

## NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 18/06/2020 11:13:20 AM AEST 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:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number:	NSD2004/2019
File Title:	CAMERON BAKER v WOOLWORTHS LIMITED ABN 88 000 014 675
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 18/06/2020 11:13:27 AM AEST

A handwritten signature in blue ink, reading "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.



Federal Court of Australia  
New South Wales District Registry  
Fair Work Division

**Cameron Baker**  
First Applicant

**Rhys Piro**  
Second Applicant

**Woolworths Group Limited**  
(ABN 88 000 014 675)  
First Respondent

**Woolworths (South Australia) Pty Limited**  
(ABN 34 007 873 118)  
Second Respondent

### **Amended Statement of claim**

1. The First Applicant ("**Mr Baker**") brings this proceeding pursuant to Part IVA of the Federal Court of Australia Act 1976 (Cth):
  - (1) for himself, and
  - (2) as the representative of a group constituted by all persons;
    - (a) employed by the First Respondent ("**Woolworths**") at any time within the period of 6 years ending on the date of the filing of the Originating Application herein (the "**Relevant Period**"),

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Filed on behalf of  
Law firm (if applicable)  
Tel  
Email  
**Address for service**

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The Applicants, Cameron Baker and Rhys Piro  
Adero Law  
(02) 61889 1022 Fax n/a  
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5 Torrens Street,  
Braddon ACT 2612

- (b) in a position in a
  - (i) supermarket, or
  - (ii) Big W Discount Department Store (including Big W Optical),  
in the "general retail industry" within the meaning of that phrase in the General Retail Industry Award 2010 (the "**Award**"),
- (c) the title of which position was, or the title of which included the word, "manager" (a "**Manager Position**"), and
- (d) which was undertaken as a "full time employee" or "part time employee" as those terms are defined in the Award.
- (e) who in any Pay Period in the Relevant Period worked a rostered hour
  - (i) which was on a Monday to Friday on what was for the purposes of the Award an evening,
  - (ii) outside the spread of hours from time to time prescribed in the Award for undertaking ordinary hours, or
  - (iii) on a Saturday, Sunday or Public Holiday,

(the "**Woolworths Sub-group**" and a/the "**Woolworths Sub-group Member/s**").

2. The Second Applicant ("**Mr Piro**") brings this proceeding pursuant to Part IVA of the Federal Court of Australia Act 1976 (Cth):

- (1) for himself, and
- (2) as the representative of a group constituted by all persons,
  - (a) employed by the Second Respondent ("**Woolworths SA**") at any time within the period of 6 years ending on the date of the filing of the Originating Application herein (the "**Relevant Period**").
  - (b) in a position in a:
    - (i) supermarket, or

- (ii) Big W Discount Department Store (including Big W Optical),  
in the "general retail industry" within the meaning of that phrase in the  
General Retail Industry Award 2010 (the "Award").
- (c) the title of which position was, or the title of which included the word,  
"manager" (a "Manager Position"), and
- (d) which was undertaken as a "full time employee" or "part time  
employee" as those terms are defined in the Award,
- (e) who in any Pay Period in the Relevant Period worked a rostered hour:
  - (i) which was on a Monday to Friday on what was for the purposes  
of the Award an evening,
  - (ii) outside the spread of hours from time to time prescribed in the  
Award for undertaking ordinary hours, or
  - (iii) on a Saturday, Sunday or Public Holiday,

(the "Woolworths SA Sub-group" and a/the "Woolworths SA Sub-group  
Member/s").

3. Hereinafter:

- (1) the Woolworths Sub-group and the Woolworths SA Sub-Group are  
collectively hereinafter referred to as the Group, and
- (2) the Woolworths Sub-group Member/s and the Woolworths SA Sub-  
group Member/s are collectively hereinafter referred to as a/the Group  
Member/s.

4. Each of Woolworths and Woolworths SA was at every time material to any claim  
herein ("**at all material times**"):

- (1) a corporation under the Corporations Act 2001 (Cth), able to sue, and liable  
to be sued in its corporate name and style;
- (2) a constitutional corporation within the meaning of s 12 and s 14 of the Fair  
Work Act 2009 (the "**FWA**"), and

- (3) a national system employer within the meaning of s 12 and s 14 of the FWA.
5. The Award at all material times:
- (1) covered throughout Australia any employer engaged in the general retail industry and employees of any such employer,
  - (2) commenced on 1 January 2010, was from time to time thereafter varied and remained in force throughout the Relevant Period.
6. Pursuant to an offer in writing:
- (1) from Woolworths dated 6 May 2014,
  - (2) accepted by Mr Baker in writing on 7 May 2014,
- Mr Baker, on 13 May 2014, commenced full-time employment with Woolworths at its supermarket at Camberwell in Victoria in a position entitled "Replenishment Team Manager" (the "**Baker Position**") at a then base salary of \$65,000.00 (the "**Baker Contract**").
7. Pursuant to an offer in writing:
- (1) from Woolworths SA dated on or about 24 August 2013,
  - (2) accepted by Mr Piro in writing on or about 24 August 2013,
- Mr Piro, on or about 2 September 2013, commenced full-time employment with Woolworths SA at its supermarket at Newton Village Shopping Centre in South Australia in a position entitled "Replenishment Team Manager" (the "**Piro Position**") at a then base salary of about \$48,000.00 (the "**Piro Contract**").
8. The Award permitted, and the Baker and Piro Contracts, as the case may be, required, that ~~Mr Baker's~~ base salary and any other monetary entitlements to which either might thereunder ~~either~~ become entitled to be paid to him in any fortnight ("a **Pay Period**") in arrears within 14 days after the end thereof.
- ~~9. The first pay period to conclude after 13.05.2014 concluded on 31.05.2014.~~

10. Mr Baker remained in the Baker Position until the end of the shift commenced by him on 18 June 2019 whereupon he ceased to be employed with Woolworths (the "**Baker Termination**").
  11. Mr Piro remained in the Piro Position until the end of the shift commenced by him on or about 17 April 2017 whereupon he ceased to be employed in the Piro Position with Woolworths SA (the "Piro Termination"). Mr Piro remained employed by Woolworths SA in a non-salaried position until the end of the shift commenced by him on or about 15 July 2018.
  12. Each of the Baker and Piro Positions was:
    - (1) in a supermarket or Big W Discount Department Store in the general retail industry as defined in the Award,
    - (2) a Manager Position, and
    - (3) within the Award classification of "Retail Employee Level 6".
  13. The Award as amended from time to time applied to, among others, Mr Baker and Mr Piro and all Group Members in respect of her or his employment with Woolworths or Woolworths SA as the case may be.
  14. On and from 13 May 2014 Mr Baker's ordinary roster was ~~ordinarily rostered days of work were:~~
    - (1) from Tuesday night to Saturday night,
    - (2) from 13 May 2014 to March 2018, from 10pm to 7am, and
    - (3) from around March 2018, from 9pm to 6am,

(the "**Baker Roster**").
  15. In the premises pleaded in ~~2 to 10~~ 4 to 6, 8, 10 and 12 to 14 above Mr Baker was, throughout the period of his employment with Woolworths, a "full time employee" as defined in the Award.
- Award cl. 11
16. On and from 2 September 2013, Mr Piro's ordinary roster was:

- (1) from Monday to Tuesday and Thursday to Saturday in the first week of a given fortnight,
- (2) from Monday to Friday in the second week of a given fortnight,
- (3) from 2 September 2013 to 1 March 2014, from 1pm to 10pm, and
- (4) thereafter, from 3:00pm to 12:00am.

(the "Piro Roster").

- 17. In the premises pleaded in 4, 5, 7, 8, 11 to 13 and 16 above Mr Piro was, throughout the period of his employment with Woolworths SA, a "full time employee" as defined in the Award.

Award cl. 11

- 18. Other than when he was for any reason on leave, each of Mr Baker and Mr Piro for so long as he was employed by Woolworths or Woolworths SA as the case may be worked the days and hours specified in the Rosters as was from time to time operative, including any day that was for the purposes of the Award a "Public Holiday".
- 19. Throughout the periods in which the Rosters operated, the hours worked by Mr Baker and Mr Piro in accordance with either the Roster relevant to him were for the purpose of the Award his "ordinary hours" of work.
- 20. **The First Evening Work Contraventions.** For each Pay Period in the period in which the his Roster operated, it was a term of the Award applicable to ~~Mr Baker's~~ the employment of Mr Baker and Mr Piro as the case may be in the his Position that for any "ordinary hour" worked by him after 18.00 on any Monday to Friday he would be paid an additional loading of 25% (the "**Evening Work Term/Loading**").

Award cl. 29.4(a)

- 21. In contravention of the Evening Work Term Woolworths or Woolworths SA as the case may be did not in any Pay Period pleaded in 14 20 above, in respect of any hour worked by Mr Baker or Mr Piro after 18:00 on any Monday to Friday, pay

him the Evening Work Loading or any part thereof (collectively the "**Evening Work Contraventions**").

22. In respect of each Evening Work Contravention Mr Baker and Mr Piro suffered loss; the difference between

- (1) what he was paid for each Evening Work hour undertaken by him, and
- (2) the hourly rate that the Evening Work Term required be paid to him for that hour.

23. **The Second Night Work Contraventions.** For each Pay Period in the period in which the his Roster operated, it was a term of the Award applicable to Mr Baker's the employment of Mr Baker and Mr Piro in the his Position that ordinary hours worked after 23.00 on any day were to be paid at

- (1) time and a half for the first three hours so worked, and
- (2) double time thereafter until the end of the shift that had commenced before or at 23.00,

(the "**Night Work Term/Loading**").

2010 Award cl. 28.2  
2017 Award cl. 29(2)(a)

24. In contravention of the Night Work Term Woolworths or Woolworths SA as the case may be did not in any Pay Period referred to in 17 23 above:

- (1) in respect of any hour worked by Mr Baker and Mr Piro after 23.00 on any day,
- (2) pay him the applicable Night Work Loading or any part thereof,

(collectively the "**Night Work Contraventions**").

25. In respect of each Night Work Contravention, Mr Baker and Mr Piro suffered loss; the difference:

- (1) between what he was paid for each Night Work hour undertaken by him, and



(2) the hourly rate that the Night Work Term required be paid for that hour.

26. **The Third Saturday Work Contraventions.** For each Pay Period in which the his Roster operated it was a term of the Award applicable to ~~Mr Baker's~~ the employment of Mr Baker and Mr Piro as a full-time employee that "an additional 25% loading" would apply for "ordinary hours" worked at any time on a Saturday (the "**Saturday Work Term/Loading**").

Award cl. 29.4(c)

27. In contravention of the Saturday Work Term, Woolworths or Woolworths SA as the case may be did not in any Pay Period pleaded in 20 26 above, in respect of any hours worked by Mr Baker or Mr Piro on a Saturday, pay him the Saturday Work Loading or any part thereof (collectively the "**Saturday Work Contraventions**").

28. In respect of each Saturday Work Contravention Mr Baker and Mr Piro suffered loss; the difference between

- (1) what he was paid for each Saturday Work hour undertaken by him, and
- (2) the hourly rate that the Saturday Work Term required be paid for that hour.

29. **The Fourth Sunday Work Contraventions.** For each Pay Period in which the his Roster operated it was a term of the Award that "ordinary hours" worked at any time on a Sunday

- (1) between 01.01.2010 and 30.06.2017 would be paid an additional 100% loading,
- (2) between 01.07.2017 and 30.06.2018 would be paid an additional 95% loading,
- (3) between 01.07.2018 and the Termination would be paid an additional 80% loading,

(the "**Sunday Work Term/Loading**").

2010 Award cl. 28.4  
2017 Award cl. 29.4(e)

30. In contravention of the Sunday Work Term Woolworths or Woolworths SA as the case may be did not in any Pay Period pleaded in 23 29 above pay Mr Baker or Mr Piro for any hours worked by him on a Sunday the applicable Sunday Work Loading (collectively the "**Sunday Work Contraventions**").

31. In respect of each Sunday Work Contravention, Mr Baker and Mr Piro suffered loss; the difference between:

- (1) what he was paid for each Sunday Work hour undertaken by him, and
- (2) the hourly rate that the Sunday Work Term required he be paid for that hour.

32. **The Fifth Public Holiday Contraventions.** For each Pay Period in which the his Roster operated it was a term of the Award applicable to Mr Baker and Mr Piro as a full-time employee that hours worked by him on a Public Holiday:

- (1) between 01.01.2010 and 30.06.2017 be compensated by payment at the rate of an additional 150%,
- (2) between 01.07.2017 and the Termination be compensated by payment of an additional 125%,

(the "**Public Holiday Work Term/Loading**").

2010 Award cl. 28.4(d)  
2017 Award cl. 29.4(a)

33. In contravention of the Public Holiday Work Term Woolworths or Woolworths SA as the case may be did not in any Pay Period pleaded in 26 32 above, pay Mr Baker or Mr Piro for any hours worked by him on a Public Holiday the applicable Public Holiday Loading or any part thereof (collectively the "**Public Holiday Contraventions**").

34. In respect of each Public Holiday Contravention Mr Baker and Mr Piro suffered loss; the difference between:

- (1) what he was paid for each Public Holiday hour undertaken by him, and
- (2) the hourly rate that the Public Holiday Term required be paid for that hour.

35. **The Overtime Contraventions.** In each pay period in which his Roster operated it was a term of the Award applicable to Mr Baker and Mr Piro that any hours worked by him:

- (1) in excess of ordinary hours,
- (2) outside the space of hours (excluding shift work), or
- (3) outside the roster conditions prescribed in cl. 27 and 28 of the Award,

as required by Woolworths or Woolworths SA were overtime to be paid at time and a half for the first three such hours and double time thereafter (the "**Overtime Term/Rate**").

36. Throughout the period in which he was employed, each of Mr Baker and Mr Piro from time to time were required by Woolworths or Woolworths SA as the case may be to work hours:

- (1) contiguous to but prior to the commencement of his rostered shift on any day,
- (2) contiguous to but after the scheduled end of his rostered shift on any day, and
- (3) after the end of a single contiguous period of work of any day (ie discontinuously with that period) and before the commencement of his next rostered shift.

37. In contravention of the Overtime Term Woolworths or Woolworths SA as the case may be did not in any Pay Period pleaded in 36 above, pay Mr Baker or Mr Piro as the case may be the Overtime Rate or any part thereof for any hour worked by him as overtime (collectively the "**Overtime Contraventions**").

38. In respect of each Overtime Contravention Mr Baker and Mr Piro suffered loss; the difference between:

- (1) what he was paid for each Overtime hour worked by him, and
- (2) the hourly rate that the Overtime Term required be paid for that hour.

39. **The Sixth Record Keeping Contraventions.** It was a requirement of the FWA in respect of Mr Baker and Mr Piro as an employee of Woolworths or Woolworths SA as the case may be, that Woolworths or Woolworths SA as the case may be make and retain records of the following:

- (1) the number of overtime hours worked by ~~Mr Baker~~ him during each day;  
and
- (2) when ~~Mr Baker~~ he started and ceased working overtime hours;

(the "**Record Keeping Obligation**").

FWA s 535  
Fair Work Regulations  
2009 (Cth) cl 3.34

40. In contravention of the Record Keeping Obligation Woolworths or Woolworths SA as the case may be did not in of any pay period in which Mr Baker or Mr Piro worked hours:

- (1) contiguous to but before the commencement of a rostered shift;
- (2) contiguous to but after the scheduled conclusion of a rostered shift, or
- (3) after the end of a single contiguous period of work on any day (ie discontinuously with that period) and before the commencement of his next rostered shift.

record the number of overtime hours worked by Mr Baker or Mr Piro during each day or when Mr Baker or Mr Piro started and ceased working overtime hours (collectively the "(the "**Record Keeping Contraventions**)").

41. The conduct of Woolworths or Woolworths SA as the case may be constituting each:

- (1) Evening Work Contravention;
- (2) Night Time Work Contravention;
- (3) Saturday Work Contravention;
- (4) Sunday Work Contravention; and

(5) Public Holiday Contravention;

(6) Overtime Contravention,

was prohibited by s.45 FWA and, together with the Record Keeping Contraventions, each was by operation of s.539 FWA a civil remedy provision for the purposes of ss. 545 and 546 FWA.

### **Group Members and their claims**

42. Each Group Member was, by reason of:

(1) working a Pay Period

(2) in the Relevant Period,

one or more hours as described in paragraph 1(2)(ee) and 2(2)(e) above, as the case may be, entitled in respect of any such hour to a payment of one or more of the following

(3) the Evening Work Loading;

(4) the Night Time Work Loading;

(5) the Saturday Work Loading;

(6) the Sunday Work Loading; and

(7) the Public Holiday Loading;

(8) Overtime Rates.

43. Woolworths and Woolworths SA as the case may be did not pay to any Group Member employed by it in respect of any hour referred to in 30 42 any, or any part of any, applicable Loading or Rate referred to in 32 42(3) to (78) above.

44. The omissions of Woolworths and Woolworths SA referred to in 32 42 above was a contravention by Woolworths and Woolworths SA as the case may be of a term of the Award and conduct prohibited by s.45 FWA which has to the extent of the non-payment caused the relevant Group Member loss.

### **Particulars**

Particulars in relation to Group Members' loss or damage will be provided if and when it is necessary for a determination to be made of the individual claims of those Group Members.

Date: 18 June 2020 ~~November 2019~~

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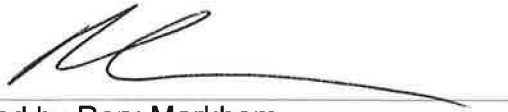
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Signed by Rory Markham  
Lawyer for the Applicant

**Certificate of lawyer**

I, Rory Markham, certify to the Court that, in relation to the amended statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 18 June 2020 ~~November 2019~~

A handwritten signature in dark ink, appearing to be 'RM', written over a horizontal line.

Signed by Rory Markham  
Lawyer for the Applicant