

NOTICE OF FILING

Details of Filing

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File Number: VID887/2023
File Title: ROSHANPAL SINGH & ORS v KENTUCKY FRIED CHICKEN PTY LTD
ACN 000 587 780 & ORS
Registry: VICTORIA 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. VID 887 of 2023

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

Roshanpal Singh and another
Applicants

Kentucky Fried Chicken Pty Ltd (ACN 000 587 780) and others
Respondents

A. PRELIMINARY

The Applicants

1. The Seventy-Second Respondent does not know and therefore cannot admit paragraph 1 of the Consolidated Statement of Claim filed 21 May 2024 (**Claim**).
2. The Seventy-Second Respondent does not know and therefore cannot admit paragraph 2 of the Claim.
3. The Seventy-Second Respondent does not know and therefore cannot admit paragraph 3 of the Claim.
4. The Seventy-Second Respondent does not know and therefore cannot admit paragraph 4 of the Claim.
5. The Seventy-Second Respondent does not know and therefore cannot admit paragraph 5 of the Claim.
6. The Seventy-Second Respondent does not know and therefore cannot admit paragraph 6 of the Claim.

Filed on behalf of (name & role of party)	Airport Retail Enterprises Pty Ltd ACN 008 749 031, the Seventy-Second Respondent		
Prepared by (name of person/lawyer)	Mark Faraday		
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7. The Seventy-Second Respondent does not know and therefore cannot admit paragraph 7 of the Claim.
8. The Seventy-Second Respondent does not know and therefore cannot admit paragraph 8 of the Claim.
9. The Seventy-Second Respondent does not know and therefore cannot admit paragraph 9 of the Claim.
10. The Seventy-Second Respondent does not know and therefore cannot admit paragraph 10 of the Claim.
11. The Seventy-Second Respondent does not know and therefore cannot admit paragraph 11 of the Claim.

Representative proceeding

12. In answer to paragraph 12 of the Claim, the Seventy-Second Respondent:
 - a. denies the paragraph in so far as it alleges that any of its employees did not receive their rest pause or rest break entitlements pursuant to the *KFC National Enterprise Agreement (2020 Agreement)* or the *Fast Food Industry Award (Award)*; and
 - b. otherwise does not know and therefore cannot admit the paragraph.
13. In answer to paragraph 13 of the Claim, the Seventy-Second Respondent:
 - a. denies the paragraph in so far as it alleges that any of its employees did not receive their rest pause or rest break entitlements pursuant to the 2020 Agreement or the Award; and
 - b. otherwise does not know and therefore cannot admit the paragraph.

The Respondents

14. In answer to paragraph 14 of the Claim, the Seventy-Second Respondent:
 - a. admits that it is a body corporate capable of being sued;
 - b. says that it is, and has been since July 2023, a national system employer within the meaning of s 14 of the *Fair Work Act 2009 (Cth) (FW Act)*; and
 - c. otherwise does not plead to the paragraph as it makes no allegation of material fact against it.

15. The Seventy-Second Respondent does not plead to paragraph 15 of the Claim as the paragraph makes no allegation of material fact against it.
16. In answer to paragraph 16 of the Claim, the Seventy-Second Respondent:
- a. says that it is a party to agreements with KFCPL pursuant to which:
 - i. it has since July 2023 operated a KFC food outlet at the Sydney Domestic Airport Terminal 2; and

Particulars

International Concession Contract (Sydney T2 Airside Concession Facility) between Kentucky Fried Chicken Pty Ltd and Airport Retail Enterprises Pty Ltd, signed by the Seventy-Second Respondent on 20 July 2023.

- ii. it has since August 2023 operated a KFC food outlet at the Sydney Kingsford Smith International Airport; and

Particulars

International Concession Contract (Sydney T1 Airside Concession Facility) between Kentucky Fried Chicken Pty Ltd and Airport Retail Enterprises Pty Ltd, with a date of grant of 31 August 2023.

- b. otherwise does not plead to the paragraph as it makes no allegation of material fact against it.
17. In answer to paragraph 17 of the Claim, the Seventy-Second Respondent repeats paragraph 16a above and otherwise does not plead to the paragraph as it makes no allegation of material fact against it.

B. THE INDUSTRIAL AGREEMENTS

2009 Agreement

18. The Seventy-Second Respondent does not plead to paragraph 18 of the Claim as the paragraph makes no allegation of material fact against it.
19. The Seventy-Second Respondent does not plead to paragraph 19 of the Claim as the paragraph makes no allegation of material fact against it.

20. The Seventy-Second Respondent does not plead to paragraph 20 of the Claim as the paragraph makes no allegation of material fact against it.
21. The Seventy-Second Respondent does not plead to paragraph 21 of the Claim as the paragraph makes no allegation of material fact against it.
22. The Seventy-Second Respondent does not plead to paragraph 22 of the Claim as the paragraph makes no allegation of material fact against it.
23. The Seventy-Second Respondent does not plead to paragraph 23 of the Claim as the paragraph makes no allegation of material fact against it.
24. The Seventy-Second Respondent does not plead to paragraph 24 of the Claim as the paragraph makes no allegation of material fact against it.
25. The Seventy-Second Respondent does not plead to paragraph 25 of the Claim as the paragraph makes no allegation of material fact against it.

2010 Agreement

26. The Seventy-Second Respondent does not plead to paragraph 26 of the Claim as the paragraph makes no allegation of material fact against it.
27. The Seventy-Second Respondent does not plead to paragraph 27 of the Claim as the paragraph makes no allegation of material fact against it.
28. The Seventy-Second Respondent does not plead to paragraph 28 of the Claim as the paragraph makes no allegation of material fact against it.
29. The Seventy-Second Respondent does not plead to paragraph 29 of the Claim as the paragraph makes no allegation of material fact against it.
30. The Seventy-Second Respondent does not plead to paragraph 30 of the Claim as the paragraph makes no allegation of material fact against it.
31. The Seventy-Second Respondent does not plead to paragraph 31 of the Claim as the paragraph makes no allegation of material fact against it.
32. The Seventy-Second Respondent does not plead to paragraph 32 of the Claim as the paragraph makes no allegation of material fact against it.
33. The Seventy-Second Respondent does not plead to paragraph 33 of the Claim as the paragraph makes no allegation of material fact against it.

Collins Foods Agreement

34. The Seventy-Second Respondent does not plead to paragraph 34 of the Claim as the paragraph makes no allegation of material fact against it.
35. The Seventy-Second Respondent does not plead to paragraph 35 of the Claim as the paragraph makes no allegation of material fact against it.
36. The Seventy-Second Respondent does not plead to paragraph 36 of the Claim as the paragraph makes no allegation of material fact against it.
37. The Seventy-Second Respondent does not plead to paragraph 37 of the Claim as the paragraph makes no allegation of material fact against it.
38. The Seventy-Second Respondent does not plead to paragraph 38 of the Claim as the paragraph makes no allegation of material fact against it.
39. The Seventy-Second Respondent does not plead to paragraph 39 of the Claim as the paragraph makes no allegation of material fact against it.
40. The Seventy-Second Respondent does not plead to paragraph 40 of the Claim as the paragraph makes no allegation of material fact against it.

2020 Agreement

41. The Seventy-Second Respondent admits paragraph 41 of the Claim.
42. The Seventy-Second Respondent admits paragraph 42 of the Claim.
43. The Seventy-Second Respondent admits paragraph 43 of the Claim.
44. The Seventy-Second Respondent admits paragraph 44 of the Claim.
45. In answer to paragraph 45 of the Claim, the Seventy-Second Respondent:
 - a. says that at all times since July 2023, the 2020 Agreement has applied to the Seventy-Second Respondent and its employees in respect of their employment by the Seventy-Second Respondent to the exclusion of the Award; and
 - b. otherwise does not plead to the paragraph as it makes no allegation of material fact against it.
46. In response to paragraph 46 of the Claim, the Seventy-Second Respondent:

- a. admits that from July 2023 the 2020 Agreement has applied to it;
- b. otherwise does not plead to the paragraph as it makes no allegation of material fact against it.

47. In response to paragraph 47 of the Claim, the Seventy-Second Respondent:

- a. says that the 2020 Agreement contains the following provisions:

12. REST PAUSES

- 12.1 Each employee who works 4 hours or more continuously on any day shall be allowed a paid rest pause of 10 minutes. The timing of this break shall be arranged by the employer when convenient for it to be taken.
- 12.2 An additional 10 minutes rest pause shall be provided when an employee works more than 8 hours on any one shift.
- 12.3 Except as provided in this subclause, no rest pause shall be given or taken within one hour of an employee's commencing or ceasing time or within one hour before or after any meal break. Where a part-time or casual employee is required to work up to one hour beyond the employee's rostered finishing time in order to meet unforeseen operational or staffing requirements, a rest pause may be taken within one hour of the employee's ceasing time.

- b. will rely on the whole of the 2020 Agreement for its full force and effect as though set out here; and
- c. otherwise denies the paragraph.

Fast Food Industry Award

48. The Seventy-Second Respondent admits paragraph 48 of the Claim.

49. In answer to paragraph 49 of the Claim, the Seventy-Second Respondent:

- a. repeats paragraph 47a above; and
- b. otherwise does not plead to the paragraph as it makes no allegation of material fact against it.

50. The Seventy-Second Respondent admits paragraph 50 of the Claim.

51. The Seventy-Second Respondent admits paragraph 51 of the Claim.

52. The Seventy-Second Respondent admits paragraph 52 of the Claim.
53. In response to paragraph 53 of the Claim the Seventy-Second Respondent:
- a. says that at all material times, the Award has contained the following provisions:

14. Breaks

- 14.1 Employees are entitled to rest and meal breaks in the following circumstances:

Hours worked per shift	Rest breaks	Meal breaks
Less than 4 hours	No rest break	No meal break
4 hours or more but less than 5 hours	One 10 minute paid rest break	No meal break
5 hours or more but less than 9 hours	One 10 minute paid rest break	One unpaid meal break of at least 30 minutes but not more than 60 minutes
9 hours or more	If 2 unpaid meal breaks are provided:	
	One 10 minute paid rest break	Two unpaid meal breaks of at least 30 minutes but not more than 60 minutes
	Or, if 2 unpaid meal breaks are not provided:	
	Two 10 minute paid rest breaks – one to be taken in the first half of the shift and one in the second half of the shift	One unpaid meal break of at least 30 minutes but not more than 60 minutes

NOTE: Rest breaks count as time worked. Meal breaks do not count as time worked.

- 14.2 The timing and duration of rest and meal breaks for part-time employees must be included in the roster and are subject to any agreement made under clause 10.3 regarding a part-time employee's regular pattern of work.
- 14.3 A variation agreed under clauses 10.5 and 10.7 for a part-time employee may include a variation to the time of taking rest and meal breaks.

14.4 The timing of the taking of a rest break or meal break is intended to provide a meaningful break for the employee during work hours.

14.5 An employer cannot require an employee:

- (a) to take a rest break or meal break within the first or the last our of work; or
- (b) to take a rest break combined with a meal break; or
- (c) to work more than 5 hours without taking a meal break.

b. it will rely upon the whole of the Award for its full force and effect as though set out here; and

c. otherwise denies the paragraph.

54. The Seventy-Second Respondent does not plead to paragraph 54 of the Claim as the paragraph makes no allegation of material fact against it.

55. In response to paragraph 55 of the Claim, the Seventy-Second Respondent:

- a. repeats paragraph 53 above; and
- b. otherwise denies the paragraph.

Effect of Industrial Instruments

56. In response to paragraph 56 of the Claim, the Seventy-Second Respondent:

- a. denies the paragraph in so far as it makes allegations with respect to the entitlements of staff employed by the Seventy-Second Respondent at any time since July 2023; or
- b. otherwise does not plead to the paragraph as it makes no allegation of material fact against it.

Particulars

Seventy-Second Respondent agrees with and adopts the construction of the provisions of the 2020 Agreement and the Award set out in the defence of the first respondent at paragraph [56].

57. In response to paragraph 57 of the Claim, the Seventy-Second Respondent:

- a. repeats paragraph 56 above; and

b. otherwise denies the paragraph.

C. KFCPL OPERATED RESTAURANT CONTRAVENTIONS

58. The Seventy-Second Respondent does not plead to paragraph 58 of the Claim as the paragraph makes no allegation of material fact against it.
59. The Seventy-Second Respondent does not plead to paragraph 59 of the Claim as the paragraph makes no allegation of material fact against it.
60. The Seventy-Second Respondent does not plead to paragraph 60 of the Claim as the paragraph makes no allegation of material fact against it.
61. The Seventy-Second Respondent does not plead to paragraph 61 of the Claim as the paragraph makes no allegation of material fact against it.

D. FRANCHISEE CONTRAVENTIONS

RG Restaurants

62. The Seventy-Second Respondent does not plead to paragraph 62 of the Claim as the paragraph makes no allegation of material fact against it.
63. The Seventy-Second Respondent does not plead to paragraph 63 of the Claim as the paragraph makes no allegation of material fact against it.
64. The Seventy-Second Respondent does not plead to paragraph 64 of the Claim as the paragraph makes no allegation of material fact against it.
65. The Seventy-Second Respondent does not plead to paragraph 65 of the Claim as the paragraph makes no allegation of material fact against it.

Southern Restaurants

66. The Seventy-Second Respondent does not plead to paragraph 66 of the Claim as the paragraph makes no allegation of material fact against it.
67. The Seventy-Second Respondent does not plead to paragraph 67 of the Claim as the paragraph makes no allegation of material fact against it.
68. The Seventy-Second Respondent does not plead to paragraph 68 of the Claim as the paragraph makes no allegation of material fact against it.

69. The Seventy-Second Respondent does not plead to paragraph 69 of the Claim as the paragraph makes no allegation of material fact against it.

Collins Restaurants South

70. The Seventy-Second Respondent does not plead to paragraph 70 of the Claim as the paragraph makes no allegation of material fact against it.
71. The Seventy-Second Respondent does not plead to paragraph 71 of the Claim as the paragraph makes no allegation of material fact against it.
72. The Seventy-Second Respondent does not plead to paragraph 72 of the Claim as the paragraph makes no allegation of material fact against it.
73. The Seventy-Second Respondent does not plead to paragraph 73 of the Claim as the paragraph makes no allegation of material fact against it.

Collins Restaurant Management

74. The Seventy-Second Respondent does not plead to paragraph 74 of the Claim as the paragraph makes no allegation of material fact against it.
75. The Seventy-Second Respondent does not plead to paragraph 75 of the Claim as the paragraph makes no allegation of material fact against it.
76. The Seventy-Second Respondent does not plead to paragraph 76 of the Claim as the paragraph makes no allegation of material fact against it.
77. The Seventy-Second Respondent does not plead to paragraph 77 of the Claim as the paragraph makes no allegation of material fact against it.

QSR

78. The Seventy-Second Respondent does not plead to paragraph 78 of the Claim as the paragraph makes no allegation of material fact against it.
79. The Seventy-Second Respondent does not plead to paragraph 79 of the Claim as the paragraph makes no allegation of material fact against it.
80. The Seventy-Second Respondent does not plead to paragraph 80 of the Claim as the paragraph makes no allegation of material fact against it.

81. The Seventy-Second Respondent does not plead to paragraph 81 of the Claim as the paragraph makes no allegation of material fact against it.

Pansummit

82. The Seventy-Second Respondent does not plead to paragraph 82 of the Claim as the paragraph makes no allegation of material fact against it.
83. The Seventy-Second Respondent does not plead to paragraph 83 of the Claim as the paragraph makes no allegation of material fact against it.
84. The Seventy-Second Respondent does not plead to paragraph 84 of the Claim as the paragraph makes no allegation of material fact against it.
85. The Seventy-Second Respondent does not plead to paragraph 85 of the Claim as the paragraph makes no allegation of material fact against it.

Collins Restaurant West

86. The Seventy-Second Respondent does not plead to paragraph 86 of the Claim as the paragraph makes no allegation of material fact against it.
87. The Seventy-Second Respondent does not plead to paragraph 87 of the Claim as the paragraph makes no allegation of material fact against it.
88. The Seventy-Second Respondent does not plead to paragraph 88 of the Claim as the paragraph makes no allegation of material fact against it.
89. The Seventy-Second Respondent does not plead to paragraph 89 of the Claim as the paragraph makes no allegation of material fact against it.

All other Franchisees

90. In response to paragraph 90 of the Claim, the Seventy-Second Respondent:
- a. admits that from July 2023 its employees were entitled to rest pauses in accordance with the provisions of the 2020 Agreement; and
 - b. repeats paragraph 47a above, and denies its employees were entitled to rest breaks pursuant to the Award at any time; and
 - c. otherwise does not know and therefore cannot admit the paragraph.

91. The Seventy-Second Respondent denies paragraph 91 of the Claim in so far as it makes allegations against it, but otherwise does not plead to the paragraph.
92. The Seventy-Second Respondent denies paragraph 92 of the Claim in so far as it makes allegations against it, but otherwise does not plead to the paragraph.
93. The Seventy-Second Respondent denies paragraph 93 of the Claim in so far as it makes allegations against it, but otherwise does not plead to the paragraph.
94. The Seventy-Second Respondent denies paragraph 94 of the Claim in so far as it makes allegations against it, but otherwise does not plead to the paragraph.

E. FRANCHISOR 588B CONTRAVENTIONS

The KFC System

95. The Seventy-Second Respondent does not plead to paragraph 95 of the Claim as the paragraph makes no allegation of material fact against it.
96. The Seventy-Second Respondent does not plead to paragraph 96 of the Claim as the paragraph makes no allegation of material fact against it.

Franchise Agreements

97. In response to paragraph 97 of the Claim, the Seventy-Second Respondent:
 - a. repeats paragraph 16a above; and
 - b. otherwise does not know and cannot admit the paragraph.
98. In response to paragraph 98 of the Claim, the Seventy-Second Respondent:
 - a. repeats paragraph 16a above; and
 - b. otherwise does not know and cannot admit the paragraph.

KFC prescriptions and supervision

99. The Seventy-Second Respondent admits paragraph 99 of the Claim in so far as it makes allegations with respect to the dealings between itself and KFCPL, but otherwise does not know and cannot admit the paragraph.
100. The Seventy-Second Respondent does not know and cannot admit paragraph 100 of the Claim.

101. The Seventy-Second Respondent does not know and cannot admit paragraph 101 of the Claim.
102. The Seventy-Second Respondent does not know and cannot admit paragraph 102 of the Claim.
103. The Seventy-Second Respondent does not know and cannot admit paragraph 103 of the Claim.
104. The Seventy-Second Respondent does not know and cannot admit paragraph 104 of the Claim.
105. The Seventy-Second Respondent does not know and cannot admit paragraph 105 of the Claim.
106. The Seventy-Second Respondent does not know and cannot admit paragraph 106 of the Claim.
107. The Seventy-Second Respondent does not know and cannot admit paragraph 107 of the Claim.

Training and audits

108. The Seventy-Second Respondent does not know and cannot admit paragraph 108 of the Claim.
109. The Seventy-Second Respondent admits paragraph 109 of the Claim.
110. The Seventy-Second Respondent admits paragraph 110 of the Claim.
111. In response to paragraph 111 of the Claim, the Seventy-Second Respondent:
 - a. admits sub-paragraph 111 a.; and
 - b. denies sub-paragraph 111 b in so far as it makes allegations with respect to the dealings between itself and KFCPL, but otherwise does not know and cannot admit the paragraph.
112. The Seventy-Second Respondent admits paragraph 112 of the Claim.
113. The Seventy-Second Respondent admits paragraph 113 of the Claim in so far as it makes allegations concerning training provided by KFC RTO to individuals it employed, but otherwise does not know and cannot admit the paragraph.

114. The Seventy-Second Respondent does not know and cannot admit paragraph 114 of the Claim.
115. The Seventy-Second Respondent admits paragraph 115 of the Claim in so far as it makes allegations with respect to the conduct of KFCPL in regards to itself, but otherwise does not know and cannot admit the paragraph.
116. In response to paragraph 116 of the Claim, the Seventy-Second Respondent:
- a. admits sub-paragraph 116 a in so far as it makes allegations with respect to itself, but otherwise does not know and cannot admit paragraph a.; and
 - b. denies sub-paragraph 116 b in so far as it makes allegations with respect to itself, but otherwise does not know and cannot admit the paragraph.

Characteristics of the employees

117. The Seventy-Second Respondent does not know and cannot admit paragraph 117 of the Claim.
118. The Seventy-Second Respondent does not know and cannot admit paragraph 118 of the Claim.
119. The Seventy-Second Respondent does not know and cannot admit paragraph 119 of the Claim.
120. The Seventy-Second Respondent does not know and cannot admit paragraph 120 of the Claim.

Relationship between KFCPL and Franchisees

121. In answer to paragraph 121 of the Claim, the Seventy-Second Respondent says that from about July 2023 it was a franchisee of KFCPL, but otherwise does not know and cannot admit the paragraph.
122. The Seventy-Second Respondent does not know and cannot admit paragraph 122 of the Claim.
123. The Seventy-Second Respondent does not know and cannot admit paragraph 123 of the Claim.

Franchisor contraventions

124. The Seventy-Second Respondent denies that it committed any “Franchisor Contraventions”, but otherwise does not know and cannot admit paragraph 124 of the Claim.
125. The Seventy-Second Respondent denies that it committed any “Franchisor Contraventions”, but otherwise does not know and cannot admit paragraph 125 of the Claim.
126. The Seventy-Second Respondent does not know and cannot admit paragraph 126 of the Claim.
127. The Seventy-Second Respondent does not know and cannot admit paragraph 127 of the Claim.
128. The Seventy-Second Respondent does not know and cannot admit paragraph 128 of the Claim.
129. The Seventy-Second Respondent does not know and cannot admit paragraph 129 of the Claim.
130. In so far as paragraph 130 of the Claim makes allegations against the Seventy-Second Respondent the Seventy-Second Respondent denies those allegations, but otherwise does not know and cannot admit the paragraph.

Date: 8 July 2024

Handwritten signature of Mark Faraday, consisting of two distinct cursive initials.

Signed by Mark Faraday
Lawyer for the Seventy-Second Respondent

This pleading was prepared by Nick Furlan, Barrister

Certificate of lawyer

I, Mark Faraday, 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: 8 July 2024

A handwritten signature in black ink, appearing to read 'Mark Faraday', is written over a light grey rectangular background.

Signed by Mark Faraday
Lawyer for the Seventy-Second Respondent