



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Wanyu Huang and Zhuangzhi Zhang

(in partnership trading as Muffin Break 7000
ABN 24 537 272 166)

Section 715 ENFORCEABLE UNDERTAKING

PARTIES

1. This enforceable undertaking (the **Undertaking**) is given to the Fair Work Ombudsman (FWO), for the purposes of section 715 of the *Fair Work Act 2009* (the **FW Act**) by:

(a) Mr Zhuangzhi Zhang (**Mr Zhang**); and

(b) Mrs Wanyu Huang (**Mrs Huang**)

in partnership as W Huang and Z Zhang trading as Muffin Break 7000 (ABN: 24 537 272 166) (the **Partnership**).

BACKGROUND

2. The Partnership commenced operating a Muffin Break franchise (the **business**) in April 2011. The business was located at 51 Murray Street, Hobart, Tasmania, and was sold on 14 June 2016 by the Partnership.
3. Mrs Huang and Mr Zhang admit and agree that, at all material times, they:
 - (a) were in partnership operating the business since April 2011;
 - (b) were ultimately responsible for overall direction, management and supervision of the operations at the business in relation to engaging staff, setting and adjusting pay rates and determining wages and conditions of employment;
 - (c) by reason of the matters set out in subparagraphs (a) and (b) were responsible in a practical sense for ensuring the business complied with its legal obligations.
4. In February 2016 the FWO received two requests for assistance from previous employees of the business (as set out in Attachment B) (the **Employees**), alleging underpayment of base rates of pay and weekend and Public Holiday penalty rates.
5. The FWO conducted an investigation into the allegations and identified contraventions of the *Fast Food Industry Award 2010* (the **Fast Food Award**), the FW Act and the *Fair Work Regulations 2009* (the **FW Regulations**).
6. The Employees were employed on a casual basis. The duties performed by the Employees included, but were not limited to food preparation, cooking food, making coffees, serving customers and cleaning. The Employees' classification under the Fast Food Award was Fast Food Employee (Level 1) during their employment periods.
7. The FWO identified contraventions of the FW Act and Fast Food Award for the period 1 April 2014 to 11 December 2015. The Partnership underpaid the Employees by failing to pay the correct minimum hourly rates of pay. The underpayments arose as a result of underpaying base hourly rates of pay for time worked Monday to Friday as well as penalty rates for Saturdays, Sundays and Public Holidays. Further underpayments arose as a result of the Partnership not paying casual loading.
8. The Partnership also failed to make and keep appropriate records or issue pay slips within one working day of payment to the Employees.

CONTRAVENTIONS

9. The FWO has determined and Mrs Huang and Mr Zhang admit, that they contravened:

- (a) Section 45 of the FW Act, which states a person must not contravene a term of a modern award. Those contraventions were as follows:

Fast Food Award:

- Underpayment of base hourly rate (cl. 17.1);
 - Underpayment of casual loading (cl. 13.2);
 - Underpayment of Saturday penalty rates, (cl. 25.5(a));
 - Underpayment of Sunday penalty rates (cl. 25.5(b)); and
 - Underpayment of Public Holiday penalty rates, (cl. 30.3);
- (b) Subsections 535(1) and 535(2) of the FW Act which prescribes an employer must make, and keep for 7 years, employee records of the kind prescribed by the FW Regulations and must contain information as prescribed by the FW Regulations;
- (c) Subsection 536(1) of the FW Act which states an employer must give a pay slip to each of its employees within one working day of paying an amount to the employee in relation to the performance of work.

COMMENCEMENT OF UNDERTAKING

10. This Undertaking comes into effect when:

- (a) the Undertaking is executed by each of, Mrs Huang and Mr Zhang; and
(b) the FWO accepts the Undertaking so executed.

Upon the commencement of this Undertaking, Mrs Huang and Mr Zhang undertake to assume the obligations set out below.

UNDERTAKINGS

11. Upon the commencement of this Undertaking and for the purposes of section 715 of the FW Act, Mrs Huang and Mr Zhang undertake the following:

Rectify Underpayments

- (a) pay the amounts arising from the Contraventions of **\$31,901.09** and **\$14,826.95** less taxation to the Employees set out in Attachment B via electronic funds transfer according to the payment plan in Attachment C.
- (b) provide a pay slip to the Employees within one business day of each payment being made;
- (c) provide evidence of each payment to the FWO on the same date of the payment being made;

Apology

- (d) within 14 days of the execution of this Undertaking, send a letter of apology (**Apology Letter**) in the form of Attachment A to the Employees and provide evidence of the Apology Letter sent to the Employees to the FWO on the same

date;

Public Notice

- (e) place a public notice in the Saturday edition of the Hobart Mercury (**Public Notice**) within 28 days, but not prior to, the FWO publishing a Media Release on its website in respect of this Undertaking in the terms set out in Attachment D and provide a copy of the Public Notice to the FWO within seven days of the publication;

Reporting

- (f) On the day of execution of this Undertaking and then every six months, report to the FWO whether Mr Zhang and/or Mrs Huang hold the role of director, sole trader or partner, in any entity; and
- (g) In the event that entities in which Mr Zhang and/or Mrs Huang hold the role of director, sole trader or partner engages any workers within two years of the commencement of this Undertaking:
 - (i) inform the FWO within 14 days of the first worker commencing duties (**the Reporting Date**);
 - (ii) ensure that it complies at all times and in all respects within the FW Act, FW Regulations and the relevant Modern Award.
- (h) If any entities in which Mr Zhang and/or Mrs Huang hold the role of director, sole trader or partner, engages any workers within two years of the commencement of this Undertaking, Mr Zhang and/or Mrs Huang undertake the following:

FWO My Account Registration

- (i) within 14 days of the Reporting Date:
 - (i) register with the FWO 'My Account' portal at www.fairwork.gov.au and have completed the profile, minimum pay rates and Award options;
 - (ii) provide to the FWO the 'My Account' Customer Registration Number (CRN); and
 - (iii) In the event that the 'My Account' portal is updated or replaced, the above actions must be completed using the new portal. If, due to changes in functionality, any of the actions cannot be completed, the FWO will advise on alternative actions to be completed and the timelines that must be adhered to.
- (j) within 21 days of the execution of Reporting Date, subscribe to the following and provide evidence to the FWO of the subscriptions:
 - (i) 'General information' email alerts from the FWO relating to the applicable Modern Award available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates>; and
 - (ii) FWO's Employer newsletter for the relevant State and industries, 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 updates;
 - d. working hours and breaks; and
 - e. annual leave/sick leave.
- (k) within 21 days of the Reporting date, at a mutually agreed time and location, demonstrate to a FWO Officer by using the 'Pay Calculator' in 'My Account' via www.fairwork.gov.au the applicable Modern Award minimum rates of pay for casual, part time and full time employees for all Levels for work performed:
 - (i) Monday to Friday;
 - (ii) Saturday;
 - (iii) Sunday; and
 - (iv) Public Holidays;

Self-audits, Reporting and Future Workplace Relations Compliance

- (l) if any entities in which Mrs Huang or Mr Zhang hold the role of director, sole trader or partner, employs employees within two years of the commencement of this Undertaking:
 - (i) have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at the expense of the Business and/or Mrs Huang and Mr Zhang) an audit of the Business's and/or Mr Huang's and Mr Zhang's compliance with Commonwealth workplace laws six months after the reporting date Reporting Date. Specifically:
 - 2. compliance must be demonstrated relating to the wages and entitlements of its employees and any Contraventions identified;
 - 3. the audit is to be of the first full pay period after sixth and the twelfth month of the engagement of the first employee and must be completed within 28 days; and
 - 4. a copy of the audit must be supplied to the FWO within seven days of its completion.
- (m) take all reasonable steps to ensure that any entities in which Mrs Huang or Mr Zhang hold the role of director, sole trader or partner, comply at all times, and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the relevant Modern Award and the FW Act, by developing systems and processes to promote ongoing compliance with those requirements. In particular, develop and implement demonstrable systems and processes to:
 - (i) ensure employees receive the correct minimum rates of pay and entitlements;
 - (ii) keep accurate and complete records to ensure employees receive their correct wages and entitlements;
 - (iii) issue pay slips within one working day of paying an amount to each employee;
- (n) provide to the FWO within 60 days of the Reporting date details of systems and processes implemented in satisfaction of clause 11(m) above.

NO INCONSISTENT STATEMENTS

12. The Business and Mrs Huang and Mr Zhang:

- (a) must not; and
- (b) 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

13. Mrs Huang and Mr Zhang acknowledge that:

- (a) The FWO may:
 - (i) make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
 - (ii) release a copy of this Undertaking (and any of the Attachments hereto) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - (iii) issue a media release in relation to this Undertaking;
 - (iv) from time to time, publicly refer to the Undertaking (and any of the Attachments hereto) and its terms; and
 - (v) rely upon the admissions made by Mrs Huang and Mr Zhang set out in paragraph 11 above in respect of decision making concerning any future non-compliance with workplace relations obligations.
- (b) 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 herein; and
- (c) 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.

14. If the Business, Mrs Huang and Mr Zhang contravene any of the terms of this Enforceable Undertaking:

- (a) 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
- (b) This Enforceable Undertaking may be provided to the Court as evidence of the admissions made by Mrs Huang and Mr Zhang in paragraph 9 above, and also in respect of the question of costs.

Executed as an Undertaking

EXECUTED by Wanyu Huang

Wanyu
(Signature)

05/09/2016
(Date)

in the presence of:

[Signature]
(Signature of witness)

in the presence of:

Juan LIU
(Name of witness)

EXECUTED by Zhuangzhi Zhang

[Signature]
(Signature)

05/09/2016
(Date)

in the presence of:

[Signature]
(Signature of witness)

in the presence of:

Juan LIU
(Name of witness)

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

[Signature]

Steven Ronson
Executive Director
Dispute Resolution and Compliance
Delegate for the FAIR WORK OMBUDSMAN

14/9/2016
(Date)

in the presence of:

[Signature]
(Signature of witness)

14/09/16.
(Name of Witness)

Attachment A – Letter of Apology

FORM OF APOLOGY LETTER TO AFFECTED EMPLOYEE

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of W Huang and Z Zhang (ABN: 24 537 272 166) in partnership trading as Muffin Break 7000 (the **Business**) for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that the Business had contravened the *Fair Work Act 2009*, *Fair Work Regulations* and *Restaurant Award 2010*:

- failing to pay your correct minimum rate of pay for time worked Monday to Friday;
- failing to pay your correct casual loading for time worked;
- failing to pay your correct penalty rates for time worked on Saturdays;
- failing to pay your correct penalty rates for time worked on Sundays;
- failing to pay your correct penalty rates for time worked on Public Holidays;
- failing to make and keep appropriate employee records;
- failing to provide you with pay slips within one working day of payment of wages;

Regrettably, the investigation determined that you were affected by the above contraventions.

The Business is taking steps to remedy the contraventions, including by rectifying the amount that you have been underpaid. You will have received the first payment on 30 June 2016.

Further payments will be made to you on:

- 30 August 2016
- 30 September 2016
- 31 October 2016
- 30 November 2016
- 30 December 2016
- 31 January 2017

You will be provided with payment advice regarding each payment.

The Business 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 with the FWO, a copy of which will be available from the FWO website at www.fairwork.gov.au. As

part of the Enforceable Undertaking we have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

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

Should you have any questions, please contact me on [REDACTED]

Yours sincerely,

Mrs Wanyu Huang and Mr Zhuangzhi Zhang
in partnership trading as Muffin Break 7000 (ABN: 24 537 272 166)

Attachment B – The Employees

Employee	Employee Name	Gross Amount
Employee A	[REDACTED]	\$31,901.09
Employee B	[REDACTED]	\$14,826.95

Attachment C – Payment Plan

Payment date	Employee	Net Amount	Gross Amount
Already paid prior to commencement of the Undertakings	Employee A	\$2500.00	\$4,158.32
	Employee B	\$2500.00	\$3244.80
30 August 2016	Employee A	\$1619.60	\$2792.88
	Employee B	\$813.67	\$1199.91
30 September 2016	Employee A	\$2000	\$3326.65
	Employee B	\$1000	\$1297.78
31 October 2016	Employee A	\$2000	\$3326.65
	Employee B	\$1000	\$1297.78
30 November 2016	Employee A	\$2000	\$3326.65
	Employee B	\$2000	\$2595.56
30 December 2016	Employee A	\$2000	\$3326.65
	Employee B	\$2000	\$2595.56
31 January 2017	Employee A	\$7000	\$11643.29
	Employee B	\$2000	\$2595.56

FORM OF PUBLIC NOTICE

Contravention of *Fair Work Act 2009* by Wanyu Huang and Zhuangzhi Zhang (in partnership) trading as Muffin Break 7000 (ABN: 24 537 272 166).

We refer to the investigation conducted by the Commonwealth Government of Australia's Office of the Fair Work Ombudsman (FWO) into allegations that Wanyu Huang and Zhuangzhi Zhang in partnership trading as Muffin Break 7000 (ABN: 24 537 272 166) contravened the *Fair Work Act 2009* by:

- failing to pay your correct minimum rate of pay for time worked Monday to Friday;
- failing to pay your correct casual loading for time worked;
- failing to pay your correct penalty rates for time worked on Saturdays;
- failing to pay your correct penalty rates for time worked on Sundays;
- failing to pay your correct penalty rates for time worked on Public Holidays;
- failing to make and keep appropriate employee records;
- failing to provide you with pay slips within one working day of payment of wages;

Mrs Huang and Mr Zhang have formally admitted to the 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 by rectifying the underpayment of AUD \$47,914.72 owed to two employees of Chinese nationality working in Australia on a student visa and post graduate visa, who had worked with the Partnership (located in Tasmania, Australia).

Mrs Huang and Mr Zhang express their sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, they give a commitment that such conduct will not occur again and that they will comply with all requirements of the Commonwealth of Australia workplace relations laws in the future.

If you worked for the Partnership and have queries or questions relating to your employment, please contact Mrs Wanyu Huang on [REDACTED]. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au.