

Form 15
Rules 8.01(1); 8.04(1)

Originating application

No. _____ of 2022

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

Sydney Trains and another

Applicants

Australian Rail, Tram and Bus Industry Union

Respondent

To the Respondent

The Applicants apply for the relief set out in this application.

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

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

Time and date for hearing: [Registry will insert time and date]

Place: 184 Phillip St, Sydney NSW 2000

The Court ordered that the time for serving this application be abridged to [Registry will insert date, if applicable].

Date:

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

Filed on behalf of (name & role of party) Sydney Trains and NSW Trains

Prepared by (name of person/lawyer) Trent Sebbens / Kate Hollings

Law firm (if applicable) Ashurst Australia

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Address for service Level 11, 5 Martin Place
(include state and postcode) SYDNEY NSW 2000

Details of claim

On the grounds stated in the Statement of Claim, the Applicants claim:

1. A declaration pursuant to section 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) that the actions notified by the Respondent:
 - a. on 3 August 2022 in the form of station staff (being employees of the First and Second Applicants) leaving all gates open or ensuring that all gates stay open at train stations from 12:01am on 13 August 2022 continuing until 12.01am on 6 September 2022;
 - b. on 31 August 2022 in the form of station staff (being employees of the First and Second Applicants) leaving all gates open or ensuring that all gates stay open at train stations from 12:01am on 10 September 2022 continuing until 12.01am on 10 October 2022; and
 - c. on 11 September 2022 in the form of station staff delaying the performance of work when Opal machines are operative to ensure that they are inoperative from 12:01am on 21 September 2022 and continuing indefinitely,

(collectively, the **First Impugned Action**),

are not forms of "industrial action" within the meaning of that phrase in section 19 of *Fair Work Act 2009* (Cth) (**FW Act**).
2. A declaration pursuant to section 21 of the FCA Act that the actions taken by station staff and attributed to the First Respondent:
 - a. from 12.01am on 13 August 2022 until 12.01am on 6 September 2022 in the form of the First Impugned Action; and
 - b. from 12.01am on 10 September 2021 until 11.59pm on 17 September 2022 in the form of the First Impugned Action,

were not forms of "industrial action" within the meaning of that phrase in section 19 of the FW Act.
3. A declaration pursuant to section 21 of the FCA Act that the actions notified by the Respondent on 16 October 2022 in the form of station staff (being employees of the First and Second Applicants):
 - a. interrupting their performance of work for the purposes of deactivating the Opal Gates by pressing the red deactivation button on any occasion the Opal Gates are not deactivated; and/or

- b. engaging in the performance of work in a manner different from that in which it is customarily performed by deactivating the Opal Gates by pressing the red deactivation button on any occasion the Opal Gates are not deactivated,

for the period of 3.00pm to 7.00pm on each weekday from 12:01am on 20 October 2022 continuing indefinitely (collectively, the **Second Impugned Action**),

are not forms of "industrial action" within the meaning of that phrase in section 19 of the FW Act.

4. A declaration pursuant to section 21 of the FCA Act that the First Impugned Action is not "protected industrial action" within the meaning of section 408 of the FW Act due to the First Impugned Action not being authorised by the protected action ballot order made on 24 January 2022 and declared on 9 February 2022 by the Fair Work Commission, and thereby not meeting the additional requirement in section 409(2) of the FW Act.
5. A declaration pursuant to section 21 of the FCA Act and section 545 of the FW Act that the Respondent has contravened section 343(1) of the FW Act by organising action against the Applicants on 3 August 2022, 31 August 2022 and 11 September 2022 with the intent to coerce the Applicants to:
 - a. enter into an enterprise agreement with their employees on terms acceptable to the Respondent in that period; and
 - b. not to exercise a workplace right to not enter into an enterprise agreement in the form sought by the Respondent in that period,

by notifying action in the form of the First Impugned Action.

6. A declaration pursuant to section 21 of the FCA Act and section 545 of the FW Act that the Respondent has contravened section 343(1) of the FW Act by taking action against the Applicants from 3 August 2022 to 17 September 2022 with the intent to coerce the Applicants to:
 - a. enter into an enterprise agreement with their employees on terms acceptable to the Respondent in that period;
 - b. not to exercise a workplace right to not enter into an enterprise agreement in the form sought by the Respondent in that period,

by notifying action in the form of the First Impugned Action and by employees of the Applicants taking action in the form of the First Impugned Action.

7. A declaration pursuant to section 21 of the FCA Act and section 545 of the FW Act that the Respondent advised and encouraged the employees of the Applicants to take action against the Applicants from 13 August 2022 to 6 September 2022, and from 10 September 2022 to 17 September 2022 with the intent to coerce the Applicants to:
 - a. enter an enterprise agreement on terms acceptable to the Respondent in that period; and
 - b. not to exercise a workplace right to not enter an enterprise agreement in the form sought by the Respondent in that period,in contravention of section 343(1) of the FW Act by the employees taking action in the form of the First Impugned Action and the Respondent thereby contravened section 362(1) of the FW Act.
8. A declaration pursuant to section 21 of the FCA Act and section 545 of the FW Act that the Respondent has contravened section 343(1) of the FW Act by organising action against the Applicants from 16 October 2022 with the intent to coerce the Applicants to:
 - a. enter an enterprise agreement on terms acceptable to the Respondent from that date; and
 - b. not to exercise a workplace right to not enter into an enterprise agreement in the form sought by the Respondent from that date,by notifying action in the form of the Second Impugned Action.
9. A declaration pursuant to section 21 of the FCA Act and section 545 of the FW Act that the Respondent advised and encouraged the employees of the Applicants to take action against the Applicants from 16 October 2022 with the intent to coerce the Applicants to:
 - a. enter an enterprise agreement on terms acceptable to the Respondent from that date; and
 - b. not to exercise a workplace right to not enter an enterprise agreement in the form sought by the Respondent from that date,in contravention of section 343(1) of the FW Act by the employees taking action in the form of the Second Impugned Action and the Respondent thereby contravened section 362(1) of the FW Act.
10. A declaration that the Respondent engaged in trespass to goods from 13 August 2022 to 17 September 2022 by taking the First Impugned Action.
11. Injunctive relief under section 545(2) of the FW Act, or alternatively under section 23 of FCA Act, restraining the Respondent, whether by itself, its officers, delegates, agents, employees, members or whosoever otherwise, from directing, organising, inducing,

advising, authorising, assisting, encouraging, conspiring, aiding, abetting, counselling, procuring or otherwise being knowingly concerned in or party to any employee of the Applicant taking the First Impugned Action and the Second Impugned Action or continuing to do one or more of the same.

12. Orders pursuant to sections 539 (Item 11) and 546 of the FW Act that the Respondent pay pecuniary penalties in respect of:
 - a. each separate and continuing contravention of section 343 of the FW Act;
and
 - b. each separate and continuing contravention of section 362 of the FW Act.
13. An order pursuant to section 546(3) of the FW Act that any pecuniary penalties that the Respondent is ordered to pay be paid to the Applicants.
14. An order that the Respondent pay compensation to the Applicants pursuant to section 545(2)(b) of the FW Act in respect of the Respondent's contraventions of sections 343 and 362 of the FW Act.
15. Damages for such loss or damage as the Applicants may suffer by conduct done in contravention of the tort of trespass to goods.
16. Costs.
17. Such further or other orders as the Court thinks fit.

Applicant's address

The Applicants' address for service is:

Place: Level 11, 5 Martin Place, SYDNEY NSW 2000

Email: trent.sebbens@ashurst.com / kate.hollings@ashurst.com

The First Applicant's address is 231 Elizabeth Street, SYDNEY NSW 2000.

The Second Applicant's address is 4 Lowden Square, WOLLONGONG NSW 2500.

Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 18 October 2022



Signed by Trent Daniel Sebbens
Lawyer for the Applicants

Schedule

No. of 2022

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

Applicants

Second Applicant: NSW Trains

Date: 18 October 2022