

29 July 2016

Associate to Vice President Hatcher
Fair Work Commission
Level 8, 80 William Street
Sydney NSW 2000

By Email: chambers.hatcher.vp@fwc.gov.au

Dear Associate

Casual (AM2014/197) and Part-Time (AM 2014/196) Employment Common Issue

We write on behalf of our client, the Recruitment and Consulting Services Association (**RCSA**), and seek leave to file the attached rebuttal witness statement (**Statement**) of Ms Melissa Evans.

On or about 16 March 2016, Mr Clinton Lewin gave evidence in this matter for the Australian Manufacturing Workers Union - Vehicle Division (**AMWU - Vehicle Division**) which consisted of a Statement dated 26 October 2016 (Exhibit 26), a further statement dated 9 March 2016 (Exhibit 27), and oral testimony given on 16 March 2016.

Mr Lewin gave evidence that the relevant labour hire employer referred to in paragraph 11 of Exhibit 26 was Randstad, who is an RCSA member. This was not established until Mr Lewin's cross examination on that date.

The Directions issued by the Full Bench on 29 June 2015 sought submissions and/or evidence in reply to be filed with the Fair Work Commission by 5.00pm on Monday, 22 February 2016.

In this respect, Mr Lewin's further Statement (Exhibit 27) and oral testimony given on 16 March 2016 denied the RCSA an opportunity to examine these additional matters, effectively cross-examine Mr Lewin in relation to the same, or file additional evidence in accordance with the previous Directions of the Full Bench.

The RCSA foreshadowed during the hearing of this matter (see Transcript at PN 3449) that it would seek leave to file an additional witness statement.

As a result, this office notified the AMWU - Vehicle Division, of our intention to file a Witness Statement in rebuttal to the evidence of Mr Lewin, to address:

1. the identity of the employer of labour hire casual employees referred to in paragraph 11 of Exhibit 26 (see Transcript at PN 3151, 3368-3372);
2. the circumstances of the labour hire employment arrangements referred to at paragraphs 10 and 11 of Exhibit 26, paragraph 3 of Exhibit 27, and in Transcript (PN 3151, 3340-3384); and
3. the particular employment arrangements for Ms Patricia Hunter in relation to her work assignment at Patricks Autocare.



On or about 6 April 2016 the AMWU – Vehicle Division notified this office of its intention to object to this proposed course of action.

Notwithstanding the date upon which we seek to file this Statement, we submit that there is no prejudice to the AMWU – Vehicle Division, or any other party, given that the material contained within the Statement is strictly confined to a rebuttal of the evidence of Mr Lewin, Ms Evans is available to attend upon the Commission upon request and the AMWU – Vehicle Division has one week to consider the Statement in relation to a limited issue prior to submissions for the matter being due.

Please do not hesitate to call or email us, should you require any further information in relation to our request.

Yours faithfully
FCB - Workplace Law


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FAIR WORK COMMISSION

FWC MATTER NO: AM2014/197

Modern Award Review 2014

STATEMENT OF MELISSA EVANS

On 29 July 2016, I, Melissa Anne Evans, Team Leader, situated at 525 Collins Street Melbourne in the State of Victoria say:

Personal Background

1. In or about May 2008, I commenced employment with Randstad Pty Limited (**Randstad**). Randstad is a global recruitment business that operates in 39 countries and provides a range of recruitment and human capital services. In Australia, Randstad specialises in:
 - (a) permanent and temporary staffing solutions in administration and office support occupations, call centres, education sector, and industrial and manufacturing sectors (**Staffing**);
 - (b) specialised recruitment for temporary and permanent roles in organisations;
 - (c) providing an in-house recruitment team solution to organisations;
 - (d) employment assessments services including pre-employment medical assessment, drugs and alcohol screening and other similar health assessment capabilities; and
 - (e) human resources consulting services including career management, talent management, employment transition, outplacement services and workforce assessment centres.
2. I work in Randstad's Staffing business. From around May 2008 to June 2014, I worked as a Consultant, Senior Consultant and then Branch Manager at Randstad's Wollongong branch.
3. From the time I commenced as Branch Manager in or about May 2012, I was responsible for overseeing all operations and services provided by Randstad staff at the Wollongong branch to clients in the Wollongong region.

4. Since around July 2014, I have been employed as a Team Leader of the Construction, Property and Engineering Division of the Randstad Newcastle branch.

Patricks Autocare

5. Patricks Autocare has been a client of the Randstad Wollongong Branch since approximately 2008. I was involved in the initial implementation of Patricks Autocare as a client and have a detailed understanding of that business given my position as Branch Manager of Wollongong branch.
6. The Randstad Wollongong Branch manages the Patricks Autocare operations which are principally operated from Port Kembla and Kembla Grange. These are two distinct sites with Port Kembla being the port location where the motor vehicles are initially landed, while Kembla Grange is a site from which the vehicles are transported to and dispatched from. The two sites are approximately 12 kilometres apart.
7. Randstad is responsible for placing on-hire workers within Patricks Autocare at both the Port Kembla and Kembla Grange sites where up to 45 on-hire workers are placed at any one time by Randstad to work at those sites.
8. In my time at the Wollongong Branch, the most significant influence on the number of Randstad on-hired workers who were placed at Patricks Autocare on a particular day was the volume of vehicles being moved from ships at Port Kembla onto land at the Patricks Autocare Port Kembla and Kembla Grange sites, or the movement of vehicles from those locations onto trucks for distribution to other parties such as motor dealerships. The volume of vehicle movements, and the type of vehicles fluctuated significantly from day to day and this had a corresponding influence on the demand for on-hired labour from day to day. At its lowest, no Randstad employees were required on site. At peak demand, Randstad would provide around 45 on-hired workers to work a day at one or both of the Patricks Autocare sites.
9. All persons employed by Randstad to work on-hired at the Patricks Autocare sites were employed on a casual basis.
10. Patricks Autocare also had a permanent workforce on site. During my time in Wollongong, temporary on-hire employees of Randstad occasionally transitioned to direct employment with Patrick Autocare's.

11. To assist in the process of managing the placement of the on-hire workers at Patricks Autocare, I would liaise David Le Brun of Patricks Autocare. Mr Le Brun would provide me with a Casual Labour Roster (**Roster**) for a particular date usually within 48 hours of the shift commencing, with the name of persons requested by Patricks Autocare to work on that date. Staff at the Randstad Wollongong branch would then contact those named persons to see if they were available to work the nominated date and if they were, confirm the work arrangements for that day. If the person was not available to work on that date, Randstad was responsible for arranging another person who was available to work that day at Patricks Autocare. Randstad and Patricks Autocare maintained a list with the names of our casual on-hired workers who could be contacted and offered work at Patricks Autocare, and this list was known the RDO Standby List (**RDO List**).
12. It was understood that the work to be performed at Patricks Autocare by Randstad staff was subject strictly to the amount of cars that were required to be transported either from the docks to one of the yards, or between the yards themselves, on any given day.
13. Randstad was required to mobilise skilled on-hire workers at short notice upon receipt of the Roster which enabled Patricks Autocare to gear up to meet operational requirements. This notice was usually no longer than 18 hours.

Patricia Hunter

14. I have reviewed Randstad's employment records, which confirm the following details in relation to Ms Patricia Hunter:
 - (a) Ms Hunter registered for on-hired casual employment with Randstad on or about 13 January 2013;
 - (b) Ms Hunter was inducted by a consultant named Marissa Snell. Ms Snell continued to manage Ms Hunter's bookings until she went on maternity leave in November 2013, after which I, and other consultants, took on this responsibility;
 - (c) on or about 24 January 2013, Ms Hunter commenced the first of many on-hire assignments with Patricks Autocare;

- (d) from 24 January 2013, Ms Hunter worked as a casual employee on-hired at the Patricks Autocare sites regularly each week, although her hours of work fluctuated from week to week from a minimum of around 7.5 to a maximum of 48.25, and an average of 31.48 hours each week;
 - (e) on or about 4 June 2014, Mr Le Brun forwarded to me the Roster for Thursday, 5 June 2014, which indicated that Ms Hunter and around 5 other on-hire workers had been moved from the Roster list to the RDO List for that day;
 - (f) Ms Bridie Dodd, a former Randstad Consultant, spoke with Ms Hunter by telephone on or about 5 June 2014, to advise her that her name had been placed on the RDO List and that meant that she would be contacted and offered work if a shift became available at short notice or the volume of work at Patricks Autocare increased, Randstad were anticipating the volume of work would be quiet for several weeks, and Randstad would therefore look for alternative on-hired work assignments to offer to Ms Hunter in that period;
 - (g) the last day worked by Ms Hunter at Patricks Autocare was 4 June 2014;
 - (h) on 5 June 2014, Ms Dodd sent an email to Ms Hunter, and I enclosed and mark as "**ME 1**" a copy of this email;
 - (i) on or about 13 June 2014, Mr Le Brun provided me with the Roster for Monday, 16 June 2015, which showed that Ms Hunter and 2 other on-hire workers had been removed from the RDO List, although there is no record of any explanation by Patricks Autocare of why this had occurred;
 - (j) on 18 June 2014, Ms Dodd contacted Ms Hunter to offer an alternative on-hired assignment as a casual employee, and on both occasions Ms Hunter declined to work the on-hired assignment. Randstad records do not record any reason given by Ms Hunter for her decision to decline the work (and in my experience Randstad does require any person to give reasons if they decline the offer of a work assignment).
15. On or about 18 June 2014 at about 3:00pm I was informed by Mr Le Brun via telephone that Ms Hunter's name had been removed from the RDO List for the reason that she had spoken aggressively to Patricks Autocare supervisor Marc Gal about the reasons why she had been moved from the Roster to the RDO List.

16. Randstad has no record of any request by Ms Hunter to convert her employment from casual to permanent full-time or part-time, or a request made by any person on behalf of Ms Hunter. I do not recall Ms Hunter ever requested that Randstad make her a permanent employee. Given that I was the Branch Manager of the Wollongong branch, and Patricks Autocare was a major client, I would have been aware of any such request.

17. At no time did Ms Hunter, or any representative on her behalf, allege that she was underpaid in her employment with Randstad. Given that I was the Branch Manager of the Wollongong branch I would have been informed of any such underpayment claim.

Signed by MELISSA EVANS

At Melbourne

on 28 July 2016



Signature

"ME 1"

From: **Bridie Dodd** <bridie.dodd@randstad.com.au>
Date: 5 June 2014 at 15:47
Subject: Email for Trish
To: Melissa Evans <melissa.evans@randstad.com.au>

Good afternoon Trish,

As per our phone conversation this afternoon, Patrick's is extremely quiet at the moment and as such you have not been rostered on for work tomorrow. It is anticipated that Patrick's will remain quiet for the next few weeks.

Regards,

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industrial

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