

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 10/03/2021 5:32:44 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: SAD156/2020
File Title: CRAIG SCHONEWEISS v THE FOURTH FORCE PTY LTD (ACN 084 438 773) & ANOR
Registry: SOUTH AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 10/03/2021 5:32:46 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.



Form 34

Rule 8.05(1)(a)

Federal Court of Australia

No. SAD 156 of 2020

South Australia Registry

Fair Work Division

Craig Schoneweiss

Applicant

Dramet Pty Ltd (ABN 59 109 544 425)

First Respondent

The Fourth Force Pty Ltd (ABN 22 084 438 773)

Second Respondent

Reply

1. The Applicant replies to the Defence filed by the Respondents on 18 February 2021 and adopts the defined terms therein.
2. The Applicant:
 - (a) adopts those admissions and deemed admissions made by the Respondents; and
 - (b) joins issue with those allegations which were either not admitted, or denied, in the Defence.

Filed on behalf of
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3. In response to paragraph 3(a)(i) of the Defence, the Applicant acknowledges that *Ardrossan Foodland* and *Drakes Ardrossan* located at 6-8 Fifth Street, Adrossan, SA 5571, are one and the same store.
4. In response to paragraph 3(a)(ii) of the Defence, the Applicant acknowledges that *Beverly Storage Solutions* (ABN 22 084 438 773) located at 15 Alfred Avenue, Beverley, SA 5009, is a business operated by the Second Respondent, but is not a supermarket, and is not covered by the GRIA. In any event, the Applicant says that any employees of *Beverly Storage Solutions* would not be considered group members by the existing group definition in paragraph 5 of the Statement of Claim, and consequently, no claim is brought on their behalf.
5. In response to paragraph 4(a)(i) of the Defence, the Applicant acknowledges that *Angle Vale Foodland* and *Drakes Angle Vale* located at Shop 1, 121-129 Heaslip Road, Angle Vale, SA 5117 are one and the same store.
6. In response to paragraph 14 of the Defence, the Applicant says that the final payslip issued by the Respondents was for the pay period ending 23 September 2018.
7. In response to paragraph 22(b)(ii) and (iii) of the Defence and the alleged 'requirement' to take a break and record the hours of such a break, the Applicant has requested further particulars of this alleged requirement and in any event denies that this requirement applied for Group Members (or at least for all Group Members) throughout the Relevant Period.
8. In response to paragraph 23(b) of the Defence and the alleged request and poll of senior employees, the Applicant has requested further particulars of this alleged request and poll and in any event denies that this applied to Group Members (or at least all Group Members) throughout the Relevant Period.
9. In response to paragraph 32(b) of the Defence and the allegation that 'relevant' staff were asked if they were willing and able to complete additional shifts, the Applicant has requested further particulars of these matters and in any event denies that this applied to Group Members (or at least all Group Members) throughout the Relevant Period. Further, the Applicant says that whether such additional shifts were performed by Group Members after a direction or requirement of the Respondent or in circumstances where such Group Members were willing and able (or volunteered to perform such shifts) does not affect Group Members' entitlements under the Award to be paid for such additional shifts, including at applicable overtime and penalty rates provided for in the Award.
10. With respect to paragraph 33 of the Defence, the Applicant:
 - (a) says that he was required by virtue of clauses 7 and 8 of both the First Contract and Second Contract to attend call-outs after hours;

- (b) says that the list of persons contacted to attend the store commenced with the staff who worked at that particular store, and followed the store hierarchy from Store Manager down; and
 - (c) as to the allegation in 33(c) of the Defence as to a 'requirement' to clock in and clock out for such call out attendances, the Applicant has requested further particulars of this alleged requirement and in any event denies that this applied to Group Members (or at least all Group Members) throughout the Relevant Period.
11. With respect to paragraphs 40, 65, 66, 67, 70, 71, 98 and 99 of the Defence, and the other parts of the Defence which refer to the alleged 'off set' or set-off clauses in the Applicant and Group Members' contracts of employment, the Applicant denies the 'off set' or set-off clause operates as alleged in the Defence.
12. In response to paragraph 63 of the Defence, the Applicant says that with respect to the remuneration received during the Hallett Cove Period, the paragraph does not answer the material allegation as set out in the Statement of Claim, and is vague and ambiguous. The Applicant has asked the Respondent to clarify its defence to this paragraph.
13. In response to paragraph 64 of the Defence, the Applicant repeats and relies upon paragraph 12 of this Reply, save that the reference to the Hallett Cove Period is to be read as the Parkinson Period.
14. In response to paragraphs 88, 91(e) and 92 of the Defence, the Applicant denies the Respondents' interpretation of the operation of the Fair Work Regulation 3.34 and the FW Act.
15. Further, in response to paragraph 91 of the Defence:
- (a) the Applicant denies ever making a request to cease using the Kronos system as alleged in the Defence;
 - (b) the Applicant denies ever participating in a poll as alleged in the Defence; and
 - (c) the Applicant repeats and relies upon paragraph 14 of this Reply, save that references to the Applicant are to be read as references to any group member.
16. The Applicant does not know and cannot admit paragraph 96(d) of the Defence and has requested further particulars of the Respondents as to which Group Members they allege were classified at lower level under the Award and which levels they allege that they were classified at.
17. In response to paragraph 102 of the Defence, the Applicant says the paragraph does not answer the material allegation as set out in the Statement of Claim, and is vague and ambiguous. The Applicant has asked the Respondent to clarify its defence to this paragraph.

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: 8 March 2021

A handwritten signature in black ink, appearing to read 'RM', followed by a horizontal line extending to the right.

Signed by Rory Markham
Lawyer for the Applicant