



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Falls Creek Coach Service Pty Ltd

As Trustee for The Mount Beauty Discretionary Trust (ABN 572 8131 5478)

*Fair Work Act 2009***Section 715 ENFORCEABLE UNDERTAKING****Parties**

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Falls Creek Coach Service Pty Ltd as trustee for The Mount Beauty Discretionary Trust (ABN 57281315478) (**employer**) for the purposes of Section 715 of the Fair Work Act 2009 (**FW Act**).

Background

2. The employer operates a bus and coach service from sites at Tawonga South and Beechworth. From here, the Employer services much of north east Victoria. The employer engages in excess of 25 employees.
3. A Caltex service station and a bus and coach reservation service are also operated by the Employer at the Tawonga South site. Amongst other things, the employer provides a bus and coach service for people travelling to and from the Falls Creek Snowfields. The Tawonga South site was visited by Fair Work Inspectors in 2013 and 2014.
4. As part of the 2014 Snowfields Campaign, the FWO undertook an audit of the employer which assessed time and wage records for employees for the period between 1 July 2014 and 28 August 2014 (**assessment period**).
5. The FWO also audited this employer as part of the 2013 Snowfields Campaign. As a result of that 2013 Snowfields audit, a Letter of Caution was issued to the Employer.
6. In finding whether there had been a contravention of Commonwealth workplace laws in the 2014 audit, the FWO utilised time and wages records provided by the employer for the assessment period.
7. The 2014 audit found that four (4) industrial instruments operated at the workplace.
8. This included a clerk whose duties were covered by the Clerks Private Sector Award 2010 (**Clerks Award**) and Reservation and Ticket Sellers whose duties were covered by the Passenger Vehicle Transportation Award 2010 (**PVTA Award**).
9. Employees who operated as Console Operators in the service station were covered by the Vehicle Manufacturing, Repair, Service and Retail Award 2010 (**Vehicle Award**).
10. Regular Casual Bus Drivers, Seasonal Casual Bus Drivers and Full Time Rostered Bus Drivers were covered by the Falls Creek Coach Service Pty Ltd Collective Agreement (2009) (**Enterprise Agreement**).

Contraventions

11. The FWO has determined, and the Employer admits, that the Employer contravened:

(a) Section 45 of the FW Act 2009, which states a person must not contravene a term of a modern award. Three (3) modern awards were contravened, which included the Clerks Private Sector Award 2010, Passenger Vehicle Transportation Award 2010 and Vehicle Manufacturing, Repair, Service and Retail Award 2010. Those contraventions were as follows:

- Clerks Private Sector Award 2010:
 Clause 16 - Minimum wage (underpayment);
 Clause 27.1 - Overtime (underpayment);
 Clause 27.2 (b) - Sunday Penalty (underpayment); and
 Clause 26.1 - Meal Breaks (underpayment)
- Passenger Vehicle Transportation Award 2010:
 Clause 23.2 – Saturday Penalty and Sunday Penalty (underpayment)
 Clause 22.2 – Crib break (non-payment)
- Vehicle Manufacturing, Repair, Service and Retail Award 2010:
 Clause 36.3 – Monday to Friday rate, Saturday and Sunday rate and
 Overtime rate (underpayment of all three rates)

(b) Section 50 of the FW Act 2009 which states a person must not contravene a term of an enterprise agreement. The Falls Creek Coach Service Pty Ltd Collective Agreement (2009) was contravened which resulted in an underpayment to one driver for a small amount of wages.

- Falls Creek Coach Service Pty Ltd Collective Agreement (2009):
 Clause 14.3(a) – Monday to Friday first 4 hours overtime (underpayment)
 Clause 14.4 (c) – Rostered work on a weekend – Sunday (underpayment)

12. As a result of the contraventions of Section 45 and 50 of the FW Act 2009 an underpayment of **\$8,257.45** gross was determined as owing to nine (9) employees. The Employer has repaid all underpayments to the affected employees.

Commencement of Undertaking

13. This Undertaking comes into effect when:

- (a) the Undertaking is executed by the Employer; and
- (b) the FWO accepts the Undertaking so executed.

14. Upon the commencement of this Undertaking (**Commencement Date**), the Employer undertake to assume the obligations set out below.

Undertakings

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

FWO My Account Registration

- (a) Within 21 days of the Commencement Date, the Employer undertakes to;
- (i) register with the FWO 'My Account' portal at www.fairwork.gov.au and complete the profile, minimum pay rates and Award options;
 - (ii) provide to the FWO the 'My Account' registration number; and
 - (iii) demonstrate to the FWO Fair Work Inspector via www.fairwork.gov.au, 'My Account' knowledge of the current Modern Award minimum rates of pay.
- (b) The Employer undertakes to:
- (i) Within 21 days of the Commencement Date:
 1. subscribe to receive "general information" email alerts from the FWO relating to the Modern Award, available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates>
 2. subscribe to FWO's Employer newsletter for the relevant State and industry, 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) provide to the FWO evidence of the above subscriptions, including advising the FWO of the email address used to register.

Future Workplace Relations Compliance

- (a) The Employers undertake to:
- (iii) ensure compliance at all times and in all respects with applicable

Commonwealth workplace laws and instruments, including but not limited to the FW Act, the FW Regulations, any Enterprise Agreement that may be in place at the time and all applicable Modern Awards, in respect of the Employer and any future businesses operated by the Employer;

- (iv) implement systems and processes to ensure ongoing compliance with the obligations referred to in paragraph 11; and
- (v) provide to the FWO, within twenty-eight (28) days of the Commencement Date, details of systems and processes implemented in satisfaction of the undertakings in paragraphs 11 above;

Self-audits and Reporting

(a) The Employer undertakes to:

- i. have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist, at own expense, audits (**Audits**) of compliance with applicable Commonwealth workplace laws and instruments, including but not limited to the FW Act, Enterprise Agreement in force at that time and the Modern Award, in respect of pay rates, conditions, payslips and record keeping in relation to all of employees of the Employer during the relevant audit period, according to the following schedule:
 - 1. an Audit of the first complete pay cycle following 1 October 2015 which is to be finalised within 28 days of the last day of the pay cycle;
 - 2. an Audit of the first complete pay cycle following 1 July 2016, which is to be finalised within 28 days of the last day of the pay cycle;
- ii. ensure that each Audit examines the Employer's compliance with any wages rate, penalty or allowance increases flowing from the Fair Work Commission Annual Wage Reviews;
- iii. within seven (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 seven (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 instrument, rectify all such contraventions within fourteen (14) days of rectification;

- vi. provide evidence of rectification of all contraventions disclosed by an Audit to the FWO within fourteen (14) days of rectification;

Workplace notice

- (b) place a notice within the workplace at all of the employer's work sites which is accessible to all employees (**Workplace Notice**) within 28 days of the execution of this Undertaking in the terms set out in Attachment A;
- (c) Provide a copy of the Workplace Notices and photographic evidence to the FWO of the placement of the Workplace Notices within seven days of its placement.

Acknowledgements

16. 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 relations obligations by the Employer;
- (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 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, 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 Falls Creek Coach Service Pty Ltd as trustee for The Mount Beauty Discretionary Trust in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

(Signature of director/company secretary)

HEATH FALLON

(Name of director)

(Name of director/company secretary)

25/8/2015

(Date)

(Date)

in the presence of:

in the presence of:



(Signature of witness)

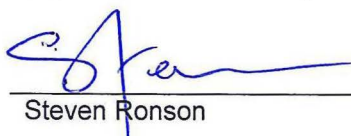
(Signature of witness)

HELEN MAU HANSEN

(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


7 September 2015

(Date)

Executive Director, Dispute Resolution and Compliance

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness)

FAY PINIORAS

(Name of Witness)

Attachment A – Form of Public and Workplace Notice

FORM OF PUBLIC AND WORKPLACE NOTICE

Contravention of Fair Work Act 2009 by Falls Creek Coach Service Pty Ltd as trustee for The Mount Beauty Discretionary Trust (ABN 57281315478) (Falls Creek Coaches).

We refer to the audit conducted by the Office of the Fair Work Ombudsman (**FWO**) in 2014 into allegations that the Employer contravened the *Fair Work Act 2009* by contravening:

- (h) Section 45 of the Fair Work Act 2009, which states a person must not contravene a term of a modern award. Three (3) modern awards were contravened, which included the Clerks Private Sector Award 2010, Passenger Vehicle Transportation Award 2010 and Vehicle Manufacturing, Repair, Service and Retail Award 2010. Contraventions included underpayments of base rates of pay, weekend penalties, overtime and meal breaks.
- (i) Section 50 of the Fair Work Act 2009 which states a person must not contravene a term of an enterprise agreement. The Falls Creek Coach Service Pty Ltd Collective Agreement 2009 was contravened which resulted in an underpayment to one driver for service grant and a small amount of wages. It should be noted that there were further contraventions of the Enterprise Agreement that did not result in a monetary shortfall to employees.

Contraventions of Section 45 and 50 of the FW Act 2009, resulted in a total gross underpayment and subsequent repayment to 9 employees of **\$8,257.45**.

Falls Creek Coaches 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.

Falls Creek Coaches expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Falls Creek Coaches 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 Falls Creek Coaches during the audit period and have queries or questions relating to your employment, please contact Heath Fallon. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.