



Fair Work OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

(as represented by the Office of the Fair Work Ombudsman);
Paul & Holly Pty Ltd (ACN 149 800 500);

and

Samuel Han

Fair Work Act 2009

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:

- (a) Paul & Holly Pty Ltd (ACN 149 800 500) (**Paul & Holly**); and
- (b) Mr Samuel Han (**Mr Han**)

for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

- 2. Paul & Holly operated a restaurant called "Carre Noir" serving western style food to customers in a sit down restaurant environment located at The Concourse, Victoria Avenue, Chatswood, NSW.
- 3. A request for assistance was made to the FWO by [REDACTED] (the **Employee**) regarding Paul & Holly on 2 April 2014. The Employee was sponsored by Paul & Holly on a subclass 457 Temporary Work (Skilled) visa to work as a Cook for Carre Noir.
- 4. Paul & Holly employed the Employee on a full-time basis from 30 May 2013 to 13 April 2014 (the **Employment Period**) when the employment ended.
- 5. During the Employment Period, the terms and conditions of the Employee's employment were governed by the *Restaurant Industry Award 2010* (the **Restaurant Award**) and the FW Act. Paul & Holly was required to pay the Employee the phased rates of pay in Schedule A to the Restaurant Award, calculated by reference to the applicable transitional instrument, namely the Australian Pay and Classification Scale derived from the Notional Agreement Preserving the *Restaurants, &C., Employees (State) Award*.
- 6. During the Employment Period the Employee performed the duties of a Cook Grade 4 under the Restaurant Award including ordering vegetables and materials, preparing rosters, preparing ingredients, cooking meal orders, cleaning and serving drinks including alcoholic drinks.
- 7. Mr Han was:
 - (a) at all material times principally responsible for the overall direction, management and supervision of the operations of Paul & Holly in relation to industrial instruments and arrangements, setting and adjusting pay rates and determining wages and conditions of employment;
 - (b) the person who made decisions on behalf of Paul & Holly, or was ultimately responsible for Paul & Holly's decisions, in relation to:
 - (i) the recruitment or engagement of employees;
 - (ii) the terms and conditions on which the employees would be engaged;
 - (iii) payments made to employees in relation to the performance of work; and
 - (iv) the work to be performed by employees;

- (c) at all material times by reason of the matters set out at 8 (b) and (c) above, responsible in a practical sense for ensuring that Paul & Holly complied with its legal obligations to its employees.

Contraventions

8. The FWO has determined, and Paul & Holly admits, that Paul & Holly contravened:

Wages

- (a) section 45 of the FW Act by failing to pay the Employee the correct minimum base hourly rate of pay in accordance with clause 20.1 and clause A.2.5 of Schedule A of the Restaurant Award.

Saturday Penalty Rates

- (b) section 45 of the FW Act by failing to pay the Employee the correct penalty rates for time worked on Saturdays in accordance with clause 34.1 and clause A.5.4 of Schedule A of the Restaurant Award.

Sunday Penalty Rates

- (c) section 45 of the FW Act by failing to pay the Employee the correct penalty rates for time worked on Sundays in accordance with clause 34.1 and clause A.5.4 of Schedule A of the Restaurant Award.

Public Holiday Penalty Rates

- (d) section 45 of the FW Act by failing to pay the Employee the correct penalty rates for time worked on Public Holidays in accordance with clause 34.1 and clause A.5.4 of Schedule A of the Restaurant Award.

Overtime

- (e) section 45 of the FW Act by failing to pay the Employee the correct overtime rates for time worked outside of the spread of hours or rostered hours in accordance with clause 33.2 of the Restaurant Award.

Split Shift Allowance

- (f) section 45 of the FW Act by failing to pay the Employee the allowance for each split shift worked in accordance with clause 24.2 of the Restaurant Award.

Annual leave and annual leave loading on termination

- (g) section 44 of the FW Act by failing to pay the Employee accrued annual leave entitlements on termination in accordance with section 90(2) of the FW Act.

Payment of wages

- (h) section 45 of the FW Act by failing to pay the Employee wages in accordance with clauses 27.1, 27.2, 27.3 and 27.4 of the Restaurant Award.

Employee records

- (i) subsection 535(1) of the FW Act by failing to comply with the record-keeping provisions contained in regulation 3.32, 3.33, 3.34 and 3.44 of the *Fair Work Regulations 2009 (Cth) (FW Regulations)*

Pay slips

(j) section 536 of the FW Act by failing to issue pay slips to the Employee.

(collectively the **Contraventions**)

9. The FWO has determined and Mr Han admits, that he was involved in the Contraventions within the meaning of section 550(a) and (c) of the FW Act.
10. As a result of the Contraventions, the Employee was underpaid \$51,158.41.
11. On 12 October 2014 a payment of \$4605.00 was made to the Employee.
12. On 21 October 2014 a payment of \$1535.00 was made to the Employee.

Commencement of Undertaking

13. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by Paul & Holly and Mr Han; and
 - (b) the FWO accepts the Undertaking so executed.
14. Upon the commencement of this Undertaking, Paul & Holly and Mr Han undertake to assume the obligations set out below.

Undertakings

15. For the purposes of section 715 of the FW Act, Paul & Holly and Mr Han (both in his role at Paul & Holly and as a director of other entities where specified in the following paragraphs) undertake to:

Rectify Underpayments

- (a) pay the Employee the remaining amount of \$45,018.41 less taxation arising from the Contraventions in accordance with the following payment plan upon the commencement of this Undertaking:
 - (i) payment of \$5018.41 less taxation on 10 November 2014
 - (ii) payment of \$10,000.00 less taxation on 10 December 2014
 - (iii) payment of \$10,000.00 less taxation on 10 January 2015
 - (iv) payment of \$10,000.00 less taxation on on 10 February 2015
 - (v) payment of \$10,000.00 less taxation on 10 March 2015;
- (b) provide evidence of each payment to the FWO within 7 days of payment being made;
- (c) rectify on a voluntary basis within 60 days any additional wage disputes received by and to the satisfaction of the FWO;

Public Notices

- (d) place a public notice in the Friday edition of the North Shore Times (**Public Notice**) within 28 days of the commencement of this Undertaking in the terms set out in Attachment A;

- (e) provide a copy of the Public Notice to the FWO within 7 days of its publication;

Apology

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

FWO My Account Registration

- (h) within 7 days of the commencement of this Undertaking, register with the FWO 'My Account' portal at www.fairwork.gov.au and complete the profile, minimum pay rates and Award options;
- (i) within 14 days of the commencement of this Undertaking provide to the FWO the 'My Account' registration number for Paul & Holly;
- (j) within 21 days of the commencement of this Undertaking, at a mutually agreed time and location, demonstrate knowledge to a FWO Fair Work Inspector via www.fairwork.gov.au 'My Account' of the current Restaurant Award minimum and penalty rates of pay;

Self-audits, Reporting and Future Workplace Relations Compliance

- (k) if Paul & Holly employs employees within three years of the commencement of this Undertaking:
 - (i) inform the FWO within 14 days of the first employee commencing employment;
 - (ii) ensure that it complies at all times and in all respects with the FW Act, FW Regulations and the Restaurant Award;
 - (iii) have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at the expense of Paul & Holly) an audit of Paul & Holly's compliance with Commonwealth workplace laws every six months for a period of 3 years from the commencement of this Undertaking. Specifically:
 1. compliance must be demonstrated relating to the wages and entitlements of its employees and any Contraventions identified;
 2. the audit is to include the one full single pay period after the commencement of the sixth and twelfth month after the engagement of the first employee; and
 3. a copy of the audit must be supplied to the FWO within seven days of its completion.
- (l) take all reasonable steps to ensure that any entities in which Mr Han holds the role of director comply at all times, and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the Modern Award and the FW Act, by developing systems and processes to promote ongoing compliance with those requirements. In particular, develop and implement demonstrable systems and processes to:
 - (i) ensure employees receive the correct minimum rates of pay and

entitlements;

- (ii) keep accurate and complete records to ensure employees receive their correct wages and entitlements; and
- (iii) issue pay slips within one working day of paying an amount to each employee.

Broader community workplace relations education

- (m) make a donation of \$1,000 within 60 days of the commencement of the Undertaking to the Working Women's Centre to fund education about workplace rights under the FW Act;
- (n) provide proof of the payment referred to in 14(m) above to the FWO within 7 days of it being made;

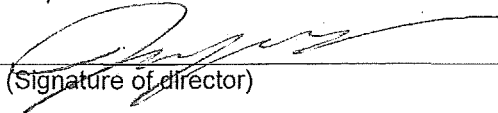
Acknowledgements

16. Paul & Holly and Mr Han acknowledge that:

- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at www.fairwork.gov.au (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
- (b) the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
- (c) the FWO may issue a media release in relation to this Undertaking and from time to time, publicly refer to the Undertaking and its terms;
- (d) the admissions made in the Undertaking may be relied upon by the FWO in respect of any future decision about enforcement action to be taken in relation to any future non-compliance with Commonwealth workplace relations obligations by Paul & Holly and/or Mr Han;
- (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 Paul & Holly and/or Mr Han have 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, Paul & Holly and/or Mr Han may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by Paul & Holly Pty Ltd (ACN 149 800 500) in accordance with section 127(1) of the Corporations Act 2001:


(Signature of director)

(Signature of director/company secretary)

Jahyoung HAN
(Name of director)

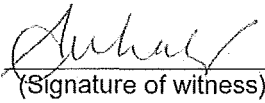
(Name of director/company secretary)

23. Oct. 2014
(Date)

(Date)

in the presence of:

in the presence of:

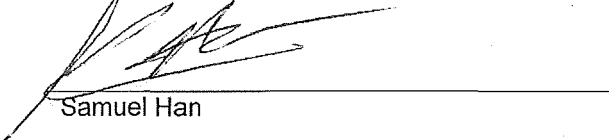

(Signature of witness)

(Signature of witness)

Antonia N. Whatley
(Name of witness)

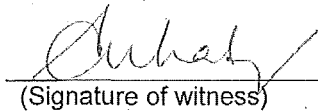
(Name of witness)

EXECUTED by Mr Samuel Han:


Samuel Han


23 Oct. 2014
(Date)

in the presence of:


(Signature of witness)

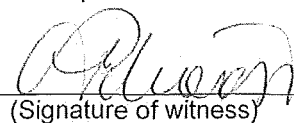
Antonia N. Whatley
(Name of witness)

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
Delegate for the FAIR WORK OMBUDSMAN

30 OCTOBER 2014
(Date)

in the presence of:


(Signature of witness)

FAY PIKIOURAS
(Name of Witness)

Attachment A – Form of Public Notice



**Contraventions of the *Fair Work Act 2009* and the
Restaurant Industry Award 2010 by Paul & Holly Pty Ltd and Samuel Han**

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Paul & Holly Pty Ltd trading as Carre Noir (**Paul & Holly**) and Samuel Han contravened the *Fair Work Act 2009* and the *Restaurant Industry Award 2010* (**Restaurant Award**).

The FWO has found that Paul & Holly and Samuel Han 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;
2. failing to pay an employee penalty rates for time worked on Saturdays;
3. failing to pay an employee penalty rates for time worked on Sundays;
4. failing to pay an employee penalty rates for time worked on Public Holidays;
5. failing to pay an employee overtime rates for hours worked outside of ordinary hours;
6. failing to pay an employee a split shift allowance for split shifts worked;
7. failing to pay an employee annual leave and annual leave loading on termination;
8. failing to keep accurate and comprehensive employee records; and
9. failing to provide an employee a payslip within one business day of wage payments.

Paul & Holly and Samuel Han have formally admitted to the FWO that these contraventions occurred and have 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. Paul & Holly and Samuel Han will also make a donation of \$1,000.00 to the Working Women's Centre to fund education about workplace rights under the *Fair Work Act 2009*.

Paul & Holly and Samuel Han express their sincere regret and apologise for the conduct which resulted in the contraventions. Furthermore, Paul & Holly and Samuel Han give their commitment that such conduct will not occur again and they will comply with all requirements of the Commonwealth workplace relations laws in the future.

If you worked for Paul & Holly or Samuel Han and have queries or questions relating to your employment, please contact Mr Samuel Han in the first instance on telephone 0418 161 900 or by email at info@carrenoir.com.au.

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 Jahyoung Han
Director – Paul & Holly Pty Ltd