

Restaurant penalised over underpayments

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The operators of a Queensland restaurant have been penalised a total of \$21,000 after paying a young Chinese backpacker just \$10 an hour.

The Federal Circuit Court imposed the penalties following an investigation and legal action by the Fair Work Ombudsman.

The worker, aged in her 20s and who speaks limited English, was in Australia on a 417 working holiday visa when she took a job at the Fire and Stone Restaurant at the Tangalooma Island Resort on Moreton Island.

She was underpaid \$1577 in just 19 days in 2014.

Fair Work inspectors investigated after the employee lodged a request for assistance.

She should have been classified as a casual employee and paid minimum rates under the Hospitality Industry (General) Award, including more than \$21 an hour for ordinary hours.

The restaurant operators also contravened record-keeping and pay-slip laws and failed to comply with a Notice to Produce employment records.

The business initially refused to back-pay the worker, telling inspectors she “ate too much food and used too much air-conditioning.”

The Federal Circuit Court found the restaurant misclassified the worker as an independent contractor and breached sham contracting laws.

It penalised owner/operator Jia Ning Wang \$3500.

Wang’s company - Golden Vision Food and Beverage Services Pty Ltd – was also penalised a further \$17,500.

The Fair Work Ombudsman had previously put Wang on notice to comply with workplace laws after receiving complaints from other workers about being underpaid.

Judge Michael Jarrett found that Wang had not displayed any genuine contrition or remorse and said the penalties should send a message to the hospitality industry and employers of visa holders.

The penalties should “serve as a warning to others that similar conduct can have serious consequences and ought not be repeated,” Judge Jarrett said.

Fair Work Ombudsman Natalie James says that deliberate exploitation of vulnerable workers in Australia will not be tolerated.

“We treat alleged underpayment of visa-holders particularly seriously,” Ms James said.

The Fair Work Ombudsman has another matter before the Court involving Wang and his company, alleging that an international student was underpaid almost \$2000 and was fired by text message after she asked to be paid correctly.

Employers and employees seeking assistance can visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94. An interpreter service is available on 13 14 50.

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