



Australian Government

Fair Work OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Gurukirpa Ji Pty Ltd (ACN 159 298 781)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Gurukirpa Ji Pty Ltd trading as Hot Million Indian Restaurant (**Gurukirpa Ji**) (ACN 159 298 781) pursuant to 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 Gurukirpa Ji; and
 - (b) the FWO accepts the Undertaking so executed.

Background

3. Gurukirpa Ji currently operates two (2) restaurants in North East Victoria employing 8 staff.
4. On 2 December 2013 Gurukirpa Ji opened the Hot Million Indian Restaurant in Mt Beauty, Victoria. The restaurant served Indian food to customers in a sit down restaurant environment and also served takeaway meals.
5. Gurukirpa Ji operated the Hot Million Indian Restaurant seven days a week including most public holidays. The hours of opening were 12:00pm to 2:00pm and 5:00pm to 9:00pm.
6. Two requests for assistance were made from two employees (**the Employees**) to the FWO in June 2014 and August 2014 in relation to frequency of payment, underpayment of wages, penalty rates and failure to pay annual leave entitlements.
7. The Employees were employed on a full time basis between 15 November 2013 and 20 April 2014 and 16 December 2013 and 5 March 2014 (**the Employment Periods**).
8. During the Employment Periods, the Employees' terms and conditions of employment were governed by the FW Act and the *Restaurant Industry Award 2010* (**Restaurant Award**). Transitional rates of pay in the Award were calculated by reference to the Transitional Award, *Liquor and Accommodation Industry – Restaurants – Victoria – Award 1998*.
9. Mr Hargulab Singh (**Mr Singh**):
 - (a) was the sole Director and Secretary of Gurukirpa Ji from 2 July 2012;
 - (b) was principally responsible for the overall direction, management and supervision of the operations of Gurukirpa Ji in relation to 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) at all material times, for the reasons set out in clause 9 (a) to (c), Mr Singh was responsible in a practical sense for ensuring Gurukirpa Ji complied with its legal obligations to its employees.

Contraventions

10. The FWO has determined, and Gurukirpa Ji admits, that Gurukirpa Ji contravened:

Wages

- (a) subsection 45 of the FW Act by failing to pay to the Employees their correct minimum hourly rate of pay in accordance with clause 20.1 and clause A.2 of Schedule A of the Restaurant Award.

Saturday Penalty Rates

- (b) subsection 45 of the FW Act by failing to pay to the Employees the legal minimum penalty rates for time worked on a Saturday in accordance with clause 34.1 and clause A.5 of Schedule A of the Restaurant Award.

Sunday Penalty Rates

- (c) subsection 45 of the FW Act by failing to pay to the Employees the correct penalty rates for time worked on a Sunday in accordance with clause 34.1 and clause A.5 of Schedule A of the Restaurant Award.

Public Holiday Penalty Rates

- (d) subsection 45 of the FW Act by failing to pay to the Employees the correct penalty rates for time worked on a Public Holiday in accordance with clause 34.1 and clause A.5 of Schedule A of the Restaurant Award.

Overtime

- (e) subsection 45 of the FW Act by failing to pay to the Employees the correct overtime rates for time worked outside of the spread of hours or rostered hours set out in clause 31 and therefore contravened clause 33.1 (a) of the Restaurant Award.

Split Shift Allowance

- (f) subsection 45 of the FW Act by failing to pay to the Employees the correct split shift allowance for split shifts worked in accordance with clause 24.2 the Restaurant Award.

Annual leave

- (g) subsection 45 and 90(2) of the FW Act by failing to pay the Employees annual leave during a period of employment and at termination of employment in accordance with clause 35.2 (a) of the Restaurant Award.

Annual leave loading

- (h) subsection 45 and 90(2) of the FW Act by failing to pay the Employees annual leave loading in accordance with clause 35.2 (b) of the Restaurant Award.

Unauthorised deductions

- (i) subsection 324 of the FW Act by making a deduction from an employee's wages without written authorisation or agreement.

Record keeping and pay slips

- (j) subsection 535 of the FW Act by failing to make and keep records in a form and including information prescribed by the *Fair Work Regulations 2009*.
(k) subsection 536 of the FW Act by failing to issue pay slips.

(collectively the **Contraventions**)

11. As a result of the Contraventions, the Employees were underpaid \$20,603.19.

Undertakings

12. Upon the commencement of this Undertaking for the purposes of section 715 of the FW Act, Gurukirpa Ji undertakes to:

Rectify Underpayments

- (a) pay the amount of \$20,603.19 less taxation to the Employees arising from the Contraventions in accordance with the following payment plan upon the commencement of this Undertaking:
 - i. payment of \$1584.87 less taxation by 24 November 2014;
 - ii. payment of \$3169.72 less taxation by 22 December 2014;
 - iii. payment of \$3169.72 less taxation by 19 January 2015;
 - iv. payment of \$3169.72 less taxation by 16 February 2015;
 - v. payment of \$3169.72 less taxation by 16 March 2015;
 - vi. payment of \$3169.72 less taxation by 13 April 2015;
 - vii. payment of \$3169.72 less taxation by 11 May 2015.
- (b) provide proof of each payment to the FWO no later than seven (7) days after the payments are made;
- (c) if an Employee cannot be located, pay any outstanding amount into the consolidated revenue of the Commonwealth of Australia (through the FWO), in accordance with section 559 of the FW Act, to be held on trust for the relevant Employee;
- (d) 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 Gurukirpa Ji admits such contraventions.

FWO MyAccount Registration

- (e) 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 Gurukirpa Ji '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

- (f) ensure that it complies at all times and in all respects with the FW Act, *Fair Work Regulations 2009* (Cth) and the Restaurant Award.
- (g) Provide the FWO, within 28 days of the date of execution of this Undertaking, details of systems and processes already in place or to be implemented to comply with paragraph (d) above. Without limitation, such systems and processes will include systems and processes relating to:
 - i. ensuring employees receive the correct minimum rates of pay and

- entitlements, such as penalty rates and overtime rates;
- ii. issuing pay slips to employees within 1 working day of payment; and
- iii. keeping accurate and complete records to ensure employees receive their correct wages and entitlements.

Workplace relations training

- (h) within 3 months of the execution of this Undertaking, organise and ensure training is provided to all persons who have managerial responsibility for human resource, recruitment or payroll functions (**Training**);
- (i) ensure the Training relates to compliance with applicable Commonwealth workplace laws and instruments, including but not limited to the responsibilities of employers under the FW Act and the Restaurant Award;
- (j) ensure the Training is conducted by an accredited workplace trainer, such person or organisation to be approved by the FWO and paid for by Gurukirpa Ji;
- (k) provide the training materials to be used in the Training to the FWO no later than 14 days before the Training is to be conducted;
- (l) provide evidence of attendance at the Training to the FWO within 7 days of the Training being provided (including the name and position of all attendees and the date on which the training was attended).

Self-audits and Reporting

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

Workplace Notice

- (n) place a notice (**Workplace Notice**) accessible to all employees within the workplace at 121 Bridge Street Benalla Victoria, and 7 High Street Yackandandah Victoria, within 28 days of the execution of the Undertaking for a total consecutive period of 28 days in the terms set out in Attachment A of this Undertaking (**Workplace Notice**).
 - i. Provide evidence to the FWO of the placement of the Workplace Notice within seven days of its placement.

Acknowledgements

13. Gurukirpa Ji acknowledges that:

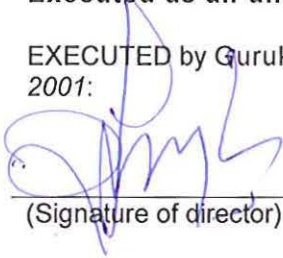
- a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au

(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 Gurukirpa Ji;
- 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 Gurukirpa Ji 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, Gurukirpa Ji may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

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


(Signature of director)

HARGULAB SINGH
(Name of director)

20/11/2014
(Date)

in the presence of:


(Signature of witness)

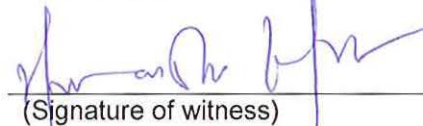
Homanshu Kapoor
(Name of witness)


(Signature of director/company secretary)

HARGULAB SINGH
(Name of director/company secretary)

20/11/2014
(Date)

in the presence of:


(Signature of witness)

Homanshu Kapoor
(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

28 November 2014
(Date)

Delegate of the FAIR WORK OMBUDSMAN

in the presence of:


(Signature of witness)

Brodie Smith
(Name of Witness)

Attachment A – Form of Workplace Notice

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

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Gurukirpa Ji Pty Ltd (**Gurukirpa Ji**) 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 penalty rates for time worked on Saturdays;
- failing to pay employees penalty rates for time working on Sundays;
- failing to pay employees penalty rates for time worked on Public Holidays;
- failing to pay employees the split shift allowance when it applied;
- failing to pay employees overtime;
- failing to pay employees annual leave and annual leave loading;
- deducting money from wages which has not been authorised by the employees;
- failing to make and keep records as required; and
- failing to issue payslips to employees

Gurukirpa Ji 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.

Gurukirpa Ji expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Gurukirpa Ji 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 Gurukirpa Ji and have queries or questions relating to your employment, please contact Mr Hargulab Singh on 0457535068. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.