

NOTICE OF FILING

Details of Filing

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File Number: WAD229/2022
File Title: PITA AWATERE TE TAU O TE RANGI v WILSON SECURITY PTY LTD
(ABN 90 127 406 295)
Registry: WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



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Registrar

Important Information

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

The date of the filing of the document is determined pursuant to the Court's Rules.



Second Further Amended Statement of claim

No. WAD 229 of 2022

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

Paul Nathan Hamilton

Pita Awatere Te Tau O Te Rangī

Applicant

Wilson Security Pty Ltd

(ABN 90 127 406 295)

Respondent

1. The Applicant (“**Mr Hamilton Te Rangī**”) brings this proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth):
 - a. for himself, and
 - b. as the representative of a group constituted by all persons:
 - i. employed by the Respondent (“**Wilson**”) at any time within the period of 31 March 2015, being a date six years from the date of the proceedings numbered WAD138/2021 (Wilkinson & Ors v Wilson Security & Anor) were commenced, ending on the date of the filing of the Originating Application herein (the “**Relevant Period**”),
 - ii. who in the Relevant Period worked in a position:
 - 1) that was covered by the *Security Services Industry Award 2020* (the “**Award**”) (which was award entitled, prior to 18 June 2020 as the *Security Services Industry Award 2010*);
 - ~~2) was required to work on a Fly in and Fly out (FIFO) basis;~~

Filed on behalf of (name & role of party)	Pita Awatere Te Tau O Te Rangī (Applicant)		
Prepared by (name of person/lawyer)	Rory Markham		
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~~3)2) worked~~ at sites operated by Woodside Petroleum, namely the Karratha Gas Plant, Pluto LNG Park, King Bay Supply Base and Burrup Material Facility (collectively, **Sites**); and

~~4) — was required to reside at one or more camps located in or near Karratha, Western Australia (**Residential Camps**); and~~

~~5)3) which~~ was undertaken as a “full time employee” or “part time employee” as those terms are defined in the Award,

- iii. who in the Relevant Period worked on a rostered cycle; and
- iv. to whom the Award applied in relation to their employment with the Respondent during the Relevant Period,

(the “**Group**” and a/the “**Group Member/s**”).

2. Wilson was at every time material to any claim herein:
 - a. a corporation under the *Corporations Act 2001* (Cth), able to sue, and liable to be sued in its corporate name and style;
 - b. a constitutional corporation within the meaning of s 12 and s 14 of the *Fair Work Act 2009* (Cth) (the “**FWA**”);; and
 - c. a national system employer within the meaning of s 12 and s 14 of the FWA.
3. The Applicant has first instructed Adero Law to prepare these proceedings on 20 October 2022. Pursuant to those instructions, Adero has caused a letter to be sent requesting employment records including rosters, payslips and other documents within the meaning of Regulation 3.42(1) of the *Fair Work Regulation 2009* (**FWR**).
4. The Applicant relies upon the contraventions particularized in Schedule A, the Method of Calculation at Schedule B and each of the particulars provided therein.

THE AWARD

5. At all material times, there were terms of the Award that covered throughout Australia any employer engaged in the security services industry and employees of any such employer.
6. The Award as amended from time to time applied to, among others, Mr Hamilton Te Rangi in respect of his employment with Wilson.

THE APPLICANT’S EMPLOYMENT

7. The Applicant:

- a. ~~Commenced his full-time signed a contract of employment for the part-time position of Relieving Officer with ISS Securitythe Respondent on 5or about 4 October 2009. In 2014, through a transfer of business, he 2017 (the "Contract");~~
- a.b. ~~commenced his fullpart-time employment with Wilsonthe Respondent on 31 March 20149 October 2017 at the Woodside Karratha in a position titled "Security First Aid Officer" (the "Contract"). site (the "Commencement Date); and~~
- b. ~~Thereafter, Mr Hamiltonon or about 12 February 2018, was employed under the ISS Security Pty Limited Western Australia Individual Transitional Employment Agreement Burrup Peninsula Karratha WA (ITEA) until 13 March 2015.~~
- c. ~~On 13 March 2015, Mr Hamilton was employed astransitioned onto a full-time employee atcontract with the Woodside Karratha facilityRespondent in athe position titled "Facilityof Facilities Protection Officer" pursuant to the Award or its predecessor award.~~

8. At all material times, from ~~31 March 2015, being a date six years from the date of the proceedings numbered WAD138/2021 (Wilkinson & Ors v Wilson Security & Anor) were commenced, Mr Hamilton9 October 2017 to 21 December 2021, Mr **Te Rangī** was employed under the classification of Security Officer Level 5 of the Award (**Level 5 Classification**). Mr ~~Hamilton~~**Te Rangī** was employed under the Classification on the basis that his duties included:~~

- a. ~~C~~oordinating the work of security officers working in a team environment;
- b. working under limited supervision;
- c. exercised discretion within the scope of the classification level; and
- d. exercised computer skills at a higher level than Level 4.

9. In the alternate, Mr ~~Hamilton~~**Te Rangī** was employed under the classification of Security Officer Level 4 (**Level 4 Classification**). Mr ~~Hamilton~~**Te Rangī** was employed under the Level 4 Classification on the basis that his duties included:

- a. ~~U~~tilising a system supplied by Honeywell International Inc (**Honeywell**) known as Enterprise Buildings Integrator (**System**). Honeywell maintained the System while employees of the Respondent, such as the Applicant operated the System. The System had the ability to:
 - i. ~~L~~ock and unlock access gates;

- ii. program personnel access cards;
 - iii. audit door access by individuals;
 - iv. record the date and time of personnel access;
 - v. monitor and record site surveillance;
 - vi. monitor intruder alarms;
 - vii. alarm whenever site access is denied;
 - viii. manage site musters; and
 - ix. produce reports in relation to site access
10. The Award permitted, and the Contract required that Mr Hamilton's Te Rangi's salary and any other monetary entitlements to which he became entitled to under either the Award or Contract be paid to him on a fortnightly basis (a/the "**Pay Period**").

Particulars

Section 16.1 of the Award

GROUP MEMBERS' EMPLOYMENT

11. Each Group Member was employed by Wilson to work at one or more of the Sites on one or more occasions (**GM Employments**) within the Relevant Period

CONTRAVENING CONDUCT IN RELATION TO THE APPLICANT UNDER THE AWARD

12. Between 31 March 2015 and 27 October 2022, it was a term of the applicable Award that provided for breaks to be scheduled for each rostered cycle being:
- a. For a roster cycle of 3 weeks – minimum 3 breaks of 2 days (48 continuous hours);
 - b. Roster cycle of 4 weeks – minimum of 3 breaks of 3 days (72 continuous hours) or 4 breaks of 2 days (48 continuous hours); and
 - c. For a roster cycle of 8 weeks – minimum 6 breaks of 3 days (72 continuous hours) or 9 breaks of 2 days (48 continuous hours),
- (Long Work Provision).**

13. In contravention of the Long Break Provision, the Applicant regularly worked rostered cycles without his minimum number of long breaks per roster cycle (**Long Break Contravention**).

Particulars

Section 14.5(a) of the Award

14. Between ~~31 March 2015 and 27~~ October ~~2022~~2017 and 21 December 2021, the Applicant worked rostered shifts of more than 48 hours without his long break of at least 48 hours (**Long Work Contravention**)

Particulars

Section 14.5(b) of the Award.

15. Between ~~31 March 2015 and 27~~ October ~~2022~~2017 and 21 December 2021, the Applicant was directed to begin work prior to his rostered start time (**Pre-shift Work**).

Particulars

The Applicant was directed by ~~Mr Chris Rentoule~~, Mr Edward Winter and Mr Jose Canadas, who were either a Security Manager or Facilities Protection Supervisor, being an employee or officer of the Respondent, acting within the authority of the Respondent within the meaning of section 793 of the FWA to complete a prestart checklist prior to departing from the Residential Camps to the Sites, on every rostered shift. The Applicant first recalls receiving this direction from Mr ~~Chris Rentoule~~Edward Winter.

In addition, the Applicant was required to drive from ~~the one or more camps located in or near Karratha, Western Australia~~ (**Residential Camps**) to the Sites prior to his rostered start time.

16. The Applicant was not paid by the Respondent for the Pre-Shift Work (**Pre-Shift Work Contravention**).

Particulars

The Applicant contends that a payments was required as a term of the Award and is by reference to overtime hours as provided in clause 19 of the Award.

The Applicant further contends that this conduct is a breach of section 45 of the FWA but no allegation is contended in respect to a serious contravention.

17. Between ~~31 March 2015 and 27~~ October ~~2022~~2017 and 21 December 2021, the Applicant was directed to finish work post his rostered end time (**Post-Shift Work**).

Particulars

When his rostered end time had lapsed and his shift ended, the Applicant was required to drive for approximately 30 minutes, back from the Site to his Residential Camp.

18. The Applicant was not paid by the Respondent for the Post-Shift Work (**Post-Shift Work Contravention**).

Particulars

The Applicant contends that a payment was required as a term of the Award and is by reference to overtime hours as provided in clause 19 of the Award.

The Applicant further contends that this conduct is a breach of section 45 of the FWA but no allegation is contended in respect to a serious contravention.

19. Between ~~31 March 2015 and 27~~ October ~~2022~~2017 and 21 December 2021, the Applicant was directed to continue working during periods of time that were otherwise, by the operation of clause 14.2 of the Award, deemed to be rest break periods. Accordingly, the Applicant unable to take a paid rest break during his shift (**Rest Break Contravention**).

Particulars

Clause 14.2 of the Award

During a night shift, the Applicant was routinely the only security staff member rostered to work and was unable to take his rest break.

During a day shift, the Applicant would routinely be directed to work by a Security Manager or Facilities Protection Supervisor, who was an employee or officer of the Respondent, acting within the authority of the Respondent within the meaning of section 793 of the FWA.

20. As a result of the Pre-Shift and Post-Shift Contraventions, the Applicant regularly worked in excess of 12 hours per shift (**Overtime Contravention**).

Particulars

Clause 13.3(b) of the Award

21. By virtue of the matter pleaded in paragraphs [8] and [9] above, between ~~27~~ October 2016~~7~~ and ~~27 October 2022~~21 December 2021, the Applicant undertook duties that were reflective of the Level 5 Classification (**Misclassification Contravention**).

Particulars

Schedule A of the Award

22. When commencing his employment with the Respondent, the Respondent did not inform the Applicant of the rostered times, being day and night shift. Nonetheless, the Applicant worked his rostered times were either:
- a. 0500hrs to 1700hrs; or
 - b. 1700hrs to 0500hrs.
23. Between ~~27~~ October 2016~~7~~ and ~~27 October 2022~~21 December 2021, the Applicant received rosters with no start or end times.

Particulars

Clause 13.5(a) of the Award

24. Between ~~27~~ October 2016~~7~~ and ~~27 October 2022~~21 December 2021, for each Pay Period in which a roster operated, it was a term of the Award that applied to the Applicant that if he worked more than two-thirds of the rostered ordinary hours between midnight and 6:00am, the work would be classified as *permanent night work* (**Permanent Night Shift Loading**).

Particulars

Clause 20.2 of the Award

25. In contravention of the Permanent Night Shift Loading, Wilson paid the Applicant the regular night shift allowance (**Night Shift Loading Contravention**).
26. In respect of the Night Shift Loading Contravention, the Applicant suffered loss being the difference between:
- a. what he was paid for each Night Shift hours undertaken by him; and
 - b. the Permanent Night Shift Loading in addition to his base rate.

CONTRAVENTIONS OF THE FWA (APPLICANT)

27. The conduct constituting each of:
- a. Long Break Contravention;
 - b. Long Work Contravention;
 - c. Pre-Shift Work Contravention;

- d. Post-Shift Work Contravention;
- e. Overtime Contravention;
- f. Rest Break Contravention; and
- g. Night Shift Loading Contravention;

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

28. The Contraventions of s 45 of the FWA by Wilson with respect to the Applicant referred to in this Second Further Amended Statement of Claim caused the Applicant loss or damage.

Particulars

Particulars may be provided after a further request for documents or discovery.

The identification of each penalty and its associated course of conduct will be identified after the first hearing.

CONTRAVENTIONS OF THE FWA (GROUP MEMBERS)

29. During the Relevant Period, Group Members claim monies owing pursuant to paragraphs [27] to [28] above.

LOSS OR DAMAGE

30. The contraventions of s 45 of the FWA by Wilson with respect to the Applicant in this Second Further Amended Statement of Claim caused the Applicant loss or damage

Particulars

The Applicant will provide particulars upon the completion of discovery.

31. The contraventions of s 45 of the FWA by Wilson with respect to the Group Members caused each Group Member loss or damage.

Particulars

The Applicant will provide to the Respondent, within 42 days (or an alternate date as ordered by the Court) of the production of the time and attendance roster and employment records of the Applicant, a working quantification model of the hours worked and the calculations made with reference to the Award. The Applicant will file and serve a copy of the model output, in reliance on the Respondent's records.

32. The Applicant will identify, in each 28-day period, the contravention claimed pursuant to paragraphs [\[27\]](#) to [\[28\]](#) above.

REMEDIES

33. The Applicant claims on behalf and on behalf of Group Members the relief set out in the [Second Further Amended](#) Originating Application.

Date: [2 May 22 August](#) 2023

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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 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: ~~2 May~~ 22 August 2023

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

Signed by Rory Markham
Lawyer for the Applicant