

NOTICE OF FILING

Details of Filing

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File Number: VID65/2026
File Title: ALISSAH MITCHELL v HUNGRY JACK'S PTY LTD
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



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

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Alissah Mitchell

Applicant

Hungry Jack's Pty Ltd

Respondent

STATEMENT OF CLAIM

A. THE PARTIES

1. The applicant (**Ms Mitchell**) was, during the period between about June 2020 to November 2021:
 - (a) employed by the respondent as a crew member on a casual basis; and
 - (b) in her employment with Hungry Jack's – a national system employee within the meaning of s 13 of the *Fair Work Act 2009* (Cth) (the **FW Act**).

2. The respondent (**Hungry Jack's**):
 - (a) is a body corporate capable of suing and being sued; and
 - (b) is, and at all material times was, in respect of its employment of Ms Mitchell and those of the Group Members (defined below) employed by it, a national system employer within the meaning of s 14 of the FW Act.

Group members

3. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by Ms Mitchell on her own behalf and on behalf of all persons:
 - (a) who in the period from 15 December 2019 to 31 December 2023 (the **Claim Period**) were employed by Hungry Jack's;
 - (b) to whom, in their employment in (a):

Filed on behalf of	The applicant, Alissah Mitchell		
Prepared by	[REDACTED]		
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- (i) the *Fast Food Industry Award 2020* (the **Fast Food Award**),
 - (ii) the *SDA Hungry Jacks (South Australia and Northern Territory) Certificated Agreement 1999* (**1999 HJ Agreement**), further or alternatively,
 - (iii) the *Hungry Jack's National Enterprise Agreement 2019* (**2019 HJ Agreement**) (together, the **HJ Agreements**), applied;
- (c) who, during their employment in (a):
- (i) were based in South Australia for work purposes;
 - (ii) on one or more Sundays during the said employment:
 - (1) performed work but were not paid at the public holiday rate(s) prescribed by the HJ Agreements or the Fast Food Award (as applicable) for that work; or
 - (2) were employed on a full-time or part time basis and –
 - (a) took paid annual leave or paid personal/carer's leave on one or more such Sundays; and
 - (b) were taken by their employer to be on paid annual leave or paid personal/carer's leave on the Sunday(s) referred to in (a); and
 - (c) by reason of (b) – had their annual or paid personal/carer's leave balance deducted in relation to the leave referred to in (a);

(the said persons being **Group Members**).

4. Immediately prior to the commencement of this proceeding, there were more than seven persons who had claims against Hungry Jack's as described in this pleading.

B. THE RESPONDENT

5. At all material times, Hungry Jack's operated in Australia a business in the fast food industry, selling food from stores branded and trading as "Hungry Jack's".

6. At all material times during the Claim Period, Hungry Jack's employed persons (**HJ Employees**) to perform work in its stores in the State of South Australia who were:

- (a) engaged in:
 - (i) the preparation of,
 - (ii) the receipt of orders from customers for,
 - (iii) cooking, or
 - (iv) sale or serving of -

- meals, snacks and/or beverages sold or to be sold to the public; or
 (b) engaged in cleaning or maintenance of stores; or

Particulars

The said work included cleaning of toilets, janitorial duties, incidental cleaning of the food delivery area, minor equipment or facility maintenance, attending to gardens and grounds including mowing, and other handy work.

- (c) engaged primarily to deliver meals, snacks or beverages to members of the public; or
 (d) engaged in supervising or training employees described in (a) to (c) above; and/or
 (e) appointed to be in charge of a Hungry Jack's store.

C. INDUSTRIAL LAWS AND INSTRUMENTS

C.1 Public holidays – Fair Work Act

7. At all material times, s 115(1) of the FW Act was in the following terms:

The public holidays

- (1) The following are public holidays:
- (a) each of these days:
- (i) 1 January (New Year's Day);
 - (ii) 26 January (Australia Day);
 - (iii) Good Friday;
 - (iv) Easter Monday;
 - (v) 25 April (Anzac Day);
 - (vi) the holiday for the birthday of the Sovereign (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);
 - (vii) 25 December (Christmas Day);
 - (viii) 26 December (Boxing Day);
- (b) any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the regulations from counting as a public holiday.

8. At all material times, s 89(1) of the FW Act was in the following terms:

Employee not taken to be on paid annual leave at certain times

Public holidays

If the period during which an employee takes paid annual leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid annual leave on that public holiday.

9. At all material times, s 98(1) of the FW Act was in the following terms:

Employee not taken to be on paid personal/carer's leave at certain times

Public holidays

If the period during which an employee takes paid personal/carer's leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid personal/carer's leave on that public holiday.

C.2 Sundays were public holidays in SA – Holidays Act 1910 (SA)

10. At all material times up to 31 December 2023, Sunday was a public holiday in South Australia within the meaning of Division 10 of the FW Act.

Particulars

*The Holidays Act 1910 (SA) (**Holidays Act 1910**) regulated public holidays in South Australia from 1910 until 31 December 2023.*

Schedule 2 of the Holidays Act 1910 prescribed the dates that were public holidays in South Australia.

The list in Schedule 2 included Sunday.

11. National system employees who were based in South Australia for work purposes in the Claim Period and:

- (a) who, during a period in which they took paid annual leave, were absent from their employment on a Sunday were, in the premises in paragraphs 7, 8 and 10 above, taken not to be on paid annual leave on that Sunday; and
- (b) who, during a period in which they took paid personal/carer's leave, were absent from their employment on a Sunday were, in the premises in

paragraphs 7, 9 and 10 above, taken not to be on paid personal/carer's leave on that Sunday.

C.3 SDA Hungry Jacks (South Australian and Northern Territory) Certificated Agreement 1999

12. On about 7 July 1999, the Australian Industrial Relations Commission certified the 1999 HJ Agreement.

Particulars

SDA Hungry Jacks (South Australian and Northern Territory) Certified Agreement 1999 (Australian Industrial Relations Commission, Commissioner Raffaelli, 7 July 1999).

13. At all times during the Claim Period up to 15 April 2020, the 1999 HJ Agreement:
- (a) was an agreement-based transitional instrument within the meaning of sch 16 item 2(2) of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) (**Transitional Act**);
 - (b) covered and applied to:
 - (i) HJ Employees other than managers as described at cl 2 and Schedule B of the 1999 HJ Agreement (**1999 HJ Agreement Employees**); and
 - (ii) Hungry Jack's in relation to the 1999 HJ Agreement Employees.
14. At all times during the Claim Period up to 15 April 2020, cl 18 of the 1999 HJ Agreement included the following terms:

CLAUSE 18. PUBLIC HOLIDAYS IN ORDINARY TIME

If a full-time or part-time employee is not required by the employer to work any part of the employee's ordinary hours on a public holiday, the employee is entitled to be absent from work on that public holiday. An employee absent from work on a public holiday in accordance with this clause must be paid the appropriate wages for the number of ordinary hours that the employee would have worked if it had not been a public holiday.

Where an employer notifies an employee that the employee is required to work on a public holiday, and the employee refuses or fails without reasonable excuse to work on the public holiday, the employee is not entitled to payment for that public holiday.

Public Holidays are the days (or substitute days) on which the following holidays are observed:

South Australia

New Year's Day	Adelaide Cup Day
Australia Day	Queen's Birthday
Good Friday	Labour Day
The day after Good Friday	Christmas Day
Easter Monday	Proclamation Day
ANZAC Day	

Any other day which is declared to be a public holiday pursuant to the Holidays Act, 1910 shall be a public holiday for the purposes of this clause.

...

Any full-time or part-time employee who works any part of that employee's ordinary hours on a public holiday shall be paid at the rate of double time for all hours so worked.

Casual employees who work any part of their ordinary hours on a public holiday shall be paid an additional 80% in lieu of their casual loading.

15. At all times during the Claim Period up to 15 April 2020, cl 10 of the 1999 HJ Agreement was in the following terms:

CLAUSE 10. HOURS

- (a) The maximum number of ordinary hours to be worked by an employee in any week shall be 38 hours, or 9 hours per day per shift. Such 9 hours shall be worked within a spread of 12 hours from starting to finishing time (this provision is subject to the operation of Clause 13).
- (b) Full-time employees may average the 38 hours over four weeks subject to the following limitations:
 Ordinary hours shall not exceed:
- 84 hours in any 2-week period;
 - 152 hours in any 4-week period.

Ordinary time starts shall not exceed 20 daily starts in any one four week period and a fulltime employee shall not be required to work for less than 3 hours on any one occasion.

...

16. At all times during the Claim Period up to 15 April 2020, cl 11 of the 1999 HJ Agreement provided that:

CLAUSE 11. OVERTIME

- a) All time worked in excess of thirty eight (38) hours in any one week or nine (9) hours in any one day or outside a spread of twelve (12) hours (subject to Clause 13) from starting time to finishing time on any one day shall be paid at the rate of time and a half for the first three hours and double time thereafter.
- b) All overtime worked on a Public Holiday shall be paid at the rate of double-time.
- c) Where an employer and an employee mutually agree in writing, the employee may be allowed time off work in lieu of payment for overtime. Such time off in lieu of payment for overtime may be accumulated and taken off at a mutually agreed time.

Time off work in lieu of payment for overtime must be in substitution for ordinary hours that the employee would otherwise be obliged to work. An employee taking time off work in lieu of payment for overtime must be permitted to take that time off work without loss of pay for the ordinary hours that the employee would otherwise be obliged to work but for the operation of this provision. In taking time off in lieu of payment for overtime, the employee must be permitted to be absent from work for the number of hours for which the employee would otherwise have been entitled to be paid for the overtime worked.

17. By reason of the matters alleged at paragraphs 12 to 16 above, the 1999 HJ Agreement Employees were:

- (a) entitled to be paid for working ordinary hours on Sundays at the applicable public holiday rate, being 200% (in the case of full-time or part-time employees) or 180% (in the case of casual employees) of their minimum hourly rate (cl 18); and
- (b) entitled to be either:
 - (i) paid for working overtime on Sundays at the applicable public holiday rate (cl 11);
 - or

- (ii) for full-time and part-time employees, in the alternative to (i), to be compensated for working overtime on a Sunday by taking time off work in lieu (**TOIL**) of payment for overtime, which permitted the employee to be absent for the equivalent number of hours which the employee would have been otherwise entitled to be paid for the overtime worked, with no loss of pay for the ordinary hours they would otherwise have worked on that day (cl 11).

C.4 Hungry Jack's National Enterprise Agreement 2019

18. On about 9 April 2020, the Full Bench of the Fair Work Commission approved the 2019 HJ Agreement, with effect from 16 April 2020.

Particulars

Hungry Jack's National Enterprise Agreement 2019 [2020]
FWCFB 1693.

19. At all times during the Claim Period from 16 April 2020, the 2019 HJ Agreement covered and applied to:
- (a) Ms Mitchell in the employment alleged at paragraph 1(a) above;
 - (b) Hungry Jack's in relation to Ms Mitchell;
 - (c) HJ Employees engaged in a classification listed in cl 17 of the Agreement (**2019 HJ Agreement Employees**); and
 - (d) Hungry Jack's in relation to the employees identified in (c).
20. At all times during the Claim Period from 16 April 2020, cl 34 of the 2019 HJ Agreement included the following terms:
- 34.1** Public holidays are provided for in the NES.
 - 34.2** An employer and a majority of employees may agree to substitute another day for a public holiday. If an employee works on either the public holiday or the substitute day public holiday penalties apply. If both days are worked, the public holiday penalties must be paid on one day chosen by the employee.
 - 34.3** Work on a public holiday must be compensated by payment at the rate of double time and a quarter of the ordinary rate, casual employees will receive double time and half (inclusive of casual loading).

21. At all times during the Claim Period from 16 April 2020, cl 25.2 of the 2019 HJ Agreement provided:

25.2 Ordinary hours

- (a) The ordinary hours of work are an average of 38 per week over a period of no more than four (4) weeks.
- (b) Hours of work on any day will be continuous, except for rest pauses and meal breaks.
- (c) The ordinary hours will be worked so as to provide an employee with two consecutive days off each week or three consecutive days off in a two-week period.
 - (i) This requirement will not apply where the employee requests other arrangements in writing. It cannot be made a condition of employment that an employee make such a request.
 - (ii) An employee can withdraw their written request to other arrangements by giving four (4) weeks written notice to the employer.

(bold emphases in original)

22. At all times during the Claim Period from 16 April 2020, the 2019 HJ Agreement provided that an employer was required to:

- (a) pay a full-time employee at the applicable overtime rate for any hours worked:
 - (i) in excess of:
 - (1) 38 ordinary hours per week or an average of 38 ordinary hours per week averaged over a 4 week period; or
 - (2) 5 days in one week; or
 - (3) 11 ordinary hours on any one day; or
 - (4) when a 10 hour break was not provided between the ceasing of a shift to the commencement of the next shift; or
 - (ii) before the employee's rostered start time on any one day; or
 - (iii) after the employee's rostered finish time on any one day; or
 - (iv) outside the ordinary hours of work,
(the times referred to in (i)-(iv) being the **full-time 2019 HJ Agreement overtime hours**);

Particulars

Cl 26.2 of the 2019 HJ Agreement.

- (b) pay a part-time employee at the applicable overtime rate for any hours worked:
- (i) in excess of:
 - (1) 38 ordinary hours per week or an average of 38 ordinary hours per week averaged over a 4 week period; or
 - (2) 5 days in one week; or
 - (3) 11 ordinary hours on any one day; or
 - (4) when a 10 hour break was not provided between the ceasing of a shift to the commencement of the next shift;
 - (5) the employee's guaranteed minimum hours that were not rostered or agreed in advance; or
 - (ii) outside the employee's availability;
 - (iii) before the employee's rostered start time on any one day; or
 - (iv) after the employee's rostered finish time on any one day; or
 - (v) outside the ordinary hours of work,
- (the times referred to in (i)-(v) being the **part-time 2019 HJ Agreement overtime hours**);

Particulars

CI 26.3 of the 2019 HJ Agreement.

- (c) pay a casual employee at the applicable overtime rate for any hours worked:
- (i) in excess of:
 - (1) 38 ordinary hours per week or, where the employee works in accordance with a roster, in excess of 38 ordinary hours per week averaged over the course of the roster cycle; or
 - (2) 11 ordinary hours on any one day; or
 - (3) 5 days per week; or
 - (4) when a 10 hour break has not been provided between ceasing of a shift to the commencement of the next shift; or
 - (ii) before the employee's rostered start time on any one day; or
 - (iii) after the employee's rostered finish time on any one day; or
 - (iv) outside the ordinary hours of work,
- (the times referred to in (i)-(ii) being the **casual 2019 HJ Agreement overtime hours**); and

Particulars

CI 26.4 of the 2019 HJ Agreement.

- (d) for any employee who had worked any overtime hours referred to in (a) to (c) above and had agreed to take TOIL at a rate equivalent to the overtime payment that would have been made instead of being paid for that overtime – give the employee that TOIL at the overtime equivalent, and pay the employee the balance of that overtime that had not been taken as TOIL, at the earliest of:
- (i) the employee requesting to be paid for the overtime instead of taking the TOIL; or
 - (ii) 6 months after the overtime was worked; or
 - (iii) the end of the employee's employment with Hungry Jack's.

Particulars

Cl 26.6 of the 2019 HJ Agreement.

23. At all times during the Claim Period from 16 April 2020, the 2019 HJ Agreement provided that the rates of pay for overtime on a public holiday were:
- (e) for full-time and part-time employees, double time and a half;
 - (f) for casual employees, double time and three quarters of the ordinary hourly rate.

Particulars

Cl 26.1 of the 2019 HJ Agreement.

24. By reason of the matters alleged at paragraphs 18 to 23 above, at all times during the Claim Period from 16 April 2020, the HJ Employees were:
- (a) entitled to be paid for working ordinary hours on a Sunday at the applicable public holiday rate (cl 34.3); and
 - (b) entitled to be either:
 - (i) paid for working full-time 2019 HJ Agreement overtime hours, part-time 2019 HJ Agreement overtime hours or casual 2019 HJ Agreement overtime hours (as the case may be on) on Sundays at the applicable public holiday rate (cl 26.1); or
 - (ii) by mutual agreement with Hungry Jack's, in the alternative to (i) – compensated for working on a Sunday by equivalent time off in lieu without loss of pay, taken within 6 months of the Sunday occurring or paid out (cl 26.6).

C.5 Fast Food Award

25. The Fast Food Award:
- (a) commenced operation on 1 January 2010;
 - (b) is, and at all material times was, a modern award within the meaning of s 45 of the FW Act; and
 - (c) was, until 27 July 2022, known as the *Fast Food Industry Award 2010*.
26. At all material times, the Fast Food Award covered and applied to HJ Employees (**HJ Award Employees**) who:
- (a) in the period up to 27 July 2022:
 - (i) were employed in a classification listed in Schedule B of the Fast Food Award (in accordance with cl 16.1); and
 - (ii) to whom the HJ Agreements did not apply; or
 - (b) in the period on and from 28 July 2022:
 - (i) were employed in the classifications listed in cl 12 of the Fast Food Award; and
 - (ii) to whom the HJ Agreements did not apply.
27. At all material times during the Claim Period up to 27 July 2022, cl 30 of the Fast Food Award provided:
- 30. Public holidays**
 - 30.1** Public holidays are provided for in the NES.
 - 30.2** An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday under the NES. If an employee works on either the public holiday or the substitute day public holiday penalties apply. If both days are worked, the public holiday penalties must be paid on one day chosen by the employee.
 - 30.3** An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES. If an employee works on either the part-day public holiday or the substitute part-day public holiday penalties apply. If both part-days are worked, the public holiday penalties must be paid on one part-day chosen by the employee.

30.4 Work on a public holiday must be compensated by payment at the rate of 225% (250% for casual employees, inclusive of the casual loading).

(bold emphases in original)

28. At all material times during the Claim Period from 28 July 2022, cl 27 of the Fast Food Award provided:

27. Public holidays

27.1 Public holiday entitlements are provided for in the NES.

27.2 Substitution of public holidays by agreement

- (a) An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday under the NES.
- (b) An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES.

27.3 Payment for work on public holiday or substitute day

- (a) An employer must pay an employee who works on a public holiday, or on a day that is substituted for a public holiday, at the public holiday penalty rate set out in clauses 20 — Overtime and 21 — Penalty rates .
- (b) An employer must pay an employee who works on a part-day public holiday, or on a day that is substituted for a part-day public holiday, at the public holiday penalty rate set out in clauses 20 — Overtime and 21 — Penalty rates.
- (c) If an employee works on both a public holiday and on a day that is substituted for the public holiday, the public holiday penalty rate is applicable to only one of those days. The employee may choose which day is to be paid at the public holiday penalty rate.
- (d) If an employee works on both a part-day public holiday and on a part-day that is substituted for the part-day public holiday, the public holiday penalty rate is applicable to only one of those

days. The employee may choose which part-day is to be paid at the public holiday penalty rate.

29. At all material times during the Claim Period, the Fast Food Award provided that an employer was required to:

(a) pay a full-time employee at the applicable overtime rate for any hours worked:

(i) in excess of:

(1) 38 ordinary hours per week or an average of 38 ordinary hours per week averaged over a 4 week period; or

(2) 5 days in one week (or 6 days in one week if, in the following week, ordinary hours are not worked on not more than 4 days);

or

(3) 11 ordinary hours on any one day;

(ii) before the employee's rostered start time on any one day; or

(iii) after the employee's rostered finish time on any one day; or

(iv) outside the ordinary hours of work,

(the times referred to in (i)-(iv) being the **full-time Award overtime hours**);

(b) pay a part-time employee at the applicable overtime rate for any hours worked:

(i) in excess of:

(1) 38 ordinary hours per week or an average of 38 ordinary hours per week averaged over a 4 week period; or

(2) 5 days in one week (or 6 days in one week if, in the following week, ordinary hours are not worked on not more than 4 days);

or

(3) 11 ordinary hours on any one day; or

(4) their agreed hours (as agreed or as varied in accordance with the Fast Food Award); or

(5) their regular pattern of work in circumstances where there is no written record of an agreed variation to a particular rostered shift; or

(ii) before the employee's rostered start time on any one day; or

(iii) after the employee's rostered finish time on any one day; or

(iv) outside the ordinary hours of work;

(the times referred to in (i)-(iv) being the **part-time Award overtime hours**);

(c) pay a casual employee at the applicable overtime rate for any hours worked in excess of:

(i) 38 ordinary hours per week or, where the employee works in accordance with a roster, in excess of 38 ordinary hours per week averaged over the course of the roster cycle; or

- (ii) 11 ordinary hours on any one day,
(the times referred to in (i)-(ii) being the **casual Award overtime hours**); and
- (d) for any employee who had worked any overtime hours referred to in (a) to (c) above and had agreed to take TOIL at a rate equivalent to the overtime payment that would have been made instead of being paid for that overtime – give the employee that TOIL at the overtime equivalent, and pay the employee the balance of that overtime that had not been taken as TOIL, at the earliest of:
- (i) the employee requesting to be paid for the overtime instead of taking the TOIL;
- (ii) 6 months after the overtime was worked; or
- (iii) the end of the employee's employment.

Particulars

- i. cl 26 of the Fast Food Award up to and including 27 July 2022 and*
- ii. cl 20.2 to 20.4 and 20.7 of the Fast Food Award on and from 28 July 2022.*

30. At all material times during the Claim Period, the Fast Food Award provided that the rates of pay for overtime were:

For overtime worked:	Full-time and part-time employees	Casual employees
	% of minimum hourly rate	% of minimum hourly rate
Monday to Saturday— first 2 hours	150	175
Monday to Saturday— after 2 hours	200	225
Sunday—all overtime hours	200	225
Public holiday—all overtime hours	250	275

Particulars

- i. cl 26.1 of the Fast Food Award up to and including 27 July 2022 and*
- ii. cl 20.6 of the Fast Food Award on and from 28 July 2022.*

31. At all material times during the Claim Period, the Fast Food Award provided that the rates of pay for ordinary hours performed at the following times were:

For ordinary hours worked:	Full-time and part-time employees	Casual employees
	% of minimum hourly rate	% of minimum hourly rate
Monday to Friday—between 10.00 pm and midnight	110	135
Monday to Friday—between midnight and 6.00 am	115	140
Saturday—any time of day	125	150
Sunday (Level 1 employees)—any time of day	125	150
Sunday (Level 2 and 3 employees)—any time of day	150	175
Public holiday—any time of day	225	250

Particulars

- i. cl 25.5 and 30.4, up to 27 July 2022; and*
- ii. cl 21 on and from 28 July 2022.*

32. By reason of the matters in paragraphs 25 to 31, at all times during the Claim Period, HJ Award Employees were:
- (a) entitled to be paid for working ordinary hours on Sundays:
 - (i) up to and including 27 July 2022 – at the rates set out for public holidays in cl 30.4 of the Fast Food Award; and
 - (ii) on and from 28 July 2022 – at the rates set out for public holidays in cl 21 of the Fast Food Award; and
 - (b) entitled to be paid for working full-time Award overtime hours, part-time Award overtime hours or casual Award overtime hours (as the case may be) on Sundays:
 - (i) up to and including 27 July 2022 – at the rates set out for public holidays in cl 26.1 of the Fast Food Award; and
 - (ii) on and from 28 July 2022 – at the rates set out for public holidays in cl 20.6 of the Fast Food Award; and
 - (c) in the alternative to (b), if an employee and their employer had agreed that that employee would take TOIL – entitled to take TOIL at the overtime

equivalent and be paid the balance of the overtime that had not been taken as TOIL, at the earliest of:

- (i) the employee requesting to be paid for the overtime instead of taking the TOIL;
 - (ii) 6 months after the overtime was worked; or
 - (iii) the end of the employee's employment;
- in accordance with:
- (iv) cl 20.7 of the Fast Food Award (on and from 28 July 2022); or
 - (v) cl 26.5 of the Fast Food Award (up to and including 27 July 2022).

D. CONTRAVENTIONS BY HUNGRY JACK'S

D.1 Ms Mitchell

33. During the Claim Period, Ms Mitchell:
- (a) was based in South Australia for work purposes;
 - (b) was, during the period in which she was a HJ Employee, classified as a Crew Member under the 2019 HJ Agreement.

Underpaid Sunday work

34. During that part of the Claim Period in which Ms Mitchell was a HJ Employee:
- (a) Ms Mitchell from time to time performed hours of work on Sundays;
 - (b) Hungry Jack's failed to pay Ms Mitchell 250% of her base rate for the hours in (a); and
 - (c) by reason of the matters in (b), Hungry Jack's:
 - (i) contravened cl 34.3(a) of the 2019 HJ Agreement; and
 - (ii) thereby contravened s 50 of the FW Act.

Particulars

Particulars of the hours of work performed by Ms Mitchell on Sundays will be provided after discovery.

Loss and damage

35. By reason of the contraventions alleged in Section D.1 above, Ms Mitchell suffered loss and damage.

Particulars

Ms Mitchell suffered –

1. *loss of earnings, consisting of the difference between the amounts she was paid for working on Sundays and the amount she was entitled to be paid under the under the Hungry Jack's Agreement; and*
2. *superannuation on those amounts, to the extent that superannuation is payable.*

Further particulars may be provided after discovery.

D.2 1999 HJ Agreement Employees*Underpaid Sunday ordinary hours*

36. During the Claim Period up to and including 15 April 2020, some or all 1999 HJ Agreement Employees worked ordinary hours on one or more Sundays.

Particulars

Particulars of the affected 1999 HJ Agreement Employees may be provided following the trial of common questions or otherwise as the Court may direct.

37. During the Claim Period up to and including 15 April 2020, Hungry Jack's did not, for the ordinary hours worked by 1999 HJ Agreement Employees on a Sunday, pay to those employees the public holiday rates in cl 18 of the 1999 HJ Agreement.
38. By reason of the matters in the preceding paragraph, Hungry Jack's:
- (a) contravened cl 18 of the 1999 HJ Agreement; and
 - (b) thereby contravened sch 16 item 2(2) of the Transitional Act.

Underpaid Sunday overtime hours

39. During the Claim Period up to and including 15 April 2020, some or all 1999 HJ Agreement Employees worked overtime hours in accordance with cl 11 of the 1999 HJ Agreement on one or more Sundays.

Particulars

Particulars of the affected 1999 HJ Agreement Employees may be provided following the trial of common questions or otherwise as the Court may direct.

40. During the Claim Period up to and including 15 April 2020, Hungry Jack's did not, in relation to the employees referred to in the preceding paragraph:
- (a) pay double time for the overtime hours worked by the employees on Sundays;
 - or
 - (b) provide those employees with equivalent TOIL without loss of pay.
41. By reason of the matters in the preceding paragraph, Hungry Jack's:
- (a) contravened cl 11 of the 1999 HJ Agreement; and
 - (b) thereby contravened sch 16 item 2(2) of the Transitional Act.

Unpaid Sunday leave – loss and damage

42. By reason of the contraventions alleged in Section D.2 above, the 1999 HJ Agreement Employees referred to therein suffered loss and damage.

Particulars

The 1999 HJ Agreement Employees suffered loss consisting of –

1. *loss of earnings consisting of the difference between the amounts that they were paid for working on Sundays, and the amount that they were entitled to be paid under the 1999 HJ Agreement;*
2. *to the extent that any 1999 HJ Agreement Employee elected to take TOIL at a rate equivalent to the overtime payment that would have been made instead of being paid for that overtime, and in fact took that TOIL, the difference between the value of the TOIL that was taken and the*

amount they were entitled to be paid under the Fast Food Award for that work on a Sunday;

3. *superannuation on those amounts, to the extent that superannuation was payable.*

Further particulars may be provided following the trial of common questions or otherwise as the Court may direct after discovery.

D.3 2019 HJ Employment Agreement Employees

Underpaid Sunday ordinary hours

43. During the Claim Period on and from 16 April 2020, some or all 2019 HJ Agreement Employees worked ordinary hours on one or more Sundays.

Particulars

Particulars of the hours worked by 2019 HJ Agreement Employees on Sundays will be provided following the trial of common questions or otherwise as the Court may direct after discovery.

44. During the Claim Period on and from 16 April 2020, Hungry Jack's did not, for the ordinary hours worked by 2019 HJ Agreement Employees referred to in the preceding paragraph, pay to those employees the public holiday rates in cl 34.3 of the 2019 HJ Agreement.
45. By reason of the matters in the preceding paragraph, Hungry Jack's:
- (a) contravened cl 34.3 of the 2019 HJ Agreement; and
 - (b) thereby contravened s 50 of the FW Act.

Unpaid Sunday overtime hours

46. On one or more Sundays during the Claim Period from 16 April 2020, some or all 2019 HJ Agreement Employees worked –
- (a) full-time 2019 HJ Agreement overtime hours,
 - (b) part-time 2019 HJ Agreement overtime hours or
 - (c) casual 2019 HJ Agreement overtime hours
- (as the case may be) in accordance with cl 26 of the 2019 HJ Agreement.

Particulars

Particulars of the hours worked by 2019 HJ Agreement Employees on Sundays will be provided following the trial of common questions or otherwise as the Court may direct after discovery.

47. During the Claim Period from 16 April 2020, Hungry Jack's did not, in relation to the hours referred to in the preceding paragraph:
- (a) pay:
 - (i) full-time employees and part-time employees 250% of their minimum hourly rate of pay for the full-time 2019 HJ Agreement overtime hours or part-time 2019 HJ Agreement overtime hours (as the case may be) they worked on Sundays;
 - (ii) casual employees 275% of their minimum hourly rate (inclusive of casual loading) for the casual 2019 HJ Agreement overtime hours they worked on Sundays; or
 - (b) if any 2019 HJ Agreement Employees and Hungry Jack's had agreed that the employee would take TOIL –
 - (i) give the employee TOIL at the overtime equivalent;
 - (ii) pay that employee the balance of the overtime that had not been taken as TOIL, at the earliest of:
 - (1) the employee requesting to be paid for the overtime instead of taking the TOIL; or
 - (2) 6 months after the overtime was worked; or
 - (3) the end of the employee's employment.
48. By reason of the matters in the preceding paragraph, Hungry Jack's:
- (a) contravened cl 26 of the 2019 HJ Agreement; and
 - (b) thereby contravened s 50 of the FW Act.

Group members' loss and damage

49. By reason of the contraventions alleged in Section D.3 above, the 2019 HJ Agreement Employees suffered loss and damage.

Particulars

The 2019 HJ Agreement Employees suffered –

1. *loss of earnings consisting of the difference between the amounts that they were paid for working on Sundays and the amount that they were entitled to be paid under the Hungry Jack's Agreement;*
2. *to the extent that any 2019 HJ Agreement Employee elected to take TOIL at a rate equivalent to the overtime payment that would have been made instead of being paid for that overtime, and in fact took that TOIL, the difference between the value of the TOIL that was taken and the amount they were entitled to be paid under the 2019 HJ Agreement for that work on a Sunday;*
3. *to the extent that any 2019 HJ Agreement Employee elected to take TOIL at a rate equivalent to the overtime payment that would have been made instead of being paid for that overtime, but did not in fact take that TOIL, the difference between the amount they were paid out for that TOIL and the value of the time worked under the 2019 HJ Agreement for that Sunday; and*
4. *superannuation on those amounts, to the extent that superannuation is payable.*

Further particulars may be provided following the initial trial.

D.4 HJ Award Employees

Underpaid Sunday ordinary hours

50. During the Claim Period, some or all HJ Award Employees worked ordinary hours on one or more Sundays.

Particulars

Particulars of the affected HJ Award Employees on Sundays may be provided following the trial of common questions or otherwise as the Court may direct.

51. During the Claim Period, Hungry Jack's did not, for the ordinary hours worked by HJ Award Employees on a Sunday, pay to those employees the public holiday rates in:
- (a) up to 27 July 2022 – cl 30.4; or
 - (b) on and from 28 July 2022 – cl 21;
- of the Fast Food Award.
52. By reason of the matters in the preceding paragraph, Hungry Jack's:
- (a) contravened:
 - (i) up to 27 July 2022 – cl 30.4; and
 - (ii) on and from 28 July 2022 – cl 27.3 and 21;
 of the Fast Food Award; and
 - (b) contravened s 45 of the FW Act.

Underpaid Sunday overtime hours

53. During the Claim Period, some or all HJ Award Employees worked full-time Award overtime hours, part-time Award overtime hours and casual Award overtime hours (as the case may be) on one or more Sundays.

Particulars

Particulars of the affected HJ Award Employees on Sundays may be provided following the trial of common questions or otherwise as the Court may direct.

54. During the Claim Period, Hungry Jack's did not:
- (a) pay HJ Award Employees who were full-time employees or part-time employees 250% of their minimum hourly rate of pay for the full-time Award overtime hours or part-time Award overtime hours (as the case may be) they worked on Sundays;
 - (b) pay HJ Award Employees who were casual employees 275% of their minimum hourly rate of pay for the casual Award overtime hours they worked on Sundays; or
 - (c) if any HJ Award Employees and Hungry Jack's had agreed that the employee would take TOIL –
 - (i) give the employee TOIL at the overtime equivalent;
 - (ii) pay that employee the balance of the overtime that had not been taken as TOIL, at the earliest of:

- (1) the employee requesting to be paid for the overtime instead of taking the TOIL;
- (2) 6 months after the overtime was worked; or
- (3) the end of the employee's employment.

55. By reason of the matters in the preceding paragraph, Hungry Jack's:

- (a) contravened:
 - (i) up to 27 July 2022 – cl 26;
 - (ii) on and from 28 July 2022 – cl 20.6 or 20.7 (as the case may be) and cl 27.3;
 of the Fast Food Award; and
- (b) thereby contravened s 45 of the FW Act.

Loss and damage

56. By reason of the contraventions alleged in Section D.4 above, the HJ Award Employees suffered loss and damage.

Particulars

The HJ Award Employees suffered –

1. *loss of earnings consisting of the difference between the amounts that they were paid for working on Sundays, and the amount that they were entitled to be paid under the Fast Food Award;*
2. *to the extent that any HJ Award Employee elected to take TOIL at a rate equivalent to the overtime payment that would have been made instead of being paid for that overtime, and in fact took that TOIL, the difference between the value of the TOIL that was taken and the amount they were entitled to be paid under the Fast Food Award for that work on a Sunday;*
3. *to the extent that any HJ Award Employee elected to take TOIL at a rate equivalent to the overtime payment that would have been made instead of being paid for that overtime, but did not in fact take that TOIL, the difference between the amount they were paid out for that TOIL and the value of the time worked under the Fast Food Award for that Sunday; and*

4. *superannuation on those amounts, to the extent that superannuation was payable.*

Further particulars may be provided following the trial of common questions or otherwise as the Court may direct.

D.5 All full-time and part-time HJ Employees

Deducted Sunday leave

57. From time to time during the Claim Period, HJ Employees who were based in South Australia for work purposes and who were employed on a full-time or part-time basis took:
- (a) paid annual leave; or
 - (b) paid personal carer's leave;
- on a Sunday.
58. By reason of the matters alleged at paragraph 11 above, on each occasion that a full-time or part-time HJ Employee took paid annual leave on a Sunday:
- (a) that employee was taken not to be on paid annual leave on that Sunday; and
 - (b) Hungry Jack's was not authorised or permitted to deduct that employee's annual leave balance in respect of that Sunday.
59. During the Claim Period Hungry Jack's deducted the annual leave balances of full-time and part-time HJ Employees who took paid annual leave on a Sunday.
60. By reason of the matters in the preceding paragraph, Hungry Jack's:
- (a) contravened s 89 of the FW Act; and
 - (b) thereby contravened s 44 of the FW Act.
61. By reason of the matters alleged at paragraph 11 above, on each occasion that a full-time or part-time HJ Employee took paid personal/carer's leave on a Sunday:
- (a) that employee was taken not to be on paid personal/carer's leave on that Sunday; and
 - (b) Hungry Jack's was not authorised or permitted to deduct that employee's personal/carer's leave balance in respect of that Sunday.
62. During the Claim Period Hungry Jack's deducted the personal/carer's leave balances of full-time and part-time HJ Employees who took paid personal/carer's leave on a Sunday.

63. By reason of the matters in the preceding paragraph, Hungry Jack's:
- (a) contravened s 98 of the FW Act; and
 - (b) thereby contravened s 44 of the FW Act.

Loss and damage

64. By reason of the contraventions alleged in Section D.5 above, HJ Employees who were employed on a full-time or part-time basis suffered loss and damage.

Particulars

The HJ Employees suffered –

1. *as to the contraventions alleged in paragraph 60 – loss of the annual leave that was deducted from their annual leave balances for Sundays when they took paid annual leave; and*
2. *as to the contraventions alleged in paragraph 63 – loss of the personal/carer's leave that was deducted from their personal/carer's leave balance for Sundays when they took paid personal/carer's leave;*
3. *further as to the contraventions alleged in paragraph 63 – lost income from days on which they took unpaid personal/carer's leave because they had insufficient paid personal/carer's leave by reason of the unlawful deduction of their personal/carer's leave for Sundays when they took paid personal/carer's leave; and*
4. *superannuation for those amounts, to the extent that superannuation is payable.*

Further particulars may be provided following the trial of common questions or otherwise as the Court may direct after discovery.

E. COMMON QUESTIONS OF LAW OR FACT

65. The questions of law or fact common to the claims of the Applicant and some or all of the Group Members are:
- (a) Whether the 1999 HJ Agreement applied to any and if so which of the Claimants.

- (b) Whether the 2019 HJ Agreement applied to any and if so which of the Claimants.
- (c) Whether the Fast Food Award applied to any and if so which of the Claimants.
- (d) Whether, in the State of South Australia, Sunday was a public holiday for the purposes of the FW Act.
- (e) Whether any and if so which of the Claimants were entitled, under the 1999 HJ Agreement, to be paid at the public holiday rates prescribed by that Agreement for work performed on Sundays.
- (f) Whether by the conduct pleaded in the Claim the Respondent contravened cl 18 of the 1999 HJ Agreement, and thereby sch 16 item 2(2) of the Transitional Act.
- (g) Whether by the conduct pleaded in the Claim the Respondent contravened cl 11 of the 1999 HJ Agreement, and thereby sch 16 item 2(2) of the Transitional Act.
- (h) The appropriate means of measuring any loss and damage suffered by Claimants or any of them resulting from the contraventions of the 1999 HJ Agreement.
- (i) Whether any and if so which of the Claimants were entitled, under the 2019 HJ Agreement, to be paid at the public holiday rates prescribed by that Agreement for work performed on Sundays.
- (j) Whether by the conduct pleaded in the Claim the Respondent contravened cl 34.3 of the 2019 HJ Agreement, and thereby s 50 of the FW Act.
- (k) Whether by the conduct pleaded in the Claim the Respondent contravened cl 26 of the 2019 HJ Agreement, and thereby s 50 of the FW Act.
- (l) The appropriate means of measuring any loss and damage suffered by Claimants as a result of the contraventions of the 2019 HJ Agreement.
- (m) Whether Claimants were entitled, under the Fast Food Award, to be paid the public holiday rates prescribed by the Award for work performed on a Sunday.
- (n) Whether by the conduct pleaded in the Claim the Respondent contravened cl 30.4 (up to 27 July 2022) and cll 27.3 and 21 (on and from 28 July 2022) of the Fast Food Award, and thereby s 45 of the FW Act.
- (o) Whether by the conduct pleaded in the Claim the Respondent contravened cl 26 (up to 27 July 2022) and cll 20.6, 20.7 or 27.3 (on and from 28 July 2022) of the Fast Food Award, and thereby s 45 of the FW Act.
- (p) The appropriate means of measuring any loss and damage suffered by Claimants as a result of the contraventions of the Fast Food Award.

- (q) Whether the Claimants were entitled, under s 89 of the FW Act, to be taken to not be on paid annual leave on a Sunday, if the Claimants took paid annual leave on that Sunday.
- (r) Whether by the conduct pleaded in the Claim the Respondent contravened s 89 of the FW Act, and thereby s 44 of the FW Act.
- (s) Whether the Claimants were entitled, under 98 of the FW Act, to be taken to not be on paid personal/carer's leave on a Sunday, if the Claimants took paid personal/carer's leave on that Sunday.
- (t) Whether by the conduct pleaded in the Claim the Respondent contravened s 98 of the FW Act, and thereby s 44 of the FW Act.
- (u) The appropriate means of measuring any loss and damage suffered by Claimants as a result of the contraventions of ss 89 and 98 of the FW Act.

AND THE APPLICANT CLAIMS on her own behalf and on behalf of the Group Members the relief set out in the Originating Application



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Signed by [REDACTED]
Lawyer for the Applicant

This pleading was prepared by Siobhan Kelly SC and Katie Gardiner of counsel, and settled by LWL Armstrong KC.

Certificate of lawyer

I, [REDACTED] 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: 15 December 2025



Signed by [REDACTED]

Lawyer for the Applicant