

NOTICE OF FILING

Details of Filing

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File Title: ANTOINETTE LATTOUF v AUSTRALIAN BROADCASTING CORPORATION
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading "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.



Defence to the Consolidated Amended Statement of Claim

No. NSD189 of 2024

Federal Court of Australia
District Registry: New South Wales
Division: Fair Work

Antoinette Lattouf

Applicant

Australian Broadcasting Corporation

Respondent

In response to the Amended Consolidated Statement of Claim filed on 15 July 2024 (**the Claim**), the Respondent pleads as follows.

Parties

1. The Respondent admits paragraph 1 of the Claim.
 - 1A. In response to paragraph 1A of the Claim, the Respondent:
 - a. says that the pleading is vague, embarrassing in the legal sense and liable to be struck out as it does not identify the 'material times';
 - b. under the cover of that objection, says that it does not know and cannot admit or deny what opinions the Applicant held at any material time;
 - c. says that the matter pleaded at subparagraphs 1A (c) of the Claim is not an opinion; and
 - d. further says that, if and to the extent that the Applicant held the opinions (if they are to be regarded as such) pleaded at subparagraphs 1A (b), (c) and/ or (d) of the Claim at 'all material times', such opinions would not be 'political opinions' as the term is properly understood.
2. The Respondent admits paragraph 2 of the Claim.

Filed on behalf of (name & role of party)	Australian Broadcasting Corporation, the Respondent
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3. In response to paragraph 3 of the Claim, the Respondent:
 - a. admits subparagraph (a);
 - b. says that Mr Ahern was acting in the position of Head of Capital City Networks from 1 November 2023 until 3 March 2024; and
 - c. otherwise denies the balance of the paragraph.
4. In response to paragraph 4 of the Claim, the Respondent:
 - a. admits subparagraph (a);
 - b. says that Ms Green held the position of Content Director, ABC Radio Sydney from May 2021; and
 - c. otherwise denies the balance of the paragraph.
- 4A. The Respondent admits paragraph 4A of the Claim.
- 4B. In response to paragraph 4B of the Claim, the Respondent:
 - a. admits subparagraph (a);
 - b. says that Mr Anderson held the position of Managing Director of the ABC from May 2019;
 - c. further say that Mr Oliver-Taylor held the position of Chief Content Officer from 3 April 2023; and
 - d. otherwise denies the balance of the paragraph.

Employment of the Applicant

5. The Respondent admits paragraph 5 of the Claim and says that:
 - a. the contract was wholly in writing and contained in the email sent to the Applicant on 24 November 2023 and accepted by her in her reply email of 27 November 2023 (**the Contract**); and
 - b. it was an express term of the Contract that the Respondent could unilaterally and at any time change the details of any engagement with the Applicant, including as to the duration of the engagement, hours of work required and/or the work to be performed (**the Change Term**).

Particulars

Clause 1 of the Contract.

6. The Respondent denies paragraph 6 of the Claim.

7. The Respondent denies paragraph 7 of the Claim.

The Applicable Enterprise Agreement

8. The Respondent admits paragraph 8 of the Claim.

9. In response to paragraph 9 of the Claim, the Respondent:

- a. relies on the terms of the Enterprise Agreement (as defined in the Claim) for its full force, meaning and effect; and
- b. otherwise denies the balance of the paragraph.

10. In response to paragraph 10 of the Claim, the Respondent:

- a. relies on the terms of the Enterprise Agreement (as defined in the Claim) for its full force, meaning and effect; and
- b. otherwise denies the balance of the paragraph.

11. In response to paragraph 11 of the Claim, the Respondent:

- a. relies on the terms of the Enterprise Agreement (as defined in the Claim) for its full force, meaning and effect; and
- b. otherwise denies the balance of the paragraph.

12. In response to paragraph 12 of the Claim, the Respondent:

- a. relies on the terms of the Enterprise Agreement (as defined in the Claim) for its full force, meaning and effect; and
- b. otherwise denies the balance of the paragraph.

Events

12A. The Respondent denies paragraph 12A of the Claim and says that Ms Buttrose and Mr Anderson received multiple emails from 18 December 2023. The Respondent further says that the complaints received by Ms Buttrose and Mr Anderson concerned the Respondent's conduct in engaging the Applicant to present *Sydney Mornings*.

12B. In response to paragraph 12B of the Claim, the Respondent:

- a. says that the pleading is vague, embarrassing in the legal sense and liable to be struck out; and
- b. under the cover of that objection, says that it does not know and cannot admit or deny the paragraph as it does not know who is (and who is not) a member of a '*Lawyers for Israel*' and/or '*Jewish Creatives and Academics*', or if such group or groups exist and in what form.

- 12C. The Respondent does not know and cannot admit or deny paragraph 12C of the Claim and repeats the matters pleaded at paragraph 12B above.
- 12D. The Respondent admits paragraph 12D of the Claim.
13. The Respondent denies paragraph 13 of the Claim and says that:
- a. Ms Green and the Applicant had a telephone discussion on 18 December 2023 at approximately 3:44 pm;
 - b. during the discussion pleaded in subparagraph (a) above, Ms Green said to the Applicant, amongst other things, words to the effect:
 - i. *“the ABC has received some complaints about you being on-air in because of a perceived stance on the Israel/Palestine conflict based on your social media posts”*;
 - ii. *“the ABC has strict editorial guidelines”*; and
 - iii. *“you should probably avoid posting anything related to the Israel/Palestine situation while you are with us”*,
 - c. in response to the matters pleaded in subparagraph (b) above, the Applicant said to Ms Green words to the effect, *“what can I post? What if another journalist dies, can I post about that?”*;
 - d. in response to the matters pleaded in subparagraph (c) above, Ms Green said words to the effect, *“if it is fact based and verified it is probably okay, but it might be better to just not post anything that could be perceived as unbalanced while you are with us”*; and
 - e. the effect of Ms Green’s statements to the Applicant, as pleaded above in subparagraphs (b) and (d), was that the Applicant was directed by Ms Green, who was acting for and on behalf of the Respondent, not to post anything related to the Israel/Palestine conflict, or in the alternative anything related to the said conflict which could be perceived as unbalanced, during the week of 18 to 22 December 2023.
14. In response to paragraph 14 of the Claim, the Respondent admits that the Applicant’s activity on her Instagram account on or about 19 December 2023 included the story referred to in paragraph 14 of the Claim.
15. The Respondent admits paragraph 15 of the Claim.

- 15A. In response to paragraph 15A of the Claim, the Respondent:
- a. admits subparagraph (a) but says that the view of Mr Oliver-Taylor on behalf of the Respondent as at 20 December 2023 was that as set out in paragraph 45B(d)(i)(1) of this Defence; and
 - b. denies subparagraph (b).
- 15B. The Respondent admits paragraph 15B of the Claim.
- 15C. The Respondent denies paragraph 15C of the Claim and says that:
- a. following receipt of the text message referred to at paragraph 15B of the Claim, Mr Anderson and Mr Oliver-Taylor had a telephone conversation;
 - b. during the telephone conversation Mr Oliver-Taylor informed Mr Anderson of the course of action he intended to take, being the course of action set out in the text message reproduced in paragraph 15B of the Claim;
 - c. Mr Oliver-Taylor did not seek Mr Anderson's approval of his proposed course of action; and
 - d. Mr Anderson did not raise any opposition to Mr Oliver-Taylor's proposed course of action.
16. The Respondent denies paragraph 16 of the Claim and says that:
- a. Mr Ahern had a meeting with the Applicant on 20 December 2023 at approximately 1:30 pm; and
 - b. during the meeting pleaded in subparagraph (a) above, Mr Ahern said to the Applicant, amongst other things, words to the following effect:
 - i. *"Elizabeth advised you not to post anything that could be perceived as controversial on your socials, while you are on air with us this week. You acknowledged that you understood"*;
 - ii. *"20 hours ago you shared a post that could be considered controversial and was about Israel-Gaza"*;
 - iii. *"In the context of your other posts, this is considered a breach of ABC policies and so you will not be required to present the last two programs you have been booked to present tomorrow and Friday"*; and
 - iv. *"In your own time, can you tell your team that you won't be coming back for the remaining two shifts on air. We will be moving to Network Summer"*

Programming from tomorrow. As soon as you are able, could you please get all of your belongings and leave when it is convenient for you.”,

- c. the effect of Mr Ahern’s statements to the Applicant, as pleaded above in subparagraph (b), was that:
 - i. the Applicant was told by Mr Ahern, who was acting for and on behalf of the Respondent, that the Respondent, in accordance with the terms of the Contract, did not require her to perform any work for the remaining two shifts, being 21 and 22 December 2023, for which she was engaged; and
 - ii. the Applicant’s employment would continue until the conclusion of her shift on 22 December 2023, and
 - d. the conduct of the Respondent, as pleaded above in subparagraph (c), was authorised by the Change Term.
17. The Respondent admits paragraph 17 of the Claim and says that the Applicant spoke to various employees before leaving the premises.
18. The Respondent denies paragraph 18 of the Claim.
19. The Respondent admits that the Applicant sent the email pleaded in paragraph 19 of the Claim, but denies that the Applicant had been dismissed that afternoon (or at all).
20. In response to paragraph 20 of the Claim, the Respondent:
- a. says that the pleading is vague, embarrassing in the legal sense and liable to be struck out; and
 - b. under the cover of that objection, says that it does not know and cannot admit or deny the paragraph as it does not know who is (and who is not) a member of a WhatsApp group called ‘*Lawyers for Israel*’, or if such a WhatsApp group exists.
21. The Respondent admits paragraph 21 of the Claim.
- 21A. The Respondent admits paragraph 21A of the Claim.
- 21B. In response to paragraph 21B of the Claim, the Respondent:
- a. says the pleading refers to ‘*paragraph 26 above*’ which does not exist;
 - b. admits it filed a response in the Fair Work Commission on 15 January 2024; and
 - c. otherwise denies the balance of the paragraph.
- 21C. The Respondent admits paragraph 21C of the Claim.
- 21D. The Respondent admits paragraph 21D of the Claim.

Attribution of conduct

22. In response to paragraph 22 of the Claim, the Respondent:
- a. says the pleading refers to '*paragraph 0*' which does not exist;
 - b. assumes that the reference to '*paragraph 0*' should be read as a reference to '*paragraph 16*';
 - c. repeats the matters pleaded at paragraph 16 above;
 - d. says that the conduct pleaded at paragraph 16 above was conduct engaged in by Mr Ahern within the scope of his actual authority; and
 - e. otherwise denies the balance of the paragraph.
23. In response to paragraph 23 of the Claim, the Respondent:
- a. repeats the matters pleaded at paragraphs 16 and 22 above;
 - b. says that the conduct pleaded at paragraph 16 above was conduct engaged in by the Respondent, for the purposes of s 793 of the *Fair Work Act 2009* (Cth) (**FW Act**); and
 - c. otherwise denies the balance of the paragraph.
24. In response to paragraph 24 of the Claim, the Respondent:
- a. repeats the matters pleaded at paragraph 20 above; and
 - b. otherwise denies the balance of the paragraph.
25. In response to paragraph 25 of the Claim, the Respondent:
- a. repeats the matters pleaded at paragraph 20 above; and
 - b. otherwise denies the balance of the paragraph.
- 25A. In response to paragraph 25A of the Claim:
- a. the Respondent says the pleading refers to '*paragraph 12D*' which does not assert any conduct engaged in by Mr Oliver-Taylor;
 - b. to the extent that the Applicant asserts that Mr Oliver-Taylor received an email within the scope of his actual or apparent authority, the Respondent admits that the email received by Mr Oliver-Taylor was received by him in his capacity as an employee of the Respondent; and
 - c. otherwise denies the balance of the paragraph.

- 25B. The Respondent denies paragraph 25B of the Claim and repeats the matters pleaded at paragraph 25A above.
- 25C. In response to paragraph 25C of the Claim:
- a. the Respondent says the pleading refers to '*paragraph 12A*' which does not assert any conduct engaged in by Mr Anderson;
 - b. to the extent that the Applicant asserts that Mr Anderson received letters and email within the scope of his actual or apparent authority, the Respondent admits that any letters or emails received by Mr Anderson in the nature of complaints about the Applicant were received by him in his capacity as an employee of the Respondent; and
 - c. otherwise denies the balance of the paragraph.
- 25D. The Respondent denies paragraph misnumbered as paragraph 24D of the Claim and repeats the matters pleaded at paragraph 25C above.

Alleged non-compliance with clause 55.2 process

26. In response to paragraph 26 of the Claim, the Respondent:
- a. says the pleading refers to '*paragraph 0*' which does not exist;
 - b. assumes that the reference to '*paragraph 0*' should be read as a reference to '*paragraph 16*';
 - c. repeats the matters pleaded at paragraph 16 above; and
 - d. otherwise denies the balance of the paragraph.
27. The Respondent denies paragraph 27 of the Claim.
28. The Respondent denies paragraph 28 of the Claim and repeats the matter pleaded at paragraph 27 above.
29. In response to paragraph 29 of the Claim, the Respondent:
- a. repeats the matter pleaded at paragraph 27 above;
 - b. admits that it did not follow the process set out at cl 55.2 of the Enterprise Agreement (as defined in the Claim);
 - c. says that it was not required to follow the process set out at cl 55.2 of the Enterprise Agreement (as defined in the Claim); and
 - d. otherwise denies the balance of the paragraph.
30. The Respondent denies paragraph 30 of the Claim.

31. The Respondent denies paragraph 31 of the Claim.

Alleged summary dismissal in contravention of the Enterprise Agreement

32. The Respondent denies paragraph 32 of the Claim and says that it did not terminate the Applicant's employment (summarily or otherwise) but rather her employment with the Respondent ended by effluxion of time at the conclusion of the Applicant's rostered shift on 22 December 2023.

33. In response to paragraph 33 of the Claim, the Respondent:

- a. repeats the matter pleaded at paragraph 27 above;
- b. admits that there was no finding that the Applicant engaged in serious misconduct within the meaning of clauses 55.6.1 and 57.1.1(a) of the Enterprise Agreement (as defined in the Claim);
- c. says that it did not allege or assert that that the Applicant engaged in serious misconduct within the meaning of clauses 55.6.1 and 57.1.1(a) of the Enterprise Agreement (as defined in the Claim); and
- d. otherwise denies the balance of the paragraph.

34. The Respondent denies paragraph 34 of the Claim and repeats the matter pleaded at paragraph 32 above.

35. The Respondent denies paragraph 35 of the Claim and repeats the matter pleaded at paragraph 32 above.

36. The Respondent denies paragraph 36 of the Claim.

Alternatively, alleged termination in contravention of the Enterprise Agreement

37. The Respondent denies paragraph 37 of the Claim.

38. The Respondent denies paragraph 38 of the Claim.

39. The Respondent denies paragraph 39 of the Claim.

40. The Respondent denies paragraph 40 of the Claim.

41. The Respondent denies paragraph 41 of the Claim.

42. The Respondent denies paragraph 42 of the Claim.

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

43. The Respondent denies paragraph 43 of the Claim.

44. The Respondent denies paragraph 44 of the Claim.

45. The Respondent denies paragraph 45 of the Claim.

Alleged unlawful termination

45A. The Respondent denies paragraph 45A of the Claim.

45B. The Respondent denies paragraph 45B of the Claim and says:

- a. the Respondent did not terminate the Applicant's employment (summarily or otherwise), but instead her employment with the Respondent ended by effluxion of time at the conclusion of the Applicant's rostered shift on 22 December 2023;
- b. in accordance with the terms of the Contract, the Respondent did not require the Applicant to perform any work for the two shifts on 21 and 22 December 2023;
- c. Mr Oliver-Taylor was the decision-maker in relation to the action pleaded at subparagraph (b) above; and
- d. the reason for Mr Oliver-Taylor's decision to not require the Applicant to perform any work for her two remaining shifts was:
 - i. his view that the Applicant's activity on her Instagram account on or about 19 December 2023 meant that:
 1. the Applicant may have breached the ABC's policies or guidelines, and/or
 2. the Applicant had not complied with a direction given to her in relation to her use of social media; and
 - ii. a loss of trust and confidence in the Applicant to present live radio in accordance with directions issued to her.

45C. The Respondent denies paragraph 45C of the Claim and says that it did not contravene the FW Act.

Relief sought

46. The Respondent denies paragraph 46 of the Claim and says that it did not contravene the FW Act.

47. The Respondent denies paragraph 47 of the Claim.

48. The Respondent denies that the Applicant is entitled to the relief claimed in paragraph 48 of the Claim, and in the alternative says that, if and to the extent that the Applicant is entitled to any relief, then she has failed to mitigate her losses.

Date: 12 August 2024



Signed by Ben Glenn Dudley
Lawyer for the Respondent

This pleading was prepared by Ian Neil of Senior Counsel and Vanja Bulut of counsel.

Certificate of lawyer

I, Ben Glenn Dudley, certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 12 August 2024



Signed by Ben Glenn Dudley
Lawyer for the Respondent