South Australian supermarket wage-theft case settles for $5.5 million

Vicki Mylonas
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More than 500 current and former supermarket workers in regional South Australia (SA) are to receive $5.5 million in back pay, following the settlement of a four-year wage theft case. They were employed at 23 regional Foodland supermarkets run by Eudunda Farmers Pty Ltd (EFL).

Josh Peak, state secretary of the Shop, Distributive and Allied Employees' Association (SDA), declared this was "one of the biggest underpayment settlements ever achieved in SA history."

The underpayment case was initially brought to the Federal Court in 2021, with the SDA arguing that, for at least six years, EFL systematically misclassified workers, incorrectly paid overtime and allowances, and breached minimum shift rules.

According to the General Retail Industry Award—the national minimum legal wages and conditions for workers in the sector—there are eight employee pay classifications. As of July 1, the current award sets out hourly rates from $26.55 (Level 1) to $32.45 (Level 8).

One worker told the Australian Broadcasting Corporation, "no matter our role, we were paid as level 1 casual retail employees, even some of the butchers, which made no sense whatsoever." Butchers, as well as bakers and pastry cooks, for example, with specific skills and qualifications, should be on the Level 4 classification (currently $28.12 an hour).

Workers were also denied overtime rates when working more than 38 hours in the week.

In addition, workers claimed EFL failed to correctly pay a range of other allowances such as cold work allowance and uniform allowance. Under the retail award, workers principally employed to enter cold chambers or stock/refill refrigerated storage, are entitled to an allowance of up to $0.56 per hour.

Wage theft is widespread in Australia, especially in the retail and fast food sectors. In 2019, major national supermarket chain Woolworths admitted it had underpaid around 5,700 salaried staff a total of around $300 million over the previous decade. In 2021, the Fair Work Ombudsman found Coles, the country's other major supermarket chain, had underpaid 7,805 workers a total of $113.8 million.

Super Retail Group, owner of various outlets such as SuperCheap Auto and Rebel Sport, admitted in 2019 to having underpaid staff by up to $43 million. In 2022, Domino's Pizza was the subject of a class action, in which delivery drivers and other employees claimed they had been paid as much as $11 per hour less than the minimum award wage.

It is no coincidence that wage theft is rife in these sectors, where a high proportion of workers are young and employed on a casual basis. Workers who are not guaranteed ongoing employment, especially if they are inexperienced, are less likely to speak out if they are underpaid.

Of the workers involved in the court case against EFL, 87 percent were casuals, although many had worked regular hours for several years. In fact, some had been employed as casuals for more than 30 years. The SDA accused EFL of failing to notify its employees of their right to convert to permanent employment, or even failing to respond to employee requests for permanent employment, in line with the National Employment Standards.

The SDA bureaucracy has used the Foodland class action to posture as a crusader against wage theft, as part of a cynical membership drive. Last year, the union narrowly won collective bargaining rights at the supermarket chain, gathering signatures from 51 percent of the workforce through a campaign that heavily promoted the underpayment claim.

The reality is that the SDA has for decades played a key role in overseeing the deteriorating living and working conditions of retail workers. The union maintains close working relationships with major retail companies, which collect dues on behalf of the SDA and make joining the union essentially a formality for new employees. In return, the SDA enforces the cuts to wages and conditions demanded by management.

In a particularly notorious example, enterprise agreements pushed through by the SDA at Coles in 2011 and 2014 slashed weekend and night penalty rates in "exchange" for a small base pay rate increase, resulting in the underpayment of more than 40,000 workers.

Under the SDA's watch, the national retail award makes workers in the industry among the lowest paid in the country. The minimum weekly rate for a full-time retail worker in the highest classification is just $1,233.20 before tax, while the median price of rent is around $665 per week.

In addition, the retail and fast food awards, as well as numerous enterprise agreements brokered by the SDA, endorse the super-exploitative practice of "junior rates." Despite having the same duties and responsibilities as their older colleagues, 20-year-old workers only have to be paid 90 percent of the adult wage, with lower rates for each lower age, down to just 45 percent for workers under 16. That is, a 15-year-old casual worker can legally be paid as little as $14.94 an hour.

The SDA, backed by the Australian Council of Trade Unions (ACTU), has appealed to the Fair Work Commission to abolish junior rates for employees 18 and older. But under the union proposal, the practice would continue for those 17 and under, albeit with slight rate increases.

That the unions are compelled to undertake these campaigns against "wage theft" and for minimal reforms to junior rates, among other issues, including gender pay equity, is an expression of mounting opposition in the working class to the deepening social crisis. At state and federal level, Labor governments, of which the SDA and ACTU are integral components, have presided over soaring inflation and interest rates, while delivering real wage cuts throughout the public sector and slashing social spending.

The SDA and the rest of the union apparatus are desperately seeking to divert and contain workers' opposition within the framework of polite appeals to governments and the industrial courts. But wage theft is not an issue of accounting failures or oversights; it is one expression of an economic system that puts the surging profits of a few over the interests of the working class.

What the union bureaucrats are anxious to prevent is what must be built—a mobilisation of workers, not just in a fight for improved wages and conditions, but a political struggle against the Labor government and capitalism itself. Such a struggle requires the building of new organisations, rank-and-file committees that are run by workers and politically and organisationally independent of any union bureaucracy.

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