

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 27/08/2020 2:20:23 PM ACST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: SAD76/2020
File Title: AARON FURNELL & ORS v SHAHIN ENTERPRISES PTY LTD ACN 008 150 543
Registry: SOUTH AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 27/08/2020 2:23:12 PM ACST

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

As required by the Court's Rules, 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 and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 17
Rule 8.05(1)(a)

Further Amended Statement of claim

(amended pursuant to leave given by White J on 27 August 2020)

No. SAD76 of 2020

Federal Court of Australia

District Registry: SA

Division: Fair Work

Aaron Furnell and others listed in the Schedule

Applicants

Shahin Enterprises Pty Ltd ACN 008 150 543

Respondent

A PARTIES

1. At all material times, the Respondent was the employer of each of:
 - (a) the Applicants;
 - (b) the Group 1 Members (as defined in paragraph 8 below);
 - (c) the Group 2 Members (as defined in paragraph 32 below);
 - (d) the Group 3 Members (as defined in paragraph 49 below);
 - (e) the Group 4 Members (as defined in paragraph 74 below); and
 - (f) the Group 5 Members (as defined in paragraph 93 below).

2. The Respondent is a National System Employer within the meaning of section 14 of the *Fair Work Act 2009* (Cth) (**FW Act**).

3. Each of the Applicants was, during their employment with the Respondent, a national system employee within the meaning of section 13 of the FW Act.

Filed on behalf of (name & role of party) The Applicants

Prepared by (name of person/lawyer) _____

Law firm (if applicable) Adero Law

Tel (02) 6189 1022 Fax _____

Email rory.markham@aderolaw.com.au

Address for service 5 Torrens Street
(include state and postcode) Braddon ACT 2601

4. At all material times until 30 June 2018, the employment by the Respondent of the Applicants and the Group 1 Members, Group 2 Members, Group 3 Members, Group 4 Members and Group 5 Members up to that date was subject to each of:

- (a) the Shahin Enterprises Pty Ltd Employee Collective Agreement Customer Service Employee (the **Customer Service CA**); and/or
- (b) the Shahin Enterprises Pty Ltd Employee Collective Agreement Full Time Employees (the **Full Time CA**).

5. Each of Customer Service CA and the Full Time CA was:

- (a) approved by the Australian Workplace Authority on 25 June 2008; and
- (b) an employee collective agreement within the meaning of s 327 of the *Workplace Relations Act 1996* (Cth);
- (c) on and from 1 July 2009:
 - (i) a 'transitional instrument';
 - (ii) specifically, an 'agreement-based transitional instrument'; and
 - (iii) more specifically, a 'collective agreement-based transitional instrument',

within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) (the **FW Transitional Act**) and the FW Act, which continued to apply to the employment of the Applicants by the Respondent until 30 June 2018.

Particulars

- (i) *Schedule 2 and items 3 and 4 of schedule 3 of the FW Transitional Act.*
- (ii) *The Customer Service CA and the Full Time CA were terminated by order Commissioner Hampton of the Fair Work Commission made on 1 March 2018 and taking effect on 30 June 2018.*

6. At all material times from 1 July 2018, the employment by the Respondent of the Applicants and the Group 1 Members, Group 2 Members, Group 3 Members, Group

4 Members and Group 5 Members by the Respondent was governed by the Vehicle Manufacturing, Repair, Services and Retail Award (the **Award**).

7. The claims pleaded below are broken down into claims made in respect of:

(a) the period between the date 6 years prior to the filing of this statement of claim and 30 June 2018 (the **Collective Agreement Period**); and

(b) the period ~~from~~ between 1 July 2018 and the date of the filing of this further amended statement of claim to the conclusion of the hearing of these proceedings (the **Modern Award Period**).

B GROUP 1 CLAIM: AARON FURNELL, PAUL YOUNG AND GROUP 1 MEMBERS UNDERPAYMENT

B-1 REPRESENTATIVE PROCEEDINGS

8. Each of the First Applicant and the Second Applicant brings this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth):

(a) in his own right; and

(b) on behalf of current and former non-salaried employees of the Respondent who, at any time during the Collective Agreement Period and Modern Award Period:

(i) were employed in the positions of:

(1) console operator;

(2) driveway attendant; or

(3) roadhouse (food) attendant,

pursuant to the Customer Service CA during the Collective Agreement Period and the Award during the Modern Award Period,

(ii) were directed verbally from time to time, to:

- (1) arrive at work, be available to perform work and perform work 10 minutes prior to the start of their scheduled shift (**Pre-Shift Work**);
 - (2) stay at work, be available to perform work and perform work after the completion of their scheduled shift (**Post-Shift Work**); and/or
 - (3) work through their shifts without taking a meal break by attending to customers during this period or being available during this period (either by being the only rostered employee and directed to attend any customers throughout their shift, or being directed from time to time while on a meal break to serve customers) to attend to customers without being given additional time for a meal break, despite their shifts scheduling such a break and a period of 30 minutes of their shifts being treated as an unpaid meal break (**Meal Break Work**);
- (iii) were not paid their entitlements in the Collective Agreement Period arising from the Customer Service CA in respect of the Pre-Shift Work, Post-Shift Work and/or Meal Break Work;
 - (iv) were not paid their entitlements in the Modern Award Period arising from the Award in respect of the Pre-Shift Work, Post-Shift Work and/or Meal Break Work; and
 - (v) have not, as at the date of commencement of this proceeding, commenced proceedings against the Respondent in respect of the non-payment or underpayment of their full entitlements for the Pre-Shift Work, Post-Shift Work and/or Meal Break Work

(Group 1 Members).

Particulars

The First Applicant brings the claim on behalf of Group 1 Members during the Collective Agreement Period. The Second Applicant brings the claim on behalf of Group 1 Members during the Collective Agreement Period and the Modern Award Period.

9. The Second Applicant:

- (a) commenced employment with the Respondent on 6 November 2013;
- (b) between 6 November 2013 and 14 February 2019 was employed as a console operator at an 'On The Run' service station operated by the Respondent located at the corner of Kings Road and Lawrence Hargrave Way, Parafield, South Australia;
- (c) performed duties consistent with working as a console operator, including attending to point of sale operations, console operating, general customer service duties, preparing food items, general restocking of products throughout the store and refrigerators, general cleaning duties and performing fuel dips at the 'On the Run' service station;
- (d) was engaged as a part-time employee pursuant to the Customer Service CA and his ordinary hours of work were agreed on the commencement of his employment to be 25-hours per week;
- (e) between 23 October 2013 and 30 April 2015 was engaged as 'trainee' and was paid \$20.24 per hour during his Monday to Friday shifts and \$23.18 per hour on weekends and public holidays;
- (f) concluded his traineeship on 30 April 2015;
- (g) from 1 May 2015 until 14 February 2019 was paid at various rates per hour during his Monday to Friday shifts and a higher amount per hour on weekends and public holidays. In the final months of the Collective Agreement Period was paid \$22.60 per hour on weekdays.

10. Each Group 1 Member including the First Applicant was:

- (a) employed by the Respondent as either a console operator, driveway attendant or roadhouse (food) attendant;
- (b) employed pursuant to

 - (i) the Customer Service CA during the Collective Agreement Period; and/or
 - (ii) the Award during the Modern Award Period;

(c) performed duties consistent with their classifications as console operator, driveway attendant or roadhouse (food) attendant under the Customer Service CA or console operator (Vehicle Industry RS&R Employee Level 4 R4), driveway attendant (Vehicle Industry RS&R Employee Level 1 R1 or Level 4 R4) or roadhouse attendant (Vehicle Industry RS&R Employee Level 2 R2) under the Award;

(d) directed verbally to:

- (i) work in accordance with his or her rostered hours; and
- (ii) perform work in addition to their rostered hours, namely the Pre-Shift Work, Post-Shift Work and Meal Break Work.

B-2 GROUP 1 | ENTITLEMENTS

11. Pursuant to the Customer Service CA, each of the First Applicant, the Second Applicant and the other Group 1 Members was entitled to be paid the rate of pay set out in Schedule 1 of the Customer Service CA as amended from time to time for all hours of work performed in each weekly pay period.

Particulars

Clause 5.1 Customer Service CA.

12. Pursuant to the Modern Award, each of the First Applicant, the Second Applicant and the other Group 1 Members was entitled to be paid at the rate of pay set out in clause 33 of the Modern Award as amended from time to time for all hours of work performed in each weekly pay period.

Particulars

Clauses 24 and 33 of the Award.

13. Pursuant to the Customer Service CA, each of the First Applicant, the Second Applicant and the other Group 1 Members who was working a shift of more than 6 hours was entitled to an unpaid meal break of 30 minutes in each shift, or where directed verbally to work without a break a 20 minute paid crib break to be taken at an operationally convenient time which may be in more than one period.

Particulars

Clauses 4.1.4 and 4.1.5 Customer Service CA.

14. Pursuant to the Award, each of the First Applicant, the Second Applicant and the other Group 1 Members who was working a shift of more than five hours was entitled to an unpaid meal break of between 30 and 60 minutes in each shift where the Respondent elected for such employee to take such a break, or where directed verbally to work without a break a 20 minute paid crib break to be taken whilst maintaining customer service.

Particulars

Clauses 26 and 43.1 Award.

B-3 GROUP 1 | UNPAID WORK

Pre-Shift Work

15. During the entire period of his employment, the Second Applicant was rostered by the Respondent to work as a 'midnight to dawn' worker. His roster contemplated that his shifts would start at 11:00pm and conclude at 8:00am the following day.
- 15A. At all material times during the Collective Agreement Period and the Modern Award Period, the Respondent had a common or general practice of verbally directing employees being either a console operator, driveway attendant or roadhouse (food) attendant to:
- (a) work in accordance with his or her rostered hours;
 - (b) attend work 10 minutes prior to the commencement of their shift;
 - (c) perform Pre-Shift work, by doing various work duties during this period,
- and not pay employees for such work.

Particulars

- (i) In respect of the First Applicant, the First and Second Applicants repeat the particulars to paragraph 18 below.*
- (ii) In respect of the Second Applicant, the First and Second Applicants repeat*

the particulars to paragraphs 16 and 17 below.

- (iii) *Such direction was given to other Group 1 Members:*
- (1) *in initial induction sessions organised by the Respondent at the offices of the Peregrine Corporation, 270 The Parade, Kensington South Australia where such directions were made by representatives of the Respondent engaged in the Respondent's Human Resources Team; and/or*
 - (2) *regularly throughout during the course of their employment by store and area managers.*
 - (3) *The Applicants will provide particulars of employees, sites, periods and circumstances (including the identity if known of the person giving such directions) of such conduct prior to the service of evidence.*
 - (A) *at the store locations and in the periods listed in the Schedule of Particulars where column B is marked "Yes"; and*
 - (B) *other store locations and periods as yet unknown to the Applicants. Further particulars will be provided following further communications with Group 1 Members and/or by way of evidence.*
- (iv) *As to (c), the duties included the duties alleged in 17(c)(i) or similar duties performed in respect of part of the 'On The Run' petrol station area and the duties alleged in 17(c)(ii). Further particulars may be provided by way of evidence.*

16. On or prior to commencing in the pattern of employment described in 15 above, and throughout his entire employment, the Second Applicant was directed verbally by representatives of the Respondent that:

- (a) he must attend work at least 10 minutes prior to his rostered start time; and
- (b) this was a 'requirement' of the Respondent.

Particulars

Such directions were provided to the Second Applicant:

- (i) *in an initial induction session organised by the Respondent at the offices of the Peregrine Corporation, 270 The Parade, Kensington South Australia where such directions were made by representatives of the Respondent engaged in the Respondent's Human Resources Team; and*
- (ii) *throughout his employment by store and area managers at the sites where he worked.*

17. Throughout the entire period of his employment, the Second Applicant:

- (a) was directed verbally by representatives of the Respondent to attend work 10 minutes prior to the commencement of his shift;
- (b) did so attend; and
- (c) was directed verbally by representatives of the Respondent to and did perform one or more of the following duties during this period:
 - (i) conducting a 'site walk' which involved touring the 'On The Run' petrol station including the forecourt area and:
 - (1) filling buckets; and/or
 - (2) emptying rubbish bins around the facility; and
 - (ii) meeting with the worker whose shift was about to conclude and receiving a 'handover' of duties from that worker; and.
- (d) was not paid for this work.

Particulars

Such direction was given to the Second Applicant regularly throughout his employment by store and area managers at the locations where he worked.

18. On or prior to commencing employment and throughout the entire period of his employment, the First Applicant:

- (a) was directed verbally by representatives of the Respondent to attend work 10 minutes prior to the commencement of his shift;
- (b) did so attend as directed;

(c) was directed verbally by representatives of the Respondent to and did perform Pre-Shift Work, by doing ~~various work~~ the following tasks duties during this period:

(i) conducting a 'site walk' which involved touring the 'On The Run' petrol station including the forecourt area;

(ii) in the course of doing so:

(1) filling buckets; and/or

(2) emptying rubbish bins around the facility; and

(d) was not paid for this work.

Particulars

Such directions were provided to the First Applicant:

(i) *in an initial induction session organised by the Respondent at the offices of the Peregrine Corporation, 270 The Parade, Kensington South Australia where such directions were made by representatives of the Respondent engaged in the Respondent's Human Resources Team; and*

(ii) *throughout his employment by store and area managers at the sites where he worked.*

19. Each of the Group 1 Members:

(a) was directed verbally by representatives of the Respondent to attend work 10 minutes prior to the commencement of their shift;

(b) did so attend;

(c) was directed verbally by representatives of the Respondent to and did perform various work duties during this period; and

(d) was not paid for such work.

Particulars

As to (a) and (c), the Applicants repeat particular (iii) to paragraph 15A above.

Meal Break Work

20A. At all material times during the Collective Agreement Period and the Modern Award Period, in respect of employees who were:

- (a) either a console operator, driveway attendant or roadhouse (food) attendant;
- (b) rostered for worked 6 or more hours; and
- (c) allocated in the Respondent's rostering system an unpaid meal break of 30 minutes in each such shift,

the Respondent had a common or general practice of:

- (d) directing such employees to undertake Meal Break Work, by verbally directing them not to take such meal breaks but to attend to customers during this period and/or be available to attend customers during this period without being given additional time for a meal break; and
- (e) paying those employees as if they had taken such rostered unpaid meal breaks during their shift (with a 30-minute deduction from their pay on each shift).

Particulars

- (i) *In respect of the First Applicant, the First Applicant repeats the particulars to paragraph 21 below.*
- (ii) *In respect of the Second Applicant, the Second Applicant repeats the particulars to paragraph 20 below.*
- (iii) *Such direction was given to the other Group 1 Members ~~regularly throughout~~ during the course of their employment by store and area managers.*

The Applicants will provide particulars of employees, sites, periods and circumstances (including the identity if known of the person giving such directions) of such conduct prior to the service of evidence.

~~(1) — at the store locations and in the periods listed in the Schedule of Particulars where column F is marked "Yes"; and~~

~~(2) — other store locations and periods as yet unknown to the Applicants. Further particulars will be provided following further communications with Group 1 Members and/or by way of evidence.~~

20. Throughout the entire period of his employment, the Second Applicant:

(a) was allocated in the Respondent's rostering and time recording system a 30-minute unpaid meal break.

Particulars

This recording system worked such that for a scheduled shift of 9 hours between 11:00pm and 8:00am the Second Applicant was paid for 8.5 hours' work. The electronic time and attendance system used by the Respondent did not allow the Second Applicant (when entering his time into this system) to elect that he had not taken the rostered break.

(b) was directed to do Meal Break Work, in that he was during his 'midnight to dawn' shift (either in one break or as a break taken over several sittings) as he was:

(i) almost always working on his own at the Respondent's 'On The Run' service station;

(ii) ~~required~~ directed verbally by Representatives of the Respondent to serve customers and/or be available to attend to customers throughout his entire shift, and

(c) was paid as if he had taken a rostered unpaid meal break of 30 minutes in each shift that he worked.

Particulars

Such direction was given to the Second Applicant regularly throughout his employment by store and area managers.

21. Throughout the entire period of his employment, the First Applicant, in respect of shifts where he worked 6 or more hours:

(a) was allocated in the Respondent's rostering system an unpaid meal break of 30 minutes in each shift;

- (b) was directed verbally to do Meal Break Work, in that he was required by representatives of the Respondent to attend to customers during this period and/or be available to attend to customers during the period and was not given additional meal break time during his shift); and
- (c) was paid as if he had taken such rostered unpaid meal breaks (with a 30-minute deduction from their pay on each shift).

Particulars

Such direction was given to the First Applicant regularly throughout his employment by store and area managers.

22. Each of the Group 1 Members, in respect of shifts where they worked 6 or more hours:
- (a) was allocated in the Respondent's rostering system an unpaid meal break of 30 minutes in each shift;
 - (b) was directed verbally to undertake Meal Break Work by representatives of the Respondent, by being required to attend to customers and/or be available to attend to customers during this period without being given additional time for a meal break; and
 - (c) was paid as if they had taken such rostered unpaid meal breaks during their shift (with a 30-minute deduction from their pay on each shift).

Particulars

As to (b), the Applicants repeat the particulars to paragraph 20A above.

Post-Shift Work

- 22A. At all material times during the Collective Agreement Period and the Modern Award Period, the Respondent had common or general a practice of directing employees being either a console operator, driveway attendant or roadhouse (food) attendant:
- (i) to work in accordance with his or her rostered hours;

- (d) to perform duties which could not be completed during their scheduled shifts, including because they were unable to leave their station unattended and were directed to serve customers;
- (e) not to leave work at the conclusion of their shifts until their duties were completed;
- (f) to perform Post-Shift Work, by attending to such accumulated duties at the end of their shifts,

and not paying such employees for such Post-Shift work.

Particulars

- (i) *In respect of the First Applicant, such directions were given to the First Applicant regularly throughout his employment by store and area managers where he worked.*
- (ii) *In respect of the Second Applicant, the First and Second Applicants repeat the particulars to paragraph 23 below.*
- (iii) *Such direction was given to the Group 1 Members regularly throughout during the course of their employment by store and area managers. ~~at the store locations and in the periods listed in the Schedule of Particulars where column D is marked "Yes";~~ and The Applicants will provide particulars of employees, sites, periods and circumstances (including the identity if known of the person giving such directions) (including the identify if known of the person giving such directions) of such conduct prior to the service of evidence.*

(1) ~~at other store locations and periods as yet unknown to the Applicants. Further particulars will be provided following further communications with Group 1 Members and/or by way of evidence.~~

23. Throughout the entire period of his employment:

- (a) the Second Applicant was directed verbally by representatives of the Respondent that he was not able to leave work upon the conclusion of his shift until all his duties were attended to;

Particulars

Such direction was given to the Second Applicant regularly throughout his employment by various agents of the respondent being store and area managers and also human resources staff and training staff in his induction referred to in the particulars to paragraph 16 above.

- (b) there were duties which the Second Applicant was unable to attend to until the conclusion of his shift;

Particulars

At the conclusion of his shifts, another staff member who was rostered on commenced and was able to relieve the Second Applicant from being stationed at the point of sale of the 'On The Run' service station.

- (c) the Second Applicant then attended to such duties at the end of his shift, including:
- (i) restocking the shelves and refrigerators;
 - (ii) cleaning the bathroom / store; and
 - (iii) any other tasks not completed during the shift arising from attending instead to customers,

until these duties were attended to.

24. The additional work required of the Second Applicant as alleged in paragraph 23 above required:

- (a) generally, approximately 15-20 minutes on weekday shifts; and
- (b) generally, approximately 45 minutes and up to 50 minutes on weekend shifts.

25. [Deleted]

26. As to each of the First Applicant and the other Group 1 Members:

- (a) each was directed verbally that they could not leave work until their duties were completed;

- (b) each was directed verbally to perform duties which could not be completed during their scheduled shifts, including because they were unable to leave their station unattended and were required to serve customers;
- (c) each performed Post-Shift Work, by:
 - (i) in the case of the First Applicant, finishing washing a car, emptying buckets of water, and/or assisting in closing up the Happy Wash outlet;
 - (ii) in the case of other Group 1 Members, attending to such accumulated duties at the end of their shifts; and
- (d) each was not paid for performing such Post-Shift work.

Particulars

The Applicants repeat the particulars to paragraph 22A above. Further as to the First Applicant, the First Applicant on some occasions refused to perform Post-Shift work and on other occasions performed as directed.

B-4 GROUP 1 | CONTRAVENTIONS AND LOSS

27. By reason of the matters alleged in paragraphs 4 to 6 and 11 to 14 above, the Respondent was required:
- (a) during the Collective Agreement Period (by clauses 4.1.4, 4.1.5 and 5.1 of the Customer Service CA); and
 - (b) during the Modern Award Period (by clauses 24, 26 and 43.1 of the Award),
to make payment to the Second Applicant and each of the Group 1 Members for time spent during:
 - (c) the Pre-Shift Work, being the 10 minutes work which they completed prior to the commencement of their scheduled shift;
 - (d) the Meal Break Work, being the 30-minute period during shifts of 6 hours or more which was treated by the Respondent as an unpaid meal break; and

(e) the Post-Shift Work, being the period at the conclusion of their scheduled shift when they were performing work that could not be attended to throughout their shift.

28. In breach of its obligations as alleged in paragraph 27 above, and by reason of the matters alleged in paragraphs 15 to 26 above, the Respondent failed to pay to the First Applicant, the Second Applicant and each other Group 1 Member for time spent during hours of work being:

(a) the Pre-Shift Work, being the 10 minutes work which they completed prior to the commencement of their scheduled shift;

(b) the Meal Break Work, being the 30-minute period during shifts of 6 hours or more which was treated by the Respondent as an unpaid meal break; and

(c) the Post-Shift Work, being the period at the conclusion of their scheduled shift when they were performing work that could not be attended to throughout their shift.

29. By breaching the Customer Service CA as alleged in paragraph 28 above during the Collective Agreement Period, the Respondent contravened section 323 of the FW Act.

Particulars

(i) The Customer Service CA, as a 'transitional instrument' within the meaning of the FW Transitional Act, can be enforced under the provisions of the FW Act: See Schedule 3, Items 2 and 34 of the FW Transitional Act.

(ii) Each Group 1 Member was underpaid in the Collective Agreement Period by an amount equal to the difference between the amount that each Group 1 Member was entitled to receive for all hours worked in the Collective Agreement Period and the amount paid to each Group 1 Member in this period.

30. By breaching the Award as alleged in paragraph 28 above during the Modern Award Period, the Respondent contravened sections 45 and 323 of the FW Act.

Particulars

Each Group 1 Member was underpaid in the Modern Award Period by an amount equal to the difference between the amount that each Group 1 Member was entitled to receive for all hours worked in the Modern Award Period and the amount paid to each Group 1 Member in this period.

31. By reason of the breaches as alleged in paragraphs 29 and 30 above, each of the First Applicant, the Second Applicant and the other Group 1 Members is entitled to an order pursuant to section 545 of the FW Act that the Respondent is required to compensate each of them for the underpayment of entitlements owed to them.

C GROUP 2 CLAIM: AARON FURNELL UNDERPAYMENT

C-1 REPRESENTATIVE PROCEEDINGS

32. The First Applicant brings this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth):

- (a) in his own right; and
- (b) on behalf of current and former non-salaried employees of the Respondent who, at any time during the Collective Agreement Period:
 - (i) were employed in the positions of:
 - (1) console operator;
 - (2) driveway attendant; or
 - (3) roadhouse (food) attendant,pursuant to the Customer Service CA,
 - (ii) were directed from time to time, to perform work in excess of their ordinary hours (**Overtime**);
 - (iii) were not paid their entitlements arising from the Overtime in that they were paid for such Overtime at their base rate of pay and not at the applicable overtime penalty rate provided for in the Customer Service CA; and

- (iv) have not, as at the date of commencement of this proceeding, commenced proceedings against the Respondent in respect of the underpayments of their entitlements relating to the Overtime.

(Group 2 Members)

33. The First Applicant:

- (a) commenced employment with the Respondent on 28 May 2014;
- (b) between 28 May 2014 and 2 September 2015 was employed as a 'trainee' driveway attendant at a 'Happy Wash' outlet operated by the Respondent located at 139 Angas Street, Adelaide, South Australia;
- (c) performed duties consistent with working as a driveway attendant, including point of sale operations, valet attendant, manually washing cars, handling chemicals used for the washing of cars and cleaning the forecourt of the Happy Wash outlet;
- (d) was engaged as a part-time 'trainee' employee pursuant to the Customer Service CA to perform 15 ordinary hours of work per week; and
- (e) was paid the following rates:
 - (i) from June 2014 to June 2015: \$15.88 per hour;
 - (ii) from June 2015 to September 2015: \$16.353 per hour on weekdays and \$18.71 per hour on weekends; and
 - (iii) from September 2015: \$16.76 per hour on weekdays.

34. Each Group 2 Member was:

- (a) employed by the Respondent during the Collective Agreement Period as either a non-salaried console operator, driveway attendant or roadhouse (food) attendant;
- (b) employed pursuant to the Customer Service CA;
- (c) performed duties consistent with their classifications as console operator, driveway attending or roadhouse (food) attendant under the Customer

Service CA;

(d) directed verbally to:

- (i) work their ordinary hours; and
- (ii) perform additional work outside of their ordinary hours, for which they were paid but at their base rate of pay not at an overtime rate.

C-2 GROUP 2 | ENTITLEMENTS

35. Pursuant to the Customer Service CA, the ordinary hours of the First Applicant and each of the Group 2 Members were not permitted to exceed an average of 38 hours per week or, where the employee was engaged on a part-time basis an amount equal to that employee's agreed part time hours up to a maximum of 38 hours per week.

Particulars

Clause 4.1.1 of the Customer Service CA.

36. Pursuant to the Customer Service CA, as the First Applicant was engaged as a part-time employee to perform 15 hours per week as alleged in paragraph 33(d) above, all time worked by the First Applicant in excess of 60 hours in any four week period was to be paid to him as overtime at the loading of time and one half (150%) of his base rate for each hour worked in excess of 60 hours in the four week period.

Particulars

Clause 4.2 of the Customer Service CA.

37. Pursuant to the Customer Service CA, in respect of the entitlement to overtime loading set out in paragraphs 35 and 36 above, such loading was not required only where the employee elected to work 'voluntary overtime' being:

- (a) overtime arising from an employee's genuine request to work 'voluntary overtime';
- (b) such requests must be made in writing in a prescribed form which identifies:
 - (i) the location where such 'voluntary overtime' shall be performed;

- (ii) the date and time upon which such 'voluntary overtime' shall be performed; and
- (iii) the duration (number of hours in a week) for which such 'voluntary overtime' shall be performed.

Particulars

Clause 4.2.1 and Schedule 2 Customer Service CA.

C-3 GROUP 2 | UNPAID WORK

38. The First Applicant worked for the Respondent in sixteen sequential 4-week periods (between the week ending 4 June 2014 and the week ending 19 August 2015) followed by one 2-week period (the weeks ending 26 August 2015 and 2 September 2015).

Particulars

First Applicant's Employee Previous Earnings Report for pay end periods between 1 June 2014 and 15 June 2016.

39. The First Applicant performed work for the Respondent in each of the 4-week periods and the final 2-week period alleged in paragraph 38 above for more than 60 hours in each 4-week period and for more than 30 hours in the 2-week period, being a total of 746 hours being hours performed in excess of 60 hours in each of these four-week periods and 30 hours in the final 2-week period.

Particulars

First Applicant's Employee Previous Earnings Report for pay end periods between 1 June 2014 and 15 June 2016.

- 39A. At all material times during the Collective Agreement Period, in respect of employees who:
- (a) were either a console operator, driveway attendant or roadhouse (food) attendant;
 - (b) were engaged either:

- (i) on a part-time basis, and who worked hours in excess of the 4-weekly average of their agreed part-time hours and/or worked in excess of 152 hours in certain 4-week periods; and/or
- (ii) on a full-time basis (not being salaried staff), and who worked in excess of 152 hours in 4-week periods of their employment,

(in each case, the excess hours being **Overtime Hours** for this section C of the pleadings);

- (c) did not perform such Overtime Hours pursuant to a genuine request to work 'voluntary overtime'; and
- (d) did not complete the 'voluntary overtime' form prescribed by the Customer Service CA in relation to such Overtime Hours, including by completing the date and time upon which such work shall be performed, the location where it shall be performed and the duration of such Overtime Hours,

the Respondent had a common or general practice of only paying such staff at their 'base rates' of pay in respect of such Overtime Hours.

Particulars

The payroll system for the Respondent was administered centrally, against rosters and attendance records maintained by managers and staff at store locations. The extent of the practice is known to the Respondent by its own records. As to the First Applicant, the First Applicant repeats paragraphs 40 to 41 below.

40. The First Applicant was paid at his base rate of pay (as alleged in paragraph 33(e) above) for all hours worked, including all 746 hours worked in excess of the 60 hour average and 30 hour average identified in paragraph 39 above.

41. In relation to all of the 746 hours worked by the First Applicant in excess of the 60 hour average and 30 hour average, the First Applicant did not:

- (a) perform such work pursuant to a genuine request he made to work 'voluntary' overtime;

(b) complete the 'voluntary overtime' form prescribed by the Customer Service CA containing the location where such overtime shall be performed, the date and time upon which it shall be performed and the duration of such overtime.

42. Each of the Group 2 Members worked Overtime Hours, namely each:

(a) was engaged on a part-time basis, and worked hours in excess of the 4-weekly average of their agreed part-time hours and/or worked in excess of 152 hours in certain 4-week periods; and/or

(b) was engaged on a full-time basis (not being salaried staff), and worked in excess of 152 hours in 4-week periods of their employment;

and

(c) did not perform such work pursuant to a genuine request to work 'voluntary overtime';

(d) did not complete the 'voluntary overtime' form prescribed by the Customer Service CA in relation to such Overtime Hours, including by completing the date and time upon which such work shall be performed, the location where it shall be performed and the duration of such Overtime Hours; and

(e) were paid at their 'base rates' of pay in respect of such Overtime Hours.

C-4 GROUP 2 | CONTRAVENTIONS AND LOSS

43. By reason of the matters alleged in paragraphs 4 to 6 and 35 to 37 above, the Respondent was required by the Customer Service CA to make payment to the First Applicant and each Group 2 Member of an overtime loading equal to 50% of the base rate of pay for each hour of overtime performed by the First Applicant / Group 2 Member.

44. In breach of the obligations of the Respondent as alleged in paragraph 43 above, by reason of the matters alleged in paragraphs 38 to 41 above, the Respondent underpaid the First Applicant in respect of the Overtime Hours in an amount which equals 50% of his relevant base rate of pay for all hours worked in excess of 60 hours in each of the 16 four-week periods and in excess of 30 hours in the final two-week period identified in paragraphs 38 to 41 above.

Particulars

That is, 50% of the First Applicant's base rate of pay for 746 hours, being the total hours which the Respondent's records indicate the First Applicant worked in excess of 60 hours in each of these 16 four-week periods and in excess of 30 hours in the final two-week period.

45. In breach of the obligations of the Respondent as alleged in paragraph 43 above, by reason of the matters alleged in paragraph 42 above, the Respondent underpaid each of the Group 2 Members in respect of Overtime Hours in an amount which equals 50% of their relevant base rate of pay for all hours worked as Overtime Hours.
46. By breaching the Customer Service CA as alleged in paragraphs 44 and 45 above, the Respondent breached clause 4.2 of the Customer Service CA.
47. By contravening the Customer Service CA as alleged in paragraph 46 above, the Respondent contravened section 323 of the FW Act.
48. By reason of the contraventions as alleged in paragraph 47 above, each of the First Applicant and the Group 2 Members is entitled to an order pursuant to section 545 of the FW Act that the Respondent is required to compensate him or her for the underpayment of entitlements owed to each of them.

D GROUP 3 CLAIM: SHANNAN MAHONEY UNDERPAYMENT

D-1 REPRESENTATIVE PROCEEDINGS

49. The Third Applicant brings this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth):
- (a) in her own right; and
 - (b) on behalf of current and former employees of the Respondent who, at any time during the Collective Agreement Period and Modern Award Period:
 - (i) were employed in salaried managerial positions of:
 - (1) store manager;
 - (2) assistant store manager;

- (3) store manager in training;
- (4) food manager;
- (5) assistant food manager; or
- (6) food manager in training,

pursuant to the Full Time CA in the Collective Agreement Period and the Award during the Modern Award Period,

- (ii) were directed verbally from time to time, to perform work in excess of 38 hours per week (**Overtime**);
- (iii) were not paid their entitlements arising from the Overtime arising from the Full Time CA in the Collective Agreement Period and Award during the Modern Award Period; and
- (iv) have not, as at the date of commencement of this proceeding, commenced proceedings against the Respondent in respect of the underpayments of their entitlements relating to the Overtime.

(Group 3 Members).

50. The Third Applicant:

- (a) commenced employment with the Respondent on 1 February 2017;
- (b) between 1 February 2017 and 17 August 2017 was engaged pursuant to the Customer Service CA as a part-time 'trainee' console operator and completed her traineeship on 17 August 2017;
- (c) around 17 August 2017 was promoted to the full-time position of 'manager in training' and was, during this period;
 - (i) employed as a full-time 'manager in training' pursuant to the Full Time CA; and
 - (ii) paid an annualised salary during this period;

- (d) between 30 June 2018 and 22 October 2018 was employed as a full-time 'manager in training' pursuant to the Award and was paid an annualised salary during this period.
- (e) between 22 October 2018 and 5 November 2018 was promoted to the full-time position of 'acting store manager', was employed in this position pursuant to the Award and was paid an annualised salary of \$45,975 during this period;
- (f) between 5 November 2018 and the termination of her employment on or around 27 August 2019 was promoted to the full-time position of 'store manager', was employed in this position pursuant to the Award and was paid an annualised salary of \$45,975 from 5 November 2018 until March 2019 and \$48,273 until the termination of her employment on or around 27 August 2019;
- (g) performed these positions at 'On The Run' service stations operated by the Respondent located at:
- (i) 1477 Main South Road, Darlington, South Australia;
 - (ii) 80 Oaklands Road, Glengowrie, South Australia; and
 - (iii) 50 Adelaide Road, Mannum, South Australia,
- (h) when employed as a 'manager in training', 'acting store manager' and 'store manager' per sub-paragraphs (c) to (f) above was paid her annualised salary by way of weekly payments of equal amounts which totalled over twelve months to the annualised salary;
- (i) other than by receiving payment of these annualised salary amounts, did not receive any other payments from the Respondent in satisfaction of her entitlements arising from her work with the Respondent;
- (j) throughout her employment performed duties which included:
- (i) predominantly the duties associated with working as a console operator (being those duties set out at paragraph 9(c) above in relation to the Second Applicant);

- (ii) general service station duties, including barista duties, limited food service and cleaning duties; and
- (iii) after being engaged in 'managerial' roles spent a small proportion of her time attending to rostering and managing staff who would work at the service station where she was stationed, receiving and overseeing deliveries at the service station, processing staff time and attendance logs through the Respondent's 'Time2Work' system and handling customer complaints'.

51. When employed pursuant to the Award in the Modern Award Period the Third Applicant was working under the 'Vehicle Industry RS&R employee level 4 R4' classification in the Award and was classified as such by the Respondent.

52. Each Group 3 Member was at all material times:

- (a) employed by the Respondent in a full-time salaried position in one of the positions set out at sub-paragraph 49(b)(i) above;
- (b) paid an annualised salary purportedly in satisfaction of all entitlements arising from the Full Time CA and Award;
- (c) covered by and employed pursuant to the Full Time CA during the Collective Agreement Period;
- (d) covered by and employed pursuant to the Award during the Modern Award Period;
- (e) directed verbally to work:
 - (i) his or her ordinary hours; and
 - (ii) perform work outside of these rostered hours,
- (f) performed duties which were substantially the same as those performed by the Third Applicant and described in sub-paragraph 50(j) above; and
- (g) during the Modern Award Period were working under the Vehicle Industry RS&R employee Level 4 R4 classification contained in the Award.

D-2 GROUP 3 | ENTITLEMENT

53. Pursuant to the Full Time CA, the ordinary hours of the Third Applicant and each of the Group 3 Members could not exceed 38 hours per week.
54. Pursuant to the Full Time CA, if the Third Applicant or any of the Group 3 Members worked in excess of 38 hours per week in any given week, such work was to be treated as 'overtime' work and was to be paid at the rate of time and one-half (150%) of the applicable base rate of pay.

Particulars

Clause 4.2 Full Time CA.

55. Pursuant to the Full Time CA, the sole exception to the entitlement to overtime loading set out in paragraph 54 above was that such an overtime loading could be avoided where the employee elected to work 'voluntary overtime' being:
- (a) overtime worked arising from an employee's genuine request to work 'voluntary overtime' at their base rate of pay;
 - (b) such requests must be made in writing in the prescribed form which identified:
 - (i) the location where such 'voluntary overtime' shall be performed;
 - (ii) the date and time upon which such 'voluntary overtime' shall be performed; and
 - (iii) the duration (number of hours in a week) for which such 'voluntary overtime' shall be performed.

Particulars

Clause 4.2.1 and Schedule 2 Full Time CA.

56. Pursuant to the Award, the ordinary hours of the Third Applicant and each of the Group 3 Members during the Modern Award Period could not exceed 38 hours per week.

Particulars

Clause 37.2 of the Award.

57. Pursuant to the Award, if the Third Applicant or any of the Group 3 Members worked in excess of 38 hours per week in any given week, such work was to be treated as 'overtime' work by the Award and was to be paid at the following rates:

(a) where such overtime work was performed on a weekday or Saturday at the rate of time and one-half (150%) for the first three hours and double time thereafter (200%); and

(b) where such overtime work was performed on a Sunday or public holidays at the rate of double time (200%).

Particulars

Clauses 43.1 and 43.4 of the Award.

58. Pursuant to the Award, any time worked by the Third Applicant and any of the Group 3 Members as 'ordinary time' being up to 38 hours per week on Saturdays, Sundays and public holidays attracted the following penalty rates:

(a) where such work was performed after noon on a Saturday, time and one-half (150%);

(b) where such time was performed on a Sunday, time and one-half (150%); and

(c) where such time was worked on a public holiday, double time (200%).

Particulars

Clause 43.3 of the Award.

D-3 GROUP 3 CLAIM | UNPAID WORK

59. Throughout her employment by the Respondent, the Third Applicant:

(a) was rostered on to work a pattern of five shifts per week scheduled on Tuesday, Wednesday, Thursday, Friday and Saturday for a total of 42.5 hours, 2.5 hours of which were unpaid meal breaks;

Particulars

The Respondent's rosters recorded the scheduled start and finish times for the Third Applicant during her period of employment. These rosters generally

provided for the Third Applicant to: start her shifts between 6:00am and 7:00am each day; finish her shifts between 3:00pm and 4:30pm each day; and take an unpaid meal break of 30 minutes throughout each of her shifts. These rosters operated such that the total duration of the Third Applicant's rostered shifts would be 42.5 hours, 2.5 hours of which were to be unpaid meal breaks. That is, the rosters contemplated that the Third Respondent would work 40 hours per week.

- (b) commenced work at her rostered start time;
- (c) however, finished work, on average, approximately two hours after her rostered finish time;
- (d) was not given the opportunity to take a break throughout her rostered shifts such that she worked for the entirety of her rostered shifts (and for two hours at the conclusion of each rostered shift); and.
- (e) accordingly, worked 52.5 hours each week when attending to work for rostered shifts, being 14.5 hours of overtime (i.e. in excess of ordinary hours under the Full Time CA and/or the Award).

60. The Third Applicant was required to perform such overtime as:

- (a) she was directed verbally by the Respondent that she was unable to finish her shifts until all of her duties were complete and this overtime was necessary to attend to all of the duties which had been assigned to her, being:
 - (i) operating consoles;
 - (ii) serving customers;
 - (iii) attending to staff who had approached her with questions, complaints, or other issues; and
 - (iv) attending or conducting staff meetings;
- (b) she was directed verbally by the Respondent to work additional hours when other staff members at the service stations she was working at called in sick

or where there were incidents at these service stations requiring her attention after the completion of her rostered hours;

- (c) she was so directed by the Respondent to work such additional hours because her supervisor (the Area Manager of the Respondent to whom she reported) directed her to perform such work in order to avoid incurring costs in paying non-salaried staff to fill staffing gaps in rosters.

Particulars

Such directions were given on average on about a weekly basis.

61. Further, in addition to the rostered shifts and overtime alleged in paragraph 59 above, through the course of her employment the Third Applicant:

- (a) was regularly directed by the Respondent to work additional shifts on her rostered days off, being Mondays and Sundays; and
- (b) did work such shifts, as directed for approximately 10.5 hours in duration, with no break, all such hours being overtime work.

Particulars

The Third Applicant picked up such additional shifts, on average, twice per month (such shifts being worked approximately once per month on a Sunday and once on a Monday).

61A. During the Collective Agreement Period and the Modern Award Period, in respect of employees who:

- (a) were employed by the Respondent in a full-time salaried position in one of the positions set out at sub-paragraph 49(b)(i) above;
- (b) were paid an annualised salary purportedly in satisfaction of all entitlements arising from the Full Time CA and Award;
- (c) performed duties which were substantially the same as some or all of those performed by the Third Applicant and described in sub-paragraph 50(j) above; and
- (d) either:

- (i) were covered by and employed pursuant to the Full Time CA during the Collective Agreement Period; or
- (ii) were covered by and employed pursuant to the Award during the Modern Award Period,

it was the common or general practice of the Respondent of:

- (e) directing such workers to work his or her ordinary hours; and
- (f) directing verbally such workers to perform work outside of those ordinary hours, including:
 - (i) additional hours performed at the end of their rostered shifts;
 - (ii) time worked through their scheduled breaks (their not having an opportunity to take such breaks); and
 - (iii) additional shifts which they worked as and when required by the Respondent,

(together, **Overtime Hours** for this section D of the pleadings); and

- (f) not paying any additional remuneration for performing such Overtime Hours.

Particulars

- (i) *As to the Third Applicant, the Third Applicant repeats paragraphs 67 to 68 below.*
- (ii) *Such direction was given to the other Group 3 Members regularly throughout during the course of their employment by store and area managers.:*

The Applicants will provide particulars of employees, sites, periods and circumstances (including the identity if known of the person giving such directions) of such conduct prior to the service of evidence.

~~(1) — at the store locations and in the periods listed in the Schedule of Particulars where column H is marked “Yes”; and~~

~~(2) — other store locations and periods as yet unknown to the Applicants. Further particulars will be provided following further communications with Group 3 Members and/or by way of evidence.~~

64. Despite performing the Overtime Hours of work as alleged in paragraphs 59 and 61 above, the Third Applicant only received weekly payment of her annualised salary being the salary amounts set out at paragraphs 50(c) to 50(f) above.

65. Each Group 3 Member throughout their employment in salaried positions:

(a) similarly performed Overtime Hours being:

- (i) additional hours performed at the end of their rostered shifts;
- (ii) time worked through their scheduled breaks (their not having an opportunity to take such breaks); and
- (iii) additional shifts which they worked as and when required by the Respondent,

(b) but did not receive any additional remuneration for performing such Overtime Hours, only receiving the weekly payments of their annualised salaries.

D-4 GROUP 3 CLAIM | CONTRAVENTION AND LOSS

66. By reason of the matters alleged in paragraphs 4 to 6 and 53 to 55 above, during the Collective Agreement Period, by virtue of the Third Applicant's pattern of work outlined in paragraphs 59 and 61 above, the Third Applicant was entitled by the Full Time CA during each week of her employment to:

- (a) payment of the applicable base rate of pay for 38 hours per week; and
- (b) payment at the overtime hourly rate of pay for 14.5 hours per week on the weeks when the Third Applicant did not perform an additional shift and 25 hours per week on the weeks when she did,

67. By reason of the matters alleged in paragraphs 4 to 6 and 56 to 58 above, during the Modern Award period, based on the Third Applicant's pattern of work outlined in paragraphs 59 and 61 above, the Third Applicant was entitled by the Award during each week of her employment to receive and the Respondent was obliged to:

- (a) payment of the applicable base rate of pay for 38 hours per week, being \$20.91 per hour in July 2018 for hours worked other than on Saturday after noon, Sunday and public holidays which were to be paid at a penalty rate of either \$31.365 or \$41.82 per hour in July 2018; and
- (b) payment at the overtime hourly rate of pay for 14.5 hours per week on the weeks when she did not perform an additional shift and 25 hours per week on the weeks when she did (at the rate of either \$31.365 or \$41.82 per hour in July 2018 depending upon whether such overtime was performed on a weekday / Saturday or Sunday),

being, as at July 2018, at least \$1,249.37 per week as a consequence of the overtime hours that she was working and the time that she spent working on weekends and public holidays.

68. By reason of the matters alleged in paragraphs 4 to 6 and 53 to 58 above, each of the Group 3 Members was entitled:

- (a) during the Collective Agreement Period; and
- (b) during the Modern Award Period,

to:

- (c) payment at the applicable base rate of pay for 38 hours per week; and
- (d) payment at the overtime rate of pay for Overtime Hours performed, being:
 - (i) additional hours performed at the end of their rostered shifts;
 - (ii) time worked through their scheduled breaks; and
 - (iii) additional shifts which were worked as and when required by the Respondent, and
- (e) in respect of the Modern Award Period only, payment at applicable penalty rates where work was performed on Saturdays after noon, Sundays and public holidays.

69. In breach of the obligations of the Respondent as alleged in paragraphs 64 above, during the Collective Agreement Period, the Respondent failed to pay the Third

Respondent for Overtime Hours at the overtime hourly rate required by the Full Time CA.

70. In breach of the obligations of the Respondent as alleged in paragraph 65 above, during the Modern Award Period the Respondent:
- (a) paid the Third Applicant an annualised salary as alleged in subparagraphs 50(e) and 50(f) above;
 - (b) failed to pay the Third Respondent Applicant for overtime hours at the overtime hourly rate required by the Award; and
 - (c) failed to pay the Third Respondent Applicant penalty rates as required by the Award,

and thereby failed to pay the Third Applicant in accordance with her entitlements under the Award.

71. In breach of the obligations of the Respondent as alleged in paragraphs 66 above, during the Collective Agreement Period, the Respondent failed to pay the Group 3 Members for Overtime Hours at the overtime hourly rate required by the Full Time CA.

72. In breach of the obligations of the Respondent as alleged in paragraph 66 above, during the Modern Award Period the Respondent:
- (a) paid each of the Group 3 Members annualised salaries payable and paid each week; and
 - (b) thereby failed to pay each Group 3 Members in accordance with their entitlements under the Award.

73. By reason of the matters alleged in paragraphs 66 to 70 above, by failing to pay amounts to which the Third Applicant and each Group 3 Member was entitled:
- (a) during the Collective Agreement Period, the Respondent breached the Full Time CA; and
 - (b) during the Modern Award Period, the Respondent breached the Award.

74. By reason of the matters pleaded in paragraph 71 above, by:

- (a) breaching the Full Time CA and Award in failing to pay the amounts in respect of the work performed by the Third Applicant and each Group 3 Member, the Respondent contravened section 323 of the FW Act;

Particulars

Each Group 3 Member was underpaid by the amounts by which their annualised salaries were insufficient to satisfy all monetary entitlements arising from the Full Time CA / Award, including their entitlements to be paid for overtime and penalty rates.

- (b) by so breaching the Award the Respondent contravened section 45 of the FW Act.

75. By reason of the contraventions alleged in paragraph 72 above, each of the Third Applicant and each Group 3 Member is entitled to an order pursuant to section 545 of the FW Act that the Respondent is required to compensate each of them for the underpayment of entitlements owed by reason of the matters pleaded in this section D of this claim.

E GROUP 4 CLAIM: TRAINEE UNDERPAYMENT

E-1 GROUP 4 REPRESENTATIVE PROCEEDINGS

76. Each of the First, Fourth and Fifth Applicants bring this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth):

- (a) in their own right; and
- (b) on behalf of current and former employees of the Respondent who, at any time during the Collective Agreement Period:
- (i) were employed as 'trainees' in the positions of:
- (1) console operator;
 - (2) driveway attendant; or
 - (3) roadhouse (food) attendant,

- (ii) pursuant to the Customer Service CA during the Collective Agreement Period,
- (iii) were engaged as 'off-the-job' trainees during their employment in this period
- (iv) performed work during this period and were paid a base rate of pay for such work which was lower than the comparable base rate of pay that would have applied had the Award applied to them and not the Customer Service CA.

(Group 4 Members)

77. In addition to the material facts of the First Applicant's employment described at paragraph 33 above, for the purposes of this Claim 4 the First Applicant:

- (a) at the commencement of his employment and training arrangement had been out of secondary school for a period of more than five years;
- (b) entered into a training contract with the Respondent which was registered with and approved by the South Australian Department of State Development as a Training Contract within the meaning of Part 4 of the *Training and Skills Development Act 2008* (SA);
- (c) such a training contract and arrangement provided that:
 - (i) the First Applicant's training was directed towards his receiving the qualification of 'Certificate III in Retail Operations (SIR30212)';
 - (ii) the First Applicant would receive training from a Registered Training Organisation being Training, Innovation, Management and Enterprise Pty Ltd (later known as Time Education and Training Pty Ltd) (**TIME**); and
 - (iii) such training was to be provided to the First Applicant on an 'off-the-job' basis for the purposes of Schedule E of the Award such that it was contemplated that the First Applicant would attend to any such training outside of his ordinary working hours and would not be paid for his time spent attending to such training.

78. The Fourth Applicant:

- (a) commenced employment with the Respondent on 2 July 2014;
- (b) between 2 July 2014 and 29 March 2016 was employed as a 'trainee' roadhouse (food) attendant at an 'Oporto' operated by the Respondent as part of a complex centred around one of its service stations at 248 Curtis Road, Munno Para West, South Australia;
- (c) completed his 'traineeship' on 29 March 2016 and thereafter continued to be employed by the Respondent as a roadhouse (food) attendant until 14 December 2016;
- (d) performed duties consistent with working as a roadhouse attendant, including fast food preparation in accordance with food safety standards, stocktake, performing temperature checks of prepared food, customer service and point of sale operations, cleaning and maintenance of front of house and back of house areas including cleaning tables, removing rubbish and cleaning floors;
- (e) was engaged as a 'part-time' trainee employee pursuant to the Customer Service CA initially to perform 25 ordinary hours per week which was later revised to 15 hours per week;
- (f) at the commencement of his employment and training arrangement had been out of secondary school for a period of more than five years;
- (g) entered into a training contract with the Respondent which was registered with and approved by the South Australian Department of State Development as a Training Contract within the meaning of Part 4 of the *Training and Skills Development Act 2008* (SA);
- (h) such a training contract and arrangement provided that:
 - (i) the Fourth Applicant's training was directed towards his receiving the qualification of 'Certificate III in Retail Operations (SIR30212)';
 - (ii) the Fourth Applicant would receive training from a Registered Training Organisation being TIME; and

(iii) such training to be provided to the Fourth Applicant on an 'off-the-job' basis for the purposes of Schedule E of the Award such that it was contemplated that the Fourth Applicant would attend to any such training outside of his ordinary working hours and would not be paid for time spent attending to such training;

(i) during his employment in the 'traineeship' was paid a base rate of pay of \$16.35 per hour on weekdays and \$18 per hour on weekends and public holidays;

79. The Fifth Applicant:

(a) commenced employment with the Respondent on 7 January 2015;

(b) between 7 January 2015 and 15 April 2015 was employed as a 'trainee' console operator pursuant to the Customer Service CA at the 'On The Run' service station operated by the Respondent and located at 41/49 West Terrace, Adelaide, South Australia;

(c) performed duties consistent with working as a console operator, including point of sale operations, cash drops, conducting fuel dips, preparing pastries for consumption at the instore bakery, cleaning the service station and toilet area, removing rubbish, attending to lottery ticket sales, cigarette sales and general retail and food sales over the counter, including making coffee, serving pastries etc. and performing stocktakes;

(d) was engaged as a part-time 'trainee' employee pursuant to the Customer Service CA to perform 25 ordinary hours per week;

(e) at the commencement of his employment and training arrangement had been out of secondary school for a period of more than three years;

(f) entered into a training contract with the Respondent which was registered and approved by the South Australian Department of State Development as a Training Contract within the meaning of Part 4 of the *Training and Skills Development Act 2008* (SA);

(g) such a training contract and arrangement provided that:

- (i) the Fifth Applicant's training was directed towards his receiving the qualification of 'Certificate III in Retail operations (SIR30212)';
 - (ii) the Fifth Applicant would receive training from a Registered Training Organisation being TIME; and
 - (iii) such training to be provided to the Fifth Applicant on an 'off-the-job' basis for the purposes of Schedule E of the Award such that it was contemplated that the Fifth Applicant would attend to any such training outside of his ordinary working hours and would not be paid for his time spent attending to such training;
- (h) was, throughout his employment as a 'trainee', paid a base rate of pay of \$14.2740 per hour on weekdays and \$16.3360 per hour on weekends and public holidays.

80. During their traineeships, none of the First, Fourth and Fifth Applicants engaged in any 'on-the-job' training as a part of their training contracts and the training programs which they were enrolled in in their employment with the Respondent.

81. During their traineeships, all time spent by the First, Fourth and Fifth Applicants in attending to such training courses was spent either:

- (a) on their own time outside of hours spent in employment with the Respondent; or
- (b) during staff meetings that they attended with representatives of the Respondent which they were not paid to attend.

82. Each Group 4 Member was:

- (a) employed by the Respondent as a console operator, driveway attendant or roadhouse (food) attendant;
- (b) employed pursuant to the Customer Service CA;
- (c) engaged as a 'trainee' and in a traineeship such that they:
 - (i) entered into a training contract with the Respondent which was registered with and approved by the South Australian Department of

State Development as a Training Contract within the meaning of Part 4 the *Training and Skills Development Act 2008* (SA);

- (ii) such training contract and arrangement providing that:
 - (1) they were working towards receiving the qualification of 'Certificate III in Retail Operations (SIR30212)' or Certificate II in Automotive Sales (AUR21105) or other qualification;
 - (2) they would receive training from a Registered Training Organisation being TIME or some other Registered Training Organisation nominated by the Respondent in the Group 4 Member's training contract or arrangement; or
 - (3) such training was to be provided to them on a solely 'off-the-job' basis for the purposes of Schedule E of the Award such that it was contemplated that they would attend to such training outside of their ordinary working hours and would not be paid for time spent attending to such training,
- (iii) such training, if at all provided, was provided on a solely 'off-the-job' basis such that they did not engage in any training during paid working hours; and
- (d) they were paid a base rate of pay which was lower than that which would have applied to them under the Award had the Award applied to their employment with the Respondent (instead of the Customer Service CA).

E-2 GROUP 4 | ENTITLEMENT

83. Throughout their employment as trainees in the positions of console operator, driveway attendant and roadhouse (food) attendant pursuant to the Customer Service CA each of the First, Fourth and Fifth Applicants and each member of Group 4 was covered by the Award within the meaning of section 48 of the FW Act.

84. Had the Award applied to each of the First, Fourth and Fifth Applicants and each Group 4 Member during this period within the meaning of section 47 of the FW Act:

- (a) the First Applicant and each Group 4 Member employed during this period as a trainee driveway attendant would have been employed pursuant to the

Award in the classification of Vehicle Industry RS&R Employee Level 1 R1 or Level 4 R4;

- (b) The Fifth Applicant and each Group 4 Member employed during this period as a trainee console operator would have been employed pursuant to the Award in the classification of Vehicle Industry RS&R Employee Level 4 R4; and
- (c) The Fourth Applicant and each Group 4 Member employed during this period as a trainee roadhouse (food) attendant would have been employed pursuant to the Award in the classification of Vehicle Industry RS&R Employee Level 2 R2.

85. As trainees engaged pursuant to the terms of a training contract operating under the *Training and Skills Development Act 2008 (SA)*, had the Award applied to each of the First, Fourth and Fifth Applicants their relevant base rate of pay under the Award would be determined in accordance with Schedule E of the Award during the period of their traineeship.

Particulars

Clauses 15.1 and 35.5 of the Award as was in place during January 2015 in each of the First, Fourth and Fifth Applicant's traineeship

86. Had the Award applied to each of the First, Fourth and Fifth Applicants during their traineeships with the Respondent, the relevant base rate of pay under the Award which would have applied to each of them would have been:

- (a) \$18.07 per hour between 28 May 2014 and 30 June 2014;
- (b) \$18.61 per hour between 1 July 2014 and 30 June 2015 ; and
- (c) \$19.08 per hour between 1 July 2015 and 30 June 2016.

Particulars

Prescribed base rate of pay for trainee in 'Wage Level B' who has been out of school for such period of time after completion of year 12 and who is a trainee per Schedules E and E1 of Award in place at times above. 'Wage Level B' applies as the training package which each of these Applicants were enrolled in was working

towards a Certificate III in Retail Operations, that is a 'retail services' training package listed in clause E.1.2 or in any event by operation of clause E.5.4.

87. The 20% discount that can be applied to these wage rates for 'on-the-job' trainees (or partly 'on-the-job' trainees) was not applicable to each of the First, Fourth and Fifth Applicants because all of their training was delivered 'off-the-job', if at all.

Particulars

Clause E.5.2(f) of Schedule E of the Award.

88. The base rates of pay set out in paragraph 84 above are higher than those which were paid to each of the First, Fourth and Fifth Applicants during their traineeships (being those amounts set out at paragraphs 33(e), 76(i) and 77(h) above).
89. The Customer Service CA applies in respect of the First, Fourth and Fifth Applicants during their traineeships such that the base rates of pay which the First, Fourth and Fifth Applicants were entitled to receive under the Customer Service CA were equal to the amounts set out in paragraph 84 above at the relevant times.

Particulars

By operation of Item 13(2) of Schedule 9 of the FW Transitional Act.

90. As to each of the Group 4 Members:
- (a) each was covered by the Award within the meaning of section 48 of the FW Act during their employment as trainees pursuant to the Customer Service CA;
 - (b) had the Award applied to them, it would have applied such that the classifications of Vehicle Industry RS&R Employee Level 1 R1, Level 2 R2 or Level 4 R4 (as the case may be) applied to them during their employment as trainees pursuant to the Customer Service CA;
 - (c) each was enrolled in training packages which worked towards their obtaining a 'Certificate III in Retail Operations' or Certificate II in Automotive Sales (AUR21105) or other qualification that is a 'retail services' training package such that had the Award applied to them they would have been entitled to have been paid at Wage Level B under Schedule E of the Award;

- (d) each was entitled to a base rate of pay equal to that set out in paragraph 84 above where they had been out of school for more than five years at the commencement of their traineeships (or more than three years after the completion of year 12);
- (e) in any event, in respect of Group 4 Members who had been out of school for a shorter period of time, such members were entitled to the relevant base rates of pay contained in Schedule E of the Award determined with reference to their age and the period of time that had elapsed since they had left school;
- (f) consequently, the Customer Service CA applies to each Group 4 Member during their traineeships such that the rates of pay which each Group 4 Member was entitled to receive is at least equal to that contained in Schedule E to the Award (determined with reference the period of time that has elapsed since they left school); and
- (g) the rates of pay which were paid by the Respondent to each of the Group 4 Members during their traineeships pursuant to the Customer Service CA were less than those contained in Schedule E of the Award described above.

E-3 GROUP 4 | CONTRAVENTION AND LOSS

- 91. By reason of the matters pleaded in paragraphs 4 to 6 and 81 to 88 above, the Respondent was required to pay each of the First, Fourth and Fifth Applicant and each Group 4 Member a base rate of pay which was at least equal to that contained in Schedule E of the Award applicable to such employees during all periods of these employees' traineeships.
- 92. In breach of its obligations as alleged in paragraph 89 above, the Respondent failed to pay each of the First, Fourth and Fifth Applicants and each Group 4 Member a base rate of pay which was at least equal to that contained in Schedule E of the Award applicable to such employees during all periods of these employees' traineeships.

Particulars

Each of the First, Fourth and Fifth Applicants and each Group 4 Member has been underpaid by an amount equal to the difference between the rate that they were

entitled to be paid at and the rate that they were paid at pursuant to the Customer Service CA.

93. By breaching its obligations as alleged in paragraph 90 above, the Respondent breached the terms of the Customer Service CA as amended by the operation of Item 13 of Schedule 9 of the FW Transitional Act and the Award and thereby contravened section 323 of the FW Act.
94. By reason of the breaches alleged at paragraphs 90 and 91 above, each of the First, Fourth and Fifth Applicants and each Group 4 Member is entitled to an order pursuant to section 545 of the FW Act that the Respondent is required to compensate each of them for the underpayment of entitlements owed by reason of the matters pleaded in this part E of this claim.

F GROUP 5 CLAIM: UNLAWFUL DEDUCTIONS

F-1 REPRESENTATIVE PROCEEDINGS

95. Each of the First, Second, Third, Fourth and Fifth Applicants bring this proceeding as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth):
- (a) in their own right; and
 - (b) on behalf of current and former employees of the Respondent who, at any time during the Collective Agreement Period and Modern Award Period:
 - (i) were employed pursuant to the Customer Service CA or Full Time CA during the Collective Agreement Period and Award during the Modern Award Period,
 - (ii) had amounts deducted from their pay purportedly for the cost of:
 - (1) uniforms which they were directed by the Respondent to wear when working; and
 - (2) criminal history checks obtained by the Respondent prior to their commencing in their employment.

(Group 5 Members)

Particulars

- (i) *The First Applicant brings the claim on behalf of Group 5 Members during the Collective Agreement Period.*
- (ii) *The Second Applicant brings the claim on behalf of Group 5 Members during the Collective Agreement and Modern Award Periods.*
- (iii) *The Third Applicant brings the claim on behalf of Group 5 Members during the Collective Agreement and Modern Award Periods.*
- (iv) *The Fourth Applicant brings the claim on behalf of Group 5 Members during the Collective Agreement Period.*
- (v) *The Fifth Applicant brings the claim on behalf of Group 5 Members during the Collective Agreement Period.*

F-2 GROUP 5 | UNLAWFUL DEDUCTIONS

96. Each of the First, Second, Third, Fourth and Fifth Applicants and Group 5 Members had amounts totalling to:
- (a) \$150 deducted from their pay purportedly to cover the cost of a uniform provided to each Applicant that they may wear during their working hours (\$90 in the case of the Third Applicant and \$205 in the case of the Second Applicant); and
 - (b) \$40 deducted from their pay purportedly to cover the costs of a police check performed by the Respondent prior to their commencing employment.
97. In respect of the First, Second, Third, Fourth and Fifth Applicants these deductions were made on the following dates in respect of the following amounts:
- (a) For the Second Applicant:
 - (i) \$40 on 30 October 2013 purportedly for the costs of a police check; and
 - (ii) \$40 on 6 November 2013, \$40 on 13 November 2013, \$40 on 20 November 2013, \$30 on 27 November 2013 and \$55 on 15 August 2018 totalling \$205 purportedly for the costs of a uniform,

- (b) For the First Applicant:
- (i) \$20 on each 4 June 2014 and 11 June 2014 totalling \$40 purportedly for the costs of a police check; and
 - (ii) \$30 on 18 June 2014, \$30 on 25 June 2014, \$20 on 2 July 2014, \$30 on 9 July 2014, \$20 on 16 July 2014, \$20 on 23 July 2014 totalling \$150 purportedly for the costs of a uniform,
- (c) For the Third Applicant:
- (i) \$30 on 8 February 2017 and \$10 on 15 February 2017 totalling \$40 purportedly for the costs of a police check; and
 - (ii) \$10 on 22 February 2017, \$10 on 1 March 2017, \$10 on 8 March 2017, \$20 on 15 March 2017, \$10 on 22 March 2017, \$10 on 29 March 2017, \$20 on 5 April 2017 totalling \$90 purportedly for the costs of a uniform,
- (d) For the Fourth Applicant:
- (i) \$40 on 9 July 2014 purportedly for the costs of a police check; and
 - (ii) \$40 on 16 July 2014, \$25 on 23 July 2014, \$25 on 30 July 2014, \$25 on 6 August 2014, \$25 on 13 August 2014 and \$10 on 20 August 2014 totalling \$150 purportedly for the costs of a uniform,
- (e) For the Fifth Applicant:
- (i) \$20 on each 14 January 2015 and 21 January 2015 totalling \$40 purportedly for the costs of a police check; and
 - (ii) \$20 on 28 January 2015, \$20 on 4 February 2015, \$20 on 11 February 2015, \$10 on 18 February 2015, \$20 on 25 February 2015, \$20 on 4 March 2015, \$20 on 11 March 2015 and \$20 on 18 March 2015 totalling \$150 purportedly for the costs of a uniform.

Particulars

Employee Previous Earnings reports for each of the First, Second, Third, Fourth and Fifth Applicants.

98. In respect of the First, Third, Fourth and Fifth Applicants the \$150 (or \$90 in the case of the Third Applicant) deducted purportedly for the costs of their work uniform was reimbursed to each of these Applicants upon the termination of each of their employment.
99. In respect of the Second Applicant the \$205 deducted purportedly for the costs of their work uniform was not reimbursed upon the termination of their employment despite his uniform being returned.
100. None of the First, Second, Third, Fourth or Fifth Applicants or any of the Group 5 Members authorised the Respondent to make such deductions in writing in an authorisation which specified the amount of the deduction.
101. The deductions referred to in paragraphs 94 to 95 above were not made principally for the benefit of the relevant First, Second, Third, Fourth or Fifth Applicants or any Group 5 Member.
102. The deductions referred to in paragraphs 94 to 95 above were not authorised by the Customer Service CA, the Full Time CA, the Award or any enterprise agreement, modern award or law of the Commonwealth or a State or Territory.
103. Accordingly, these deductions were not permitted deductions within the meaning of section 324 of the FW Act.

F-3 GROUP 5 | CONTRAVENTION AND LOSS

104. By reason of the matters pleaded in paragraphs 4 to 6 and 94 to 101 above, the Respondent was required to pay each of the First, Second, Third, Fourth and Fifth Applicants and each Group 5 Member in full and without the deductions referred to in paragraphs 94 to 95 above.

Particulars

Sections 323, 324 FW Act.

105. By making the deductions referred to in paragraphs 94 to 95 above from the pay of each the First, Second, Third, Fourth and Fifth Applicant and each Group 5 Member, the Respondent contravened section 323 of the FW Act.

106. By reason of the contravention alleged in paragraph 103 above, the First, Second, Third, Fourth and Fifth Applicant and each Group 5 Member is entitled to an order pursuant to section 545 of the FW Act that the Respondent is required to compensate each of them for the underpayment of entitlements owed by reason of the Respondent's contravention of the FW Act pleaded in this part F of this claim.

G COMMON ISSUES

107. The questions of law or fact common to the claims of the members of Group 1, 2, 3, 4 and 5 in this proceeding are as follows.

105A. In respect of Group 1 Members, whether it there was a common or general practice of the Respondent as alleged in paragraph 15A during the Collective Agreement Period and the Modern Award Period of directing employees being either a console operator, driveway attendant or roadhouse (food) attendant to:

- (a) — work in accordance with his or her rostered hours;
- (b) — attend work 10 minutes prior to the commencement of their shift; and
- (c) — perform Pre-Shift Work, by doing various duties during this period, and not be paid for such work.

105B. In respect of Group 1 Members, during the Collective Agreement Period and the Modern Award Period, who were:

- (a) either a console operator, driveway attendant or roadhouse (food) attendant;
- (b) rostered for work for 6 or more hours;
- (c) allocated in the Respondent's rostering system an unpaid meal break of 30 minutes in each such shift,

whether it there was a common or general practice of the Respondent as alleged in paragraph 20A to:

- (d) — direct such employees to undertake Meal Break Work, by directing them not to take such meal breaks but to attend to customers during this period and/or be available to attend to customers during this period without being given additional time for a meal break; and

~~(e) — pay those employees as if they had taken such rostered unpaid meal breaks during their shift (with 30-minute deduction from their pay on each shift).~~

105C In respect of Group 1 Members, whether it there was a common or general practice of the Respondent during the Collective Agreement Period and the Modern Award Period as alleged in paragraph 22A. of directing employees being either a console operator, driveway attendant or roadhouse (food) attendant:

~~(a) — to work in accordance with his or her rostered hours;~~

~~(b) — to perform duties which could not be completed during their scheduled shifts, including because they were unable to leave their station unattended and were required to serve customers;~~

~~(c) — not to leave work at the conclusion of their shifts until their duties were completed; and~~

~~(d) — to perform Post-Shift Work, by attending to such accumulated duties at the end of their shifts;~~

~~(e) — and not paying such employees for such Post-Shift work.~~

108. In respect of Group 1 Members whether, on the proper interpretation of the Customer Service CA and the Award, the Respondent was required to pay each group member for:

(a) time spent attending to the Pre-Shift Work;

(b) time spent attending to the Post-Shift Work; and

(c) time spent attending to the Meal Break Work.

106A. In respect of Group 2 Members, during the Collective Agreement Period, who:

(a) were either a console operator, driveway attendant or roadhouse (food) attendant;

(b) were engaged either:

- (i) on a part-time basis, and who worked hours in excess of the 4-weekly average of their agreed part-time hours and/or worked in excess of 152 hours in certain 4-week periods; and/or
- (ii) on a full-time basis (not being salaried staff), and who worked in excess of 152 hours in 4-week periods of their employment,
- (c) did not perform such work pursuant to a genuine request to work 'voluntary overtime'; and
- (d) did not complete the 'voluntary overtime' form prescribed by the Customer Service CA in relation to such overtime, including by completing the date and time upon which such work shall be performed, the location where it shall be performed and the duration of such overtime,

whether the Respondent had a common or general practice of only paying such staff at their 'base rates' of pay in respect of such overtime.

109. In respect of Group 2 Members whether, on the proper interpretation of the Full Time CA, the Respondent was required to pay each group member an overtime loading for:

- (a) for part time employees:
 - (i) time spent working in excess of their agreed part-time hours (averaged over a four-week period); or
 - (ii) time spent in excess of 152 hours in a four-week period;
- (b) for full time employees, time spent working in excess of 152 hours in a four-week period,

in circumstances where such work was not performed pursuant to the 'voluntary overtime' regime contained in the Customer Service CA.

107A. In respect of Group 3 Members, during the Collective Agreement Period and the Modern Award Period, who:

- (a) were employed by the Respondent in a full-time salaried position in one of the positions set out at sub-paragraph 49(b)(i) above;

- (b) were paid an annualised salary purportedly in satisfaction of all entitlements arising from the Full Time CA and Award; and
- (c) performed duties which were substantially the same as some or all of those performed by the Third Applicant and described in sub-paragraph 50(j) above; and
- (d) either:
 - (i) were covered by and employed pursuant to the Full Time CA during the Collective Agreement Period; or
 - (ii) were covered by and employed pursuant to the Award during the Modern Award Period;

whether ~~it~~ there was the common or general practice of the Respondent of as alleged in paragraph 61A(e) to (g);

- ~~(e) — directing such workers to work his or her ordinary rostered hours; and~~
- ~~(f) — directing such workers to perform work outside of these rostered hours, including:

 - ~~(i) — additional hours performed at the end of their rostered shifts;~~
 - ~~(ii) — time worked through their scheduled breaks (their not having an opportunity to take such breaks); and~~
 - ~~(iii) — additional shifts which they worked as and when required by the Respondent; and~~~~
- ~~(g) not paying any additional remuneration for performing such overtime, only receiving the weekly payments of their annualised salaries.~~

110. In respect of Group 3 Members whether, on the proper interpretation of the Full Time CA and Award, the Respondent was required to pay each group member employed in a salaried position amounts above the weekly annualised salary payments that were made to such members, in satisfaction of these members entitlements to additional payments by reason of:

- (a) these members performing regular scheduled overtime by way of additional work before, during and after their shifts;
- (b) these members performing regular unscheduled overtime by way of the performance of additional shifts on their usual rostered days off; and
- (c) these members performing some of their work at times and on days which entitled them to penalty rates.

111. In respect of Group 4 Members whether, on the proper interpretation of the Customer Service CA, FW Transitional Act and FW Act, the members were entitled to a base rate of pay equal to the base rate of pay which would have applied had the Award determined the terms of such members' employment and not the Customer Service CA.

112. In respect of Group 5 Members, whether, on the proper interpretation of the FW Act, Award, Customer Service CA and the Full Time CA the deductions taken from members wages purportedly to meet the costs of their uniforms and police checks undertaken by the Respondent (whether or not reimbursed at some later date) were in contravention of the FW Act.

H REMEDIES

113. The Applicants seek a declaration that the Respondent has contravened:

- (a) sections 323 and 45 of the FW Act as alleged in paragraphs 29 and 30 above;
- (b) section 323 of the FW Act as alleged in paragraph 47 above;
- (c) sections 323 and 45 of the FW Act as alleged in paragraphs 72(a) and 72(b) above;
- (d) section 323 of the FW Act as alleged in paragraph 91 above; and
- (e) section 323 of the FW Act as alleged in paragraph 103 above.

114. The Applicants seek an order for compensation pursuant to section 545 of the FW Act for loss suffered by the Applicants and the members of each Group 1, 2, 3, 4 and 5 in connection with these contraventions of the FW Act, namely the loss pleaded at paragraphs 31, 48, 73, 92 and 104 above.

115. The Applicants seek an order for interest on such amounts of compensation up to the date of judgment pursuant to section 547 of the FW Act.

116. The Applicants seek an order for the payment of a pecuniary penalty, to be paid to each of the Applicants and members of each Group 1, 2, 3, 4 and 5 to be ordered as a consequence of each of the Respondent's contraventions of section 323 and 45 of the FW Act as set out in paragraph 111 above.

Schedule of Particulars

A	B	C	D	E	F	G	H	I
Location	Claim: Pre-shift work	Time Period	Claim: Post-shift work	Time Period	Claim: Meal Break Work	Time Period	Claim: Managers overtime hours	Time Period
Alberton – 156 Port Rd	Yes	2015-2018	Yes	2015-2018	Yes	2015-2018		
Aldinga – 3 Port Rd	Yes	2015-2018	Yes	2015-2020	Yes	2015-2020		
Angle Park – 610 South Rd	Yes	2014-2019	Yes	2014-2019	Yes	2014-2019		
Angle Vale – 131 Heaslip Rd	Yes	2016-2019	Yes	2015-2019	Yes	2014-2019		
Athelstone – 310 Gorge Rd			Yes	2016	Yes	2014		
Balhannah – 93 Onkaparinga Valley Road	Yes	2017-2019	Yes	2017-2019		2017-2019		
Belair – 1 Main Rd	Yes	2014-2015	Yes	2014-2015				
Berri – 1314 Old Sturt Hwy	Yes	2014-2020	Yes	2015	Yes	2014-2019		
Blackwood – 203 Main Rd	Yes	2017-2018	Yes	2014-2017	Yes	2014-2017		
Blair Athol – 402 Main North Rd			Yes	2014-2019	Yes	2013-2019	Yes	2015-2020
Bordertown – 2 Dukes Hwy			Yes	2014-2016	Yes	2014-2016		
Brighton – 480 Brighton Rd	Yes	2016-2019	Yes	2014-2016	Yes	2014-2020		
Broadview – 150 Hampstead Rd	Yes	2019-2020	Yes	2014-2020	Yes	2014-2020		
Brompton – 73 Torrens Rd	Yes	2017-2020	Yes	2017-2020	Yes	2018-2020		
Cavan (Inbound) – 144 Port Wakefield Rd	Yes	2014-2016	Yes	2015-2016	Yes	2015-2016		
Cavan (Outbound-DT) – 113 Port Wakefield Rd	Yes	2014-2019	Yes	2015-2019	Yes	2014-2017		
Ceduna – 35 Eyre Hwy	Yes	2015-2017	Yes	2015-2019	Yes	2015-2019		
Christies Beach (Beach Rd) – 124 Beach Rd	Yes	2014-2017	Yes	2017-2020	Yes	2017-2019		
Christies Beach (Dyson Rd) – 159 Dyson Rd	Yes	2014-2016	Yes	2014-2017				
Clarence Park – 340 Goodwood Rd	Yes	2015-2020			Yes	2014-2016		
Darlington – 1487 Main South Rd	Yes	2014-2017	Yes	2016-2017	Yes	2014-2018		
Davoren Park – 41 Peachey Rd	Yes	2014-2020	Yes	2014-2017				

A	B	C	D	E	F	G	H	I
Location	Claim: Pre-shift work	Time Period	Claim: Post-shift work	Time Period	Claim: Meal Break Work	Time Period	Claim: Managers overtime hours	Time Period
Dernancourt - 819 Lower North-East Rd	Yes	2014-2016			Yes	2014-2016		
Dry Creek - 11 Vater St	Yes	2017-2020	Yes	2014-2020	Yes	2013-2016		
Elizabeth - 17 Philip Hwy								
Elizabeth (DT) - 11 Elizabeth Way			Yes	2015	Yes	2014-2018		
Elizabeth South - Lot 2 John Rice Ave	Yes	2015-2020	Yes	2015-2020	Yes	2015-2020		
Erindale - 372 Kensington Rd								
Evandale - 87 Portrush Rd	Yes	2014-2020	Yes	2014-2020	Yes	2014-2020		
Flinders Park - 148 Grange Rd	Yes	2014-2018	Yes	2014-2018	Yes	2012-2018		
Fulham - 510 Henley Beach Rd					Yes	2017-2019		
Fulham Gardens (DT) - 471 Tapleys Hill Rd			Yes	2017-2020				
Fullarton - 390 Fullarton Rd	Yes	2016-2017	Yes	2016-2017	Yes	2016-2017		
Glandore (DT) - 134 Anzac Hwy	Yes	2015-2016	Yes	2014-2020	Yes	2014-2020		
Glen Osmond - 411 Glen Osmond Rd	Yes	2014-2018	Yes	2014-2019	Yes	2017-2020	Yes	2017
Glenelg East - 66 Brighton Rd								
Glengowrie - 80 Oaklands Rd	Yes	2014-2020	Yes	2014-2020	Yes	2016-2020		
Glenside - 282 Greenhill Rd	Yes	2014-2019	Yes	2014-2019	Yes	2014-2020		
Glenunga - 303 Glen Osmond Rd								
Golden Grove - Lot 1031 Helicon Dr	Yes	2014-2017	Yes	2014-2017	Yes	2014-2017		
Gouger St (Adelaide CBD) - 76 Gouger St								
Greenacres - 325 North East Rd	Yes	2019	Yes	2019	Yes	2019		
Harbourtown (DT) - Cnr Tapleys Hill Rd & West Beach Rd								

A	B	C	D	E	F	G	H	I
Location	Claim: Pre-shift work	Time Period	Claim: Post-shift work	Time Period	Claim: Meal Break Work	Time Period	Claim: Managers overtime hours	Time Period
Hazelwood Park - 465 Glynburn Rd	Yes	2016-2018			Yes	2016-2018		
Hillbank - Lot 92 Main North Rd	Yes	2014-2019	Yes	2014-2019	Yes	2014-2019	Yes	2018-2019
Hillcrest - 431 North East Rd	Yes	2016-2020	Yes	2016-2020	Yes	2016-2020		
Hilton - 79 Sir Donald Bradman Dr	Yes	2014-2015	Yes	2014-2015				
Holden Hill North - 742 North East	Yes	2014-2016	Yes	2014-2016	Yes	2014-2016		
Kadina - 19 Frances Tee	Yes	2015-2020	Yes	2018-2019	Yes	2015-2020		
Kapunda - 1 Mildred St	Yes	2014-2018	Yes	2015-2017	Yes	2014-2018		
Kensington Gardens - 408 Magill Rd	Yes	2016-2020	Yes	2015				
Kent Town - 1 Fullarton Rd	Yes	2016-2018	Yes	2016-2017	Yes	2018		
Kilburn - 427 Churchill Rd	Yes	2014-2020	Yes	2014-2020	Yes	2014-2020		
Kingscote - 10 Telegraph Rd			Yes	2018-2019	Yes	2018-2019		
Kingston (SE) - 1 Princess Hwy	Yes	2014-2017	Yes	2014-2018	Yes	2014-2017		
Kensington - 294 The Parade	Yes	2016-2020	Yes	2015	Yes	2015		
Largs Bay (Military Rd) - 354 Military Rd	Yes	2018-2020	Yes	2018-2020	Yes	2018-2020		
Littlehampton - 81 North Tee	Yes	2015-2017	Yes	2015	Yes	2017-2018		
Loxton (French Rd)	Yes	2015	Yes	2014-2015	Yes	2014-2015		
Loxton (Roundabout) - 50 Bookpurnong Tee	Yes	2015-2018	-		Yes	2015		
Mannum - 50 Adelaide Rd	Yes	2014-2020	Yes	2014-2020	Yes	2014-2020		
Marion - 752 Marion Rd	Yes	2014-2017	Yes	2014-2016	Yes	2014-2016		
Mawson Lakes - 7 Central Link	Yes	2016-2017	Yes	2016-2017	Yes	2016-2017		
Mitchell Park - 843 Marion Rd	Yes	2014-2015	Yes	2014-2019	Yes	2014-2019		
Modbury - 931 North East Rd			Yes	2017-2020	Yes	2017-2020		
Morphett Vale (Inbound) - 131 Main South Rd Morphett Vale	Yes	2015-2019	Yes	2015-2019	Yes	2015-2019		

A	B	C	D	E	F	G	H	I
Location	Claim: Pre-shift work	Time Period	Claim: Post-shift work	Time Period	Claim: Meal Break Work	Time Period	Claim: Managers overtime hours	Time Period
Morphett Vale (Outbound)- 140 Main South Rd	Yes	2017-2019	Yes	2017-2019	Yes	2014-2015		
Motorsport Park -543 Dukes Hwy	Yes	2018-2019	Yes	2019-2020	Yes	2018-2019		
Mount Barker Knott Street - 18 Knott St	Yes	2015	Yes	2015	Yes	2020		
Mount Barker Adelaide Road- 24 Adelaide Rd	Yes	2018-2020	Yes	2018-2020	Yes	2018-2020		
Mount Gambier -29 Penola Rd	Yes	2014-2017	Yes	2014-2017			Yes	2013-2017
Munno Para West - 248 Curtis Rd	Yes	2018	Yes	2018	Yes	2018		
Murray Bridge (Adelaide Rd)- 177 Adelaide Rd	Yes	2014-2017	Yes	2017	Yes	2017	Yes	2015-2020
Murray Bridge Eastside - 64 Old Princes Highway	Yes	2014-2016			Yes	2014-2016		
Newton - 72 Gorge Rd	Yes	2015-2020	Yes	2015-2020	Yes	2015-2020	Yes	2014
North Terrace - Ground Floor, 144 North Tce	Yes	2020	Yes	2020				
Norwood - 76 The Parade	Yes	2014-2017	Yes	2014-2017	Yes	2014-2017		
Nuriootpa - Gnr Tanunda Rd & New Rd	Yes	2015-2018	Yes	2015-2018	Yes	2017-2019		
Old Reynella - 133 Old South Rd	Yes	2015-2018			Yes	2014-2018	Yes	2014-2016
Parafield - Lot 12 Kings Rd	Yes	2014-2019	Yes	2016	Yes	2016		
Para Hills - 321 Bridge Rd	Yes	2014-2015			Yes	2016-2017		
Para Hills West (DT) - 1351 Main South Rd			Yes	2018-2020				
Paralowie - 926 Port Wakefield Rd	Yes	2017-2018	Yes	2020	Yes	2020		
Pasadena - 14 Fiveash Dr			Yes	2014-2020			Yes	2014-2020
Peterhead - 107 Victoria Rd			Yes	2016-2017	Yes	2016-2017		
Pinnaroo - 6 Mallee Hwy	Yes	2014-2018	Yes	2015-2016				
Plympton - 279 Anzac Hwy			Yes	2014-2017	Yes	2014-2017		

A	B	C	D	E	F	G	H	I
Location	Claim: Pre-shift work	Time Period	Claim: Post-shift work	Time Period	Claim: Meal Break Work	Time Period	Claim: Managers overtime hours	Time Period
Pooraka – 126 Bridge Rd			Yes	2014-2019	Yes	2014-2019		
Port Augusta – Cnr Princes Highway & Northern Power Station Rd	Yes	2018-2020			Yes	2018		
Port Augusta West – 4 Eyre Highway	Yes	2019	Yes	2019	Yes	2019		
Portland (VIC) – 140b Percy St			Yes	2019-2020	Yes	2019		
Prospect – 68 Prospect Rd			Yes	2015-2017	Yes	2015-2017		
Port Lincoln – 22 Kings St	Yes	2014-2018	Yes	2014-2018	Yes	2018-2020		
Port Pirie South – 328 Senate Rd					Yes	2014-2019		
Port Wakefield Rd – 859 Port Wakefield Rd			Yes	2015	Yes	2016-2018		
Pulteney Street – 139 Angas Street	Yes	2015-2020	Yes	2018	Yes	2015-2020	Yes	2014-2015
Renmark – 292 Renmark Ave	Yes	2014-2020	Yes	2014-2015	Yes	2014-2020		
Ridleyton – 231 South Rd			Yes	2014-2017	Yes	2014-2017		
Rosewater – 125 Grand Junction Rd			Yes	2014-2019	Yes	2014-2019		
Salisbury (Commercial Rd) – 55 Commercial Rd	Yes	2017	Yes	2017	Yes	2017		
Salisbury (DT) – 138 Salisbury Hwy			Yes	2014-2018	Yes	2014-2018		
Salisbury (Park Terrace) – 105 Park Terrace					Yes	2019-2020		
Seaton – 356 Tapleys Hill Rd			Yes	2015-2016	Yes	2015-2016		
Seaview Downs – 216 Seacombe Rd	Yes	2014-2020	Yes	2014-2020	Yes	2014-2020		
Sheidow Park – 2 Commercial Rd	Yes	2014-2016	Yes	2014-2016	Yes	2014-2020		
Smithfield – 23 Main North Rd	Yes	2014-2015	Yes	2014-2017	Yes	2014-2018	Yes	2014
South Plympton (DT) – 501 Marion Rd	Yes	2016-2019	Yes	2018-2020	Yes	2015-2020		
St Mary's – 1175 South Rd	Yes	2015-2019	Yes	2015-2019	Yes	2015-2017		

A	B	C	D	E	F	G	H	I
Location	Claim: Pre-shift work	Time Period	Claim: Post-shift work	Time Period	Claim: Meal Break Work	Time Period	Claim: Managers overtime hours	Time Period
Stepney – 90 Payneham Rd	Yes	2014-2019	Yes	2014-2019	Yes	2014- 2019		
Surrey Downs – 665 Golden Grove Rd	Yes	2014-2020	Yes	2014-2020	Yes	2014- 2020		
Tallem Bend (Inbound) – 10 Princes Hwy			Yes	2018	Yes	2018		
Tanunda – 242 Murray St	Yes	2017-2018	Yes	2017-2018	Yes	2017- 2018		
Thorngate – 20A Main North Rd			Yes	2016-2017	Yes	2016- 2017		
Tranmere – 172 Glyburn Rd	Yes	2014-2018	Yes	2014-2018	Yes	2014- 2018	Yes	2014
Two Wells – Old Port Wakefield Rd			Yes	2014-2015	Yes	2014- 2015		
Underdale – 282 Henley Beach Rd	Yes	2017	Yes	2017	Yes	2017		
Unley – 17 King William Rd	Yes	2015-2019	Yes	2015-2019	Yes	2015- 2019		
Victor Harbor – 310 Port Elliot Rd	Yes	2014-2018	Yes	2016	Yes	2014- 2018		
Walkerville – 68 North East Rd	Yes	2019			Yes	2014- 2018		
Wayville – 51 Goodwood Rd	Yes	2014-2018	Yes	2014-2018	Yes	2014- 2015		
Welland – 522 Port Rd	Yes	2014-2015	Yes	2014-2015	Yes	2014- 2018		
West Beach – 89 Military Rd				2014-2015	Yes	2014- 2015		
West Terrace – Cnr West Tee & Currie St			Yes	2015-2017	Yes	2015- 2017	Yes	2014- 2015
Whyalla Playford – 48-50 Playford Ave	Yes	2019	Yes	2019	Yes	2019		
Woodville Park (DT) – 701 Port Rd	Yes	2015-2017			Yes	2015- 2017		
Woodville West – 938 Port Rd	Yes	2014-2017	Yes	2016				

Date: 1 July 2020²⁷ August 2020



Signed by Rory Markham
Lawyer for the Applicant

This pleading was prepared by Rory Markham, lawyer and settled by Michael Whitbread and Justin Hogan-Doran of Counsel

Certificate of lawyer

I Rory Markham certify to the Court that, in relation to the 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: 1 July 2020²⁷ August 2020



Signed by Rory Markham
Lawyer for the Applicant

Schedule of Parties

First Applicant	Aaron Furnell
Second Applicant	Paul Young
Third Applicant	Shannan Mahoney
Fourth Applicant	Christopher Palmer
Fifth Applicant	Laurence Lagoon Williamson
Respondent	Shahin Enterprises Pty Ltd ACN 008 150 543