

## WESTERN AUSTRALIAN INDUSTRIAL MAGISTRATES COURT

**CITATION** : 2020 WAIRC 00407

**CORAM** : INDUSTRIAL MAGISTRATE D. SCADDAN

**HEARD** : WEDNESDAY, 13 MAY 2020

**DELIVERED** : THURSDAY, 16 JULY 2020

**FILE NO.** : M 70 OF 2019

**BETWEEN** : MATTHEW JUSTIN FAHIE  
**CLAIMANT**

AND

MATAYA PTY LTD  
**RESPONDENT**

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**CatchWords** : INDUSTRIAL LAW – Restaurant industry – Contravention of *Fair Work Act 2009* (Cth) – Contravention of modern award on annualised salary; payment of time in lieu; payment of public holiday in lieu – Construction of terms of modern award and computation of annualised salary

**Legislation** : *Fair Work Act 2009* (Cth)  
*Industrial Relations Act 1979* (WA)  
*Magistrates Court (Civil Proceedings) Act 2004* (WA)

**Instrument** : *Restaurant Industry Award 2010* (Cth)

**Case(s) referred to in reasons** : *City of Wanneroo v Australian Municipal, Administrative, Clerical Services Union* (2006) 153 IR 426  
*Kucks v CSR Ltd* (1996) 66 IR 182  
*Amcor Ltd v CFMEU* [2005] HCA 10  
*Becherelli v Mediterraneus Pty Ltd trading as Lucioli* [2017] WAIRC 65  
*Linkhill Pty Ltd v Director, Office of the Fair Work Building Industry Inspectorate* [2015] FCAFC 99  
*WorkPac Pty Ltd v Rossato* [2020] FCAFC 84  
*James Turner Roofing Pty Ltd v Peters* [2003] WASCA 28  
*Miller v Minister of Pensions* [1947] 2 All ER 372  
*Sammut v AVM Holdings Pty Ltd [No2]* [2012] WASC 27  
*Briginshaw v Briginshaw* [1938] HCA 34

**Result** : Claim proven in part

**Representation:**

Claimant : Mr M. Fahie

Respondent : Ms N. Adams for the Respondent (Director)

**REASONS FOR DECISION**

- 1 Mr Matthew Fahie (Mr Fahie) was employed by Mataya Pty Ltd (Mataya) as a Level 6, Grade 5 Chef at Mataya Restaurant in Mandurah from 10 July 2017 to 25 January 2018.
- 2 Mr Fahie's employment was subject to the terms of the *Restaurant Industry Award 2010* (Cth) as varied from time to time (Award) and a contract of employment dated 7 July 2017 (the Employment Contract).<sup>1</sup>
- 3 Mr Fahie claims Mataya contravened the Award and the *Fair Work Act 2009* (FWA) in failing to pay him:
  - an annualised salary in compliance with cl 28.1(b) of the Award;
  - the equivalent amount for time worked in lieu (TOIL) in excess of the contracted number of hours in compliance with cl 33.5 of the Award; and
  - public holiday payments on certain public holidays where annual leave was not credited in compliance with cl 38.2 of the Award.
- 4 Mr Fahie seeks orders for payment of the following amounts:
  - \$79.71 in annual salary;
  - \$5,222.05 in remaining balance for TOIL; and
  - \$1,131.06 in public holiday payments.
- 5 Mr Fahie elected the small claims procedure.
- 6 Mataya denies the claim and says Mr Fahie has been paid all his entitlements. Further, Mataya disputes how Mr Fahie characterised and calculated his entitlements under the Award contending that Mr Fahie has erroneously applied the terms of the Award. Mataya provided its own calculations of amounts paid to Mr Fahie. Mataya also disputes certain facts relevant to Mr Fahie's claim for TOIL.
- 7 As will be discussed, during the hearing Ms Natalie Adams (Ms Adams) agreed that certain discrepancies were identified as it related to TOIL, but an amount was paid to Mr Fahie in relation to these discrepancies. If the Industrial Magistrates Court of Western Australia (IMC) identifies any other amount owing to Mr Fahie, Mataya contends that this amount should be set-off against an alleged overpayment to Mr Fahie by Mataya.

**Issues To Be Determined**

- 8 At the commencement of the hearing, the IMC clarified Mr Fahie's claim. Consequently, the following issues are to be determined:
  - a. Relevant to cl 28.1(b) of the Award, how is an annualised salary to be calculated where an employee's employment is terminated prior to the completion of a year?

- b. Relevant to cl 33.5 of the Award, what was the total amount of time worked by Mr Fahie in excess of 42 hours per week?
  - c. Is Mr Fahie entitled to any or any further amount in TOIL, and, if so, what amount?
  - d. Having regard to time worked, is Mr Fahie entitled to any payment, or further payment, in respect of public holidays either under cl 38.2 of the Award or otherwise, and, if so, what amount?
- 9 Determination of issue (a) is largely resolved by a construction of the identified sections of the Award.
- 10 Schedule 1 of this decision sets out the law relevant to the jurisdiction, practice and procedure of IMC in determining this case. Relevant to matters identified under the heading, 'Jurisdiction' in Schedule 1 of this decision, I am satisfied: Mataya is a corporation to which paragraph 51(XX) of the Constitution applies and it is a '*national system employer*'; Mr Fahie was an individual who was employed by Mataya and is a '*national system employee*'.
- 11 Schedule 2 of this decision contains the relevant clauses of the Award.
- 12 Schedule 3 of this decision contains the relevant rates of pay under the Award.
- 13 Schedule 4 of this decision contains a spreadsheet of the hours worked by Mr Fahie<sup>2</sup> and the comparison of the Award pay to time worked and an explanation of the rates of pay applied.

### **Background Facts**

- 14 According to the Employment Contract,<sup>3</sup> Mr Fahie was employed as Head Chef of Mataya Restaurant in Mandurah where the relevant terms of his employment were:
- Full time employment with an annualised salary of \$65,000 per annum.
  - Ordinary hours of work of 42 hours per week.
  - Clause 4.6 of the Employment Contract provides:
 

*[a]ny payments or other entitlements we provide to you in excess of your minimum entitlements offset any liability, claim or entitlement that you may claim against us connected with your employment and we are entitled to set off those overpayments in the event of any claim by you.*
  - Clause 4.7 of the Employment Contract provides:
 

*[i]f your pay specified in Item 13 is expressed as annual salary and your Modern Award is the Restaurant Industry Award 2010, your gross pay as specified in Item 13 includes all payments and benefits that we are obliged to provide to you. Your pay is specifically offset against and absorbs any existing or newly introduced benefits to which you are, or may become, legally entitled (including but not limited to minimum weekly wages, allowances, penalty rates, premiums, pay period specifications, overtime, loadings and payments of a like nature) under any legislation, industrial instrument or award, unless we specify otherwise.*
  - Clause 6 of the Employment Contract provides:
 

*[w]e may deduct from your remuneration, during your employment or upon termination of your employment:*

    - (a) any overpaid money;*
    - (b) any amount that we are lawfully obliged or allowed to deduct; and*
    - (c) any amount which you have authorised us in writing to deduct.*

- Clause 8.5 of the Employment Contract provides:

*[i]f you are employed on a full-time basis and one of your rostered days off falls on a public holiday (or that public holiday's alternative or substitute public holiday), we will credit you an additional day's annual leave.*

- 15 Mr Fahie commenced work on 10 July 2017 and his employment was terminated on 25 January 2018.<sup>4</sup>
- 16 Mr Fahie was rostered to work from 6.30 am to 3.00 pm Thursday to Monday inclusive. That is, Tuesday and Wednesday were his rostered days off. However, at times he worked in excess of, and less than, 42 hours per week and from time to time worked on his rostered days off.<sup>5</sup>
- 17 One of the facts in dispute is whether Mr Fahie took meal breaks and the contribution this makes to the TOIL calculation. Mr Fahie says that he was unable to take meal breaks because the restaurant was understaffed. Ms Adams says Mr Fahie did not use the 'Deputy' pay role system to record his meal breaks and had poor time management skills, and he was always able to take meal breaks.
- 18 There were four public holidays during Mr Fahie's period of employment: 25 September 2017, 25 December 2017, 26 December 2017 and 1 January 2018. The restaurant was closed on 25 December 2017 and 26 December 2017 and Mr Fahie did not work on 31 December 2017. The restaurant was open on 25 September 2017 and on 1 January 2018 and Mr Fahie worked on these days.
- 19 Following a pre-trial conference, Mataya paid an amount of \$1,444.02 to Mr Fahie for 45.33 hours of TOIL owed but denies that Mr Fahie is owed the remaining claimed 125 hours of TOIL. However, during the hearing Ms Adams agreed that according to Mataya's TOIL calculations<sup>6</sup> an amount the equivalent of 8.53 hours of TOIL is owed to Mr Fahie, although Mataya claims this amount should be set off against an annual salary overpayment.

### **How The Annualised Salary Is To Be Calculated Where An Employee's Employment Is Terminated Prior To The Completion Of A Year?**

- 20 Mr Fahie gave evidence on his behalf and tendered several documents into evidence in support of his claim. Ms Adams gave evidence on behalf of Mataya and tendered several documents into evidence in support of Mataya's defence to the claim.
- 21 The parties' dispute on this issue concerns the computation of the annualised salary in the context of cl 28.1(b) of the Award.
- 22 Mr Fahie calculates his annualised salary under cl 28.1(b) of the Award by using an example 42-hour week for a five-day week (Thursday to Monday), including penalty rates and public holidays for the whole of a calendar year, to obtain a weekly wage of \$1,252.79. He then multiplies this average weekly wage by 52 weeks and says that pursuant to cl 28.1 of the Award his correct annual salary is \$65,145.08, of which he is owed \$79.71.<sup>7</sup>
- 23 Mataya contends that Mr Fahie's method of calculation is flawed where Mr Fahie's ordinary hours is based on 8.4 hours per day, rather than 7.6 hours per day, resulting in a 'double account' of 0.8 hours at ordinary rate of pay and overtime rate of pay. In addition, Mataya further contends that any annualised salary calculation can only consider public holidays actually worked during the period of employment rather than averaging out what public holidays might be worked if Mr Fahie worked for a full year. Mataya similarly calculates an average weekly wage, but says this average weekly wage is \$1,168.47, which is then multiplied by 52 weeks for a total of \$60,760.39 (excluding public holidays) and divided by the actual days worked (200). Mataya

then adds to this, total public holidays worked by Mr Fahie during the employment period with a deduction for ordinary rates paid for the same day.<sup>8</sup>

- 24 Mataya contends that under cl 28.1 of the Award, Mr Fahie was entitled to be paid \$33,480.96 (inclusive of \$204.42 deducted for ordinary pay for work on 25 September 2017). Mataya says that Mr Fahie was paid \$35,465.77 for 200 days worked and, thus, was ‘overpaid’ \$1,984.81.<sup>9</sup>

#### Clause 28 of the Award

- 25 Clause 28.1 of the Award deals with annualised salary arrangements. In summary, cl 28 of the Award provides for five things:

- by agreement, an employee can be paid at a rate of equivalent to an annual salary of at least 25% or more above the weekly rate prescribed in cl 20 of the Award multiplied by 52. This amount obviates the requirement to pay overtime and penalty rates provided the salary is sufficient to cover equivalent Award entitlements;<sup>10</sup>
- if an employee’s employment is terminated prior to the completion of a year, the salary paid during such period of employment must be sufficient to cover what the employee would have been entitled to if all of the Award obligations had been complied with;<sup>11</sup>
- the employee is entitled to a minimum of eight days off per four-week cycle;<sup>12</sup>
- if an employee covered by cl 28 of the Award is required to work on a public holiday, the employee is ‘*entitled to a day off instead of public holidays or a day added to the annual leave entitlement*’;<sup>13</sup> and
- the employer must keep records to allow a reconciliation at the end of the year where if any comparison reveals a shortfall between wages paid and entitlements under the Award, the difference is paid to the employee.<sup>14</sup>

- 26 The interpretation of an award begins with consideration of the natural and ordinary meaning of the words used.<sup>15</sup> An award is to be interpreted in light of its industrial context and purpose, and must not be interpreted in a vacuum divorced from industrial realities.<sup>16</sup> An award must make sense according to the basic conventions of English language.<sup>17</sup> Narrow and pedantic approaches to the interpretation of an award are misplaced.<sup>18</sup>

- 27 Clause 28 of the Award is, arguably, an easier accounting mechanism for employers and employees provided the employer complies with the reconciliation process and makes good any deficit when compared to the entitlements under the Award.

- 28 For an employee who works less than a year, the computation of the equivalent salary under the Award relies on the construction of cl 28.1(b) of the Award. In my view, the proper construction of the computation of a salary for an employee who works less than a year turns on the meaning of the phrases ‘*the salary paid during such period of employment*’ and ‘*what the employee would have been entitled to*’ in cl 28.1(b) (emphasis added).

- 29 The use of the words ‘*such period of employment*’ and ‘*would have been entitled to*’ indicate that the comparator is between the annual salary paid for the time period actually worked versus the salary that would have been paid if the Award applied for the time period actually worked. The use of these words does not favour a construction where the comparator involves a hypothetical time period that might have been worked had the employee in fact worked an entire year.

- 30 The preferred construction involving a comparison of the time period worked is certain, whereas the alternative construction involves speculation having regard to an employee's average time worked.
- 31 Further, the preferred construction is also consistent with the employer's requirement to keep records for reconciliation. If the cl 28.1(b) of the Award computation was based on average weekly time worked, including time not worked, multiplied by 52, as suggested by Mr Fahie (and to a lesser extent by Ms Adams), the need for reconciliation is largely redundant. However, cl 28 of the Award is prescriptive indicating an intention to ensure that actual time worked is paid in accordance with the terms of the clause where a shortfall occurs.
- 32 Therefore, in my view, the proper construction of the cl 28.1(b) of the Award computation of an employee's equivalent Award salary where they work less than a year is by reference to the time period actually worked and not by reference to weekly averages for what might have been worked.
- 33 Schedule 4 of the reasons for decision detail the hours worked by Mr Fahie and the methodology used to calculate Mr Fahie's equivalent Award salary for the actual time worked by him. Paragraph 55 to 56 explains why the hours worked contained in Mataya's spreadsheet was accepted and preferred to the hours worked contained in Mr Fahie's spreadsheet.

#### Application of the Proper Construction to Mr Fahie's Employment

- 34 Having regard to this construction of cl 28.1(b) of the Award, Mr Fahie would have been paid \$34,288.74 for time worked from 10 July 2017 to 25 January 2018 if he were paid in accordance with the Award obligations.<sup>19</sup>
- 35 For the same period for the same time worked, Mataya paid Mr Fahie \$35,465.77.<sup>20</sup>
- 36 The difference is \$1,177.03.

#### Determination

- 37 Mr Fahie claims \$79.71 as a 'deficit' in annualised salary. Mataya claims Mr Fahie was 'overpaid' for the same time period worked.
- 38 I find that had Mr Fahie has been paid in accordance with the Award obligations, he would have been paid less than the amount he was in fact paid for the same period worked, namely \$1,177.03 less.
- 39 Accordingly, I find the salary paid during the relevant period of employment was sufficient to cover what Mr Fahie would have been entitled to if all of the Award obligations had been complied with.
- 40 Based on the findings made, Mr Fahie has not established this aspect of his claim to the requisite standard and his claim as it relates to an alleged deficiency in annualised salary is not proven.

#### **What Was The Total Amount Of Time Worked By Mr Fahie In Excess Of 42 Hours Per Week?**

- 41 The parties prepared their own spreadsheets of time worked for the purposes of calculating TOIL.<sup>21</sup> There is no dispute that hours worked in excess of 42 hours per week were TOIL, capable of being paid out to Mr Fahie. The dispute is whether Mr Fahie was owed TOIL and, if so, what were the number of hours and the amount (if any) owed.
- 42 I note Mr Fahie, in his witness statement and revised claim, referred to discussions in a pre-trial conference. These discussions are without prejudice to any evidence or submission that the party

has adduced or made or may subsequently adduce or make.<sup>22</sup> Further the pre-trial conference is private.<sup>23</sup> The purpose of the pre-trial conference is to attempt to affect a settlement between the parties without prejudice to the contested proceedings. Therefore, I disregard any comments by Mr Fahie referencing things said or done between the parties during any pre-trial conference.

- 43 Mr Fahie states in oral evidence that he was told to complete his own spreadsheet and he did so each day at the end of his shift. Mr Fahie also states that he asked Mataya to provide him with a copy of the Deputy pay roll system to compare against his own spreadsheet.<sup>24</sup>
- 44 Ms Adams said that while Mr Fahie was advised to keep his own records, Mataya used the Deputy pay roll system to record all employee work times. The Deputy pay roll system required the employee to enter their work times, including meal breaks, in the system using the [web] application associated with Deputy. The information was then collated on Deputy. Ms Adams also said that Mr Fahie did not record his meal breaks, notwithstanding he was provided with meal breaks and that this was indicative of Mr Fahie's poor time management skills.<sup>25</sup>
- 45 Mr Fahie disputes that he was provided with meal breaks or that he failed to record his meal breaks stating that he was not provided with a meal break due to staff shortages. Accordingly, Mr Fahie says his spreadsheet accurately reflects the time worked, although he could not accurately say what portion of remaining TOIL claimed was due to unpaid meal breaks. At best Mr Fahie estimated the claim for TOIL comprised approximately 20% of unpaid meal breaks.
- 46 Mr Fahie relies upon text messages and four emails sent between him and Ms Adams where he says Ms Adams told him to keep a record of his own hours and where he advised her of TOIL he had accumulated. Mr Fahie says that he did not receive any query to these emails or text messages and after he ceased employment, he received text messages from Ms Adams indicating meal breaks had been 'removed' from the TOIL records. Further, Mr Fahie says that issues about his time keeping, recording of TOIL and any inconsistencies in his recording of TOIL were not raised during management meetings.<sup>26</sup>
- 47 Ms Adams says the Deputy pay roll system is more advanced at the time of the hearing than it was when Mr Fahie's employment was terminated, and Mr Fahie was provided with time sheets using the extracted data. In addition, Mr Fahie was provided with payslips showing time worked.<sup>27</sup>
- 48 Ms Adams further stated that the extracted Deputy data was provided to Mr Fahie on 19 February 2018 (once it could be provided) and Mr Fahie used this data in his own spreadsheet provided to the IMC. Ms Adams says a meal break was provided to each employee and Mataya's spreadsheet of time worked and TOIL shows the correct times. On that basis, Ms Adams accepted that Mataya owed an additional 8 hours of TOIL to Mr Fahie in addition to the 45.66 hours paid.<sup>28</sup> However, she denied Mataya owed an additional 125 hours of TOIL as claimed by Mr Fahie.
- 49 Ms Adams explained Mataya used the Deputy pay roll system because it was efficient and extracted summaries were provided to Mataya's bookkeeper. She said TOIL was not logged on the Deputy pay roll system but was logged separately where the Deputy system was not responsible for TOIL worked in excess of 42 hours per week. Ms Adams further explained that Mr Fahie's hours were not 'removed' from the Deputy pay roll system but were removed from the total hours worked per day where the hours worked per day previously included meal breaks.
- 50 Ms Adams maintained Mr Fahie was provided with meal breaks but did not record these meals breaks on the Deputy pay roll system and that she had face to face meetings with Mr Fahie regarding his lack of time keeping. She maintained the Deputy system data was accurate. She agreed that she told Mr Fahie to keep a record of his hours, because it was appropriate that he did

so but said that Mataya's information came from one set of agreed data, namely from the Deputy pay roll system.

### Evidence

- 51 Example emails between Mr Fahie and Ms Adams dated 7 September 2017 do not greatly assist either party in the sense that it supports both parties' evidence.<sup>29</sup> That is, Mr Fahie's comments in his email refers to updated hours '*in lui*' [sic], whereas Ms Adams' reply states '*I have all your OT hours logged with in my accounting software. It's updated each week. Preferably keep a record yourself as a check but we have them. They won't appear on your payslip unless we start manually entering them as notes but if you ever want a summary please ask*'.
- 52 Similarly, an earlier email from Mr Fahie dated 23 August 2017 refers to an attached spreadsheet of hour worked and hours '*in lui*' [sic].<sup>30</sup>
- 53 Text messages between the parties from 16 February 2018 to 23 February 2018 do not assist one party more than another with the content reflecting Mr Fahie's and Ms Adams' oral evidence of how they perceived the situation.
- 54 Ms Adams relied upon an example roster for the period 4 September 2017 to 10 September 2017 to demonstrate that Mataya had two people rostered in the kitchen to allow for meal breaks.<sup>31</sup> Further, Ms Adams referred to the leave transaction record for Mr Fahie and various payslips demonstrating Mataya's recording of leave.<sup>32</sup>
- 55 Resolution of the issue with respect to the taking or not taking of meal breaks principally relies upon accepting one party's recording system of hours worked where Mr Fahie's and Ms Adams' oral evidence diverged on whether a meal break was taken or not. Mataya's time recording system relied upon the employee entering their meal break on the Deputy pay roll system where Mataya otherwise demonstrate a reliable accounting system. Mr Fahie did not dispute using the information provided by Mataya, in part, to support his claim and otherwise relied upon Mataya's accounting systems. In addition, Mr Fahie's claim for TOIL was, in part, an estimate where he said approximately 20% of the claim was due to not taking a meal break. Ultimately, a claimant is required to prove his or her claim, including the facts giving rise to the claim.
- 56 In this case, I find Mataya's system of time recording and other accounting systems more reliable than Mr Fahie's individual system of recording his time after work. On that basis, and where Mataya had a reliable system of recording time worked, including meal breaks, consistent with meal breaks being provided, I do not accept Mr Fahie's evidence that he was not provided with a meal break. In making this finding, I do not accept Mr Fahie's evidence contained in his spreadsheet<sup>33</sup> of time worked and TOIL owed, and I prefer Mataya's evidence contained in its spreadsheet<sup>34</sup> of time worked and TOIL owed.

### Determination

- 57 Having regard to Mataya's spreadsheet of time worked and TOIL owed, I find:
- for the period worked between 10 July 2017 and 25 January 2018, Mr Fahie worked 82.62 hours in excess of 42 hours per week;
  - during the same period, Mr Fahie took 28.76 in TOIL hours, leaving a balance of 53.86 hours of unpaid TOIL at the time of the termination of his employment; and
  - on 23 July 2019, Mataya paid \$1,444.02 or 45.33 hours of TOIL with a remaining balance of 8.53 hours of TOIL to be paid to Mr Fahie.



- 58 The parties agreed that time worked in excess of 42 hours per week constituted TOIL. I note that the Employment Contract is silent on the issue of taking and payment of TOIL. Therefore, it is necessary to refer to the Award.
- 59 Pursuant to cl 33.5(h) of the Award, on termination of employment where TOIL has not been taken, *'the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked'*.
- 60 The principle difficulty in Mr Fahie's case is attributing 8.53 hours of TOIL to the applicable overtime rate. Neither parties' spreadsheet assists in that regard. Further, I note from Mr Fahie's claim, he calculates his entitlement for remaining TOIL owed based on an hourly rate of \$41.77 per hour irrespective of time worked.<sup>35</sup> Similarly, Mataya calculates \$1,615.80 payable for 53.86 hours of TOIL owed or \$30 per hour. Neither of these hourly amounts are referable to any amount under the Award or to cl 33.5(h) of the Award.
- 61 Given the difficulty in ascribing the remaining 8.53 hours of TOIL, I have determined that the appropriate way to ascribe this time is by dividing it over the course of Mr Fahie's working week. That is, Mr Fahie worked Thursday to Monday inclusive, or 1.712 hours of TOIL per day. Having regard to the relevant overtime rates under cl 33.2 of the Award based on the ordinary rate of pay<sup>36</sup> relevant to Mr Fahie during his employment, the following amounts apply:

	<b>Hours</b>	<b>Rate</b>	<b>Total</b>
Thursday	1.712	\$34.85	\$59.66
Friday	1.712	\$34.85	\$59.66
Saturday	1.712	\$40.65	\$69.59
Sunday	1.712	\$46.46	\$79.54
Monday	1.712	\$34.85	\$59.66
<b>Total</b>	<b>8.53</b>		<b>\$328.11</b>

- 62 Therefore, I find the amount owed to Mr Fahie with respect to unpaid TOIL is \$328.11.

**Is Mr Fahie Entitled To Any Payment, Or Further Payment, With Respect Of Public Holidays, And, If So, What Amount?**

- 63 Mr Fahie claims \$1,131.06 for public holidays during his employment where he was either on a rostered day off or worked on a rostered day off and says that this ought to have been added to his annual leave entitlement.
- 64 Mr Fahie claims cl 38.1 and cl 38.2 of the Award applies to his employment. Consistent with cl 38.2 of the Award, I note that cl 8.5 of the Employment Contract provides that as a full-time employee if a *rostered day off* was on a public holiday, he would be credited an additional day's annual leave. Further, Mr Fahie was paid an annualised salary pursuant to cl 28.1(a) of the Award and, therefore, pursuant to cl 28.1(c) of the Award if an employee is required to work on a public holiday, the employee is entitled to a day off instead of the public holiday or a day added to the annual leave entitlement.
- 65 The parties agree that the restaurant was closed for business on 25 December 2017 and 26 December 2017. It is also agreed that the restaurant was open on 27 December 2017 and that

Mr Fahie attended work on what was his usual rostered day off (Wednesday). It is also agreed that Mr Fahie worked on 25 September 2017, which was a public holiday but also a rostered working day for Mr Fahie (Monday). Mataya's spreadsheet shows that Mr Fahie worked on 1 January 2018, also a rostered working day for Mr Fahie (Monday).

- 66 Mr Fahie says that he ought to have received annual leave or TOIL or an amount equivalent to annual leave or TOIL for 25 December 2017, 26 December 2017 and 27 December 2017 under cl 38 of the Award. He also says that he ought to have received annual leave or TOIL or an amount equivalent to annual leave or TOIL for working on 25 September 2017 and 1 January 2018.
- 67 Mr Fahie agreed that he had been paid for 25 December 2017 and 26 December 2017 as part of his usual pay but says that this was not in accordance with the Award. Similarly, he also agreed that he was paid for time worked on 25 September 2017 and 27 December 2017 but says that this was not in accordance with the Award.
- 68 Ms Adams says Mr Fahie worked one public holiday during his employment, namely on 25 September 2017 and he was paid his normal rate of pay for working on this day, and he was credited TOIL for working on a public holiday.<sup>37</sup> I note Mataya's spreadsheet also shows that Mr Fahie worked on 1 January 2018, also a public holiday.
- 69 Ms Adams says that the restaurant was closed on 25 December 2017 and 26 December 2017 and says that Mr Fahie was paid normal rates for those days.<sup>38</sup> Ms Adams denies that Mr Fahie is owed TOIL or annual leave or penalty rates for those days where the business was not trading, and he was otherwise paid in the usual way.
- 70 Ms Adams says 27 December 2017 was a normal trading day and that this was one of Mr Fahie's usual rostered days off but says that Mr Fahie agreed to work that day and it was a short working week. However, while Ms Adams stated that Mr Fahie was not paid additional monies to work on that day, upon reviewing the relevant payslip she observed that Mr Fahie had been credited TOIL for the week 25 December 2017 to 31 December 2017.<sup>39</sup>
- 71 Ms Adams contends that Mr Fahie's annualised salary was in lieu of any additional days off for any public holidays worked.

#### Clause 38 of the Award

- 72 Mr Fahie was paid an annualised salary, and the annualised salary arrangements in cl 28.1 of the Award accounts for split shift allowance (cl 24.2), overtime (cl 33) and penalty rates (cl 34.1 and cl 34.2). However, it does not account for additional provisions for work on public holidays under cl 34.4 of the Award or additional arrangements for full time employees with respect to public holidays (cl 38).
- 73 Clause 34.4(c) of the Award provides that employees who work on a prescribed holiday may, by agreement, perform such work at a rate of 125% of the relevant minimum wage in cl 20 of the Award, rather than the penalty rate prescribed in cl 34.1 of the Award, provided equivalent paid time is added to the employee's annual leave or one day instead of such public holiday will be allowed to the employee during the week in which such holiday falls. Provided further that such holiday may be allowed to the employee within 28 days of such holiday falling due.<sup>40</sup>
- 74 The parties did not refer to any agreement attracting consideration of cl 34.4(c) of the Award.
- 75 Clause 38.2 of the Award provides that a *'full-time employee whose rostered day off falls on a public holiday must, subject to cl 34.4:*

- (a) *be paid an extra day's pay;*
- (b) *be provided with an alternative day off within 28 days; or*
- (c) *receive an additional day's annual leave'.*

76 Therefore, pursuant to cl 38.2 of the Award, if Mr Fahie's *rostered days off* fell on a public holiday the options were to have:

- (a) paid him an extra day's pay;
- (b) provide him with an alternative day off within 28 days; or
- (c) provide him an additional day's annual leave.

77 According to cl 8.5 of the Employment Contract, the option elected by Mataya appears to be to provide Mr Fahie with an additional day's annual leave.

### Evidence

78 Mataya's relevant payslips<sup>41</sup> and spreadsheet<sup>42</sup> shows the following:

- for the pay period 25 September 2017 to 1 October 2017 Mr Fahie was paid 40 ordinary hours, which included payment for working on the public holiday, and was credited 'time in lieu' (or TOIL) of 7.74 hours;
- for the pay period 25 December 2017 to 31 December 2017 Mr Fahie was paid 42 ordinary hours, which included not working on 25 December 2017 and 26 December 2017, and was credited 'time in lieu' of 7.99 hours;
- for the pay period 1 January 2018 to 7 January 2018 Mr Fahie was paid his ordinary hours and was credited 'time in lieu' of 4.42 hours;
- the TOIL spreadsheet credits 2.09 hours of TOIL for the week 25 September 2017 to 1 October 2017 and credits 9 hours of TOIL for the week 27 December 2017 to 31 December 2017 (with the notation '*Plus Xmas Day P/H*'); and
- the annual leave transactions show the accumulation of annual leave on a weekly basis.<sup>43</sup>

79 25 September 2017<sup>44</sup> was a usual rostered day on for Mr Fahie, albeit he worked on a public holiday.

80 Similarly, 1 January 2018<sup>45</sup> was a usual rostered day on for Mr Fahie, albeit he worked on a public holiday.

81 25 December 2017<sup>46</sup> was a usual rostered day on for Mr Fahie, but he did not work because the restaurant was closed, and he was paid in the usual course.

82 26 December 2017<sup>47</sup> was a rostered day off for Mr Fahie and he did not work because the restaurant was closed, and he was paid in the usual course.

83 Mataya's spreadsheet shows that for the week 25 December 2017 to 31 December 2017, Mr Fahie worked 34.79 hours and was credited 9 hours of TOIL. The spread of work was over four days from 27 December 2017 to 30 December 2017, where 26 December 2017 and 27 December 2017 were usual rostered days off and 31 December 2017 was a usual rostered day on but was not worked. Mr Fahie did not dispute the circumstances of working on 27 December 2017.

## Determination

### *25 September 2017*

- 84 25 September 2017 was a usual rostered day on and a public holiday.
- 85 In accordance with cl 28.1(a) of the Award, when read with cl 34.1 of the Award, Mr Fahie was not entitled to any additional rate of pay for working on 25 September 2017. Further, as 25 September 2017 was a rostered day on, not a rostered day off, he was not entitled to any of the options under cl 38.2 of the Award (also provided for in cl 8.5 of the Employment Contract). Mr Fahie's annualised salary took into account work undertaken on rostered public holidays.
- 86 However, pursuant to cl 28.1(c) of the Award, as Mr Fahie was paid an annualised salary, if he was required to work on a public holiday, he was entitled to a day off instead of a public holiday or a day added to the annual leave entitlement.
- 87 Mr Fahie was required to work on 25 September 2017, which was a public holiday, therefore he was entitled to either a day off or a day added to the annual leave entitlement.
- 88 The pay slip for the week 25 September 2017 to 1 October 2017 Mr Fahie credited 'time in lieu' of 7.74 hours to Mr Fahie for presumably working on the public holiday, but nothing in the pay slips or the spreadsheet provided by Mataya shows that this time was either paid out or given as an additional day off. In fact, the payslips suggest that the time accumulated but was never paid out upon termination and the spreadsheet states '*No Lieu Day for Public Holiday – Usual RDO this day*' suggesting that it was not accounted for other than by Mataya's bookkeeper.
- 89 Further, Mataya's annual leave calculation does not credit the 'time in lieu' as annual leave, notwithstanding it appears on the relevant payslip (albeit as 'time in lieu').<sup>48</sup>
- 90 I find that in relation to work performed on 25 September 2017, pursuant to cl 28.1(c) of the Award, Mr Fahie was entitled to an additional day off or a day added to annual leave. I find that this is 7.6 hours or payment of the equivalent amount based on the Award hours for a full-time employee.

### *25 December 2017*

- 91 25 December 2017 was a usual rostered day on, but he did not work that day as the restaurant was closed and he was paid in the usual course. As this day was not a rostered day off, cl 38.2 of the Award and cl 8.5 of the Employment Contract do not apply. Further, Mr Fahie was not required to work on this day, and therefore cl 28.1(c) of the Award does not apply.
- 92 Therefore, no entitlement arises in relation to 25 December 2017.

### *26 December 2017*

- 93 26 December 2017 was a usual rostered day off and a public holiday. Therefore, as his usual rostered day off was on a public holiday, pursuant to cl 38.2 of the Award and cl 8.5 of the Employment Contract, Mr Fahie was entitled to an additional annual leave day (or one of the other options in cl 38.2 of the Award).
- 94 For the week 25 December 2017 to 31 December 2017, Mr Fahie was paid as if he worked 42 hours for the week, when the number of hours he worked was 34.79 and he was credited 9 hours of TOIL on Mataya's spreadsheet. The 9 hours of TOIL is included in Mataya's calculation of total TOIL owed to Mr Fahie. I also note that the payslip for his week credits 7.99 hours of TOIL.

95 Therefore, Mr Fahie was paid 42 hours and credited 9 hours for TOIL totalling 51 hours, which he has been paid either as part of his usual pay or in the payment for TOIL in July 2019.

96 Accordingly, the requirement under cl 38.2 of the Award has been provided with respect to Mr Fahie's rostered day off on 26 December 2017, albeit that it was not credited to annual leave but credited to TOIL and was paid out in July 2019.

97 For this reason, Mr Fahie has not made out his claim for any additional payment or leave pursuant to cl 38.2 of the Award with respect to his claim relevant to 26 December 2017.

#### *27 December 2017*

98 27 December 2017 was not a public holiday and any agreement by Mr Fahie with respect to working on this day does not arise under cl 28.1(c) or cl 38.2 of the Award or cl 8.5 of the Employment Contract.

#### *1 January 2018*

99 1 January 2018 was a usual rostered day on and a public holiday.

100 For the same reasons that apply with respect to Mr Fahie working on 25 September 2017, pursuant to cl 28.1(c) of the Award, as Mr Fahie was paid an annualised salary and where he worked on 1 January 2018, he was entitled to either a day off or a day added to the annual leave entitlement.

101 Mr Fahie was not entitled to any additional rates of pay or any of the options under cl 38.2 of the Award.

102 The payslip for the week 1 January 2018 to 7 January 2018 shows Mr Fahie was paid for 42 hours of work and credited with 4.42 hours of TOIL. Mataya's spreadsheet shows that Mr Fahie was credited with 3.92 hours of TOIL, but this was because he worked in excess of 42 hours that week.

103 Similar to 25 September 2017, nothing in the payslips or the spreadsheet or the leave transaction shows that he was credited an additional day's annual leave or paid for the TOIL credited in the payslip.

104 I find that in relation to work performed on 1 January 2018, pursuant to cl 28.1(c) of the Award Mr Fahie was entitled to an additional day off or a day added to annual leave entitlement. I find that this is 7.6 hours or payment of the equivalent amount based on the Award hours for a full-time employee.

105 Therefore, I am satisfied that Mr Fahie has proven to the requisite standard that Mataya failed to credit him with an additional day's annual leave for work performed on 25 September 2017 and 1 January 2018 in compliance with cl 28.1(c) of the Award. The total number of hours of additional annual leave owed is 15.2 hours.

106 I note that Mataya paid annual leave at the rate of \$29.7619 being the rate applied in respect of Mr Fahie's ordinary rates of pay.<sup>49</sup> Accordingly, had the additional annual leave entitlement for working on a public holiday been credited to the leave transaction, it is reasonable to infer it would have been paid at the same rate.

107 Therefore, I find that the equivalent amount for 15.2 hours of additional annual leave owed is \$452.38.

### **Applicable Contraventions Of The FWA**

108 As a result of the findings made, Mataya contravened s 45 of the FWA where it breached:

- cl 33.5(h) of the Award in failing to pay TOIL owed at the time of Mr Fahie's termination of employment; and
- cl 28.1(c) of the Award in failing to credit a day to Mr Fahie's annual leave entitlement for working on 25 September 2017 and 1 January 2018.

109 A contravention of s 45 of the FWA is a civil remedy provision.

### **Summary**

110 Section 545(3) of the FWA enables an eligible State court (of which the IMC is an eligible State court) to '*order an employer to pay an amount to, or on behalf of, an employee of the employer if the court is satisfied that:*

(a) *the employer was required to pay the amount under this Act or a fair work instrument; and*

(b) *the employer has contravened a civil remedy provision by failing to pay the amount'.*

111 Therefore, there are three preconditions to an order by the IMC under s 545(3) of the FWA:

- (1) an amount payable by the employer to the employee;
- (2) a requirement to pay the amount by reference to an obligation under the FWA or a fair work instrument; and
- (3) the failure to pay constitutes a civil remedy provision under s 539(1) and s 539(2) of the FWA.

112 I note further that Mr Fahie elected the small claim procedure. Thus, the amount referred to in s 548(1)(a) and s 548(1A) of the FWA refers to '*an amount that an employer was required to pay to ... an employee:*

(i) *under [the FWA] or a fair work instrument; or*

(ii) *because of a safety net contractual entitlement; or*

(iii) *because of an entitlement of the employee arising under subsection 542(1)' of the FWA.*

113 Having regard to the findings of fact made and to the application of those facts to the law, I am satisfied Mr Fahie has proven to the requisite standard the following:

- Mataya failed to pay 8.53 hours of TOIL owed at the time of his termination of employment;
- Mataya failed to credit two days to his annual leave entitlement for working on 25 September 2017 and 1 January 2018; and
- in contravening cl 33.5(h) and cl 28.1(c) of the Award, Mataya has contravened a term of a modern award: s 45 of the FWA. Contravening a term of a modern award is a civil remedy provision: s 539(2) of the FWA, pt 2 - 1 item 1.

114 In respect of the other aspects of Mr Fahie's claim, I find that he has not proven to the requisite standard that:

- (1) he was paid less than the Award obligations for the period worked;

- (2) he was owed 125 hours of TOIL at the time of his termination of employment; and
- (3) he was entitled to additional payment or TOIL or annual leave entitlement for 25 December 2017, 26 December 2017 or 27 December 2017.

### **Mataya's Submission On Set Off**

- 115 Mataya contends that based on its calculations Mr Fahie was paid \$1,984.81 in excess of the Award entitlements for the period worked.
- 116 Having regard to the findings made by the IMC, Mr Fahie would have been paid \$34,288.74 for time worked from 10 July 2017 to 25 January 2018 if he were paid in accordance with the Award obligations. The difference between what Mr Fahie was paid pursuant to the Employment Contract and what we would have been paid under the Award entitlements was \$1,177.03.
- 117 Mataya submits that any finding by the IMC of an amount paid in excess of the Award entitlements should be set off against any amount found to be owed by Mataya to Mr Fahie.
- 118 Mataya relies upon cl 4.6 and cl 6 of the Employment Contract.
- 119 In a recent decision (*Becherelli v Mediterranean Pty Ltd trading as Lucioli* [2017] WAIRC 65 [23]) Industrial Magistrate Flynn noted that in *Linkhill Pty Ltd v Director, Office of the Fair Work Building Industry Inspectorate* [2015] FCAFC 99, the Full Court of the Federal Court reviewed the law on this issue. The review included an assessment of the decision of Industrial Appeal Court of Western Australia (Anderson, Scott and Parker JJ) in *James Turner Roofing Pty Ltd v Peters* [2003] WASCA 28. The judgment of North and Bromberg JJ placed emphasis on the following passage of the judgement of Anderson J from *James Turner Roofing*:

*The payment of an amount as wages for hours worked in a period can be relied on by the employer in satisfaction of an award obligation to pay wages for that period whether in relation to wages for ordinary time, overtime, weekend penalty rates, holidays worked or any other like monetary entitlement under the award. This is so, whether the payment of the wages is made in contemplation of the obligations arising under the award or without regard for the award. However, if a payment is made expressly or impliedly to cover a particular obligation (whether for ordinary time, overtime, weekend penalty rates, fares, clothing or any other entitlement whether arising under the award or pursuant to the contract of employment) the payment cannot be claimed as a set off against monies payable to cover some other incident of employment. A payment made on account of say ordinary time worked cannot be used in discharge of an obligation arising on some other account such as a claim for overtime. Whether or not the payment was for a particular incident of employment will be a question of fact in every case [45].*

- 120 In *Linkhill Pty Ltd* the joint judgment proceeds to state:

*[W]hat is required is a close correlation between the award obligation and the contractual obligation in respect of which the payment was made. It is not the monetary nature of the payment made under the contract that must correlate with the award. It is the subject matter of the contractual obligations for which the payment was made that must be examined and be found to closely correlate with the obligations in the award said to be discharged by the payment [98].*

- 121 On 20 May 2020, the Full Court of the Federal Court published its reason for decision in *WorkPac Pty Ltd v Rossato* [2020] FCAFC 84. His Honour White J at [818] to [864] reviewed the law as in related to claims for set-off and at [865] summarised the applicable principles into four propositions:

- (a) ... application of the parties [employment] contract ... [if the parties] agree that a sum of money is paid and received for a specific purpose which is over and above or extraneous to an award entitlement, the [employment] contract precludes the employer from later seeking to rely on the

payment as satisfying an award obligation which is outside the agreed purpose of the payment ... [A]n employer cannot later reallocate an amount agreed to be paid to an employee in respect of [one purpose] ... (for example, ordinary hours of work) to meet a claim in respect of [another purpose] ... (for example, overtime pay) ... If [the purpose of the payment] arises out of the same purpose as the award obligation, it can be set off;

- (b) ... application of the common law principles ... [w]hen there are outstanding award or enterprise agreement entitlements, a payment designated by the employer as being for a purpose other than satisfaction of the award entitlement cannot be regarded as having satisfied the award or enterprise agreement’;
- (c) close regard must be had to the character of the payment on which the employer relies for the claimed set off and the purpose ... for which it was made; and
- (d) the purpose for which a payment was made will be a question of fact in each case. It may be express or ... implied from the parties’ agreement or from the employer’s conduct. (original emphasis)

- 122 Clause 4.6 of the Employment Contract refers to payments in excess of Mr Fahie’s ‘*minimum entitlements*’ capable of being set off in any claim by him. However, Mr Fahie’s ‘*minimum entitlements*’ are not defined in the Employment Contract.
- 123 If Mr Fahie’s ‘*minimum entitlement*’ is his annualised salary, then this is a term of the contract agreed to by the parties for work performed by him.
- 124 The Employment Contract provides that Mr Fahie would be paid \$65,000 per annum. The finding made with respect to Mr Fahie’s annualised salary for working less than one year, only goes to demonstrate the sufficiency of the annualised salary for the purposes of cl 28.1(c) of the Award.
- 125 The finding does not undermine the bargain the parties struck as to the amount of salary to be paid for work performed by Mr Fahie. It was always open to the parties to determine an amount for an annualised salary and provided that it was sufficient for the purposes of cl 28.1(c) of the Award, the fact that it might be more, even substantially more, does not make it an overpayment of an amount necessarily capable of being set off against other amounts found to be owed to Mr Fahie. It makes it a term of a contract.
- 126 The Employment Contract does not otherwise refer to Mr Fahie’s ‘*minimum entitlement*’ to be an amount he would have been paid under Award obligations. In the absence of any reference in the Employment Contract to ‘*minimum entitlement*’ meaning what he would have been paid under the Award obligations, I do not intend to, nor do I consider that I should, infer that such a term was implied into the agreement.
- 127 Had it been intended by the parties that any above Award wages be considered an ‘overpayment’ and recoverable, then I would have expected this to be an express term of the Employment Contract. However, such a term is, arguably, an anathema to the concept of an annualised salary and would in any event likely infringe the principles of set off referred to in ***WorkPac Pty Ltd v Rossato***.
- 128 Clause 6 of the Employment Contract allows Mataya to make certain deductions from Mr Fahie’s remuneration, including any overpaid money. However, for reasons already given the contractual amount of money paid to Mr Fahie for work performed is not an overpayment, but a term of the Employment Contract.
- 129 The amounts found to be owed to Mr Fahie arose due to TOIL he worked in excess of agreed hours of work and annual leave entitlements where he worked on public holidays. Both of these



entitlements arose ostensibly as result of Award entitlements. The purpose of these payments was significantly different to the purpose associated with the payment of a salary for work performed under contract.

130 Therefore, in my view, there is no amount owed by Mr Fahie to Mataya capable of being set off against the amounts found to be owed by Mataya to Mr Fahie.

131 Accordingly, I do not accept Mataya's submission and I find that the amounts owing to Mr Fahie are not capable of being set off against any alleged 'overpayment' of wages paid pursuant to the Employment Contract.

**Result and Order**

132 I am satisfied that Mataya is to pay to Mr Fahie the following amounts:

- \$328.11 for outstanding TOIL owed at the time of termination of employment; and
- \$452.38 for two days' additional annual leave for work performed on 25 September 2017 and 1 January 2018.

133 I order Mataya pay to Mr Fahie the amount of \$780.49

**D. SCADDAN  
INDUSTRIAL MAGISTRATE**

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- <sup>1</sup> Mataya's Response dated 27 May 2019 attached at 'A'.
- <sup>2</sup> See paragraph 41 to 56 for an explanation.
- <sup>3</sup> Exhibit 7 – Witness Statement of Natalie Adams dated 8 May 2020 at appendix 1.
- <sup>4</sup> Exhibit 7 – appendix 4.
- <sup>5</sup> Mr Fahie's oral evidence and exhibit 7 – appendix 10 (which in part is replicated in Exhibit 3 – Mr Fahie's TOIL calculation spreadsheet).
- <sup>6</sup> Exhibit 7 – appendix 10.
- <sup>7</sup> Exhibit 2 – Mr Fahie's weekly full time pay calculation. The amount of \$79.71 is obtained by subtracting \$65,000 from \$65,145.08 and dividing days actually worked in the year (200) by 365.
- <sup>8</sup> Exhibit 7 – appendix 13.
- <sup>9</sup> Exhibit 7 – appendix 13.
- <sup>10</sup> Clause 28.1(a) of the Award.
- <sup>11</sup> Clause 28.1(b) of the Award.
- <sup>12</sup> Clause 28.1(c) of the Award.
- <sup>13</sup> Clause 28.1(c) of the Award.
- <sup>14</sup> Clause 28.2 of the Award.
- <sup>15</sup> *City of Wanneroo v Australian Municipal, Administrative, Clerical Services Union* (2006) 153 IR 426, 438.
- <sup>16</sup> *City of Wanneroo* (438 and 440).
- <sup>17</sup> *City of Wanneroo* (440).
- <sup>18</sup> *Kucks v CSR Ltd* (1996) 66 IR 182; *Amcors Ltd v CFMEU* [2005] HCA 10.
- <sup>19</sup> Schedule 5.
- <sup>20</sup> Exhibit 7 – Appendix 19 (final pay slip).
- <sup>21</sup> Mr Fahie's spreadsheet is exhibit 3 and Mataya's spreadsheet is appendix 10 to Exhibit 7.
- <sup>22</sup> Regulation 23(2) of the *Industrial Magistrates Court (General Jurisdiction) Regulations 2005* (IMC Regulations).
- <sup>23</sup> Regulation 23(1) of the IMC Regulations.
- <sup>24</sup> Exhibit 1 – Witness Statement of Matthew Fahie lodged 16 April 2020.
- <sup>25</sup> Exhibit 7 at [3.2] and [3.3].
- <sup>26</sup> Exhibit 1.
- <sup>27</sup> Exhibit 7 at [3.3] and [4].
- <sup>28</sup> Ms Adam's oral evidence.
- <sup>29</sup> Exhibit 4 – email between the parties dated 7 September 2017.
- <sup>30</sup> Exhibit 4.
- <sup>31</sup> Exhibit 7 – appendix 5.
- <sup>32</sup> Exhibit 7 – appendix 11; Exhibit 7 – appendix 14 to 19 (also referred to by Ms Adams in relation to the payment for public holidays).
- <sup>33</sup> Exhibit 3.
- <sup>34</sup> Exhibit 7 – appendix 10.
- <sup>35</sup> Mr Fahie claims \$5222.05 for 125 hours of remaining TOIL.
- <sup>36</sup> \$23.23 per hour for a Level 6 Cook Grade 5.
- <sup>37</sup> Exhibit 7 at [1.2] and appendix 15.
- <sup>38</sup> Exhibit 7 – appendix 17.
- <sup>39</sup> Exhibit 7 – appendix 17.
- <sup>40</sup> Clauses 34.4(a), (b) and (d) of the Award are not relevant to the claim.
- <sup>41</sup> Exhibit 7 – appendixes 15 and 17.
- <sup>42</sup> Exhibit 7 – appendix 10.
- <sup>43</sup> Exhibit 7 – appendix 11.
- <sup>44</sup> Monday.
- <sup>45</sup> Monday.
- <sup>46</sup> Monday.
- <sup>47</sup> Tuesday.
- <sup>48</sup> Exhibit 7 – appendix 11.
- <sup>49</sup> Exhibit 7 – Appendix 18.

**Schedule I: Jurisdiction, Practice And Procedure Of The Industrial Magistrates Court of Western Australia Under The Fair Work Act 2009 (Cth)**

**Jurisdiction**

- [1] An employee, an employee organization or an inspector may apply to an eligible state or territory court for orders regarding a contravention of the civil penalty provisions identified in s 539(2) of the FWA. IMC being a court constituted by an industrial magistrate, is '*an eligible State or Territory court*': s 12 of the FWA (see definitions of '*eligible State or Territory court*' and '*magistrates court*'); the *Industrial Relations Act 1979* (WA) (IR Act), s 81, s 81B.
- [2] The application to the IMC must be made within six years after the day on which the contravention of the civil penalty provision occurred: s 544 of the FWA.
- [3] The civil penalty provisions are identified in s 539 of the FWA.
- [4] An '*employer*' has the statutory obligations noted above if the employer is a '*national system employer*' and that term, relevantly, is defined to include '*a corporation to which paragraph 51(xx) of the Constitution applies*': s 14, s 12 of the FWA. The obligation is to an '*employee*' who is a '*national system employee*' and that term, relevantly, is defined to include '*an individual so far as he or she is employed by a national system employer*': s 13 of the FWA. It is not in dispute and it was found that the respondent company is a corporation to which paragraph 51(xx) of the Constitution applies and that the claimant was employed by the respondent company.
- [5] Where the IMC is satisfied that there has been a contravention of a civil penalty provision, the court may make orders for a person to pay a pecuniary penalty: s 546 of the FWA. The application of a pecuniary penalty order does not apply to the small claims procedure: s 548(1)(a) of the FWA.

**Burden and Standard Of Proof**

- [6] In an application under the IR Act, the claimant carries the burden of proving the claim. The standard of proof required to discharge the burden is proof 'on the balance of probabilities. In *Miller v Minister of Pensions* [1947] 2 All ER 372, 374, Lord Denning explained the standard in the following terms:
- It must carry a reasonable degree of probability but not so high as is required in a criminal case. If the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged, but if the probabilities are equal it is not.*
- [7] In the context of an allegation of the breach of a civil penalty provision of the IR Act it is also relevant to recall the observation of Dixon J said in *Briginshaw v Briginshaw* [1938] HCA 34; (1938) 60 CLR 336:
- The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences [362].*
- [8] Where in this decision it is stated that a finding has been made, the finding is made on the balance of probabilities. Where it is stated that a finding has not been made or cannot be made, then no finding can be made on the balance of probabilities.

Practice and Procedure of the Industrial Magistrates Court

- [9] The IR Act provides that, except as prescribed by or under the FWA, the powers, practice and procedure of the IMC is to be the same as if the proceedings were a case under the *Magistrates Court (Civil Proceedings) Act 2004* (WA): s 81CA. Relevantly, regulations prescribed under the IR Act provide for an exception: a court hearing a trial is not bound by the rules of evidence and may inform itself on any matter and in any manner as it thinks fit: reg 35(4).
- [10] The FWA provides that the IMC is not bound by any rules of evidence and procedure and may act in an informal manner and without regard to legal forms and technicalities: s 548(3) of the FWA.
- [11] In *Sammut v AVM Holdings Pty Ltd [No2]* [2012] WASC 27, Commissioner Sleight examined a similarly worded provision regulating the conduct of proceedings in the State Administrative Tribunal and made the following observation (omitting citations):
- ... The tribunal is not bound by the rules of evidence and may inform itself in such a manner as it thinks appropriate. This does not mean that the rules of evidence are to be ignored. The more flexible procedure provided for does not justify decisions made without a basis in evidence having probative force. The drawing of an inference without evidence is an error of law. Similarly, such error is shown when the tribunal bases its conclusion on its own view of a matter which requires evidence [40].*

**Schedule 2: Restaurant Industry Award 2010 (Cth)****Clause 28****28. Annualised salary arrangements****28.1 Alternative method of payment—annual salary**

- (a) As an alternative to being paid by the week, by agreement between the employer and an individual employee, an employee other than a casual, can be paid at a rate equivalent to an annual salary of at least 25% or more above the weekly rate prescribed in clause 20—Minimum wages, multiplied by 52 for the work being performed. In such cases, there is no requirement under clauses 24.2, 33—Overtime, 34.1 and 34.2 to pay overtime and penalty rates in addition to the weekly wage, provided that the salary paid over a year was sufficient to cover what the employee would have been entitled to if all award overtime and penalty rate payment obligations had been complied with.
- (b) Provided further that in the event of termination of employment prior to completion of a year, the salary paid during such period of employment must be sufficient to cover what the employee would have been entitled to if all award overtime and penalty rate payment obligations had been complied with.
- (c) An employee being paid according to this clause will be entitled to a minimum of eight days off per four week cycle. Further, if an employee covered by this clause is required to work on a public holiday, such employee will be entitled to a day off instead of public holidays or a day added to the annual leave entitlement.

**28.2** The employer must keep all records relating to the starting and finishing times of employees to whom this clause applies. This record must be signed weekly by the employee. This is to enable the employer to carry out a reconciliation at the end of each year comparing the employee's ordinary wage under this award and the actual payment. Where such a comparison reveals a shortfall in the employee's wages, then the employee must be paid the difference between the wages earned under the award and the actual amount paid.

Clause 33.5**33.5 Time off instead of payment for overtime**

[33.5 substituted by [PR585805](#) ppc 14Dec16]

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.
- (b) The period of time off that an employee is entitled to take is equivalent to the overtime payment that would have been made.

EXAMPLE: By making an agreement under clause 33.5 an employee who worked 2 overtime hours at the rate of time and a half is entitled to 3 hours' time off.

- (c) Time off must be taken:
  - (i) within the period of 6 months after the overtime is worked; and
  - (ii) at a time or times within that period of 6 months agreed by the employee and employer.
- (d) If the employee requests at any time, to be paid for overtime covered by an agreement under clause 33.5 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (e) If time off for overtime that has been worked is not taken within the period of 6 months mentioned in paragraph (c), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (f) An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.
- (g) An employee may, under section 65 of the Act, request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 33.5 will apply for overtime that has been worked.

Note: If an employee makes a request under section 65 of the Act for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the Act).

- (h) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 33.5 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

Note: Under section 345(1) of the Act, a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 33.5.

Clause 38

**38. Public holidays**

**38.1 Public holidays are provided for in the NES**

By agreement between the employer and the majority of employees in the relevant enterprise or section of the enterprise, an alternative day may be taken as the public holiday instead of any of the days prescribed in the NES.

**38.2 Additional arrangements for full-time employees:**

A full-time employee whose rostered day off falls on a public holiday must, subject to clause 34.4:

- (a) be paid an extra day's pay;
- (b) be provided with an alternative day off within 28 days; or
- (c) receive an additional day's annual leave.

**38.3** A full-time employee who works on a public holiday which is subject to substitution as provided for in the NES will be entitled to the benefit of the substitute day.

**Scheduled 3: Fair Work Pay Rate**

**Fair Work**  
OMBUDSMAN

**Your pay rates summary**

Pay rate as at: 27 July 2017

Level 6 - cook grade 5 (tradesperson) | Full-time | 20 years or over

Hourly Pay Rate:	\$23.23
Weekly Pay Rate:	\$882.80
Part-Time Rate:	\$23.23 per hour
Casual Rate:	\$29.04 per hour
Your award:	Restaurant Industry Award 2010 (MA000119)
Employment Status:	Full-time

## Your selected penalty rates:

Penalty	Rate
Saturday	\$29.04 per hour
Sunday	\$34.85 per hour
Public holiday	\$52.27 per hour, with a minimum payment of 4 hours
Late night - Monday to Friday - 10pm to midnight	\$23.23 per hour plus \$2.13 per hour or part of an hour
Early morning - Monday to Friday - midnight to 6am	\$23.23 per hour plus \$3.19 per hour or part of an hour
No meal break - Monday to Friday - 6am to 10pm	\$34.85 per hour, from 6 hours after starting work until the meal break is given or the shift ends
No meal break - Saturday	\$40.65 per hour, from 6 hours after starting work until the meal break is given or the shift ends
No meal break - Sunday	\$46.46 per hour, from 6 hours after starting work until the meal break is given or the shift ends
No meal break - Public holiday	50% of the ordinary rate plus the appropriate public holiday rate per hour, from 6 hours after starting work until the meal break is given or the shift ends
No meal break - Late night - Monday to Friday - 10pm to midnight	\$34.85 per hour plus \$2.13 per hour or part of an hour, from 6 hours after starting work until the meal break is given or the shift ends
No meal break - Early morning - Monday to Friday - midnight to 6am	\$34.85 per hour plus \$3.19 per hour or part of an hour, from 6 hours after starting work until the meal break is given or the shift ends
No meal break - Overtime	50% of the ordinary rate plus the appropriate overtime rate per



	hour, from 6 hours after starting work until the meal break is given or the shift ends
No meal break - Other	50% of the ordinary rate plus the appropriate rate per hour, from 6 hours after starting work until the meal break is given or the shift ends
Overtime - Monday to Friday - first 2 hours	\$34.85 per hour
Overtime - Monday to Friday - after 2 hours	\$46.46 per hour
Overtime - Saturday - first 2 hours	\$40.65 per hour
Overtime - Saturday - after 2 hours	\$46.46 per hour
Overtime - Sunday	\$46.46 per hour
Overtime - RDO	\$46.46 per hour, with a minimum payment of 4 hours
Working through a meal break - Monday to Friday - 6am to 10pm	\$34.85 per hour, from the time the meal break was scheduled to start until it's given or the shift ends
Working through a meal break - Saturday	\$40.65 per hour, from the time the meal break was scheduled to start until it's given or the shift ends
Working through a meal break - Sunday	\$46.46 per hour, from the time the meal break was scheduled to start until it's given or the shift ends
Working through a meal break - Public holiday	50% of the ordinary rate plus the appropriate public holiday rate per hour, from the time the meal break was scheduled to start until it's given or the shift ends
Working through a meal break - Late night - Monday to Friday - 10pm to midnight	\$34.85 per hour plus \$2.13 per hour or part of an hour, from the time the meal break was scheduled to start until it's given or the shift ends
Working through a meal break - Early morning - Monday to Friday - midnight to 6am	\$34.85 per hour plus \$3.19 per hour or part of an hour, from the time the meal break was scheduled to start until it's given or the shift ends
Working through a meal break - Overtime	50% of the ordinary rate plus the appropriate overtime rate per hour, from the time the meal break was scheduled to start until it's given or the shift ends
Working through a meal break - Other	50% of the ordinary rate plus the appropriate rate per hour, from the time the meal break was scheduled to start until it's given or the shift ends
Minimum break after overtime	overtime rates until a break of 8 hours is given
Public holiday - additional day off	\$29.04 per hour and equivalent time taken off or added to annual leave balance
Public holiday - Christmas Day - Saturday	\$34.85 per hour, with the benefit of a substitute day
Public holiday - Christmas Day - Sunday	\$40.66 per hour, with the benefit of a substitute day

## Common penalties for your award:

Penalty	Rate
Saturday	\$29.04 per hour

**Schedule IV: Spreadsheet of the Hours Worked by Mr Fahie and Award Calculation**

	Date	Start	End	Meal break	Total Hour	Break	Total	>42	Base hours (7.6) at base rate <sup>50</sup>		Overtime hours over 7.6 <sup>51</sup>	Overtime Total <sup>52</sup>	Total
<b>M</b>	10/7/17	8:00	15:00	0:30	6.5		6.5		151.00				151.00
<b>T</b>	11/7/17	6:30	15:30	0:30	8.5		8.5		197.46				197.46
<b>W</b>	12/7/17	6:30	15:30	0:30	8.5		8.5		197.46				197.46
<b>Th</b>	13/7/17	6:30	15:00	0:30	8		8		185.84				185.84
<b>S</b>	16/7/17	6:30	10:30	0:30	3.5		3.5		121.98				121.98
							35	-7					<b>853.72</b>
<b>M</b>	17/7/17	6:30	15:30	0:30	8.5		8.5		176.55		0.9	31.365	207.91
<b>T</b>	18/7/17	6:30	15:00	0:15	8.25		8.25		383.30	RDO <sup>53</sup>			383.30
<b>W</b>	19/7/17	6:30	15:00	0:15	8.25		8.25		383.30	RDO <sup>54</sup>			383.30
<b>Th</b>	20/7/17	6:30	15:00	0:15	8.25		8.25		176.55		0.65	22.65	199.20
<b>F</b>	21/7/17	6:30	15:00	0:30	8		8		176.55		0.4	13.94	190.49
<b>Sat</b>	22/7/17	6:30	15:00	0:30	8		8		220.7		0.4	16.26	236.96
<b>S</b>	23/7/17	6:28	15:00	0:15	8.28		8.28		264.86		0.68	31.59	296.45
							57.53	15.53					<b>1,897.61</b>
<b>M</b>	24/7/17	6:31	15:52	0:00	9.35	-0.5	8.85		176.55		1.25	43.56	220.11
<b>T</b>	25/7/17	7:02	15:54	0:30	8.37		8.37		176.55		0.77	26.83	203.38
<b>F</b>	28/7/17	6:32	15:58	0:30	8.93		8.93		176.55		1.33	46.35	222.90
<b>Sat</b>	29/7/17	6:38	16:04	0:30	8.93		8.93		220.7		1.33	54.06	274.77
<b>S</b>	30/7/17	6:35	16:10	0:30	9.08		9.08		264.86		1.48	68.76	333.62
							44.16	2.16					<b>1,254.78</b>
<b>M</b>	31/7/17	6:34	15:38	0:30	8.57		8.57		176.55		0.97	33.8	210.35
<b>T</b>	3/8/17	18:45	20:30	0:00	1.75	-0.5	1.25		176.55		2	69.7	246.25

Key:

M	Monday	T	Tuesday	W	Wednesday
Th	Thursday	F	Friday	Sat	Saturday
S	Sunday				

	Date	Start	End	Meal break	Total Hour	Break	Total	>42	Base hours (7.6) at base rate <sup>50</sup>	Overtime hours over 7.6 <sup>51</sup>	Overtime Total <sup>52</sup>	Total
<b>Th</b>	3/8/17	6:46	15:46	0:30	8.5		8.5			0.15	6.97	6.97
<b>F</b>	4/8/17	6:31	15:42	0:30	8.68		8.68		176.55	1.08	37.64	214.19
<b>Sat</b>	5/8/17	7:00	15:20	0:30	7.83		7.83		220.7	0.23	9.35	230.05
<b>S</b>	6/8/17	6:56	15:21	0:30	7.92		7.92		264.86	0.32	14.87	279.73
							42.75	0.75				<b>1,187.54</b>
<b>M</b>	7/8/17	6:27	16:09	0:30	9.2		9.2		176.55	1.6	55.76	232.31
<b>Th</b>	10/8/17	6:30	16:01	0:30	9.02		9.02		176.55	1.42	49.49	226.04
<b>F</b>	11/8/17	6:27	16:12	0:30	9.25		9.25		176.55	1.65	57.5	234.05
<b>Sat</b>	12/8/17	6:28	16:02	0:30	9.07	9.07			220.7	1.47	59.76	280.46
<b>S</b>	13/8/17	6:59	15:27	0:30	7.97		7.97		264.86	0.37	17.19	282.05
							44.51	2.51				<b>1,254.90</b>
<b>M</b>	14/8/17	6:30	16:01	0:00	9.52	-0.5	9.02		176.55	1.42	49.49	226.04
<b>Th</b>	17/8/17	6:32	16:07	0:15	9.33		9.33		176.55	1.73	60.29	236.84
<b>F</b>	18/8/17	6:33	16:01	0:00	9.47	-0.5	8.97		176.55	1.37	47.75	224.29
<b>Sat</b>	19/8/17	7:00	16:07	0:15	8.87		8.87		220.7	1.27	51.63	272.33
<b>S</b>	20/8/17	6:59	16:19	0:15	9.08		9.08		264.86	1.48	68.76	333.62
							45.27	3.27				<b>1,293.12</b>
<b>M</b>	21/8/17	6:26	16:23	0:30	9.45		9.45		176.55	1.85	64.47	241.02
<b>Th</b>	24/8/17	6:27	16:02	0:30	9.08		9.08		176.55	1.48	51.58	228.13
<b>F</b>	25/8/17	6:30	16:04	0:30	9.07		9.07		176.55	1.47	51.23	227.78
<b>Sat</b>	26/8/17	6:59	15:57	0:30	8.47		8.47		220.7	0.87	35.3655	256.07
<b>S</b>	27/8/17	7:03	15:27	0:30	7.9		7.9		264.86	0.3	13.938	278.8
							43.97	1.97				<b>1,231.79</b>

Key:

M  
Th  
SMonday  
Thursday  
SundayT  
FTuesday  
FridayW  
SatWednesday  
Saturday

	Date	Start	End	Meal break	Total Hour	Break	Total	>42	Base hours (7.6) at base rate <sup>50</sup>		Overtime hours over 7.6 <sup>51</sup>	Overtime Total <sup>52</sup>	Total
<b>M</b>	28/8/17	6:40	16:46	0:00	10.1	-0.5	9.6		176.55		2	69.7	246.25
<b>Th</b>	31/8/17	6:30	16:18	0:30	9.3		9.3		176.55		1.7	59.25	235.79
<b>F</b>	1/9/17	6:27	16:00	0:30	9.05		9.05		176.55		1.45	50.53	227.08
<b>Sat</b>	2/9/17	7:00	16:08	0:30	8.63		8.63		220.7		1.03	41.87	262.57
<b>S</b>	3/9/17	6:41	15:45	0:30	8.57		8.57		264.86		0.97	45.06	309.93
							45.15	3.15					<b>1,281.62</b>
<b>M</b>	4/9/17	6:30	16:58	0:30	9.97		9.97		176.55		2	69.7	246.25
											0.37	17.19	17.19
<b>Th</b>	7/9/17	6:41	15:50	0:30	8.65		8.65		176.55		1.05	36.59	213.14
<b>F</b>	8/9/17	6:22	15:51	0:30	8.98		8.98		176.55		1.38	48.09	224.64
<b>Sat</b>	9/9/17	6:59	15:40	0:30	8.18		8.18		220.7		0.58	23.58	244.28
<b>S</b>	10/9/17	6:53	16:36	0:30	9.22		9.22		264.86		1.62	75.26	340.13
							45	3					<b>1,285.63</b>
<b>M</b>	11/9/17	6:41	16:55	0:30	9.73		9.73		176.55		2	69.7	246.25
											0.13	6.04	6.04
<b>Th</b>	14/9/17	6:34	15:59	0:30	8.92		8.92		176.55		1.32	46	222.55
<b>F</b>	15/9/17	6:36	16:03	0:00	9.45	-0.5	8.95		176.55		1.35	47.05	223.60
<b>Sat</b>	16/9/17	6:58	15:56	0:00	8.97	-0.5	8.47		220.7		1.52	61.79	282.49
<b>Sat</b>	16/9/17	16:53	18:02	0:00	1.15	-0.5	0.65						
<b>S</b>	17/9/17	7:05	16:00	0:30	8.42		8.42		264.86		0.82	38.1	302.96
							45.14	3.14					<b>1,283.88</b>
<b>M</b>	18/9/17	6:33	16:22	0:30	9.32		9.32		176.55		1.72	59.94	236.49

Key:

M  
Th  
SMonday  
Thursday  
SundayT  
FTuesday  
FridayW  
SatWednesday  
Saturday

	Date	Start	End	Meal break	Total Hour	Break	Total	>42	Base hours (7.6) at base rate <sup>50</sup>		Overtime hours over 7.6 <sup>51</sup>	Overtime Total <sup>52</sup>	Total
<b>T</b>	19/9/17	13:18	16:20	0:00	3.03	-0.5	2.53		117.54	RDO <sup>55</sup>			117.54
<b>Th</b>	21/9/17	6:30	16:32	0:00	10.03	-0.5	9.53		176.55		1.93	67.26	243.81
<b>F</b>	22/9/17	6:30	16:24	0:30	9.4		9.4		176.55		1.8	62.73	239.28
<b>Sat</b>	23/9/17	6:59	15:48	0:00	8.82	-0.5	8.32		220.7		0.72	29.27	249.96
<b>S</b>	24/9/17	7:01	16:06	0:30	8.58		8.58		264.86		0.98	45.53	310.39
							47.68	5.68					<b>1,397.48</b>
<b>M</b>	25/9/17	6:59	16:27	0:30	8.97		8.97		468.86	PH <sup>56</sup>			468.86
<b>Th</b>	28/9/17	6:28	16:14	0:30	9.27		9.27		176.55		1.67	58.2	234.75
<b>F</b>	29/9/17	6:30	16:00	0:30	9		9		176.55		1.4	48.79	225.34
<b>Sat</b>	30/9/17	7:00	15:48	0:30	8.3		8.3		220.7		0.7	28.46	249.16
<b>S</b>	1/10/17	7:00	16:03	0:30	8.55		8.55		264.86		0.95	44.14	309
NO LIEU DAY FOR PUBLIC HOLIDAY – USUAL RDO this day													
							44.09	2.09					<b>1,487.10</b>
<b>M</b>	2/10/17	6:27	16:39	0:15	9.95		9.95		176.55		2	69.7	246.25
											0.35	16.26	16.26
<b>Th</b>	5/10/17	6:30	16:37	0:00	10.12	-0.5	9.62		176.55		2	69.7	246.25
											0.02	0.93	0.93
<b>F</b>	6/10/17	6:28	16:27	0:30	9.48		9.48		176.55		1.88	65.52	242.07
<b>Sat</b>	7/10/17	7:02	15:34	0:30	8.03		8.03		220.7		0.43	17.48	238.18
<b>S</b>	8/10/17	6:49	15:41	0:30	8.37		8.37		264.86		0.77	35.77	300.63
							45.45	3.45					<b>1,290.57</b>
<b>M</b>	9/10/17	6:27	16:36	0:30	9.65		9.65		176.55		2	69.7	246.25
											0.05	2.32	2.32

Key:

M	Monday	T	Tuesday	W	Wednesday
Th	Thursday	F	Friday	Sat	Saturday
S	Sunday				

	Date	Start	End	Meal break	Total Hour	Break	Total	>42	Base hours (7.6) at base rate <sup>50</sup>		Overtime hours over 7.6 <sup>51</sup>	Overtime Total <sup>52</sup>	Total
<b>Th</b>	12/10/17	6:19	16:01	0:30	9.2		9.2		176.55		1.6	55.76	232.31
<b>F</b>	13/10/17	6:28	16:30	0:30	9.53		9.53		176.55		1.93	67.26	243.81
<b>Sat</b>	14/10/17	6:56	16:24	0:30	8.97		8.97		220.7		1.37	55.69	276.39
<b>S</b>	15/10/17	6:23	16:21	0:30	9.47		9.47		264.86		1.87	86.88	351.74
							46.82	4.82					<b>1,352.82</b>
<b>M</b>	16/10/17	6:25	17:29	0:30	10.57		10.57		176.55		2	69.7	246.25
											0.97	45.07	45.07
<b>Th</b>	19/10/17	6:31	16:17	0:30	9.27		9.27		176.55		1.67	58.2	234.75
<b>F</b>	20/10/17	6:24	17:13	0:30	10.32		10.32		176.55		2	69.7	246.25
											0.72	33.45	33.45
<b>Sat</b>	21/10/17	6:45	16:06	0:30	8.85		8.85		220.7		1.25	50.81	271.52
<b>S</b>	22/10/17	6:29	15:36	0:30	8.62		8.62		264.86		1.02	47.39	312.25
							47.63	5.63					<b>1,389.53</b>
<b>M</b>	23/10/17	6:23	15:57	0:30	9.07		9.07		176.55		1.47	51.23	227.78
<b>Th</b>	26/10/17	8:30	17:23	0:30	8.38		8.38		176.55		0.78	27.18	203.73
<b>F</b>	27/10/17	6:28	16:17	0:30	9.32		9.32		176.55		1.72	59.94	236.49
<b>Sat</b>	28/10/17	6:34	16:20	0:30	9.27		9.27		220.7		1.67	67.8855	288.59
<b>S</b>	29/10/17	6:15	16:09	0:30	9.4		9.4		264.86		1.8	83.628	348.49
							45.44	3.44					<b>1305.08</b>
<b>M</b>	30/10/17	6:24	16:02	0:30	9.13		9.13		212.09				212.09
<b>Th</b>	2/11/17	6:44	16:29	0:30	9.25		9.25		214.88				214.88
<b>F</b>	3/11/17	6:21	16:45	0:30	9.9		9.9		229.98				229.98
							28.28			TOIL 11.72			<b>656.94</b>

Key:

M	Monday	T	Tuesday	W	Wednesday
Th	Thursday	F	Friday	Sat	Saturday
S	Sunday				

	Date	Start	End	Meal break	Total Hour	Break	Total	>42	Base hours (7.6) at base rate <sup>50</sup>		Overtime hours over 7.6 <sup>51</sup>	Overtime Total <sup>52</sup>	Total
<b>M</b>	6/11/17	6:19	16:31	0:30	9.7		9.7		225.33				225.33
<b>F</b>	10/11/17	7:58	16:30	0:30	8.03		8.03		186.54				186.54
<b>Sat</b>	11/11/17	6:50	15:55	0:30	8.58		8.58		249.16				249.16
<b>S</b>	12/11/17	6:43	16:00	0:30	8.78		8.78		305.98				305.98
							35.09			TOIL 1.42 AL 3.49			<b>967.01</b>
<b>M</b>	13/11/17	6:32	15:49	0:30	8.78		8.78		176.55		1.18	41.12	217.67
<b>Th</b>	16/11/17	6:32	16:19	0:30	9.28		9.28		176.55		1.68	58.55	235.10
<b>F</b>	17/11/17	6:30	16:30	0:30	9.5		9.5		176.55		1.9	66.22	242.76
<b>Sat</b>	18/11/17	6:53	16:01	0:30	8.63		8.63		220.7		1.03	41.87	262.57
<b>S</b>	19/11/17	6:50	16:05	0:30	8.75		8.75		264.86		1.15	53.43	318.29
							44.94	2.94					<b>1,276.39</b>
<b>M</b>	20/11/17	6:30	16:37	0:30	9.62		9.62		176.55		2	69.7	246.25
<b>Th</b>	23/11/17	6:24	16:40	0:30	9.77		9.77		176.55		0.02	0.93	0.93
											2	69.7	246.25
											0.17	7.9	7.9
<b>F</b>	24/11/17	6:23	16:20	0:30	9.45		9.45		176.55		1.85	64.47	241.02
<b>Sat</b>	25/11/17	6:46	16:20	0:30	9.07		9.07		220.7		1.47	59.76	280.46
<b>S</b>	26/11/17	5:55	16:06	0:30	9.68		9.68		264.86		2.08	96.64	361.5
							47.59	5.59					<b>1,384.30</b>
<b>M</b>	27/11/17	6:20	16:01	0:30	9.18		9.18		176.55		1.58	55.06	231.61

Key:

M	Monday	T	Tuesday	W	Wednesday
Th	Thursday	F	Friday	Sat	Saturday
S	Sunday				

	Date	Start	End	Meal break	Total Hour	Break	Total	>42	Base hours (7.6) at base rate <sup>50</sup>		Overtime hours over 7.6 <sup>51</sup>	Overtime Total <sup>52</sup>	Total
<b>Th</b>	30/11/17	6:24	16:08	0:30	9.23		9.23		176.55		1.63	56.81	233.35
<b>F</b>	1/12/17	6:22	16:21	0:30	9.48		9.48		176.55		1.88	65.51	242.07
<b>Sat</b>	2/12/17	6:44	15:58	0:30	8.73		8.73		220.7		1.13	45.93	266.64
<b>S</b>	3/12/17	6:27	15:39	0:30	8.7		8.7		264.86		1.1	51.11	315.97
							45.32	3.32					<b>1,289.64</b>
<b>M</b>	4/12/17	6:24	16:37	0:30	9.72		9.72		176.55		2	69.7	246.25
											0.12	5.58	5.58
<b>Th</b>	7/12/17	6:22	16:38	0:30	9.77		9.77		176.55		2	69.7	246.25
											0.17	7.9	7.9
<b>F</b>	8/12/17	6:25	15:44	0:30	8.82		8.82		176.55		1.22	42.52	219.07
<b>Sat</b>	9/12/17	6:56	16:30	0:30	9.07		9.07		220.7		1.47	59.76	280.46
<b>S</b>	10/12/17	6:54	15:30	0:30	8.1		8.1		264.86		0.5	23.23	288.09
							45.48	3.48					<b>1,293.58</b>
<b>Th</b>	14/12/17	6:35	14:36	0:30	7.52		7.52		174.69				174.69
<b>F</b>	15/12/17	6:24	16:05	0:30	9.18		9.18		213.25				213.25
<b>Sat</b>	16/12/17	6:57	15:51	0:30	8.4		8.4		243.94				243.94
<b>S</b>	17/12/17	6:51	15:29	0:30	8.13		8.13		283.33				283.33
							33.23				TOIL 8.77		<b>915.21</b>
<b>M</b>	18/12/17	6:21	15:55	0:30	9.07		9.07		210.7				210.7
<b>Th</b>	21/12/17	6:23	14:32	0:30	7.65		7.65		177.71				177.71
<b>F</b>	22/12/17	6:29	16:25	0:21	9.58		9.58		222.54				222.54
							26.3				TOIL 5.62		<b>610.95</b>

Key:

M	Monday	T	Tuesday	W	Wednesday
Th	Thursday	F	Friday	Sat	Saturday
S	Sunday				



	Date	Start	End	Meal break	Total Hour	Break	Total	>42	Base hours (7.6) at base rate <sup>50</sup>		Overtime hours over 7.6 <sup>51</sup>	Overtime Total <sup>52</sup>	Total
										AL 8.08			
<b>W</b>	27/12/17	6:27	15:54	0:26	9.02		9.02		209.53				209.53
<b>Th</b>	28/12/17	6:29	14:33	0:30	7.57		7.57		175.85				175.85
<b>F</b>	29/12/17	6:27	16:05	0:15	9.38		9.38		217.9				217.9
<b>Sat</b>	30/12/17	6:53	16:12	0:30	8.82		8.82		256.13				256.13
PLUS XMAS DAY P/H (TUESDAY'S RDO ANYWAY)								9		TOIL 9			
							34.79						<b>859.42</b>
<b>M</b>	1/1/18	7:00	17:00	0:30	9.5		9.5		496.57	PH <sup>57</sup>			496.57
<b>Th</b>	4/1/18	6:36	14:51	0:28	7.78		7.78		176.55		0.18	6.27	182.82
<b>F</b>	5/1/18	6:30	15:51	0:30	8.85		8.85		176.55		1.25	43.56	220.11
<b>Sat</b>	6/1/18	6:28	16:17	0:30	9.32		9.32		220.7		1.72	69.92	290.62
<b>S</b>	7/1/18	6:08	17:06	0:00	10.97	-0.5	10.47		264.86		2.87	133.34	398.2
							45.92	3.92					<b>1,588.32</b>
<b>M</b>	8/1/18	6:27	15:18	0:30	8.35		8.35		176.55		0.75	26.14	202.69
<b>Th</b>	11/1/18	6:28	14:26	0:30	7.47		7.47		173.53				173.53
<b>F</b>	12/1/18	6:27	16:13	0:22	9.4		9.4		176.55		1.8	62.73	239.28
<b>Sat</b>	13/1/18	6:48	15:04	0:30	7.77		7.77		220.7		0.17	6.91	227.61
<b>S</b>	14/1/18	6:50	15:06	0:29	7.78		7.78		264.86		0.18	8.36	273.22
							40.77			TOIL 1.23			<b>1,116.33</b>

Key:

M	Monday	T	Tuesday	W	Wednesday
Th	Thursday	F	Friday	Sat	Saturday
S	Sunday				

	Date	Start	End	Meal break	Total Hour	Break	Total	>42	Base hours (7.6) at base rate <sup>50</sup>	Overtime hours over 7.6 <sup>51</sup>	Overtime Total <sup>52</sup>	Total
<b>M</b>	15/1/18	6:27	15:33	0:31	8.58		8.58		176.55	0.98	34.153	210.70
<b>Th</b>	18/1/18	6:26	14:36	0:22	7.8		7.8		176.55	0.2	6.97	183.52
<b>F</b>	19/1/18	6:25	15:51	0:20	9.1		9.1		176.55	1.5	52.26	228.82
<b>Sat</b>	20/1/18	6:47	15:45	0:30	8.47		8.47		220.7	0.87	35.37	256.07
<b>S</b>	21/1/18	6:47	15:46	0:09	8.83		8.83		264.86	1.23	57.15	322.01
							42.78	0.78				<b>1,201.12</b>
<b>M</b>	22/1/18	6:29	17:00	0:22	10.15		10.15		235.78			235.78
<b>Th</b>	25/1/18	6:30	12:00	0:00	5.5	-0.5	5		116.15			116.15
							15.15					<b>351.93</b>
								82.62				
								53.86				
								<b>1615.8</b>				<b>34,558.3</b>

<sup>50</sup> Relevant base rate of pay for Monday to Friday is \$23.23, Saturday is \$29.04 and Sunday is \$34.85

<sup>51</sup> Relevant overtime rate of pay for Monday to Friday is \$34.85 for first 2 hours and \$46.46 thereafter, Saturday is \$40.65 for first 2 hours and \$46.46 thereafter and Sunday is \$46.46 per hour

<sup>52</sup> Overtime – Where there are two amounts, the first amount is applicable to the first 2 hours of work and the second figure is applicable for hours of work thereafter

<sup>53</sup> Rostered Day Off for which all time is paid at \$46.46 per hour

<sup>54</sup> Rostered Day Off for which all time is paid at \$46.46 per hour

<sup>55</sup> Rostered Day Off for which all time is paid at \$46.46 per hour

<sup>56</sup> Public Holiday for which all time is paid at \$52.27 per hour

<sup>57</sup> Public Holiday for which all time is paid at \$52.27 per hour

Key:

M	Monday	T	Tuesday	W	Wednesday
Th	Thursday	F	Friday	Sat	Saturday
S	Sunday				