

Second Defence

No. SAD76/2020

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

Aaron Furnell and others named in the Schedule
Applicants

Shahin Enterprises Pty Ltd ACN 008 150 543
Respondent

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A. PARTIES

1. As to paragraph 1 of the Second Further Amended Statement of Claim (**Claim**), the Respondent:
 - 1.1 does not know and cannot admit what are alleged to be the “material times”, which are not defined or otherwise stated, during which it is alleged to have employed the Applicants and refers to and repeats paragraphs 4 and 6 below in respect of the duration of the Applicants’ employment;
 - 1.2 says that, from 1 March 2020, all of the Respondent’s On The Run service station (**OTR**) employees were transferred to On The Run Pty Ltd ACN 638 356 466 and the Respondent has not had any OTR employees since that time;
 - 1.3 refers to and repeats paragraphs 8, 32, 49, 76 and 95 below in respect of the alleged Group Members.
2. The Respondent admits paragraph 2 of the Claim.
3. The Respondent admits paragraph 3 of the Claim.
4. As to paragraph 4 of the Claim, the Respondent:
 - 4.1 in respect of the Second Applicant, Paul Young (**Mr Young**), admits that he was employed under the Shahin Enterprises Pty Ltd Employee Collective Agreement – Customer Service Employee (**Customer Service CA**) from 14 May 2014 to 30 June 2018;
 - 4.2 in respect of the First Applicant, Aaron Furnell (**Mr Furnell**), admits that he was employed under the Customer Service CA from 28 May 2014 to 26 August 2015;

- 4.3 in respect of the Third Applicant, Shannan Mahoney (nee Oakley) (**Ms Mahoney**), admits that she was employed:
- (a) under the Customer Service CA from 1 February 2017 to 1 August 2017; and
 - (b) under the Shahin Enterprises Pty Ltd Employee Collective Agreement – Full Time Employees (**Full Time CA**) from 2 August 2017 to 30 June 2018;
- 4.4 in respect of the Fourth Applicant, Christopher Palmer (**Mr Palmer**), admits that he was employed under the Customer Service CA from 2 July 2014 to 12 December 2016;
- 4.5 in respect of the Fifth Applicant, Laurence Lagoon Williamson (**Mr Williamson**), admits that he was employed under the Customer Service CA from 7 January 2015 to 9 April 2015;
- 4.6 insofar as paragraph 4 makes allegations in respect of the alleged Group Members, refers to and repeats paragraph 1 above;
- 4.7 says further that its employees were not and could not have been employed under the Customer Service CA “and/or” the Full Time CA because an employee could only be employed under one of those collective agreements at any point in time depending on their employment status; and
- 4.8 otherwise denies the matters alleged therein.
5. The Respondent admits paragraph 5 of the Claim save that it denies that the Customer Service CA and the Full Time CA applied to each Applicant until 30 June 2018 by reason of the matters set out at paragraph 4 above.
6. As to paragraph 6 of the Claim, the Respondent:
- 6.1 in respect of Mr Young, admits that he was employed under the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* (**Award**) from 1 July 2018 to 4 February 2019;
 - 6.2 in respect of Mr Furnell, denies the paragraph and says that his employment with the Respondent ceased on 26 August 2015 and he was never employed under the Award;

- 6.3 in respect of Ms Mahoney, admits that she was employed under the Award from 1 July 2018 to 27 August 2019;
 - 6.4 in respect of Mr Palmer, denies the paragraph and says that his employment with the Respondent ceased on 12 December 2016 and he was never employed under the Award;
 - 6.5 in respect of Mr Williamson, denies the paragraph and says his employment with the Respondent ceased on 9 April 2015 and he was never employed under the Award;
 - 6.6 insofar as paragraph 6 makes allegations in respect of the alleged Group Members, refers to and repeats paragraph 1 above; and
 - 6.7 otherwise denies the matters pleaded therein.
7. As to paragraph 7 of the Claim, the Respondent:
- 7.1 adopts the definition of “**Collective Agreement Period**”;
 - 7.2 where it refers to the “**Modern Award Period**” in this Defence, it refers to the period between 1 July 2018 and 29 February 2020 inclusive; and
 - 7.3 refers to and repeats subparagraph 1.2 above.

B. GROUP 1 CLAIM: PRE-SHIFT, POST-SHIFT AND MEAL BREAK WORK

B-1 Representative proceedings

8. The Respondent:
- 8.1 as to subparagraph 8(a) of the Claim, admits that Mr Young and Mr Furnell bring these proceedings in their own right; and
 - 8.2 as to subparagraph 8(b) of the Claim:
 - (a) admits that it employed console operators, driveway attendants and/or roadhouse (food) attendants at its OTR stores pursuant to the Customer Service CA during the Collective Agreement Period and under the Award during the Modern Award Period;
 - (b) does not know and cannot admit whether any of the employees referred to in subparagraph (a) above satisfy

subparagraphs 8(b)(ii), 8(b)(iii), 8(b)(iv) and 8(b)(v) of the Claim because those subparagraphs do not plead the material facts or particulars of:

- (i) the alleged directions to arrive at work 10 minutes prior to their rostered start time, which is alleged to be ~~perform~~ Pre-Shift Work, and to perform Post-Shift and Meal Break Work, namely where, when, by whom and in what circumstances they were alleged to have been made and the substance of what was said; and
- (ii) the allegation that they were not paid their entitlements in the Collective Agreement Period or the Modern Award Period, namely the work it is alleged they were not paid for and the amount it is alleged they have been underpaid;
- (c) refers to and repeats paragraphs 15A, 20A and 22A below with respect to the Respondent's alleged common or general practices regarding Pre-shift, Meal Break and Post-shift Work;
- (d) says that, as a matter of fact and law, if a direction to attend at a premises 10 minutes prior to a rostered shift time so as to be ready to commence work at the rostered shift time was given (which is denied), mere attendance is not work and no entitlement to payment can arise in respect of that time;
- (e) refers to and repeats paragraph 1 above; and
- (f) otherwise denies the matters pleaded therein;
- (g) says further that:
 - (i) Mr Furnell was employed at the Happy Wash Valet offer on Pulteney Street during part of the Collective Agreement Period, which was one of only three Happy Wash Valet offers in the entire network of approximately 131 stores (on average across the Collective Agreement Period and Modern Award Period) and is not representative of alleged Group 1

Members by reason that the valet service's opening hours, duties and staffing arrangements were fundamentally different to those at the Respondent's other stores;

- (ii) Mr Young was employed primarily as a midnight-to-dawn worker at the Parafield store and is not representative of alleged Group 1 Members by reason that there were only about 29 stores (on average across the Collective Agreement Period and Modern Award Period) of a comparable size and product offering in the entire network of 131 stores (on average across the Collective Agreement Period and Modern Award Period) by reason that unlike the majority of stores in the network Parafield generally operated with only one team member rostered on at a time.

9. As to paragraph 9 of the Claim, the Respondent:

- 9.1 ~~denies~~ admits subparagraph 9(a) of the Claim ~~and says that Mr Young's employment with the Respondent commenced on 23 October 2013;~~
- 9.2 admits subparagraph 9(b) of the Claim ~~save that it denies that Mr Young's employment with the Respondent commenced on 6 November 2013;~~
- 9.3 admits as alleged in subparagraph 9(c) that Mr Young was employed in the position of console operator but otherwise denies the matters alleged;
- 9.4 admits subparagraph 9(d) of the Claim but denies that Mr Young's ordinary hours of work were 25 per week and says that his ordinary hours of work were determined according to the Customer Service CA as set out in paragraph 35 below;
- 9.5 admits subparagraph 9(e) of the Claim save that it denies that Mr Young was paid \$20.84 per hour for Monday to Friday shifts and says that Mr Young was paid \$20.85 per hour for Monday to Friday shifts;

9.6 admits subparagraph 9(f) of the Claim; and

9.7 denies subparagraph 9(g) of the Claim and says further:

- (a) Mr Young's employment ceased on 5 February 2019;
- (b) Mr Young was paid for the period up to 30 June 2018 above the rate applicable to an employee in his position under the Award or the Customer Service CA, namely:
 - (i) \$20.85 per hour for Monday to Friday shifts between 1 July 2014 and 30 June 2015;
 - (ii) \$23.87 per hour for Saturday, Sunday and Public Holiday shifts between 1 July 2014 and 30 June 2015;
 - (iii) \$21.37 per hour for Monday to Friday shifts between 1 July 2015 and 30 June 2016;
 - (iv) \$24.47 per hour for Saturday, Sunday and Public Holiday shifts between 1 July 2015 and 30 June 2016;
 - (v) \$21.88 per hour for Monday to Friday shifts between 1 July 2016 and 30 June 2017;
 - (vi) \$25.05 per hour for Saturday, Sunday and Public Holiday shifts between 1 July 2016 and 30 June 2017;
 - (vii) \$22.60 per hour for Monday to Friday shifts between 1 July 2017 and 30 June 2018; and
 - (viii) \$25.88 per hour for Saturday, Sunday and public holiday shifts between 1 July 2017 and 30 June 2018; and
- (c) Mr Young was paid for the period between 1 July 2018 and the cessation of his employment at various rates between \$20.91 and \$27.68 per hour for Monday to Friday shifts.

10. As to paragraph 10 of the Claim, the Respondent:

10.1 insofar as paragraph 10 makes allegations in respect of Mr Furnell:

- (a) as to subparagraph 10(a) of the Claim, admits that Mr Furnell was employed by the Respondent as a part time driveway attendant at the Happy Wash Valet offer at OTR Pulteney Street from 28 May 2014 to 26 August 2015;
- (b) as to subparagraph 10(b) of the Claim, admits that Mr Furnell was employed under the Customer Service CA during his employment with the Respondent;
- (c) as to subparagraph 10(c) of the Claim, admits that Mr Furnell was employed to perform duties consistent with his classification as a driveway attendant under the Customer Service CA;
- (d) as to subparagraph 10(d) of the Claim:
 - (i) admits subparagraph 10(d)(i); and
 - (ii) does not know and cannot admit subparagraph 10(d)(ii) and says further that the subparagraph does not plead the material facts or particulars of the alleged direction to Mr Furnell, namely where, when, by whom and in what circumstances it was alleged to have been given and the substance of what was said; and
 - (iii) refers to and repeats paragraphs 15 to 26 below in respect of the alleged Pre-Shift, Post-Shift Meal Break Work;

10.2 insofar as paragraph 10 of the Claim makes allegations in respect of Mr Young:

- (a) as to subparagraph 10(a) of the Claim, admits that Mr Young was employed by the Respondent as a part time console operator from 23 October 2013 to 5 November 2019;

- (b) as to subparagraph 10(b) of the Claim, admits that Mr Young was employed under the Customer Service CA during the Collective Agreement Period and that Mr Young was employed under the Award during the Modern Award Period;
 - (c) as to subparagraph 10(c) of the Claim, admits that Mr Young was employed to perform duties consistent with his classification as a console operator:
 - (i) under the Customer Service CA during the Collective Agreement period; and
 - (ii) under the Award during the Modern Award Period;
 - (d) as to subparagraph 10(d) of the Claim:
 - (i) admits subparagraph 10(d)(i); and
 - (ii) does not know and cannot admit subparagraph 10(d)(ii) and says further that the subparagraph does not plead the material facts or particulars of the alleged direction to Mr Young, namely where, when, by whom and in what circumstances it was alleged to have been given and the substance of what was said; and
 - (iii) refers to and repeats paragraphs 15 to 26 below in respect of the alleged Pre-Shift, Post-Shift Meal Break Work;
- 10.3 refers to and repeats paragraph 8.2(d) above insofar as it is alleged that attendance at the workplace prior to an employee's rostered start time constitutes work for which an employee is entitled to be paid;
- 10.4 insofar as paragraph 10 of the Claim makes allegations in respect of the alleged Group 1 Members, the Respondent refers to and repeats subparagraph 8.2 above; and
- 10.5 otherwise denies the allegations therein.

B-2 Group 1 alleged entitlements

11. As to paragraph 11 of the Claim, the Respondent:

- 11.1 admits that Mr Young and Mr Furnell were entitled to be paid at the rates set out in Schedule 1 of the Customer Service CA during the periods of their respective employment during the Collective Agreement Period;
- 11.2 says further that clause 5.1 of the Customer Service CA does not refer to a weekly pay period but rather refers to payment being made weekly or fortnightly;
- 11.3 insofar as paragraph 11 of the Claim makes allegations in respect of the alleged Group 1 Members, refers to and repeats subparagraph 8.2 above; and
- 11.4 otherwise denies the allegations therein.

12. As to paragraph 12 of the Claim, the Respondent:

- 12.1 in respect of Mr Young:
 - (a) denies that the Award set an employee's entitlement to overtime payments during the Collective Agreement Period; and
 - (b) admits that he was entitled to be paid at the rate set out in clause 33 of the Award for the period of his employment during the Modern Award Period;
- 12.2 in respect of Mr Furnell, denies the matters alleged and says his employment ceased on 26 August 2015 and he was never employed under the Award;
- 12.3 insofar as paragraph 12 of the Claim makes allegations in respect of the alleged Group 1 Members, refers to and repeats subparagraph 8.2 above; and
- 12.4 otherwise denies the allegations therein.

13. The Respondent denies paragraph 13 of the Claim and, in respect of the Collective Agreement Period, relies on clauses 4.1.4 and 4.1.5 of the Customer Service CA for their full force and effect, the effect of which was that:

13.1 pursuant to clause 4.1.4, an employee's ordinary hours were exclusive of any unpaid half hour meal breaks which he or she is entitled to take when working a shift in excess of six hours, however, when an employee was the sole employee on duty, the meal break was required to be taken on premises and be interrupted to serve customers, with such time spent serving customers to count as time worked; and

13.2 pursuant to clause 4.1.5, the Respondent was entitled to require an employee to change the timing of a scheduled break to meet operational needs where it was not unreasonable to do so, and where an employee was required to work without a break he or she was entitled to a 20 minute crib break to be taken at an operationally convenient time which may be in more than one period and which would count as time worked.

14. The Respondent denies paragraph 14 of the Claim and, in respect of the Modern Award Period, relies on clauses 26 and 43.1 of the Award as if set out herein.

14.1 The effect of clause 26 of the Award is that:

(a) ordinarily:

(i) an employee (other than a console operator) may take an unpaid meal break of between 30 and 60 minutes when working for more than five hours; and

(ii) an employee will be paid at time and one half for time worked beyond five hours without a meal break or during meal breaks and thereafter until a meal break is allowed;

(b) an employer and a majority of employees may agree that six hours can be worked without a meal break, which will vary the ordinary arrangements provided for in subparagraph (a) above; and

- (c) an employer may in appropriate circumstances reasonably require an employee to change the time of a scheduled meal break or rest break to meet operational requirements.

14.2 The effect of clause 43.1 of the Award is that a person employed principally to perform duties of a driveway attendant, console operator or roadhouse (food) attendant will work their ordinary hours continuously except for, when working a shift of over five hours:

- (a) meal breaks at the discretion of the employer; or
- (b) a 20 minute crib break whilst maintaining customer service, which will count as time worked.

B-3 Group 1 claimed unpaid work

Claimed Pre-Shift Work

15. The Respondent denies paragraph 15 of the Claim and says:

15.1 Mr Young worked day shifts as well as night shifts;

15.2 Mr Young's rostered nightshift start times varied from 9.30 pm to midnight; and

15.3 Mr Young's rostered nightshift finish times varied from 5.00 am to 8.00 am.

15A. As to paragraph 15A of the Claim, the Respondent:

15A.1 as to subparagraph 15A(a), admits that employees were directed to work in accordance with their rostered hours (subject to agreement to vary those hours or, during the Collective Agreement Period, variation pursuant to clause 4.1.6 of the Customer Service CA) but says that they were paid for work done in accordance with their rostered hours (as varied);

15A.2 as to subparagraphs 15A(b) and ~~(c)~~:

- (a) admits that during induction sessions conducted prior to about April 201~~8~~⁹ there was a common or general practice of trainers employed by the Respondent encouraging console operators, driveway attendants and roadhouse (food)

attendants to arrive at work ~~10 minutes~~ prior to the commencement of their shifts to be ready to start work at the commencement of their shift;

- (b) admits that prior to about April 201~~8~~⁹ it did not pay employees for arriving at work up to 10 minutes prior to the commencement of their shift;
- (c) says that there was no common or general practice of console operators, roadhouse (food) attendants or driveway attendants:
 - (i) arriving at work and being ready to commence their shifts 10 minutes prior to their rostered start time;
 - (ii) performing work prior to their rostered start time;
 - (iii) being disciplined or penalised for failing to arrive at work 10 minutes prior to their rostered start time; and
- (d) refers to and repeats paragraph 8.2(d) above insofar as it is alleged that mere attendance at the workplace prior to an employee's rostered start time constitutes work for which an employee is entitled to be paid;

15A.3 says further, insofar as it is alleged that employees were not paid for attending at the workplace prior to their rostered start time:

- (a) the Respondent's electronic time recording system commenced on or about 1 July 2017;
- (b) following the implementation of the Respondent's electronic time recording system, employees:
 - (i) were required to scan their fingerprint at the commencement of their shift; and
 - (ii) if they scanned in within 7 minutes either side of their rostered start time, were paid in accordance with their rostered start time;

- (iii) if they scanned in greater than 7 minutes either side of their rostered start time, had their pay adjusted accordingly (subject to any manual adjustments in consultation with their manager for incorrectly scanning in, for reasons including that an employee in fact started work on time but forgot to scan in until later);
- (c) prior to the implementation of its electronic time recording system, employees:
 - (i) filled out manual time books in which they recorded their start time and were required to sign or initial their time books each day to confirm their accuracy; and
 - (ii) were paid in accordance with their “**Actuals**”, being the record of the time employees worked which was provided to payroll by their managers following consultation with employees where the time actually worked was different to that recorded in the rosters or time books, for reasons including that an employee forgot to complete their time book;
- (d) the Respondent refers to and repeats paragraph 31A below in respect of its time records;
- (e) no Store Manager, Assistant Manager or Area Manager, including Ms D’Cruz and Mr Garwood, had actual or apparent authority to direct employees to undertake work tasks prior to the commencement of their shift on an unpaid basis;
- (f) no Area Manager, including Ms D’Cruz and Mr Garwood, had actual or apparent authority to instruct Store Managers or Assistant Managers to direct employees to undertake work tasks prior to the commencement of their shift on an unpaid basis;
- (g) none of the persons identified in paragraph 15A of the Claim, including Ms D’Cruz and Mr Garwood, ever reported to or notified the Respondent that they had given or were giving a

direction to employees to perform work tasks prior to the commencement of their shift on an unpaid basis;

15A.4 otherwise denies the matters alleged therein.

16. As to paragraph 16 of the Claim, the Respondent:

16.1 does not know which persons employed in the Respondent's Human Resources Team ~~or Store or Area Managers~~ are alleged to have given Mr Young the directions alleged in paragraph 16 of the Claim;

16.2 denies that the directions by the night shift managers alleged ~~could or would have been~~ were given to Mr Young throughout the entire period of his employment; and

16.3 refers to and repeats paragraph 15A above.

17. As to paragraph 17 of the Claim, the Respondent:

17.1 does not know which ~~Store or Area Manager~~ members of its Human Resources Team are alleged by Mr Young to have given him the directions alleged in paragraph 17 of the Claim;

17.2 denies that the directions by the night shift managers alleged ~~could or would have been~~ were given to Mr Young throughout the entire period of his employment;

17.3 refers to and repeats paragraphs 15A and 16 above;

17.4 says that Mr Young did not attend work 10 minutes prior to the commencement of his shift throughout the entire period of his employment ~~or perform work duties prior to the commencement of his shift throughout the entire period of his employment;~~

17.5 says further that, there were ~~on the~~ occasions that Mr Young arrived after his rostered start time and failed to work for the full period of his rostered shift, he did not have his pay reduced; and

17.6 otherwise denies the matters alleged therein.

Particulars

(a) Paul Young attendance records.

- (b) Mr Young recorded shift start times in his time book (which he signed or initialled to confirm its accuracy) and using the fingerprint scanner that were from time to time earlier than, the same as and later than his rostered start times, as to which, he was variously paid from a start time that was earlier, the same as or later than his rostered start time following the process of review of his time records by his manager set out at paragraph 31A below. There were also occasions in which Mr Young forgot to record a shift start time but was nonetheless paid following the process of review set out in paragraph 31A below.

18. As to paragraph 18 of the Claim, the Respondent:

- ~~18.1 does not know which persons employed in the Respondent's Human Resources Team or Store or Area Manager are alleged to have given Mr Furnell the directions alleged in paragraph 18 of the Claim;~~
- 18.2 denies that the directions alleged ~~could or would have been~~ were given to Mr Furnell throughout the entire period of his employment;
- 18.3 refers to and repeats paragraph 15A above;
- 18.4 says that Mr Furnell did not attend work 10 minutes prior to the commencement of his rostered start time throughout the entire period of his employment ~~or perform work duties prior to the commencement of his rostered start time throughout the entire period of his employment;~~ and
- 18.5 otherwise denies the matters alleged therein.

Particulars

- (a) Aaron Furnell attendance records.
- (b) Mr Furnell recorded his time using a manual time book from the start of which he signed or initialled to confirm its accuracy. He recorded shift start times in his time book that were from time to time earlier than, the same as and later than his rostered start times, as to which, he was variously paid from a start time that was earlier, the same as or later than his

rostered start time following the process of review of his time records by his manager set out at paragraph 31A below.

19. The Respondent denies paragraph 19 of the Claim and refers to and repeats subparagraph 8.2 above.

Claimed Meal Break Work

- 20A. As to paragraph 20A of the Claim, the Respondent:

20A.1 admits that during the Collective Agreement Period it had a common practice of requiring console operators, roadhouse (food) attendants and driveway attendants to take meal breaks in accordance with clauses 4.1.4 and 4.1.5 of the Customer Service CA if they were the only person working in a store;

20A.2 refers to and repeats paragraph 13 above;

20A.3 otherwise denies the matters alleged therein;

20A.4 says further:

- (a) the Respondent's electronic time recording system commenced on or about 1 July 2017;
- (b) following the implementation of the Respondent's electronic time recording system, employees:
 - (i) who did not take their scheduled meal breaks were required to notify their manager, who was then to manually adjust their time attendance records to reflect that a break had not been taken; and
 - (ii) were paid in accordance with their time attendance records (as adjusted in consultation with their manager);
- (c) prior to the implementation of the electronic time recording system, employees:
 - (i) filled out manual time books in which they recorded whether they had taken their meal breaks and were

required to sign or initial their time books each day to confirm their accuracy; and

(ii) were paid in accordance with their Actuals;

(d) the Respondent relied upon its employees to:

(i) accurately complete their time books each day during the period that manual time books were used and sign or initial them to confirm their accuracy;

(ii) ensure that they took meal breaks where they were entitled to them, including by:

(A) liaising with other employees on site including the relevant Store Managers to manage the timing of meal breaks;

(B) planning, organising and managing their tasks so as to enable them to take a meal break;

(iii) inform the relevant Store or Area Manager in the event that they were unable to take a meal break;

20A.5 where employees worked on a shift with at least one other employee, they were able to take uninterrupted meal breaks and there was no common or general practice of requiring such employees to be available to serve customers during their meal breaks;

20A.6 where an employee was requested to interrupt their meal break, they were requested to resume their meal break after the interruption and given additional time for their meal break equal to the length of time by which it had been interrupted;

20A.7 during the Modern Award Period:

(a) no Store Manager, Assistant Manager or Area Manager, including Ms D'Cruz and Mr Garwood, had actual or apparent authority to direct employees to undertake Meal Break Work on an unpaid basis;

- (b) no Area Manager, including Ms D'Cruz and Mr Garwood, had actual or apparent authority to instruct Store Managers or Assistant Managers to direct employees to undertake Meal Break Work on an unpaid basis;

20A.8 none of the persons identified in paragraph 20A of the Claim, including Ms D'Cruz and Mr Garwood, ever reported to or notified the Respondent that they had given or were giving the alleged directions to perform Meal Break Work.

20. As to paragraph 20 of the Claim, the Respondent:

20.1 denies the paragraph;

~~20.2 says that it does not know which Store or Area Manager is alleged to have given the directions alleged in paragraph 20 of the Claim; and~~

20.3 refers to and repeats paragraph 20A above.

Particulars

- (a) Paul Young attendance records.
- (b) Mr Young recorded his time using a manual time book from the start of the Collective Agreement Period until 18 June 2017 which he signed or initialled to confirm its accuracy and in which he never wrote that he had not taken a meal break.
- (c) During his employment Mr Young was variously paid as if he had taken a meal break, had not taken a meal break or had taken a crib break following the process of review of his time records by his manager referred to at paragraph 31A below.

21. As to paragraph 21 of the Claim, the Respondent:

21.1 denies the paragraph;

~~21.2 says it does not know which Store or Area Manager is alleged to have given the directions alleged in paragraph 21 of the Claim;~~

21.3 says that Mr Furnell was never employed during the Modern Award Period;

21.4 says further that, under the Customer Service CA, Mr Furnell was only entitled to an unpaid meal break when working shifts of more than 6 hours, as set out at paragraph 13 above; and

21.5 refers to and repeats paragraph 20A above.

Particulars

(a) Aaron Furnell attendance records.

(b) During his employment with the Respondent, Mr Furnell recorded his time using a manual time book which he signed or initialled to confirm its accuracy in which he never wrote that he did not take a meal break. Mr Furnell was variously paid as if he had and had not taken a meal break following the process of review of his time records set out at paragraph 31A below.

22. The Respondent denies paragraph 22 of the Claim and refers to and repeats subparagraph 8.2 above.

Claimed Post-Shift Work

22A. As to paragraph 22A of the Claim, the Respondent:

22A.1 admits as alleged in subparagraph 22A(a) that it had a common or general practice of directing employees to work in accordance with their rostered hours (subject to agreement to vary those hours or, during the Collective Agreement Period, variation pursuant to clause 4.1.6 of the Customer Service CA) but says that they were paid for work done in accordance with their rostered hours (as varied);

22A.2 otherwise denies the matters alleged therein; and

22A.3 says further:

(a) the Respondent's electronic time recording system commenced on or about 1 July 2017;

(b) following the implementation of the Respondent's electronic time recording system, employees:

(i) scanned their fingerprint at the conclusion of their shift;

- (ii) if they scanned out within 7 minutes either side of their rostered finish time, were paid in accordance with their rostered finish time;
 - (iii) if they scanned in greater than 7 minutes either side of their rostered finish time, had their pay adjusted accordingly (subject to any manual adjustment in consultation with their manager for incorrectly scanning out, for reasons including that an employee in fact finished work on time but forgot to scan out);
- (c) prior to the implementation of the electronic time recording system, employees:
 - (i) filled out manual time books in which they recorded their finish time and were required to sign or initial their time books daily to confirm their accuracy; and
 - (ii) were paid in accordance with their Actuals;
- (d) the Site Procedure Manual used at the Respondent's stores from time to time:
 - (i) set out tasks which should be completed in a store on a daily basis, with each day being divided into four periods of time, which periods did not align with the Respondent's rosters (which varied from day-to-day and store-to-store);
 - (ii) did not specify tasks that individual employees were required to complete in each of their shifts;
 - (iii) contained tasks which in almost every instance could be completed in stages across multiple shifts, by multiple employees and were not of their nature time sensitive, for example emptying bins or sweeping;
- (e) no Store Manager, Assistant Manager or Area Manager, including Ms D'Cruz and Mr Garwood, had actual or apparent authority to direct employees to undertake Post Shift Work on an unpaid basis;

- (f) no Area Manager, including Ms D'Cruz and Mr Garwood, had actual or apparent authority to instruct Store Managers or Assistant Managers to direct employees to undertake Post Shift Work on an unpaid basis;
- (g) none of the persons identified in paragraph 22A of the Claim, including Ms D'Cruz and Mr Garwood, ever reported to or notified the Respondent that they had given or were giving the alleged directions to perform Post Shift Work;
- (h) the Respondent refers to and repeats paragraph 31A below in respect of its time records.

23. As to paragraph 23 of the Claim, the Respondent:

- 23.1 denies the paragraph;
- 23.2 does not know which training staff, human resources staff or Store or Area Manager is alleged to have given the directions;
- 23.3 denies that the directions alleged were ~~could or would have been~~ given throughout the entire period of Mr Young's employment;
- 23.4 denies that the completion of Mr Young's shifts was subject to completion of specific duties or that the duties Mr Young was required to perform were such that they could or would not have been completed in the course of his shifts;
- 23.5 says further that there were occasions on which Mr Young left work prior to his rostered finish time and failed to work the full period of his rostered shifts and, on those occasions, he did not have his pay reduced.

Particulars

- (a) Paul Young attendance records.
- (b) Transaction counts during shifts worked by Mr Young.
- (c) Mr Young recorded shift finish times in his time book (which he scanned or initialled to confirm its accuracy) and using the fingerprint scanner that were from time to time earlier than, the

same as and later than his rostered finish times, as to which, he was variously paid to a finish time that was earlier, the same as or later than his rostered finish time following the process of review of his time records by his manager set out at paragraph 31A below. There were also occasions in which Mr Young forgot to record a shift finish time but was nonetheless paid following the process of review set out in paragraph 31A below.

24. The Respondent denies paragraph 24 of the Claim and refers to and repeats paragraph 23 and subparagraph 22A above.

25. [Not used.]

26. As to paragraph 26 of the Claim:

26.1 insofar as paragraph 26 makes allegations in respect of Mr Furnell, the Respondent:

- (a) says that the paragraph does not plead the material facts or particulars of the alleged verbal directions by the Respondent, namely when, where, by whom and in what circumstances they were made and the substance of what was said;
- (b) denies that completion of Mr Furnell's shifts was subject to completion of specific duties or that the duties Mr Furnell was required to perform were such that they could or would not have been completed in the course of his shifts; and
- (c) refers to and repeats paragraph 22A above;

Particulars

- (i) Aaron Furnell attendance records.
- (ii) During his employment with the Respondent, Mr Furnell recorded his time using a manual time book which he signed or initialled to confirm its accuracy. He recorded shift start times in his time book that were from time to time earlier than, the same as and later than his rostered start times, as to

which, he was variously paid from a start time that was earlier, the same as or later than his rostered start time following the process of review of his time records by his manager set out at paragraph 31A below. There was also an occasion in which he failed to record a shift finish time but was nonetheless paid following the process of review set out at paragraph 31A below.

26.2 insofar as paragraph 26 makes allegations in respect of the alleged Group 1 Members, refers to and repeats subparagraph 8.2 above; and

26.3 otherwise denies the matters alleged therein.

B-4 Group 1 alleged contraventions and loss

27. As to paragraph 27 of the Claim, the Respondent:

27.1 denies the paragraph;

27.2 refers to and repeats paragraphs 4 to 6 and 11 to 14 above; and

27.3 says further that any claim of Mr Young against the Respondent (which is denied) should be reduced to take into account the occasions for which he was paid for time he did not work.

28. The Respondent denies paragraph 28 of the Claim and refers to and repeats paragraphs 15 to 27 above.

29. The Respondent denies paragraph 29 of the Claim and refers to and repeats paragraph 28 above.

30. The Respondent denies paragraph 30 of the Claim and refers to and repeats paragraph 28 above.

31. The Respondent denies paragraph 31 of the Claim and refers to and repeats paragraphs 29 and 30 above.

B-5 Group 1 alleged failure to keep records

31A The Respondent denies paragraph 31A of the Claim, refers to and repeats paragraphs 15 to 26 above and 35 and 36 below and says further:

31A.1 the time books and electronic time recording systems referred to in paragraphs 15A, 20A, 22A and 31B above recorded employees' time worked (that is, their Actuals);

31A.2 employees were responsible for recording their time worked in the Respondent's time recording systems every shift by:

- (a) during the period in which the Respondent used time books, recording the time that they worked into their time books and signing or initialling them each day to confirm their accuracy;
- (b) during the period in which the Respondent used an electronic time recording system, scanning their fingerprint at the start and end of their shift and indicating whether they had approval to work overtime in the event that they scanned in more than 7 minutes prior to their rostered start time or scanned out more than 7 minutes after their rostered end time;

31A.3 if an employee considered that their pay did not reflect their time worked, including by reason that the Respondent's records did not record the time they had worked they could:

- (a) raise the matter with their Store and/or Area Manager in the event that the issue arose prior to them being paid in respect of the relevant period;
- (b) if the issue arose after they had been paid for the relevant period, submit a wage adjustment form to address any pay discrepancy;

Particulars

(i) Procedure – Pay Query:

"Employees across the business work varying hours and shifts and receive different rates of pay. Payroll process all pay every Thursday. In instances where an employee believes they have not received the correct pay amount they may raise a query and request an adjustment through the correct channels.

...

4. Upon review of their payslip [if] an employee has a query about their pay and believes an adjustment is needed. The employee must complete Part A of a Pay Query & Adjustment Form (Annexure A) with as much details as possible. The completed form is forwarded to their direct LM for review. If payment is urgent this must be identified to the Line Manager**.

5. The LM reviews the query and investigates the matter further.

a. The review found that payment was correct and no adjustment is required. See Step 9.

b. The review found there were adjustments required. See Step 6.

6. The LM has found an issue. The LM completes and signs off Section B and forwards the completed form.

7. The LM forwards the completed form to the site Area Manager (AM). The AM reviews and authorises if appropriate.

... If there are adjustments required the finalised version is handed to Payroll by the Delegated AM (weekly). ...

Payroll will adjust the payments in the system for the next week's pay. Queries marked as urgent will be reviewed on a case by case basis. Where applicable Payroll will organise payment prior to the next payment period.

If there are no discrepancies and no adjustments are required, the employee must be informed of the outcome."

31A.4 if issues with pay were raised by employees during or immediately following the relevant pay period, the Respondent could and did investigate those issues including by reviewing CCTV footage and speaking with other employees who worked at the relevant times and thereafter conferring with the employee so as to agree any necessary alteration to their pay and/or Actuals;

31A.5 if issues with pay were not raised by employees contemporaneously with the work being performed and receipt of payment for the relevant pay period, including the underpayments asserted in the Claim,

because employees failed to avail themselves of the pay query procedure referred to at paragraph 31A.3 above:

- (a) the Respondent was entitled to assume, and the Respondent did assume, that employees had been paid correctly, by reason that employees had induced that assumption by completing their time records and not subsequently raising any issue as to payment in respect of that work, thereby representing that they had been paid correctly;
- (b) the Respondent had no reason to investigate, did not investigate, and has now lost the opportunity to investigate and to verify the veracity of, individual asserted underpayments, including by reason of staff turnover, the loss of CCTV footage and staff no longer being able to recall the circumstances of what is asserted to be underpayments relating to a matter of minutes before or after a shift or individual meal breaks years after the event and which are unparticularised;
- (c) insofar as any underpayments are alleged to have been systemic (which is denied), the Respondent lost the opportunity to address such underpayments including by changing rostering or staffing arrangements for stores, providing further training or disciplining Store Managers, Assistant Managers or Area Managers who now claim to have given directions to employees to perform unpaid work or to keep inaccurate records, including Mr Garwood and Ms D'Cruz;

31A.6 Store Managers, and Assistant Managers on days when Store Managers were not working, were required to review and approve employees' time records daily and again weekly before submitting Actuals to payroll for processing employees' pay;

Particulars

- (a) Setting Up and Paying an Employee – Rostered Staff, section 6.1.1 (Weekly Calculation of Staff Pay):

"For employees listed on the roster system, the Site Manager enters the actual hours worked from the employee Time Book into the "Actuals" program system."

- (b) My Guide Back of House Procedures.
 - (i) Section 1.2 (Manager's Daily Task List): "Input Daily Actuals".
 - (ii) Section 1.3 (Manger's Weekly Checklist): "Roster Completion Times (9.30am on Wednesday)".
- (c) Site Manager User Guide Time2Work.
 - (i) Timesheets | Daily Review: "Every day before 10am, you must review and approve the daily Timesheet."
 - (ii) Timesheets | End of Week:

"The Approval tab gives you access to past and current Timesheets (Actuals) which must be review and approved at the end of the pay week.

Payroll relies on this weekly approval, so make sure you always complete the process accurately and on time."

31A.7 Area Managers were responsible for ensuring that time approvals were being conducted by stores daily and that time records reflected the stores within their area completed time approvals daily and addressing employee pay queries;

Particulars

- (a) My Guide to Area Management v9 June 2014.
 - (i) Section 2.1(iii) (Completing Roster Actuals):

"Every Area Manager needs to make sure that their sites are completing roster actuals on a daily basis.

Roster actuals need to be completed by Site Managers daily to ensure that things do not get missed at the end of the week when they are sent to Payroll for processing.

To complete the roster actuals Sites Managers must use Team Member time books to enter hours against what was posted on the rosters. All actuals

entered into the actuals tab must reflect what has been written in the TM's time book.

Where there is a different time recorded than the rostered shift there must be an explanation of reason why in the employee time book. Depending on what the reason is the Site Manager must speak with the Team Member as continued adjustments will affect the overall hours allocated which may cause the site to overspend on their budgeted hours."

...

"Each Area Manager is provided with a daily scorecard of Roster Actuals status and figures (Scoreboard Actual to Budget – Week to Date). Use this report to track the compliance of your Site Managers who are completing actuals daily, and how the site is tracking with regards to compliance to the hours budget and the dollar budget.

Where Site Managers fail to complete roster actuals daily a performance management discussion needs to take place outlining the importance of completing roster actuals daily."

(b) My Guide to Area Management v13 January 2018.

(i) Section 2.1(iv) (Actuals – Checking Site Compliance):

"As an AM, you must ensure that your Site Managers are complying with the requirement to approve Actuals (clocking data for TMs) at the end of each day, and at the end of the pay week.

...

Check compliance regularly. Remember that TMs will not be paid properly if Timesheets (Actuals) are not approved. If a Site Manager consistently fails to approve daily and weekly timesheets, you may need to offer guidance or performance manage as appropriate."

(ii) Section 2.1(v) (Actuals – Pay Queries, Disputes and Adjustment):

"If a team member wishes to dispute their paid hours when fingerprint attendance logs do not align with rostered hours, then the Site Manager is required to complete a 'Team Member Wage Discrepancy' form, which should be filed in the

Roster Actuals folder at site. Area Managers are able to review this form, which should detail the result of any investigation, if a Team Member escalates the dispute to the Area Manager. The form can be found under 'Employee Forms' on Perenet.

If it is found that a Team Member or Manager's pay has been processed with an error, then a 'Pay Query & Adjustment Form' must be completed. This form must contain all details necessary for Payroll to identify where the adjustment is required. Once completed by the Site Manager, this form should be sent to the Area Manager for approval/review. If approved, the Area Manager is then required to sign and submit to a 'Wage Adjustment' sleeve kept near Customer Service in the Convenience Operations area at SSO. The form can be found under 'Employee Forms' on Perenet.

If an Area Manager has reason to suspect that roster actuals are not truly reflective of time worked, they can review the roster actuals against the 'Staff Logins' report, available through the Site Stock Tool (pictured below). This report allows the Area Manager to review actual fingerprint log in/out times for a selected date range, which can then be compared to the Roster Actuals. Continual discrepancies that may indicate contracted or paid hours are not actually being fulfilled should be investigated further for possible time theft."

(c) My Guide to Area Management v4.2 October 2019.

(i) Section 2.2 (Scheduling & Approvals):

"As an Area Manager you must ensure that your Site Managers are complying with the requirement to approve Actuals (clocking data for Team Members) at the end of each day, and at the end of the pay week. Some of this information is captured in emailed reports, but you can also check a site's compliance at any time within Time2Work."

(ii) Section 2.3 (Pay Queries):

"If a Team Member wishes to question their paid hours then follow the Payroll Pay Query Procedure (Step 4 onwards). If you need support, please contact Payroll for advice.

...

If an Area Manager has reason to suspect that roster actuals are not truly reflective of time worked, they can review the roster actuals against the 'Staff Logins' report, available through the Site Stock Tool ... This report allows the Area Manager to review actual fingerprint log in/out times for a selected date range, which can then be compared to the Roster Actuals. Continual discrepancies that may indicate contracted or paid hours are not actually being fulfilled should be investigated further for possible time theft. Ensure your sites understand that time theft is theft and will be taken extremely seriously by the Company."

31B As to paragraph 31B of the Claim, the Respondent:

31B.1 denies that the overtime was worked as alleged;

31B.2 refers to and repeats paragraph 31A above.

31C The Respondent denies paragraph 31C of the Claim and refers to and repeats paragraph 31A above.

31D As to paragraph 31D of the Claim, the Respondent:

31D.1 denies the matters alleged therein;

31D.2 refers to and repeats paragraphs 15 to 26 above and 35 and 36 below;

31D.3 says that, in respect of overtime, regulation 3.46(1)(g) of the *Fair Work Regulations 2009* (Cth) (**Fair Work Regulations**) required the Respondent to specify the amount (if any) paid to alleged Group 1 Members that was a loading in respect of overtime on their payslips but did not require the Respondent to specify the number of overtime hours (if any) worked by alleged Group 1 Members on their payslips.

31E The Respondent denies paragraph 31E of the Claim and refers to and repeats paragraph 31D above.

31F The Respondent denies paragraph 31F of the Claim and refers to and repeats paragraph 31C above.

31G The Respondent denies paragraph 31G of the Claim and refers to and repeats paragraphs 31D and 31E above.

31H The Respondent denies paragraph 31H of the Claim and refers to and repeats paragraph 31F above.

31I The Respondent denies paragraph 31I of the Claim and refers to and repeats paragraph 31G above.

Alleged false or misleading records

31J The Respondent denies paragraph 31J of the Claim and refers to and repeats paragraph 31A above.

31K As to paragraph 31K of the Claim, the Respondent:

31K.1 denies the paragraph;

31K.2 says that the paragraph should be struck out because, contrary to rule 16.43, it does not plead the material facts or particulars which it is asserted establish knowledge, including:

- (a) what records were asserted to have been known to have been false or misleading, and in what respect;
- (b) what asserted overtime hours are asserted to have been known not to have been recorded; and
- (c) how it was that the named persons knew that those asserted overtime hours were not recorded, and in respect of what asserted hours;

31K.3 says further that the paragraph should be struck out because it does not plead the material facts or particulars of the conduct asserted to have been engaged in by the manager, including:

- (a) when and where the directions are alleged to have been given; or
- (b) the effect of what was said;

31K.4 says further that the paragraph should be struck out because it does not plead the material facts or particulars of the basis on which the giving of the directions as alleged was within the apparent authority of the manager (which is denied);

31K.5 says further that Mr Furnell's manager, Mr Vaughan, did not have the actual or apparent authority to direct employees of the Respondent to:

- (a) perform unpaid work; or
- (b) inaccurately record, or not record, the time worked by employees of the Respondent pursuant to a direction to perform such work,

such that the Respondent cannot be taken to have given any such directions for the purposes of s 793 of the *Fair Work Act 2009* (Cth) (**Fair Work Act**);

31K.6 says further that Mr Vaughan never reported to the Respondent that he had the knowledge or engaged in the conduct alleged;

31K.7 refers to and repeats paragraph 31A above.

31L The Respondent denies paragraph 31L of the Claim.

31M The Respondent denies paragraph 31M of the Claim and refers to and repeats paragraph 31N below.

31N The Respondent denies paragraph 31N of the Claim, refers to and repeats paragraphs 31A and 31K above and says further:

31N.1 the paragraph should be struck out because, contrary to rule 16.43, it does not plead the material facts or particulars which it is asserted establish knowledge, including:

- (a) what records were asserted to have been known to have been false or misleading;
- (b) in what respect the records are asserted to have been false or misleading;
- (c) what asserted overtime hours are asserted to have known not to have been recorded; and
- (d) how it was that the named persons knew that those asserted overtime hours were not recorded, and in respect of what asserted hours;

31N.2 the paragraph should be struck out because it does not plead the material facts or particulars of the conduct asserted to have been engaged in by the manager, including:

- (a) when and where the directions are alleged to have been given;
- (b) what time entries are asserted to have been “revised”, and when and how the entries were “revised”;

31N.3 the paragraph should be struck out because it does not plead the material facts or particulars of the basis on which the conduct as alleged was within the apparent authority of the manager (which is denied);

31N.4 no Store or Area Manager of the Respondent (including Managers in Training, Assistant Managers and Trainee Area Managers), including Ms D’Cruz and Mr Garwood, had the actual or apparent authority to direct employees of the Respondent to:

- (a) perform unpaid work; or
- (b) inaccurately record, or not record, the time worked by employees of the Respondent pursuant to a direction to perform such work,

such that the Respondent cannot be taken to have given any such directions for the purposes of s 793 of the Fair Work Act;

31N.5 none of the persons identified in paragraph 31N, including Ms D’Cruz and Mr Garwood, reported to the Respondent that they had the knowledge or engaged in the conduct alleged;

31N.6 it was not possible for any person, including Store and Area Managers, to alter the finger print records in the Respondent’s electronic time recording system.

31O The Respondent denies paragraph 31O of the Claim and refers to and repeats paragraphs 31J to 31N above.

Alleged serious contraventions

31P As to paragraph 31P of the Claim, the Respondent:

31P.1 denies the contraventions alleged in paragraphs 31H, 31I and 31O of the Claim and refers to and repeats paragraphs 31A and 31N above; and

31P.2 denies that the contraventions alleged, if established (which are denied), were engaged in knowingly for the purposes of s 557A of the Fair Work Act by reason:

31P.2.1 that no Store or Area Manager of the Respondent (including Managers in Training, Assistant Managers and Trainee Area Managers) had actual or implied authority to engage in the conduct alleged in paragraphs 31K, 31M and 31N of the Claim (which are denied and, as to which, the Respondent refers to and repeats paragraphs 31K, 31M and 31N above), such that their alleged conduct cannot be taken to have been engaged in by the Respondent for the purposes of s 793 of the Fair Work Act;

31P.2.2 that the Respondent had taken company-wide steps to ensure that alleged Group Members' time records were accurate, including by implementing the time recording systems set out at paragraphs 15A, 20A, 22A and 31A above;

31P.2.3 of the matters in paragraphs 31F, 31G, 31N, 31P.2.1 and 31P.2.2 above:

31P.2.3.1 the Respondent did not expressly, tacitly or impliedly authorise the alleged contraventions for the purposes of s 557B of the Fair Work Act; and

31P.2.3.2 the alleged contraventions were not part of a systematic pattern of conduct for the purposes of s 557A of the Fair Work Act;

31P.2.4 of the matters in paragraph 31A above, any contravention occurred by reason of alleged Group Members' failure to accurately record their time worked and, or in the alternative, follow the procedures in place to investigate and address asserted underpayments.

31Q As to paragraph 31Q of the Claim, the Respondent:

31Q.1 denies the breaches of the Fair Work Act alleged in paragraphs 29 and 30 of the Claim and repeats paragraphs 29 and 30 above;

31Q.2 denies that the contraventions alleged, if established (which are denied), were engaged in knowingly for the purposes of s 557A of the Fair Work Act by reason of the matters set out in paragraphs 31N and 31P above;

31Q.3 denies that the “Expectations at Mile End Drive Thu” document referred to in paragraph 31Q of the Claim was a policy document of, or authorised by, the Respondent;

31Q.4 denies that any of the other documents referred to in paragraph 31Q of the Claim required work to be performed prior to shift start time on an unpaid basis;

31R The Respondent denies paragraph 31R of the Claim and refers to and repeats paragraph 31Q above.

C. GROUP 2 CLAIM: PART TIME EMPLOYEES’ OVERTIME

C-1 Representative proceedings

32. The Respondent:

32.1 as to subparagraph 32(a) of the Claim, admits that Mr Furnell brings these proceedings in his own right; and

32.2 as to subparagraph 32(b) of the Claim:

(a) admits that it employed console operators, driveway attendants and/or roadhouse (food) attendants at its OTR stores pursuant to the Customer Service CA;

(b) does not know and cannot admit whether any of the employees referred to in subparagraph (a) above satisfy subparagraphs 32(b)(ii), 32(b)(iii) and 32(b)(iv) of the Claim because those subparagraphs do not plead the material facts or particulars of:

- (i) the alleged direction to perform work in excess of their ordinary hours namely, when, where, by whom and in what circumstances it was made and the substance of what was said; and
 - (ii) the entitlements that are allegedly unpaid, namely the amounts, applicable rates and work in respect of which it is alleged they have been underpaid;
 - (iii) what the ordinary hours were alleged to have been or how they were calculated;
- (c) refers to and repeats paragraph 39A below in respect of the Respondent's alleged common or general practices regarding overtime;
 - (d) refers to and repeats paragraph 1 above; and
 - (e) otherwise denies the matters alleged therein.

33. As to paragraph 33 of the Claim, the Respondent:

- 33.1 admits subparagraph 33(a);
- 33.2 admits subparagraph 33(b) ~~save that it denies that Mr Furnell was employed as a trainee until 2 September 2015 and says that he was employed as a trainee until 26 August 2015;~~
- 33.3 admits that Mr Furnell was employed in the position of driveway attendant at the Happy Wash Valet on Pulteney Street but otherwise denies subparagraph 33(c);
- 33.4 admits subparagraph 33(d) but denies that his ordinary hours of work were 15 per week and says that his ordinary hours of work were determined as set out in paragraph 35 below; and
- 33.5 denies subparagraph 33(e) and says that Mr Furnell was paid:
 - (a) \$15.88 per hour for Monday to Friday shifts and \$18.17 per hour for Saturday, Sunday and Public Holiday shifts between the commencement of his employment and 2 July ~~30 June~~ 2014;

- (b) \$16.35 per hour for Monday to Friday shifts and \$18.71 for Saturday, Sunday and Public Holiday shifts between 3 4 July 2014 and 1 July ~~30 June~~ 2015; and
- (c) \$16.76 per hour for Monday to Friday shifts and \$19.18 for Saturday, Sunday and Public Holiday shifts between 2 4 July 2015 and the termination of his employment.

34. The Respondent denies paragraph 34 of the Claim and refers to and repeats subparagraph 32.2 above.

C-2 Group 2 alleged entitlements

35. The Respondent denies paragraph 35 of the Claim and relies on clauses 3.1.1, 4.1.1 and 4.1.6 of the Customer Service CA for their full force and effect.

35.1 The effect of clause 3.1.1 was that a part time employee may be required to work up to an average of 38 ordinary hours a week on a permanent basis, with the average to be calculated over a 4 week period exclusive of any voluntary overtime.

35.2 The effect of clause 4.1.1 was that an employee's average number of ordinary hours to be worked in a week is up to 38 for a part time employee, with the average to be calculated over a 4 week period exclusive of any voluntary overtime.

35.3 The effect of clause 4.1.6 was that an employee's ordinary hours of work will be at times governed by the needs of the business and may be varied with one hour's notice.

35.4 The ordinary hours referred to in clauses 3.1.1 and 4.1.1 were exclusive of any voluntary overtime worked pursuant to clause 4.2.1, referred to at paragraph 36 below.

36. The Respondent denies paragraph 36 of the Claim and relies on clauses 4.2 and 4.2.1 of the Customer Service CA as if set out herein.

36.1 The effect of clause 4.2 was that an employee may be required to work no more than three reasonable additional hours per shift outside of the ordinary hours in clause 4.1.1 (set out at paragraph 35 above) from time to time, which would be paid with a loading of 50%.

36.2 The effect of clause 4.2.1 was that voluntary overtime hours could be provided to an employee who genuinely requested to work overtime at their ordinary rate of pay, such request being voluntary and made in writing using the form in Schedule 2.

37. The Respondent denies paragraph 37 of the Claim and says further:

37.1 it relies on clauses 4.2 and 4.2.1 (as set out at paragraph 36 above) and Schedule 2 of the Customer Service CA for their full force and effect;

37.2 the voluntary overtime request form in Schedule 2 allowed an employee to express a preference to work voluntary overtime:

(a) either at a specific location or at any location at which additional hours were available;

(b) either at a specific time or date, or on any time or date on which additional hours were available; and

(c) either of a specific number of hours per week or as many hours per week as were available; and

37.3 the Respondent relies on clause 4.2.1.4 for its full force and effect, the effect of which was that an employee was entitled to receive the applicable overtime rate in clause 4.2 if they were directed to work overtime without having elected to work voluntary overtime.

C-3 Group 2 claimed unpaid work

38. The Respondent denies ~~admits~~ paragraph 38 of the Claim and says that Mr Furnell worked for it in sixteen sequential 4 week periods (between the weeks ending 4 June 2014 and 19 August 2015) followed by one two-week period (the weeks ending 26 August 2015 and 2 September 2015).

39. As to paragraph 39 of the Claim, the Respondent:

39.1 admits only that Mr Furnell worked the hours alleged;

39.2 says further that Mr Furnell never worked more than 152 hours in any four week period; and

- 39.3 otherwise denies the hours worked by Mr Furnell gave rise to any entitlement to be paid at above the rates set out at subparagraph 33.5 above.
- 39A. As to paragraph 39A, the Respondent:
- 39A.1 admits that it did not pay overtime loading to employees who worked overtime after completing a voluntary overtime form;
- 39A.2 refers to and repeats section C-2 above;
- 39A.3 says further that the Respondent's policy was to only offer overtime work to employees who completed voluntary overtime forms; and
- 39A.43 otherwise denies the matters alleged therein.
40. As to paragraph 40 of the Claim, the Respondent:
- 40.1 admits only that Mr Furnell worked the hours alleged;
- 40.2 denies that Mr Furnell was paid at the rates set out in subparagraph 33(e) of the Claim and says that he was paid the rates set out at subparagraph 33.5 above; and
- 40.3 otherwise denies the hours worked by Mr Furnell gave rise to any entitlement to be paid at above the rates set out at subparagraph 33.5 above.
41. As to paragraph 41 of the Claim, the Respondent:
- 41.1 denies the matters alleged therein and refers to and repeats paragraph 37 above; and

Particulars

- (a) Employee Voluntary Request to Work Additional Hours form signed by Mr Furnell (undated) submitted by Mr Furnell on or about 27 May 2014.
- 41.2 says further that, because Mr Furnell never worked more than 152 hours in any four week period, he never worked overtime for the purpose of clause 4.2 of the Customer Service CA.

42. The Respondent does not know and cannot admit paragraph 42 of the Claim and says further that:

42.1 employees could not be employed on a part time and full time basis as alleged in subparagraphs 42(a) and (b) of the Claim;

42.2 the paragraph does not plead the material facts or particulars of what are alleged to have been the alleged Group 2 Members' agreed part time hours;

42.3 the reference to persons being engaged on a full time basis is inconsistent with the definition of the alleged Group 2 Members at paragraph 32 of the Claim and inconsistent with clause 3.1.1 of the Customer Service CA; and

42.4 it refers to and repeats subparagraph 32.2 above.

C-4 Group 2 alleged contraventions and loss

43. As to paragraph 43 of the Claim, the Respondent:

43.1 denies the paragraph insofar as it makes allegations in respect of Mr Furnell and refers to and repeats paragraphs 35 to 41 above; and

43.2 insofar as paragraph 43 makes allegations in respect of the alleged Group 2 Members, refers to and repeats subparagraph 32.2 and paragraph 42 above and otherwise denies the matters alleged therein.

44. The Respondent denies paragraph 44 of the Claim and refers to and repeats subparagraph 43.1 above.

45. The Respondent does not know and cannot admit paragraph 45 of the Claim and refers to and repeats subparagraph 43.2 above.

46. As to paragraph 46 of the Claim, the Respondent:

46.1 denies the paragraph insofar as it makes allegations in respect of Mr Furnell and refers to and repeats paragraph 44 above; and

46.2 insofar as paragraph 46 makes allegations in respect of the alleged Group 2 Members, refers to and repeats paragraph 45 above and otherwise denies the matters alleged therein.

47. As to paragraph 47 of the Claim, the Respondent:
- 47.1 denies the paragraph insofar as it makes allegations in respect of Mr Furnell and refers to and repeats paragraph 46.1 above; and
- 47.2 insofar as paragraph 47 makes allegations in respect of the alleged Group 2 Members, refers to and repeats subparagraph 46.2 above and otherwise denies the matters alleged therein.
48. As to paragraph 48 of the Claim, the Respondent:
- 48.1 denies the paragraph insofar as it makes allegations in respect of Mr Furnell and refers to and repeats subparagraph 47.1 above; and
- 48.2 insofar as paragraph 48 makes allegations in respect of the alleged Group 2 Members, and refers to and repeats subparagraph 47.2 above and otherwise denies the matters alleged therein.

C-5 Alleged failure to keep records

48A The Respondent denies paragraph 48A of the Claim and refers to and repeats paragraphs 38 to 42 above.

48B The Respondent denies paragraph 48B of the Claim and refers to and repeats paragraphs 48A above and 48C below.

48C As to paragraph 48C of the Claim, the Respondent:

48C.1 admits that it kept records of alleged Group 2 Members' hours worked, which included Overtime Hours (as that phrase is defined in paragraph 39A(b) of the Claim);

48C.2 says that it kept records of overtime worked pursuant to clause 4.2 of the Customer Service CA as set out in paragraphs 35 to 37 above;

48C.3 says further that alleged Group 2 Members' Overtime Hours (as that phrase is defined in paragraph 39A(b) of the Claim) were only recorded as being overtime hours for the purposes of the Respondent's records in the event that they were overtime pursuant to clause 4.2 of the Customer Service CA as set out in paragraphs 35 to 37 above;

48C.4 refers to and repeats paragraph 48A above;

48C.5 otherwise denies the matters alleged therein.

48D As to paragraph 48D of the Claim, the Respondent:

48D.1 refers to and repeats paragraph 48C above;

48D.2 otherwise denies the matters alleged therein.

48E The Respondent denies paragraph 48E of the Claim and refers to and repeats paragraphs 48A to 48D above.

48F The Respondent denies paragraph 48F and says that, in respect of overtime, regulation 3.46(1)(g) of the Fair Work Regulations required the Respondent to specify the amount (if any) paid to alleged Group 2 Members that was a loading in respect of overtime on their payslips but did not require the Respondent to specify the number of overtime hours (if any) worked by alleged Group 2 Members on their payslips.

48G As to paragraph 48G of the Claim, the Respondent:

48G.1 refers to and repeats paragraphs 48C and 48F above;

48G.2 says that the payslips of Mr Furnell and the alleged Group 2 Members recorded amounts paid to them (if any) that was a loading in respect of overtime;

48G.3 otherwise denies the matters alleged therein.

48H The Respondent denies paragraph 48H of the Claim and refers to and repeats paragraph 48G above.

48I The Respondent denies paragraph 48I of the Claim and refers to and repeats paragraph 48H above.

D. GROUP 3 CLAIM: FULL TIME EMPLOYEES' OVERTIME

D-1 Representative proceedings

49. The Respondent:

49.1 as to subparagraph 49(a) of the Claim, admits that Ms Mahoney brings these proceedings in her own right;

49.2 as to subparagraph 49(b) of the Claim:

- (a) admits that it employed persons in salaried managerial positions of store manager, assistant store manager, store manager in training, food manager, assistant food manager and/or food manager in training at its OTR stores pursuant to the Full Time CA in the Collective Agreement Period and the Award during the Modern Award Period;
- (b) does not know and cannot admit whether any of the employees referred to in subparagraph (a) above satisfy the assertions in subparagraphs 49(b)(ii), 49(b)(iii) or 49(b)(iv) because those subparagraphs do not plead the material facts or particulars of:
 - (i) the alleged direction to work in excess of 38 hours per week, namely when, where, by whom and in what circumstances it was given and the substance of what was said; and
 - (ii) the entitlements that are alleged to have been unpaid, namely the amounts, applicable rates and the work to which the entitlements relate;
- (c) refers to and repeats paragraph 61A below as to the alleged common or general practices of the Respondent in respect of overtime;
- (d) refers to and repeats paragraph 1 above; and
- (e) otherwise denies the matters alleged therein.

50. The Respondent:

- 50.1 admits subparagraph 50(a) of the Claim;
- 50.2 denies subparagraph 50(b) of the Claim and says that Ms Mahoney was employed under the Full Time CA from 2 August 2017 when she was promoted to Manager in Training;
- 50.3 admits subparagraph 50(c) of the Claim ~~save that it says Ms Mahoney was appointed to the position of Manager in Training on 2 August 2017 and employed under the Full Time CA from that date;~~

50.4 denies subparagraphs 50(d) and ~~(e)~~ of the Claim and says that Ms Mahoney's position was Assistant Store Manager and her annualised salary was \$44,975 ~~was appointed to the position of Assistant Store Manager on 1 July 2018 and appointed to the position of Acting Store Manager on 24 October 2018;~~

50.4A admits subparagraph 50(e) of the Claim;

50.5 denies subparagraph 50(f) of the Claim and says that Ms Mahoney was appointed to the position of Store Manager at OTR Mannum on 13 February 2019, from which point her base salary until the termination of her employment on 27 August 2019 was \$48,273 per annum;

50.6 denies subparagraph 50(g) of the Claim and says:

- (a) Ms Mahoney held the positions of Console Operator and Manager in Training at OTR Darlington;
- (b) Ms Mahoney held the positions of Manager in Training and Assistant Store Manager at OTR Glengowrie; and
- (c) Ms Mahoney held the positions of Acting Store Manager and Store Manager at OTR Mannum;
- (d) Ms Mahoney also worked one shift at each of OTR Christies Beach, OTR St Mary's, OTR Brighton and OTR Littlehampton;

50.7 denies subparagraph 50(h) and says that Ms Mahoney was not employed under a single contract of employment for a full 12 month period;

50.8 denies subparagraph 50(i) of the Claim and refers to and repeats paragraph 64 below; and

50.9 as to subparagraph 50(j) of the Claim:

- (a) admits as alleged in subparagraph 50(j)(i) that Ms Mahoney was engaged to perform the duties of a console operator during the period in which she was engaged as a console operator;

- (b) as to subparagraph 50(j)(ii), admits that Ms Mahoney was engaged to perform general service station duties and says further that such duties included responsibility for the safety of the site;
- (c) as to subparagraph 50(j)(iii), admits that after being appointed to Manager in Training and in the positions of Assistant Store Manager, Acting Store Manager and Store Manager, Ms Mahoney was engaged to undertake rostering and managerial duties for the stores at which she held those positions, which included the processing of time and attendance records, including her own; and
- (d) otherwise denies the matters alleged therein; and

50.10 says in answer to the allegations as to the performance by Ms Mahoney of her duties that she was subject to a number of performance and behavioural issues in the course of her employment, in particular:

- (a) on 2 January 2019, while employed as Acting Store Manager, Ms Mahoney was counselled for inappropriate group messaging, poor performance management of her team and for improperly threatening disciplinary action for any team member who contacted her;
- (b) on multiple occasions Ms Mahoney deliberately failed to comply with the dress standards and uniform policy;
- (c) on 5 July 2019:
 - (i) Ms Mahoney was smoking with a friend in a non-smoking part of the premises while on duty, which created a safety hazard given their proximity to petrol pumps; and
 - (ii) when counselled about her failure to comply with the dress standards and uniform policy and smoking while on duty, said to the Respondent's Area Manager, Marcus Simes, "*fuck this, I quit, going home*" and, as she was walking out of the store,

farewelled Mr Simes by saying “*fuck you*” and hitting a nearby customer feedback stand;

- (d) on 9 July 2019, Ms Mahoney allowed an unknown driver to take products from the site without payment and failed to report the matter;
- (e) Ms Mahoney was suspended from duties between 30 July 2019 and 2 August 2019 and did not perform her alleged duties during that time;
- (f) on 31 July 2019, while suspended from duty pending an investigation into the conduct referred to at subparagraph (d) above, Ms Mahoney attended the OTR Murray Bridge store and discussed the terms of her suspension and confidential matters relating to other employees in front of customers and other staff; and
- (g) Ms Mahoney attempted to mislead the Respondent’s investigation into the conduct referred to in subparagraphs (d) and (f) above.

Particulars of subparagraph 50.10

- (i) Letters from the Respondent to Ms Mahoney dated 1 August and 16 August 2019.
- (ii) Notes for the Record dated 22 January 2019 and 5 July 2019.

- 51. The Respondent admits paragraph 51 of the Claim.
- 52. The Respondent denies paragraph 52 of the Claim and refers to and repeats paragraph 49.2 above. The Respondent says further that, insofar as the alleged Group 3 Members were employed in the positions of food manager, assistant food manager and food manager in training, their duties were not substantially the same as those alleged in subparagraph 50(j) of the Claim.

D-2 Group 3 alleged entitlements

- 53. The Respondent denies paragraph 53 of the Claim and relies on clauses 3.1.1, 4.2 and 4.2.1 of the Full Time CA for their full force and effect.

- 53.1 The effect of clause 3.1.1 was that a full time employee was employed on a permanent basis and required to work an average of 38 hours per week over a four week period.
- 53.2 The effect of clause 4.2 was that an employee may be required to work up to 3 reasonable additional hours per shift outside of the ordinary hours in clause 3.1.1 (pleaded at subparagraph 53.1 above) from time to time, which would be paid with a loading of 50%.
- 53.3 The effect of clause 4.2.1 was that voluntary overtime hours may be provided to an employee who genuinely requested to work overtime at their ordinary rate of pay, such request being voluntary and made in writing using the form in Schedule 2.
54. As to paragraph 54 of the Claim, the Respondent:
- 54.1 denies the paragraph;
- 54.2 relies on clauses 4.2 and 4.2.1 of the Full Time CA (as set out at paragraph 53 above) as if set out herein;
- 54.3 says further that Ms Mahoney agreed to perform an average of two hours per week of voluntary overtime, in respect of which she was not entitled to overtime loading.

Particulars

- (a) Offers of employment dated 28 November 2017, 26 June 2018, 22 October 2018 and 18 February 2019.
55. The Respondent denies paragraph 55 of the Claim and relies on clause 4.2.1 (as set out at paragraph 53 above) and Schedule 2 of the Full Time CA for its full force and effect. The Respondent says further that the voluntary overtime request form in Schedule 2 allowed an employee to express a preference to work overtime:
- 55.1 either at a specific location or at any location at which additional hours were available;
- 55.2 either at a specific time or date, or on any time or date on which additional hours were available; and

- 55.3 either of a specific number of hours per week or as many hours per week as were available.
56. As to paragraph 56 of the Claim, the Respondent:
- 56.1 insofar as paragraph 56 makes allegations in respect of Ms Mahoney, relies on clause 37.2 of the Award for its full force and effect, which is that an employee's "ordinary hours" of work will be an average of 38 hours per week on not more than five days in any week calculated on the following bases:
- (a) 38 hours within a work cycle not exceeding seven consecutive days;
 - (b) 76 hours within a work cycle not exceeding 14 consecutive days;
 - (c) 114 hours within a work cycle not exceeding 21 consecutive days;
 - (d) 152 hours within a work cycle not exceeding 28 consecutive days; or
 - (e) any other work cycle during which a weekly average of 38 ordinary hours are worked or may be determined by agreement between the employer and an employee or employees;
- 56.2 insofar as paragraph 56 makes allegations in respect of the alleged Group 3 Members, refers to and repeats paragraph 49.2 above; and
- 56.3 otherwise denies the matters alleged therein.
57. As to paragraph 57 of the Claim, on the assumption that it is only intended to relate to the Modern Award Period, the Respondent:
- 57.1 denies paragraph 57 of the Claim in respect of Ms Mahoney and says that she was only entitled to overtime loading where her hours exceed her "ordinary hours" as set out at paragraph 56 above; and

- 57.2 insofar as paragraph 57 makes allegations in respect of the alleged Group 3 Members, refers to and repeats paragraph 49.2 above and otherwise denies the matters alleged therein.
58. As to paragraph 58 of the Claim, on the assumption that it is only intended to relate to the Modern Award Period, the Respondent:
- 58.1 denies paragraph 58 of the Claim in respect of Ms Mahoney, refers to and repeats paragraph 64 below, and says that she was only entitled to overtime loading where her hours exceed her “ordinary hours” as set out at paragraph 56 above; and
- 58.2 insofar as paragraph 58 makes allegations in respect of the alleged Group 3 Members, refers to and repeats paragraph 49.2 above and otherwise denies the matters alleged therein.

D-3 Group 3 claimed unpaid work

59. As to paragraph 59 of the Claim, the Respondent:
- 59.1 denies Ms Mahoney was rostered as alleged in subparagraph 59(a);
- 59.2 denies subparagraph 59(b) and says that there were occasions on which:
- (a) Ms Mahoney commenced work late, on which occasions her pay was not reduced; or
- (b) did not attend work at all due to taking sick leave;
- 59.3 denies subparagraph 59(c) and says that there were occasions on which Ms Mahoney finished work early, on which occasions her pay was not reduced;
- 59.4 denies subparagraph 59(d) and says further that during the period in which Ms Mahoney held managerial positions she was responsible for managing staff meal breaks, including her own; and
- 59.5 denies subparagraph 59(e).

Particulars

- (a) Rosters and attendance records for Ms Mahoney.

- (b) During the period in which she was employed under the Full Time CA in the Collective Agreement Period and under the Award during the Modern Award Period, Ms Mahoney recorded her time using the Respondent's electronic time recording system which was subject to the procedure set out in paragraph 31A above. She recorded start and finish times which differed from her rostered start and finish times and was also paid from start times and to finish times that differed from her rostered start and finish times. Ms Mahoney was also paid as if she had taken a meal break, had not taken a meal break or had taken a crib break, as the case may be, from time to time.
- (c) In total, Ms Mahoney was paid for 39 hours more work than her scan data recorded that she had performed.

60. The Respondent denies paragraph 60 of the Claim, refers to and repeats paragraph 59 above and says further:

60.1 Ms Mahoney did not perform the tasks alleged in subparagraphs 60(a)(iv~~ii~~) and (vi~~v~~) prior to taking on managerial roles;

60.2 it denies that the completion of Ms Mahoney's shifts was subject to completion of specific duties or that the duties Ms Mahoney was required to perform were such that they could or would not have been completed in the course of her shifts;

60.3 paragraph 60 does not plead the material facts or particulars of:

- (a) the alleged directions by the Respondent, namely when, where, ~~by whom~~ and in what circumstances they were alleged to have been made and the substance of what was said;
- (b) the instances where it is alleged that Ms Mahoney worked additional hours due to other staff members calling in sick, namely when and where she was required to perform the hours alleged and the number of additional hours worked; and
- (c) the instances where it is alleged that Ms Mahoney worked additional hours where there were incidents at other service stations requiring her attention, namely the nature of the

incidents, when they occurred, the stores at which they occurred and the number of additional hours worked;

60.4 as to paragraphs 60(b) and (c) of the Claim, the Respondent:

- (a) says that in the event that a staff member could not work a shift, for example due to taking sick leave, Ms Mahoney had the option of covering the shift herself or organising for another staff member to cover the shift;
- (b) denies that there was an additional cost to the Respondent associated with having one staff member cover another staff member's shift in circumstances where the person whose shift was being covered and the person covering the shift were both non-salaried employees;
- (c) says further that in the event that Ms Mahoney worked additional hours, including to cover another staff member's shift, she was expected to:
 - (i) lodge a "Manager Overtime Form" to receive payment for the additional hours worked; or

Particulars

- (A) Manager & Full Time Over Contract Hours Adjustment Request form, which stated:

Managers are contracted for standard working hours each week (usually 38 hrs/week). It may be necessary on occasions for a manager to work over their contracted hours. If this happens then Payroll must be notified to make an adjustment. In order for Payroll to process an adjustment the below information must be completed and the adjustment authorised.

- (ii) re-organise the roster to reduce her hours later in the week;

- (d) Ms Mahoney was responsible for accurately recording her hours worked using the Respondent's time recording systems referred to at paragraphs 15A, 20A, 22A and 31A above;
- (e) If Ms Mahoney considered that her pay did not reflect her time worked, including by reason that the Respondent's records did not record the time she had worked, she could lodge a Wage Adjustment Form according to the procedure as set out at paragraph 31A.3 above;
- (f) Ms Mahoney, when a Store Manager or an Assistant Manager or Manager In Training when the Store Manager was not on duty, was responsible for reviewing staff members' time records, including her own, and submitting accurate records to the Respondent's payroll department each pay period as referred to at paragraph 31A above;
- (g) Ms Mahoney, when a Store Manager, was responsible for the preparation of rosters for the purpose of ensuring that the store was adequately staffed:
 - (i) insofar as she considered herself unable to perform her duties within her rostered hours (which is denied), it was her responsibility to delegate tasks to other team members, including those on other shifts in circumstances where the store was open and team members were rostered on and available to perform tasks 24 hours per day, 7 days per week;
 - (ii) insofar as she had difficulty covering shifts due to a shortage of staff at her store (which is denied), she could notify her Area Manager who could contact other stores to organise for other staff members to fill in.

61. As to paragraph 61 of the Claim:

61.1 the Respondent denies subparagraph 61(a) and says further that Ms Mahoney did not have "rostered days off"; and

61.2 the Respondent denies subparagraph 61(b).

- 61A. As to paragraphs 61A of the Claim, the Respondent:
- 61A.1 admits that it had a common or general practice of directing its employees to work their rostered hours (subject to agreement to vary those hours or, during the Collective Agreement Period, variation pursuant to clause 4.1.7 of the Full Time CA);
- 61A.2 otherwise denies the matters alleged therein;
- 61A.3 refers to and repeats paragraphs 15A, 20A, and 22A, 31A, 49.2 and 60 above;
- 61A.4 refers to and repeats paragraph 8.2(d) above;
- 61A.5 says further that none of the persons identified in paragraph 61A of the Claim, including Mr Garwood and Ms D'Cruz:
- (a) ever reported to or notified the Respondent that they had given or were giving the alleged directions to perform overtime; or
- (b) had actual or apparent authority to direct employees to perform unpaid overtime.
62. [Not used.]
63. [Not used.]
64. The Respondent denies paragraph 64 of the Claim and says that Ms Mahoney received top-up payments on the occasions that her salary was not sufficient to cover her minimum entitlements under the Award.

Particulars

- 64.1 Pay week ending 18 July 2018 - \$34.23.
- 64.2 Pay week ending 15 August 2018 - \$2.87.
- 64.3 Pay week ending 17 October 2018 - \$55.14.
- 64.4 Pay week ending 7 November 2018 - \$12.39.
- 64.5 Pay week ending 26 December 2018 - \$212.34.
- 64.6 Pay week ending 2 January 2019 - \$263.31.

- 64.7 Pay week ending 9 January 2019 - \$98.64.
- 64.8 Pay week ending 30 January 2019 - \$15.00.
- 64.9 Pay week ending 6 February 2019 - \$22.84.
- 64.10 Pay week ending 27 February 2019 - \$7.16.
- 64.11 Pay week ending 6 March 2019 - \$7.96.
- 64.12 Pay week ending 13 March 2019 - \$140.58.
- 64.13 Pay week ending 3 April 2019 - \$4.66.
- 64.14 Pay week ending 24 April 2019 - \$313.08.
- 64.15 Pay week ending 1 May 2019 - \$161.49.
- 64.16 Pay week ending 22 May 2019 - \$2.05.
- 64.17 Pay week ending 28 August 2019 - \$11.22.

65. The Respondent denies paragraph 65 of the Claim and refers to and repeats subparagraph 49.2 above.

D-4 Group 3 alleged contraventions and loss

66. As to paragraph 66 of the Claim, the Respondent:

- 66.1 denies the paragraph;
- 66.2 refers to and repeats paragraphs 4 to 6, 53 to 55 and 59 to 61 above;
and
- 66.3 says further that any claim of Ms Mahoney against the Respondent (which is denied) should be reduced to take into account the occasions for which she was paid for time she did not work.

67. The Respondent denies paragraph 67 of the Claim and refers to and repeats paragraphs 4 to 7, 56 to 61 and 66 above.

68. The Respondent denies paragraph 68 of the Claim and refers to and repeats paragraphs 4 to 7 and 53 to 58 and subparagraph 49.2 above.

69. The Respondent denies paragraph 69 of the Claim and refers to and repeats paragraph 66 above.

70. The Respondent denies paragraph 70 of the Claim and refers to and repeats paragraphs 64 and 67 above.
71. The Respondent denies paragraph 71 of the Claim and refers to and repeats paragraph 68 and subparagraph 49.2 above.
72. The Respondent denies paragraph 72 of the Claim and refers to and repeats paragraph 68 and subparagraph 49.2 above.
73. The Respondent denies paragraph 73 of the Claim and refers to and repeats paragraphs 68 to 72 above.
74. The Respondent denies paragraph 74 of the Claim and refers to and repeats paragraph 73 above.
75. The Respondent denies paragraph 75 of the Claim and refers to and repeats paragraph 74 above.

D-5 Alleged failure to keep records and further contraventions

Alleged failure to keep records

75A The Respondent denies paragraph 75A of the Claim and refers to and repeats paragraphs 53 to 65 above.

75B The Respondent denies paragraph 75B of the Claim, refers to and repeats paragraph 75A above.

75C As to paragraph 75C of the Claim, the Respondent:

75C.1 denies the paragraph;

75C.2 says that:

- (a) the Respondent's electronic time recording system commenced on or about 1 July 2017;
- (b) following the implementation of the Respondent's electronic time recording system, alleged Group 3 Members:
 - (i) scanned their fingerprint at the commencement and conclusion of their shift;

- (ii) if they scanned out within 7 minutes either side of their rostered start or finish time, were paid in accordance with their rostered start or finish time, as the case may be;
 - (iii) if they scanned in greater than 7 minutes either side of their rostered start or finish time, had their pay adjusted accordingly, subject to:
 - (A) in respect of alleged Group 3 Members who were not Store Managers, any manual adjustment in consultation with their manager for incorrectly scanning out, for reasons including that an employee in fact started or finished work on time but forgot to scan in or out, as the case may be;
 - (B) in respect of alleged Group 3 Members who were Store Managers, any manual adjustment they made to their own records, for reasons including that they in fact started or finished work on time but forgot to scan in or out, as the case may be;
- (c) prior to the implementation of the electronic time recording system, alleged Group 3 Members:
 - (i) who were not Store Managers:
 - (A) filled out manual time books in which they recorded their start and finish times and meal breaks and signed or initialled their entries to confirm their accuracy; and
 - (B) were paid in accordance with their Actuals;
 - (ii) who were Store Managers provided their Actuals directly to Payroll;

- (d) alleged Group 3 Members were required to follow the time recording procedures, and were entitled to avail themselves of pay query process, referred to at paragraph 31A above.

75D As to paragraph 75D of the Claim, the Respondent:

75D.1 denies the paragraph;

75D.2 refers to and repeats paragraph 75C above; and

75D.3 says that, in respect of overtime, regulation 3.46(1)(g) of the Fair Work Regulations required the Respondent to specify the amount (if any) paid to alleged Group 3 Members that was a loading in respect of overtime on their payslips but did not require the Respondent to specify the number of overtime hours (if any) worked by alleged Group 3 Members on their payslips.

75E The Respondent denies paragraph 75E of the Claim and refers to and repeats paragraph 75D above.

75F The Respondent denies paragraph 75F of the Claim and refers to and repeats paragraph 75C above.

75G The Respondent denies paragraph 75G of the Claim and refers to and repeats paragraph 75E above.

75H The Respondent denies paragraph 75H of the Claim and refers to and repeats paragraph 75F above.

75I The Respondent denies paragraph 75I of the Claim and refers to and repeats paragraph 75G above.

Alleged false or misleading records

75J The Respondent denies paragraph 75J of the Claim and refers to and repeats paragraph 75H above.

75K As to paragraph 75K of the Claim, the Respondent:

75K.1 denies the paragraph;

75K.2 repeats paragraph 75C above;

75K.3 says that the paragraph should be struck out because, contrary to rule 16.43, does not plead the material facts or particulars which it is asserted establish knowledge, including:

- (a) what records were asserted to have been known to have been false or misleading;
- (b) in what respect the records are asserted to have been false or misleading;
- (c) what asserted overtime hours are asserted to have known not to have been recorded; and
- (d) how it was that the named persons knew that those asserted overtime hours were not recorded, and in respect of what asserted hours;

75K.4 says further that the paragraph should be struck out because it does not plead the material facts or particulars of the conduct asserted to have been engaged in by the named persons, including:

- (a) when and where the directions are alleged to have been given to the Third Respondent;
- (b) whether the directions were oral or in writing and, if the directions were oral, the effect of what was said, or, if the directions were in writing, particulars of the documents containing the directions;

75K.5 says further that the paragraph should be struck out because it does not plead the material facts or particulars of the basis on which the giving of the directions as alleged was within the apparent authority of the named persons (which is denied).

75L The Respondent denies paragraph 75L of the Claim, refers to and repeats paragraphs 75C and 75K above and says further:

75L.1 the paragraph should be struck out because, contrary to rule 16.43, it does not plead the material facts or particulars which it is asserted establish knowledge, including:

- (a) what records were asserted to have been known to have been false or misleading and in what respect;
- (b) in what respect the records are asserted to have been false or misleading;
- (c) what asserted overtime hours are asserted to have known not to have been recorded; and
- (d) how it was that the named persons knew that those asserted overtime hours were not recorded, and in respect of what asserted hours;

75L.2 the paragraph should be struck out because it does not plead the material facts or particulars of the conduct asserted to have been engaged in by the manager, including:

- (a) when and where the directions are alleged to have been given;
- (b) what time entries are asserted to have been “revised”, and when and how the entries were “revised”;

75L.3 the paragraph should be struck out because it does not plead the material facts or particulars of the basis on which the conduct as alleged was within the apparent authority of the manager (which is denied);

75L.4 no Store or Area Manager of the Respondent (including Managers in Training, Assistant Managers and Trainee Area Managers), including Ms D’Cruz and Mr Garwood, had the actual or apparent authority to direct employees of the Respondent to:

- (a) perform unpaid work; or
- (b) inaccurately record, or not record, the time worked by employees of the Respondent pursuant to a direction to perform such work,

such that the Respondent cannot be taken to have given any such directions for the purposes of s 793 of the Fair Work Act;

75L.5 none of the persons identified in paragraph 75L, including Ms D'Cruz and Mr Garwood, reported to the Respondent that they had the knowledge or engaged in the conduct alleged

75L.6 it was not possible for any person, including Store and Area Managers, to alter the fingerprint records in the Respondent's electronic time recording system.

75M The Respondent denies paragraph 75M of the Claim and refers to and repeats paragraphs 75L above.

Alleged serious contraventions

75N As to paragraph 75N of the Claim, the Respondent:

75N.1 denies the contraventions alleged in paragraphs 75H, 75I and 75L of the Claim; and

75N.2 denies that the contraventions alleged, if established (which are denied), were engaged in knowingly for the purposes of s 557A of the Fair Work Act by reason:

75N.2.1 that no Store or Area Manager of the Respondent (including Managers in Training, Assistant Managers and Trainee Area Managers) had actual or implied authority to engage in the conduct alleged (which are denied and, as to which, the Respondent refers to and repeats paragraphs 75C, 75K and 75L above), such that their alleged conduct cannot be taken to have been engaged in by the Respondent for the purposes of s 793 of the Fair Work Act;

75N.2.2 that the Respondent had taken company-wide steps to ensure that alleged Group Members' time records were accurate, including by implementing the time recording systems set out at paragraph 75C above;

75N.2.3 of the matters set out above:

75N.2.3.1 the Respondent did not expressly, tacitly or impliedly authorise the alleged contraventions for the purposes of s 557B of the Fair Work Act; and

75N.2.3.2 the alleged contraventions were not part of a systematic pattern of conduct for the purposes of s 557A of the Fair Work Act;

75N.2.3 of the matters in paragraph 75C above, any contravention was caused by alleged Group Members' failure to accurately record their time worked and, or in the alternative, follow the procedures in place to investigate and address asserted underpayments.

75O The Respondent denies paragraph 75O of the Claim and refers to and repeats paragraph 75N above.

E. GROUP 4 CLAIM: TRAINEES

E-1 Representative proceedings

76. The Respondent:

76.1 as to subparagraph 76(a) of the Claim, admits that each of Mr Furnell, Mr Palmer and Mr Williamson bring these proceedings in their own right;

76.2 as to subparagraph 76(b) of the Claim:

- (a) admits that it employed a number of trainee console operators, driveway attendants and/or roadhouse (food) attendants at its OTR stores pursuant to the Customer Service CA during the Collective Agreement Period;
- (b) admits that it employed a number of trainees during the Collective Agreement Period but says they were not off-the-job trainees assuming the reference to off-the-job trainees in the Claim is intended to mean that no on-site training was provided;
- (c) does not know whether any of the persons referred to in subparagraph (a) above satisfy subparagraph 76(b)(iii) and (iv) of the Claim because the subparagraphs do not plead the material facts or particulars of:

- (i) the alleged off-the-job traineeships, namely where, when and for how long they were allegedly undertaken, and who allegedly provided the training; and
- (ii) the base rates that were alleged to have been paid that were lower than the base rates that were alleged to have been applicable under the Award;
- (d) refers to and repeats paragraph 1 above; and
- (e) otherwise denies the matters alleged therein.

E-2 Legal framework

76A As to paragraph 76A of the Claim, the Respondent says that:

76A.1 the *Training Skills and Development Act 2008* (SA) (**TSD Act**) as in force during the Collective Agreement Period provided for entry into training contracts in South Australia;

76A.2 the TSD Act does not make any reference to “off the job” or “on the job” training;

76A.3 the reference to the “VET System” in paragraph 76A of the Claim is otherwise vague and ambiguous as it does not identify the statutory or regulatory instruments asserted to give rise to that system, the provisions which are said to give rise to the features of the system as alleged or the relevance of legislation in other states to the legal position in South Australia.

76B The Respondent admits that section 46 of the TSD Act provided for training plans, repeats paragraph 76A above and otherwise denies the matters alleged in paragraph 76B of the Claim.

76C The Respondent repeats paragraph 76B above and otherwise denies the matters alleged in paragraph 76C of the Claim.

76D The Respondent denies paragraph 76D of the Claim and says that at all material times clause E.4.3(f) of Schedule E to the Award and the *Miscellaneous Award 2010* provided that the minimum wage for a part-time traineeship was to be calculated as follows:

(ii) Where the approved training for a part-time traineeship is provided fully off-the-job by a registered training organisation, for example at school or at TAFE, the relevant minimum wage in clauses E.5.2(a)-(e) of this schedule applies to each ordinary hour worked by the trainee.

(iii) Where the approved training for a part-time traineeship is undertaken solely on-the-job or partly on-the-job and partly off-the-job, the relevant minimum wage in clauses E.5.2(a)-(e) of this schedule minus 20% applies to each ordinary hour worked by the trainee.

76E The Respondent admits paragraph 76E to the Claim.

E-3 Relevant facts

77. As to paragraph 77 of the Claim, the Respondent:

77.1 admits subparagraphs 77(a), (b) and (c)(i) of the Claim; and

77.2 denies subparagraphs 77(c)(ii), ~~and~~ (iii) and (iv).

78. The Respondent:

78.1 admits subparagraph 78(a) of the Claim;

78.2 as to subparagraph 78(b) of the Claim:

(a) admits that Mr Palmer's worksite location for the purpose of his traineeship was OTR Munno Para West and says that he worked at the Oporto outlet located there but says he also worked shifts at OTR Pulteney Street, OTR Hillbank, OTR Mawson Lakes, OTR Pt Wakefield Road and OTR Brompton; and

(b) says that his traineeship concluded on 1 April 2016;

78.3 admits subparagraph 78(c) save that Mr Palmer's traineeship concluded on 1 April 2016 at which time he was issued with a Certificate III in Retail Operations and Mr Palmer's employment with the Respondent concluded on 12 December 2016;

78.4 as to subparagraph 78(d), admits that Mr Palmer was engaged in the position of roadhouse (food) attendant but otherwise denies the subparagraph;

- 78.5 denies subparagraph 78(e) and says that Mr Palmer's ordinary hours of work were determined as set out in paragraph 35 above;
- 78.6 admits subparagraph 78(f);
- 78.7 admits subparagraph 78(g);
- 78.8 as to subparagraph 78(h):
- (a) admits subparagraph 78(h)(i); and
 - (b) denies subparagraphs 78(h)(ii), ~~and (iii)~~ and (iv); and
- 78.9 admits subparagraph 78(i).
79. As to paragraph 79 of the Claim, the Respondent:
- 79.1 admits subparagraph 79(a);
- 79.2 admits subparagraph 79(b) save that it says Mr Williamson's employment ceased on 9 April 2015 when he resigned without proper notice, following which his traineeship was cancelled on 15 April 2015;
- 79.3 as to subparagraph 79(c), the Respondent admits that Mr Williamson was engaged in the position of console operator but otherwise denies the subparagraph;
- 79.4 denies subparagraph 79(d) and says that Mr Williamson's ordinary hours of work were determined as set out in paragraph 35 above;
- 79.5 ~~denies~~ admits subparagraph 79(e) ~~and says further that Mr Williamson had been out of secondary school for a period of more than two but less than three years when he commenced employment with the Respondent as a trainee;~~
- 79.6 admits subparagraph 79(f);
- 79.7 admits subparagraph 79(g)(i);
- 79.8 denies subparagraphs 79(g)(ii), ~~and (iii)~~ and (iv);
- 79.9 admits subparagraph 79(h); and
- 79.10 otherwise denies the matters alleged therein.

~~80. The Respondent denies paragraph 80 of the Claim and says further that, in respect of each of Mr Furnell, Mr Palmer and Mr Williamson, their training was “on-the-job” or in the alternative “partly on-the-job” by reason that:~~

~~80.1 training was provided by employees of the Respondent with the support of the registered training organisation Training, Innovation, Management and Enterprise Pty Ltd (**TIME**);~~

~~80.2 training was undertaken variously at the main sites at which Mr Furnell, Mr Palmer and Mr Williamson each worked or at the Respondent’s head office; and~~

~~80.3 training was undertaken during paid shifts.~~

~~81. The Respondent denies paragraph 81 of the Claim and refers to and repeats paragraph 80 above.~~

82. The Respondent denies paragraph 82 of the Claim and refers to and repeats subparagraph 76.2 above.

E-2 4 Group 4 alleged entitlements

83. As to paragraph 83 of the Claim, the Respondent:

83.1 admits that each of Mr Furnell, Mr Palmer and Mr Williamson were covered by the Award during their employment with the Respondent during which time they were employed pursuant to the Customer Service CA;

83.2 insofar as paragraph 83 makes allegations in respect of the alleged Group 4 Members, refers to and repeats subparagraph 76.2 above; and

83.3 otherwise denies the matters alleged therein;-

83.4 says further that, as to Mr Furnell, Mr Palmer and Mr Williamson, their training was “on-the-job” or in the alternative “partly on-the-job” by reason that:

(a) training was provided by employees of the Respondent with the support of the registered training organisation Training, Innovation, Management and Enterprise Pty Ltd (TIME);

(b) training was undertaken variously at the main sites at which Mr Furnell, Mr Palmer and Mr Williamson each worked or at the Respondent's head office; and

(c) training was undertaken during paid shifts;

83.5 by reason that training was provided "on-the-job" or in the alternative "partly on-the-job" each or Mr Palmer, Mr Furnell and Mr Williamson and other trainees were not required to attend training in their own time without payment for the time spent training.

~~84. The Respondent denies paragraph 84 of the Claim.~~

~~85. The Respondent admits paragraph 85 of the Claim.~~

86. The Respondent denies paragraph 86 of the Claim and refers to and repeats paragraph ~~80~~ 83 above.

~~87. The Respondent denies paragraph 87 of the Claim and refers to and repeats paragraph 86 above.~~

~~88. The Respondent admits paragraph 88 of the Claim but denies that the rates of pay set out in paragraph 86 of the Claim were the applicable rates and refers to and repeats paragraph 87 above.~~

~~89. The Respondent denies paragraph 89 of the Claim and refers to and repeats paragraph 88 above.~~

~~90. The Respondent denies paragraph 90 of the Claim and refers to and repeats subparagraph 76.2 above.~~

E-5 Group 4 alleged contraventions and loss

~~91. The Respondent denies paragraph 91 of the Claim and refers to and repeats paragraphs 83 to 90 above.~~

92. The Respondent denies paragraph 92 of the Claim and refers to and repeats paragraph ~~94~~ 86 above.

93. The Respondent denies paragraph 93 of the Claim and refers to and repeats paragraph 92 above.

94. The Respondent denies paragraph 94 of the Claim and refers to and repeats paragraph 93 above.

F. GROUP 5 CLAIM: DEDUCTIONS

F-1 Representative proceedings

95. The Respondent:

95.1 as to subparagraph 95(a) of the Claim, admits that the Applicants bring this proceeding in their own right;

95.2 as to subparagraph 95(b) of the Claim:

(a) in response to subparagraph 95(b)(i):

(i) admits that it employed persons at its OTR stores pursuant to the Customer Service CA during the Collective Agreement Period;

(ii) admits that it employed persons pursuant to the Full Time CA during the Collective Agreement Period;

(iii) admits that it employed persons pursuant to the Award during the Modern Award Period;

(iv) otherwise denies the subparagraph;

(b) does not know and cannot admit subparagraph 95(b)(ii) because that subparagraph does not plead the material facts or particulars of the alleged directions, namely:

(i) whether they were oral or in writing and when, where and by whom they were made;

(ii) the uniforms that are alleged to have been the subject of the directions;

(iii) the amounts allegedly deducted in respect of the uniforms and police checks;

(c) says further that:

- (i) during the Collective Agreement Period and during the Modern Award Period prior to 17 October 2019, the Respondent deducted from the pay of console operators, roadhouse (food) attendants and driveway attendants up to \$150 as a deposit for their uniform, which deposit was refunded to the employee upon them returning their uniform to the Respondent at the conclusion of their employment;
- (ii) the Respondent has not made any deductions from employees' pay in respect of uniforms after 17 October 2019;
- (iii) during the Collective Agreement Period and during the Modern Award Period prior to 4 November 2019, the Respondent deducted from the pay of console operators, roadhouse (food) attendants and driveway attendants \$40 to offset the cost of obtaining a National Police Certificate (**police check**) on behalf of those employees;
- (iv) the Respondent has not made any deductions from employees' pay in respect of police checks after 4 November 2019;
- (d) refers to and repeats paragraph 1 above; and
- (e) otherwise denies the matters alleged therein.

F-2 Group 5 alleged unlawful deductions

96. As to paragraph 96 of the Claim, the Respondent:

96.1 in respect of Mr Young:

- (a) denies that the amount of \$205 was deducted from his pay to cover the cost of a uniform and says that:
 - (i) \$150 was deducted at the direction of and at the request of Mr Young as a security deposit for his uniform by way of three deductions of \$40 and one

deduction of \$30 in the pay periods ending 6 November 2013, 13 November 2013, 20 November 2013 and 27 November 2013, respectively;

- (ii) a deduction of \$55 was made in the pay period ending 15 August 2018 at the direction of and at the request of Mr Young for an additional uniform item, namely a jacket;
- (b) admits that the amount of \$40 was deducted from his pay during the pay period ending 30 October 2013 to cover the cost of a police check;
- (c) says that Mr Young agreed to pay the amount in subparagraph (a)(ii) above and to the deductions in subparagraphs (a)(i) and (b) above;

Particulars

- (i) Employment Application Form signed by Mr Young on 23 September 2013, which provided:
 - (A) *"I understand that if I am over 18 years old I will be required to supply a "National Police Record Check" prior to commencing employment. If you are unable to supply a police check then the company will arrange the application and payment on your behalf. This cost will be deducted from your salary";*
 - (B) Mr Young ticked "yes" to the question *"do you require a police check to be arranged on your behalf";*
 - (C) Mr Young initialled the statement *"I agree and understand the uniform deposit of \$150 for team members (\$120 for school based) is required";*
 - (D) Mr Young initialled the statement *"I understand I will need to meet the company*

policy on Uniforms, piercings, tattoos, shoes, hair, nails and adhere to this policy at all times", in circumstances where the Uniform Policy provided to Mr Young provided, inter alia, that staff are required to pay a uniform deposit, refundable upon return of the uniform at the cessation of employment and that any uniforms purchased in addition to initial uniform pack are chargeable to the employee and remain the property of the employee.

(ii) Uniform Order Form signed by Mr Young on 22 October 2013, which provided:

(A) *"I authorise the deduction of \$150 from my wages to be held by Shahin Enterprises Pty Ltd as a security deposit, which will be refunded when the uniform and Activity Book(s) are returned to Shahin Enterprises Pty Ltd (Central) in reasonable condition... If I am over 18 years of age I authorise the deduction of the above amount [\$40] to reimburse the company for the cost (\$40) of a "National Police Record Check"; and*

(B) Mr Young ticked "yes" to the statement *"Police Check Required \$40"*.

(iii) Oral instruction to Lisa Dobner, Site Manager, OTR Parafield to purchase the additional jacket on or about 24 July 2018.

(iv) Uniform Log dated 30 June 2018 for Mr Young in respect of the jacket purchase, in which he agreed to pay \$55 to purchase the additional jacket.

96.2 in respect of Mr Furnell:

- (a) denies that the amount of \$150 was deducted from his pay to cover the cost of a uniform and says that the deduction was made at the direction of and at the request of Mr Furnell by way of deductions of \$20 to \$30 during the pay periods ending 18 June 2014, 25 June 2014, 2 July 2014, 9 July 2014, 16 July 2014 and 23 July 2014 as a security deposit for his uniform;
- (b) admits that the amount of \$40 was deducted from his pay by way of deductions of \$20 in the pay periods ending 4 June 2014 and 11 June 2014 to cover the cost of a police check;
- (c) says that Mr Furnell agreed to the deductions in subparagraphs (a) and (b) above;

Particulars

- (i) Employment Application Form signed by Mr Furnell on 19 May 2014, which provided:
 - (A) *“I understand that if I am over 18 years old I will be required to supply a “National Police Record Check” prior to commencing employment. If you are unable to supply a police check then the company will arrange the application and payment on your behalf. This cost will be deducted from your salary”;*
 - (B) Mr Furnell ticked “yes” to the question “do you require a police check to be arranged on your behalf”;
 - (C) Mr Furnell initialled the statement “I agree and understand the uniform deposit of \$150 for team members (\$120 for school based) is required”; and
 - (D) Mr Furnell initialled the statement “I understand I will need to meet the company policy on Uniforms, piercings, tattoos,

shoes, hair, nails and adhere to this policy at all times”, in circumstances where the Uniform Policy provided to Mr Furnell provided, inter alia, that staff are required to pay a uniform deposit, refundable upon return of the uniform at the cessation of employment.

(ii) Uniform Order Form signed by Mr Furnell on 27 May 2014, which provided:

(A) *“I authorise the deduction of \$150 from my wages to be held by Shahin Enterprises Pty Ltd as a security deposit, which will be refunded when the uniform and Activity Book(s) are returned to Shahin Enterprises Pty Ltd (SSO) in reasonable condition, and \$40 if a police check was conducted on my behalf; and*

(B) The field *“Police Check Required”* was marked *“Yes”*.

96.3 in respect of Ms Mahoney:

(a) denies that the amount of \$90 was deducted from her pay to cover the cost of a uniform and says that a deduction of \$90 was made at the direction of and at the request of Ms Mahoney by way of deductions of \$10 to \$20 for the pay periods ending 22 February 2017, 1 March 2017, 8 March 2017, 15 March 2017, 22 March 2017, 29 March 2017 and 5 April 2017 as a security deposit for his uniform and refunded upon termination of her employment;

(b) admits that the amount of \$40 to cover the cost of a police check was deducted from Ms Mahoney’s pay at her direction and request by way of deductions of \$30 and \$10 in the pay periods ending 8 February 2017 and 15 February 2017, respectively;

- (c) says that Ms Mahoney agreed to the deductions referred to in subparagraphs 96.5(a) and 96.5(b) above;

Particulars

- (i) Employment Application Form lodged by Ms Mahoney dated 16 December 2016 which provided:

- (A) *"If you are over 18 years of age it is a requirement of employment that you supply a Police Clearance no older than 3 months, or give us permission by completing the Fit2Work application to conduct one on your behalf. The cost will be deducted from your salary if you are successful."*
- (B) *"All staff are required to pay a uniform deposit, this is returned when your uniform is returned to the office, once employment has ceased";*
- (C) Ms Mahoney selected "Yes" in answer to the question *"Do you require a police check to be conducted on your behalf?"*;
- (D) Ms Mahoney selected "Yes" in answer to the question *"I have read, understand and agree to the Convenience Uniform Policy & Personal Presentation Standards"*;
- (E) Ms Mahoney selected "Yes" in answer to the statement *"I have read, understand and agree to the above points"*, on of which was *"I agree and understand the uniform deposit of \$150 (\$120 for school based) is required. The full amount will be deducted in small increments over a period of time."*

(ii) Uniform sheet signed by Ms Mahoney on 31 January 2017, which provided:

(A) *"I authorise the deduction of \$150 from my wages to be held by Shahin Enterprises Pty Ltd as a security deposit, which will be refunded when the uniform and Activity Book(s) are returned to Shahin Enterprises Pty Ltd (SSO) in reasonable condition, and \$40 if a police check was conducted on my behalf, and*

(B) The field *"Police Check Required"* was marked *"Yes"*.

96.4 in respect of Mr Palmer:

- (a) denies that the amount of \$150 was deducted from his pay to cover the cost of a uniform and says that the deduction was made at the direction of and at the request of Mr Palmer by way of deductions of \$10 to \$40 during the pay periods ending 16 July 2014, 23 July 2014, 30 July 2014, 6 August 2014, 13 August 2014 and 20 August 2014 as a security deposit for his uniform and refunded upon termination of his employment;
- (b) admits that the amount of \$40 was deducted from Mr Palmer's pay at his direction and request during the pay period ending 9 July 2014 to cover the cost of a police check;
- (c) says that Mr Palmer agreed to the deductions in subparagraphs (a) and (b) above;

Particulars

(i) Employment Application Form signed by Mr Palmer on 11 June 2014, which provided:

(A) *"I understand that if I am over 18 years old I will be required to supply a "National Police Record Check" prior to commencing employment. If you are unable to supply a*

police check then the company will arrange the application and payment on your behalf. This cost will be deducted from your salary”;

(B) Mr Palmer initialled the statement *“I agree and understand the uniform deposit of \$150 for team members (\$120 for school based) is required”*; and

(C) Mr Palmer initialled the statement *“I understand I will need to meet the company policy on Uniforms, piercings, tattoos, shoes, hair, nails and adhere to this policy at all times”*, in circumstances where the Uniform Policy provided to Mr Palmer provided, inter alia, that staff are required to pay a uniform deposit, refundable upon return of the uniform at the cessation of employment.

(ii) Uniform Sheet signed by Mr Palmer 1 July 2014, which provided:

(A) *“I authorise the deduction of \$150 from my wages to be held by Shahin Enterprises Pty Ltd as a security deposit, which will be refunded when the uniform and Activity Book(s) are returned to Shahin Enterprises Pty Ltd (SSO) in reasonable condition, and \$40 if a police check was conducted on my behalf, and*

(B) The field *“Police Check Required”* was marked *“Yes”*.

96.5 in respect of Mr Williamson:

(a) denies that the amount of \$150 was deducted from his pay to cover the cost of a uniform and says that the deduction was made at the direction of and at the request of Mr Williamson

by way of deductions of \$10 to \$20 during the pay periods ending 28 January 2015, 4 February 2015, 11 February 2015, 18 February 2015, 25 February 2015, 4 March 2015, 11 March 2015 and 18 March 2015 as a security deposit for his uniform and refunded upon termination of his employment;

- (b) admits that the amount of \$40 was deducted from his pay by way of deductions of \$20 during the pay periods ending 14 January 2015 and 21 January 2015 to cover the cost of a police check;
- (c) says that Mr Williamson agreed to the deductions referred to in subparagraphs (a) and (b) above;

Particulars

- (i) Employment Application Form, lodged by Mr Williamson which provided:

- (A) *"If you are over 18 years of age it is a requirement of employment that you supply a Police Clearance no older than 3 months, or give us permission by completing the Fit2Work application to conduct one on your behalf. The cost will be deducted from your salary if you are successful."*
- (B) *"All staff are required to pay a uniform deposit, this is returned when your uniform is returned to the office, once employment has ceased";*
- (C) Mr Williamson selected "Yes" in answer to the question *"Do you require a police check to be conducted on your behalf?"*;
- (D) Mr Williamson initialled the statement *"I understand that adhering to the Uniform Policy is part of my employment (refer to Uniform Policy)"*;

(E) Mr Williamson initialled the statement “*I agree and understand the uniform deposit of \$150 (\$120 for school based) is required. The full amount will be deducted in small increments over a period of time.*”.

96.6 insofar as paragraph 96 makes allegations in respect of the alleged Group 5 Members, refers to and repeats subparagraph 95.2 above; and

96.7 otherwise denies the matters alleged therein.

97. The Respondent denies paragraph 97 of the Claim and refers to and repeats paragraph 96 above.

98. The Respondent admits paragraph 98 of the Claim save that it denies the deductions were made for the costs of the uniforms and repeats subparagraphs 96.2(a), 96.3(a), 96.4(a) and 96.5(a) above.

99. As to paragraph 99 of the Claim, the Respondent:

99.1 denies that Mr Young returned his uniform upon termination of his employment;

99.2 admits that Mr Young’s security deposit of \$150 was not refunded upon termination of his employment and says that he was not entitled to a refund of the security deposit because he did not return his uniform;

99.3 admits that Mr Young was not refunded the sum of \$55 in respect of the jacket he purchased and says that he was not entitled to be refunded that amount as the jacket was purchased at his discretion and was not part of the standard uniform kit.

Particulars

(a) Peregrine Corporation Uniform Policy.

100. As to paragraph 100 of the Claim, the Respondent refers to and repeats paragraph 96 above and says further:

100.1 as to Mr Young:

(a) in respect of the uniform deductions referred to at subparagraph 96.1(a) above, the Respondent does not know and cannot admit that Mr Young did not authorise in writing the purchase of his jacket to be deducted from his pay and otherwise denies the paragraph;

(b) in respect of Mr Young's police check deduction referred to at subparagraph 96.1(b), the Respondent denies the paragraph;

100.2 as to Mr Furnell, denies the paragraph;

~~100.3 as to Ms Mahoney, denies the paragraph;~~

~~100.4 as to Mr Palmer, denies the paragraph;~~

100.5 as to Mr Williamson:

(a) in respect of the uniform deduction referred to at subparagraph 96.5(a) above, denies the paragraph;

(b) in respect of the police check deduction referred to at subparagraph 96.5(b) above, admits that he did not authorise the amount of the deduction in writing but otherwise denies the paragraph;

100.6 insofar as paragraph 100 makes allegations in respect of the alleged Group 5 Members, refers to and repeats subparagraph 95.2 above and otherwise denies the matters alleged therein.

101. As to paragraph 101 of the Claim, the Respondent:

101.1 denies the paragraph in respect of the Applicants' uniform security deposits, and says that the deductions were principally for the Applicants' benefit by reason that the Applicants benefited from paying the deposits by way of staggered deductions rather than up-front payments from their own funds which the Respondent could otherwise have required;

101.2 denies the paragraph in respect of Mr Young's additional jacket purchase and refers to and repeats paragraph 99.3 above;

101.3 denies the paragraph in respect of the Applicants' police checks and says that the deductions were principally for the Applicants' benefit by reason that:

- (a) Mr Furnell, Ms Mahoney and Mr Williamson benefited from paying the deposits by way of staggered deductions rather than up-front payments from their own funds which the Respondent could otherwise have required; and
- (b) the cost of obtaining the police check through the Respondent was approximately \$5 lower for each Applicant than it would have been if the Applicants had obtained their own police checks, the cost of which would have been \$45;
- (c) the Respondent did not recover from the Applicants the full amount of the cost to the Respondent of obtaining the police checks, which it obtained at a cost of approximately \$55 each;
- (d) the Applicants benefited from obtaining a police check at a discounted cost to them that they could use for other purposes, for example seeking alternative employment or volunteer roles or roles with community organisations;
- (e) the Applicants benefited from the convenience of having police checks obtained by the Respondent rather than sourcing them individually at greater cost and which required greater time and effort including attendance and production of identification at a police station, which the Respondent could otherwise have required;

101.4 insofar as paragraph 101 makes allegations in respect of the alleged Group 5 Members, refers to and repeats paragraph 95.2 above; and

101.5 otherwise denies the matters alleged therein.

102. As to paragraph 102 of the Claim, the Respondent:

102.1 denies the paragraph in respect of:

- (a) Mr Young's uniform deduction referred to at subparagraph 96.1(a)(i) above and his police check;

- (b) Mr Furnell;
- (c) Ms Mahoney;
- (d) Mr Palmer; and
- (e) Mr Williamson's uniform deduction referred to at subparagraph 96.5(a) above;

102.2 does not know and cannot admit the paragraph in respect of Mr Young's jacket deduction referred to at subparagraph 96.1(a)(ii) above;

102.3 admits the paragraph in respect of Mr Williamson's police check deduction referred to at subparagraph 96.4(b) above; and

102.4 insofar as paragraph 102 makes allegations in respect of alleged Group 5 Members, refers to and repeats paragraph 95.2 above and otherwise denies the matters alleged therein.

103. As to paragraph 103 of the Claim, the Respondent:

103.1 denies the paragraph in respect of:

- (a) Mr Young's uniform deduction referred to at subparagraph 96.1(a)(i) above and his police check;
- (b) Mr Furnell;
- (c) Ms Mahoney;
- (d) Mr Palmer; and
- (e) Mr Williamson's uniform deduction referred to at subparagraph 96.5(a) above;

103.2 does not know and cannot admit the paragraph in respect of Mr Young's jacket deduction referred to at subparagraph 96.1(a)(ii) above;

103.3 admits the paragraph in respect of Mr Williamson's police check deduction referred to at subparagraph 96.4(b) above; and

103.4 insofar as paragraph 103 makes allegations in respect of the alleged Group 5 Members, refers to and repeats paragraph 95.2 above and otherwise denies the matters alleged therein.

F-3 Group 5 alleged contraventions and loss

104. As to paragraph 104 of the Claim, the Respondent:

104.1 denies the paragraph in respect of:

- (a) Mr Young's uniform deduction referred to at subparagraph 96.1(a)(i) above and his police check;
- (b) Mr Furnell;
- (c) Ms Mahoney;
- (d) Mr Palmer; and
- (e) Mr Williamson's uniform deduction referred to at subparagraph 96.5(a) above;

104.2 does not know and cannot admit the paragraph in respect of Mr Young's jacket deduction referred to at subparagraph 96.1(a)(ii) above;

104.3 admits the paragraph in respect of Mr Williamson's police check deduction referred to at subparagraph 96.4(b) above; and

104.4 insofar as paragraph 104 makes allegations in respect of the alleged Group 5 Members, refers to and repeats paragraph 95.2 above and otherwise denies the allegations made therein.

105. As to paragraph 105 of the Claim, the Respondent:

105.1 denies the paragraph in respect of:

- (a) Mr Young's uniform deduction referred to at subparagraph 96.1(a)(i) above and his police check;
- (b) Mr Furnell;
- (c) Ms Mahoney;
- (d) Mr Palmer; and

- (e) Mr Williamson's uniform deduction referred to at subparagraph 96.5(a) above;
- 105.2 does not know and cannot admit the paragraph in respect of Mr Young's jacket deduction referred to at subparagraph 96.1(a)(ii) above;
- 105.3 admits the paragraph in respect of Mr Williamson's police check deduction referred to at subparagraph 96.4(b) above; and
- 105.4 insofar as paragraph 105 makes allegations in respect of the alleged Group 5 Members, refers to and repeats paragraph 95.2 above; and
- 105.5 otherwise denies the matters alleged therein.
- 106. As to paragraph 106 of the Claim, the Respondent:
 - 106.1 denies paragraph 106 in respect of each Applicant;
 - 106.2 says further:
 - (a) Mr Young can have no claim in respect of his uniform deposit and police check referred to at subparagraphs 96.1(a)(i) and 96.1(b) above by reason that these proceedings were commenced more than 6 years after the deductions were made, contrary to section 544 of the Fair Work Act;
 - (b) by reason of having repaid the uniform deposits for the employees who returned their uniforms, denies that the Applicants' have been underpaid their entitlements in respect of any deductions made in respect of their uniform deposits; and
 - (c) in respect of each Applicant, if and to the extent the Respondent was not entitled to deduct the amounts referred to in paragraph 96 from each Applicant, it was nevertheless entitled to be paid those amounts by each Applicant at the time those deductions were made by reason of the matters set out at paragraph 96 and each Applicant has thereby suffered no loss as a consequence of the deductions; and

106.3 insofar as paragraph 106 makes allegations in respect of the alleged Group 5 Members, refers to and repeats paragraph 95.2 above and otherwise denies the matters alleged therein.

G. COMMON ISSUES

107. The Respondent denies paragraph 107 of the Claim.

105A. The Respondent denies the common or general practice in paragraph 105A of the Claim, says that the common question does not arise and refers to and repeats Section B above.

105B. The Respondent denies the common or general practice in paragraph 105B of the Claim, says that the common question does not arise and refers to and repeats Section B above.

105C. The Respondent denies the common or general practice in paragraph 105C of the Claim, says that the common question does not arise and refers to and repeats Section B above.

108. The Respondent denies that Pre-Shift, ~~Post-Shift and Meal Break~~ work was undertaken as alleged, says that the common question in paragraph 108 of the Claim does not arise and refers to and repeats Section B above.

108A The Respondent denies that Post-Shift Work was undertaken as alleged in paragraph 108A of the Claim, says that the common question does not arise and repeats Section B above.

108B The Respondent denies that Meal Break Work was undertaken as alleged in paragraph 108B of the Claim, says that the common question does not arise and repeats Section B above.

108C The Respondent denies the common practice as alleged in paragraph 108C of the Claim, says that the common question does not arise and repeats Section B above.

180D The Respondent denies the common practice as alleged in paragraph 108D of the Claim, says that the common question does not arise and repeats Section B above.

108E The Respondent denies the common practice as alleged in paragraph 108E of the Claim, says that the common question does not arise and repeats Section B above.

108F The Respondent denies the common practice as alleged in paragraph 108F of the Claim, says that the common question does not arise and repeats Section B above.

108G The Respondent denies the common practice as alleged in paragraph 108G of the Claim, says that the common question does not arise and repeats Section B above.

108H The Respondent denies the common practice as alleged in paragraph 108H of the Claim, says that the common question does not arise and repeats Section B above.

108I The Respondent denies the common practice as alleged in paragraph 108I of the Claim, says that the common question does not arise and repeats Section B above.

108J The Respondent denies the common practice as alleged in paragraph 108J of the Claim, says that the common question does not arise and repeats Section B above.

108K The Respondent denies the common practice as alleged in paragraph 108K of the Claim, says that the common question does not arise and repeats Section B above.

108L The Respondent denies the directions were given as alleged in paragraph 108L of the Claim, says that the common question does not arise and repeats Section B above.

108M As to paragraph 108M of the Claim, the Respondent:

108M.1 says that the asserted requirement that managers ensure that records kept by the Respondent about the working hours of alleged Group 1 Members is vague and embarrassing;

108M.2 otherwise denies the matters alleged therein;

108M.3 says that the common question does not arise; and

108M.4 refers to and repeats Section B above.

106A. The Respondent denies the common or general practice in paragraph 106A of the Claim, says the common question does not arise and refers to and repeats Section C above.

106B The Respondent denies the common or general practice in paragraph 106B of the Claim, says the common question does not arise and refers to and repeats Section C above.

109. The Respondent denies that the common question alleged in paragraph 109 of the Claim arises and refers to and repeats Section C above.

109A The Respondent denies the common or general practice alleged in paragraph 109A of the Claim, says that the common question does not arise and refers to and repeats Section C above.

109B The Respondent denies the common question alleged in paragraph 109B of the Claim arises and refers to and repeats Section C above.

107A. The Respondent denies the common or general practice alleged in paragraph 107A of the Claim, says that the common question does not arise and refers to and repeats Section D above.

110. The Respondent denies that overtime was worked as alleged, says that the common question alleged in paragraph 110 of the Claim does not arise and refers to and repeats Section D above.

110A The Respondent denies the common or general practice alleged in paragraph 110A of the Claim, says that the common question does not arise and refers to and repeats Section D above.

110B The Respondent denies that it was required to record the Overtime Hours as alleged on the payslips of Group 3 Members, says that the common question does not arise and refers to and repeats Section D above.

110C The Respondent denies the common or general practice alleged in paragraph 110C of the Claim, says that the common question does not arise and refers to and repeats Section D above.

110D The Respondent denies the directions were given as alleged in paragraph 110D of the Claim, says that the common question does not arise and refers to and repeats Section D above.

110E As to paragraph 110E of the Claim, the Respondent:

110E.1 says that the asserted requirement that managers ensure that records kept by the Respondent about the working hours of Group 3 Members were accurate is vague and embarrassing;

110E.2 otherwise denies the matters alleged therein;

110E.3 says that the common question does not arise; and

110E.4 refers to and repeats Section D above.

111. The Respondent denies that the Award determined the terms of trainees' employment, says that the common question alleged in paragraph 111 of the Claim does not arise and refers to and repeats Section E above.

111A The Respondent denies that it was required to calculate trainees' wages as alleged in paragraph 111A of the Claim, says that the common question does not arise and refers to and repeats Section E above.

111B The Respondent denies that the Award determined the terms of trainees' employment, says that the common question alleged in paragraph 111B of the Claim does not arise and refers to and repeats Section E above.

112A The Respondent denies that the common question alleged in paragraph 112A of the Claim arises and refers to and repeats Section F above.

112B The Respondent denies that the common question alleged in paragraph 112A of the Claim arises and refers to and repeats Section F above.

112. The Respondent denies that deductions for uniform deposits and police checks were in contravention of the Fair Work Act, says the common question alleged in paragraph 112 of the Claim does not arise and refers to and repeats Section F above.

H. REMEDIES


113. The Respondent denies paragraph 113 of the Claim.

114. The Respondent denies paragraph 114 of the Claim.

115. The Respondent denies paragraph 115 of the Claim.

116. The Respondent denies paragraph 116 of the Claim.

Date: ~~30 September 2020~~ 7 April 2022


Signed by Thomas Alexander Griffith
Piper Alderman
Lawyer for the Respondent

This pleading was prepared by Lloyd Wicks of counsel and settled by Mark Hoffmann QC.

Certificate of lawyer

I, Thomas Alexander Griffith, certify to the Court that, in relation to the defence filed on behalf of the Respondent, 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 September 2020~~ 7 April 2022



Signed by Thomas Alexander Griffith
Piper Alderman
Lawyer for the Respondent

Schedule

Applicants

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