



Australian Government

Fair Work OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between



The Commonwealth of Australia

(as represented by the Office of the Fair Work Ombudsman)

and

KNODAJI PTY LTD (ABN 52158099999)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:
 - (a) Knodaji Pty Ltd ACN 158 099 999 (**the Company**); and
 - (b) Younsig Kang (**Mr Kang**) Director, Knodaji Pty Ltd;for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

2. The Company is in the Restaurant Industry operating a dine-in Sushi restaurant located at [REDACTED] Bundaberg Queensland and trading as Nodaji Sushi.
3. Mr Kang is the sole Director of the Company.
4. During the period 10 February 2014 to 06 July 2014 the Company engaged an employee [REDACTED] as a casual Food and Beverage Attendant Grade 2 (**The Employee**).
5. The Employee consistently worked more than 38 hours per week over a 7 day period.
6. The Employee was not paid annual leave throughout her employment period or at the termination of her employment.
7. The Employee did not receive personal leave payments throughout her employment.
8. From the 1 January 2010 the terms and conditions of the Employee's employment were governed by the *Restaurant Industry Award 2010 (MA 000119)* (**the MA**) and the Fair Work Act 2009 (**FW Act**).
9. The Company recorded the hours the Employee worked in a Wildon time and wages book.
10. The company did not record the start and finish times of the Employee's shifts only the number of hours worked each day.
11. The Company did not issue pay slips.
12. The Company did not pay Superannuation entitlements.
13. The minimum hourly rate of pay for work performed on a Monday to Friday for a casual Food and Beverage Attendant Grade 2 was \$21.65, consisting of \$17.38 for the ordinary base hourly rate and \$4.27 as a casual loading.
14. The minimum hourly rate of pay for a casual Food and Beverage Attendant Grade 2 for work performed on a Saturday was \$25.13 consisting of \$17.38 for the ordinary base hourly rate, a \$4.27 casual loading and a Saturday loading rate of \$3.48 per hour.
15. The minimum hourly rate of pay for a casual Food and Beverage Attendant Grade 2 for work performed on a Sunday was \$28.60 consisting of \$17.38 for the ordinary base hourly rate, a \$4.27 casual loading and a Sunday loading rate of \$6.95 per hour.
16. The Company paid \$14 per hour for worked performed on a Monday to Saturday and three different rates being \$22.50, \$21.43 and \$21.54 for work performed on three occasions on a Sunday.
17. On 15 July 2014 the FWO received the Employee's request for assistance in which she alleged underpayment of the casual hourly rate, non-payment of weekend penalty rates and non-payment of Superannuation.

18. On or about 13 August 2014 the FWO commenced an investigation into the allegations made by the Employee.
19. As a result of the investigation the FWO determined that the Company had contravened the FW Act by way of non-issuance of payslips and the MA by failing to comply with the MA in relation to the payment of the correct ordinary hourly rate, casual loading, weekend penalty rates and non-payment of superannuation entitlements.

Contraventions

20. The FWO has determined, and the Company admits, that the Company contravened section 45 of the FW Act by failing to comply with the following provisions of the MA;
 - (a) clause 20.1 and Schedule A1 of the MA by failing to pay the Employee the correct ordinary hourly rate of pay;
 - (b) clause 13 and Schedule A1 of the MA by failing to pay the Employee the correct casual loading on the ordinary hourly rate;
 - (c) clause 34.1 and Schedule A1 of the MA by failing to pay the Employee weekend penalty rates;
 - (d) clause 30.2 by failing to pay the Employee's Superannuation entitlements.
21. The FWO has determined, and the Company admits, that the Company has contravened section 536(1) of the FW Act by failing to issue a pay slip within one working day of paying the Employee.

22. Commencement of Undertaking

23. This Undertaking comes into effect when:

- (a) the Undertaking is executed by the Company and Mr Kang; and
- (b) the FWO accepts the Undertaking so executed.

24. Upon the commencement of this Undertaking the Company and Mr Kang undertakes to assume the obligations set out below.

Undertakings

25. For the purposes of section 715 of the FW Act, the Company and Mr Kang undertake to:

Rectify Underpayment

- (a) the Company undertakes to pay the amount of **\$\$5,639.60** less taxation to the Employee who was underpaid as a result of the Contraventions referred to in paragraph 20 (**Affected Employee**) within 14 days of the execution of the Commencement Date;
- (b) evidence of rectification of the underpayments to the Affected Employee was provided to the FWO on 10 March 2015

Issue pay slips

- (c) within 28 days of the execution of this Undertaking provide evidence to FWO that each current employee of the Company is being issued with a pay slip in accordance with S 536 FW Act and Regulations 3.45 – 3.46 *Fair Work Regulations 2009*;

FWO MyAccount Registration

- (d) within 14 days of the execution of this Undertaking, register with the FWO 'My Account' portal at 'www.fairwork.gov.au' and have completed the profile, minimum pay rates and Award options.
 - i. within 15 days of the execution of the Undertaking provide to the FWO the Company's 'My Account' registration number.
 - ii. within 28 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a Fair Work Inspector through MyAccount, knowledge of the current Restaurant Award minimum pay rates and Saturday, Sunday and Public Holiday penalty rates.

Future Workplace Relations Compliance

- (e) ensure the Company and Mr Kang complies at all times and in all respects with the FW Act, *Fair Work Regulations 2009* (Cth) and the Restaurant Award;

Public Notices

- (f) place a notice within the workplace which is accessible to all employees (**Workplace Notice**) within 28 days of the execution of this Undertaking for a total consecutive period of seven (7) days in the terms set out in **Attachment B**;
- (g) provide a copy of the **Workplace Notice** and provide photographic evidence of its display to the FWO within seven (7) days of the display of the notices;

Apology

- (h) send to the Affected Employee within 14 days of the execution of this Undertaking an apology (**Apology Letter**) in the form of the letter set out in **Attachment C**;
- (i) within seven (7) days of the Apology Letter being sent provide to the FWO a copy of the Apology Letter and proof of it being sent to the Affected Employee;

Self-Audit and Reporting Activity

- (i) have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at the expense of the Company), no earlier than 11 calendar months but no later than 12 calendar months of the execution of this undertaking, an audit of its compliance with Commonwealth workplace laws. Specifically:
 - (i) The Company must demonstrate compliance relating to the wages and entitlements of its employees and the Contraventions identified;
 - (ii) The Company must demonstrate compliance with clause 30.2 of the Award by providing to the FWO evidence of superannuation contributions to a superannuation fund for the benefit of employees.
 - (iii) The audit is to include the one (1) full single pay period after the commencement of the eleventh month of the execution of this; and
 - (iv) The Company must provide a copy of the audit to the FWO within seven (7) days of its completion.

Donation to Queensland Working Woman's Centre

- (k) the Company undertakes to:
 - (i) make a donation of \$5,000.00 within 60 days of the Commencement Date to the 'Queensland Working Woman's Centre' to fund education about workplace rights under the FW Act; and

- (ii) provide proof of the payments referred to in subparagraph 0(i) above to the FWO within 7 days of it being made.

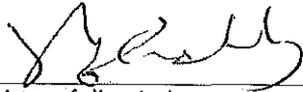
Acknowledgements

26. The Company and Mr Kang acknowledge that:

- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at www.fairwork.gov.au (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
- (b) the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
- (c) the FWO may issue a media release in relation to this Undertaking and from time to time, publicly refer to the Undertaking and its terms;
- (d) the admissions made in the Undertaking may be relied upon by the FWO in respect of any future decision about enforcement action to be taken in relation to any future non-compliance with Commonwealth workplace relations obligations by the Company and Mr Kang;
- (e) consistent with the Note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out in this Undertaking;
- (f) if the FWO considers that the Company or Mr Kang has contravened any of the terms of this this Undertaking the FWO may apply to any of the Courts set out in section 715(6) of the FW Act, for orders under section 715(7) of the FW Act;
- (g) consistent with section 715(3) of the FW Act, the Company and Mr Kang may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by Knodaji Pty Ltd in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

(Signature of director/company secretary)

Younsig Kang

(Name of director)

(Name of director/company secretary)

23/03/15

(Date)

(Date)

in the presence of:

in the presence of:



(Signature of witness)

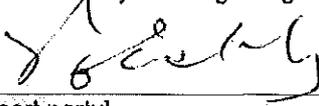
(Signature of witness)

SIMJUNGN KWON

(Name of witness)

(Name of witness)

EXECUTED by Younsig Kang:

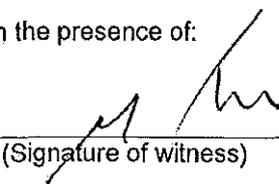


[insert party]

23/03/15

(Date)

in the presence of:

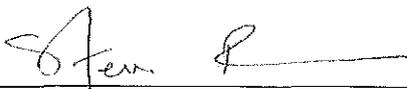


(Signature of witness)

SIMJUNGN KWON

(Name of witness)

ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the *Fair Work Act 2009*
on:



Steven Ronson

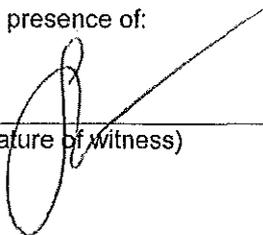
25 MARCH 2015

(Date)

Executive Director Dispute Resolution and
Compliance

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness)

25 March 2015

(Name of Witness)

Attachment B – Form of Workplace Notice

Contraventions of the *Fair Work Act 2009* and the *Restaurant Industry Award 2010* by Knodaji Pty Ltd

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Knodaji Pty Ltd (Knodaji) contravened the *Fair Work Act 2009* and the *Restaurant Industry Award 2010* (Restaurant Award) by:

- failing to pay employees their lawful minimum hourly rates of pay for time worked Monday to Friday;
- failing to pay employees the correct casual loading on hours worked;
- failing to pay employees penalty rates for time worked on Saturdays;
- failing to pay employees penalty rates for time working on Sundays;
- failing to pay superannuation contributions on behalf of employees;
- failing to issue payslips to employees

Knodaji has formally admitted to FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au) committing to a number of measures to remedy the contraventions, including rectifying the underpayments to the employees affected by the contraventions and changing workplace practices.

Knodaji expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Knodaji gives a commitment that such conduct will not occur again and that it will comply with all requirements of the Commonwealth workplace relations laws in the future.

If you worked for Knodaji and have queries or questions relating to your employment, please contact Mr Younsig Kang [REDACTED]. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

Attachment C – Letter of Apology

Date>

<Employee Name & Address>

Dear <Employee Name>

I am writing to apologise on behalf of Knodaji Pty Ltd (t/as Nodaji Sushi) (**Knodaji**) for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that Knodaji Pty Ltd contravened the *Fair Work Act 2009* by failing to pay its casual employees the following entitlements under the *Restaurant Industry Award 2010* (MA000119):

- the correct minimum hourly rate for worked performed Monday to Friday
- casual loading for all hours worked
- penalty rates for work performed on a Saturday;
- penalty rates for work performed on a Sunday; and
- Superannuation entitlements.

The investigation determined that you were affected by the above contraventions.

Knodaji, and is taking steps to remedy the contraventions, including by:

- Paying you the amount that you have been underpaid (Insert amount); and
- Committing to future compliance.

Knodaji has formally admitted to the FWO that it did not comply with its obligations under Commonwealth workplace relations laws and has entered into an Enforceable Undertaking with the FWO, a copy of which is available from the FWO website at www.fairwork.gov.au. As part of the Enforceable Undertaking, Knodaji Pty Ltd has committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

Knodaji expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact Younsig Kang on 0422 225 123

Yours sincerely

[Director/Officer]
Knodaji Pty Ltd