

NOTICE OF FILING

Details of Filing

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File Number: VID1662/2018
File Title: TANIA KELEHEAR v STELLAR PERSONNEL BRISBANE PTY LIMITED
& ORS
Registry: VICTORIA 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.

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



Amended statement of claim

No. VID1662 of 2018

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

Tania Kelehear

Applicant

Stellar Personnel Brisbane Pty Ltd and another

Respondents

A. PARTIES AND GROUP MEMBERS

1. The Applicant:
 - (a) is and was at all relevant times a national system employee within the meaning of the *Fair Work Act 2009* (Cth) (**FWA**); and
 - (b) brings this proceeding on her own behalf and on behalf of each of the persons defined as “Group Members” in the Amended Originating Application (**Group Members**).
2. The Second Respondent, Stellar Recruitment Pty Ltd (**Stellar Recruitment**) is and was at all material times:
 - (a) a body corporate capable of being sued; and
 - (b) a trading corporation formed within the limits of the Commonwealth.
3. The First Respondent, Stellar Personnel Pty Ltd (**Stellar Personnel**) is and was at all material times:
 - (a) a body corporate capable of being sued; and
 - (b) a trading corporation formed within the limits of the Commonwealth.

Filed on behalf of (name & role of party)Tania Kelehear.....
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4. The **Group Members** are those persons:
- (a) who were employed by Stellar Personnel (or alternatively Stellar Recruitment) to work at black coal mines in Australia at any time during the period 25 December 2012 to 24 December 2018 (inclusive) (**Relevant Period**);
 - (b) who were at any time during the Relevant Period, each a coal mining employee within the meaning of clause 4.1(b)(ii) of the *Black Coal Award 2010* (**Award**) and, as a result, covered by the Award, and who were not covered by an enterprise agreement;
 - (c) who were engaged in roles falling within the “Production and Engineering Employees” classifications of the Award and who worked generally in accordance with a full-time roster; and
 - (d) who were treated as casual employees by Stellar Personnel (or alternatively, Stellar Recruitment).
5. At the date of this pleading, there are at least seven Group Members.

B. AWARD OBLIGATIONS

Note: all references to Award clause numbers are to the numbering system applying at the end of the Relevant Period

Application of Award

6. When employing the Applicant and Group Members (as pleaded below), Stellar Recruitment was a “national system employer” within the meaning of the FWA.
7. During the Relevant Period, no enterprise agreement “applied” (within the meaning of FWA s.52) to the Applicant and Group Members in their employments with Stellar Recruitment.
8. During the Relevant Period, the Award “applied” (within the meaning of FWA s.47) to Stellar Recruitment, the Applicant and Group Members.

Particulars

The Award was in operation, “covered” Stellar Recruitment, the Applicant and Group Members, and no enterprise agreement applied.

Award terms

9. At all material times, there was a term of the Award (**No-casuals Clause**) prohibiting the employment of Production and Engineering Employees as casual employees.

Particulars

The proper construction of clause 10.1

10. At all material times, there was a term (**Accrual Term**) of the Award entitling all employees (other than casual "Staff" employees) to accrue paid annual leave at the rate of 3.3654 hours for each completed week of employment, or else at the rate of 4.0385 hours for each week (**Higher Rate**) if they were assigned to work on a roster having a pattern where, inter alia, shifts might be worked on any of the 7 days of the week.

Particulars

The proper construction of clauses 25.1 - 25.3.

11. At all material times, there was a term of the Award (**Termination Term**) requiring the employer, at the end of an employee's employment, to pay for all accrued annual leave entitlements at the employee's base rate of pay, with the payment to be made on the day of termination or forwarded by post within 72 hours to the employee's last notified address.

Particulars

Clauses 13.5(a) and 16.7 of the Award.

12. At all material times, the "base rate of pay" for the purposes of the Termination Term was the employee's agreed rate of pay for ordinary time work (**Contract Rate**), alternatively the applicable Award rate of pay for ordinary time work at the employee's classification (**Award Rate**).

C. FACTS

The employments

13. On various dates, Stellar Recruitment employed the Applicant and each Group Member:
- (a) as a casual employee;
 - (b) to work on assignments at a black coal mine in Australia;
 - (c) to work in production or engineering roles at the mine site; and

- (d) to remain employed until the assignment ended, unless the employment was terminated earlier by either party;
- (e) to perform such work as was reasonably necessary, with a mutual expectation (but not a guarantee) of working a full-time roster, which roster pattern permitted shifts to fall on any day of the week.

Particulars

The employments arose under template written contracts entitled "Contract Worker's Agreement For On-Hire Of Services". The Applicant's contract is dated 26 June 2014. Further particulars may be provided after discovery.

Performance of work

14. On various dates during the Relevant Period, the Applicant and Group Members performed work, in their employments with Stellar Recruitment:
- (a) at black coal mines in Australia; and
 - (b) in production or engineering roles at the mine site;
 - (c) generally according to a full-time roster, which roster pattern permitted shifts to fall on any day of the week; and
 - (d) as casual employees.

Particulars

Between 1 July 2014 and 28 September 2014, the Applicant worked at the Curragh North black coal mine, operating a rear dump truck to excavate coal, generally according to a 5/5 roster, and as a casual employee. Particulars of the Group Members' work may be given after discovery.

Accrual of annual leave entitlements

15. By reason of the matter pleaded at paragraph 13(b), in their employments during the Relevant Period, the Applicant and Group Members: were properly classified as "Production and Engineering Employees" within the meaning of the Award.

Particulars

The Applicant was properly classified as a "Mineworker" (one of the sub-classifications for Production and Engineering Employees) under the Award. Particulars of the Group Members' classifications may be given after discovery.

16. In the premises, in their employments during the Relevant Period, the Applicant and Group Members accrued paid annual leave entitlements under the Accrual Term.
17. By reason of the matter pleaded at paragraph 13(c), in their employments during the Relevant Period, the Applicant and Group Members accrued paid annual leave entitlements at the Higher Rate.

Ending of employments

18. During the Relevant Period, the Applicant and certain Group Members (**Departed GMs**) ended their employments with Stellar Recruitment.

Particulars

The Applicant's employment with Stellar Recruitment effective 28 September 2014. Particulars of the ending of the Departed GMs' employments may be given after discovery.

19. When the Applicant and the Departed GMs ended their employments, Stellar Recruitment did not pay or forward to them any moneys on account of their accrued annual leave entitlements, and has not done so at any time prior to the date of this pleading.

D. CLAIMS AGAINST STELLAR RECRUITMENT

Debt claim

20. By reason of the matters pleaded at paragraphs 9 to 19 above, Stellar Recruitment is indebted to the Applicant and to each Departed GM in respect of the sum owing to them under the Termination Term.

Particulars

The Applicant is owed \$2,660.80 (4.0835 hrs/wk accrual x 12 completed weeks' service x Contract Rate of \$54.30). Alternatively, she is owed \$1,021.15 (4.0835 hrs/wk accrual x 12 completed weeks' service x Award Rate for Mineworker of \$20.839/hr). Further particulars of the debts due to the Group Members may be given after discovery.

Contravention of Termination Term

21. By reason of the matters pleaded at paragraphs 13 to 19 above, Stellar Recruitment has contravened the Termination Term in respect of the Applicant and each Departed GM, and has thereby contravened s.45 of the FWA.
22. The contraventions caused the Applicant and Departed GMs loss and damage.

Particulars

The Applicant was underpaid by \$7,127.10, alternatively \$1,021.15. Further particulars of the losses suffered by Group Members may be given after discovery.

Contravention of Engagement Term

23. By reason of the matters pleaded at paragraphs 13(a), 14(d) and 15 above, Stellar Recruitment has contravened the Engagement Term, with respect to the Applicant and Group Members insofar as they were employed during the Relevant Period, and has thereby contravened s.45 of the FWA.
24. The contravention caused the Applicant and Departed GMs loss and damage.

Particulars

- A. Loss of the financial benefits under the Award which attach to being engaged as a permanent employee-: clauses 25.1-25.3, 13.5(a), 16.7 of the Award.
- B. Loss of the non-financial benefits which attach to permanent employment, including greater job security, less anxiety about stability of income and employment, and a greater ability to obtain finance from banks.

E. ALTERNATIVE CLAIMS AGAINST STELLAR PERSONNEL

25. In the alternative to paragraphs 13 to 19 above, Stellar Personnel was the employer of the Applicant and the Group Members, and the Applicant repeats paragraphs 13 to 19 above but replacing references to “Stellar Recruitment” with “Stellar Personnel”.

Particulars

The conclusion that Stellar Personnel was the legal employer is to be inferred from the fact that Stellar Personnel paid the employees’ wages. Further particulars may be given after discovery.

26. In the premises, the Applicant repeats paragraphs 20 to 24 above, but replacing references to “Stellar Recruitment” with “Stellar Personnel”.

Date: ~~15 May 2023~~ 10 October 2023

J FETTER
Castan Chambers

This Amended Statement of Claim was prepared by Rory Markham, Adero Law

A handwritten signature in black ink, appearing to be 'RM', with a long horizontal stroke extending to the right.

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: ~~15 May 2023~~ 10 October 2023

A handwritten signature in black ink, consisting of the letters 'RM' followed by a long horizontal stroke.

Signed by Rory Markham
Lawyer for the Applicant