



Australian Government

Fair Work OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Mondial Fundraising Communications Pty Ltd

ABN 76111952615

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by
 - (a) MONDIAL FUNDRAISING COMMUNICATIONS PTY LTD ABN: 76111952615 (**Mondial**)for the purpose of section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

2. Mondial is a privately owned Australian company first registered on 25 November 2004. Mondial is contracted by major charities to provide telephone fundraising in Australia and New Zealand. The call centre operation in Australia is based in North Sydney, NSW. ANLEKI PR CONSULTING UND BETEILIGUNGS GMBH, a business registered in Austria, is the ultimate holding company of Mondial.
3. Mondial's clients include, The Wilderness Society, OXFAM Australia, UNICEF, RSPCA, Starlight Children's Foundation of Australia and the Cancer Council.
4. Mondial currently engages approximately 53 casual employees in its contract call centre operation and 10 full-time employees in administrative functions across its business. Mondial's workforce predominantly comprises of adult employees over 21 years of age with English as their first language. A small proportion of Mondial's workforce are Working Holiday Visa holders (subclass 417).
5. On 13 April 2016 media outlets reported that Mondial had admitted to publically underpaying its staff an estimated \$643,000 since 2013. The FWO took immediate action in response to the allegations and scheduled a meeting with the Chief Executive Officer of Mondial the same day.
6. Mondial advised the FWO that it believed its employees were award free. On this basis it paid the national minimum wage plus casual loading. Mondial said that it had mistakenly relied on internal payroll advice to keep abreast of wage rates.
7. Mondial first became aware of its error when it engaged the services of an employment law specialist (**Specialist**) in December 2015. The Specialist advised Mondial that employees were not Award free and were covered under the *Contract Call Centres Award 2010* (**Award**).
8. An audit conducted by the Specialist in January 2016 identified 824 former and current employees (**Affected Employees**) had been underpaid since 1 January 2010 an amount of approximately \$770,411. The underpayments ranged from under \$100 to over \$9,000 for the Affected Employees.
9. From mid-February 2016, Mondial commenced paying its employees in accordance with the Award. During April 2016, Mondial rectified underpayments occurring since 1 January 2015 for all currently employed Affected Employees totalling \$93,102.
10. As at 31 August 2016, Mondial has back paid Affected Employees a total of \$300,011.
11. Mondial expressed genuine remorse for its mistake and agreed to enter into an undertaking with the FWO which formalises a payment plan to rectify the outstanding underpayments that occurred between 1 January 2010 and 1 January 2015 totalling approximately \$470,400. Further, Mondial has undertaken to take steps to ensure its future compliance with Australian workplace laws.

12. The FWO recognises that Mondial has voluntarily undertaken the following corrective action prior to the execution of this Undertaking:
- (a) Taking steps to implement changes to current practices when the contraventions were first identified;
 - (b) Writing to all currently employed Affected Employees about the underpayments;
 - (c) Promptly paying the underpayment amounts to the currently employed Affected Employees;
 - (d) Engaging with employee union representatives; and
 - (e) Developing a timeline within which to pay the underpayment amounts to the Affected Employees who are no longer working with Mondial.

Contraventions

13. The FWO has formed the reasonable belief, and Mondial admits, that Mondial contravened section 45 of the FW Act by contravening the following terms of the Award:
- (i) Clause 13.1 by failing to pay casual employees an hourly rate of 1/38 of the weekly rate prescribed for the class of work performed, plus 25 per cent;
 - (ii) Clause 18 by failing to pay rates prescribed for the class of work performed;
 - (iii) Clause 24.7 (a)(i) by failing to pay penalty rates prescribed for work performed outside the spread of ordinary hours from Monday to Friday; and
 - (iv) Clause 24.7 (a) (ii) by failing to pay penalty rates prescribed for work performed on a Saturday.

Commencement of Undertaking

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

Undertakings

16. For the purposes of section 715 of the FW Act, Mondial undertakes to:

Rectify the Underpayments

- (a) make payments to Affected Employees by no later than 31 December 2017, whether or not any of the Affected Employees agree to sign a deed of release, as follows:
 - (i) \$91,000 by 31 December 2016;
 - (ii) \$200,000 by 6 June 2017;
 - (iii) \$179,400 by 31 December 2017.
- (b) provide proof of such payments referred to in 16(a)(i), (ii) and (iii) to the FWO within 14 days of the payment having been made;

- (c) between the time from the execution of this Undertaking and 31 December 2017, will take all reasonable steps to locate any former Affected Employees including, but not limited to, taking steps to ascertain their current residential address and contacting them by telephone, post or email to:
 - i. Advise them that they are owed money;
 - ii. Explain the process for claiming the money owed to them; and
 - iii. Report to the FWO on Mondial's attempts to locate former Affected Employees within 14 days of the dates referred to in 16(a)(i)(ii) and (iii).
- (d) within 14 days of the dates referred to in 16(a)(i)(ii) and (iii) Mondial will:
 - i. pay any amounts owed to former Affected Employees who could not be located to the Commonwealth (as presented by the FWO), pursuant to section 559 of the FW Act and in discharge of Mondial's liability to make further payments to those Affected Employees; and
 - ii. report to the FWO on the former Affected Employees who could not be located including their name, details of the amount owed to them, their last known address and telephone numbers, date of birth, details of the bank account into which they last received wages and visa details (if any).

Future Audit Activity

- (e) conduct an audit by an accounting professional (for example a Certified Practising Accountant) or an employment law specialist, at Mondial's expense, audits of Mondial's compliance with all Commonwealth workplace laws and instruments (**Audits**), relating to the pay and conditions of 25% of employees as follows:
 - i. The Audit of 1 complete pay period in January 2017 to be finalised by 31 March 2017; and
 - ii. The Audit of 1 complete pay period in January 2018 to be finalised by 31 March 2018.
- (f) provide to the FWO within 14 days of each of the finalisation dates specified in subclauses (e)i. and ii. above, details of the methodology used to conduct the Audit and a report on the outcomes of the Audit;
- (g) in the event either Audit or both Audits disclose contraventions of any applicable Commonwealth Workplace relations laws, rectify all such contraventions including rectification of any and all underpayments to employees and provide evidence of the rectification to the FWO within 14 days of completion of each Audit;
- (h) if an employee referred to in subclause (e)i. and ii. above cannot be located, within 1 month of the payment falling due, pay any amounts owed to the Commonwealth (as presented by the FWO), pursuant to section 559 of the FW Act and in discharge of Mondial's liability to make further payments to those employees.

Apology

- (i) send an apology to each Affected Employee within 28 days of payment being made in the terms set out in Attachment A;
- (j) in the event that the Audits referred to in (e)i. and ii. requires rectification of any underpayments, send an apology to the employee(s) within 28 days of payment being made in the terms set out in Attachment A;
 - i. within seven days of the distribution of the Apology Letter(s) referred to in (i) and (j) above, provide a copy of the Apology Letter to the FWO.

Public Notice

- (k) place a public notice (**Public Notice**) in the Saturday edition of The Australian within 28 days of, but not prior to, the FWO publishing a Media Release on its website in respect of this Undertaking. The Public Notice must:
 - (i) Bear the name of Mondial Fundraising Communications Pty Ltd;
 - (ii) Bear the logo (if any) of Mondial Fundraising Communications Pty Ltd;
 - (iii) Be in the form of Attachment B; and
 - (iv) Provide a copy of the Public Notice to the FWO within seven days of publication.

FWO My Account Registration

Within 14 days of the execution of this Undertaking:

- (l) register with the FWO 'My Account' portal at www.fairwork.gov.au and have completed the profile, minimum pay rates and Award options;
- (m) provide to the FWO with Mondial 'My Account' registration number;
- (n) within 14 days of the execution of the Undertaking, subscribe to the following and provide evidence to the FWO as set out in Attachment C;
 - (i) General information email alerts from the FWO relating to the Modern Award, available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates>
 - (ii) FWO's Employer newsletter for the relevant State and industry, available at <http://www.fairwork.gov.au/about-us/news-and-media-releases/newsletter>, selecting at least the following options:
 - (I) pay updates;
 - (II) award updates;
 - (III) holiday updates;
 - (IV) working hours and breaks; and
 - (V) annual leave/sick leave.

Donation

- (o) donate \$10,000 to Marrickville Legal Centre ABN 53 699 012 017 for the purposes of providing free workplace legal advice to workers, to be paid in instalments as set out below:
 - (i) \$1,666 by 30 September 2016;
 - (ii) \$1,666 by 28 October 2016;
 - (iii) \$1,666 by 25 November 2016;
 - (iv) \$1,666 by 23 December 2016;
 - (v) \$1,666 by 20 January 2017; and
 - (vi) \$1,670 by 17 February 2017.
- (p) provide proof of payment of each instalment to the FWO within 7 days of payment.

Workplace Notices

- (q) within 28 days of the execution of this Undertaking, display a notice in the form of Attachment B to this Undertaking (**Workplace Notice**):
 - (i) for a period of at least 28 days in locations where employees are engaged by Mondial; and

- (ii) in a manner which is reasonably capable of drawing the notice to the general attention of all persons engaged by Mondial (for example, by placement on a staff noticeboard in the workplace in at least A3 size).
- (r) provide written details of the method/s of displaying or providing the Workplace Notice, and photographic proof of their display, to the FWO within 7 days of it first being displayed.

No Inconsistent Statements

- (s) Mondial will not make and will take reasonable steps to ensure that its respective officers, employees or agents do not make any statement, orally or in writing, or otherwise which conveys or implies or reasonably conveys or implies anything inconsistent with the terms of this Undertaking.

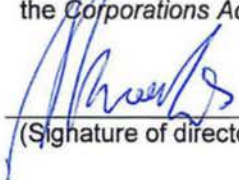
Acknowledgements

17. Mondial 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 (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 Mondial Fundraising Communications Pty Ltd;
- (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 Mondial 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, Mondial may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by Mondial Fundraising Communications Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:



(Signature of director)

(Signature of director/company secretary)

SEBASTIAN BROOKS

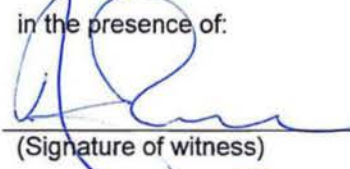
(Name of director)

(Name of director/company secretary)

06/09/2016

(Date)

(Date)

in the presence of:


(Signature of witness)

in the presence of:

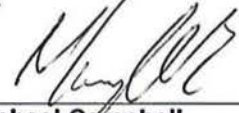
(Signature of witness)

ASHLEY ROSE

(Name of witness)

(Name of witness)

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




Michael Campbell
Deputy Fair Work Ombudsman – Operations

16 / 9 / 16

(Date)

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:


(Signature of witness)

LOUISE CATO

(Name of Witness)

Attachment A – Letter of Apology

FORM OF APOLOGY LETTER

Date

Employee Name

Address

Address

Dear _____

The purpose of this letter is to apologise on behalf of Mondial Fundraising Communications Pty Ltd (**Mondial**) for non-compliance with Commonwealth workplace relations laws. Following recent engagement with the Office of the Fair Work Ombudsman (FWO) it was confirmed that Mondial had contravened the *Fair Work Act 2009* (FW Act) by failing to pay its employees the following entitlements under *Contract Call Centres Award 2010 [MA000023]*:

- Clause 13 – Prescribed casual loading
- Clause 18 – Classifications and minimum wage rates
- Clause 24.7 – Penalty rates for time worked outside the spread of ordinary hours Monday to Friday and on weekends

Regrettably, our internal investigation determined that you were affected by the above contraventions. Mondial is taking steps to remedy the contraventions, including by rectifying \$_____ that you have been underpaid.

You will/have receive/d this payment on (date) and will be provided with payment advice (pay slip) regarding the payment.

Mondial has formally admitted to the FWO that it did not comply with its obligations under Commonwealth workplace relations laws and have entered into an Enforceable Undertaking under the FW Act with the FWO, a copy of which is available from the FWO website at www.fairwork.gov.au.

As part of the Enforceable Undertaking, Mondial has committed to a number of measures to ensure future compliance with Commonwealth workplace laws.

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

Should you have any questions, please contact Mondial on 02 8001 3023.

Yours sincerely

Mondial Fundraising Communications Pty Ltd

Attachment B – Form of Public and Workplace Notice

Contravention of the Fair Work Act by Mondial Fundraising Communications Pty Ltd

We refer to the admission made to the Office of the Fair Work Ombudsman (FWO) by Mondial Fundraising Communications Pty Ltd (**Mondial**) that it had contravened the *Fair Work Act 2009*.

Mondial worked cooperatively with the FWO to determine that it had contravened Section 45 of the FW Act by contravening a Modern Award, specifically failing to pay the prescribed hourly rates and casual loadings.

Mondial 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 in addition to rectifications already made, which includes future reporting to the FWO.

Mondial expresses its sincere regret and apologises for its actions which resulted in the contraventions. Furthermore, **Mondial** gives a commitment that it will not happen again and that it will comply with all requirements of the Commonwealth workplace relations laws in the future.

If you worked for **Mondial** and have queries or questions relating to your employment, please contact **Mondial on 02 8001 3023 or payment@mondialfundraising.com.au**. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

Attachment C - Workplace Relations Training

FAIR WORK OMBUDSMAN WEBSITE – SUBSCRIPTIONS

_____, (name & position title), on behalf of Mondial Fundraising Communications Pty Ltd have undertaken the following activities:

- Registered for “My Account”
- Subscribed to the bi-monthly employer newsletter
- Subscribed to the pay rate update alert RSS feed for the following Award:
 - Contract Call Centres Award 2010 [MA000023]

(Signature of director)

(Name of director)

(Date)