

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

UB Partners Pty Ltd (ACN 134 135 747)

and

Ujjwal Singh

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:
 - (a) UB Partners Pty Ltd (**UB Partners**); and
 - (b) Ujjwal Singh (**Mr Singh**)for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

2. UB Partners operate a Nandos franchise at Kelvin Grove at 15/8 Carraway St, Kelvin Grove Queensland (**Nandos Kelvin Grove**).
3. Mr Singh admits and agrees that, at all material times, he:
 - (a) was sole director of UB Partners, having been so since 12 November 2008;
 - (b) was ultimately responsible for the overall direction, management and supervision of the operations of Nandos Kelvin Grove in relation to engaging staff, setting and adjusting pay rates and determining wages and conditions of employment;
 - (c) was aware that employees are entitled to be paid for work performed in accordance with applicable industrial instruments and Commonwealth workplace laws; and
 - (d) by reason of the matters set out in subparagraphs (a) to (c) was responsible in a practical sense for ensuring UB Partners complied with its legal obligations.
4. Mr Singh is also sole director of UBS Pty Ltd which operates a Nandos franchise in Newstead, Brisbane (**Nandos Newstead**). Staff of Nandos Kelvin Grove (employed by UB Partners) sometimes worked at Nandos Newstead (employed by UBS Pty Ltd) and staff of Nandos Newstead sometimes worked at Nandos Kelvin Grove.
5. In July 2014 the FWO received a complaint from a former employee of UB Partners, [REDACTED] (the **Complainant**), relating to underpayment of wages. The Complainant also alleged that his wages for his first work cycle were withheld by UB Partners as a bond and not paid to him until around 15 May 2014. Since 2010, the FWO has received one other complaint against UB Partners and one complaint against a related entity, UBS Pty Ltd, alleging similar issues.
6. UB Partners employed the Complainant between 20 January 2014 and 29 May 2014 (the **Employment Period**).
7. The Complainant was employed on a casual basis. His duties included cleaning, cooking, serving food to customers and clearing tables.
8. During the Employment Period, the Complainant's terms and conditions of employment were governed by the FW Act and the *Restaurant Industry Award 2010* (**Restaurant Award**). For the purposes of the transitional provisions of Schedule A of the Restaurant Award, the applicable transitional instrument is the *Hospitality Industry – Restaurant, Catering and Allied Establishments Award – South-Eastern Division 2002* (**Transitional Award**).
9. As a result of its investigation, the FWO determined that UB Partners contravened provisions of the Restaurant Award and the FW Act. In particular, the FWO found that UB Partners had underpaid the Complainant by failing to pay the correct minimum casual hourly rates of pay and weekend, night work and public holiday penalties in accordance with the Restaurant Award. The FWO's investigation determined a total underpayment of \$5,382.49 (gross).
10. The FWO also determined that UB Partners contravened the FW Act by withholding wages

from the Complainant for his first work cycle and not paying them until four months into his employment.

11. UB Partners advised the FWO during the course of the investigation that an internal review of the Complainant's records showed an underpayment of \$5,573.50 gross. UB Partners subsequently made full payment to the Complainant of \$5,573.50 less taxation.

Contraventions

12. The FWO has determined, and UB Partners admits, that UB Partners has contravened:
 - (a) section 45 of the FW Act by failing to comply with the following provisions of the Restaurant Award:
 - (i) Clause 20.1 and Schedule A by failing to pay the Complainant the minimum base rate of pay;
 - (ii) Clause 13.1 and Schedule A by failing to pay the Complainant casual loading;
 - (iii) Clause 34.1 and Schedule A by failing to pay the Complainant Saturday penalty rates;
 - (iv) Clause 34.1 and Schedule A by failing to pay the Complainant Sunday penalty rates;
 - (v) Clause 34.1 and Schedule A by failing to pay the Complainant Public holiday penalty rates; and
 - (vi) Clause 34.2(a)(i) and Schedule A by failing to pay the Complainant the applicable additional amount per hour for late night work.
 - (b) section 323 of the FW Act by failing to pay the first pay cycle of the Complainant's wages in full and at least monthly.

(collectively the **Contraventions**).
13. The FWO has determined, and Mr Singh admits, that by reason of the matters set out in paragraph 3 above, he was involved in the Contraventions pursuant to section 550(2)(c) of the FW Act.

Commencement of Undertaking

14. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by UB Partners and Mr Singh; and
 - (b) the FWO accepts the Undertaking so executed.
15. Upon the commencement of this Undertaking, UB Partners and Mr Singh undertake to assume the obligations set out below.

Undertakings

16. UB Partners and Mr Singh in his role as director of UB Partners give the following undertakings:

Future workplace relations compliance

- a) Take all reasonable steps to ensure compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the Restaurant Award and the FW Act.
- b) In particular:
 - i. implement systems and processes to ensure ongoing compliance with the obligations referred to in paragraph 16(a) above; and

- ii. complete all education courses designed for employers available on the FWO online learning centre via www.fairwork.gov.au.
- c) Provide to the FWO, within 28 days of the execution of the Undertaking:
 - i. written details of the systems and processes implemented in satisfaction of the Undertaking in subparagraph 16(a); and
 - ii. documentary evidence that the undertaking in subparagraph 16(b) above has been complied with

Rectify other underpayments

- d) In relation to any future complaints received by the FWO of contraventions of Commonwealth workplace laws or instruments:
 - i. use all reasonable endeavours to resolve the complaint(s), including rectifying any identified contraventions, within 60 days of the execution of this Undertaking or of being notified by the FWO of the complaint (whichever is later);
 - ii. where a complaint has been resolved, provide the FWO with evidence of resolution of the complaint; and
 - iii. where a complaint has not been resolved by agreement with the complainant within the period specified in subparagraph 16(d)(i), report to the FWO about the nature of the complaint and the steps taken to try to resolve it.

FWO My Account Registration

- e) Within 7 days of the execution of this Undertaking, register with the FWO 'My Account' portal at www.fairwork.gov.au and complete the profile, minimum pay rates and Award options.
- f) Within 14 days of the execution of this Undertaking provide to the FWO the 'My Account' registration number.
- g) Within 21 days of the execution of this Undertaking, at a mutually agreed time and location, demonstrate to a FWO Fair Work Inspector via www.fairwork.gov.au 'My Account' current Restaurant Award minimum pay rates.

Self-audit and Reporting

- h) Cause to have performed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist, at UB Partners' expense, an audit of UB Partners' compliance with Commonwealth workplace laws and instruments, including but not limited to the Restaurant Award and the FW Act, relating to the pay and conditions of all employees of UB Partners, for the period 1 July 2014 to 1 July 2015 (the **Audit**). The Audit is to be finalised by 31 August 2015.
- i) Within 7 days of the Audit being provided to UB Partners, provide the FWO with details of the methodology used to conduct the Audit and a copy of the certified audit report.
- j) In the event the Audit discloses contraventions of any applicable Commonwealth workplace laws or instruments, rectify all such contraventions within 14 days of the Audit being provided to UB Partners.
- k) Provide evidence of rectification of all contraventions disclosed by the Audit to the FWO within 14 days of rectification.

Workplace notice

- l) Cause to be displayed at Nandos Kelvin Grove notices in the terms set out in Attachment A to this Undertaking (**Workplace Notices**) in both English and Korean, printed in at least 20 font on A3 size paper:
 - i. for a period of at least 28 days;

- ii. clearly displayed in a location to which all employees who work at Nandos Kelvin Grove have access; and
 - iii. in a manner which is reasonably capable of drawing each Workplace Notice to the general attention of all employees who work at Nandos Kelvin Grove (for example, by placement on a staff noticeboard).
- m) Provide a copy of the Workplace Notices and photographic evidence to the FWO of the placement of the Workplace Notices within 7 days of their placement.

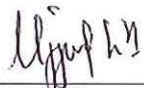
Acknowledgements

17. UB Partners and Mr Singh 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 UB Partners and/or Mr Singh;
- (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 UB Partners and/or Mr Singh has contravened any of the terms of 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, UB Partners and/or Mr Singh may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.
- (h) UB Partners and Mr Singh must not, and must ensure that its respective officers, employees or agents, do not, make any statement, orally or in writing, or otherwise, which conveys or implies or reasonably conveys or implies anything inconsistent with acknowledgements contained in this Undertaking.

Executed as an undertaking

EXECUTED by UB Partners Pty Ltd (ACN 134 135 747) in accordance with section 127(1) of the Corporations Act 2001:


(Signature of director)

(Signature of director/company secretary)

UJJWAL SINGH
(Name of director)


(Name of director/company secretary)

22 JANUARY 2015
(Date)

(Date)

in the presence of:

in the presence of:


(Signature of witness)

(Signature of witness)

REBEKAH MANNION
(Name of witness)

(Name of witness)

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


Steven Ronson


6 FEBRUARY 2015.
(Date)

Executive Director

Dispute Resolution and Compliance

(an authorised delegate pursuant to an instrument of delegation made pursuant to section 683 of the FW Act)

in the presence of:


(Signature of witness)

PIA MORGAN
(Name of Witness)

(Signature of witness)

(Name of Witness)

Attachment A – Form of Workplace Notice

Contraventions of the *Fair Work Act 2009* by

UB Partners Pty Ltd operating a Nandos franchise restaurant at Kelvin Grove

We refer to an investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) into allegations that UB Partners Pty Ltd (**UB Partners**) contravened the *Fair Work Act 2009* (**FW Act**) and the *Restaurant Industry Award 2010* (**Restaurant Award**) in relation to the employment of a former employee (the **Employee**).

UB Partners owns and operates the Nandos franchise restaurant located at 15/8 Carraway St, Kelvin Grove Queensland.

The FWO has found that UB Partners contravened section 45 of the FW Act by failing to comply with the following provisions of the Restaurant Award:

- Clause 20.1 and Schedule A – by failing to pay the Employee minimum base rates of pay.
- Clause 13.1 and Schedule A - by failing to pay the Employee casual loading.
- Clause 34.1 and Schedule A - by failing to pay the Employee Saturday penalty rates.
- Clause 34.1 and Schedule A - by failing to pay the Employee Sunday penalty rates.
- Clause 34.1 and Schedule A - by failing to pay the Employee Public holiday penalty rates.
- Clause 34.2(a)(i) and Schedule A – by failing to pay the Employee the additional payment for late night work.

The FWO also found that UB partners withheld the Employee's first pay cycle as a bond until 4 months into his employment, in contravention of section 323 of the FW Act.

UB Partners has formally admitted to the FWO that these contraventions occurred, has rectified the underpayments and has entered into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au) committing to a number of measures to ensure that there are no further contraventions, including changing workplace processes and practices.

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

If you worked for UB Partners and have queries or questions relating to your employment, please contact Mr Ujjwal Singh in the first instance by email at kgnandos@gmail.com.

Anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94 to check their rates of pay and the terms and conditions of the Restaurant Award.