



Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Fine Food Gallery Pty Ltd

(ACN: 160602102)

Fair Work Act 2009

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Fine Food Gallery Pty Ltd (ACN: 160602102) (**Fine Food Gallery**) trading as Sushi Izu 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 Fine Food Gallery; and
 - (b) the FWO accepts the Undertaking so executed.
3. Upon the commencement of this Undertaking, Fine Food Gallery undertakes to assume the obligations set out below.

Background

4. Fine Food Gallery operates two (2) Sushi Izu Franchises operating within Woolworths stores located at corner of Park and George streets, Sydney and in Double Bay, New South Wales.
5. Fine Food Gallery employees prepare, pack and display Sushi Izu branded sushi in the Sushi Izu display fridges and the Woolworths fresh food display fridges. Customers select their sushi and pay at the Woolworths cash registers.
6. A request for assistance was made to the FWO regarding Fine Food Gallery, Sydney City store on 31 March 2014. Fine Food Gallery employed the employee between 12 December 2013 and 26 February 2014 (the **Employment Period**).
7. The employee was employed on a full time basis. His duties included preparing ingredients, making sushi, packaging sushi and general cleaning duties.
8. During the Employment Period, the employee's terms and conditions of employment were governed by the *Fair Work Act 2009 (FW Act)* and the *Fast Food Industry Award 2010 (Fast Food Award)*. Transitional rates of pay in the Award were calculated by reference to the Transitional Award *Shop Employees (State) Award (Transitional Award)*.
9. Fine Food Gallery underpaid the employee for his work by failing to pay the correct minimum hourly rates of pay in accordance with the Fast Food Award. The underpayments arose as a result of underpaying rates of pay including all hours worked on week days Monday to Friday, Saturday, Sunday and Public Holidays.

Contraventions

10. The FWO has determined, and Fine Food Gallery admits, that Fine Food Gallery contravened:

Wages

- (a) subsection 45 of the FW Act by failing to pay the employee his correct minimum base hourly rate of pay in accordance with clause 17 and clause A.3.6 of Schedule A of the Fast Food Award.

Saturday Penalty Rates

- (b) subsection 45 of the FW Act by failing to pay the employee the correct penalty rate for time worked on Saturdays in accordance with clause 25.5 (b) and clause A.7 of Schedule A of the Fast Food Award.

Sunday Penalty Rates

- (c) subsection 45 of the FW Act by failing to pay the employee the correct penalty rate for time worked on Sundays in accordance with clause 25.5 (c) and clause A.7 of Schedule A of the Fast Food Award.

Public Holiday Penalty Rates

- (d) subsection 45 of the FW Act by failing to pay the employee the correct penalty rate for time worked on Public Holidays in accordance with clause 30.3 and clause A.7 of Schedule A of the Fast Food Award.

Evening work Penalty rate

- (e) subsection 45 of the FW Act by failing to pay the employee the correct penalty rate for time worked between 09:00 pm and 06:00 am Monday to Friday in accordance with clause 25.5(a). and clause A.7 of Schedule A of the Fast Food Award.

Overtime

- (f) subsection 45 of the FW Act by failing to pay the employee the correct overtime rates for time worked on Public Holidays in accordance with clause 26 of the Fast Food Award.

Annual leave

- (g) subsections 45 and 90(2) of the FW Act by failing to pay the employee the accrued annual leave in accordance with clause 28.1 of the Fast Food Award.

Annual leave

- (h) subsections 45 and 90(2) of the FW Act by failing to pay the employee the accrued annual leave loading in accordance with clause 28.3 of the Fast Food Award.

Pay slips

- (i) section 536 of the FW Act by failing to provide the employee with a pay slip in accordance with the section 536 and the FW Act.

(collectively the **Contraventions**)

11. As a result of the Contraventions, the employee was underpaid \$5,008.34.

Commencement of Undertaking

12. This Undertaking comes into effect when:
- (a) the Undertaking is executed by Fine Food Gallery; and
 - (b) the FWO accepts the Undertaking so executed.
13. Upon the commencement of this Undertaking, Fine Food Gallery undertakes to assume the obligations set out below.

Undertakings

14. For the purposes of section 715 of the FW Act, Fine Food Gallery undertakes to:

Rectify Underpayments

- (a) pay the amount of **\$5,008.34** less taxation to the employee arising from the Contraventions within 21 days of the execution of this Undertaking.
 - (i) within 28 days of the execution of this Undertaking, provide evidence of payment to the FWO.
- (b) self-rectify on a voluntary basis within 60 days any additional wage disputes received by and to the satisfaction of the FWO in the event the Company admits such contraventions.

Public Notices

- (c) 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 A.
 - (i) provide a copy of the **Workplace Notice** and photographic evidence of its display to the FWO within seven (7) days of the display of the notice.

Apology

- (d) send an apology to the employee in the terms set out in Attachment B.

FWO My Account Registration

- (e) within seven (7) 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 14 days of the execution of the Undertaking provide to the FWO the Fine Food Gallery 'My Account' registration number.
 - (ii) within 21 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a FWO Fair Work Inspector via www.fairwork.gov.au 'My Account' current Fast Food Award minimum pay

rates and Saturday, Sunday and Public Holiday penalty rates of pay.

Future Workplace Relations Compliance

- (f) ensure that it complies at all times and in all respects with the FW Act, *Fair Work Regulations 2009* (Cth) and the Fast Food Award;

Self-audits and Reporting

- (g) have completed by an external accounting professional (e.g. Certified Practicing Accountant), audit specialist or employment law specialist (at the expense of Fine Food Gallery), an audit of its compliance with Commonwealth workplace laws at six (6) months and again at twelve (12) months from the execution of this Undertaking. Specifically:
 - (i) Fine Food Gallery must demonstrate compliance relating to the wages and entitlements of its employees and the Contraventions identified;
 - (ii) the audit is to include the one (1) full single pay period after the commencement of the sixth and twelfth month of the execution of this Undertaking; and
 - (iii) Fine Food Gallery must provide a copy of the audit to the FWO within seven (7) days of its completion.

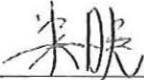
Acknowledgements

15. Fine Food Gallery acknowledges that:

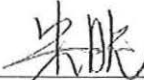
- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at www.fairwork.gov.au (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
- (b) the FWO may release 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 relations obligations by Fine Food Gallery;
- (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 Fine Food Gallery 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, Fine Food Gallery may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by Fine Food Gallery Pty Ltd (ACN: 160602102) in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)



(Signature of director/company secretary)

Joo Young (Jennifer) Yu

(Name of director)

Joo Young (Jennifer) Yu

(Name of director/company secretary)

30th Sep 2014


(Date)

30th Sep 2014


(Date)

in the presence of:

in the presence of:



(Signature of witness)



(Signature of witness)

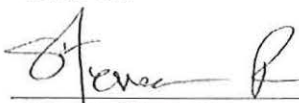
Lara Hurvell

(Name of witness)

Lara Hurvell

(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

1 OCTOBER 2014

(Date)

Delegate for the FAIR WORK
OMBUDSMAN

in the presence of:



(Signature of witness)

Brodie Smith

(Name of Witness)