

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



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

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 Statement of Claim filed on 23 February 2024 (**the Claim**), the Respondent pleads as follows.

Parties

1. The Respondent admits paragraph 1 of the Claim.
2. The Respondent admits paragraph 2 of the Claim.
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.

Filed on behalf of (name & role of party) Australian Broadcasting Corporation, the Respondent
Prepared by (name of person/lawyer) Ben Glenn Dudley
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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 Applicant 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

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. The Respondent admits paragraph 14 of the Claim.
15. The Respondent admits paragraph 15 of the Claim.
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 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.

Attribution of conduct

22. In response to paragraph 22 of the Claim, the Respondent:
- a. repeats the matters pleaded at paragraph 16 above;
 - b. says that the conduct pleaded at paragraph 16 above was conduct engaged in by Mr Ahern within the scope of his actual authority; and
 - c. otherwise denies the balance of the paragraph.
23. In response to paragraph 23 of the Claim, the Respondent:
- a. repeats the matters pleaded at paragraph 16 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.

Alleged non-compliance with clause 55.2 process

26. In response to paragraph 26 of the Claim, the Respondent:
- a. repeats the matters pleaded at paragraph 16 above; and
 - b. 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.

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.

Date: 22 March 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: 22 March 2024

A handwritten signature in black ink, appearing to read "B. Dudley", written in a cursive style.

Signed by Ben Glenn Dudley
Lawyer for the Respondent