

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.



Further Amended Statement of claim

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

A. THE APPLICANT

1. The Applicant 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 (**'Sydney Trains'**) at any time within the period beginning 1 May 2018, and ending on the date of filing of the Originating Application (the **'Relevant Period'**);
 - ii. employed as an 'Employee' within the meaning of the *Sydney Trains Enterprise Agreement 2018* (the **'2018 Agreement'**) and the *Sydney Trains and NSW TrainLink Enterprise Agreement 2022* (the **'2022 Agreement'**) (collectively, the **'Agreement'**) and the definitions therein;
 - iii. employed in an 'Operations Position' within the meaning of the Agreement; and
 - iv. employed in a position of any relevant grade classified as an 'Area Controller' or 'Signaller' within the meaning of the Agreement.

Filed on behalf of	The Applicant, Ritchie White
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(the “**Group**” and a/the “**Group Member/s**”)

2. The Applicant and the Group Members were at all material times during the Relevant Period, national system employees with the meaning of s.12-13 and s.14 of the *Fair Work Act 2009* (Cth) (“**the FWA**”).
3. On the date of filing of the Originating Application, there were more than seven Group Members.

B. THE RESPONDENT

4. Sydney Trains was at all material times during the Relevant Period:
 - a. a national system employer within the meaning of s.12 and s.14 of the FWA;
 - b. an employer covered by the application of the Agreement as per s.52 and s.53 of the FWA; and
 - c. in the premises, liable to be sued as a national system employer under the FWA.

C. THE ENTERPRISE AGREEMENT

5. The 2018 Agreement:
 - a. came into effect on 1 May 2018 within the meaning of s. 54 of the FWA and remained in force from this date until 16 February 2023 (the ‘**2018 Agreement Period**’); and
 - b. covered any employee of Sydney Trains from 1 May 2018 until 16 February 2023, as per s.52 and s.53 of the FWA.
6. The 2018 Agreement applied to, among others, the Applicant and Group Members in respect of his or her employment with Sydney Trains.
7. In the premises, Sydney Trains was prohibited by s.50 of the FWA from contravening any term of the 2018 Agreement which applied to the Applicant and Group Members during the 2018 Agreement Period.
8. The 2022 Agreement:
 - a. came into effect on 17 February 2023 within the meaning of s. 54 of the FWA and remains in force on the date of filing of the Originating Application (the ‘**2022 Agreement Period**’); and
 - b. covers any employee of Sydney Trains from 17 February 2023 until the date of filing of the Originating Application

9. The 2022 Agreement applied to, among others, the Applicant and Group Members in respect of his or her employment with Sydney Trains.
10. In the premises, Sydney Trains was prohibited by s.50 of the FWA from contravening any term of the 2022 Agreement which applied to the Applicant and Group Members during the 2022 Agreement Period.

D. THE APPLICANT'S EMPLOYMENT

Employment as a 'Signaller'

11. Pursuant to an offer in writing:
 - a. from Sydney Trains dated 26 September 2016; and
 - b. accepted by the Applicant in writing on 26 September 2016,
(the '**Signaller Contract**'),the Applicant on 2 October 2016 commenced employment with Sydney Trains at the Parramatta Signal Box, in the Operations Position titled 'Signaller - Grade 2' (the '**Signaller Position**').
12. The Signaller Contract stipulated that the Applicant was contracted to work 76 hours per fortnight, divided into no more than 10 shifts (the '**Signaller Ordinary Hours**'), at a base salary of \$1,169.30 per week.
13. The Signaller Contract was subject to the Agreement during the Relevant Period as per s.52 and s.53 of the FWA.
14. Upon commencement of the Signaller Position, the Applicant understood his duties to include the following:
 - a. be responsible for the control and supervision of train, locomotive and rail traffic movements in accordance with safe working regulations;
 - b. initiate strategies to overcome late or out of course running of trains and implement emergency procedures and ensure that advice is disseminated of irregularities and alterations to train services, to appropriate officers;
 - c. liaise with Train Controllers and carry out any directions safely;
 - d. liaise with stakeholders to ensure all on track maintenance is carried out in a safe and timely manner, with personnel being protected in accordance with safe working procedures;
 - e. implement emergency and safe working procedures;

- f. provide timely advice regarding alterations, diversions, and cancellation of services;
- g. maintain appropriate records in line with safe working requirements;
- h. action STNs, circulars, telegrams, and any other relevant documentation; and
- i. maintain Train Describer and Passenger Information systems.

Employment as a 'Area Controller'

15. Pursuant to an offer in writing:

- a. from Sydney Trains dated 17 October 2019,
 - b. accepted by the Applicant in writing on 18 October 2019,
- (the '**Area Controller Contract**'),

the Applicant on 3 November 2019 commenced employment with Sydney Trains at the Granville Signal Box, in the Operations Position titled 'Area Controller – Grade 2' (the '**Area Controller Position**').

16. The Area Controller Contract stipulated that the Applicant was contracted to work 72 hours per fortnight, divided into no more than 9 shifts (the '**AC Ordinary Hours**') at a base salary of \$1,672.20 per week.
17. The Area Controller Contract was subject to the Agreement during the Relevant Period as per s.52 and s.53 of the FWA.
18. Upon commencement of the Area Controller Position, the Applicant understood his duties to include the following:
- a. Control and supervise train, locomotive, and rail traffic movements following safe working regulations;
 - b. Develop strategies to address delays and deviations in train schedules, and implement emergency procedures;
 - c. Communicate irregularities and changes in train services to relevant officers;
 - d. liaise with Train Controllers and follow their instructions safely;
 - e. Liaise with stakeholders to ensure all on track maintenance is carried out in a safe and timely manner, with personnel being protected in accordance with safe working procedures;
 - f. Execute emergency and safe working procedures;
 - g. Provide timely information on service alterations, diversions, and cancellations;

- h. Maintain accurate records in compliance with Safeworking requirements; and
 - i. Process STNs, circulars, telegrams, and other relevant documentation.
 - j. Manage Train Describer and Passenger Information systems.
19. During the Relevant Period, the Applicant was employed as a **'Shift Worker'** within the meaning of the Agreement and both the Signaller Contract and Area Controller Contract (collectively, **'the Contracts'**).

Particulars

The definition of Shift Worker is provided for by Cl. 3 of the Agreement.

20. Hereinafter, the Signaller Ordinary Hours and the AC Ordinary Hours may collectively be referred to as, the **'Ordinary Hours'**.
21. The Applicant's rosters varied, but included shifts that were usually-identified under clause 112 of the Agreement as:
- a. an Early Morning Shift, being a shift which commenced at or between 4.00am and 5.30am;
 - b. an Afternoon Shift, being a shift which commenced before and concludes after 6.00pm; and
 - c. a Night Shift, being a shift which commenced at or between 6.00pm and 3.59am.
22. Other than for periods of leave as defined in the Agreement, the Applicant for so long as he was employed by Sydney Trains, worked:
- a. the days and hours specified in the rosters, including any day that for the purposes of the Agreement, was a Saturday, Sunday and/or 'Public Holiday'; and
 - b. days and hours in excess of the Ordinary Hours, as required from time to time by Sydney Trains (the **'Overtime Hours'**).

Particulars

The Applicant was regularly required ~~on average~~ by Sydney Trains to work in excess of 76 hours per fortnight, and up to or in excess of ~~11~~9 shifts per fortnight.

E. WAGES TERM

23. During the Relevant Period, the Applicant and Group Members had a Sunday-to-Saturday fortnightly pay period (the **'Pay Period'**), and Thursday was their regular pay day.
24. In the premises, at all times during the Relevant Period, the Agreement contained a term (the **'Wages Term'**) which on its proper construction, required Sydney Trains to pay to the

Applicant and Group Members every Pay Period the base salary, and any further loadings, allowances or entitlements accrued and due under the Agreement for the actual hours worked by the employees in the preceding Sunday – Saturday fortnightly pay period.

Particulars

Clause 11.5 of the Agreement states that each employee will be paid fortnightly.

F. SYSTEM LEADING TO CONTRAVENTIONS

25. During the Relevant Period, Sydney Trains operated a system under which the Applicant and Group Members:

- a. worked according to rosters which were drawn without regard to, and were not in conformity with the 'Rostering Principles', within the meaning of the Agreement;

Particulars

The 'Rostering Principles' are defined within clause 27 of the Agreement. The Agreement at clause 27.3 conferred an obligation on Sydney Trains to roster Shift Workers in accordance with the following principles:

- i. the health and safety of Employees;
- ii. fatigue management obligations;
- iii. operational and business requirements;
- iv. duty of care obligations;
- v. a fair and equitable distribution of the rostered work between Employees of like classification;
- vi. local level consultation;
- vii. patterns of work which assist quality of life considerations; and
- viii. reasonable periods of notice of change to rostered working.

- b. worked according to rosters which were drawn without regard to, and were in excess of the Ordinary Hours;

- c. were required to work hours outside of the hours rostered, by being required to work the Overtime Hours for reasons including but not limited to;

- i. Sydney Trains requiring employees to conduct handovers at the beginning and end of rostered shifts between incoming and outgoing employees without appropriate overlap such that additional unpaid work was required to be completed outside of rostered hours (Unpaid Handover Time); and
- ii. increased volumes of work required to be performed due to inadequate staffing levels and rostering being undertaken by Sydney Trains;
- i. —

Particulars

The Applicant was required to conduct 15 minute handovers at the end of each shift and has never been paid for this work.

d. were routinely given less than 24 hours notice to work shifts additional to those within the roster;

e.e. were regularly required to work and did work at times attracting penalty rates under the Agreement;

d.f. were not required by Sydney Trains to record their actual hours of work in its systems, and generally did not do so;

e.g. in each Pay Period, were paid their base salary according to Schedule 4A of the Agreement and each of the Applicant and Group Member Contracts;

f.h. in each Pay Period, were paid further loadings and entitlements calculated based on the applicable rostered hours of work for that Pay Period, as opposed to actual hours worked;

were regularly required to work shifts without meal or crib rest-breaks, including shifts with a duration in excess of the ordinary hours of work under the Agreement.

26. During the Relevant Period, the Applicant and the Group Members worked generally in accordance with the system described above at [25].

G. CONTRAVENTIONS OF THE FAIR WORK ACT 2009 (CTH)

27. The contraventions of the FWA by Sydney Trains during the Relevant Period, as set out below at paragraphs [28] – [80], are collectively the '**Respondent's Contraventions**' for the purposes of this Statement of Claim and associated Originating Application.

G-1 FWA s.535(1) and s.535(3) - Record-keeping obligations & Inspection obligations

28. During the Relevant Period, pursuant to s.535(1) of the FWA and regulations 3.33 and 3.34 of the *Fair Work Regulations 2009* (Cth) (the '**FWR**'), Sydney Trains was required to make and keep records specifying:
- a. when the Applicant and each Group Member started and ceased working the Overtime Hours, and the number of Overtime Hours worked during each day (the '**Overtime Records**'); and
 - b. the allowances and entitlements owed to the Applicant and each Group Member relevant to their individual employment, and as paid to the Applicant and Group Members during their employment (the '**Entitlements Records**').
29. The Applicant and the Group Members have been unable to inspect complete copies of the Overtime Records and Entitlements Records, despite multiple requests for inspection being made to Sydney Trains under s.535(3) of the FWA and regulation 3.42 of the FWR.

Particulars

The Overtime Records and the Entitlements Records were requested from Sydney Trains on:

- a. 13 February 2023;
- b. 3 March 2023;
- c. 15 March 2023;
- d. 12 April 2023; and
- e. 27 April 2023.

On the date of filing this Statement of Claim, Sydney Trains have only provided partial production of the documents requested.

30. Sydney Trains has failed to comply with their inspection obligations and is therefore in breach of s.535(3) of the FWA and regulation 3.42 of the FWR.
31. Sydney Trains' failure to comply with their inspection obligations leads the Applicant and Group Members to believe that Sydney Trains failed to make and keep the Overtime Records and Entitlements Records without significant deficiencies.
32. For the reasons set out above, Sydney Trains has contravened s.535(1) of the FWA, being the record-keeping obligations.
33. Section 535(1) of the FWA is a civil remedy provision within the meaning of the FWA.
34. Further, the contraventions of s.535(1) of the FWA are serious contraventions within the meaning of s.557A of the FWA.

Particulars

The contraventions were part of a systemic pattern of conduct by Sydney Trains relating to the Applicant and Group Members during the Relevant Period.

35. The contraventions of s.535(1) of the FWA have caused the Applicant and Group Members loss and damage.

G-2 FWA s.50 – underpayments

36. ~~On average~~ During the Relevant Period, due to the operation of the system pleaded at paragraphs [25] – [26], Sydney Trains failed to pay the Applicant and each Group Member the sums and entitlements due to them under the Agreement, as set out below.

G-2.1 'Overtime Loadings'

37. At all material times during the Relevant Period, it was a term of the Agreement at clause 118, applicable to the employment of the Applicant and Group Members, that any hour(s) or shift(s) worked in excess of the Ordinary Hours, as defined by clause 25 of the Agreement, would be '**Overtime Hour(s)**'.

Particulars

The Applicant was regularly required on average by Sydney Trains to work in excess of 76 hours per fortnight, and ~~up to or~~ in excess of ~~11~~ 9 shifts per fortnight.

- i. In the period 9 January 2022 to 22 January 2022, the Applicant worked a total of 108.33 hours across a total of 11 shifts, as set out in Schedule A.

38. At all material times during the Relevant Period, it was a term of the Agreement at clause 118.2, that any and all Overtime Hour(s) shall be paid at a rate of:
- a. time and one half for the first three Overtime Hour(s); and
 - b. double-time thereafter.
- ('Overtime Loading')**
39. For each Pay Period during the Relevant Period, there was no relevant agreement made between Sydney Trains and the Applicant or the Group Member(s) to alter the Ordinary Hours or forgo the Overtime Loading, as per clause 108 of the Agreement.

40. ~~On average d~~During the Relevant Period, Sydney Trains failed to remunerate the Applicant and the Group Members for the actual Overtime Hours worked with the Overtime Loading.

G-2.2 Interval between Shifts Entitlements

41. At all material times during the Relevant Period, it was a term of the Agreement at clause 109.2, applicable to the employment of the Applicant and Group Members, that there would be a minimum interval of 10 hours off duty between shifts (**'Minimum Shift Interval'**).
42. At all material times during the Relevant Period, there were only two relevant exceptions to the Minimum Shift Interval, being the following:
- a. where the Applicant and Groups Members were changing Shifts, in which case a minimum interval of 8 hours off duty between shifts would apply (**'Changing Shift Interval'**); and
 - b. when the Applicant and Group Members had to return to home station, in which case, clause 120 of the Agreement stipulated their entitlements.
43. At all material times during the Relevant Period, it was a term of the Agreement at clause 109.3, applicable to the employment of the Applicant and Group Members, that where an employee had less than the Minimum Shift Interval between shifts, they shall be paid according to the below:
- a. where the Minimum Shift Interval is relevant - time and a quarter for each actual hour worked (**'Shift Interval Loading'**); or
 - b. where the Changing Shift Interval is relevant – the Overtime Loading for each hour worked.
44. The Minimum Shift Interval, Changing Shift Interval and the Shift Interval Loading may hereinafter be collectively referred to as the **'Interval between Shifts Entitlements'**.
45. For each Pay Period during the Relevant Period, there was no relevant agreement made between Sydney Trains and the Applicant or the Group Member(s) to alter the Minimum Shift Interval, or forgo the Shift Interval Loading, as per clause 109.5 of the Agreement.
46. ~~On average d~~During the Relevant Period, the Applicant and Group Members were regularly not provided the benefit of the Minimum Shift Interval, and Sydney Trains failed to remunerate the Applicant and Group Members with the Shift Interval Loading.

Particulars

The Applicant has never received remuneration for the Shift Interval Loading.

G-2.3 'Limits of Shifts Entitlements'

47. At all material times during the Relevant Period, it was a term of the Agreement at clause 115.6, applicable to the employment of the Applicant and Group Members that employees shall not be rostered to work more than 9 hours on any one shift (the '**Maximum Shift Duration**').
48. For each Pay Period during the Relevant Period, there was no relevant agreement made under clause 25 of the Agreement between Sydney Trains and the Applicant to alter the Maximum Shift Duration.
49. ~~On average d~~During the Relevant Period:
- a. Sydney Trains regularly failed to roster the Applicant and Group Members in accordance with the Maximum Shift Duration; and
 - b. failed to remunerate the Applicant and Group Members with the Overtime Loading where the relevant shifts worked were of a duration in excess of the Maximum Shift Duration.

Particulars

In the period 9 January 2022 to 22 January 2022, the Applicant worked a total of 5 shifts of between 9 and 12.25 hours in length, as set out in Schedule A.

~~The Applicant on average worked 2 shifts per month of between 9 and 12 hours in length.~~

G-2.4 'Public Holiday Penalty Entitlement'

50. At all material times during the Relevant Period, it was a term of the Agreement at clause 29, applicable to the employment of the Applicant and Group Members, that employees are entitled, without loss of pay, to the 'Public Holidays' as defined in clause 29.1 - 29.4 of the Agreement (the '**Public Holiday Entitlement**').
51. At all material times during the Relevant Period, it was a term of the Agreement at clause 29.5, applicable to the employment of the Applicant and Group Members, that employees shall be paid a loading of 150% of the ordinary hourly base rate of pay for each actual hour worked on a day defined as a 'Public Holiday' within the meaning of clause 29.1 - 29.4 of the Agreement (the '**Public Holiday Penalty Rate**').
52. ~~On average d~~During the Relevant Period, Sydney Trains failed to remunerate the Applicant and Group Members with the Public Holiday Loading for the actual hours worked on each day defined as a 'Public Holiday' with the meaning of clause 29.1 - 29.4 of the Agreement.

Particulars

The Applicant, ~~on average~~ worked a minimum of half the Public Holidays in each given year during the Relevant Period and did not receive the Public Holiday Penalty Rate for each actual hour worked on each Public Holiday.

G-2.5 'Saturday Penalty Entitlement'

53. ~~At all material times during the Relevant Period, it was a term of the Agreement:~~

- a. ~~at clause 43.1, applicable to the employment of the Applicant and Group Members, that employees shall be paid at the rate of time and one half for each actual hour worked on each Saturday;~~
- b. ~~at clauses 118.6 and 118.7, applicable to the employment of the Applicant and Group Members, that employees shall be paid at the rate of double time for the Saturday portion of any excess shift in a fortnight; and~~
- c. ~~at clause 118.13 of the 2018 Agreement and clause 118.14 of the 2022 Agreement, applicable to the employment of the Applicant and Group Members, that employees shall be paid at a rate of double time for all Overtime Hours worked on a Saturday.~~
~~(together, the 'Saturday Penalty Rates').~~

53. ~~_____~~

54. ~~On average~~ ~~d~~During the Relevant Period, Sydney Trains failed to remunerate the Applicant and Group Members with the Saturday Loading ~~Penalty Rates~~ for the actual hours worked on each Saturday.

Particulars

The Applicant ~~regularly~~, worked ~~on average~~ 1-2 Saturdays per ~~month~~ ~~fortnight~~ during the Relevant Period, and did not receive the Saturday Penalty Rates for each actual hour worked on each Saturday.

G-2.6 'Sunday Penalty Entitlement'

55. At all material times during the Relevant Period, it was a term of the Agreement at clause 43.2, applicable to the employment of the Applicant and Group Members, that employees shall be paid at the rate of double time for each actual hour worked on each Sunday (the 'Sunday Penalty Rate').

56. ~~On average~~ ~~d~~During the Relevant Period, Sydney Trains failed to remunerate the Applicant and Group Members with the Sunday Loading for the actual hours worked on each Sunday.

Particulars

The Applicant regularly, worked on average 1-2 Sundays per month fortnight during the Relevant Period, and did not receive the Sunday Penalty Rate for each actual hour worked on each Sunday.

G-2.7 – ‘One Off Payment’ Entitlement

57. It was a term of the 2022 Agreement at clause 11.6, applicable to the employment of the Applicant and Group Members, that employees shall be entitled to a one-off payment of \$4,500 in the first full pay period commencing on or after the 17 February 2023 (the ‘**One-Off Payment Entitlement**’).
58. Sydney Trains failed to remunerate the Applicant and Group Members in accordance with the One-Off Payment Entitlement.

G-2.8 – ‘Back Pay Entitlements’

59. It was a term of the 2022 Agreement applicable to the employment of the Applicant and Group Members, that:
- a. pursuant to clause 11.1(a), employees were entitled to a 2.53% pay rise with effect from the first pay period commencing on or after 1 May 2022; and
 - b. pursuant to clause 11.1(b), employees were entitled to a 3.03% pay rise with effect from the first pay period commencing on or after 1 May 2023
- (collectively, the ‘**Back Pay Entitlements**’).
60. Upon proper construction of clause 11.1, the Back Pay Entitlements entitled the Applicant and Group Members to a back payment of an additional percentage (as applicable under the relevant subsection of clause 11.1) of their base salary for the Ordinary Hours worked from the relevant commencement date, until such date as the Respondent proceeded to pay the Applicant and Group Member’s base salary in accordance with the applicable rates under the 2022 Agreement (the ‘**Salary Back Payment**’).
61. Further, it was a term of the 2022 Agreement at clause 11.2 that all applicable allowances relevant to the Applicant and Group Members’ employment, would be adjusted in accordance with the percentage wage increases at clause 11.1 (the ‘**Back Pay Allowance Entitlements**’).

Particulars

Allowances include all allowances specified under Schedule 4B, but also the applicable wages rates that are calculated by reference to the base salary, such as ‘time and a half’ or ‘double time’ wage increases, including, Overtime Loadings, Saturday Penalty Rates, Sunday Penalty Rates, Public Holiday Penalty Rates and Shift Interval Loadings.

62. Upon proper construction of clause 11.2, the Back Pay Allowance Entitlements entitled the Applicant and Group Members to a back payment of an additional percentage (as applicable under the relevant subsection of cl 11.1) for each actual allowance accrued from the relevant commencement date, until such date as the Respondent proceeded to pay the Applicant and Group Member's Allowances in accordance with the applicable rates under the 2022 Agreement (the '**Allowance Back Payment**').
63. Sydney Trains failed to remunerate the Applicant and Group Members in accordance with the Salary Back Payment and the Allowance Back Payment pursuant to the Back Pay Entitlement and the Back Pay Allowance Entitlement.

G-2.9 - Contraventions

64. By reason of the matters pleaded above at [36] – [63], Sydney Trains contravened the Wages Term and s.50 of the FWA on each occasion the Applicant and/or Group Member(s) were underpaid in the Relevant Period.
65. Section 50 of the FWA is a 'civil remedy provision' within the meaning of the FWA.
66. Further, in relation to the contraventions occurring during the Relevant Period:
- a. Sydney Trains (by its payroll officers) expressly authorised the contraventions and Sydney Trains thereby knowingly contravened s.50; and
 - b. the contraventions were part of a systemic pattern of conduct engaged in by Sydney Trains, as pleaded at paragraphs [25] – [26].
67. Each of the contraventions to s.50 of the FWA pleaded above at [36] - [63] meet the definition of 'serious contravention(s)' within the meaning of s.557A of the FWA.
68. Sydney Trains' contraventions of s.50 have caused the Applicant and Group Members loss and damage.

G-3 s.323 FWA – failure to rectify

69. In respect of each of the contraventions of the Wage Term pleaded under sub-heading G-2 above, Sydney Trains did not pay to the Applicant and the Group Members the wages due to them in full:
- a. at the end of the calendar month in which the breach occurred; or
 - b. within one calendar month of the breach.
70. In the premises, Sydney Trains contravened s.323(1) of the FWA in respect of each of those failures.

71. Further, in relation to the contraventions of s.323 occurring in the Relevant Period:
- a. Sydney Trains (by its payroll officers) expressly authorised the contraventions and the Respondent thereby knowingly contravened s.323; and
 - b. The contraventions were part of a systemic pattern of conduct as outlined at paragraphs [25] – [26].
72. In the premises, the contraventions of s.323 of the FWA are serious contraventions within the meaning of s.557A of the FWA.

G-4 s.50 FWA – Break Entitlements

73. At all material times during the Relevant Period, it was a term of the Agreement (the '**Meal Break Term**') at clause 54.1, applicable to the employment of the Applicant and Group Members, that employees shall be entitled to an unpaid meal break (the '**Break Entitlement**').

Particulars

Clause 54.1 of the Agreement states that an employee shall be entitled to unpaid meal breaks of not less than 30 minutes and not more than 60 minutes.

74. Upon proper construction of the Meal Break Term, where the Meal Break Entitlement was unable to be provided to the Applicant and Group Members due to operational requirements, the Meal Break Entitlement is to be substituted with paid crib breaks (the '**Substitute Crib Break Entitlement**').

74.75. Further, it was a term of the 2022 Agreement at clause 110.2, applicable to the employment of the Applicant and Group Members, that employees shall be entitled to a 20 minute paid crib break when working greater than a 5 hour shift (the '**2022 Crib Break Entitlement**').

75.76. Collectively, the Break Entitlement, and the Substitute Crib Break Entitlement, and the 2022 Crib Break Entitlement are the '**Break Entitlements**'.

76.77. On average ~~d~~During the Relevant Period, Sydney Trains failed to provide the Applicant and Group Members with the Break Entitlements.

Particulars

The Applicant was regularly ~~not~~ provided any unpaid meal breaks or paid crib breaks.

77.78. In the premises, Sydney Trains contravened s.50 of the FWA on each occasion the Applicant and/or Group Member(s) were not provided the Break Entitlements during their shift(s).

78.79. Section 50 of the FWA is a 'civil remedy provision' within the meaning of the FWA.

79.80. The contraventions of s.50 of the FWA in respect of the Break Entitlements meet the definition of 'serious contravention(s)' within the meaning of s.557A of the FWA.

80.81. Sydney Trains' contraventions of s.50 in respect of the Break Entitlements have caused the Applicant and Group Members loss and damage.

H – Relief Claimed

81.82. The Applicant claims on their own behalf, and on behalf of Group Members:

- a. orders pursuant to s.545 of the *Fair Work Act 2009* (Cth) (**FWA**) awarding compensation to the Applicant and Group Members in respect of the Respondent's Contraventions, being:
 - i. an order pursuant to s.33Z(1)(f) and/or s.33Z(1)(g) and/or s.33ZF of the FCAA awarding damages on an aggregate basis in respect of compensation claimed at paragraph 3; or in the alternative;
 - ii. an order pursuant to s.33Z(1)(e) and/or s.33Z(1)(g) and/or s.33ZF of the FCAA awarding damages for group members, sub-group members or individual group members, being damages consisting of specified amounts or amounts worked out in such manner as the Court specifies, in respect of compensation claimed at paragraph 3 above.
- b. an order pursuant to s.546 FWA that the Respondents pay a pecuniary penalty:
 - i. to the Applicant or the relevant Group Member;
 - ii. on the basis that each of the Respondent's Contraventions, was a "serious contravention" within the meaning of s.557A FWA;
- c. an order pursuant to s.547 of the FWA and/or s. 51A of the FCAA awarding interest up to judgment on the above amounts; and
- d. such further or other relief as the Court deems fit.

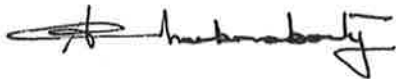
THE APPLICANT AND GROUP MEMBERS CLAIM THE RELIEF SET OUT IN THE ORIGINATING APPLICATION

Schedule A – Hours Worked in Sample Period Fortnight: 9 to 22 January 2022

<u>DAY</u>	<u>START DATE</u>	<u>START TIME</u>	<u>END TIME</u>	<u>HOURS WORKED</u>
Sunday	09-Jan-22	21:35:00	5:50:00	08:15:00
Monday	10-Jan-22	21:35:00	5:50:00	08:15:00
Tuesday	11-Jan-22			
Wednesday	12-Jan-22	1:35:00	13:50:00	12:15:00
Thursday	13-Jan-22	5:35:00	13:50:00	08:15:00
Friday	14-Jan-22	5:35:00	13:50:00	08:15:00
Saturday	15-Jan-22	1:35:00	13:50:00	12:15:00
Sunday	16-Jan-22	1:35:00	13:50:00	12:15:00
Monday	17-Jan-22			
Tuesday	18-Jan-22	13:35:00	1:50:00	12:15:00
Wednesday	19-Jan-22			
Thursday	20-Jan-22	13:35:00	21:50:00	08:15:00
Friday	21-Jan-22	13:35:00	21:50:00	08:15:00
Saturday	22-Jan-22	12:00:00	21:50:00	09:50:00
TOTAL				108.33 hours

*Shifts worked did not allow for the Break Entitlements

Date: 18 July 2023, amended 15 September 2023, further amended 22 March 2024.



Signed by Andrew Chakrabarty
Lawyer for the Applicant

This pleading was prepared by Andrew Chakrabarty, Lawyer