

NOTICE OF FILING

Details of Filing

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File Number: NSD730/2023
File Title: RITCHIE WHITE v TRANSPORT FOR NSW T/A SYDNEY TRAINS
Registry: NEW SOUTH WALES 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.



Reply

No. NSD730 of 2023

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

Ritchie White

Applicant

Sydney Trains

ABN 38 284 779 682

Respondent

PRELIMINARY MATTERS

- A. The Applicant further adopts and relies upon the defined terms utilised in the Further Amended Statement of Claim filed on 22 March 2024 (**FASOC**).

In reply to the Defence filed 13 June 2024 by the Respondent (**Defence**), the Applicant says as follows:

1. In reply to paragraph 1:
 - a. The Applicant in reply to subparagraph 1(b)(ii), says that an 'Operations Position' within the meaning of the Agreement means any classification and/or position outlined under the sub-heading 'Operations' in Schedule 4A of the Agreement, being a schedule to Division 4 of the Agreement, titled 'Division 4 – Operations';
 - b. The Applicant in reply to subparagraph 1(b)(iii), says that "Area Controller" and "Signaller" position classifications are those positions as listed under the sub-heading of 'Operations' in Schedule 4A, of any relevant grade as particularised below:

Particulars

Schedule 4A of the 2018 Agreement and the 2022 Agreement:

Signaller Grade 1 1 st Year
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Signaller Grade 1 Thereafter
Signaller Grade 2 1 st Year
Signaller Grade 2 Thereafter
Signaller Grade 3 1 st Year
Signaller Grade 3 Thereafter
Signaller Grade 4
Area Controller Grade 1
Area Controller Grade 2
Area Controller Grade 3

c. otherwise joins issue with the Defendant regarding paragraph 1.

2. In reply to paragraph 2, the Applicant:

- a. repeats paragraphs 4(a)-(c) of the FASOC;
- b. says that the Applicant and the Group Members were during the Relevant Period, employed or usually employed by the Respondent;
- c. says that the Applicant and the Group Members, are 'national system employees' within the meaning of ss 12, 13 and 14 of the FWA, pursuant to subparagraph 2(b) above; and
- d. otherwise joins issue with the Defendant regarding paragraph 2.

3. In reply to paragraph 11, the Applicant says that:

- a. the Respondent's written offer of employment to the Applicant on 26 September 2016 for the Signaller Position, was an offer of permanent employment made on a provisional basis, insofar that the offer was in response to the Applicant's application for a promotion, and the Applicant's appointment to the role was subject to a promotional review;
- b. the Applicant's employment was otherwise on a permanent and full-time basis;
- c. the Applicant's appointment to the Signaller Position was processed internally on or about 29 September 2016; and

Particulars

Staff Transfer/Change Form (Form #SM47131) dated 29 September 2016

Email from Paul Newling to 'TSS Personnel' dated 29 September 2016

d. otherwise joins issue with the Defendant regarding paragraph 11.

4. In reply to subparagraph 12(c), the Applicant:
- repeats paragraphs 47 – 49 of the FASOC;
 - states that cl 108.1 of the 2018 Agreement provided that ordinary hours may be worked in shifts of up to 12 hours without attracting overtime penalties, subject to the employee agreeing to an alteration of the length of the shift and/or the removal of overtime penalties;
 - is subject to work health and safety concerns, suitable rostering arrangements, and the other criteria as outlined at cl. 108.1(a)-(e) of the 2018 Agreement; and
 - otherwise joins issue with the Defendant regarding paragraph 12 in its entirety.
5. In reply to subparagraph 14(a), the Applicant says that the Applicant's understanding of his duties as pleaded at subparagraphs 14(a)-(i) was informed by:
- the Signaller Contract and position description contained therein;
 - the Agreement; and
 - directions regarding his duties given by the Respondent from time to time.
6. In reply to paragraph 18, the Applicant says that the Applicant's understanding of his duties as pleaded at subparagraphs 18(a)-(j) was informed by:
- the Area Controller Contract and position description contained therein;
 - the Agreement; and
 - directions regarding his duties given by the Respondent from time to time.
7. In reply to subparagraph 22(c), the Applicant:
- repeats paragraphs 1(b)(i), 11, and 15 of the FASOC; and
 - says for the avoidance of doubt, that the Applicant was employed with Sydney Trains for the entirety of the Relevant Period.

Particulars

ROLE	DATES OF EMPLOYMENT (within the Relevant Period)
Signaller – Grade 2	1 May 2018 – 2 November 2019
Area Controller – Grade 2	3 November 2019 – Date of Filing

8. In reply to paragraph 25(e), the Applicant:
- repeats paragraphs 28 – 35 of the FASOC;

- b. says that the Applicant will rely on ss 557A, 557B and 557C of the FWA for their full force and effect; and
 - c. otherwise joins issue with the Defendant regarding subparagraph 25(e).
9. In reply to paragraph 29(c), the Applicant:
- a. repeats paragraph 29 and subparagraphs (a)-(e) of the Particulars to paragraph 29;
 - b. says that a further employee record request pursuant to s 535(3) of the FWA and regulation 2.42 of the FWR was made to the Respondent on 15 April 2024. No records were provided by the Respondents in response to this request; and

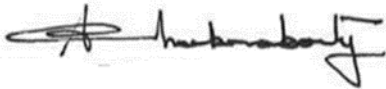
Particulars

Correspondence to Herbert Smith Freehills dated 15 April 2024

Correspondence from Herbert Smith Freehills dated 30 April 2024

- c. otherwise denies the allegations at subparagraph 29(c) of the Defence.
10. In reply to paragraph 34, the Applicant says that they will rely on ss 557A, 557B, 577C of the FWA for their full force and effect.
11. The Applicant otherwise joins issue with the Defendant regarding the remainder of the FASOC and Defence.

Date: 4 July 2024



Signed by Andrew Chakrabarty
Lawyer for the Applicant

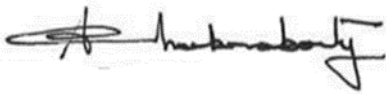
This pleading was prepared by Andrew Chakrabarty, Lawyer

Certificate of lawyer

I, Andrew Chakrabarty 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:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 4 July 2024

A handwritten signature in black ink, appearing to read 'Andrew Chakrabarty', written in a cursive style.

Signed by Andrew Chakrabarty
Lawyer for the Applicant