

NOTICE OF FILING

Details of Filing

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File Number: NSD189/2024
File Title: ANTOINETTE LATTOUF v AUSTRALIAN BROADCASTING CORPORATION
Registry: NEW SOUTH WALES 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.



Consolidated Amended Statement of claim

No. NSD189 of 2024

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

Antoinette Lattouf
Applicant

Australian Broadcasting Corporation
Respondent

Parties

1. The applicant is and was at all material times:

- (a) a natural person capable of suing in her own name;
- (b) a national system employee within the meaning of s 13 of the *Fair Work Act 2009* (Cth) (**FW Act**); ~~and~~
- (c) an employee within the meaning of s 42 of the FW Act; and
- (d) a woman of Lebanese and Arab and Middle Eastern descent.

1A. At all material times, the applicant held political opinions including:

- (a) opposing the Israeli military campaign in Gaza;
- (b) supporting Palestinians' human rights;
- (c) questioning the authenticity of footage of demonstrators chanting antisemitic chants at the Sydney Opera House; and

Filed on behalf of (name & role of party) Antoinette Lattouf, Applicant
Prepared by (name of person/lawyer) Josh Bornstein, Lawyer for the Applicant
Law firm (if applicable) Maurice Blackburn Lawyers
Tel 02 8267 0940 Fax _____
Email jbornstein@mauriceblackburn.com.au; pparker@mauriceblackburn.com.au
Address for service Level 29, 161 Castlereagh Street, Sydney NSW 2000
(include state and postcode) _____

(d) that media organisations should report about the conflict between Israel and Palestinians accurately and impartially.

2. The respondent (**ABC**) is and was at all material times:

(a) a body corporate established by the *Broadcasting and Television Act 1942* (Cth) and continued in existence by the *Australian Broadcasting Corporation Act 1983* (Cth);

(b) capable of suing and being sued;

(c) a national system employer within the meaning of s 14 of the FW Act; and

(d) an employer within the meaning of s 42 of the FW Act.

3. At all material times, Steve Ahern:

(a) was an employee of the ABC within the meaning of FW Act s 15; and

~~(b) held the role of Acting Head of Capital City Network.~~ was acting in the position of Head of Capital City Network.

4. At all material times, Elizabeth Green:

(a) was an employee of the ABC within the meaning of FW Act s 15; and

(b) held the role of Content Director, ABC Radio Sydney.

4A. At all material times, Ita Buttrose held the office of Chairperson of the ABC.

4B. At all material times, David Anderson:

(a) was an employee of the ABC within the meaning of FW Act s 15; and

(b) held the role of Chief Content Officer.

Employment of the Applicant

5. On or about 18 December 2023, the Applicant commenced an engagement as a casual employee of the ABC pursuant to a contract of employment.

Particulars

The contract of employment was constituted by:

- (a) a conversation by phone between the applicant and Elizabeth Green on 17 November 2023;
- (b) emails between the applicant and Elizabeth Green on 17 November 2023;
- (c) standard terms sent by email to the applicant on 24 November 2023;
- (d) alternatively, the contract of employment was constituted by (a) and (b).

6. There were terms of the applicant's contract that:

- (a) the applicant was to present "Mornings" on ABC Radio Sydney; and
- (b) the applicant was to do so for ~~a week commencing 18 December 2023~~ five days commencing 18 December 2023.

Particulars

Email from Elizabeth Green (ABC Content Director) to the applicant dated 17 November 2023 at 1:17PM.

7. Further or in the alternative to paragraph 6(a), it was a term of the applicant's contract that she would be given a reasonable opportunity to present on air during the term of the contract.

Particulars

The term was implied by law in accordance with the principles discussed in *White v Australian and New Zealand Theatres Ltd* (1943) 67 CLR 266 and *Associated Newspapers Ltd v Bancks* (1951) 83 CLR 322.

The Applicable Enterprise Agreement

8. In respect of her employment with the ABC:

- (a) the applicant was covered by the ABC Enterprise Agreement 2022-2025 (**the Enterprise Agreement**); and
- (b) the Enterprise Agreement applied to her and the ABC.

9. There were terms of the Enterprise Agreement to the effect that:

- (a) where an allegation of misconduct is made, an employee is to be:
- (i) advised in writing of the nature of the alleged misconduct (cl 55.2.1(a));
 - (ii) advised that at any stage during these or subsequent proceedings they may choose to be accompanied or represented by a person of their choice (cl 55.2,1(b));
 - (iii) advised in writing of the process to be undertaken by the ABC to determine whether the alleged misconduct is substantiated (cl 55.2.1(c));
 - (iv) given an opportunity to respond and/or explain their actions or inactions and any mitigating factors they seek to have taken into consideration, provided that explanation is provided in a timely manner, before any decision is made about whether the misconduct has occurred or a determination as to the appropriate penalty has been made (cl 55.2.1(f));
- (b) where the ABC forms the view that the alleged misconduct is likely to constitute serious misconduct, the ABC will advise the employee of that view at the earliest opportunity (cl 55.2.2).

10. There were further terms of the Enterprise Agreement to the effect that, where an allegation of misconduct is substantiated, the ABC may:

- (a) terminate the employee's employment on notice (or the provision of payment in lieu of notice) (cl 57.1.1(b));
- (b) impose one or more of any of the following forms of disciplinary action, as appropriate to the nature and seriousness of the misconduct:
 - (i) take no disciplinary action, but counsel the employee and record the counselling on the employee's file (cl 55.4.2);
 - (ii) reprimand the employee (cl 55.4.1(a));
 - (iii) issue a written warning to the employee (cl 55.4.1(b));

11. There were further terms of the Enterprise Agreement to the effect that, in the case of serious misconduct, the ABC may:

- (a) summarily dismiss the employee (cll 55.4.1(g), 57.1.1(a));

- (b) dismiss the employee with notice or payment in lieu in accordance with the relevant provisions of clause 57 – Termination of employment (cl 55.4.1(f));
- (c) impose one or more of any of the following forms of disciplinary action, as appropriate to the nature and seriousness of the misconduct:
 - (i) transfer the employee to another position at an equal or lower salary (cl 57.1.1(c));
 - (ii) withhold the employee’s salary for part or all of any period of suspension (by agreement with the employment) (cl 57.1.1(d)); or
 - (iii) reduce the employee’s salary within the band (cl 57.1.1(e)).

12. The only sanctions for misconduct and serious misconduct permitted by the Enterprise Agreement are those pleaded in paragraphs 10 to 11.

Events

12A. From on or about 10 December 2023 to 20 December 2023, Ita Buttrose and David Anderson received multiple letters and emails complaining about the applicant.

12B. The complaints referred to in paragraph 12A were sent by members of Lawyers for Israel and Jewish Creatives and Academics.

12C. The complaints made by members of Lawyers for Israel and Jewish Creatives and Academics sought to pressure the ABC to:

- (a) not employ the applicant; and/or
- (b) terminate the employment of the applicant for reasons including the applicant’s:
 - (i) political opinion; or
 - (ii) political opinion and her race (Lebanese and/or Arab and/or Middle Eastern) and/or national extraction (her Lebanese and/or Arab and/or Middle Eastern heritage and that she is a descendant of foreign immigrants).

12D. On Monday 18 December 2023, David Anderson sent an email to Christopher Oliver-Taylor to the effect that he had received complaints about the applicant.

Particulars

Email from David Anderson to Christopher Oliver-Taylor and Justin Stevens dated 18 December 2023, sent at 1:34pm.

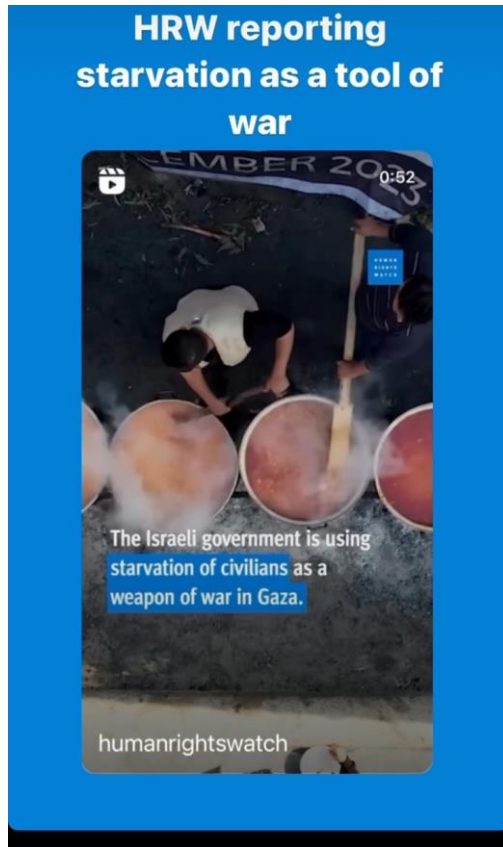
13. On or about the afternoon of 18 December 2023, the applicant had a conversation with Elizabeth Green during which Elizabeth Green said words to the effect that:
- (a) the ABC had had a large number of complaints from pro-Israel lobbyists about the applicant being on-air;
 - (b) the applicant should keep a low profile on Twitter; and
 - (c) the applicant could post factual information from reputable sources like Amnesty International.

Particulars

Telephone conversation with Elizabeth Green at approximately 3.35pm.

14. On the evening of 19 December 2023, the applicant reposted a report from Human Rights Watch as a story on her Instagram account and added additional text reading “HRW reporting starvation as a tool of war”.

Particulars



15. On a number of occasions between 18 and 20 December 2023, the ABC reported on Human Rights Watch's claims that Israel was "weaponising starvation in Gaza".

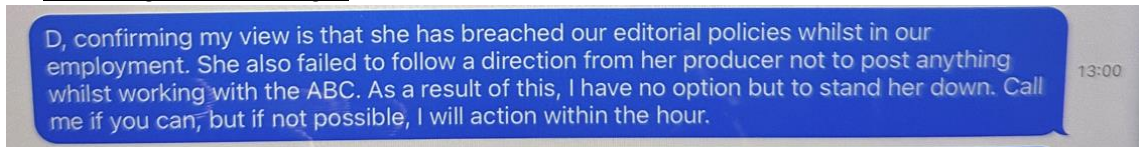
Particulars

- (a) ABC Online story: <https://www.abc.net.au/news/2023-12-18/israel-hostages-made-sos-signs-as-military-reveals-hamas-tunnel/103240278>
- (b) Video: <https://www.abc.net.au/news/2023-12-20/human-rights-watch-accuses-israel-of-weaponising-starvation/103249098>
- (c) ABC News Breakfast interview on 20 December 2023 with Omar Shakir from Human Rights Watch.
- (d) Various radio broadcasts, particulars of which will be provided following discovery.

15A. The applicant's repost at paragraph 14 above did not:

- (a) contravene the social media policy of the ABC; or
- (b) contravene a direction given by the ABC to the applicant.

15B. At 1pm on 20 December 2023, Christopher Oliver-Taylor sent David Anderson the following text message:



15C. Following receipt of the text message referred to above, David Anderson and Christopher Oliver-Taylor had a telephone conversation, in which David Anderson said words to the effect that he approved of Christopher Oliver-Taylor's proposed course.

16. At or around lunchtime on 20 December 2023, Steve Ahern said to the applicant words to the effect that:

- (a) as a result of a specific social media post the applicant had shared on Instagram, the ABC had decided that she will not be returning to complete her last two shifts on air;
- (b) the applicant had been asked not to post, and had now breached the social media policy by posting the Human Rights Watch post because it called into question the ABC's impartiality;
- (c) she could return to her desk, get her bag and leave.

Particulars

Steve Ahern said words to the applicant to the effect alleged during a meeting attended by the applicant, Steve Ahern, Mark Spurway and Elizabeth Green on 20 December 2023.

17. The applicant returned to her desk, collected her belongings and left the premises.

18. Prior to 2:39PM, the ABC had informed a reporter at *The Australian* that the applicant's employment had been terminated.

Particulars

- (a) At 2:39PM on 20 December 2023, *The Australian* posted a story online by Sophie Elsworth entitled "ABC presenter Antoinette Lattouf sacked after anti-Israel social media posts".
- (b) Ms Elsworth could only have known of the applicant's dismissal by that time from a source within the ABC.

- (c) The article in *The Australian* quoted an ABC spokesman: “ABC Sydney casual presenter Antoinette Lattouf will not be back on air for her remaining two shifts this week”.
- (d) Further particulars will be provided following discovery.
19. On 20 December 2023 at 5:23PM, the applicant sent an email to Steve Ahern and Mark Spurway (copying Elizabeth Green) about her dismissal that afternoon.
20. On 20 December 2023, the ABC Chair, Ita Buttrose, responded to an email from a member of a WhatsApp group known as Lawyers for Israel by saying “You are probably unaware that Ms Lattouf no longer works at the ABC”.
21. The applicant did not return to complete her remaining contracted shifts presenting “Mornings” on 21 and 22 December 2023.
- 21A. On 22 December 2023, the applicant filed an application pursuant to s 772 of the FW Act with the Fair Work Commission.
- 21B On 15 January 2024, the ABC filed its response to the application referred to in paragraph 26 above, which conceded it terminated the applicant’s employment.
- 21C On 10 January 2024, the applicant filed an amended application pursuant to s 772 of the FW Act.
- 21D. On 22 January 2024, the ABC filed an amended response to the application referred to in paragraph 21C above.

Attribution of conduct

22. Steve Ahern engaged in the conduct pleaded in paragraph 0 on behalf of the ABC within the scope of his actual or apparent authority.
23. By reason of the matters pleaded in paragraph 22, the conduct engaged in by Steve Ahern pleaded in paragraph 0 was engaged in by the ABC by operation of s 793 of the FW Act.
24. Ita Buttrose engaged in the conduct pleaded in paragraph 20 on behalf of the ABC within the scope of her actual or apparent authority.

25. By reason of the matters pleaded in paragraph 24, the conduct engaged in by Ita Buttrose pleaded in paragraph 20 was engaged in by the ABC by operation of s 793 of the FW Act.
- 25A. Christopher Oliver-Taylor engaged in the conduct pleaded at paragraph 12D on behalf of the ABC within the scope of her actual or apparent authority.
- 25B. By reason of the matters pleaded in paragraph 25A above, the conduct engaged in by Christopher Oliver-Taylor was engaged in by the ABC by operation of s 793 of the FW Act.
- 25C. David Anderson engaged in the conduct pleaded at paragraph 12A on behalf of the ABC within the scope of her actual or apparent authority.
- 24D. By reason of the matters pleaded in paragraph 25C above, the conduct engaged in by David Anderson was engaged in by the ABC by operation of s 793 of the FW Act.

Non-compliance with clause 55.2 process

26. When Steve Ahern said to the applicant the words pleaded in paragraph 0, he alleged that the applicant had, by posting the Human Rights Watch post:
- (a) posted when the applicant had been asked not to do so; and
 - (b) breached the ABC's social media policy.
27. The allegation pleaded in paragraph 26 was an allegation of misconduct for the purposes of the Enterprise Agreement, in that it was an allegation that the applicant had:
- (a) wilfully disobeyed or disregarded a reasonable and lawful direction (cl 5.1.1(a) of the Enterprise Agreement);
 - (b) engaged in improper conduct as an employee of the ABC (cl 55.1.1(d) of the Enterprise Agreement);
 - (c) engaged in improper conduct which brings, or is likely to bring, the ABC into disrepute (cl 55.1.1(e) of the Enterprise Agreement).
28. There having been made an allegation of misconduct, the respondent was obliged to comply with the process in clause 55.2.1 of the Enterprise Agreement as pleaded in paragraph 9 above.

29. The ABC did not do any of the things required by the process set out in cl 55.2 of the Enterprise Agreement as pleaded in paragraph 9 above, namely the ABC did not:
- (a) advise the applicant in writing of the nature of the alleged misconduct;
 - (b) advise the applicant that at any stage during the proceedings (or subsequent proceedings) that she may choose to be accompanied or represented by a person of their choice;
 - (c) advise the applicant in writing of the process to be undertaken by the ABC to determine whether the alleged misconduct was substantiated;
 - (d) give the applicant an opportunity to respond and/or explain her actions or inactions and any mitigating factors she sought to have taken into consideration, before any decision was made about whether the misconduct had occurred or a determination as to the appropriate penalty had been made; or
 - (e) advise the applicant that it considered the alleged misconduct was likely to constitute serious misconduct at the earliest opportunity, or at all.
30. By reason of each of the failures pleaded in paragraph 29, the ABC contravened cl 55.2 of the Enterprise Agreement.
31. Each of the contraventions pleaded in paragraph 30 constitutes a contravention of s 50 of the FW Act.

Summary dismissal in contravention of the Enterprise Agreement

32. By the conduct pleaded in paragraph 0 as attributed to the ABC as pleaded in paragraph 23, the ABC purported to summarily dismiss the applicant.
33. The applicant was not guilty of and had not committed serious misconduct within the meaning of clauses 55.6.1 and 57.1.1(a) of the Enterprise Agreement.
34. In the premises, the ABC was not permitted to summarily dismiss the applicant.
35. In the premises, by summarily dismissing the applicant as pleaded in paragraph 32, the ABC contravened clause 57.1.1 of the Enterprise Agreement.
36. The contravention pleaded in paragraph 35 constitutes a contravention of s 50 of the FW Act.

Alternatively, termination in contravention of the Enterprise Agreement

37. In the alternative to paragraphs 32 to 36, by engaging in the conduct in paragraph 0, the ABC breached the contractual terms pleaded in paragraphs 6(a) and/or 7.
38. The breaches of contract pleaded in paragraph 387:
 - (a) were breaches of a fundamental term; or
 - (b) were sufficiently serious breaches of innominate terms; or
 - (c) were conduct evincing the ABC's intention not to be bound by the contract, entitling the applicant to treat the contract as repudiated.
39. Further or alternatively, by engaging in any combination of the conduct pleaded in paragraphs 0, 18, 19 and 20, the ABC evinced an intention not to be bound by the applicant's contract pleaded in paragraph 5, which entitled the applicant to treat the contract as repudiated.
40. The applicant accepted the ABC's repudiation of the contract.
41. By repudiating the contract, the ABC terminated the applicant's employment on a basis not set out in clause 57.1.1 of the Enterprise Agreement, and thereby contravened the Enterprise Agreement.
42. The contravention pleaded in paragraph 41 constitutes a contravention of s 50 of the FW Act.

Alternatively, being taken off air in contravention of the Enterprise Agreement

43. In the alternative to paragraphs 32 to 42, if the ABC did not summarily dismiss the applicant or terminate her employment (which is denied), then not allowing her to present the Mornings program on 21 and 22 December 2023 was not a sanction for disciplinary action that was authorised under the Enterprise Agreement.
44. By engaging in the conduct pleaded in paragraph 0 and thereby imposing a sanction which is not permitted by clause 55.4 of the Enterprise Agreement, the ABC contravened the Enterprise Agreement.
45. The contravention pleaded in paragraph 44 constitutes a contravention of s 50 of the FW Act.

Unlawful termination

45A. By engaging in the conduct at paragraph 16 above, the ABC terminated the applicant's employment.

45B. The ABC terminated the applicant's employment, for reasons including:

(a) one or more of the applicant's political opinions as pleaded in paragraph 1A; or

(b) one or more of the applicant's political opinions as pleaded in paragraph 1A; and:

(i) her race (Lebanese and/or Arab and/or Middle Eastern); and/or

(ii) her national extraction (her Lebanese and/or Arab and/or Middle Eastern heritage and that she is a descendant of foreign immigrants).

Particulars

The applicant relies upon s 783 of the FW Act.

45C. By engaging in the conduct at paragraphs 45A and 45B above, the ABC contravened s 772(1)(f) of the FW Act.

Relief

46. The applicant was an employee who was affected by the contraventions pleaded at paragraphs 31, 36, 42, 45 and 45C and is accordingly entitled to seek orders in relation to those contraventions under s 540(1)(a) of the FW Act.

47. By reason of one or more of the contraventions pleaded, the applicant has suffered loss and damage.

Particulars

(a) Reputational damage.

(b) Loss of opportunity of future engagements.

(c) Hurt and distress.

(d) Further particulars will be provided before trial.

48. The applicant is entitled to, and seeks, the relief in the originating application.

Date: ~~22 February 2024~~ 15 July 2024



Signed by Josh Bornstein
Lawyer for the Applicant

This consolidated amended pleading was prepared by Christopher Tran of counsel and ~~settled~~
by Noel Hutley SC.

Certificate of lawyer

I Josh Bornstein 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: ~~22 February 2024~~ 15 July 2024



Signed by Josh Bornstein
Lawyer for the Applicant