



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Rebecca Lin Cong trading as Written on Tea

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Ms Rebecca Lin Cong trading as Written on Tea for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Commencement of Undertaking

2. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by Rebecca Lin Cong trading as Written on Tea; and
 - (b) the FWO accepts the Undertaking so executed.
3. Upon the commencement of this Undertaking (the **Commencement Date**), Rebecca Lin Cong trading as Written on Tea (**the Employer**) undertakes to assume the obligations set out below.

Background

4. The Employer operates two Chinese restaurants serving beverages and traditional Chinese food to customers in a sit-down and table service environment located in the suburb of Sandy Bay and Hobart, Tasmania (the **Business**).
5. In October 2008, the Employer opened the Business located at Shop 6, 236 Sandy Bay Road, Sandy Bay 7005. The city restaurant located at 135 Bathurst Street, Hobart 7000 opened in August 2014.
6. The Business operates the Sandy Bay restaurant seven (7) days per week including public holidays. The trading hours are 11:30 am to 3:00 pm for lunch and 4:30 pm to 9:30 pm for dinner. The Hobart city restaurant operates six (6) days per week. The trading hours are 12:00 pm to 2:30 pm for lunch and 5:00 pm to 9:00 pm for dinner Monday to Friday and 5:00 pm to 9:00 pm on Saturdays.
7. The Employer employed [REDACTED] (the **Employee**) in the Business between 7 February 2014 and 14 March 2014 (the **Employment Period**).
8. During the Employment Period, the Employee's terms and conditions of employment were governed by the FW Act and the *Restaurant Industry Award 2010* (the **Modern Award**). Transitional rates of pay in the Award were calculated by reference to the Transitional Award *Restaurant Keepers Award* [AN170086] (the **Pre-Modern Award**);
9. The Employee was employed on a casual basis. Her duties in the Business included taking food and drink orders, table service, clearing tables, handling money and general cleaning duties. The duties undertaken were consistent with the classification of a Food and beverage attendant grade 2 under the Modern Award.

Contraventions

10. The FWO has determined, and the Employer admits, that the Employer committed the following contraventions:

Wages

- (a) section 45 of the FW Act by failing to pay the Employee her correct minimum base hourly rate of pay in accordance with clause 20 and clause A.2.5 of Schedule A of the Modern Award.

Casual Loading

- (b) section 45 of the FW Act by failing to pay the Employee the correct casual loading in accordance with clause 13 of the Modern Award.

Monday to Friday Evening Penalty Rates

- (c) section 45 of the FW Act by failing to pay the Employee the correct penalty rates for time worked between 10 pm to midnight Monday to Friday in accordance with 34.2 (i) of the Modern Award.

Saturday Penalty Rates

- (d) section 45 of the FW Act by failing to pay the Employee the correct penalty rates for time worked on Saturdays in accordance with clause 34 of the Modern Award.

Sunday Penalty Rates

- (e) section 45 of the FW Act by failing to pay the Employee the correct penalty rates for time worked on Sundays in accordance with clause 34 and clause A.6.4 of Schedule A of the Modern Award.

(collectively, the **Contraventions**)

11. As a result of the Contraventions, the Employee was underpaid a total of **\$3,501.82**.

Undertakings

12. For the purposes of section 715 of the FW Act:

Rectify Underpayments

- (a) The Employer undertakes to:

- (i) pay the amount of \$3,501.82 less taxation to the Employee (being the underpayment arising from the Contraventions) within 21 days of the Commencement Date.

- (ii) within 28 days of the Commencement Date, provide evidence of payment to the FWO.

- (b) The Employer undertakes that, in relation to any future requests for assistance received by the FWO relating to contraventions of Commonwealth workplace laws or instruments in relation to employees of the Employer, the Employer will:

- (i) use all reasonable endeavours to resolve the request, including rectifying any identified contraventions, within 60 days of being notified by the FWO of the request for assistance;

- (ii) where a request for assistance has been resolved, provide the FWO with evidence of resolution and

- (iii) where a request for assistance has not been resolved by agreement with the requester within the period specified in subparagraph 15(d)(i), report to the FWO

about the nature of the matter and the steps taken to try to resolve it;

FWO My Account Registration

(c) the Employer undertakes to:

- (i) within 7 days of the Commencement Date, register with the FWO 'My Account' portal at www.fairwork.gov.au and complete the profile, minimum pay rates and Award options;
- (ii) within 14 days of the Commencement Date, provide to the FWO her 'My Account' registration number; and
- (iii) within 21 days of the Commencement Date, demonstrate to a FWO Fair Work Inspector via www.fairwork.gov.au 'My Account' knowledge of the current Modern Award minimum and penalty rates of pay, Saturday, Sunday and Public Holiday penalty rates.

(d) The Employer undertakes to:

(i) within 7 days of the Commencement Date:

- i. subscribe to receive "general information" email alerts from the FWO relating to regarding the Modern Award and Tasmania (alert subscription available at www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates);
- ii. subscribe to FWO's employer newsletter for the relevant State and industry (subscription available at <http://www.fairwork.gov.au/about-us/news-and-media-releases/newsletter>), selecting at least the following options:
 - a. pay updates;
 - b. award updates;
 - c. holiday entitlements;
 - d. working hours and breaks; and
 - e. annual leave / sick leave;

- (ii) within 14 days of the Commencement Date, provide to the FWO evidence of the above subscriptions, including advising the FWO of the email address used to register;

Future Workplace Relations Compliance

(e) The Employer undertakes to:

- (i) ensure compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the FW Act and the Modern Award, in respect of the Business and any future businesses operated by the Employer (whether as a sole trader, a director of a company or by way of any other business structure);
- (ii) implement systems and processes to ensure ongoing compliance in the Business with the obligations referred to in paragraph 12 (d) (i) i. and ii. and (ii) above, including obligations relating to rates of pay, loadings, penalties, taxation, superannuation and record keeping; and
- (iii) provide to the FWO, within 28 days of the Commencement Date, details of systems and processes implemented in satisfaction of the undertakings in paragraphs 12. (e) (ii) above;

Self-audits and Reporting

(f) The Employer undertakes to:

- (i) have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist, at her expense, audits (**Audits**) of her compliance with applicable Commonwealth workplace laws and instruments, including but not limited to the FW Act and the Modern Award, in respect of pay rates, conditions, payslips and record keeping in relation to all of employees of the Business during the relevant audit period, according to the following schedule:
 - iii. an Audit of the first complete pay cycle following 1 July 2015, which is to be finalised within 28 days of the last day of the pay cycle;
 - iv. an Audit of the first complete pay cycle following 1 January 2016, which is to be finalised within 28 days of the last day of the pay cycle;
- (ii) without limiting paragraph 13(f) above, ensure that each Audit examines the Employer's compliance with any wage rate, penalty or allowance increases flowing from the Fair Work Commission's Annual Wage Reviews;
- (iii) within 7 days of the completion of each Audit, provide the FWO with details of the methodology used to conduct the Audit and a copy of the certified audit report;
- (iv) upon request by FWO, provide within 7 days of receiving such request a copy of all documents provided to the auditor for the purpose of undertaking an Audit;
- (v) in the event that an Audit discloses contraventions of any applicable Commonwealth workplace laws or instruments, rectify all such contraventions within 14 days of receipt of the Audit results; and
- (vi) provide evidence of rectification of all contraventions disclosed by an Audit to the FWO within 14 days of rectification;

Workplace Notices

(g) The Employer undertakes to:

- (i) within 28 days of the Commencement Date, place a notice (**Workplace Notice**) within the restaurants operated by the Business in a location which is accessible to all persons employed in the Business in the terms set out in Attachment A in both English and Mandarin, such notice to remain in place for a total period of 7 consecutive days; and
- (ii) provide a copy of the Workplace Notice and photographic evidence of its display to the FWO within 7 days of the display of the notice;

Acknowledgements

13. The Employer acknowledges that:

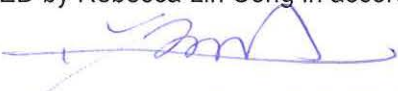
- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at www.fairwork.gov.au (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
- (b) the FWO may release 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 law or instruments by either or both of the Companies;

- (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 Employer 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) FWO reserves the right to rely on the terms of this Undertaking and the admissions made herein in respect of any future proceedings brought by the FWO against the Employer in relation to any future contraventions of Commonwealth workplace laws;
- (h) the Employer must not, and must ensure that her agents and employees do not, make any statements, orally or in writing or otherwise, which convey or imply anything inconsistent with the admissions and acknowledgements contained in this Undertaking; and
- (i) consistent with section 715(3) of the FW Act, the Employer may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by Rebecca Lin Cong in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of sole trader)

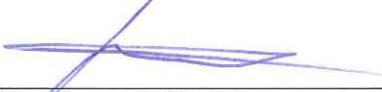
REBECCA 2015

(Name of sole trader)

23.03. 2015

(Date)

in the presence of:



(Signature of witness)

KEZ MA

(Name of witness)

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




Steven Ronson
Executive Director
Dispute Resolution and Compliance
Delegate of the Fair Work Ombudsman

25 MARCH 2015

(Date)

in the presence of:



(Signature of witness)

Brodie Smith

(Name of Witness)