



Australian Government

# Fair Work OMBUDSMAN

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## **ENFORCEABLE UNDERTAKING**

Between

The Commonwealth of Australia

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

and

Abella Travel Pty Ltd (ACN: 126808437)

Section 715 ENFORCEABLE UNDERTAKING

**Parties**

1. This Enforceable Undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Abella Travel Pty Ltd (**Abella Travel**) for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

**Commencement of Undertaking**

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

**Background**

4. Abella Travel has owned and operated a travel agency in Melbourne, Victoria since July 2007.
5. Abella Travel sells and conducts tours and books travel on behalf of customers. Most sales are made online or by phone. Customers are primarily Korean students and Korean working holiday makers in Australia.
6. On 31 July 2014, the FWO received a request for assistance from a former employee (the **Employee**) of Abella Travel alleging non-payment of wages for certain periods, underpayment of wages in other periods and failure to give notice of termination.
7. Abella Travel employed the Employee from 2 June 2014 to 21 July 2014 (**the Employment Period**). The Employee, a Korean national, was in Australia on a subclass 428 spousal Visa.
8. From the start of her employment until 15 June 2014, the Employee:
  - (a) was engaged on a full-time basis to work 38 hours per week;
  - (b) was treated by Abella Travel as an unpaid trainee.
9. From 16 June to 29 June 2014, the Employee continued to work on a full-time basis. Abella Travel paid her a flat rate (without any penalties or loadings). This rate was below the applicable minimum rates (further details of which are set out below).
10. On 30 June 2014 the Employee was informed by Abella Travel that her status of employment had been unilaterally changed to part-time, working 25.5 hours per week. In the period 30 June to the end of the Employee's employment, Abella Travel paid the Employee but at a flat rate (without any penalties or loadings). This rate was below the applicable minimum rates (further details of which are set out below).
11. The Employee's duties, including during the purported training period, included making bookings for customers, taking customer enquiries and administration incidental to these activities. During the period 2 to 16 June 2014, the Employee was performing productive work Abella Travel and was entitled to be paid.
12. During the Employment Period, the Employee's terms and conditions of employment were governed by the *General Retail Industry Award 2010* (**Retail Award**) and the FW Act. Transitional rates of pay in the Retail Award were calculated by reference to the transitional award - *Travel Industry – Agencies – General Award 1999* (**Transitional Award**). The Employee was entitled to be classified as [a Retail Employee Level 1].
13. In the period 2 June to 16 June 2014, Abella Travel failed to pay the Employee anything for

her work and, accordingly, underpaid the Employee her entitlements in accordance with the Retail Award.

14. In the period 16 June to 21 July 2014, Abella Travel underpaid the Employee for her work by failing to pay the following minimum rates of pay in accordance with the Retail Award:
- (a) the ordinary minimum rate for all hours worked;
  - (b) the penalty for hours worked after 6 pm on week days;
  - (c) penalty rates for work on Saturdays;
  - (d) penalty rates for work on a Public Holiday;
  - (e) the additional rates payable for overtime.
15. Abella Travel did not pay the Employee anything for untaken accrued annual leave upon the termination of her employment.

### **Contraventions**

16. The FWO has determined, and Abella Travel admits, that throughout the Employment Period Abella Travel contravened:

#### *Wages*

- (a) subsection 45 of the FW Act by failing to pay the Employee her correct minimum base hourly rate of pay for all hours worked in accordance with clause 17.1 and clause A.2 of Schedule A of the Retail Award.

#### *Evening Penalty Rates*

- (b) subsection 45 of the FW Act by failing to pay the Employee penalty rates for time worked after 6 pm Monday to Friday in accordance with subclause 29.4(a) and clause A.5 of Schedule A of the Retail Award.

#### *Saturday Penalty Rates*

- (c) subsection 45 of the FW Act by failing to pay the Employee penalty rates for time worked on Saturday and in accordance with subclause 29.4(b) and clause A.5 of Schedule A of the Retail Award.

#### *Public Holiday Penalty Rates*

- (d) subsection 45 of the FW Act by failing to pay the Employee penalty rates for time worked on a Public Holiday (being the Queen's Birthday holiday on 9 June 2014) in accordance with subclause 29.4(d) of the Retail Award.

#### *Overtime*

- (e) subsection 45 of the FW Act by failing to pay the Employee overtime rates for time worked outside of the spread of hours or rostered hours set out in clause 27 and 28 in accordance with clause 29.2 of the Retail Award.

#### *Annual Leave*

- (f) subsection 44(1) of the FW Act by failing to pay the Employee her annual leave (including leave loading) upon termination of employment as required by subsection 90(2) of the FW Act.

#### *Notice of termination of employment*

- (g) subsection 117(1) of the FW Act by failing to give notice of termination of employment in writing.

## Record Keeping

- (h) subsection 535(1) of the FW Act by failing to make and keep the following records in accordance with the *Fair Work Regulations 2009* (the **Regulations**):
  - (i) regulation 3.32 – content:
    - 1. Records specifying the employer and employers name, the status of the employee, whether the employment is temporary or ongoing, the start date of employment and the ABN of the employer;];
  - (ii) regulation 3.33 – pay:
    - 1. 3.33(2) to set out the hours worked as an irregular part time employee.
    - 2. 3.33(3) the record must set out details of the penalty rate paid on all hours that attract a penalty rate.
  - (iii) regulation 3.34 – overtime
    - 1. Records detailing the number of overtime hours worked by the employee or when the employee started and ceased working overtime hours.
  - (iv) regulation 3.36 – leave
    - 1. if an employee is entitled to leave, the balance of the employee's leave entitlement to leave (both annual leave and personal leave) from time to time.
  - (v) regulation 3.40 – termination of employment
    - 1. details setting out if the employment was terminated by mutual consent, by notice, without notice or in some other manner and the name of the person who acted to terminate the employment.
- (i) subsection 535(1) of the FW Act by failing to make and keep the following records in accordance with the *Fair Work Regulations 2009* (the **Regulations**):
  - (i) regulation 3.32 – content:
    - 1. Records specifying the employer and employers name, the status of the employee, whether the employment is temporary or ongoing, the start date of employment and the ABN of the employer;];
  - (ii) regulation 3.33 – pay:
    - 1. 3.33(2) to set out the hours worked as an irregular part time employee.
    - 2. 3.33(3) the record must set out details of the penalty rate paid on all hours that attract a penalty rate.
  - (iii) regulation 3.34 – overtime
    - 1. Records detailing the number of overtime hours worked by the employee or when the employee started and ceased working overtime hours.
  - (iv) regulation 3.36 – leave

1. if an employee is entitled to leave, the balance of the employee's leave entitlement to leave (both annual leave and personal leave) from time to time.

(v) regulation 3.40 termination of employment

1. details setting out if the employment was terminated by mutual consent, by notice, without notice or in some other manner and the name of the person who acted to terminate the employment.

*Pay Slips*

- (j) subsection 536(1) of the FW Act by failing to issue payslips within one working day of payment of wages, or at all;

(collectively the **Contraventions**):

17. As a result of the Contraventions, the Employee was underpaid \$4,231.42.
18. On 2 November 2014, Abella Travel rectified the underpayments by paying the amount of \$4,231.42 (gross) to the Employee.

**Undertakings**

19. For the purposes of section 715 of the FW Act, Abella Travel undertakes to:

*FWO My Account Registration*

- (a) Within seven (7) days of the execution of this Undertaking, register with the FWO 'My Account' portal at [www.fairwork.gov.au](http://www.fairwork.gov.au) and have completed the profile, minimum pay rates and Award options.
- (b) Within 14 days of the execution of the Undertaking, provide to the FWO the Abella Travel 'My Account' registration number.
- (c) Within 21 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a FWO Fair Work Inspector via [www.fairwork.gov.au](http://www.fairwork.gov.au) 'MyAccount', the current Retail Award minimum pay rates and Saturday, Sunday, Public Holiday and overtime penalty rates of pay.

*Future Workplace Relations Compliance*

- (d) Ensure that it complies at all times and in all respects with the FW Act, the Regulations and the Retail Award, including by implementing systems and processes to:
  - (i) ensure employees receive the correct minimum rates of pay and entitlements, such as penalty rates and overtime rates;
  - (ii) ensure that pay slips are issued to employees within 1 working day of payment; and
  - (iii) ensure the keeping of accurate and complete records to ensure employees receive their correct wages and entitlements.
- (e) Provide the FWO, within 28 days of the date of execution of this Undertaking, details of systems and processes already in place or to be implemented to comply with paragraph (d) above.

*Workplace relations training*

- (f) Within 4 months of the execution of this Undertaking, organise and ensure training (the **Training**) is provided to any and all persons who have managerial responsibility for or are involved in human resource, recruitment or payroll functions for Abella

Travel;

- (g) Ensure the Training relates to compliance with applicable Commonwealth of Australia workplace laws and instruments, including the rights and responsibilities of employers under the FW Act and the Retail Award;
- (h) Ensure the Training is conducted by an accredited workplace trainer, such person or organisation to be approved in advance by the FWO and paid for by Abella Travel;
- (i) 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;
- (j) Provide evidence of attendance at the Training to the FWO within 7 days of the Training being provided (including the name and position of all attendees and the date on which the training was attended)
- (k) For a period of 18 months from the execution of this Undertaking, ensure that training is conducted in the manner prescribed in paragraphs 13(g) to (j) above in relation to any new or existing employees or contractors who, after the commencement of this Undertaking, acquire managerial responsibilities and/or human resources, recruitment or payroll functions on behalf of Abella Travel;

*Records and payslip audit*

- (l) Within 14 days of the execution of this Undertaking, provide to the FWO a copy of:
  - (i) all time and wage records kept by Abella Travel for its employees relating to the pay period immediately prior to the date for the provision of the records (**Records Audit Period**); and
  - (ii) all pay slips issued to employees of Abella Travel relating to the Records Audit Period;
- (m) Without limiting the undertaking in paragraph 19(d) above, ensure that all records and payslips for the Records Audit period comply with the requirements of the FW Act and the Regulations;
- (n) If the FWO identifies any respects in which the records and/or payslips for the Records Audit Period do not comply with the requirements of the FW Act and/or the Regulations, within 14 days of being so informed by the FWO:
  - (i) implement systems and processes to rectify the deficiencies; and
  - (ii) provide evidence to the FWO of the steps taken by Abella Travel to comply with subparagraph 17(n)(i) above;

*External audit activity*

- (o) Cause to have performed by an accounting professional (for example a Certified Practising Accountant) or an employment law specialist, at Abella Travel's expense, two audits of Abella Travel's compliance with all Commonwealth workplace laws and instruments (**Audits**) on the following basis:
  - (i) the first Audit to be finalised by 31 June 2015;
  - (ii) the second Audit to be finalised by 30 December 2015;
  - (iii) each Audit to relate to two pay cycles within the 6 months immediately prior to the relevant Audit's finalisation date;
  - (iv) each Audit to assess Abella Travel's compliance with minimum pay and conditions for all employees employed during the relevant audit period.
- (p) Provide to the FWO within 14 days of each Audit being finalised, details of the methodology used to conduct the Audit and a report specifying the outcomes of the Audit;

- (q) In the event an Audit discloses contraventions of any applicable Commonwealth workplace law and/or instruments, rectify all such contraventions within 14 days of the Audit finalisation date including by rectifying any and all identified underpayments to employees of Abella Travel;
- (r) Provide evidence of rectification of the contraventions to the FWO within 14 days of the Audit finalisation date;

#### *Workplace Notice*

- (s) Within seven days of the execution of this Undertaking, cause to be displayed a notice in the form of Attachment A to this Undertaking (**Workplace Notice**) for a period of 28 days, at Abella Travel's premises at Suite 904, 343 Little Collins Street Melbourne;
- (t) Ensure that the Workplace Notice is printed in at least A3 size and is clearly displayed:
  - (i) In a location to which all employees who work at Abella Travel have access;
  - (ii) In a manner which is reasonably capable of drawing attention of all employees to the Workplace Notice (for example, by placement on a staff noticeboard);
- (u) Provide evidence to the FWO of the placement of the Workplace Notice within seven days of its placement.

#### *Apology*

- (v) within 14 days of the commencement of this Undertaking, send a written apology to the Employee in the terms set out in Attachment B;
- (w) within 7 days of the written apology being sent to the Employee, provide a copy of the apology to the FWO.

### **Acknowledgements**

20. Abella Travel 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](http://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 Abella Travel;
- (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 Abella Travel 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, Abella Travel may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO;
- (h) the FWO reserves the right to rely on the terms of this Undertaking and the admissions made herein in respect of any future proceedings brought by the FWO

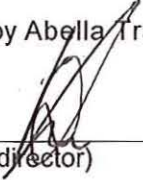
against Abella Travel in relation to any future contraventions of Commonwealth workplace laws;

- (i) Abella Travel must not, and must take all reasonable action to ensure that its officers, agents and employees do not, make any statements, orally or in writing or otherwise, which conveys or implies or reasonably conveys or implies anything inconsistent with the admissions and acknowledgments contained in this Undertaking.



**Executed as an undertaking**

EXECUTED by Abella Travel in accordance with section 127(1) of the *Corporations Act 2001*:

  
\_\_\_\_\_  
(Signature of director)

\_\_\_\_\_  
(Signature of director/company secretary)

Young Hyun Lee  
\_\_\_\_\_  
(Name of director)

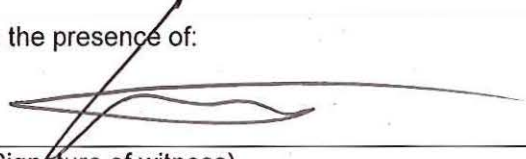
\_\_\_\_\_  
(Name of director/company secretary)

8/12/2014  
\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

in the presence of:

in the presence of:

  
\_\_\_\_\_  
(Signature of witness)

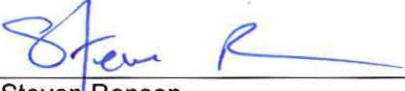
\_\_\_\_\_  
(Signature of witness)

KEZ MA  
\_\_\_\_\_  
(Name of witness)

\_\_\_\_\_  
(Name of witness)

8/12/2014  
\_\_\_\_\_  
(Date)

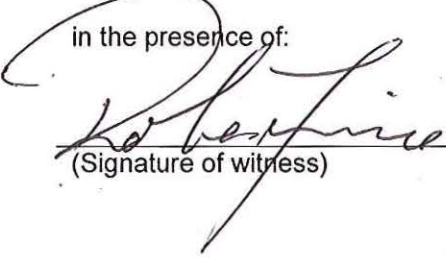
ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the *Fair Work Act 2009* on:

  
\_\_\_\_\_  
Steven Ronson  
Executive Director  
Dispute Resolution and Compliance

17 DECEMBER 2014  
\_\_\_\_\_  
(Date)

as delegate for the Fair Work Ombudsman  
subject to an instrument of delegation made  
pursuant to section 683 of the FW Act

in the presence of:

  
\_\_\_\_\_  
(Signature of witness)

ROBERT PRICE  
\_\_\_\_\_  
(Name of Witness)

**Contraventions of the *Fair Work Act 2009* and the *General Retail Industry Award 2010* by Abella Travel Pty Ltd**

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Abella Travel Pty Ltd contravened the *Fair Work Act 2009* and the *General Retail Industry Award 2010 (Retail Award)* by:

- failing to pay the lawful minimum hourly rates of pay for time worked Monday to Friday;
- failing to pay the penalty rate for time worked on Saturdays
- failing to pay the penalty rate for time worked on a Public Holiday
- failing to pay overtime
- failing to pay accrued annual leave and leave loading upon the termination of employment
- failing to make and keep records as required
- failing to issue payslips

Abella Travel has formally admitted to FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at [www.fairwork.gov.au](http://www.fairwork.gov.au)) committing to a number of measures to remedy the contraventions. These include conducting training in workplace laws, registering for the FWO MY Account, issuing payslips to employees within one day of payment, ensuring correct record keeping and undergoing two audits to monitor its compliance with workplace laws.

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

If you worked for Abella Travel and have queries or questions relating to your employment, please contact John Lee on [insert]. Alternatively, anyone can contact the FWO via the website at [www.fairwork.gov.au](http://www.fairwork.gov.au) or the Infoline on 13 13 94.

## Attachment B – Letter of Apology

<Date>

<Employee Name>

<Employee Address>

Dear [Insert name of Employee],

I am writing to apologise on behalf of Abella Travel for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that Abella Travel contravened the *Fair Work Act 2009* and the *General Retail Industry Award 2010* by:

- o failing to pay the lawful minimum hourly rates of pay for time worked Monday to Friday;
- o failing to pay penalty rates for time worked on Saturdays
- o failing to pay penalty rates for time worked on a Public Holiday
- o failing to pay overtime
- o failing to pay accrued annual leave and leave loading upon the termination of employment
- o failing to make and keep records as required
- o failing to issue payslips

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

Abella Travel has formally admitted to the FWO that Abella Travel 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](http://www.fairwork.gov.au). As part of the Enforceable Undertaking Abella Travel has committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

Abella Travel has taken steps to remedy the contraventions, including by rectifying the underpayment to you.

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

Should you have any questions, please contact [party to include contact details].

Yours sincerely

**John Lee**  
Director