

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 30/10/2020 3:02:27 PM ACDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Reply - Form 34 - Rule 16.33
File Number: SAD76/2020
File Title: AARON FURNELL & ORS v SHAHIN ENTERPRISES PTY LTD ACN 008 150 543
Registry: SOUTH AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 30/10/2020 3:02:31 PM ACDT

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Reply

No. SAD76 of 2020

Federal Court of Australia
District Registry: South Australia
Division: Fair Work

Aaron Furnell and others listed in the Schedule

Applicants

Shahin Enterprises Pty Ltd ACN 008 150 543

Respondent

1. As to paragraph 15A (particularly sub-paragraph 15A.3) of the Defence and other parts of the Defence referring to time and attendance records maintained by the Respondent (paragraphs 17, 18, 20A, 21, 22, 26, 59), the Applicants say:
 - a. The time recording systems described in 15A.3 of the Defence did not allow the Applicants and Group Members (both before and after the implementation of the electronic time recording system) who had arrived at work prior to the start of their scheduled shift to, themselves, log in early and register their commencement of work upon their arrival. The systems only allowed a manager to register early commencement and the Respondent had a common or general practice of such managers not doing so in relation to the Pre-Shift Work.
 - b. The time recording system described in 15A.3 of the Defence did not allow the Applicants and Group Members (both before and after the implementation of the electronic time recording system) who had remained at work beyond the completion of their rostered shift and ordinary hours to, themselves, record their additional hours / overtime in the system. The systems only allowed a manager to register such additional hours / overtime and the Respondent had a common or general practice of such managers not doing so in relation to the Post-Shift Work.

Filed on behalf of (name & role of party)	<u>The Applicant</u>		
Prepared by (name of person/lawyer)	<u>Rory Markham</u>		
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c. The time recording system and the records retained by the Respondent arising from the systems described in paragraph 15A.3 of the Defence did not accurately record the working hours of the Applicants and Group Members. This system and these records did not accurately record:

- i. the Pre-Shift Work;
- ii. the Post-Shift Work;
- iii. the Meal Break Work; and
- iv. the Overtime Hours and Overtime performed by Group Members

(as those terms are used in the Group 1 Claim, Group 2 Claim and Group 3 Claim in the Further Amended Statement of Claim filed 27 August 2020 (FASOC))

2. During the Relevant Period the Respondent was required by section 535 of the FW Act and Part 3-6, Division 3, Subdivision 1 of the *Fair Work Regulations 2009* (Cth) to make and retain for a period of 7 years an employee record which records the:

- a. number of overtime hours worked by the Applicants and Group Members on each day when overtime is worked; or
- b. when such Applicants and Group Members started and stopped working overtime hours on each day when overtime is worked.

3. The time recording systems and records described in the Defence, if relied upon by the Respondent as such an employee record, were:

- a. inaccurate in that they did not record all hours of overtime work performed by the Applicants and Group Members by reason of the matters set out in paragraph 1(c) above; and
- b. inadequate in that they failed to record the matters set out in paragraph 2 above.

4. As to paragraphs 23.4, 26.1(b), 60.2 of the Defence which state that work the Applicants allege was performed after the scheduled conclusion of their shifts was work that 'could or would have been completed in the course of [their] shifts'. Such a matter is not relevant to the Applicants and Group Members claims and does not answer these claims.

5. As to paragraph 50.10 of the Defence which includes descriptions of alleged misconduct of the Third Applicant. Such matters are not relevant to the claim made by the Third Applicant and Group Members and do not answer these claims.

Date: 30 October 2020



Signed by Rory Markham
Lawyer for the Applicants

This pleading was prepared by Rory Markham, lawyer and settled by Michael Whitbread and Justin Hogan-Doran SC of Counsel.

Certificate of lawyer

I Rory Markham certify to the Court that, in relation to the reply filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 30 October 2020



Signed by Rory Markham
Lawyer for the Applicant

Schedule of Parties

First Applicant	Aaron Furnell
Second Applicant	Paul Young
Third Applicant	Shannan Mahoney
Fourth Applicant	Christopher Palmer
Fifth Applicant	Laurence Lagoon Williamson
Respondent	Shahin Enterprises Pty Ltd ACN 008 150 543