

He found that the underpayments stemmed from informal market research by the restaurant operators to see what other restaurants were paying their staff.

“They discovered that there were three approaches – the first were the star-rated restaurants which paid according to the Award, the second were medium restaurants that followed the Award half the time and the third included small restaurants that just paid illegal rates,” Judge Smith Said.

“Mamak took the third approach.

“The fact that there are many restaurants in the industry that do not comply with their legal obligations does not exculpate the respondents in any way. In my view, it does the opposite.

“The point here is that all of the respondents knew that there was an Award but deliberately chose to ignore it in order to maximise profit.

“That approach, of course, was taken at the cost of the employees, who in reality, funded the success of the business.

“Although they have now been repaid the amounts that they were owed, Mamak and the other respondents in turn had the benefit of that money over a number of years.”

Judge Smith said the fact that the underpaid employees did not complain to the restaurant about their wages and agreed to work under the conditions they were offered did not mitigate against the seriousness of the contraventions.

“Not only did the respondents know that the employees were being paid less than their legal entitlements, but they also knew that their records were not kept in accordance with the law.”

In addition to the financial penalties, Judge Smith ordered Mamak Pty Ltd to commission a qualified professional to audit pay practices across all of its restaurants next year and to rectify any underpayments identified.

The audit - for the period from March to December 2016 - will cover the Haymarket restaurant, as well as Mamak Malaysian restaurants at Chatswood in Sydney and the Melbourne CBD, and a factory at Marrickville, in Sydney, where food is prepared.

Fair Work Ombudsman Natalie James says the Agency is strongly committed to taking pro-active action to improve compliance in the hospitality industry.

And she says she is focussed on ensuring the Agency does more to ensure culturally and linguistically diverse business operators understand and comply with Australian workplace laws.

"It is not okay for employers to arbitrarily determine low, flat rates of pay," Ms James said.

"Researching 'black market' wage rates in an industry is not the way to determine how to pay your staff.

"Minimum wage rates apply to everyone in Australia – including visa-holders – and they are not negotiable.

"While I understand there are cultural challenges and vastly different laws in other parts of the world, it is incumbent on all businesses operating in Australia to understand and apply Australian laws. To that end, the Fair Work Ombudsman is here to help with free advice and resources in a range of languages."

Ms James said she was particularly pleased to see the Court taking the provision of false records to Fair Work Inspectors seriously, awarding close to the maximum penalties available under the current laws. She also noted the Government's commitment to increasing these penalties in its election policies.

"Cases such as this demonstrate the harm that can be caused when businesses fail to keep records, or provide false records to disguise their deliberate underpayment of staff."

Employers who are concerned that they are not meeting their workplace obligations can visit www.fairwork.gov.au or phone the Fair Work Infoline on 13 13 94.

An interpreter service is available by calling 13 14 50.

Small businesses calling the Infoline can opt to receive priority service to assist with their inquiries.

Information to assist people from culturally and linguistically diverse backgrounds has been translated into 27 languages and is available on the website.

The Agency also has fact sheets tailored to overseas workers and international students on the website and YouTube videos in 14 languages to assist workers to understand their workplace rights.

The Fair Work Ombudsman's Pay and Conditions Tool (PACT) provides advice about pay, shift, leave and redundancy entitlements.

Visit www.calculate.fairwork.gov.au (<http://www.calculate.fairwork.gov.au/>) to learn more.

Ms James says the Fair Work Ombudsman's three-year National Hospitality Industry Campaign, finalised earlier this year, resulted in more than \$2 million being recovered for underpaid employees in the hospitality industry across Australia.

For more information about the three waves of the campaign, please see:

- [Half-a-million dollar top-up for pay packets of hundreds of take-away food workers \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/march-2016/20160330-hospitality-final-report\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/march-2016/20160330-hospitality-final-report)
- [Restaurant, café and catering services workers share more than \\$1.2 million back-pay \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/june-2015/20150625-hospitality-wave-2-presser\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2015-media-releases/june-2015/20150625-hospitality-wave-2-presser)
- [45 per cent compliance rate for Vic pubs, bars, taverns and accommodation businesses \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2013-media-releases/december-2013/20131211-hospitality-vic\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2013-media-releases/december-2013/20131211-hospitality-vic)

Ms James said the Agency recently launched an Anonymous Report function which enables members of the community to alert the Fair Work Ombudsman to potential workplace issues.

Intelligence can be provided at www.fairwork.gov.au/tipoff (<http://www.fairwork.gov.au/tipoff>) .

"The Fair Work Ombudsman is determined to build a culture of compliance with workplace laws across Australian workplaces," Ms James said.

"While many employers want to do the right thing, there are some who seek to gain a competitive advantage by exploiting vulnerable workers, such as visa-holders," she said.

"The Agency will continue to provide ongoing education and support to the hospitality sector to encourage and improve compliance levels.

"It is also important that major players in the hospitality sector, industry groups and intermediaries such as accountants and lawyers, all play their part to help lift the levels of compliance."

The Fair Work Ombudsman obtains intelligence from a range of sources within the community and works closely with a range of key stakeholders, including industry associations and employee bodies, to promote compliance with workplace laws.

For example, the Fair Work Ombudsman has Memorandums of Understanding (MoUs) with key industry bodies the Accommodation Association of Australia (AAoA), the Australian Hotels Association (AHA) and the Restaurant and Catering Association (RCA).

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

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*Since issuing this Media Release, it has come to the attention of the Fair Work Ombudsman that the total penalties imposed on Clement Lee, Julian Lee and Alan Wing-Keung Au were incorrectly reported in the Court's published penalty decision, and that they are in fact \$36,992 for Clement Lee and \$36,448 each for Julian Lee and Alan Wing-Keung Au.

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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

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