

Café faces Court for allegedly requiring cook to pay back wages in exploitative cash-back scheme

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An overseas worker employed as a cook on the Gold Coast was allegedly required to pay back more than \$21,000 of her wages to her employer in an exploitative cash-back scheme.

The Fair Work Ombudsman claims the Korean national felt “compelled” to do as she was concerned her employer would cease to sponsor her 457 visa if she did not.

She was allegedly underpaid a total of \$29,587 over 19 months.

The employee is one of 59 workers across two Espresso Carwash Café sites at Southport and Labrador allegedly underpaid a total of \$147,362.

Facing legal action in the Federal Circuit Court is the company which operates them, Ausinko Pty Ltd and owner-director Richard Sang Kyun Kim.

Also facing legal proceedings is Ausinko manager Chao “Tommy” Liu.

The company was audited after the Fair Work Ombudsman received 12 requests for assistance from employees from 2011.

The Korean 457 visa-holder sought help after Fair Work inspectors commenced their inquiries into alleged underpayments.

She was engaged on an annual salary of \$49,330, but was allegedly required to pay a portion of her wages back to her employer in cash every week.

The result was that she was allegedly paid between \$15 and \$18.50 an hour.

The Fair Work Ombudsman alleges the employee was short-changed her minimum wages, weekend and public holiday penalty rates and overtime she was entitled to under the Vehicle Manufacturing, Repair, Services and Retail Award.

It is alleged that over 19 months, the employee paid back more than \$21,600 of her wages in cash to Ausinko, leaving her underpaid by almost \$30,000.

She allegedly made cash-back payments of between \$111 and \$715 a week, depending on the hours she worked.

She allegedly felt “compelled” to comply with the employer’s instructions because she was concerned that her employment would otherwise be terminated and her 457 visa would be revoked.

The Fair Work Ombudsman will allege in Court that Ausinko operated the cash-back scheme to try to make it appear that the worker was being paid correctly.

Ausinko allegedly provided Fair Work inspectors investigating the matter with false or misleading employment records that did not show the cash back payments.

As a result of a wider audit of the two sites, the Fair Work Ombudsman allegedly uncovered the underpayment of 58 other employees.

The employees were aged between 20 and 31 and included overseas workers in Australia on the 417 working holiday visa.

They were allegedly short-changed a total of \$117,775.

The casual employees, who variously performed car-washing, kitchen and café duties, were allegedly paid flat rates of between \$12 and \$17 an hour.

They were variously entitled to be paid \$16.37 to \$23.69 for ordinary hours and penalty rates ranging from \$25.28 to \$44.96 for weekend, public holiday and overtime work.

Pay-slip laws were also allegedly contravened.

Ausinko has committed to back-paying the workers in-full and has already rectified more than half of the alleged underpayments.

However, Fair Work Ombudsman Natalie James says the involvement of vulnerable workers and the fact that Ausinko had previously been put on notice of the need to pay employees their lawful minimum entitlements were significant factors in the decision to commence legal action.

Ausinko Pty Ltd faces penalties of up to \$51,000 per contravention, while Mr Kim and Mr Liu face maximum penalties of up to \$10,200 per contravention

The Fair Work Ombudsman is also seeking a Court Order requiring Ausinko to commission a professional external audit of its pay practices next year and rectify any underpayments discovered; display a workplace notice detailing employee entitlements and register with the My Account service at www.fairwork.gov.au and complete the training courses.

A directions hearing is scheduled for the Federal Circuit Court in Brisbane on August 1.

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 and information on the website is translated into 27 different languages.

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