

NOTICE OF FILING

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Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: VID1661/2018
File Title: LAWRENCE RIDGE v HAYS SPECIALIST RECRUITMENT
(AUSTRALIA) PTY LIMITED
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 5/08/2022 4:00:03 PM AEST

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

Registrar

Important Information

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

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Amended Statement of Claim

VID 1661 of 2018

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

Lawrence Ridge
Applicant

Hays Specialist Recruitment (Australia) Pty Limited (ACN 001 407 281)
Respondent

A. PARTIES AND BACKGROUND

1. The Applicant:

a. is a natural person;

b. was, at all material times;

(i) employed by the Respondent (**Hays**) as described in paragraph 7(a) below;

and

(ii) a national system employee within the meaning of s 12 and s 13 of the *Fair Work Act 2009* (Cth) (**FWA**);

~~a.~~ was, from about 17 March 2014 to about 29 October 2017 (**Applicant's Employment Period**), a coal mining employee within the meaning of cl 4.1(b)(ii) of the *Black Coal Mining Industry Award 2010* (**Award**) and, as a result, covered by the Award;

~~b-c.~~ commences this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) on his own behalf and on behalf of all persons who:

(i) ~~who~~ were employed on one or more occasions by Hays **Specialist Recruitment (Australia) Pty Limited (Hays)** to work at a black coal mine in the State of Queensland ~~in Australia~~ and/or in the State of Western Australia ~~in Australia~~ (the **Mines**);

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- ~~(i)(ii) ended any period of employment referred to in (i) (**Employment**) at any time between 21 December 2012 and [insert date on which amendment takes effect] 21 December 2018 (**Relevant Period**); and~~
- ~~(ii)(iii) who were at any time during the Relevant Period a coal mining employee within the meaning of cl 4.1(b)(ii) of the Award and, as a result, covered by the Award during any such period of Employment performed the work of Production and Engineering employees (**Production Employees**) within the meaning of Schedule A to the *Black Coal Mining Industry Award 2020* (**Award**) (which award was entitled, prior to 28 January 2022, as the *Black Coal Mining Industry Award 2010*); and~~
- ~~(iii) who worked at one or more of the Mines in accordance with the roster system alleged in paragraph 11 below; and~~
- (iv) who were treated as “casual” employees by Hays, (**Group Members**).

2. Hays is and was at all times during the Relevant Period:
- a. a corporation incorporated under the *Corporations Act 2001* (Cth) and liable to be sued in its own name;
 - b. a national system employer within the meaning of s 12 and s 14 of the FWA; and
 - c. an employer of coal mining employees within the meaning of cl 4.1(a) of the Award and, as a result, covered by the Award; and
 - d. a person to whom the Award applied, within the meaning of the FWA.
3. Immediately prior to the commencement of this proceeding seven or more persons have claims against Hays within the meaning of section 33C of the FCA Act.

B. THE AWARD

[4 to 5 not used]

6. At all material times, ~~cl 10.2 of the Award provided: “A full-time employee is an employee whose average ordinary hours of work will be 35 hours per week.”~~, there were terms of the Award that:

- a. an employer was prohibited from engaging a Production Employee as a casual employee (**No-casuals Clause**)

Particulars

Clause 10.1 of the Award (as numbered during the Relevant Period).

b. a Production Employee who, over the roster cycle, may be rostered to work shifts on any day of the week (a **Seven Day Roster Employee**), was entitled to accrue annual leave at the rate of 4.0385 hours for each completed week of employment;

Particulars

Award clauses 25.1 – 25.3 (as numbered during the Relevant Period), read with the definition of “seven day roster employee” in clause 2 of the Award.

c. as the **Termination Term** – that when the employment of a Seven Day Roster Employee ended with a period of accrued but untaken annual leave:

(i) the said Employee was entitled to be paid a sum in respect of the untaken annual leave (**Annual Leave Entitlement**); and

(ii) the Annual Leave Entitlement was to be calculated by multiplying the number of hours’ leave owing by the rate pate of pay (excluding loadings and other separately identifiable amounts) payable to the Employee for their ordinary hours of work pursuant to:

(a) their contracts of employment (**Contract Base Rate**);
alternatively

(b) the Award (**Award Base Rate**).

Particulars

Award clause 13.4(a) (as numbered during the Relevant Period), read with the definition of “base rate of pay” in clause 3.1 (as numbered during the Relevant Period).

C. ~~EMPLOYMENT OF APPLICANT AND GROUP MEMBERS BY HAYS~~

C.1 The Applicant’s employment

7. The Applicant:

a. was employed by Hays to work as a Control Room Operator at the Blackwater coal mine (**Blackwater**), a black coal mine in Queensland during the period (**Applicant’s Employment Period**) from 17 March 2014 to 29 October 2017 (**Applicant’s Termination Date**); and

b. in the premises in (a), was a Production Employee within the meaning of the Award;

c. worked on the B or C crew roster, which rosters had shifts on all seven days of the week;

- d. in the premises in (c), was a Seven Day Roster Employee; and
- e. was employed pursuant to a contract describing the Applicant's employment as "casual" employment. ~~was employed by Hays to work at the Blackwater coal mine (Blackwater) during the Applicant's Employment Period.~~

7A. At all material times during his employment, the Applicant was a person to whom the Award applied, within the meaning of the FWA.

7B. As at the Applicant's Termination Date:

- a. the Applicant's Contract Base Rate was \$52.00 per hour; and
- b. the Applicant's Award Base Rate was \$24.53 per hour.

Particulars

\$858.60 per week (Mineworker) ÷ 35 hours per week: Award clause A4.

[8 not used]

9. By reason of the matters alleged in paragraphs 7 and 7A and 8 above, during the Applicant's Employment Period, the Applicant accrued annual leave pursuant to the Accrual Term of the Award~~was employed by Hays to work at Blackwater as a full-time employee within the meaning of cl 10.2 of the Award.~~

9A. During his employment, the Applicant did not take any paid annual leave.

C.2 Group Members' employmentAward Period

10. Each Group Member was:

- a. ~~were~~ employed by Hays to work at one or more of the Mines on one or more occasions (GM Employments), with at least one such period employment ending on a date (GM Termination Date) within during the Relevant Period;
- b. in the premises in (a): a Production Employee within the meaning of schedule A of the Award;
- c. required to work on a roster which had shifts on all seven (7) days of the week;
- d. in the premises in (c): a Seven Day Roster Employee;
- e. employed pursuant to a contract describing the Group Member's employment as "casual" employment.

10A. During each GM Employment, the Group Member was a person to whom the Award applied, within the meaning of the FWA.

[11 not used]

12. By reason of the matters alleged in paragraphs 10 and 10A and 11 above, during the Relevant Period GM Employments, each Group Members accrued annual leave pursuant to the Accrual Term ~~were employed by Hays to work at one or more of the Mines as full-time employees within the meaning of cl 10.2 of the Award.~~

12A. During their employments, no Group Member took any paid annual leave.

D. CONTRAVENING CONDUCT ~~UNDER THE AWARD~~ IN RELATION TO APPLICANT

[13 to 34 not used]

D.17 Accrued Annual Leave

[35 not used]

36. At the ~~end of the Applicant's Employment Period,~~ Termination Date, the Applicant had accrued but untaken annual leave pursuant to the Award (~~Award Accrued Annual Leave~~).

Particulars

~~The Applicant accrued annual leave pursuant to the Award during the Applicant's Employment Period.~~

~~The Applicant refers to and relies on cl 25.2 and 25.3 of the Award for the method of annual leave accrual.~~

~~Particulars of the Award Accrued Annual Leave will be provided upon the completion of discovery.~~

So far as the Applicant is able to say prior to discovery, his accrued untaken leave is to be calculated as 4.0385 hours per completed week x 189 completed weeks = 763.2765 hours' accrued leave.

37. By reason of the matters alleged in paragraphs 9, ~~9A, 35~~ and 36 above, at the end of the Applicant's Employment Period, Hays was required to pay the Applicant his the Accrued Annual Leave (Award Annual Leave Entitlement).

38. ~~In contravention of the Termination Term, cl 25.2(a) of the Award,~~ Hays did not, at the end of the Applicant's Employment Period or at any time thereafter, pay the Applicant his the Award Annual Leave Entitlement.

Particulars

~~Particulars of the calculation of the Award Annual Leave Entitlement not paid will be provided upon completion of discovery.~~

38A. In the premises set out in the preceding paragraph, Hays contravened the Termination Term.

D.2 Mode of engagement

38B. By reason of the matter pleaded at paragraph 7(e), Hays contravened the No-casuals Term.

[39 to 41 not used]

F. CONTRAVENING CONDUCT IN RELATION TO GROUP MEMBERS

F.1 Group Members' Award Annual Leave Entitlements

42. Each Group Member as at their GM Termination Date was, by reason of the matters alleged in paragraph 12 above, entitled to be provided one or more of the entitlements specified in the Award (Group Members' Award Entitlements). Each Group Member:
a. had accrued but untaken annual leave as at the GM's Termination Date; and
b. in the premises in (a) – was required to be paid their Annual Leave Entitlement upon the termination of their employment by Hays.

43. In contravention of the Award Termination Term, Hays did not provide pay the Group Members' Award Annual Leave Entitlements, or any moneys on account of that entitlement, on each Group Member's Termination Date or at any time thereafter.

Particulars

~~The Group Members' Award Entitlements included one or more of the entitlements alleged in Part D above in relation to the Applicant.~~

Further particulars of ~~any~~ Group Members' Annual Leave Entitlements Award Entitlements other than the entitlements alleged in Part D above may be provided upon the completion of discovery following discovery and the trial of common questions, or otherwise as the Court may direct.

F.2 Mode of engagement

43A. By reason of the matter pleaded at paragraph 10(e), the Respondent contravened the No-casuals Term in respect of each Group Member.

[44 to 46 not used]

G. CONTRAVENTIONS OF THE FWA

G.1 Applicant

47. By reason of the matters alleged in:

- ~~(a) paragraph 18 above;~~
- ~~(b) paragraph 22 above;~~
- ~~(c) paragraph 26 above;~~
- ~~(d) paragraph 30 above;~~
- ~~(e) paragraph 34 above, and/or~~
- (f) paragraph 38 above; and
- (g) paragraph 38A above.

Hays contravened s 45 of the FWA with respect to the Applicant.

[48 not used]

48A. The Contraventions of s 45 of the FWA by Hays with respect to the Applicant referred to in this Amended Statement of Claim caused the Applicant loss or damage.

Particulars

Loss of the Annual Leave Entitlements, worth \$39,690.37 (\$52.00 x 763.2765) if payable at the Contract Base Rate, alternatively worth \$18,723.17 (\$24.53 x 763.2765) if payable at the Award Base Rate. Further particulars may be provided after discovery.

G.2 Group Members

49. By reason of the matters alleged in paragraph 43 and 43A above, Hays contravened s 45 of the FWA ~~with in~~ respect ~~to of each of~~ the Group Members.

[50 not used]

H. LOSS OR DAMAGE

50. The contraventions of s 45, ~~alternatively s 44~~, of the FWA by Hays with respect to the Applicant referred to in this Amended Statement of Claim caused the Applicant loss or damage.

Particulars

The Applicant will provide particulars upon the completion of discovery.

51. The contraventions of s 45, ~~alternatively s 44~~, of the FWA by Hays with respect to the Group Members ~~referred to in this Statement of Claim~~ caused ~~the each~~ Group Members loss or damage.

Particulars

Particulars in relation to Group Members' loss or damage will be provided ~~if and when it is necessary for a determination to be made of the individual claims of those Group Members following the trial of common questions or otherwise as the Court may direct.~~

I. REMEDIES

52. The Applicant claims on his own behalf and on behalf of Group Members the relief set out in the Amended Originating Application.

~~This pleading was prepared by Richard Attiwill QC and Eugenia Levine of Counsel.~~

This pleading was prepared by LWL Armstrong QC and Joel Fetter of counsel.

Date: 21 December 2018

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Signed by Rory Markham

Lawyer for the Applicant

Certificate of lawyer

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

Date:

.....
Signed by Rory Markham

Lawyer for the Applicant