

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
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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
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



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.

Form 19
Rule 9.32



**Amended Originating application starting a representative proceeding
under Part IVA of the Federal Court of Australia Act 1976**

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

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place:

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of
Prepared by
Tel:
Email:
Address for service:

The Applicant, Ritchie White
Adero Law
(02) 6189 1022
andrew.chakrabarty@aderolaw.com.au
3 Hobart Place, Canberra City, ACT 2601



Representative action

The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976 (Cth)* (the '**FCAA**').

The Applicant brings these proceedings:

1. for himself; and
2. as the representative of a group constituted of all persons:
 - a. employed by the Respondent ('**Sydney Trains**') at any time within the period beginning 1 May 2018 and ending on the date of filing of this Originating Application (the '**Relevant Period**');
 - b. defined 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 '**Agreements**') and the definitions therein;
 - c. employed in an 'Operations Position', within the meaning of the Agreements; and
 - d. employed in a position of any relevant grade classified as 'Area Controller' or 'Signaller', within the meaning of the Agreements,
(the "**Group**" and a/the "**Group Member/s**")
3. On the date of filing of this Originating Application, there were more than seven Group Members.

Details of claim

On the grounds stated in the accompanying Statement of Claim (and adopting the terms defined therein), the Applicant claims on their own behalf, and on behalf of Group Members:

4. 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, as defined within the Statement of Claim, being:
 - a. 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;
 - b. 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 [4] above.



5. an order pursuant to s.546 FWA that the Respondents pay a pecuniary penalty:
 - a. to the Applicant or the relevant Group Member;
 - b. on the basis that each of the Respondent's Contraventions, as defined within the accompanying Statement of Claim, was a "serious contravention" within the meaning of s.557A FWA;
6. 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
7. such further or other relief as the Court deems fit.

Questions common to claims of group members

The questions of law or fact common to the claims of the Group Members are:

8. whether during the Relevant Period, Sydney Trains contravened s.535(1) of the FWA and regulations 3.33-3.34 of the *Fair Work Regulations 2009* (Cth) (the '**FWR**') (collectively, '**the Record-keeping Obligations**') by failing to make and keep records, being:
 - a. the Overtime Records; and
 - b. the Entitlements Records.
9. Whether during the Relevant Period, Sydney Trains contravened s.535(3) of the FWA and regulation 3.42 of the FWR (collectively, '**the Inspection Obligations**') by failing to provide inspection of:
 - a. the Overtime Records; and
 - b. the Entitlements Records,upon written request made on behalf of the employees to whom the records relate.
10. whether during the Relevant Period, the Group Members were entitled to the minimum rates of pay, allowances and terms and conditions of employment as prescribed by the Agreements, specifically being:
 - a. Overtime Loadings;
 - b. Interval between Shifts Entitlements;
 - c. Limits of Shifts Entitlements;
 - d. Public Holiday Penalty Entitlements;
 - e. Saturday Penalty Entitlements;
 - f. Sunday Penalty Entitlements;



- g. One Off Payment Entitlement; and
 - h. Back Pay Entitlement.
11. whether during the Relevant Period, Sydney Trains contravened s.50 of the FWA by failing to pay the Group Members the sums and entitlements at paragraph 8(a)-(h) as prescribed by the Agreements;
 12. whether during the Relevant Period, Sydney Trains contravened s.50 of the FWA by failing to provide the Group Members with the Break Entitlements;
 13. whether during the Relevant Period, Sydney Trains contravened s.323(1) of the FWA by failing to pay the Group Members the wages due to them in full on a monthly basis, inclusive of all loadings, entitlements and allowances; and
 14. whether each of the Respondent's Contraventions, as defined within the accompanying Statement of Claim, are serious contraventions within the meaning of section 557A of the FWA.

Applicant's address

The Applicant's address for service is:

Place: Adero Law
3 Hobart Place
Canberra City ACT 2601

Email: andrew.chakrabarty@aderolaw.com

Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 18 July 2023, amended 15 September 2023

A handwritten signature in blue ink, appearing to read 'Andrew Chakrabarty'.

Signed by Andrew Chakrabarty
Lawyer for the Applicant