

Fair Work Act 2009

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:

Logistics 1 Pty Ltd (**Logistics 1**) for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

2. Logistics 1 is a long distance road trucking business, based in Dandenong, Victoria.
3. Logistics 1 incorporated on 9 September 2004. The current Directors are Christopher O'Keefe and Mark Lowe.
4. The Logistics 1 workforce currently comprises 15 employees engaged in the areas of Head Office (7 employees), warehouse (2 employees) and casual truck drivers (6 employees).
5. A request for assistance was initially lodged with the FWO on 11 April 2013 by a casual long distance truck driver concerning alleged underpayments of wages and allowances. Following involvement by the FWO, this matter was resolved between the parties.
6. Between the 13 January 2014 and 14 April 2014, three further requests for assistance were lodged with the FWO. These matters again related to underpayment of wages and allowances.
7. Logistics 1 was subsequently provided with education by the FWO relating to the application of clauses contained within the *Road Transport (Long Distance Operations) Award 2010* (**Modern Award**).
8. On 14 April 2014, Logistics 1 was issued with a formal Letter of Caution by the FWO as a result of a number of contraventions and underpayments identified during the FWO's investigations into the allegations made by employees. Logistics 1 was requested to identify and rectify underpayments to all staff from 8 March 2014.
9. On 11 June 2014, the FWO received confirmation that underpayments totalling \$23,904.87 had been recovered for 41 employees as a result of the review of employee entitlements with effect from March 2014.
10. On 20 January 2015, the FWO received a further request for assistance from a casual long distance truck driver (the **Driver**) who alleged that they did not receive correct employment entitlements. On 18 February 2015 and 27 February 2015, Logistics 1 responded to the allegations and provided supporting documentary evidence for review by the FWO in relation to the Driver.
11. An assessment of the records provided in response to the Driver's allegations highlighted a number of contraventions of the Modern Award. These contraventions resulted in underpayments to the Driver. Logistics 1 calculated this amount to be \$2,304.08 (gross). The rates and methodology used in these calculations were verified by the FWO.
12. Throughout the investigative process, Logistics 1 responded proactively with FWO's requests and at all times acted in a cooperative manner.
13. Logistics 1 acknowledged errors it had made and readily admitted the contraventions identified. Logistics 1 further agreed to undertake calculations and has corrected underpayments to the Driver as a matter of priority.

Contraventions

14. The FWO has determined, and Logistics 1 admits, that Logistics 1 contravened section 45 of the FW Act by failing to comply with the following provisions of the Modern Award:
- (a) Clause 26.5
 - (i) by failing to pay public holiday rates as prescribed for all time worked on public holidays prior to 8 July 2014;
 - (ii) by failing to pay public holiday rates as prescribed in circumstances where the majority of the work undertaken by the employee on a long distance operation is undertaken on a public holiday from 8 July 2014;
 - (b) Clause 22 by failing to pay for all time up to a maximum of 8 hours in any period of 24 hours at the rates prescribed where a long distance operation is delayed due to breakdowns or impassable highways;
 - (c) Clause 13.5(a)(ii) by failing to use the compliant method of payment and rates of pay resulting in a failure to pay the correct total amount for actual hours worked for journeys not listed in clause 13.5(c) of the Modern Award;

Commencement of Undertaking

15. This Undertaking comes into effect when:
- (a) the Undertaking is executed by Logistics 1; and
 - (b) the FWO accepts the Undertaking so executed.
16. Upon the commencement of this Undertaking, Logistics 1 undertakes to assume the obligations set out below.

Undertakings

17. For the purposes of section 715 of the FW Act, Logistics 1 undertakes to:

Rectify the underpayments

- (a) Within twenty-eight days of the execution of this Undertaking, conduct a self-audit to identify all contraventions of relevant Commonwealth workplace laws for all employees currently and previously employed (the **Affected Employees**) from the pay period commencing 8 March 2014 including; entitlements for public holidays, breakdowns and long distance operations to routes outside those listed in clause 13.5(c) of the Modern Award;
- (b) Pay to the Affected Employees referred to in (a), within fifty-six days of the execution of this Undertaking, the outstanding amounts as calculated using the compliant minimum rates of pay from the period commencing 8 March 2014;
- (c) Within seven days of each payment being made to an Affected Employee as per paragraphs (a) and (b), provide the methodology of the calculations and reasonable evidence to the FWO that these payment/s have been made;
- (d) If an Affected Employee cannot be located, within one month of the payment falling due, 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 Affected Employee;

Apology

- (e) Prepare a letter apologising for the contraventions to the Driver (as defined in paragraph 10) in the form of Attachment A to this Undertaking (**Apology Letter**) and

post this to the Driver within 14 days of the execution of this Undertaking;

- (f) Prepare an Apology Letter for all Affected Employees and attach an Apology Letter to all of the Affected Employee's pay slips within seven days of the payment referred to in 17 (b) being made to each of the Affected Employees;
- (g) Within seven days of posting the Apology Letter to the Driver, provide a copy of the letter to the FWO;
- (h) Within seven days of distributing the Apology Letters to the Affected Employees, submit a sample copy of an Apology Letter to the FWO and written details of when each Apology Letter was provided to each Affected Employee;

Public Notice

- (i) Place a public notice in The Saturday Age (**Public Notice**) within twenty-eight days of the execution of this Undertaking in the terms set out in Attachment B;
- (j) Provide a copy of the Public Notice to the FWO within seven days of its publication;

Future workplace relations compliance

- (k) Ensure compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the *Road Transport (Long Distance Operations) Award 2010* and the FW Act by developing systems and processes to ensure ongoing compliance with those requirements;
- (l) Provide to the FWO, within twenty-eight days of the execution of this Undertaking, written detail of the systems and processes implemented in satisfaction of the undertaking in paragraph (k) above designed to ensure such ongoing compliance specifically in relation to employee payments as a result of breakdowns, public holidays worked and journeys to routes outside those listed in clause 13.5(c) of the Modern Award;

Workplace relations training

- (m) Within three months of the execution of this Undertaking, organise and ensure accredited training for all persons engaged by Logistics 1 who have managerial responsibility for human resources, recruitment/termination and/or payroll functions (**Training**);
- (n) Within three months of the execution of this Undertaking, provide the FWO with written details of the Training undertaken including names of the courses, dates the Training was undertaken, the name/s and details of the accredited trainer and names of participants who attended the Training;
- (o) Ensure the Training relates to compliance with all applicable Commonwealth workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act and the *Road Transport (Long Distance Operations) Award 2010*;
- (p) In addition to any external Training, within three months of the execution of this Undertaking ensure persons referred to in paragraph (m) review relevant education material available on the FWO website and as a minimum, complete educational activities as set out in Attachment C and ensure a copy of each Attachment C completed is provided to the FWO, along with requested supplementary documentation;
- (q) Ensure within fourteen days of the execution of this Undertaking, Logistics 1 has actioned the following activities with the FWO website:
 - i. Register for "My Account"
 - ii. subscribe to the bi-monthly employer newsletter
 - iii. subscribe to the pay rate update alert RSS feed for the *Road Transport (Long*

- (r) Complete the written form provided in Attachment D and provide the signed, completed form to the FWO within seven days of completion of the activities outlined in paragraph (q) above.

Future audits

- (s) Arrange to have performed by an accounting professional (for example, a Certified Practising Accountant) or an employment law specialist, at Logistics 1's expense, audits of Logistics 1's compliance with all applicable Commonwealth workplace laws and instruments, including but not limited to the *Road Transport (Long Distance Operations) Award 2010* and the FW Act, relating to pay and conditions of all employees of Logistics 1 (**Audit**), for a two year period as follows:
 - i. The Audit for the calendar year 2015 is to be finalised by 28 February 2016; and
 - ii. The Audit for the calendar year 2016 is to be finalised by 28 February 2017;
- (t) Provide to the FWO, at least fourteen days prior to the commencement of an Audit being undertaken, the methodology to be used for the purpose of the Audit for approval by the FWO;
- (u) Provide to the FWO, within fourteen days of each finalised Audit, details of the methodology used to conduct the Audit and the outcomes of the Audit;
- (v) In the event an Audit discloses contraventions of any applicable Commonwealth workplace laws and instruments, rectify all such contraventions within fourteen days of the finalised Audit including rectification of any and all underpayments to employees;
- (w) Provide evidence of rectification in relation to paragraph (v) above to the FWO within fourteen days of the finalised Audit;

Future complaints

- (x) In instances where Logistics 1 is contacted by current or former employees, not covered by this Undertaking, who allege that their lawful entitlements have not been met, Logistics 1 agree to:
 - i. notify the FWO within seven days of receiving the allegation;
 - ii. take all reasonable steps to ascertain whether a contravention/s of the FW Act has occurred, and where such contravention/s have been found and take immediate steps to rectify the contravention/s;
 - iii. within seven days of resolving the allegation, provide the FWO with evidence that any identified underpayments have been paid and evidence that other issues identified have been resolved; and
 - iv. should a decision be made not to rectify an issue raised by an allegation, notify the FWO within seven days of this decision and the reasons for not rectifying.

Acknowledgements

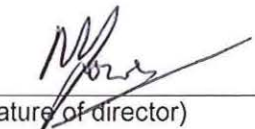
18. Logistics 1 acknowledges that:

- (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 Logistics 1;
- (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 Logistics 1 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; and
- (g) Consistent with section 715(3) of the FW Act, Logistics 1 may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by Logistics 1 Pty Ltd (ACN 110 889 355) in accordance with section 127(1) of the Corporations Act 2001:



(Signature of director)

MARK LOWE

(Name of director)


(Signature of director/company secretary)

(Name of director/company secretary)

21-5-15

(Date)

in the presence of:



(Signature of witness)

TINA JOHNSTON

(Name of witness)


(Date)

in the presence of:

(Signature of witness)


(Name of witness)

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



FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness)

27 MAY 2015

(Date)

PIA MORGAN

(Name of Witness)

Attachment A – Letter of Apology

FORM OF APOLOGY LETTER TO AFFECTED EMPLOYEES

Date

Employee Name

Address

Address

Dear _____

The purpose of this letter is to apologise on behalf of Logistics 1 Pty Ltd (**Logistics 1**) for non-compliance with Commonwealth workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that Logistics 1 had contravened the *Fair Work Act 2009 (FW Act)* by failing to pay its employees the following entitlements under *Road Transport (Long Distance Operations) Award 2010*

- Public holiday rates;
- Entitlements for Breakdowns and delays;
- Correct minimum rates of pay for routes outside those listed within clause 13.5(c) of the *Road Transport (Long Distance Operations) Award 2010*.

Regrettably, the investigation determined that you were affected by the above contraventions. Logistics 1 is taking steps to remedy the contraventions, including by rectifying \$_____ that you have been underpaid.

You will/have receive/d this payment on (date) and will be provided with payment advice (pay slip) regarding the payment.

Logistics 1 has formally admitted to the FWO that it did not comply with its obligations under Commonwealth workplace relations laws and have entered into an Enforceable Undertaking under the FW Act with the FWO, a copy of which is available from the FWO website at www.fairwork.gov.au.

As part of the Enforceable Undertaking, Logistics 1 has committed to a number of measures to ensure future compliance with Commonwealth workplace laws.

Logistics 1 expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact Christopher O'Keefe or or Mark Lowe, Directors, on (03) 9706 6725.

Yours sincerely

Logistics 1 Pty Ltd

Attachment B – Public Notice

FORM OF PUBLIC NOTICE



Contraventions of the *Fair Work Act 2009*, and the *Road Transport (Long Distance Operations) Award 2010* by Logistics 1 Pty Ltd

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Logistics 1 Pty Ltd contravened the *Fair Work Act 2009* (FW Act).

The FWO has found that Logistics 1 Pty Ltd contravened the FW Act by:

1. failing to pay employees the correct rates for public holidays worked;
2. failing to pay employees correct rates for breakdowns that delayed long distance operations;
3. failing to use the compliant method of payment and rates of pay, resulting in a failure to pay employees the correct total amount for journeys not listed in clause 13.5(c) of the Modern Award.

Logistics 1 Pty Ltd 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.

Logistics 1 Pty Ltd expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Logistics 1 Pty Ltd has taken steps to ensure that it will comply with all requirements of Commonwealth workplace relations laws in the future.

If you worked for Logistics 1 Pty Ltd and have queries or questions relating to your employment, please contact Christopher O'Keefe or Mark Lowe on (03) 9706 6725.

Alternatively, 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 Award terms and conditions.

Mr Christopher O'Keefe
Mr Mark Lowe
Directors – Logistics 1 Pty Ltd

Attachment C

TRAINING RESOURCES UTILISED FROM THE FAIR WORK OMBUDSMAN WEBSITE

I, _____ have undertaken the following tools:

Completed online courses* including:

- Difficult conversations in the workplace – manager course date completed: _____
- Hiring employees date completed: _____
- Managing performance date completed: _____
- Other _____ date completed: _____
- Other _____ date completed: _____

** Please provide printout of the Statement/Certificate of Attainment for each course completed*

Viewed Videos including:

- Welcome to fairwork.gov.au date completed: _____
- Finding information for your industry date completed: _____
- My account date completed: _____
- Other _____ date completed: _____
- Other _____ date completed: _____

Read Factsheets including:

- Role of the Fair Work Ombudsman date completed: _____
- Other _____ date completed: _____
- Other _____ date completed: _____

Read information on the following:

- **Pay Overview**
 - Minimum wages Page Ref No. _____ date completed: _____
 - Penalty rates & allowances Page Ref No. _____ date completed: _____
- **Leave Overview**

- Annual leave Page Ref No. _____ date completed: _____
- Sick & carer's leave Page Ref No. _____ date completed: _____

- ***Ending Employment Overview***

- Notice & final pay Page Ref No. _____ date completed: _____
- Unfair dismissal Page Ref No. _____ date completed: _____

- ***Employee Entitlements Overview***

- Types of employees Page Ref No. _____ date completed: _____
- National Employment Standards Page Ref No. _____ date completed: _____

- ***Awards & Agreements Overview***

- Awards Page Ref No. _____ date completed: _____

- ***Other educational material utilised***

Date and signature

Attachment D

FAIR WORK OMBUDSMAN WEBSITE – SUBSCRIPTIONS

I, _____, on behalf of Logistics 1 Pty Ltd have undertaken the following activities:

- Registered for "My Account"
- Subscribed to the bi-monthly employer newsletter
- Subscribed to the pay rate update alert RSS feed for the following Award:
 - Road Transport (Long Distance Operations) Award 2010;

Date and signature