



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Jusbinder Singh BENNING, Tarlochan Singh BENNING,
Balbir Kaur BENNING and Amarjit Kaur BENNING trading as

K S Benning & Sons

(ABN: 85 143 823 439)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:
 Jusbinder Singh BENNING, Tarlochan Singh BENNING, Balbir Kaur BENNING and Amarjit Kaur BENNING trading as K S Benning & Sons (**the Partnership**)
 for the purpose of Section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

2. The Partnership operates blueberry farms in the Sandy Beach area in New South Wales.
3. From the 1 January 2010 the terms and conditions of the Employees' employment were governed by the *Horticulture Award 2010* (MA000028) (**the MA**) and the *Fair Work Act 2009* (**FW Act**).
4. During the period 1 July 2014 and 31 January 2015 (**Employment Period**), the Partnership employed in excess of 200 employees to pick blueberries.
5. On or around 3 March 2015, the FWO commenced an audit of the Partnership's compliance with Commonwealth workplace laws during the Employment Period as part of FWO's Harvest Trail Inquiry
6. As a result of its audit, the FWO determined that:

- (a) 137 employees listed in Attachment A were affected by the Partnership's contravention of the FW Act and the MA (the Employees);
- (b) the Employees' classification under the Award was Level 1;
- (c) the Employees were entitled to be paid the following minimum rates of pay during the Relevant Period;

Employment Period	Minimum Hourly Wage	Casual Hourly Rate	Public Holiday Rate
01/07/2014 – 31/01/2015	\$16.87	\$21.08	\$37.95

- (d) the Employees were paid the following amounts during the Relevant Period:

Period Commencing	Casual Hourly Rate Paid	Public Holiday Rate Paid
01/07/2014 – 20/10/2014	\$20.46	\$20.46
21/10/2014 – 31/01/2015	\$21.08	\$21.08

- (e) The Partnership had contravened provisions of the Award with respect to underpayment of hourly rates of pay and public holiday penalty rates.
 - (f) The Partnership had contravened the *Fair Work Regulations 2009* with respect to record-keeping (time worked records) for casual employees.
7. As a result of the contraventions, the Partnership assessed the total wage underpayments owed to the Employees during the Employment Period to be \$46,082.31 gross.

8. The Partnership acknowledged that it had underpaid the Employees a total of \$46,082.31 gross during the Relevant Period and has rectified the underpayments by paying the Employees the amounts as set out in **Attachment A**.

Contraventions

9. The FWO has determined, and the Partnership admits, that the Partnership contravened Section 45 of the FW Act by failing to comply with the following provisions of the MA;
- (a) Clause 10.4(b) of the MA by failing to pay the Employees the correct casual loading;
 - (b) Clause 28.3 of the MA by failing to pay the Employees the correct rate of pay for work performed on public holidays;
10. The FWO has determined, and the Partnership admits, that the Partnership contravened Regulation 3.33(2) of the *Fair Work Regulations 2009* by failing to keep time worked records for all casual employees.

(Paragraphs 9 and 10 collectively referred to as the “**Contraventions**”)

Commencement of Undertaking

11. This Undertaking comes into effect when:
- (a) the Undertaking is executed by Jusbinder Singh BENNING, Tarlochan Singh BENNING, Balbir Kaur BENNING and Amarjit Kaur BENNING, as Partners within the Partnership; and
 - (b) the FWO accepts the Undertaking so executed.
12. Upon the commencement of this Undertaking the Partnership undertakes to assume the obligations set out below.

Undertakings

13. For the purposes of Section 715 of the FW Act the Partnership, undertakes to:

FWO MyAccount Registration

- (a) 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 and;
 - i. within 28 days of the execution of the Undertaking provide to the FWO the Partnership’s ‘My Account’ registration number.
 - ii. within 28 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a FWO employee through MyAccount, knowledge of the current *Horticulture Award* minimum pay rates and Public Holiday penalty rates.

Future Workplace Relations Compliance

- (b) ensure the Partnership complies at all times and in all respects with the FW Act, *Fair Work Regulations 2009* and the *Horticulture Award 2010* (MA 000028);

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 B**;
- (d) provide a copy of the **Workplace Notice** and provide photographic evidence of its display to the FWO within seven (7) days of the display of the notices;

Apology

- (e) send to the Employees within 14 days of the execution of this Undertaking an apology (**Apology Letter**) in the form of the letter set out in **Attachment C**;
- (f) within seven (7) days of the Apology Letter being sent provide to the FWO a copy of the Apology Letter and proof of it being sent to the Employees;

Self- Audit and Reporting Activity

- (g) have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at the expense of the Company), no earlier than 11 calendar months but no later than 12 calendar months of the execution of this undertaking, an audit of its compliance with Commonwealth workplace laws. Specifically:
 - (i) The Partnership must demonstrate compliance relating to the wages and entitlements of its employees and the Contraventions identified;
 - (ii) The Partnership must provide to the FWO evidence of superannuation contributions to a superannuation fund for the benefit of the employees as this will avoid the Company being required to pay the superannuation guarantee charge under superannuation legislation with respect to employees;
 - (iii) The audit is to be conducted upon a 10% sample of the Partnerships full-time, part-time and casual employees for a period of two (2) full pay periods to be undertaken after the commencement of the eleventh calendar month of the execution of this undertaking but no later than 12 calendar months of the execution of this undertaking; and
 - (iv) The Company must provide a copy of the audit to the FWO within seven (7) days of its completion.

Workplace relations training

- (h) within three months of the execution of this Undertaking, organise and ensure training of all persons engaged by the Partnership who have managerial responsibility for human resources, recruitment or payroll functions (**Training**);
- (i) 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 Horticulture Award;
- (j) ensure the Training is conducted by a suitably qualified person; such person or organisation to be approved by the FWO and paid for by the Partnership;
- (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 seven days of the Training being provided (including the name and position of all attendees and the date on which the Training was attended);
- (m) for a period of two years from the execution of this Undertaking, ensure that training is conducted in the manner prescribed in paragraphs (h) to (l) above in relation to any new or existing employees who, after the commencement of this Undertaking, acquire managerial responsibilities that include human resources, recruitment or payroll functions on behalf of the Partnership;

Donation to Adele Residential Treatment Program

- (n) Make a donation of \$5,000 within 60 days of the Commencement Date to the Adele Residential Treatment Program (Adele Dundas Inc. ABN 30 757 725 055);
- (o) Provide proof of the payments referred to in paragraph (h) above to the FWO within 7 days of it being made.

No Inconsistent Statements

14. The Partnership:

- (i) must not; and
- (ii) must ensure that each of its officers, employees or agents, do not, make any statement, orally or in writing or otherwise imply anything that is inconsistent with admission or acknowledgements contained in this agreement.

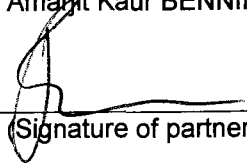
Acknowledgements

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

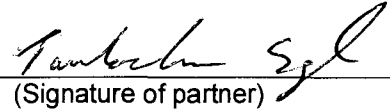
Executed as an undertaking

EXECUTED by Jusbinder Singh BENNING, Tarlochan Singh BENNING, Balbir Kaur BENNING and Amarjit Kaur BENNING, as Partners



(Signature of partner)

Jusbinder Singh BENNING



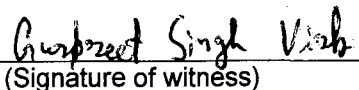
(Signature of partner)

Tarlochan Singh BENNING

23-10-15

(Date)

in the presence of:



(Signature of witness)


GURPREET SINGH VIRK

(Name of witness)

23-10-15

(Date)


in the presence of:



(Signature of witness)

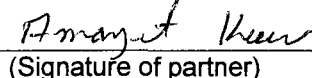
Gurbreet Singh VIRK

(Name of witness)



(Signature of partner)

Balbir Kaur BENNING




(Signature of partner)

Amarjit Kaur BENNING

23-10-15

(Date)

in the presence of:



(Signature of witness)

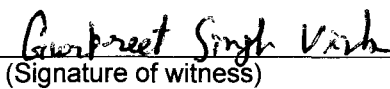
Gurbreet Singh VIRK

(Name of witness)

23-10-15

(Date)

in the presence of:

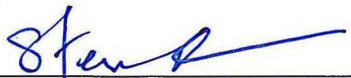


(Signature of witness)

Gurbreet Singh VIRK

(Name of witness)

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



Steven Ronson

2 / 11 / 2015

(Date)

Executive Director Dispute Resolution and
Compliance

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness)

PIA MORGAN

(Name of Witness)

Attachment A – List of Underpayments Rectified

Employee	Amount Paid
	\$404.88
	\$358.56
	\$122.31
	\$38.62
	\$404.88
	\$664.76
	\$720.40
	\$646.72
	\$468.53
	\$105.44
	\$9.77
	\$194.53
	\$147.61
	\$151.62
	\$7.56
	\$151.94
	\$383.05
	\$15.62
	\$95.60
	\$479.87
	\$420.51
	\$609.15
	\$746.88
	\$223.53
	\$591.22
	\$544.25
	\$143.40
	\$286.79
	\$253.05
	\$208.04
	\$248.83
	\$441.96
	\$468.49
	\$147.61
	\$134.96
	\$271.29
	\$778.86
	\$147.61
	\$358.49
	\$362.71
	\$345.84
	\$134.96
	\$836.52
	\$740.95
	\$151.83
	\$231.96
	\$834.34
	\$324.75
	\$898.26
	\$3.15

	\$25.20
	\$134.96
	\$832.64
	\$366.61
	\$778.96
	\$295.23
	\$557.44
	\$147.61
	\$413.32
	\$286.79
	\$215.09
	\$668.01
	\$345.84
	\$446.99
	\$88.57
	\$280.52
	\$891.04
	\$158.11
	\$105.44
	\$282.57
	\$618.20
	\$713.57
	\$151.83
	\$803.40
	\$693.65
	\$5.20
	\$665.10
	\$826.70
	\$147.61
	\$676.90
	\$358.49
	\$261.49
	\$267.81
	\$153.94
	\$337.40
	\$773.83
	\$696.59
	\$655.44
	\$357.31
	\$9.29
	\$274.14
	\$786.93
	\$450.29
	\$409.10
	\$379.37
	\$728.13
	\$286.79
	\$966.16
	\$817.36
	\$643.60
	\$785.53
	\$134.96
	\$286.79
	\$480.38
	\$278.13

		\$956.37
		\$25.20
		\$151.92
		\$3.94
		\$370.56
		\$711.95
		\$622.75
		\$147.61
		\$705.02
		\$583.00
		\$139.18
TOTAL		\$46,082.31

Attachment B – Form of Workplace Notice

Contraventions of the *Fair Work Act 2009* and the *Horticulture Award 2010* by

Jusbinder Singh BENNING, Tarlochan Singh BENNING, Balbir Kaur BENNING and Amarjit Kaur BENNING trading as

K S Benning & Sons

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that K S Benning & Sons contravened the *Fair Work Act 2009*, the *Fair Work Regulations 2009* and the *Horticulture Award 2010* by:

- failing to pay employees the correct casual loading on hours worked;
- failing to pay employees penalty rates for time worked on Public Holidays;
- failing to keep time worked records for all casual employees.

We have 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.

We express our sincere regret and apologise for the conduct which resulted in the contraventions. Furthermore we give 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 K S Benning & Sons and have queries or questions relating to your employment, please contact Mr Jusbinder BENNING on Phone [REDACTED]. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

Jusbinder Singh Benning

Tarlochan Singh Benning

Balbir Kaur Benning

Amarjit Kaur Benning

Attachment C – Letter of Apology

Date>

<Employee Name & Address>

Dear **<Employee Name>**

I am writing to apologise on behalf of Jusbinder Singh BENNING, Tarlochan Singh BENNING, Balbir Kaur BENNING and Amarjit Kaur BENNING, trading as K S Benning & Sons for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (FWO) determined that K S Benning & Sons contravened the *Fair Work Act 2009* by failing to pay its casual employees the following entitlements under the *Horticulture Award 2010* (MA000028):

- casual loading for all hours worked;
- penalty rates for work performed on Public Holidays.

In addition, K S Benning and Sons contravened the *Fair Work Regulations 2009* by failing to keep all time worked records for Casual employees.

The investigation determined that you were affected by the above contraventions.

K S Benning & Sons has taken steps to remedy the contraventions, including by:

- Paying you the amount that you have been underpaid (Insert amount); and
- Committing to future compliance.

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

As part of the Enforceable Undertaking, K S Benning & Sons has committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

K S Benning & Sons expresses sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact Jusbinder BENNING on Phone [REDACTED]

Yours sincerely

[Director/Officer]

K S Benning & Sons