

Fair Work Act 2009

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by MK Train Pty Ltd (ACN: 142 916 069) (**MK Train**) 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 MK Train; and
 - (b) the FWO accepts the Undertaking so executed.
3. Upon the commencement of this Undertaking, MK Train undertakes to assume the obligations set out below.

Background

4. MK Train operate a Sushi Train franchise serving Japanese style food to customers in a sit-down restaurant environment located in the northern Brisbane suburb of Aspley.
5. On or about May 2011, MK Train opened the Sushi Train franchise restaurant located at Shop 1, Aspley Arcade, 1368 Gympie Road, Aspley, Qld 4034.
6. Mk Train operates the Sushi Train restaurant seven (7) days per week including public holidays. The trading hours are 11:00 am to 9:00 pm.
7. MK Train employed the Complainant between 14 April 2014 and 2 June 2014 (the **Employment Period**) when the employment ended.
8. The Complainant was employed on a casual basis. His duties included taking food and drink orders, serving food to customers at the tables and sushi 'train', taking customer payments, clearing, cleaning and setting tables and general cleaning duties.
9. During the Employment Period, the Complainant's terms and conditions of employment were governed by the FW Act and the *Restaurant Industry Award 2010* (**Restaurant Award**). Transitional rates of pay in the Award were calculated by reference to the *Transitional Award Hospitality Industry – Restaurant, Catering and Allied Establishments Award – South-Eastern Division 2002* (**Transitional Award**);
10. MK Train underpaid the Complainant for his work by failing to pay the correct minimum hourly rates of pay in accordance with the Restaurant Award. The underpayments arose as a result of underpaying rates of pay including all hours worked on week days Monday to Friday, Saturday, Sunday and Public Holidays.

Contraventions

11. The FWO has determined, and MK Train admits, that MK Train contravened:

Wages

- (a) subsection 45 of the FW Act by failing to pay the Complainant his correct minimum base hourly rate of pay in accordance with clause 20.1 and clause A.2 of Schedule A of the Restaurant Award.

Casual Loading

- (b) subsection 45 of the FW Act by failing to pay the Complainant the correct casual loading in accordance with clause 13.1 and clause A.5 of the Restaurant Award.

Saturday Penalty Rates

- (c) subsection 45 of the FW Act by failing to pay the Complainant the correct penalty rates for time worked on Saturdays in accordance with clause 34.1 and clause A.5 of Schedule A of the Restaurant Award.

Sunday Penalty Rates

- (d) subsection 45 of the FW Act by failing to pay the Complainant the correct penalty rates for time worked on Sundays in accordance with clause 34.1 and clause A.5 of Schedule A of the Restaurant Award.

Public Holiday Penalty Rates

- (e) subsection 45 of the FW Act by failing to pay the Complainant the correct penalty rates for time worked on Public Holidays in accordance with clause 34.1 and clause A.5 of Schedule A of the Restaurant Award.

(collectively the **Contraventions**)

12. As a result of the Contraventions, the Complainant was underpaid \$2,212.81.

Undertakings

13. For the purposes of section 715 of the FW Act, MK Train undertakes to:

Rectify Underpayments

- (a) pay the amount of \$2,212.81 less taxation to the Complainant arising from the Contraventions within 21 days of the execution of this Undertaking.
 - (i) within 28 days of the execution of this Undertaking, provide evidence of payment to the FWO.
- (b) self-rectify on a voluntary basis any additional wage disputes received by and to the satisfaction of the FWO.

FWO My Account Registration

- (c) within seven (7) days of the execution of this undertaking, register with the FWO 'My Account' portal at www.fairwork.gov.au and have completed the profile, minimum pay rates and Award options.
 - (i) within 14 days of the execution of the Undertaking provide to the FWO the MK Train 'My Account' registration number.
 - (ii) within 21 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to an FWO Fair Work Inspector via www.fairwork.gov.au 'My Account' current Restaurant Award minimum pay rates and Saturday, Sunday and Public Holiday penalty rates of pay.

Future Workplace Relations Compliance

- (d) ensure that it complies at all times and in all respects with the FW Act, *Fair Work*

Regulations 2009 (Cth) and the Restaurant Award;

Public Notices

- (e) place a notice within the workplace which is accessible to all employees (**Workplace Notice**) within 28 days of the execution this Undertaking for a total consecutive period of seven (7) days in the terms set out in Attachment A;
 - (i) provide a copy of the **Workplace Notice** and photographic evidence of its display to the FWO within seven (7) days of the display of the notice;

Self-audits and Reporting

- (f) have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at the expense of MK Train), no earlier than 11 calendar months but no later than 12 calendar months of the execution of this undertaking, an audit of its compliance with Commonwealth workplace laws. Specifically:
 - (i) MK Train must demonstrate compliance relating to the wages and entitlements of its employees and the Contraventions identified;
 - (ii) the audit is to include the one (1) full single pay period after the commencement of the eleventh month of the execution of this; and
 - (iii) MK Train must provide a copy of the audit to the FWO within seven (7) days of its completion.

Acknowledgements

14. MK Train acknowledges that:

- (g) 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);
- (h) the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982 (Cth)*;
- (i) 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;
- (j) 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 MK Train;
- (k) 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;
- (l) if the FWO considers that MK Train 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;
- (m) consistent with section 715(3) of the FW Act, MK Train may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by MK Train Pty Ltd (ACN: 142 916 069) in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

(Signature of director/company secretary)

Mitsue Tanaka

(Name of director)

(Name of director/company secretary)

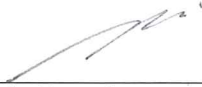
7, Aug, 2014

(Date)

(Date)

in the presence of:

in the presence of:



(Signature of witness)

(Signature of witness)

Kenichi Suzuki

(Name of witness)

(Name of witness)

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



Steven Ronson
Executive Director
Dispute Resolution and Compliance

12 August 2014

(Date)

For Natalie James, Fair Work Ombudsman, as her delegate subject to the instrument of delegation made pursuant to section 683 of the FW Act and executed by Nicholas Paul Wilson on 30 January 2013.

in the presence of:



(Signature of witness)

Matthew Fossey

(Name of Witness)



Contraventions of the *Fair Work Act 2009* and the
Restaurant Industry Award 2010 by MK Train Pty Ltd

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) into allegations that MK Train Pty Ltd trading as Sushi Train Aspley (**MK Train**) contravened the *Fair Work Act 2009* and the *Restaurant Industry Award 2010* (**Restaurant Award**)

MK Train Pty Ltd owns and operates the Sushi Train Aspley franchise restaurant located at Shop 1, Aspley Arcade, 1368 Gympie Road, Aspley, Qld 4034 and no previous contraventions of Commonwealth workplace laws have been determined against MK Train.

The FWO has found that MK Train contravened the *Fair Work Act 2009* and the *Restaurant Industry Award 2010* by:

1. failing to pay an employee their correct minimum base hourly rates of pay for time worked Monday to Friday;
2. failing to pay an employee a casual loading for all hours worked;
3. failing to pay an employee penalty rates for time worked on Saturdays;
4. failing to pay an employee penalty rates for time worked on Sundays; and
5. failing to pay an employee penalty rates for time worked on Public Holidays.

MK Train has 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 underpayments to the employee affected by the contraventions and changing workplace practices.

MK Train expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, MK Train 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 MK Train and have queries or questions relating to your employment, please contact Ms Mitsue Tanaka in the first instance on telephone 0411 601 997 or by email at mitsuekd5@hotmail.com.

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 Restaurant Award terms and conditions.

Ms Mitsue Tanaka
Director – MK Train Pty Ltd