

Media Release

7-Eleven franchisee admits to doctored records, underpaying workers, to cut costs

A 7-Eleven store in **Melbourne's CBD** has admitted deliberately short-changing its staff by tens of thousands of dollars and doctoring its employment records to cut costs.

The store owner has also revealed that he learned how to manipulate the payroll system from another franchisee at a 7-Eleven conference.

The admissions come after the Fair Work Ombudsman made an unannounced site visit to the convenience store on the evening of Saturday, September 13 last year.

A team of Fair Work inspectors made spot checks of 20 7-Eleven stores across **Melbourne, Sydney** and **Brisbane** during the course of the night.

7-Eleven stores were targeted for attention because of concerns about systemic underpayment of wages and entitlements and false-record keeping practices.

Fair Work inspectors interviewed staff, took photographs where appropriate, collected records and served a number of Notices to Produce (NTPs) on employers requiring them to produce records and documents for analysis.

An operational decision was taken to make the visits at night and on a weekend to allow inspectors to make observations and collect evidence which may not have been available during normal daytime business hours.

Fair Work Ombudsman Natalie James says the Agency is mindful 7-Eleven stores employ many young, potentially vulnerable employees, including international students from non-English-speaking backgrounds.

Ms James says the Fair Work Ombudsman has expressed concern to 7-Eleven's head office about the behavior of some employers, saying the Agency expects franchisors to take more responsibility and pay greater attention to workplace compliance by its franchisees.

One 7-Eleven operator, Kumar Sandarakumar, who runs the shop at 237 **Exhibition Street** in the Melbourne CBD, has confirmed he deliberately breached federal workplace laws in the face of increasing financial pressure.

Mr Sandarakumar knowingly short-changed his employees by paying them for fewer hours than they actually worked.

For example, an employee who worked 20 hours in one pay period was only paid for seven hours work. Another who worked 14 hours was only paid for eight.

Calculations by the Fair Work Ombudsman have revealed that 12 of the store's 15 employees were underpaid more than \$30,000 in the 12 months to October last year.

The largest individual underpayment was \$7981.

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Additionally, Mr Sandarakumar admitted to producing false and misleading records by manipulating the data he entered into the 7-Eleven head office payroll system – something he learned from another store owner at a 7-Eleven conference.

Ms James says Mr Sandarakumar has co-operated with an investigation, agreed to reimburse the employees all outstanding entitlements and put processes and systems in place to ensure he is compliant with workplace laws in future.

Mr Sandarakumar and his company PSP International Trading Pty Ltd have signed an Enforceable Undertaking (EU) with the Fair Work Ombudsman as an alternative to litigation.

A copy of the EU is available on the website at www.fairwork.gov.au

In February, the Fair Work Ombudsman announced it had commenced legal proceedings against the operator of a former 7-Eleven store at 243 Edwards Street, in **Brisbane**.

It is alleged Queensland businessman Mubin Ul Haider and his company Haider Enterprises Pty Ltd underpaid an overseas worker from Nepal more than \$21,000 in the 13 months to February last year.

Ms James says 7-Eleven stores have been on the Fair Work Ombudsman's radar for some years.

In July, 2009, the Fair Work Ombudsman requested five 7-Eleven stores in **Melbourne** reimburse 88 of their employees a total of \$112,000 after the underpayments were uncovered following a series of random, unannounced visits to stores across the CBD.

A sixth store was instructed to credit almost 1000 hours of annual leave back to 12 staff who were not accruing the entitlement, when they should have been.

In October, 2009, the Fair Work Ombudsman announced a joint campaign with the 7-Eleven franchisor to audit dozens of franchisees throughout Victoria following ongoing concerns about stores not paying employees for some hours worked, non-payment of weekend and night penalty rates and non-compliance with record-keeping and pay-slip obligations.

The results were announced on September 17, 2010, with 30 per cent of 56 stores audited found to be non-compliant. This campaign identified underpayments totalling \$32,300 for 62 employees.

On January 20, 2010, the Fair Work Ombudsman announced legal proceedings against a company called Bosen Pty Ltd, which previously owned 7-Eleven stores in **Geelong** and **South Yarra** (Victoria), alleging that four workers had been underpaid a total of \$85,400 over four years between 2005 and 2009.

In April, 2011, the Melbourne Magistrate's Court had issued a penalty totalling \$150,000 against Bosen and its directors Hao Chen and Zue Jing.

Ms James says this latest finding is a timely reminder to 7-Eleven business operators of the need to ensure they take the time to understand and comply with the laws applicable to their workplace.

She encouraged employers who had any uncertainty about whether their workplace practices were appropriate or not to visit the website or call the Fair Work Infoline on **13 13 94** for advice.

Online tools also include pay rate calculators to assist employers determine the correct Award and minimum wages for employees and free templates for pay slips and time-and-wages records.

The Fair Work Ombudsman established an Overseas Workers' Team in July, 2012 in recognition that overseas workers can be vulnerable to exploitation or require specialist assistance.

Information on the Fair Work Ombudsman website is available in 27 languages. An interpreter service is available on **13 14 50**.

Media inquiries:

Fair Work Infoline: 13 13 94

www.fairwork.gov.au

 **[fairwork_gov_au](https://twitter.com/fairwork_gov_au)**



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

PSP International Trading Pty Ltd (ACN: 136 692 530)

and

Kumar Sundarakumar

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Commonwealth of Australia (as represented by the Fair Work Ombudsman (**FWO**)), pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**), by:
 - (a) PSP International Trading Pty Ltd (**PSP International**); and
 - (b) Kumar Sundarakumar (**Mr Sundarakumar**).

Background

2. PSP International operate a 7 Eleven convenience store franchise located at 237 Exhibition Street, Melbourne, Victoria.
3. Mr Sundarakumar admits and agrees that, at all material times, he:
 - (a) was sole director of PSP International, having been so since 21 April 2009;
 - (b) was ultimately responsible for the overall direction, management and supervision of 7 Eleven 237 Exhibition Street in relation to engaging staff and 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) by reason of the matters set out in subparagraphs (a) and (c) was responsible in a practical sense for ensuring PSP International complied with its legal obligations.
4. on 13 September 2014, the FWO conducted a site visit to 7 Eleven, 237 Exhibition Street Melbourne, as part of a wider activity to monitor compliance of a selection of 7 Eleven stores located in Melbourne, Brisbane and Sydney. During this visit a Notice to Produce Records or Documents (the **Notice**) was served on PSP International requesting employment records for all employees for a one month period between 13 August 2014 and 13 September 2014.
5. in response to the NTP, Mr Sundarakumar made admissions to the FWO that he was not paying all employees for all hours worked. Mr Sundarakumar committed to co-operating with the FWO investigation.
6. as a result of information provided to the FWO in response to the Notice, the FWO commenced an investigation which included an audit (the **Audit**) of all employees of PSP International working in the period from 30 October 2013 until 30 October 2014 (the **Audit Period**).
7. the Audit assessed employment records provided by PSP International for the following employees;
 - (a) [REDACTED]
 - (b) [REDACTED]

- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]
- (f) [REDACTED]
- (g) [REDACTED]
- (h) [REDACTED]
- (i) [REDACTED]
- (j) [REDACTED]
- (k) [REDACTED]
- (l) [REDACTED]
- (m) [REDACTED]
- (n) [REDACTED]
- (o) [REDACTED]
- (p) [REDACTED]
- (q) [REDACTED] – (collectively; **The Employees**)

8. during the Audit Period, the Employees' terms and conditions of employment were governed by the *General Retail Industry Award 2010* (the **Retail Award**). Transitional rates of pay in the Award were calculated by reference to the *Shop, Distributive and Allied Employees Association – Victorian Shops Interim Award 2000* (the **Transitional Award**).

9. with the exception of [REDACTED], who was employed on a full time basis, the remaining Employees were employed on a part-time basis. Their duties included the basic functions of retail sales including sale of goods, receipt of monies, operation of a cash register and preparing goods for sale. The Employees' classification during the Audit Period was Retail Employee Level 1. [REDACTED], [REDACTED], [REDACTED] and [REDACTED] were employed as shift workers during the Audit Period.

10. as a result of the Audit, the FWO identified underpayments to 12 employees (collectively; the **Affected Employees**). The underpayments occurred because PSP International contravened provisions of the Retail Award and the FW Act with respect to minimum rates of pay, shiftwork rates, Saturday penalty rates, Sunday penalty rates, Public Holiday penalty rates and overtime rates.

11. the total underpayment to the Affected Employees during the Audit Period is \$30,634.91 (gross), attributable to each of the Affected Employees as follows;

- (a) [REDACTED] \$753.81
- (b) [REDACTED] \$5,957.34
- (c) [REDACTED] \$5,549.06

- (d) [REDACTED] \$346.99
- (e) [REDACTED] \$558.23
- (f) [REDACTED] \$5,369.01
- (g) [REDACTED] \$1,354.26
- (h) [REDACTED] \$1,556.14
- (i) [REDACTED] \$175.04
- (j) [REDACTED] \$7,981.18
- (k) [REDACTED] \$574.16
- (l) [REDACTED] \$459.69

Contraventions

12. The FWO has determined, and PSP International and Mr Sundarakumar admit, that in respect of the Audit, they contravened:
- (a) section 45 of the FW Act, by failing to comply with the following provisions of the Retail Award:
 - (i) Clause 17 and Schedule A by failing to pay the Affected Employees the minimum base rates of pay for all hours worked
 - (ii) Clause 29.4 (a) and Schedule A by failing to pay the Affected Employees the applicable rate of pay for all hours worked between 6pm and 11pm Monday to Friday
 - (iii) Clause 29.4 (b) and Schedule A by failing to pay the Affected Employees the applicable rate of pay for all hours worked on Saturdays
 - (iv) Clause 29.4 (c) and Schedule A by failing to pay the Affected Employees the applicable rate of pay for all hours worked on Sundays
 - (v) Clause 29.4 (d) and Schedule A by failing to pay the Affected Employees the applicable rate of pay for all hours worked on Public Holidays
 - (vi) Section 29.2 and Schedule A by failing to pay the Affected Employees overtime rates for hours worked outside the span of hours, or roster conditions specified in the Award.
 - (vii) Section 30.3 and Schedule A by failing to pay the Affected Employees who were employed as shift workers shiftwork rates for shifts starting on or after 6pm on one day, and before 5.00am on the following day.
 - (b) Regulation 3.44 (1) of the FW Regulations by knowingly keeping a record that is false or misleading.
13. The FWO has determined, and Mr Sundarakumar admits, that by reason of the matters set out in paragraph 3 above, he was involved in the Contraventions pursuant to section 550(2)(c) of the FW Act.

Commencement of Undertaking

14. This Undertaking comes into effect when:
- (a) The Undertaking is executed by PSP International and Mr Sundarakumar; and
 - (b) The FWO accepts the Undertaking so executed.
15. upon the commencement of this Undertaking, PSP International and Mr Sundarakumar undertake to assume the obligations set out below.

Undertakings

16. For the purposes of section 715 of the FW Act PSP International and Mr Sundarakumar give the following undertakings:

Rectify the Underpayments

- (a) by no later than 30 April 2015 pay \$5778.32 (gross) to the following Affected Employees;
- | | | |
|-------|----------------------|------------|
| i. | ████████████████████ | \$753.81 |
| ii. | ████████████████████ | \$346.99 |
| iii. | ████████████████████ | |
| | ████████████████ | \$558.23 |
| iv. | ████████████████████ | \$1,354.26 |
| v. | ████████████████████ | \$1,556.14 |
| vi. | ████████████████████ | \$175.04 |
| vii. | ████████████████████ | \$574.16 |
| viii. | ████████████████████ | \$459.69 |
- (b) by no later than 30 September 2015 pay \$24,856.59 (gross) to the following Affected Employees in accordance with the Payment Schedule set out in Attachment C (**Payment Schedule**) of this Undertaking;
- | | |
|------|----------------------|
| i. | ████████████████████ |
| ii. | ████████████████████ |
| iii. | ████████████████████ |
| iv. | ████████████████████ |
- (c) within 7 days of each payment being made to an Employee, provide reasonable evidence to the FWO that the payment has been made.

Future workplace relations compliance

- (d) develop systems and processes to promote ongoing compliance with applicable Commonwealth workplace laws and instruments, including the

Retail Award and the FW Act; and

- (e) complete all education courses designed for employers available on the FWO online learning centre from time to time via www.fairwork.gov.au or its successors.
- (f) provide to the FWO, within 28 days of the execution of the Undertaking:
 - i. written details of the systems and processes implemented in satisfaction of the Undertaking in subparagraph 16(c); and
 - ii. documentary evidence that the undertaking in subparagraph 16(d) above has been complied with.

Part time agreements

- (g) in relation to current and future employees of PSP International who are employed on a part time basis:
 - i. ensure that all part time employees have in place a written part time work agreement that satisfies the requirements as provided for under Clause 12.2 of the Retail Award;
 - ii. within 60 days of the execution of the undertaking, provide to the FWO examples of part time work agreements for five (5) part time employees.

Self- audit and reporting

- (h) cause to have an audit performed by an external accounting professional (e.g Certified Practising Accountant), audit specialist or employment law specialist, at PSP International's expense, an audit of PSP International's compliance with Commonwealth workplace laws and instruments, including but not limited to, the Retail Award and the FW Act, relating to pay and conditions of employment of all employees of PSP International, for the period 1 July 2015 to 30 June 2016 (the **Self Audit**);
- (i) by no later than 1 October 2016 provide the FWO with details of the methodology used to conduct the audit and a copy of the certified audit report;
- (j) in the event the Self Audit discloses contravention of any applicable Commonwealth workplace laws or instruments by PSP International, rectify all such contraventions by 31 October 2016; and
- (k) provide evidence of rectification of all contraventions disclosed by the Self Audit to the FWO within 14 days of rectification.

Workplace notice

- (l) cause to be displayed at 7 Eleven, 237 Exhibition Street a notice in the terms set out in Attachment A to this Undertaking (**Workplace Notice**) printed in at least size 20 font on A3 size paper
 - (i) for a period of at least 28 days;
 - (ii) clearly displayed in a location to which all employees who work at 7 Eleven, 237 Exhibition Street have access; and

- (iii) in a manner which is reasonably capable of drawing the Workplace Notice to the attention of all employees who work at 7 Eleven, 237 Exhibition Street (e.g. by placement on a staff noticeboard).

Apology

- (m) within 14 days of the commencement of this Undertaking, provide a letter of apology to each of the Employees affected by the contraventions in the form set out in Attachment B to this Undertaking (**Letter of Apology**);
- (n) provide a Letter of Apology to any other affected Employees disclosed by the Audit, within 14 days of such disclosure, in the form set out in Attachment B to this Undertaking; and
- (o) provide reasonable evidence to the FWO of delivery of the Letters of Apology within 7 days of the each Letter of Apology being sent.

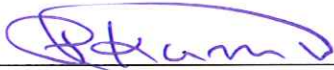
Acknowledgements

17. PSP International and Mr Sundarakumar acknowledge that;

- (p) 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);
- (q) the FWO may release a copy of this Undertaking pursuant to any relevant request under the Freedom of Information Act 1982 (Cth);
- (r) 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;
- (s) 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 PSP International and Mr Sundarakumar;
- (t) 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;
- (u) if the FWO considers that PSP International and Mr Sundarakumar 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;
- (v) consistent with section 715(3) of the FW Act, PSP International and Mr Sundarakumar may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (w) PSP International and Mr Sundarakumar must not, and must ensure that their respective employees or agents do not, make any statement, orally or in writing, or otherwise, which reasonably conveys or implies anything inconsistent with the acknowledgements contained in this Undertaking.

Executed as an undertaking

EXECUTED by **PSP International Trading Pty Ltd** in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

(Signature of director/company secretary)

KUMAR, SUNDARAKUMAR

(Name of director)

(Name of director/company secretary)

12-03-2005

(Date)

(Date)

in the presence of:

in the presence of:



(Signature of witness)

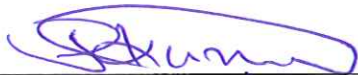
(Signature of witness)

KERLYN SHACKLOCK

(Name of witness)

(Name of witness)

EXECUTED by **Kumar Sundarakumar**:



(Signature of Kumar Sundarakumar)

KUMAR SUNDARAKUMAR 12-03-15

(Date)

in the presence of:

in the presence of:




(Signature of witness)

KERLYN SHACKLOCK

(Name of witness)

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

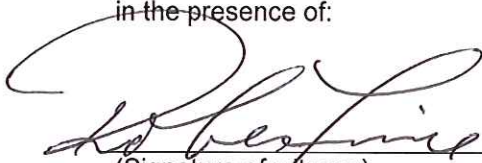


pro (Fair Work Ombudsman)

13 MARCH 2015

(Date)

in the presence of:



(Signature of witness)

ROBERT PRICE

(Name of Witness)

Attachment A – Form of Workplace Notice

Contraventions of the *Fair Work Act 2009* by

PSP International Trading Pty Ltd trading as 7 Eleven, 237 Exhibition Street, Melbourne

We refer to an audit conducted by the Office of the Fair Work Ombudsman (FWO) of the time and wage records of PSP International Pty Ltd (PSP International) for the 30 October 2013 to 30 October 2014.

PSP International owns and operates the 7 Eleven convenience store located at 237 Exhibition Street, Melbourne Victoria.

The FWO has found that PSP International contravened section 45 of the FW Act by failing to comply with the following provisions of the *General Retail Industry Award 2010* in relation to the employment of 12 employees:

- Clause 17 and Schedule A by failing to pay minimum base rates of pay for all hours worked
- Clause 29.4 (a) and Schedule A by failing to pay applicable penalty rate for all hours worked between 6pm and 11pm Monday to Friday
- Clause 29.4 (b) and Schedule A by failing to pay the applicable penalty rate for all hours worked on Saturdays
- Clause 29.4 (c) and Schedule A by failing to pay the applicable penalty rate for all hours worked on Sundays
- Clause 29.4 (d) and Schedule A by failing to pay the applicable penalty rate for all hours worked on Public Holidays
- Section 29.2 and Schedule A by failing to pay overtime rates for hours worked outside the span of hours, or roster conditions specified in the Award.
- Section 30.3 and Schedule A by failing to pay employees who were employed as shift workers the shiftwork rates for shifts starting on or after 6pm on one day, and before 5.30am on the following day.

The FWO also found that PSP International deliberately paid some employees for fewer hours than they actually worked for a 12 month period commencing September 2013. PSP International has formally admitted to the FWO that these contraventions occurred, has undertaken to rectify the underpayments to employees affected and has entered into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au) committing to a number of measures to ensure that there are no further contraventions, including changing workplace processes and practices.

PSP International expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, PSP International gives a commitment that such conduct will not occur again and that it will comply with all requirements of Commonwealth workplace relations laws and instruments in the future.

If you worked for PSP International and have queries or questions relating to your employment, please contact Mr Kumar Sundarakumar.

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 the terms and conditions of the Retail Award.

Attachment B – Letter of Apology

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of PSP International Trading Pty Ltd, trading as 7 Eleven, 237 Exhibition Street, Melbourne, for non-compliance with Commonwealth Workplace laws.

A recent Audit by the Office of the Fair Work Ombudsman (**FWO**) determined that PSP International Trading Pty Ltd contravened the *Fair Work Act 2009* by failing to provide the correct rates of pay and penalty rates under the *General Retail Industry Award 2010* for all hours worked by employees at 7 Eleven 237 Exhibition Street, Melbourne.

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

We are working with the FWO to remedy the contraventions, including by rectifying the amount that you were underpaid, undertaking a broader audit of our compliance with Commonwealth workplace laws, and taking steps to ensure our future compliance with workplace laws.

We have formally admitted to the FWO that PSP International Trading Pty Ltd 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 is available from the FWO website at www.fairwork.gov.au.

We express our sincere regret and apologise to you for failing to comply with our lawful obligations.

Should you have any questions, please contact **<PSP International Trading Pty Ltd contact details>**.

Yours sincerely

Mr Kumar Sundarakumar

Director – PSP International Trading Pty Ltd.

Attachment C – Payment Schedule

| | by no later than 30-May 2015 | by no later than 30-Jun 2015 | by no later than 30-Jul 2015 | by no later than 30-Aug 2015 | by no later than 30-Sep 2015 |
|--------------|------------------------------------|------------------------------------|------------------------------------|------------------------------------|------------------------------------|
| ██████████ | \$1,191.47 | \$1,191.47 | \$1,191.47 | \$1,191.47 | \$1,191.47 |
| ██████████ | \$1,109.81 | \$1,109.81 | \$1,109.81 | \$1,109.81 | \$1,109.81 |
| ██████████ | \$1,073.80 | \$1,073.80 | \$1,073.80 | \$1,073.80 | \$1,073.80 |
| ██████████ | \$1,596.24 | \$1,596.24 | \$1,596.24 | \$1,596.24 | \$1,596.24 |
| Total | \$4,971.32 | \$4,971.32 | \$4,971.32 | \$4,971.32 | \$4,971.32 |



Australian Government

Fair Work OMBUDSMAN

Media Release

31 Aug, 2015

7-Eleven operator faces Court over underpayments

The Fair Work Ombudsman has commenced legal proceedings against a 7-Eleven retail store in **Sydney** which allegedly underpaid two migrant employees almost \$50,000 and created erroneous records for the workers.

Facing the Federal Circuit Court is Harmandeep Singh Sarkaria, who owns and operates the 7-Eleven outlet at 354 Flushcombe Road in **Blacktown**. Also facing court is Mr Sarkaria's company, Amritsaria Four Pty Ltd.

Mr Sarkaria and his company allegedly underpaid two console operators a total of \$49,426.

Most of the alleged underpayment relates to a migrant employee from Pakistan aged in his late 30s, allegedly short-changed a total of \$43,633 between March, 2012 and March, 2014.

The other employee, also from Pakistan and aged in his mid-20s, was on an international student visa when he started working at the store. Now a permanent resident of Australia, he was also allegedly underpaid \$5793 between August, 2013 and March, 2014.

The Fair Work Ombudsman claims the alleged underpayments are the result of the workers often being paid rates equivalent to \$10 an hour.

The employees were entitled to receive normal hourly rates of more \$22 an hour and up to \$29.27 an hour for some weekend, public holiday and overtime shifts.

Amritsaria Four Pty Ltd allegedly made erroneous entries into the 7-Eleven head office payroll system that significantly understated the hours the employees had worked.

The company also allegedly routinely made entries that the employees had worked only 10 hours a week, despite them working significantly more hours.

The Fair Work Ombudsman claims the erroneous entries gave the appearance that the employees were paid about \$25 an hour.

Fair Work inspectors investigating the underpayments were allegedly provided with false time-and-wages sheets that understated the hours the employees had worked.

Fair Work Ombudsman Natalie James says a decision was made to commence legal action because of the seriousness of the alleged breaches and the involvement of vulnerable migrant employees.

Mr Sarkaria faces maximum penalties of between \$5100 and \$10,200 per breach and his company \$25,500 to \$51,000 per breach.

He has been co-operating with the Fair Work Ombudsman in relation to rectifying the alleged underpayments.

Employers and employees seeking assistance can visit www.fairwork.gov.au or contact the Fair Work Infoline on **13 13 94**. An interpreter service is available by calling **13 14 50**.

Media queries: Ryan Pedler 0411 430 902, ryan.pedler@fwo.gov.au

NOTICE OF FILING

This document was lodged electronically in the FEDERAL CIRCUIT COURT OF AUSTRALIA (FCC) on 12/06/2015 9:13:36 AM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Statement of claim
File Number: SYG1601/2015
File Title: Fair Work Ombudsman v Amritsaria Four Pty Ltd ACN 151 620 245 & Anor
Registry: SYDNEY REGISTRY- FEDERAL CIRCUIT COURT - FEDERAL LAW



Dated: 12/06/2015 4:39:44 PM AEST

A handwritten signature in blue ink that reads 'Adele Byrne'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



IN THE FEDERAL CIRCUIT COURT OF AUSTRALIA
REGISTRY: SYDNEY
FAIR WORK DIVISION

File number:

FAIR WORK OMBUDSMAN

Applicant

AMRITSARIA FOUR PTY LTD

(ACN 151 620 245)

First Respondent

HARMANDEEP SINGH SARKARIA

Second Respondent

STATEMENT OF CLAIM

THE APPLICANT

1. The Applicant is and was at all relevant times:
 - (a) a statutory appointee of the Commonwealth appointed by the Governor-General by written instrument pursuant to Division 2 of Part 5-2 of the *Fair Work Act 2009* (Cth) (**FW Act**);
 - (b) a Fair Work Inspector pursuant to section 701 of the FW Act; and
 - (c) a person with standing to bring these proceedings pursuant to subsection 539(2) of the FW Act.

THE FIRST RESPONDENT

2. The First Respondent, Amritsaria Four Pty Ltd, is and was at all relevant times:
 - (a) from 21 June 2011, a company incorporated under the *Corporations Act 2001* (Cth);
 - (b) able to be sued in and by its corporate name;

Filed on behalf of The Applicant
Prepared by Teresa Dwight Lawyer's code _____
Name of law firm Fair Work Ombudsman
Address for service in Australia Level 25, 400 George Street, Brisbane
State QLD Postcode 4000
Email teresa.dwight@fwo.gov.au
Tel 07 3404 4708 Fax _____ Attention Teresa Dwight

- (c) a constitutional corporation within the meaning of section 12 of the FW Act; and
 - (d) a national system employer within the meaning of section 14 of the FW Act.
3. At all relevant times, the First Respondent operated a 7-Eleven convenience store and service station from premises at 354 Flushcombe Road, Blacktown, in the State of New South Wales (**Blacktown Store**).
 4. On or around 30 August 2011, the First Respondent entered a franchise agreement with 7-Eleven Pty Ltd ACN 005 244 986 (**7-Eleven Head Office**) to operate the Blacktown Store.

THE SECOND RESPONDENT

5. The Second Respondent, Harmandeep Singh Sarkaria, is and was at all relevant times:
 - (a) the sole director and shareholder of the First Respondent;
 - (b) the secretary of the First Respondent;
 - (c) responsible for the overall direction, management and supervision of the First Respondent's operations in relation to setting pay rates, wages and conditions of the First Respondent's employees and maintaining employee records;
 - (d) responsible for processing payments to employees, which was done by entering data (including the hours worked by each employee) on a weekly basis into the electronic payroll system of 7-Eleven Head Office (**Payroll Portal**), so that 7-Eleven Head Office could transfer funds to each employee by electronic funds transfer;
 - (e) responsible for making decisions on behalf of the First Respondent regarding the terms and conditions upon which persons would be employed by the First Respondent, the work to be performed and the time, method and manner of payments to employees;
 - (f) responsible for ensuring that the First Respondent complied with its legal obligations under the FW Act; and
 - (g) by reason of subsection 793(2) of the FW Act, a person whose state of mind was the state of mind of the First Respondent in respect of conduct engaged in within the scope of his actual or apparent authority.

THE EMPLOYEES

6. During the period from 26 March 2012 to 28 March 2014 (**Employment Period**), the First Respondent employed the following employees in the Blacktown Store:
 - (a) Aqeel Ahmed (**Mr Ahmed**); and
 - (b) Muhammad Imran Yousaf (**Mr Yousaf**);(collectively, the **Employees**).
7. At all relevant times, Mr Ahmed was employed by the First Respondent:
 - (a) during the period from at least 26 March 2012 to 28 March 2014 (**Ahmed Employment Period**);
 - (b) on a casual basis;
 - (c) as a console operator; and
 - (d) performing duties in the Blacktown Store which included serving customers, handling cash, using the cash register and console, packing and refilling stock and refilling fuel pumps.
8. During the Ahmed Employment Period, Mr Ahmed was paid by:
 - (a) electronic funds transfer into his nominated bank account directly from 7-Eleven Head Office in accordance with the number of hours entered into the Payroll Portal by the Second Respondent; and
 - (b) cash (to a total of \$5,210.00) received from the Second Respondent (on behalf of the First Respondent), with payments made on various occasions, irregularly and not by reference to any specific pay period or entitlement (**Cash Payments**).
9. At all relevant times, Mr Yousaf was employed by the First Respondent:
 - (a) during the period from at least 11 August 2013 to 28 March 2014 (**Yousaf Employment Period**);
 - (b) on a casual basis;
 - (c) as a console operator; and
 - (d) performing duties in the Blacktown Store which included serving customers, handling cash, using the cash register and console, packing and refilling stock and refilling fuel pumps.
10. During the Yousaf Employment Period, Mr Yousaf was paid by electronic funds transfer into his nominated bank account directly from 7-Eleven Head Office in

accordance with the number of hours entered into the Payroll Portal by the Second Respondent.

11. At all relevant times during the Employment Period, the FW Act applied to the First Respondent in respect of the employment of the Employees.

APPLICABLE INDUSTRIAL INSTRUMENT

12. At all relevant times during the Employment Period, the First Respondent was bound by the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* (**Modern Award**) in respect of the Employees because:
 - (a) pursuant to subsection 49(2) of the FW Act and clause 2.1 of the Modern Award, the Modern Award commenced operation on 1 January 2010;
 - (b) pursuant to subsections 47(1) and 48(1) of the FW Act, a modern award applies to the employer if the modern award is expressed to cover the employer, the modern award is in operation and no other provision of the FW Act applies such that the modern award does not apply to the employer;
 - (c) pursuant to clause 4.1 of the Modern Award, the Modern Award covers "*employers throughout Australia of employees engaged in vehicle manufacturing and/or vehicle industry repair, services and retail, as defined in this clause, to the exclusion of any other modern award and where the employer's establishment, plant or undertaking is principally connected or concerned with: ... operations or allied businesses concerned with selling, distributing or supplying running requirements for vehicles (including motor fuels, gas and oils); [or] ... any operation concerned with roadside/mobile service*"; and
 - (d) pursuant to the matters pleaded at paragraph 3 above, the First Respondent operated the Blacktown Store as a convenience store and a service station.
13. By reason of the duties and responsibilities of each of the Employees as pleaded in subparagraphs 7(d) and 9(d) above, each of the Employees were properly classified as Level R4 employees pursuant to Schedule B, clause B.4 of the Modern Award.
14. At all relevant times during the Employment Period, Schedule A of the Modern Award applied because the minimum wages and loadings under the *AN120631 – Vehicle Industry – Repair Services and Retail (State) Award (Transitional Instrument)* were less than the minimum wages and loadings under the Modern Award as at 1 January 2010.

15. At all relevant times during the Employment Period, the relevant minimum wage instrument for the purposes of Schedule A of the Modern Award was the Australian Pay and Classification Scale derived from the Transitional Instrument.
16. By reason of the duties and responsibilities of each of the Employees as pleaded in subparagraphs 7(d) and 9(d) above, each of the Employees fell within the classification of Level 3, Console Operator pursuant to the Transitional Instrument.

UNDERPAYMENT CONTRAVENTIONS OF THE FIRST RESPONDENT

Failure to pay minimum rates

17. By reason of the matters pleaded in paragraphs 2 and 6 to 16, the First Respondent was required by section 45 of the FW Act to pay the Employees the casual minimum wage pursuant to clause A.2.5 of the Modern Award, by reference to clause 36.3 of the Modern Award.
18. By reason of the matters pleaded at paragraph 17 above, during the following periods within the Employment Period, the First Respondent was required to pay the Employees the following casual minimum rates under the Modern Award for ordinary hours worked Monday to Friday (**Weekday Ordinary Hours**):
 - (a) 26 March 2012 to 30 June 2012: \$22.00;
 - (b) 1 July 2012 to 30 June 2013: \$22.81; and
 - (c) 1 July 2013 to 28 March 2014: \$23.57.

Mr Ahmed

19. During the Ahmed Employment Period, Mr Ahmed worked 1978 Weekday Ordinary Hours for the First Respondent.
20. By reason of the matters pleaded at paragraphs 18 and 19 above, the First Respondent was required to pay Mr Ahmed \$45,468.44 in respect of his Weekday Ordinary Hours.
21. Instead, during the Ahmed Employment Period, the First Respondent paid Mr Ahmed a total of \$18,125.99 for his Weekday Ordinary Hours.
22. By reason of the matters pleaded at paragraphs 20 and 21 above, the First Respondent underpaid Mr Ahmed \$27,496.75.

Particulars

*The particulars of the hours worked, payment entitlement and amount paid are set out in **Schedule A**.*

Mr Yousaf

23. During the Yousaf Employment Period, Mr Yousaf worked 205.75 Weekday Ordinary Hours for the First Respondent.
24. By reason of the matters pleaded at paragraphs 18(c) and 23 above, the First Respondent was required to pay Mr Yousaf a total of \$4,849.53 in respect of his Weekday Ordinary Hours.
25. Instead, during the Yousaf Employment Period, the First Respondent paid Mr Yousaf a total of \$2,200.99 in respect of his Weekday Ordinary Hours.
26. By reason of the matters pleaded at paragraphs 24 and 25 above, the First Respondent underpaid Mr Yousaf \$2,688.12.

Particulars

*The particulars of the hours worked, payment entitlement and amount paid are set out in **Schedule B**.*

Contraventions - casual minimum rate

27. By reason of the matters pleaded in paragraphs 17 to 26 above, the First Respondent contravened a term of a modern award, being clause A.2.5 of Schedule A of the Modern Award, and thereby contravened section 45 of the FW Act, by failing to pay the Employees the casual minimum rate for Weekday Ordinary Hours.

Failure to pay Saturday rates

28. By reason of the matters pleaded in paragraphs 2 and 6 to 16 above, the First Respondent was required by section 45 of the FW Act to pay the Employees the Saturday rates pursuant to clause A.7.3 of Schedule A of the Modern Award, by reference to clause 36.3 of the Modern Award.
29. By reason of the matters pleaded at paragraph 28 above, during the following periods within the Employment Period, the First Respondent was required to pay the Employees the following rates under the Modern Award for hours worked on Saturday (**Saturday Hours**):

- (a) from 26 March 2012 to 30 June 2012: \$24.70;
- (b) from 1 July 2012 to 30 June 2013: \$26.97; and
- (c) from 1 July 2013 to 28 March 2014: \$29.27.

Mr Ahmed

- 30. During the Ahmed Employment Period, Mr Ahmed worked 322 Saturday Hours for the First Respondent.
- 31. By reason of the matters pleaded at paragraphs 29 and 30 above, during the Ahmed Employment Period, the First Respondent was required to pay Mr Ahmed a total of \$8,662.87 for his Saturday Hours.
- 32. Instead, during the Ahmed Employment Period, the First Respondent paid Mr Ahmed a total of \$2,796.02 for his Saturday Hours.
- 33. By reason of the matters pleaded at paragraphs 31 and 32 above, the First Respondent underpaid Mr Ahmed \$5,866.85.

Particulars

*The particulars of the hours worked, payment entitlement and amount paid are set out in **Schedule A**.*

Mr Yousaf

- 34. During the Yousaf Employment Period, Mr Yousaf worked 69 Saturday Hours for the First Respondent.
- 35. By reason of the matters pleaded at paragraphs 29(c) and 34 above, during the Yousaf Employment Period, the First Respondent was required to pay Mr Yousaf a total of \$2,019.63 for his Saturday Hours.
- 36. Instead, during the Yousaf Employment Period, the First Respondent paid Mr Yousaf a total of \$702.26 for his Saturday Hours.
- 37. By reason of the matters pleaded at paragraphs 35 and 36 above, the First Respondent underpaid Mr Yousaf \$1,341.75.

Particulars

*The particulars of the hours worked, payment entitlement and amount paid are set out in **Schedule B**.*

Contraventions – Saturday rates

38. By reason of the matters pleaded in paragraphs 28 to 37, the First Respondent contravened a term of a modern award, being clause A.7.3 of Schedule A of the Modern Award, and thereby contravened section 45 of the FW Act, by failing to pay the Employees the Saturday rate.

Failure to pay Sunday rates

39. By reason of the matters pleaded in paragraphs 2 and 6 to 16 above, the First Respondent was required by section 45 of the FW Act to pay the Employees the Sunday rates pursuant to clause A.7.3 of Schedule A of the Modern Award, by reference to clause 36.3 of the Modern Award.
40. By reason of the matters pleaded at paragraph 39 above, during the following periods within the Employment Period, the First Respondent was required to pay the Employees the following rates under the Modern Award for hours worked on Sunday (**Sunday Hours**):
- (a) from 26 March 2012 to 30 June 2012: \$24.70;
 - (b) from 1 July 2012 to 30 June 2013: \$26.97; and
 - (c) from 1 July 2013 to 28 March 2014: \$29.27.

Mr Ahmed

41. During the Ahmed Employment Period, Mr Ahmed worked 419 Sunday Hours for the First Respondent.
42. By reason of the matters pleaded at paragraphs 40 and 41 above, during the Ahmed Employment Period, the First Respondent was required to pay Mr Ahmed a total of \$11,346.38 for his Sunday Hours.
43. Instead, during the Ahmed Employment Period, the First Respondent paid Mr Ahmed a total of \$3,441.94 for his Sunday Hours.
44. By reason of the matters pleaded at paragraphs 42 and 43 above, the First Respondent underpaid Mr Ahmed \$7,904.44.

Particulars

*The particulars of the hours worked, payment entitlement and amount paid are set out in **Schedule A**.*

Mr Yousaf

45. During the Yousaf Employment Period, Mr Yousaf worked 55.17 Sunday Hours for the First Respondent.
46. By reason of the matters pleaded at paragraphs 40(c) and 45 above, during the Yousaf Employment Period, the First Respondent was required to pay Mr Yousaf a total of \$1,614.83 for his Sunday Hours.
47. Instead, during the Yousaf Employment Period, the First Respondent paid Mr Yousaf a total of \$606.75 for his Sunday Hours.
48. By reason of the matters pleaded at paragraphs 46 and 47 above, the First Respondent underpaid Mr Yousaf \$1,008.08.

Particulars

*The particulars of the hours worked, payment entitlement and amount paid are set out in **Schedule B**.*

Contraventions – Sunday rates

49. By reason of the matters pleaded in paragraphs 39 to 48, the First Respondent contravened a term of a modern award, being clause A.7.3 of Schedule A of the Modern Award, and thereby contravened section 45 of the FW Act, by failing to pay the Employees the Sunday rate.

Failure to pay public holiday rates

50. By reason of the matters pleaded in paragraphs 2 and 6 to 16, the First Respondent was required by section 45 of the FW Act to pay the Employees the public holiday rates pursuant to clause A.7.3 of Schedule A of the Modern Award, by reference to clause 36.3 of the Modern Award.
51. By reason of the matters pleaded at paragraph 50 above, during the following periods within the Employment Period, the First Respondent was required to pay the Employees the following rates under the Modern Award for hours worked on public holidays (**Public Holiday Hours**):
 - (a) from 26 March 2012 to 30 June 2012: \$24.70;
 - (b) from 1 July 2012 to 30 June 2013: \$26.97; and
 - (c) from 1 July 2013 to 28 March 2014: \$29.27.

Mr Ahmed

52. During the Ahmed Employment Period, Mr Ahmed worked 75 Public Holiday Hours for the First Respondent.
53. By reason of the matters pleaded at paragraphs 51 and 52 above, during the Ahmed Employment Period, the First Respondent was required to pay Mr Ahmed a total of \$2,009.40 for his Public Holiday Hours.
54. Instead, during the Ahmed Employment Period, the First Respondent paid Mr Ahmed a total of \$448.23 for his Public Holiday Hours.

Particulars

*The particulars of the hours worked, payment entitlement and amount paid are set out in **Schedule A**.*

55. By reason of the matters pleaded at paragraphs 53 and 54 above, the First Respondent underpaid Mr Ahmed \$1,561.17.

Mr Yousaf

56. During the period from Yousaf Employment Period, Mr Yousaf worked 9 Public Holiday Hours for the First Respondent.
57. By reason of the matters pleaded at paragraphs 51(c) and 56 above, during the Yousaf Employment Period, the First Respondent was required to pay Mr Yousaf a total of \$263.43 for his Public Holiday Hours.
58. Instead, during the Yousaf Employment Period, the First Respondent paid Mr Yousaf a total of \$90.00 for his Public Holiday Hours.
59. By reason of the matters pleaded at paragraphs 57 and 58 above, the First Respondent underpaid Mr Yousaf \$173.43.

Particulars

*The particulars of the hours worked, payment entitlement and amount paid are set out in **Schedule B**.*

Contraventions – public holiday rates

60. By reason of the matters pleaded in paragraphs 50 to 59, the First Respondent contravened a term of a modern award, being clause A.7.3 of Schedule A of the

Modern Award, and thereby contravened section 45 of the FW Act, by failing to pay the Employees the public holiday rate.

Failure to pay overtime rates

61. By reason of the matters pleaded in paragraphs 2 and 6 to 16, the First Respondent was required by section 45 of the FW Act to pay the Employees overtime rates pursuant to clause 36.3 of the Modern Award for hours worked in excess of 10 hours per day (**Overtime Hours**).
62. By reason of the matters pleaded at paragraph 61 above, during the following periods within the Employment Period, the First Respondent was required to pay the Employees the following overtime rates under the Modern Award for Overtime Hours:
 - (a) from 26 March 2012 to 30 June 2012: \$12.75;
 - (b) from 1 July 2012 to 30 June 2013: \$13.12; and
 - (c) from 1 July 2013 to 28 March 2014: \$13.46.

Mr Ahmed

63. During the Ahmed Employment Period, Mr Ahmed worked 457 hours of Overtime Hours for the First Respondent.
64. By reason of the matters pleaded at paragraphs 62 and 63 above, during the Ahmed Employment Period, the First Respondent was required to pay Mr Ahmed a total of \$6,013.43 for his Overtime Hours.
65. Instead, during the Ahmed Employment Period, the First Respondent did not pay Mr Ahmed any amount in respect of his Overtime Hours.
66. By reason of the matters pleaded at paragraphs 64 and 65 above, the First Respondent underpaid Mr Ahmed \$6,013.43.

Particulars

*The particulars of the hours worked, payment entitlement and amount paid are set out in **Schedule A**.*

Mr Yousaf

67. During the Yousaf Employment Period, Mr Yousaf worked 43.25 Overtime Hours for the First Respondent.

68. By reason of the matters pleaded at paragraphs 62 and 67 above, during the Yousaf Employment Period, the First Respondent was required to pay Mr Yousaf a total of \$582.15 for his Overtime Hours.
69. Instead, during the Yousaf Employment Period, the First Respondent did not pay Mr Yousaf any amount in respect of his Overtime Hours.
70. By reason of the matters pleaded at paragraphs 68 to 69 above, the First Respondent underpaid Mr Yousaf \$582.15.

Particulars

*The particulars of the hours worked, payment entitlement and amount paid are set out in **Schedule B**.*

Contravention – overtime rates

71. By reason of the matters pleaded in paragraphs 61 to 70, the First Respondent contravened a term of a modern award, being clause 36.3 of the Modern Award, and thereby contravened section 45 of the FW Act, by failing to pay the Employees overtime rates.

TOTAL UNDERPAYMENT

72. By reason of the contraventions pleaded at paragraphs 17 to 0 above, the Respondent underpaid the Employees a total underpayment of \$49,601.98 as follows:
 - (a) \$43,632.64 to Mr Ahmed (\$48,842.64 total underpayments less the Cash Payments of \$5,210.00); and
 - (b) \$5,793.53 to Mr Yousaf.

RECORD KEEPING CONTRAVENTIONS OF THE FIRST RESPONDENT

73. On 7 October 2014, the Second Respondent (on behalf of the First Respondent) produced to Fair Work Inspector Verity Okno (**Inspector Okno**), copies of payroll records titled '*Payroll Details & YTD (Detail Report)*' in relation to:
 - (a) Mr Ahmed for the period from 3 February 2013 to 30 March 2014; and
 - (b) Mr Yousaf for the period from 11 August 2013 to 30 March 2014;

(Payroll Records).

Failure to make and keep records of overtime worked

74. Pursuant to subsection 535(1) of the FW Act, the First Respondent was required to make, and keep for seven years, records relating to the employment of all employees as prescribed by the *Fair Work Regulations 2009 (Cth) (FW Regulations)*.

Particulars

Subdivision 1 of Division 3 of the FW Regulations specifies the employee records required to be made and kept for the purposes of subsection 535(1) of the FW Act.

75. By reason of the matters pleaded in paragraphs 61 and 74 above, pursuant to regulation 3.34 of the FW Regulations, the First Respondent was required to make and keep a record of the number of Overtime Hours worked by an employee during each day, or when the employee started and ceased working Overtime Hours.
76. By reason of the matters set out in paragraphs 63 and 67 above, each of the Employees worked Overtime Hours.
77. The First Respondent did not keep any record of the Overtime Hours worked by either of the Employees.

Particulars

The Payroll Records did not record any of the Overtime Hours as specified in paragraphs 63 and 67 above, in relation to either of the Employees.

78. The Second Respondent intentionally failed to enter the Overtime Hours worked by the Employees into the Payroll Portal.
79. By reason of the matters pleaded in paragraphs 74 to 77 above, the First Respondent contravened subsection 535(1) of the FW Act.

Failure to make and keep records of amounts paid

80. Pursuant to subsection 535(2) of the FW Act, the records which the First Respondent was required to make and keep under the FW Regulations pursuant to subsection 535(1) were required to include the information prescribed by the FW Regulations.
81. By reason of the matters pleaded in paragraphs 7, 9 and 80 above, pursuant to subregulation 3.33(1)(b) of the FW Regulations, the First Respondent was required to make and keep a record of the gross and net amounts paid to each of the Employees.

82. The First Respondent did not keep a complete record of the gross and net amounts paid to each of the Employees as the Payroll Records did not include the cash payments made to Mr Ahmed.
83. By reason of the matters pleaded in paragraphs 80 to 82 above, the First Respondent contravened subsection 535(2) of the FW Act.

Keeping false or misleading records

84. Pursuant to subregulation 3.44(1) of the FW Regulations, the First Respondent was required to ensure that any record that it was required to keep under the FW Act or FW Regulations was not false or misleading to the First Respondent's knowledge.
85. Pursuant to subregulation 3.33(2) of the FW Regulations, the First Respondent was required to make and keep a record of the hours worked by each of the Employees.
86. On 10 October 2014, the Second Respondent (on behalf of the First Respondent) produced to Inspector Okno a copy of the First Respondent's timebook in which the hours allegedly worked by the Employees are handwritten for the periods:
 - (a) 19 March 2012 to 30 September 2012; and
 - (b) 31 December 2012 to 23 March 2014;**(Company Time Records).**
87. The Company Time Records were false or misleading because they did not accurately record the hours worked by the Employees.
88. The Second Respondent knew that the Company Time Records did not accurately record the hours worked by the Employees.
89. When the Second Respondent (on behalf of the First Respondent) produced the Company Time Records to Inspector Okno on 10 October 2014, the First Respondent knew that the Company Time Records were false or misleading.

Particulars

The Applicant repeats and relies upon paragraphs 87, 88 and subparagraph 5(g) above.

90. By reason of the matters pleaded in paragraphs 84-89 above, the First Respondent:
 - (a) failed to ensure that the records that it was required to keep under the FW Act and FW Regulations in respect of each of the Employees was not false or misleading; and

- (b) in doing so, contravened subregulation 3.44(1) of the FW Regulations, which is a civil remedy provision in accordance with regulation 4.01A of the FW Regulations.

Making use of false or misleading records

91. Pursuant to subregulation 3.44(6) of the FW Regulations, the First Respondent was required not to make use of an entry in a record made and kept by it under the FW Act or FW Regulations if it did so knowing that the entry was false or misleading.
92. By reason of the matters pleaded at paragraph 86 above, the First Respondent made use of the entries in the Company Time Records for the Employees by producing them to Inspector Okno on 10 October 2014.
93. By reason of the matters pleaded at paragraph 87 above, the Company Time Records contained false and misleading entries to the effect that they did not accurately record the hours worked by the Employees.
94. By reason of the matters pleaded at paragraph 88 and 89 above, the First Respondent knew that the entries in the Company Time Records for the Employees were false and misleading.
95. By reason of the matters pleaded at paragraphs 91 to 93 above, the First Respondent made use of entries in employee records made and kept by the First Respondent pursuant to Subdivision 1 of Chapter 3, Part 3-6, Division 3 of the FW Regulations, knowing that the entry was false and misleading and, in doing so, contravened subregulation 3.44(6) of the FW Regulations, which is a civil remedy provision pursuant to subregulation 4.01A(2) of the FW Regulations.

ACCESSORIAL LIABILITY OF THE SECOND RESPONDENT

96. The Second Respondent undertook training and received industry materials concerning the First Respondent's employment obligations including:
- (a) on 28 August 2007, the Second Respondent undertook a nine day face-to-face 7-Eleven Franchisee Training programme;
 - (b) on 7 April 2011 and 7 October 2011, the Second Respondent completed online training modules conducted by 7-Eleven Head Office;
 - (c) from at least 2011, the Second Respondent had a copy of the 7-Eleven Franchise Systems Manual which included material concerning minimum rates, pay rates, industrial legal requirements and paperwork obligations; and

- (d) from at least 2011, the First Respondent and Second Respondent received 7-Eleven Circulars which contained information relating to payroll reporting, the Modern Award and record keeping obligations.
97. The training and industrial materials referred to in paragraph 96 covered, amongst other things:
- (a) the National Employment Standards under the FW Act;
 - (b) types of employment;
 - (c) award conditions (including leave entitlements);
 - (d) the application of the Modern Award;
 - (e) rates of pay;
 - (f) timesheets and record keeping obligations under the FW Act; and
 - (g) payroll.
98. By reason of the matters pleaded in paragraphs 96 to 97 above, the Second Respondent knew that:
- (a) the Modern Award applied to the Employees' employment;
 - (b) there existed statutory minimum entitlements relating to the Employees' employment;
 - (c) the First Respondent was required to pay the minimum rates to the Employees under the Modern Award in respect of:
 - (i) Weekday Ordinary Hours;
 - (ii) Saturday Hours;
 - (iii) Sunday Hours;
 - (iv) Public Holiday Hours; and
 - (v) Overtime Hours; and
 - (d) the First Respondent was required to keep records of:
 - (i) the gross and net amounts paid to employees;
 - (ii) the overtime worked by employees; and
 - (iii) the hours worked by employees.
99. By reason of the matters pleaded in paragraph 5 above, the Second Respondent had knowledge of:

- (a) the employment of the Employees;
 - (b) the amounts paid to each Employee by or on behalf of the First Respondent; and
 - (c) the hours worked by each Employee at the Blacktown Store.
100. By reason of the matters pleaded in paragraph 98 to 99 above, the Second Respondent had actual knowledge of the First Respondent's failure to comply with the Modern Award.
101. The Second Respondent knew of, and all times had access to, the Company Time Records.
102. By reason of the matters pleaded at paragraphs 96 to 101 above, the Second Respondent:
- (a) was involved (within the meaning of subsection 550(2)(c) of the FW Act) in the First Respondent's contraventions of:
 - (i) section 45 of the FW Act as alleged in paragraphs 17 to 0 above;
 - (ii) subsection 535(1) of the FW Act as alleged in paragraphs 73 to 78 above;
 - (iii) subsection 535(2) of the FW Act as alleged in paragraphs 80 to 83 above; and
 - (iv) subregulations 3.44(1) and 3.44(6) of the FW Regulations as alleged in paragraphs 84 to 95 above; and
 - (b) by virtue of subsection 550(1) of the FW Act, is taken to have committed those contraventions.

ORDERS SOUGHT

The Applicant seeks:

103. Declarations that the First Respondent has contravened:
- (a) section 45 of the FW Act by failing to pay the Employees the minimum casual adult rate for Monday to Friday work as required by clause A.2.5 of Schedule A of the Modern Award, by reference to clause 36.3 of the Modern Award;
 - (b) section 45 of the FW Act by failing to pay the Employees Saturday rates as required by clause A.7.3 of Schedule A of the Modern Award, by reference to clause 36.3 of the Modern Award;
 - (c) section 45 of the FW Act by failing to pay the Employees Sunday rates as required by clause A.7.3 of Schedule A of the Modern Award, by reference to clause 36.3 of the Modern Award;

- (d) section 45 of the FW Act by failing to pay the Employees public holiday rates as required by clause A.7.3 of Schedule A of the Modern Award, by reference to clause 36.3 of the Modern Award;
- (e) section 45 of the FW Act by failing to pay the Employees overtime as required by clause 36.3 of the Modern Award;
- (f) subsection 535(1) by failing to keep records required by regulation 3.34 of the FW Regulations in relation to the Employees;
- (g) subsection 535(2) by failing to keep records in relation to the Employees in the form required by subregulation 3.33(1)(b) of the FW Regulations;
- (h) subregulation 3.44(1) of the FW Regulations by failing to ensure that records required to be kept in relation to the Employees were not false or misleading;
and
- (i) subregulation 3.44(6) of the FW Regulations by making use of entries in employee records for the Employees, knowing that those records were false or misleading.

104. A declaration that the Second Respondent was involved (within the meaning of subsection 550(2) of the FW Act) in the contraventions by the First Respondent as set out in paragraph 103 above.

105. An order that the First Respondent undertake, or at its expense engage a third party with qualifications in accounting or workplace relations to undertake, an audit of the First Respondent's compliance with the FW Act and the Modern Award on the following terms:

- (a) the audit period will be the period of six months commencing on the date of this order;
- (b) the audit is to be completed within 30 days of the end of the audit period;
- (c) the audit will apply to all employees employed by the First Respondent at any time during the audit period in a classification of work under the Modern Award;
- (d) the audit will assess the First Respondent's compliance with the following obligations according to each employee's classification of work, category of employment and hours worked during the audit period:
 - (i) wages and work-related entitlements under the Modern Award;
 - (ii) accrual and payment of entitlements under the National Employment Standards in Part 2-2 of the FW Act; and

- (iii) record keeping obligations in Division 3 of Part 3-6 of the FW Act and Division 3 of Part 3-6 of the FW Regulations.
- 106. An order that within 30 days of the audit referred to in paragraph 105 above being completed, the First Respondent will provide to the Applicant:
 - (a) a copy of the audit report which will include a statement of the methodology used in the audit; and
 - (b) written details of any contraventions identified in the audit and the steps that the First Respondent will take to rectify any identified contravention(s) and the date by which the rectification will occur.
- 107. An order that the Second Respondent is to engage, at his own expense, a person or organisation with professional qualifications in workplace relations to provide training to the Second Respondent within six months of the date of this order that covers the following:
 - (a) obligations on employers under the Modern Award and the National Employment Standards in the FW Act;
 - (b) payment of wages in accordance with Division 2 of Part 2-9 of the FW Act; and
 - (c) record keeping obligations in Division 3 of Part 3-6 of the FW Act and Division 3 of Part 3-6 of the FW Regulations.
- 108. An order that within 30 days of completing the training set out in paragraph 107 above, the Second Respondent is to provide to the Applicant, in writing:
 - (a) the date on which the training was completed;
 - (b) the name of the person or organisation that conducted the training; and
 - (c) the details of the method of delivery of the training and the content of the training.
- 109. If the underpayments referred to in paragraph 72 above remain outstanding as at the date of the order, an order pursuant to section 545 of the FW Act directing the First Respondent to pay to the Employees the remainder of the amount owed within 28 days of the date of the order.
- 110. An order pursuant to subsection 547(2) of the FW Act that the First Respondent pay interest on the sum referred to in paragraph 105 above.
- 111. An order pursuant to subsection 546(1) of the FW Act that the First Respondent pay pecuniary penalties in respect of the contraventions set out at paragraph 103 above.

112. An order pursuant to subsection 546(1) of the FW Act that the Second Respondent pay pecuniary penalties in respect of the contraventions set out at paragraph 104 above.
113. Orders pursuant to subsection 546(3)(a) of the FW Act that any pecuniary penalties ordered to be paid by the First Respondent and Second Respondent be paid to the Commonwealth within 28 days of the order.
114. An order that the Applicant have liberty to apply on seven days' notice in the event that any of the preceding orders are not complied with.
115. Such further or other orders as the Court deems fit.

Date: 12 June 2015



Mark Davidson

Legal practitioner representing the Applicant

Office of the Fair Work Ombudsman

Schedule A

Mr Ahmed

During the Ahmed Employment Period, Mr Ahmed was underpaid a total of **\$43,632.64**, made up as follows:

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|------------------------------|--------------------|-------|---------|-------------|-------------|----------------------|
| Entitlement | Period | Hours | Rate | Entitlement | Paid | Underpayment |
| Weekday Ordinary Hours | 26/3/2012-1/7/2012 | 230 | \$22.00 | \$5,060.00 | \$1,897.39 | (\$3,170.61) |
| | 2/7/2012-30/6/2013 | 1042 | \$22.81 | \$23,768.02 | \$8,428.61 | (\$15,465.69) |
| | 1/7/2013-28/3/2014 | 706 | \$23.57 | \$16,640.42 | \$7,799.99 | (\$8,860.45) |
| | | 1978 | | \$45,468.44 | \$18,125.99 | (\$27,496.75) |
| Saturday Hours | 26/3/2012-1/7/2012 | 51 | \$24.70 | \$1,259.70 | \$499.26 | (\$760.44) |
| | 2/7/2012-30/6/2013 | 230 | \$26.97 | \$6,203.10 | \$1,833.16 | (\$4,369.94) |
| | 1/7/2013-28/3/2014 | 41 | \$29.27 | \$1,200.07 | \$463.60 | (\$736.47) |
| | | 322 | | \$8,662.87 | \$2,796.02 | (\$5,866.85) |
| Sunday Hours | 26/3/2012-1/7/2012 | 75 | \$24.70 | \$1,852.50 | \$689.81 | (\$1,162.69) |
| | 2/7/2012-30/6/2013 | 250 | \$26.97 | \$6,742.50 | \$1,753.25 | (\$4,989.25) |
| | 1/7/2013-28/3/2014 | 94 | \$29.27 | \$2,751.38 | \$998.88 | (\$1,752.50) |
| | | 419 | | \$11,346.38 | \$3,441.94 | (\$7,904.44) |
| Public Holiday Hours | 26/3/2012-1/7/2012 | 15 | \$24.70 | \$370.50 | \$26.04 | (\$344.46) |
| | 2/7/2012-30/6/2013 | 51 | \$26.97 | \$1,375.47 | \$384.66 | (\$990.81) |
| | 1/7/2013-28/3/2014 | 9 | \$29.27 | \$263.43 | \$37.53 | (\$225.90) |
| | | 75 | | \$2,009.40 | \$448.23 | (\$1,561.17) |
| Overtime Hours | 26/3/2012-1/7/2012 | 71 | \$12.75 | \$905.25 | \$0.00 | (\$905.25) |
| | 2/7/2012-30/6/2013 | 257 | \$13.12 | \$3,371.84 | \$0.00 | (\$3,371.84) |
| | 1/7/2013-28/3/2014 | 129 | \$13.46 | \$1,736.34 | \$0.00 | (\$1,736.34) |
| | | 457 | | \$6,013.43 | \$0.00 | (\$6,013.43) |
| Underpayment | | | | | | (\$48,842.64) |
| Cash Payments | | | | | | \$5,210.00 |
| Total underpayment | | | | | | (\$43,632.64) |

Schedule B

Mr Yousaf

During the Yousaf Employment Period, Mr Yousaf was underpaid a total of **\$5,793.53**, made up as follows:

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|------------------------------|---------------------|--------|-------------|-------------|------------|---------------------|
| Entitlement | Period | Hours | Rate | Entitlement | Paid | Underpayment |
| Weekday Ordinary Hours | 11/8/2013-28/3/2014 | 205.75 | \$23. 57 | \$4,849.53 | \$2,200.99 | (\$2,688.12) |
| Saturday Hours | 11/8/2013-28/3/2014 | 69 | \$29. 27 | \$2,019.63 | \$702.26 | (\$1,341.75) |
| Sunday Hours | 11/8/2013-28/3/2014 | 55.17 | \$29. 27 | \$1,614.83 | \$606.75 | (\$1,008.08) |
| Public Holiday Hours | 11/8/2013-28/3/2014 | 9 | \$29. 27 | \$263.43 | \$90.00 | (\$173.43) |
| Overtime Hours | 11/8/2013-28/3/2014 | 43.25 | \$13. 46 | \$582.15 | \$0.00 | (\$582.15) |
| Total underpayment | | | | | | (\$5,793.53) |