

## Court penalises café operator who threatened bankruptcy to avoid workplace obligations

31 May 2016

A federal judge has imposed a penalty of \$16,830 against the former operator of a Sydney café who threatened to bankrupt his company if action was taken against him for underpaying an overseas worker.

“You can’t get blood out of a stone,” Arthur Antonopoulos told the Fair Work Ombudsman after closing his Wild Sage Café at Cammeray.

However, six months after the Fair Work Ombudsman took legal action against Antonopoulos and his company Blu Hornsby Pty Ltd, they reimbursed the employee more than \$22,000 in outstanding wages and entitlements.

And the Federal Circuit Court last week imposed a penalty of \$2805 against Antonopoulos and a further \$14,025 against his company.

Fair Work Ombudsman Natalie James says she is determined to hold companies and their directors to account if they flout workplace laws and then refuse to co-operate with the Agency to rectify underpayment of vulnerable workers.

“Where we are unable to secure back-pay from the direct employer, for example, where the corporate entity folds or has insufficient funds, we will look to all other avenues available to us to put unpaid wages back into the hands of workers,” she said.

“Where a party other than the employer has played a role in the exploitation of workers, we will consider whether the law can make them legally responsible.”

The Blu Hornsby matter relates to an Indian national who was underpaid a total of \$22,329 in minimum wages and penalty rates when employed as a pastry chef between November, 2012 and May, 2014. She was in her early 20s at the time.

Initially in Australia as an international student, the employee was later sponsored by Blu Hornsby on a 457 skilled worker visa.

She was at first reluctant to raise concerns about her wages because she was reliant on Antonopoulos’ support for her visa to remain in Australia.

However, after her employment ended, the employee lodged a request for assistance with the Fair Work Ombudsman.

Legal proceedings commenced after Antonopoulos and Blu Hornsby failed to adhere to a Compliance Notice requiring prompt back-payment of the employee.

Judge Justin Smith found that the conduct was deliberate.

“Particularly important to my consideration is the need to ensure that other employers are aware that, if they do not propose to seek review of a Contravention Notice, they must comply with it or face a significant penalty,” Judge Smith said.

Judge Smith described the underpayment as a “considerable sum” for the employee, whose contract entitled her to a salary of \$52,000 per annum.

Ms James says that visa-holders are over-represented in the Fair Work Ombudsman’s complaints data, and that their complaints involve the most serious examples of exploitation.

“For example, people being paid well under the minimum wage of \$17.29 an hour ... we see cases of \$8, \$10, \$12 an hour,” she said.

“Often the employer is elusive and avoids our calls, refuses our requests for a record of interview and ignores our notices to produce documents.

“In the event we do gather enough evidence to take them to Court, some have a tendency to fold their corporate entity to avoid the full consequences of their actions and leave their employees without the wages they are entitled to.

“That’s why we are pushing the boundaries of the accessorial liability provisions of the Fair Work Act, to hold people to account for their actions.”

Underpayment of workers is a persistent issue in the hospitality industry and the successful legal action should send a message to hospitality employers that short-changing employees is a serious matter.

The Fair Work Ombudsman's three-year National Hospitality Industry Campaign, finalised earlier this year, resulted in more than \$1.2 million being recovered for underpaid employees at restaurants, cafés and catering companies throughout Australia.

This included more than \$282,000 being recovered for 788 underpaid employees in NSW.

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 urges hospitality businesses to use the online tools and resources available to them free of charge at [www.fairwork.gov.au/hospitality](http://www.fairwork.gov.au/hospitality)

These include pay calculators to determine the correct Award and minimum wages for employees, templates for pay-slips and time-and-wages records and a range of fact sheets on workplace entitlements.

Other Online tools include an Online Learning Centre with free interactive courses and Best Practice Guides on a range of topics, including an employer's guide to employing young workers.

Employers and employees seeking assistance can visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or contact the Fair Work Infoline on 13 13 94.

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