

NOTICE OF FILING

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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



Sia Lagos

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.

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Form 34
Rule 16.33

Reply

No. WAD 229 of 2022

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

Pita Awatere Te Tau O Te Rangi

Applicant

Wilson Security Pty Ltd

(ABN 90 127 406 295)

Respondent

In this reply, the Applicant adopts the terms used in the Second Further Amended Originating Application dated 22 August 2023 (**2FAOA**), the Second Further Amended Statement of Claim dated 22 August 2023 (**2FASOC**) and the Defence dated 10 November 2023 to the 2FASOC (the **Defence**). Where there is a competing definition contained in the Defence, the Applicant is referring to the term as defined in either the 2FAOA and/or the 2FASOC.

To the Respondent's Defence, the Applicant says:

1. In relation to paragraph 1, the Applicant:
 - a. admits sub-paragraphs 1(b) and 1(c);
 - b. refers to paragraph 4 below; and
 - c. otherwise does not know and therefore cannot admit the allegations in paragraph 1.
2. In relation to paragraph 3, the Applicant:
 - a. admits sub-paragraph 3(a);
 - b. admits sub-paragraph 3(b), but says that the employment records requested in sub-paragraph 2.2(a), (b) and (e) of the 27 October letter include information required to be kept per the FWR;

Filed on behalf of (name & role of party)	Pita Awatere Te Tau O Te Rangi (Applicant)	
Prepared by (name of person/lawyer)	Rory Markham	
Law firm (if applicable)	Adero Law	
Tel	(02) 6189 1022	Fax
Email	Rory.Markham@aderolaw.com.au	
Address for service (include state and postcode)	3 Hobart Place, Canberra, ACT 2601	

- c. admits sub-paragraph 3(c); and
 - d. otherwise does not know and therefore cannot admit the allegations in paragraph 3.
- 3. In relation to paragraph 5, the Applicant:
 - a. admits sub-paragraph 5(a); and
 - b. otherwise denies the paragraph.
- 4. In relation to paragraph 7, the Applicant:
 - a. admits sub-paragraph 7(a);
 - b. admits sub-paragraph 7(b) insofar as he admits those are terms contained in the Part-Time Contract and otherwise says the Respondent is not entitled to use the Part-Time Set-Off Clause to set-off the remuneration and other monetary benefits paid to the Applicant under the Part-Time Contract which is in excess of any entitlements that the Applicant may have under the Award, where the Respondent did not designate any alleged over-award payment to a particular obligation prior to or at the time of payment;
 - c. says in relation to sub-paragraph 7(c) that:
 - i. on or around 2 October 2017, the Applicant commenced his employment with the Respondent;

Particulars

Between 2 to 6 October 2017, the Applicant completed an unpaid Certificate II EMS course which was paid for by the Respondent.

The Applicant was notified by Marjory Mayfield, the Contracts Manager, that the Respondent would pay for him to complete a Certificate II EMS course.

- ii. sub-paragraph (i) is denied and says the Applicant commenced paid employment on 9 October 2017; and
- iii. denies sub-paragraph (ii) and says that he was directed to by the Respondent and worked at various sites in Perth, including schools, bottle stores, Fremantle Passenger Terminal, NewGen Shutdown, BHP Onslow Shutdown and DP World Fremantle Port prior to 1 December 2017; and
- iv. otherwise admits sub-paragraph (iii);

- d. admits sub-paragraphs 7(d) and (f);
 - e. admits sub-paragraph 7(e) insofar as he admits those are terms contained in the Full-Time Contract and otherwise says the Respondent is not entitled to use the Full-Time Set-Off Clause to set-off the remuneration and other monetary benefits paid to the Applicant under the Full-Time Contract which is in excess of any entitlements that the Applicant may have under the Award, where the Respondent did not designate any alleged over-award payment to a particular obligation prior to or at the time of payment; and
 - f. otherwise denies the paragraph.
5. In relation to paragraph 7A, the Applicant:
- a. admits sub-paragraphs 7A(a) and (b);
 - b. admits sub-paragraphs 7A(c) – (e) but says the sub-paragraphs do not reflect the totality of the Applicant's duties and responsibilities. The Applicant says there were a number of tasks required to be completed due to all Sites having wharves and thus being covered by the *Maritime Transport and Offshore Facilities Security Act 2003* (Cth) and being required to complete a significant portion of the job using the System. Additional tasks, included but was not limited to:
 - i. bag searches;
 - ii. investigating any incursions in the waterside area by unauthorised persons;
 - iii. crew and visitor escorts to and from ships moored at the wharf which included escorting a bus that arrived to pick up crew and/or visitors from a boat;
 - iv. working with border patrol who performed random checks;
 - v. programming Visitor Access Cards, Temporary Access Cards, SEL Yard Access Cards and New Starters Site Access Cards. This was a multi-step process which involved checking the System to see if the person had been to site before or an Offshore Facility, whether their site inductions were valid, ID verification, alteration of the parameters of the card which involved providing access to specific gates, recording a biometric finger scan and ensuring the card was operational. Some access cards required the person to be at the gate house with their supervisor or SEL Yard approved person prior to the parameters and propagating the specific type of access on their card;

- vi. New Starters were required to attend the security office to confirm ownership of a new access card, and to allow the FPOs to enter required data altering parameters of the card prior to final propagation and card distribution. A similar process was followed with return site personnel and card re-activation;
- c. denies sub-paragraph 7(f), refers to paragraphs 8 and 9 of the 2FASOC, and says that:
 - i. he was required to perform keyboard operation to alter the parameters within the System, an integrated intelligent building management and security system, including operating a computer program that has the ability to lock or unlock doors, program access cards, audit door access by individuals as well as recording the time and date of access. This is a task that an employee at level 4 or 5 may be required to perform (C.4.3(b) and C.5.3(a) of the *Security Services Industry Award 2010 (2010 Award)* and A.4.3(b) and A.5.3(a) of the *Security Services Industry Award 2020 (2020 Award)*); and

Particulars

Wilson Security On-The-Job-Training Competency Assessment for "Facility Protection Officer" Version 1.0 (08 May 2016) prepared by Jose Canadas, Burrup Security Manager, a copy of which is in the possession of the Applicant's solicitors and may be inspected upon request.

- ii. during the site musters or training muster exercises, he was required to co-ordinate, monitor or record the activities of personnel onsite utilising the System within the gatehouse, including logging all relevant incoming and outgoing handheld radio and phone communications. This is a task that an employee at level 4 or 5 may be required to perform (C.4.3(c) and C.5.3(b) of the 2010 Award and A.4.3(b) and A.5.3(b) of the 2020 Award).
- 6. In relation to paragraph 9, the Applicant refers to and repeats paragraphs 4 and 5 above.
- 7. The Applicant admits paragraph 10.
- 8. In relation to paragraph 12, the Applicant says:
 - a. the wording of the Long Break Provision ought to be constructed as to their ordinary meanings:

- i. a 'break' is a separately identifiable event in time. A break is properly identifiable in terms of its start and end times;
 - ii. the clause refers to 'breaks' in the plural; and
 - iii. the long breaks must therefore be separated by working days;
 - b. that the Respondent's interpretation defeats the purpose of clause 21.4(a) of the 2010 Award and cl 14.5(a) of the 2020 Award and is not an option provided for by the clauses, with none of the options contemplating a break in excess of the duration of 72 continuous hours. The purpose of the above clauses is to promote employee well-being, help maintain productivity and ensure compliance with the FWA; and
 - c. otherwise denies the paragraph.
- 9. The Applicant denies paragraphs 13 and 14 and says:
 - a. the 2010 Award and 2020 Award do not prescribe that any non-compliance with the Long Work Provision can be resolved by paying an employee at overtime rates; and
 - b. payment at overtime rates is required when employees work outside of ordinary hours and are not provided with an 8-hour break between shifts and is separate to the requirement for mandatory minimum hours of breaks to be provided.

Particulars

Clauses 21.1 to 21.4 of the 2010 Award.

Clauses 13 and 19 of the 2020 Award.

- 10. The Applicant denies paragraph 15.
- 11. In relation to paragraph 15A, the Applicant:
 - a. admits sub-paragraphs 15A(b) and 15A(c);
 - b. denies sub-paragraphs 15A(a) and (d)-(g), and says:
 - i. the Applicant was required to attend a Site and start his shift 15 minutes prior to his rostered start time at either 4:45am or 4:45pm to complete a Handover. After the Handover was completed, the Applicant was then required to commence site pre-starts which included the Site Vehicle pre-start, Site Ambulance pre-start and Site Medicine bag audit and start the Daily Operation Report (**DOR**);

Particulars

The email sent by Mr Jose Canadas on 19 May 2020 (2:11pm) contains a reminder that employees are to start their shift at 4:45am or 4:45pm.

- ii. the Applicant was required to complete the light vehicle pre-start at the Residential Camps and did so by about 4:15am or 4:15pm following which he drove from the Residential Camps to arrive at the Sites prior to his rostered start time and by 4:45am or 4:45pm; and

Particulars

Section 21.1(b)(ii) 2010 Award and section 13.2(b) 2020 Award.

The email sent by Security KMG on 14 June 2018 (7:46am). The email sent by Mr Jose Canadas on 25 June 2018 (11:10am). The email sent by Mr Ed Winter on 13 December 2017 (9:40pm).

- iii. he denies he was permitted to leave a Site prior to his rostered end time, and usually 10 to 15 minutes prior to the conclusion of the rostered shift and says that:
 - 1. permission to leave Site prior to his rostered shift end time was at the discretion of the individual supervisor on the day at KGP, not the Applicant;
 - 2. permission to leave Site prior to his rostered shift end time was self-managed at Pluto, KBSB and BMF;
 - 3. he was required to be available to perform work until the rostered end time; and
 - 4. it was a requirement to remain onsite after his rostered end time for any outstanding issue to be completed such as a Site Muster or as per client operational requirements;
- iv. in the premises, by reason of the matters referred to in sub-paragraph 11(b) above and paragraphs 17 and 19 of the 2FASOC, the Applicant worked shifts over 12 hours in duration; and
- v. otherwise denies the paragraph.

12. In relation to paragraph 15B, the Applicant:

- a. denies sub-paragraph 15B(a)(i) and says that:

- b. says he was not paid by the Respondent for Post-Shift Work;
- c. says the Set-off Defence is not available to the Respondent as it did not designate any alleged over-award payment to a particular obligation prior to or at the time of payment; and
- d. otherwise denies the paragraph.

16. In relation to paragraph 19, the Applicant:

- a. admits sub-paragraphs 19(c) and 19(d) to the extent that there were no fixed break times and that a break was discretionary;
- b. says he was unable to take a paid rest break during his shift;
- c. says the Set-off Defence is not available to the Respondent as it did not designate any alleged over-award payment to a particular obligation prior to or at the time of payment; and
- d. otherwise does not admit the paragraph.

Particulars

There was no recording mechanism of when or if rest breaks were taken, nor the commencement and finishing times of any such break.

There were no communications or instructions in respect of when rest breaks ought to be taken and under what circumstances the break could or could not be interrupted.

The Applicant was on duty for the entire duration of his rostered shift, was required to remain on site and was not allowed to go to Dampier for a meal.

The Applicant was expected to interrupt his rest break to answer phones and radios, immediately attend to musters and site emergencies, immediately investigate and report any fire alarms and promptly issue visitor passes etc.

17. In relation to paragraph 19A, the Applicant:

- a. admits sub-paragraphs 19A(a)-(e) inclusive and further says that additional staff would be contracted to fulfil other requirements such as Shutdowns, Site Expansion Contracts, night shift at BMF due to a ship mooring at BMF wharf or as required by the client;

- b. admits sub-paragraph 19A(f) and says that the Applicant was unable to take breaks and repeats the particulars in paragraph 16 above; and
 - c. otherwise denies the paragraph.
- 18. As to paragraph 20, the Applicant:
 - a. refers to and repeats paragraphs 4, 5, 10 to 17 above; and
 - b. otherwise denies the paragraph.
- 19. As to paragraph 21, the Applicant:
 - a. refers to and repeats paragraphs 4 to 6 above;
 - b. maintains that he was misclassified and was entitled to payment at a level 5 or in the alternative at a level 4;
 - c. says the Set-off Defence is not available to the Respondent as it did not designate any alleged over-award payment to a particular obligation prior to or at the time of payment; and
 - d. otherwise denies the paragraph.
- 20. As to paragraph 22, the Applicant;
 - a. admits sub-paragraph 22(a), however says he was required to be at the Sites and performing work prior to his rostered start time by either 4:45am or 4:45pm;
 - b. admits sub-paragraph 22(b)(i) and further says that the roster was often changed, sometimes 2 or 3 times a day by Mr Canadas who would email a copy of the amended roster directing staff to print and post the roster on the staff notice board;
 - c. denies sub-paragraph 22(b)(ii) and says that he only accessed WNet for payroll queries or payslips and does not know and therefore cannot admit the allegations on when rosters were available on WNet; and
 - d. denies the remainder of the paragraph.
- 21. The Applicant denies paragraph 23 and refers to and repeats paragraph 20 above.
- 22. The Applicant denies paragraph 24.
- 23. The Applicant denies paragraph 25 and further says the Set-off Defence is not available to the Respondent as it did not designate any alleged over-award payment to a particular obligation prior to or at the time of payment.

24. The Applicant denies paragraph 26 and refers to and repeats paragraphs 24 and 25 of the 2FASOC.
25. The Applicant denies paragraphs 27 to 33 of the Defence and refers to and repeats paragraphs 8 to 24 above.
26. As to paragraph 34, the Applicant admits the paragraph.
27. As to paragraph 35, the Applicant:
 - a. says the Set-off Defence is not available to the Respondent as it did not designate any alleged over-award payment to a particular obligation prior to or at the time of payment; and
 - b. denies the paragraph and says further that where the Applicant and the group members' fortnightly payment exceeded the minimum entitlements that otherwise arose under the 2010 Award and 2020 Award in the applicable fortnight, the group member is entitled to retain this surplus, without prejudice to their right to be awarded compensation for an underpayment that occurred in any other fortnight of the Relevant Period.
28. Save for the express admissions made and referred to above, he joins issue with the Respondent.

Date: 1 December 2023

DocuSigned by:
Claudia Brennan


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Signed by Claudia Brennan
Lawyer for the Applicant

Certificate of lawyer

I Claudia Brennan certify to the Court that, in relation to the reply filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 1 December 2023

DocuSigned by:

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Signed by Claudia Brennan
Lawyer for the Applicant