



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT MASSON

B2023/1204

s.236 - Application for a majority support determination

**Retail and Fast Food Workers Union Incorporated T/A Retail and Fast Food Workers
Union Incorporated
and
Factory X Pty Ltd T/A Dangerfield & Princess Highway
(B2023/1204)**

Melbourne

10.00 AM, MONDAY, 22 JANUARY 2024

Continued from 23/11/2023

PN1

THE DEPUTY PRESIDENT: I will take appearances, please.

PN2

MR J CULLINAN: If it pleases the Commission, Cullinan, initial J, on behalf of the applicant.

PN3

THE DEPUTY PRESIDENT: Thank you. For the respondent?

PN4

MS M MOLONEY: Good morning. If it pleases the Commission Moloney, initial M, and I seek leave to appear on behalf of the respondent, Factory X.

PN5

THE DEPUTY PRESIDENT: I think permission was previously granted to Mr Monroe.

PN6

MS MOLONEY: That's correct.

PN7

THE DEPUTY PRESIDENT: Or permission was previously granted for legal representation, unless I need to revisit that, Mr Cullinan. Are you content to - - -

PN8

MR CULLINAN: Deputy President, we understand that permission was granted for the specific circumstances of the mentions.

PN9

THE DEPUTY PRESIDENT: Do you object to legal representation being granted for these proceedings today?

PN10

MR CULLINAN: We do, and the reason when we raised it last time is we had no insight into the employer, or no deep insight into the employer. Now we know that a single witness has a \$28m wage budget, \$120m in sales, over a thousand employees operating throughout Australia, it occurs to us that it must have HR and legal expertise for such a large employer, and so we currently press that objection.

PN11

THE DEPUTY PRESIDENT: Thank you.

PN12

MS MOLONEY: Thank you very much. We confirm we seek permission to appear pursuant to section 596 of the Fair Work Act, and Mr Cullinan is correct that this matter was dealt with on an interim basis at the mentions hearing. We rely specifically on sections (2)(a) and (2)(b).

PN13

In relation to (2)(a) we do note the complexity of the matter, noting that the materials in this matter run to almost 400 pages, with the bulk of those being the applicant's materials; that evidence is being led by the applicant from 16 witnesses, seven of whom we require for cross-examination today. There are a number of disputes in both fact and law, and the applicant has made a number of objections based on aspects of evidence, and there are difficult legal issues in dispute. In those circumstances we submit it would assist the Commission for the respondent to be legal represented.

PN14

In relation to (2)(b) in terms of fairness to the respondent, despite the belief that Mr Cullinan may have Factory X does not employ lawyers or HR staff with industrial relations expertise. Nor does it have a sophisticated industrial relations function, having no history of enterprise bargaining. It outsources its legal function, and as I said its HR manager does not have relevant expertise in industrial relations matters. So we respectfully submit it would be unfair to require it to represent itself in such circumstances, particularly in a case where Mr Cullinan is an experienced advocate who regularly appears before the Commission. So on that basis I seek permission to appear.

PN15

THE DEPUTY PRESIDENT: Mr Cullinan, anything in reply?

PN16

MR CULLINAN: No.

PN17

THE DEPUTY PRESIDENT: All right. I note that submissions have been made from the Bar table about the capability of the respondent and what it says is a lack of specialist IR expertise and in-house lawyers. Even if I were not to take that into account I would grant permission to appear, and I do so on the basis of the complexity of the matter. There are some complex legal points to be canvassed, as well as a somewhat complex factual matrix. I think the Commission would be assisted by granting permission, and I do so. Thank you. Mr Cullinan?

PN18

MR CULLINAN: Can I just confirm that we have no witnesses in the courtroom.

PN19

MS MOLONEY: That's correct.

PN20

MR CULLINAN: The enquiry is just about the transcription service with the clock not ticking.

PN21

THE ASSOCIATE: The transcription service is working. The clock is broken, but the recording is working.

PN22

THE DEPUTY PRESIDENT: It seems that we have cost saving activities underway at the Commission with respect to some of our technology.

PN23

MR CULLINAN: Thank you, Deputy President. So RAFFWU or the Retail and Fast Food Workers Union Incorporated made an application for a majority support determination on 1 November 2023, and the application was supported by a confidential petition, which following the efforts of the Commission showed more than half of the workers to be covered by the proposed agreement wanted to bargain.

PN24

We rely on our submissions and the statements of 16 workers, including seven workers who made a second statement. Our reply submissions responds to the claims of the respondent, and before I turn to the witness statements for RAFFWU we wish to make a number of point.

PN25

THE DEPUTY PRESIDENT: Can I just say, Mr Cullinan, I'm rarely aided by long opening submissions, but feel free to proceed. I tend to like to get into the evidence and then hear from the parties after that, but if both parties want to make opening subs please do so.

PN26

MR CULLINAN: No, I can shorthand it. I was going to raise some issues to do with evidence, but I can do that when it arises.

PN27

THE DEPUTY PRESIDENT: I understand there is the issue of Ms Pillar's evidence to be dealt with as possibly a procedural issue.

PN28

MR CULLINAN: I was going to come to that as well.

PN29

THE DEPUTY PRESIDENT: Sure. Okay, thank you.

PN30

MR CULLINAN: The issue that I was going to raise first was in relation to the evidence of the respondent and the hearsay opinion and irrelevant material that was included in the statements, but I can do that when we come to the evidence of the respondent.

PN31

In relation to Ms Pillar - maybe I will deal with that before going to tendering statements. We requested early advice from the respondent of the witnesses it required for cross-examination on the morning of Monday last week. We were not told Ms Pillar was required until the night of Thursday. I spoke to Ms Pillar on the morning of Friday and to the representative of the respondent after that, and at 3.36 we were informed that the respondent agreed to the video link proposal, and we wrote to the Commission shortly after that.

PN32

Over the weekend Ms Pillar had arranged a Telehealth medical appointment to obtain a certificate. It's not her usual doctor. Ms Pillar explained the situation to the doctor the difficulty they had being present in the court and the ability to give evidence by remote connection. I have got a copy of the certificate. I provide a bit of that context because the certificate is not particularly well worded and simply makes reference to Ms Pillar being unfit and should be allowed absence.

PN33

The context is that Ms Pillar explained the situation to the doctor, and can explain it to the Commission if we are able to have her participate by video link, and that included in relation to her anxiety and the desire for evidence to be given in this proceeding by video link.

PN34

THE DEPUTY PRESIDENT: It doesn't address that point at all. It just says she can't appear.

PN35

MR CULLINAN: Well, she's unfit for duties. I understand that, and the difficult
- - -

PN36

THE DEPUTY PRESIDENT: But despite that she's proposing to appear by video link?

PN37

MR CULLINAN: She is, yes.

PN38

THE DEPUTY PRESIDENT: It seems to me she's either fit or unfit to give evidence. What is it?

PN39

MR CULLINAN: The issue is that it was a Telehealth appointment, not her usual doctor, and she's explained the situation and I expect it's a form certificate.

PN40

THE DEPUTY PRESIDENT: I don't much care whether parties agree on particular procedural aspects. As I said in my responsive email I expect witnesses to attend unless there's good reason why they shouldn't. Ms Pillar is said to be unfit. I take that on its face value that she's unable to give evidence. But you're submitting that she should be allowed to give evidence in any event by video link.

PN41

MR CULLINAN: Because of that context, yes, Deputy President.

PN42

THE DEPUTY PRESIDENT: Well, that might be the context, but it's a rather badly worded certificate. It doesn't address at all the issue that I was seeking guidance on.

PN43

MR CULLINAN: We understand that, Deputy President.

PN44

THE DEPUTY PRESIDENT: All right. Okay, Ms Moloney, what do you want to say about it? Thank you.

PN45

MS MOLONEY: Yes, thank you very much, Deputy President. I think if anything this has clouded the issue rather than clarified it in terms of I am very reluctant to proceed with the cross-examination where we have a certificate stating that a particular person is unfit, particularly in circumstances where we've received some explanation of the nature of that unfitness, which is a psychological condition. So on that basis we object. I do note that, and I will raise it in a minute, we are in a similar position with Ms Cox. We're not seeking to call her because she has advised because of anxiety - - -

PN46

THE DEPUTY PRESIDENT: And you understand the impact that will have on the evidence she would have given.

PN47

MS MOLONEY: Well, I will make submissions on it, but I understand that it's open to you to completely disregard her evidence, and there have been some discussions about the fact that we're both in this and about perhaps making submissions regarding weight, but my understanding is that Mr Cullinan has not agreed to that. Thank you.

PN48

THE DEPUTY PRESIDENT: All right. Anything to be said in reply?

PN49

MR CULLINAN: Well, Deputy President, there's a very significant difference between the evidence of the two witnesses. One is contested, whereas Ms Pillar's evidence isn't contested by a witness from the respondent. We understand the issue of the test, and the concern that Ms Moloney has raised. We still seek for our witness to be able to give evidence by video link.

PN50

THE DEPUTY PRESIDENT: I decline to hear her evidence by video link, because the medical certificate makes it clear she's unfit. In my view simply based on the medical certificate, as it is, putting a witness in a position where she is giving evidence in circumstances where a general practitioner said she's unfit to do so gives rise to concerns about the proper process the Commission might take in obtaining evidence. Of course it's open for clarifying medical certification to be provided which allows evidence to be given, but as it stands I see that as a significant barrier to taking her evidence.

PN51

Ultimately if it's not taken it may or may not be determinative of proceedings. She is one of several witnesses, many of whom are not being cross-

examined. So their evidence I assume would largely stand for what it is, unless countered. But in the case of an individual who is unable by that medical certificate to appear I am reluctant to the point of declining to hear from her. Thank you.

PN52

MR CULLINAN: As the Commission pleases. And so I then turn to the other witnesses for the applicant, and as I mentioned nine are not required for cross-examination. So we seek to tender those statements.

PN53

THE DEPUTY PRESIDENT: Yes, okay. I'm a bit old-fashioned, I have got hard copies, so you will need to bear with me as I go through.

PN54

MR CULLINAN: Yes. So the first is of Leo Moe(?).

PN55

THE DEPUTY PRESIDENT: Is this in the order in which it appears in the court book, or is it not?

PN56

MR CULLINAN: I can do that.

PN57

THE DEPUTY PRESIDENT: No, it doesn't matter. If you can take me to the relevant court book page.

PN58

MR CULLINAN: So this is court book number 7 and it's pages 27 and 28. Just in terms of the index for my learned friend's benefit there's just an error in the dates there. It should be 5 December 2023.

PN59

THE DEPUTY PRESIDENT: Yes, I see. All right, go on. How do I pronounce that, Leo - - -

PN60

MR CULLINAN: Leo Moe.

PN61

THE DEPUTY PRESIDENT: You tender that?

PN62

MR CULLINAN: I tender that.

**EXHIBIT #A1 WITNESS STATEMENT OF LEO MOE DATED
05/12/2023**

PN63

THE DEPUTY PRESIDENT: Thank you.

PN64

MR CULLINAN: Did you want me to go through each, or I'm not sure if there's any concern with the statement. The next I had down is that of the witness Freyer Black, which is dated 5 December. It's court book 4 page 24.

PN65

THE DEPUTY PRESIDENT: Thank you.

**EXHIBIT #A2 WITNESS STATEMENT OF FREYER BLACK
DATED 05/12/2023**

PN66

MR CULLINAN: The third is that of Paige Laurie. Paige Laurie's is at number 14 in the court book, page 51 of the court book.

EXHIBIT #A3 WITNESS STATEMENT OF PAIGE LAURIE

PN67

Thank you. The fourth is that of Tegan Whitchurch. Tegan's is at number 20 on the second page of the index at pages 57 and 58 of the court book.

EXHIBIT #A4 WITNESS STATEMENT OF TEGAN WHITCHURCH

PN68

Thank you. The fifth is that of Rebecca Doran. This is at 15 of the court book, page 52.

EXHIBIT #A5 WITNESS STATEMENT OF REBECCA DORAN

PN69

Thank you. The sixth is that of Evalina Semus, which is court book 3 page 23.

EXHIBIT #A6 WITNESS STATEMENT OF EVALINA SEMUS

PN70

Thank you. The seventh is that of Jasmine Tan, which is at court book 5 page 25.

EXHIBIT #A7 WITNESS STATEMENT OF JASMINE TAN

PN71

Thank you. The eighth is Catania Bliss, which is at number 6 page 26.

EXHIBIT #A8 WITNESS STATEMENT OF CATANIA BLISS

PN72

And the ninth is Yiska Chrisco, which is at court book 19 page 56.

EXHIBIT #A9 WITNESS STATEMENT OF YISKA CHRISCO

PN73

Thank you, Commissioner. So they are the nine witness statements that we seek to tender that are not subject to cross-examination.

PN74

THE DEPUTY PRESIDENT: Thank you.

PN75

MR CULLINAN: We then have seven witnesses whose statements are subject to cross-examination, and at some stage I might investigate the seventh being Natalie Pillar. So there's six that are here today, and they will give evidence. So the first witness we are calling is Mr Michael Johnstone.

PN76

THE DEPUTY PRESIDENT: Thank you. Yes.

PN77

MS MOLONEY: Sorry, may I just be heard on some issues. I note that you have sought to defer discussion regarding objections to evidence, but obviously we also have some objections that have arisen. So I'm wondering whether you would like to deal with them in terms of letting everything in and having discussions about it later, or whether you'd like to hear from us in relation to objections prior to - - -

PN78

THE DEPUTY PRESIDENT: I don't want to be spending all day going through each statement and objecting to paragraph 13, paragraph 15, second line.

PN79

MS MOLONEY: I understand that.

PN80

THE DEPUTY PRESIDENT: My preference is for parties to make submissions at the appropriate point on what if any weight should be given to particular statements that are argued to be hearsay for example. That's simply my preference, but if the parties want to have a statement by statement argument - - -

PN81

MS MOLONEY: Not particularly, Deputy President, and I don't have any objections in that sense to Mr Johnstone. Thank you.

PN82

THE DEPUTY PRESIDENT: Thank you.

PN83

THE ASSOCIATE: Mr Johnstone, please state your full name and address.

PN84

MR JOHNSTONE: Michael Johnstone, (address supplied)

<MICHAEL JOHNSTONE, AFFIRMED [10.23 AM]

EXAMINATION-IN-CHIEF BY MR CULLINAN [10.23 AM]

*** MICHAEL JOHNSTONE

XN MR CULLINAN

PN85

THE DEPUTY PRESIDENT: Thank you, Mr Cullinan.

PN86

MR CULLINAN: Thank you, Mr Johnstone. In front of you you've got a copy of the court book there. I wanted to firstly confirm that you made two witness statements for the purposes of this proceeding?---Yes, that's correct.

PN87

If you look in the court book at the contents table there are two references at table number 8, and then on the second page table number 22. So I am going to take you to each of those documents. So firstly could you go to page 29 of the court book?---Yes.

PN88

Is this a copy of your first statement?---It is.

PN89

Is it dated 8 December 2023?---It is.

PN90

And is it 15 paragraphs?---It is.

PN91

Is this statement true and accurate in every regard?---It is.

PN92

Thank you. Has it got, I should have asked, one attachment?---Yes.

PN93

Thank you. We seek to tender that statement.

PN94

THE DEPUTY PRESIDENT: Yes.

EXHIBIT #A10 FIRST WITNESS STATEMENT OF MICHAEL JOHNSTONE DATED 08/12/2023

PN95

MR CULLINAN: If I can get you to take up your second statement then. That's at page 71. Is that your second statement?---It is.

PN96

Is that statement dated 12 January 2024?---It is.

PN97

And is it three paragraphs?---Yes.

PN98

Is that statement true and accurate in every regard?---Yes.

*** MICHAEL JOHNSTONE

XN MR CULLINAN

PN99

Thank you. We seek to tender that statement, Deputy President.

EXHIBIT #A11 SECOND WITNESS STATEMENT OF MICHAEL JOHNSTONE DATED 12/01/2024

PN100

We have no further questions.

PN101

THE DEPUTY PRESIDENT: Thank you.

CROSS-EXAMINATION BY MS MOLONEY

[10.26 AM]

PN102

MS MOLONEY: Thank you very much. Good morning, how are you. I'm just going to ask you a series of questions, and I may at times refer you to your two statements, including the attachment, just so that you're aware of that, MM1, which I believe if you could just look at page 4 of the court book, is what you've called a RAFFWU claims document?---Page 4, was it?

PN103

Yes. Sorry.

PN104

THE DEPUTY PRESIDENT: It's MM1 attached to the statement.

PN105

MS MOLONEY: MM1, sorry, after page - - -

PN106

THE DEPUTY PRESIDENT: Yes. It's page 32 of the court book.

PN107

MS MOLONEY: Page 32. So that is a claims document, and I might just take you to some of the things that are set out within those claims. The first is that minimum wage be paid at \$32 per hour. Do you know what the current minimum wage is?---For retail?

PN108

Yes?---I believe it's \$24.73 now.

PN109

Okay. So you'd concede that that's quite an ambitious claim?---No.

PN110

So a pay increase of some \$8 not an ambitious claim. That's fine. In terms of superannuation the claim is that it be paid at 15 per cent for all workers. I put to you that that's another very ambitious claim given the current superannuation rates are 10.5 per cent?---I don't agree.

*** MICHAEL JOHNSTONE

XXN MS MOLONEY

PN111

Okay, thank you. In terms of job security there is a claim that a casual employee will be offered - after three months employment they will be offered the option to convert to a permanent part-time role. Are you aware that under the Fair Work Act that currently requires a number of prerequisites to be met, but for an employee to have at least 12 months employment?---I'm aware of that.

PN112

So I put it to you that that's also a very ambitious claim?---I disagree.

PN113

Another claim is that after nine months employment a part-time employee will be offered the option to convert to a full-time role?---Yes.

PN114

And there is currently no law in Australia that provides for such a conversion. Do you agree with that?---I'm not aware.

PN115

Currently under the Fair Work Act casual employees don't have an entitlement to sick leave, do they?---I don't believe so.

PN116

So the claim is that there would be paid sick leave of 20 days. Is that per annum, do I assume that's per annum?---I believe so.

PN117

Yes. So I put it to you that again that's a very ambitious claim that would be breaking new ground in Australian employment law?---I disagree.

PN118

Okay. So I just wanted to ask you some questions. So you are an industrial organiser for RAFFWU; is that correct?---I'm an organiser, yes.

PN119

Yes. Thank you. And you've been in that role for seven years?---That's right.

PN120

So you're quite experienced in running such campaigns?---I would like to think so.

PN121

In terms of your dealings with the organisation Factory X when did your dealings commence with them?---It would be probably around 2021.

PN122

So you've organised or a part of the group that's organising the campaign that's subject to this proceeding, haven't you?---That's right.

*** MICHAEL JOHNSTONE

XXN MS MOLONEY

PN123

And together with Ms Mulveney; is that correct?---Yes.

PN124

And you say in your statement that you advise delegates to say certain things when collecting the petition, didn't you?---That's correct.

PN125

So you say you told them for example to describe the purpose of the petition?---That's correct.

PN126

So in this particular campaign you were dealing with a number of inexperienced delegates, weren't you?---What do you mean, sorry?

PN127

So those people hadn't been delegates for very long, had they?---That's right.

PN128

And so I put it to you that those delegates had never had experience in such a campaign going to colleagues and asking them to sign a petition?---For some of them, yes. Others had experience talking with Fair Work about petitions.

PN129

Okay. Thank you. So in terms of - we've heard that you've told them to describe the purpose of the petition, but there's no way for you to know that they in fact did so, is there?---Not purely, no. I'm not witnessing this - - -

PN130

Exactly. So you're not there. Just to be clear you're not accompanying them - - - ?---Correct.

PN131

- - - when they are speaking to their colleagues. So there's certainly no guarantee that they use the wording you suggested, is there?---No.

PN132

And in this particular campaign there were a number of delegates and other employees involved in terms of collecting signatures?---Other than the delegates you mean?

PN133

So there were a number of delegates and then there were a number of other employees who weren't delegates; is that correct?---Yes.

PN134

In excess of 10 employees collecting signatures?---Most of whom were delegates.

*** MICHAEL JOHNSTONE

XXN MS MOLONEY

PN135

Yes. Now, Ms Maybury who will give evidence in this proceeding, she will give evidence about how she was approached on numerous occasions by Natalie Butler

and Mon Mulveney, and she will give evidence that she said she wasn't interested on a number of occasions, but despite this she continued to receive unwanted and unsolicited approaches from both Natalie and Mon trying to provide further information. You can't dispute that, can you?---No.

PN136

Now, I did - and, Deputy President, I might just pause there. Mr Johnstone was a recipient of an email from an employee called Ms Isabella Cox, and as you know Ms Cox is not appearing in these proceedings, and I know you have a certain view in relation to that. But I did just want to take Mr Johnstone to the email that he was in fact a recipient of if you have no objection.

PN137

THE DEPUTY PRESIDENT: I think it's an attachment to Mon Mulveney's second witness statement I believe.

PN138

MS MOLONEY: No, I believe Ms Mulveney refers to and responds to the email, but it's not an actual attachment.

PN139

THE DEPUTY PRESIDENT: Is it in the evidence somewhere?

PN140

MS MOLONEY: It's attached to Ms Cox's statement. I'm very happy to tender it as a business record if required in circumstances where Ms Cox is not appearing, but I don't think either Mr Johnstone or Ms Mulveney has disputed that such an email was sent.

PN141

THE DEPUTY PRESIDENT: Can you take me to the court book where that - - -

PN142

MS MOLONEY: Certainly. It's page 340 of the court book. Mr Johnstone, if I could just ask you to - - -

PN143

THE DEPUTY PRESIDENT: No, hang on, I want to have a look at it first.

PN144

MS MOLONEY: Sorry.

PN145

THE DEPUTY PRESIDENT: In order to rely on and put it to the witness in my view it needs to be tendered as an exhibit, and Mr Cullinan is free to object to that.

PN146

MS MOLONEY: Yes.

*** MICHAEL JOHNSTONE

XXN MS MOLONEY

PN147

THE DEPUTY PRESIDENT: If he wishes to.

PN148

MR CULLINAN: It's just going to be a call. We don't have an objection.

PN149

THE DEPUTY PRESIDENT: Thank you.

PN150

MS MOLONEY: Thank you. I tender that, Deputy President.

EXHIBIT #R1 ATTACHMENT IC1

PN151

Thank you very much, Deputy President.

PN152

THE DEPUTY PRESIDENT: Thank you.

PN153

MS MOLONEY: If I could now ask you to turn to page 340 of the court book, thank you. Now, what you should have before you is an email with the heading 'Attachment IC1'?---Yes.

PN154

Could I ask you to read that. I will give you a few moments to read through that?---Yes.

PN155

Thank you. Now, do you agree that this email was addressed to you?---I was CC'd into it, yes.

PN156

Yes, thank you. This email suggests from Ms Cox that she would like to withdraw her signature. That's correct, isn't it, from the petition?---Yes.

PN157

And it suggests that the reason for doing that is she's feeling misinformed?---That's what she says, yes.

PN158

And she also states she was being asked to sign without her full understanding of what she was in agreement with. That's correct, isn't it?

PN159

MR CULLINAN: We object. The document says what it says.

PN160

THE DEPUTY PRESIDENT: Yes. I'm not sure what Mr Johnstone can opine on what might have been - - -

*** MICHAEL JOHNSTONE

XXN MS MOLONEY

PN161

MS MOLONEY: Yes, certainly. Thank you, Deputy President. So it's a serious allegation, isn't it, for someone to say they felt misinformed about such a serious document?---Yes.

PN162

Thank you. So I wanted to talk a little bit about the campaign, and as we've taken you to you've set out in the attachment the log of claims which accompanied the petition, and it sets out a variety of issues. RAFFWU's campaign regarding these issues at Factory X isn't just in relation to Dangerfield and Princess Highway in Victoria, is it?---No, it is.

PN163

It is. Okay. A video and Ms Chapman in her - have you had an opportunity to read Ms Chapman's statement?---No.

PN164

Ms Chapman will give evidence regarding a video published to the RAFFWU TikTok account, and that video refers to all Factory X staff, and there are captions and it says, 'Including Dangerfield, Princess Highway, warehouse and Gorman 2.' That's correct, isn't it?---I'm not sure.

PN165

You haven't seen that video?---No, I don't believe so.

PN166

Okay. If I could take you to EC7, which is page 375, and what I put to you is that this video was filmed by a Princess Highway employee, and he says the words that are stated there in italics:

PN167

Including that recently Victorian Dangerfield and Princess Highway workers have been campaigning for safer stores.

PN168

And the second paragraph there he states:

PN169

Now we're appealing to all store members nationwide to join our campaign, whether you're Dangerfield, Princess Highway, Gorman 2.

PN170

So I put to you that suggests that Gorman is also part of this campaign?---That's now how I understand it.

PN171

Okay, thank you. And in terms of the description of the video there is also a number of hash tags appearing on the screen, and I put to you that those hash tags include Dangerfield, Princess Highway and Gorman?---Those are the hash tags, yes.

*** MICHAEL JOHNSTONE

XXN MS MOLONEY

PN172

Yes, all right. Thank you very much. Are you aware that there's currently, or can I ask if you're involved in the New South Wales RAFFWU campaign?---No.

PN173

No. Okay. Are you aware that there is a campaign there?---Yes.

PN174

And is it your understanding that that campaign relates only to Princess Highway and Dangerfield?---I don't know those specifics.

PN175

Do you have any knowledge that it relates to Gorman as well?---I don't know the specifics.

PN176

Okay. So you don't have any knowledge. Thank you. And you weren't on a call on 12 December regarding that campaign?---No.

PN177

And I assume from that you also were not on a call on 9 January regarding that campaign. So that was last - - -?---That was on Tuesday.

PN178

- - - Tuesday?---No.

PN179

Thank you. So if I put to you that such call was attended by both Dangerfield and Gorman staff you couldn't dispute that, could you?---I couldn't.

PN180

So in terms of the New South Wales RAFFWU campaign they're dealing with the same issues in terms of terms and conditions of employment as the Victorian campaign; is that correct?---Well, I don't know.

PN181

All right. Thank you. I have no further questions. Thank you, Mr Johnstone.

PN182

THE DEPUTY PRESIDENT: Mr Cullinan?

PN183

MR CULLINAN: Thank you, Deputy President.

RE-EXAMINATION BY MR CULLINAN

[10.42 AM]

*** MICHAEL JOHNSTONE

RXN MR CULLINAN

PN184

Mr Johnstone, you were asked a few questions at the outset about conditions and whether the claims were very ambitious, and you answered 'No'. Can you tell the

Commission what you understand very ambitious to mean?---More than what is reasonable, or I guess just, for lack of a better word.

PN185

What do you believe is reasonable and just?---What the workers have indicated they feel is reasonable and just.

PN186

Thank you.

PN187

THE DEPUTY PRESIDENT: Does that mean taken to the nth degree if employees sought a minimum hourly rate of pay of \$100 that would be not ambitious, or is it a matter of proportion?---I trust workers to be reasonable and - - -

PN188

No, I'm just asking. I mean there must be bounds of proportionality surely?---I think \$100 an hour is obviously a lot, but like this is - - -

PN189

I think self-evidently that would probably be ambitious?---Be pretty reasonable.

PN190

All right. Perhaps we will beg to differ on what's ambitious, but I understand the point you're making, and I understand the point that is being made by the respondent. Thank you.

PN191

MR CULLINAN: You were asked a question about the claim in relation to sick leave, and it was put to you that there's no paid statutory entitlement for casuals for sick leave. Are you aware of a system in Victoria that does provide sick leave to casuals?---I'm aware of the scheme currently implemented by the government where casuals can apply to have access to sick leave.

PN192

Thank you. You were asked about the implementation by delegates of the things that you had told them about collecting petitions. Did you have subsequent conversations with delegates about their collecting of petitions?

PN193

MS MOLONEY: I do object. This appears to be leading new evidence that wasn't in the original statements.

PN194

THE DEPUTY PRESIDENT: Yes. And so it would be more persuasive if evidence was adduced directly from the person who received the instructions and what they then did.

*** MICHAEL JOHNSTONE

RXN MR CULLINAN

PN195

MR CULLINAN: Yes. Thank you.

PN196

THE DEPUTY PRESIDENT: Rather than what they said they did to Mr - - -

PN197

MR CULLINAN: I understand, yes. I have got a lot to say about that stuff later. Thank you. You were asked questions about the campaign in Victoria. Actually I think you said, no, you don't know. That's all the questions I have.

PN198

THE DEPUTY PRESIDENT: Thank you. Thank you for attending today and give evidence. You're now released. You may remain in the court, or if you choose to go and do your day job you're also welcome to do that. Thank you.

<THE WITNESS WITHDREW

[10.46 AM]

PN199

THE DEPUTY PRESIDENT: The next witness.

PN200

MR CULLINAN: Our next witness is Mon Mulveney.

PN201

THE DEPUTY PRESIDENT: Thank you.

PN202

THE ASSOCIATE: Ms Mulveney, please state your full name and address.

PN203

MS MULVENEY: Sorry, my name on my birth certificate?

PN204

MR CULLINAN: The name on your witness statement I think is the intention.

PN205

MS MULVENEY: Is Mon Mulveney. And my home address?

PN206

THE ASSOCIATE: Work address is fine. Either is fine.

PN207

MS MULVENEY: (Address supplied)

<MON MULVENEY, AFFIRMED

[10.47 AM]

EXAMINATION-IN-CHIEF BY MR CULLINAN

[10.47 AM]

*** MON MULVENEY

XN MR CULLINAN

PN208

MR CULLINAN: Thank you, Ms Mulveney. There's a court book in front of you there which includes your witness statements. There's also a bottle of water there is you want to have the water. So I'm going to have a few questions with you - - -

PN209

THE DEPUTY PRESIDENT: By the way it's not a communal bottle I don't think.

PN210

MR CULLINAN: I think there's a slab there.

PN211

THE DEPUTY PRESIDENT: We won't leave a half empty bottle for the next witness, and say go for your life. It's currently sealed.

PN212

THE WITNESS: Thank you so much.

PN213

MR CULLINAN: So if you look in the court book I'm going to take you to your two statements. The first statement starts at page 38. So can you open it up to page 38. From page 38 you do have attachments - I think it goes through to page 47. Can you have a look at that?---The one (indistinct) 47?

PN214

Yes, 38 to 47. So is that a copy of your first statement in this proceeding?---Yes.

PN215

Thank you. And is it dated 7 December?---It is.

PN216

And is it 71 paragraphs long?---It is.

PN217

And does it have one attachment?---Yes.

PN218

Is that statement true and accurate in every regard?---Yes.

PN219

Thank you. We tender that statement.

PN220

THE DEPUTY PRESIDENT: Yes.

EXHIBIT #A12 FIRST WITNESS STATEMENT OF MON MULVENEY DATED 07/12/2023

*** MON MULVENEY

XN MR CULLINAN

PN221

MR CULLINAN: Then can you turn over to page 80, and here we have another document which goes through to page 85, the four attachments. Is that a copy of your second statement in this proceeding?---Yes.

PN222

And is it 46 paragraphs long?---Yes.

PN223

And is it dated 12 January?---Yes.

PN224

Are there three attachments, MM2, MM3 and MM4?---Yes.

PN225

And is that statement true and accurate in every regard?---Yes.

PN226

Thank you. We tender that statement.

EXHIBIT #A13 SECOND WITNESS STATEMENT OF MON MULVENEY DATED 12/01/2024

PN227

Thank you, Deputy President.

PN228

THE DEPUTY PRESIDENT: Yes.

CROSS-EXAMINATION BY MS MOLONEY

[10.51 AM]

PN229

MS MOLONEY: Thank you. Good morning, Ms Mulveney. I'm going to ask you a series of questions and if there's anything you don't understand please ask me to explain. I just wanted to start just by confirming that you were previously an employee of Factory X; is that correct?---(No audible reply)

PN230

THE DEPUTY PRESIDENT: Just a sec. When you answer - Tara, can you move the microphone a little bit closer.

PN231

MS MOLONEY: This is being recorded so we need to - if you nod the transcript is not going to know that.

PN232

THE DEPUTY PRESIDENT: It's entirely for my benefit. I'm deaf in one ear I think.

PN233

THE WITNESS: My apologies.

*** MON MULVENEY

XXN MS MOLONEY

PN234

THE DEPUTY PRESIDENT: Thank you.

PN235

MS MOLONEY: Thank you. No, that's totally fine. So you were previously - I will ask again - you were previously an employee of Factory X; is that correct?---Yes.

PN236

And you are now an employee of RAFFWU; is that correct?---Yes.

PN237

And you've been responsible I think you say in your statement for implanting what you refer as the RAFFWU Dangerfield campaign; is that correct?---Yes.

PN238

And I believe in your statement you say that you commenced that campaign on or around 5 October; is that correct? I can take you to your statement. Perhaps if you go to page 40?---Thank you. Yes.

PN239

And that was also by, perhaps not coincidence, the day you commenced employment with RAFFWU; is that correct?---Yes.

PN240

And had you taken part in such a campaign previously in terms of gathering signatures to a petition?---No.

PN241

So I think it's fair to say that you were inexperienced in that process; is that correct?---Yes.

PN242

So in terms of your responsibility for implementing what you refer to as the RAFFWU Dangerfield campaign is that just in Victoria or is it always in other states?---That's just in Victoria.

PN243

Just in Victoria. Okay. So you're currently an organiser for RAFFWU; is that correct?---Yes.

PN244

I did want to take you if I could to an attachment that is not at your statement, just to hopefully not confuse you. It's at Mr Johnstone's statement, but hopefully it's a document that you are familiar with. So if you could turn to page 32?---Mm-hm.

PN245

Do you recognise that document?---Yes.

*** MON MULVENEY

XXN MS MOLONEY

PN246

And is that a document that sets out RAFFWU - what's referred to as Dangerfield/Princess Highway member claims as unanimously endorsed on 26 September 2023?---Yes.

PN247

As it appears. One of the claims is a minimum wage of \$32 per hour. And are you aware of what the current award wage is for retail workers level 1?---Not the exact amount, no.

PN248

Generally?---It's just under \$30.

PN249

Okay. We might check that, because Mr Johnstone has given evidence that it was \$24.

PN250

THE DEPUTY PRESIDENT: Mr Johnstone states that the minimum wage to his knowledge was \$24.73.

PN251

MS MOLONEY: Okay. I put it to you that the minimum wage is \$24.73?---I accept that.

PN252

And you can't dispute that, can you? We will actually get the figure. So I put it to you - - -

PN253

THE DEPUTY PRESIDENT: Just a sec. Tara, can you just check the Retail Award. Just confirm that rate is correct.

PN254

MS MOLONEY: And Mr Monroe is doing the same thing. Thank you.

PN255

THE DEPUTY PRESIDENT: It sounds about right.

PN256

MS MOLONEY: Okay. So I put it to you if indeed, and we will get clarification in just one minute, that level 1 of the Retail Industry Award is slightly less than \$25, that a claim of \$32 is quite an ambitious claim. So it's a significant increase?---Yes, I would agree that it is a significant increase.

PN257

Thank you. And also part of the claim is that superannuation be paid at 15 per cent, and I put it to you on the basis that current superannuation rates are 10.5 per cent that that again is a significant increase in superannuation.

*** MON MULVENEY

XXN MS MOLONEY

PN258

THE DEPUTY PRESIDENT: Sorry, can you - - -?---Sorry. Yes, that is a significant increase.

PN259

MS MOLONEY: Thank you. Yes, we have confirmed that the permanent amount is \$24.73.

PN260

THE DEPUTY PRESIDENT: Thank you.

PN261

MS MOLONEY: And casual would be 30.91 applying a 25 per cent loading. Thank you. Under the heading 'Job security' there is a claim that after three months employment a casual employee will be offered the option to convert to a permanent part-time role. Is that correct?---Yes.

PN262

And I put it to you that no such right exists currently in Australian law?---I'm not aware.

PN263

And that's fine, if you're not aware please say so?---I'm not aware of what the current law is.

PN264

Thank you. Well, what I will say to you is currently under the Fair Work Act in order to qualify for casual conversion you need to have been engaged for at least 12 months. You can't dispute that, can you?---No, because I don't know the information.

PN265

Thank you very much. So I put it to you that a casual conversion that would apply after three months is a significant change to Australian law?---Yes.

PN266

THE DEPUTY PRESIDENT: It wouldn't be a change to the Australian law.

PN267

MS MOLONEY: Sorry, a significant change that would be out of step with Australian law?---I feel like I don't know enough on the matter to be able to answer that question.

PN268

THE DEPUTY PRESIDENT: I think self-evidently for my benefit the claim is three months versus the current statutory standard of 12 months. You can make submissions on whether that's a significant claim, whether it's outrageous, whether it's - you know.

*** MON MULVENEY

XXN MS MOLONEY

PN269

MS MOLONEY: Yes, thank you. Then I might leave those questions there. You've given evidence that on your first day you began the campaign. Does that include collecting signatures on that day?---Sorry, which page are you?

PN270

It's just a question. On 5 October - so in your statement at the paragraph I took you to previously, paragraph 18 at page 40, you've stated you're responsible for the conduct of a petition, and you started doing this on and from 5 October 2023. And my question to you is did that involve collecting signatures on 5 October?---I believe I did, but I must remember I'm not sure of the exact dates when I collected every - I don't have that memory of the exact date I collected every signature.

PN271

Thank you. I just wanted to ask you some questions about Factory X where you previously worked. You're aware that Factory X has three store brands; is that correct?---Yes.

PN272

And those store brands are Dangerfield, Gorman and Princess Highway?---Yes.

PN273

And each of those are a separate brand of Factory X, aren't they?---Yes.

PN274

And in the same way that Gorman is a separate brand from Princess Highway Dangerfield is also a separate brand from Princess Highway; is that correct?---Yes.

PN275

Thank you. And do you accept that each of those brands have a retail store?---Yes, in Victoria they do.

PN276

Yes, thank you. Thank you for that clarification. And you'd accept that employees in each brand are all employed by the Factory X entity, wouldn't you?---Yes.

PN277

You would accept that store employees in each brand are arranged in the same way with a store manager, second in charge, occasionally a third in charge, and sales assistants, wouldn't you?---I can't answer that because I don't know enough about what happens in Gorman stores to know that.

PN278

And you don't deny, do you, that each brand has the same or very similar training manual?---I again can't answer that because I don't know enough about what happens in Gorman.

*** MON MULVENEY

XXN MS MOLONEY

PN279

And would you accept that stores in each brand have the same sales training, the same assessments and mystery shoppers?---Again I'm so sorry I don't - for Dangerfield and Princess Highway, yes, but I don't know enough about Gorman, I'm sorry.

PN280

Well, I will put it to you that Ms Chapman will give evidence that there is the same sales training and they have a similar training manual. You couldn't dispute that, could you, based on your knowledge?---No.

PN281

And I put it to you that Ms Chapman will also give evidence that each employee in each store is required to comply with the same code of conduct, and again you can't dispute that, can you?---No.

PN282

The brands use the same operational systems, including the AP21 process and the Kepler for measuring foot traffic, and Ms Chapman will give evidence to that effect. You couldn't dispute that either, could you?---No. In fact I actually do believe that that is from my knowledge, yes, I would agree with that.

PN283

Okay. Now, you've attached several job advertisements to your second statement, haven't you, Ms Mulveney?---Yes.

PN284

But you don't deny that positions across the brand have the same position descriptions, do you?---No.

PN285

I believe you were the store manager at Dangerfield Swanston Street; is that correct?---Yes.

PN286

You don't suggest that a person at a Gorman store would have a different position description to the position description you had as a store manager, would you?---No.

PN287

Thank you. If I can now direct you to attachment EC6, which is at page 372.

PN288

THE DEPUTY PRESIDENT: I am curious, Ms Mulveney, and I'm being a little bit flippant here, but if I was going to attire myself would I go into Dangerfield or - given my age would those stores be suitable for my age in your view, or unlikely? Is it targeted at particular demographics?---I think, yes, it is targeted - -
-

*** MON MULVENEY

XXN MS MOLONEY

PN289

A younger demographic?---Yes, but having said that it wouldn't be uncommon for someone your age - - -

PN290

I'm a mature age. Yes, okay?---To shop at those locations.

PN291

Okay. I was just curious. I've heard of the Dangerfield brand. I haven't heard the Princess Highway brand. I don't know why, but I've heard of Dangerfield. I always sense that it was probably aimed at a younger demographic?---I think it is. I think it also is aimed at like aesthetic demographic if that makes sense.

PN292

a hipper demographic than perhaps I might be. Okay, thank you. Ms Moloney.

PN293

MS MOLONEY: Is it correct while we're on the subject that Princess Highway has predominantly female clothing?---Yes.

PN294

And is it correct that Gorman also has predominantly female clothing?---I can't answer that, I'm so sorry.

PN295

Ms Chapman will give evidence that that is the case. You can't dispute that, can you?---No.

PN296

But I think what we've established is that - - -

PN297

MR CULLINAN: I don't think that is Ms Chapman's evidence.

PN298

MS MOLONEY: Okay. I withdraw that.

PN299

THE DEPUTY PRESIDENT: No, it's not that I recall. There's some evidence about the demographics of the workforce in each of the outlets, but I don't think there was particular evidence going to the focus of the fashion, whether it was younger, older, female, male. That's why I was querying.

PN300

MS MOLONEY: Yes. And certainly I think what we have learnt is that Dangerfield has both male and female clothing - - -?---Yes.

PN301

- - - from that question.

*** MON MULVENEY

XXN MS MOLONEY

PN302

THE DEPUTY PRESIDENT: I think we were going to page 372.

PN303

MS MOLONEY: Yes. That's a position description for a Factory X employee irrespective of brand. You don't dispute that that would apply to someone who was at Princess Highway, Gorman or Dangerfield?---No.

PN304

Thank you. And it wouldn't surprise you to learn that applicants who apply through the Dangerfield website may be appointed to a role in a Gorman store or vice versa, would it?---If that's the case then sure.

PN305

Thank you. And it also wouldn't surprise you to learn that regardless of the brand of the store you work in employees receive the same contract?---If that's the case, yes.

PN306

And at paragraph 16 of your witness statement, and we've already gone to the particular paragraph, you refer to the RAFFWU Dangerfield campaign; is that correct? I can take you back there?---Thank you.

PN307

THE DEPUTY PRESIDENT: What page are we back at, sorry?

PN308

MS MOLONEY: Forty.

PN309

THE WITNESS: Yes, I do say in my statement the RAFFWU Dangerfield campaign.

PN310

MS MOLONEY: Yes. And that's because Dangerfield is a distinct brand from Princess Highway, isn't it?---No, I mistyped. I should have said Dangerfield/Princess Highway campaign. That was my mistake and I apologise.

PN311

Well, I put it to you that Dangerfield is a distinct brand from Princess Highway?---Yes.

PN312

Thank you. And Princess Highway was added to that campaign later, wasn't it?---Yes, but not that much later, and in consultation with like other members.

PN313

And Gorman has since been added to some of the materials relating to RAFFWU's campaign for bargaining, hasn't it?---No. Sorry, what do you mean by added to?

*** MON MULVENEY

XXN MS MOLONEY

PN314

I will take you to a document that might provide - - -?---Thank you so much.

PN315

- - - some more clarity. So there was a video published to the RAFFWU TikTok account that refers to all Factory X staff, and what I might do is take you to a transcript of that video that is set out at page 375. So you should have in front of you a document that's 375 and also has EC7?---Mm-hm.

PN316

And could I ask you to just read through. This is a transcript of a video that appeared on the RAFFWU - - -?---And you would just like me to read the words in italics, or you would like me to read the whole page?

PN317

Where it starts, 'Hi, my name is Elliott'?---Yes.

PN318

That sentence and down to the end of the document?---'Hi, my name is Elliott' - - -

PN319

Sorry, if you could just read it to yourself?---So sorry, my apologies.

PN320

That's fine. If you want to read it aloud that's fine.

PN321

THE DEPUTY PRESIDENT: No, I'd rather not.

PN322

MS MOLONEY: Thank you. The text of that suggests, doesn't it, that this is referring to all Factory X staff including Dangerfield, Princess Highway, warehouse and Gorman 2, doesn't it?---It does refer to all of those workers.

PN323

And it also refers to nationwide, doesn't it?---It does refer.

PN324

So you'd be aware that that video was specifically about a campaign for an enterprise agreement?---Yes.

PN325

So the video is part of a series of RAFFWU videos about Factory X and enterprise bargaining. That's correct, isn't it?---Yes.

PN326

And the video then effectively opens up this campaign and calls upon Factory X staff nationally. It talks about nationwide, doesn't it?---It does.

*** MON MULVENEY

XXN MS MOLONEY

PN327

And then it calls on Factory X staff in Gorman 2, doesn't it?---It does.

PN328

And the hash tags for the video you can see include Princess Highway, Dangerfield and Gorman, don't they?---They do.

PN329

Thank you. Now, you've stated at paragraph 8 of your second statement, and I'm very happy for you to turn to that and have a look at it?---Thank you.

PN330

And it commences at page 80, and that's paragraph 8. It's at the top of page 81?---Yes.

PN331

So you were in Sydney between 18 to 21 November on RAFFWU business; is that correct?---Yes.

PN332

And you stated you didn't collect signatures or any petition or ask anyone to sign a petition?---No. As in no I didn't, sorry.

PN333

Yes. And, Ms Mulveney, are you aware that Factory X stores in New South Wales are receiving flyers referring to the same or substantially similar issues as part of the RAFFWU claims document we've been through this morning?---Sorry, can you rephrase the question for me.

PN334

Certainly?---Thank you.

PN335

You're aware, aren't you, that Factory X stores in New South Wales are receiving flyers dealing with the same or substantially similar issues as part of RAFFWU's claims document that we looked at this morning?---Flyers?

PN336

Flyers, pieces of paper, pamphlets?---I'm not aware.

PN337

Okay. Thank you.

PN338

THE DEPUTY PRESIDENT: Sorry, just to be clear, are you aware that a campaign is being conducted in Sydney in pursuit of similar, if not the same claims as has been advanced in Victoria in the Dangerfield/Princess Highway stores?---It has come up in discussions in meetings. I'm not aware of those members being in pursuit of the same claims that Victorian members are.

*** MON MULVENEY

XXN MS MOLONEY

PN339

MS MOLONEY: Okay. And you don't deny in your statement that on 12 December RAFFWU held a call that was open to Factory X staff, including those in New South Wales?---Yes, that did happen.

PN340

And you wouldn't deny that a similar call was held on 9 January 2024, would you?---I believe so, but I would have to check my calendar to check the exact dates.

PN341

And were you on that call, Ms Mulveney?---I was on both those calls.

PN342

And I put it to you - well, if I could ask the question - were there staff from Gorman on that call?---Not that I'm aware of.

PN343

Do you keep a roll of who attends such calls?---I do keep a roll, yes.

PN344

I would call for that document, Deputy President, to ascertain whether there was at least one Gorman staff member on that call.

PN345

THE DEPUTY PRESIDENT: All right. Mr Cullinan?

PN346

MR CULLINAN: We just don't understand the relevance. I think there's a conflation of the word 'campaign' here, but we don't understand the relevance of such document.

PN347

THE DEPUTY PRESIDENT: Perhaps, Ms Moloney, you can explain the relevance.

PN348

MS MOLONEY: As part of this application the onus is on the applicant to establish that the group of employees in respect of which the majority support determination application is sought are fairly chosen, and that includes operationally, organisationally and geographically distinct group of employees. And our case is that in terms of the current campaign that is not correct, that there is the same or similar issues being raised in New South Wales, and that at least one Gorman employee is attending these calls as recently as 9 January 2024.

PN349

THE DEPUTY PRESIDENT: You have not put on any evidence to that effect, have you?

*** MON MULVENEY

XXN MS MOLONEY

PN350

MS MOLONEY: No. That was after our submissions were due. That was I think last Monday, your Honour, but I do intend to seek leave to ask Ms Chapman about that, and hence I'm giving Ms Mulveney the opportunity - Ms Mulveney has given evidence that she was on that call, and I simply asked her whether there was also at least one Gorman person on that call, and Ms Mulveney has said she doesn't recall. I have asked Ms Mulveney whether a roll is kept of attendees, and I have now called for that document. That's the relevance.

PN351

THE DEPUTY PRESIDENT: If I were to order the production of that document or roll I mean presumably the parties would respect the confidentiality of participants on such roll.

PN352

MS MOLONEY: Yes.

PN353

THE DEPUTY PRESIDENT: And then how would I reconcile a list that might be provided by Ms Mulveney and the employee that you refer to?

PN354

MS MOLONEY: If there is a name and a store appearing on the roll then certainly - - -

PN355

THE WITNESS: There's not. Sorry, the lists I keep are a first name and as they appear in the RAFFWU database, and the first letter of her surname.

PN356

MS MOLONEY: Okay. If that name could be provided to us as legal representatives under the condition that we don't share that name, although I will have to think through how we then work out whether that person is employed by Gorman.

PN357

THE DEPUTY PRESIDENT: Is it not enough for - I mean the evidence to date appears to be that RAFFWU has initiated a campaign in respect of Factory X employees, straddling each of the three, as far I could tell. They may not have been successful yet, but they seem to be targeting each of the three brand outlets, certainly in their promotional material.

PN358

MS MOLONEY: Certainly. Perhaps I can deal with this - - -

*** MON MULVENEY

XXN MS MOLONEY

PN359

THE DEPUTY PRESIDENT: Isn't that sufficient for the purposes of the argument you're seeking to advance, as I understand it, and I'm saying accept the argument. I understand that RAFFWU you say have made an arbitrary decision to confine their petition to Princess Highway and Dangerfield, and that those two brand outlets have as much in common with Gorman as they do with each other,

and therefore that feeds into your submission that it's not fairly chosen. You draw on evidence that suggests that they are more broadly targeting Factory X outlets in this broader campaign. Okay. So if a name is produced, which simply confirms that there was in attendance a meeting a Gorman staff member does that advance that submission much?

PN360

MS MOLONEY: Well, it suggests that it's not a case of Princess Highway and Dangerfield being the only people who are part of these discussions in New South Wales.

PN361

THE DEPUTY PRESIDENT: But RAFFWU by its own material is clearly seeking to broaden the campaign to include Gorman, on one view.

PN362

MS MOLONEY: Yes, I accept that, your Honour.

PN363

THE DEPUTY PRESIDENT: I am just not sure how far it really takes the case much further, that's all.

PN364

MS MOLONEY: Thank you. Perhaps I can put it in another way that might - - -

PN365

THE DEPUTY PRESIDENT: Thank you.

PN366

MS MOLONEY: You don't dispute, do you, that on such a call was staff from Dangerfield and Gorman; you can't dispute that?---No, I can't dispute it.

PN367

Thank you. And I put it to you that you have arbitrarily carved out Victoria, haven't you, in this campaign?---What do you mean by arbitrarily?

PN368

In that there's no reason for the campaign to take part simply in Victoria. We've heard in terms of the TikTok video that it is nationwide, but you've made a decision to carve out Victoria, haven't you?---So the decision to campaign for an EBA was a decision made by all members. I was also a Factory X employee and a RAFFWU member when that decision was made, and it was a decision that members made as a group.

PN369

But I put it to you there are RAFFWU members in New South Wales?---There are RAFFWU members in New South Wales, yes.

PN370

But currently we're dealing with a campaign that relates only to Victoria?---Yes.

*** MON MULVENEY

XXN MS MOLONEY

PN371

Thank you. And that by virtue of mathematics makes it easy to get signatures, doesn't it?---Yes, sure.

PN372

Now, in your second statement you refer to circumstances of your departure, and I just want to clarify something you've raised which is about Princess Highway stock.

PN373

THE DEPUTY PRESIDENT: Sorry, which witness statement, where am I at?

PN374

MS MOLONEY: The second statement.

PN375

THE DEPUTY PRESIDENT: Yes. Page? Paragraph, sorry?

PN376

MS MOLONEY: Yes, certainly. So it commences at page 80, and paragraph 12 onwards.

PN377

THE DEPUTY PRESIDENT: Yes.

PN378

MS MOLONEY: And you were concerned because Princess Highway stocks only women's clothing; is that correct?---Yes.

PN379

Whereas Dangerfield stocks a variety of feminine and masculine clothing; is that correct?---Yes.

PN380

And indeed the difference between those two brands was enough to quite rightly cause you discomfort; is that correct?---Yes.

PN381

And this differentiates Gorman and Princess Highway from Dangerfield, doesn't it?---Yes and no. I think the biggest difference between - sorry, I'm trying to think how to phrase this.

PN382

That's okay, take your time?---So, yes, Dangerfield and Princess Highway clothing are sold under those two separate names, but of the three Gorman is the only one that is not sold in - like is the only one that is always sold in a separate location to the other two. So there is a difference between aesthetic, but for Dangerfield and Princess Highway, for example when I was working in a Dangerfield store there would be shifts that I worked where I wore a combination of both brands to that shift, rather than just wearing one or the other.

*** MON MULVENEY

XXN MS MOLONEY

PN383

Thank you. But would you - - -

PN384

THE DEPUTY PRESIDENT: Sorry, just so I'm clear. Dangerfield stocks clothing both, for want of a better word, masculine and feminine aesthetic; is that correct?---So they sell clothes that are cut in either a feminine or a masculine line. The aesthetic between Dangerfield - the aesthetic for Dangerfield I guess you could classify as old Goth. Sorry.

PN385

I need an urban dictionary here.

PN386

THE WITNESS: So sorry.

PN387

THE DEPUTY PRESIDENT: I think I understand what you're saying. A particular demographic is more likely to wear - I really don't know how to say this - - -?---Totally.

PN388

- - - but Dangerfield is likely - I'm trying to understand it from a boomer perspective - is likely to sell clothing that is more likely to appeal to different genders. Am I right in that?---Yes.

PN389

And Princess Highway is more likely to appeal to aesthetic that is more feminine. Is that correct?---Yes.

PN390

Right?---Sorry.

PN391

No, no?---I'm not making it easier I know.

PN392

I'm conscious of the minefield I have to step through on this stuff. Were you discomfited by that transition from one to the other?---I was more discomfited - like there are Princess Highway items of clothing that throughout my entire time I was employed at Factory X I would have felt comfortable, maybe a pair of jeans, a shirt, but to not have the option of wearing a masculine cut - - -

PN393

Or Dangerfield clothing?---Yes, totally. That's what brought me discomfort, was that I would only be able to wear Princess Highway.

PN394

Thank you.

*** MON MULVENEY

XXN MS MOLONEY

PN395

MS MOLONEY: Thank you. Would it surprise you to learn that in December there were approximately 1000 employees across Factory X Gorman, Dangerfield and Princess Highway stores?---I don't know if I'd seem surprised. I wasn't aware of that information.

PN396

Ms Chapman will give evidence that that is the case, and you can't dispute that, can you?---No.

PN397

You've stated that you've never known a worker to cross over from Dangerfield or Princess Highway to Gorman, but you don't know that this has never happened, do you?---No.

PN398

And you can't say how many people have worked in both Gorman and Dangerfield. Nor can you say how many people have worked in Gorman and Princess Highway, can you?---No.

PN399

THE DEPUTY PRESIDENT: Does the evidence indicate anywhere what those figures might be?

PN400

MS MOLONEY: There is certainly evidence from Ms Chapman that there is crossover, particularly - - -

PN401

THE DEPUTY PRESIDENT: There's general evidence that there's crossover, but it's not apparent on my reading of the evidence it's clear the numbers involved.

PN402

MS MOLONEY: Yes.

PN403

THE DEPUTY PRESIDENT: Is that a fair assessment?

PN404

MS MOLONEY: That's correct.

PN405

THE DEPUTY PRESIDENT: Yes, thank you.

*** MON MULVENEY

XXN MS MOLONEY

PN406

MS MOLONEY: I put it to you that in the week 6 to 9 November there was crossover between staff between Gorman and Princess Highway. I withdraw that. I will just check one thing with my instructor. I put it to you that in the week 2 to 9 October Ms Chapman will give evidence that there was crossover between staff working at Princess Highway and Gorman, but there was no

crossover between staff working between Princess Highway and Dangerfield?---Sorry, what's the question?

PN407

You can't dispute that, can you?---Not for that specifically, no.

PN408

THE DEPUTY PRESIDENT: Does the evidence state that, and if so where is that stated?

PN409

MS MOLONEY: That is evidence that we're proposing to lead from Ms Chapman.

PN410

THE DEPUTY PRESIDENT: Okay.

PN411

MS MOLONEY: And you've only been in a Gorman store to collect ink for your store's printer, and you don't know how similar they are, do you?---Sorry, how similar what is?

PN412

Similar between Gorman and Princess Highway?---Similar in what way?

PN413

Similar in the clothing that they have?---No, I don't know enough about Gorman stock, I'm so sorry.

PN414

When you worked for Factory X you worked at Dangerfield Fitzroy at one point. That's correct, isn't it?---For four days I think.

PN415

Do you recall that that is located at 202 to 204 Brunswick Street?---I think so.

PN416

Then in your capacity as a RAFFWU organiser you collected signatures at Dangerfield Fitzroy. That's correct, isn't it?---Yes, I believe I did.

PN417

And you also collected signatures at Princess Highway Fitzroy, didn't you?---Yes, I believe I did.

PN418

And that's at 188 Brunswick Street, isn't it?---If you say it is then I agree.

PN419

Do you happen to know the address of Gorman Fitzroy?---No, I don't.

*** MON MULVENEY

XXN MS MOLONEY

PN420

But if I told you it was also 188 Brunswick Street you couldn't dispute that, could you?---No, I can't dispute that.

PN421

Deputy President, I would like to show the witness just two photos.

PN422

THE DEPUTY PRESIDENT: What address is - I have got two here. Perhaps you can identify them for my benefit.

PN423

MS MOLONEY: Yes. Thank you very much. So the Dangerfield photo is 202/204 Brunswick Street, Fitzroy, and the other photo is 188 Brunswick Street, Fitzroy. Do you have a copy of those two photos?---Yes, I do.

PN424

So in your capacity you collected signatures at both the Dangerfield store and the Princess Highway store, and I put it to you that you would have had to walk past the Gorman store in order to get to the Princess Highway store which is in the same building as we can see from this photo?---Yes.

PN425

And if you look carefully at that photo there are some models in the window on the left-hand side?---Mm-hm.

PN426

And I put it to you that they are models wearing feminine clothing?---Yes.

PN427

Thank you. So in fact as you're collecting signatures for Dangerfield and Princess Highway you literally walked past the Gorman store, didn't you?---Yes, I did.

PN428

And the Princess Highway shopfront is right next to the Gorman shopfront, isn't it?---Yes.

PN429

Thank you.

PN430

THE DEPUTY PRESIDENT: Do those photos need to be marked?

PN431

MS MOLONEY: Yes, thank you, Deputy President. I tender those.

PN432

THE DEPUTY PRESIDENT: All right. Just let me make a note.

EXHIBIT #R2 DANGERFIELD STORE PHOTO

*** MON MULVENEY

XXN MS MOLONEY

EXHIBIT #R3 GORMAN/PRINCESS HIGHWAY STORE PHOTO

PN433

Thank you.

PN434

MS MOLONEY: Thank you. You were involved in organising the collection of petitions, weren't you, signatures on petitions as part of the campaign?---Yes.

PN435

And you were responsible for a significant amount of those signatures, weren't you?---Yes.

PN436

Could you estimate how many signatures you collected; just a rough guess is fine?---Maybe 40 or - actually I'm really not sure, I'm so sorry.

PN437

No, that's fine. And those signatures were collected based on your evidence at Princess Highway Doncaster, Fitzroy outlet and Fitzroy store, and Dangerfield Chadstone, Eastland, Brunswick, Highpoint, and then Princess Highway Swanston Street and Dangerfield Flinders Street, Fountain Gate and Fitzroy. Does that sound right, and I won't hold you to remembering, but a variety of stores?---There were a variety of stores, but is the question you're asking where I personally collected signatures from, or where signatures were collected from in general?

PN438

Where you went to the store to collect a signature?---I didn't go to Brunswick to collect signatures.

PN439

All right, thank you. Based on our calculations at least 16 signatures on the 10 petition pages you had sole custody of. Does that sound right?---That sounds - yes.

PN440

Not everyone you spoke to signed the petition, did they?---No.

PN441

For example Ms Maybury who's giving evidence in these proceedings, she didn't sign the petition, did she?---No.

PN442

So you would certainly have spoken to more than 16 people in collecting these petitions?---Yes.

*** MON MULVENEY

XXN MS MOLONEY

PN443

You said in your first statement that you always explained the purpose of the petition asking workers if they were interested in reading the RAFFWU claims in bargaining and asking workers to sign a petition; is that right?---Yes.

PN444

What exactly did you say when you explained the purpose of the petition?---So I explained that members had endorsed a set of claims for an enterprise bargaining agreement, and that the petition was for workers across the state to show support for bargaining.

PN445

Thank you. I understand from your statement you asked workers if they were interested in reading the RAFFWU claims document?---Yes.

PN446

And did some of the people you spoke to read that claims document?---Yes.

PN447

And I put to you this morning that that document includes a number of entitlements that are more favourable than the current Australian law. You wouldn't disagree with that, would you?---No.

PN448

For each person when you provided them with the claims document did you explain that there was no guarantee that signing the petition would result in the outcome that those entitlements would be forthcoming in bargaining?---For some, yes, when the question was asked, but it wasn't a part of - - -

PN449

So you didn't volunteer that information?---No.

PN450

So I put it to you that some people may have been left with the impression when they read the claims document that that's what they were signing up for, enterprise bargaining where those entitlements might be the result?---Might be the result, yes, but I never said to anybody that if you sign this petition this means that, you know, if we get a majority support on this petition that this is what working for Factory X is going to look like. I never insinuated that.

PN451

But I put it to you you didn't put the opposite of that, that there is no guarantee these claims will form part of enterprise bargaining?---No, I didn't use those words explicitly. I do think it was inferred that when I was introducing the purpose of the petitions that it was to show support when - sorry. It was to show support for when we were asking Factory X to come to the bargaining table. It was never said that it was like to show support for - yes, sorry.

*** MON MULVENEY

XXN MS MOLONEY

PN452

No, no, that's fine. Perhaps I will put a different proposition to you, and that is that you had conversations with a number of employees. You've given evidence

that you provided a number of those employees details of the claim, and you've also given evidence that you didn't volunteer that those claims were not part of the majority support determination in the sense that those claims would necessarily form part of an agreement that would be reached?---No, I didn't volunteer that information.

PN453

Thank you. So I put it to you that some people may have drawn a conclusion between the two documents; one saying these are all these great entitlements that RAFFWU will claim on your behalf, and here is a petition for enterprise bargaining. I put it to you they may have drawn a conclusion between those two documents, that one would necessarily follow the other?---If someone signed that it meant that they would get those entitlements?

PN454

That an enterprise agreement may be forthcoming with those entitlements?

PN455

MR CULLINAN: We object, Deputy President. It's speculative opinion. Ms Mulveney couldn't possibly know what workers are thinking.

PN456

THE DEPUTY PRESIDENT: I tend to agree. The evidence stands for itself. I mean she didn't volunteer that additional information, that just because we bargain doesn't mean we're going to get these claims.

PN457

MS MOLONEY: Yes. Thank you. And how long typically would people have spent talking to you prior to them signing the petition?---Anywhere between 10 and 30-ish minutes.

PN458

Okay, thank you. I would like to take the witness to exhibit R1.

PN459

THE WITNESS: So which - - -

PN460

MS MOLONEY: Sorry, page 340?---Thank you.

PN461

You should have in front of you, and I think I can see that you do, an attachment IC1. This is an email - perhaps I will ask the question. Did you receive this email from Isabella Cox?---I did.

PN462

Do you agree that the email states that Ms Cox would like to withdraw her signature after feeling misinformed and being asked to sign without her full understanding. They are the words of the email?

*** MON MULVENEY

XXN MS MOLONEY

PN463

MR CULLINAN: We have already dealt with this, Deputy President. The words speak for themselves, if there's a question.

PN464

THE DEPUTY PRESIDENT: The words speak for themselves. What, is there a question in relation to the words?

PN465

MS MOLONEY: Yes. Would you say it's a serious allegation for someone to say they felt misinformed when signing a document that's going to be relied on in proceedings like this?---Yes.

PN466

Thank you. But your point when you were talking to people was to get numbers, wasn't it, on petitions?---No. Well, I mean, yes, that was the purpose of why I was in stores, but I wasn't there just to - my point or purpose was to bring the information to all workers, so that all workers had an opportunity to have a say of what was going on. So, yes, I do agree that the purpose was to collect signatures, but it was not just a numbers game, if that makes sense.

PN467

Yes, thank you. And I put it to you that you and other RAFFWU delegates were persistent in trying to get support for employees, weren't you?---Sorry, what do you mean by persistent?

PN468

Well, I will give you an example of Ms Maybury. Ms Maybury will give evidence that she was very clear that she did not want to receive information about RAFFWU or receive the petition. But despite this two individuals, yourself and Ms Butler, interacted with her via four conversations and three text messages in order to get her support, didn't you?

PN469

MR CULLINAN: That's not the evidence, Deputy President.

PN470

THE DEPUTY PRESIDENT: Perhaps we can take the applicant to the actual evidence.

PN471

MS MOLONEY: Yes, certainly.

PN472

MR CULLINAN: I don't believe the text messages made any reference at all.

PN473

THE DEPUTY PRESIDENT: I would like the question going to the evidence.

*** MON MULVENEY

XXN MS MOLONEY

PN474

MS MOLONEY: Yes, certainly. If I could take you to the witness statement of Hannah Maybury.

PN475

THE DEPUTY PRESIDENT: Page 341.

PN476

MS MOLONEY: Sorry, 341?---Thank you.

PN477

And if I could ask you to read from paragraph 8 onwards at 342.

PN478

THE DEPUTY PRESIDENT: I am just wondering at this point whether it may be appropriate to take a short break, and during that break the witness may have an opportunity to read the relevant paragraphs, and then we can return and the question can be put.

PN479

MS MOLONEY: Thank you.

PN480

THE DEPUTY PRESIDENT: Is that an appropriate path?

PN481

MR CULLINAN: It's that I don't think my learned friend was clear. It was 8 on, on page 342. I don't know if she meant 8 on for the whole statement or just that page.

PN482

MS MOLONEY: Up to paragraph 32, my apologies.

PN483

THE DEPUTY PRESIDENT: Yes. So perhaps in the break, and you're free to avail yourself of the rest rooms, but perhaps in the break you can read those paragraphs. Please don't discuss your evidence with anyone during the break. Thank you. All right. We might adjourn till five minutes to 12. Okay. Thank you.

<THE WITNESS WITHDREW [11.43 AM]

SHORT ADJOURNMENT [11.43 AM]

RESUMED [11.58 AM]

<MON MULVENEY, RECALLED [11.58 AM]

CROSS-EXAMINATION BY MS MOLONEY, CONTINUING [11.58 AM]

*** MON MULVENEY

XXN MS MOLONEY

PN484

THE DEPUTY PRESIDENT: Thank you.

PN485

MS MOLONEY: Thank you for that short break, Deputy President. Ms Mulveney, have you had an opportunity to read from paragraph 8 through to paragraph 32?---Yes, I have.

PN486

And if I can just go back to my question. So this is obviously the witness statement of Hannah Maybury and she's going to give evidence, and I put it to you that she will be very clear that she conveyed that she didn't want to receive information about RAFFWU. Do you agree with that proposition?---I don't remember her explicitly saying to me about that she wasn't interested. I have read the conversation as Ms Maybury has written it out from their recollection, and that is not the memory that I have of that conversation. There were a couple of points where I asked questions such as, 'Would you like my phone number so we can speak about this another time', and she said, yes, she'd be happy to take it. Yes.

PN487

Thank you. So just in terms of your specific conversation with Ms Maybury you don't recall the specific words that you used, do you?---No, I don't.

PN488

And I put it to you, Ms Mulveney, that we established earlier that you'd spoken to at least 16, but possibly more employees; is that correct?---Yes.

PN489

While Ms Maybury recalls two conversations with two people specifically, yourself and Ms Butler. That's correct, isn't it?---Yes.

PN490

Now, speaking of Ms Butler when you spoke to Ms Maybury you were aware that Ms Butler had already spoken to her, weren't you?---Yes.

PN491

And you knew that Ms Butler had visited Ms Maybury's store, didn't you?---Yes.

PN492

And you knew that Ms Butler had spoken to Ms Maybury on three occasions about RAFFWU's campaign and the petition, didn't you?---The amount of occasions I'm not sure, but I do know that the campaign had come up in discussion, yes.

PN493

Yes. And you've seen in paragraph 15 to 18 that Ms Butler texted Ms Maybury a further three times in order to tell her about a film premier that RAFFWU was organising about another company's experience?---Yes.

*** MON MULVENEY

XXN MS MOLONEY

PN494

Thank you. And Ms Maybury made it clear, didn't she, to you that she didn't want to sign the petition?---Yes.

PN495

And she said as soon as she saw you words to the effect, 'Oh no, did they not tell you I don't want to do this'?---I don't remember exactly, I apologise.

PN496

No, that's fine, but you'd spoken to Ms Butler and you were aware that Ms Maybury hadn't signed the petition and had expressed some reservation about signing the petition?---Yes.

PN497

Hence why you decided to go to the store and speak to Ms Maybury?---Yes.

PN498

Thank you. Do you agree you said words to the effect, 'We really want to get you on our side, we really need to talk about this', to Ms Maybury?---'We really want to get you on our side' - that doesn't sound like me. Sorry, the second one, 'We really need to talk about this', I probably did say something to that effect, yes.

PN499

Yes. And so despite Ms Maybury seeing you and saying immediately, 'Didn't they tell you I don't want to do this', you did say to Ms Maybury, 'I'd like to give you my phone number'?---I don't necessarily agree that this is how the conversation initiated, that immediately Ms Maybury said to me, 'Did they not tell you I don't want to do this.' From my memory I walked into the store and we had a conversation, something about, 'Do you remember me, I'm Mon', something like that.

PN500

But I put to you - - -?---But - sorry.

PN501

Apologies, you go ahead?---At no point did Ms Maybury say, 'Has anyone told you I don't want to do this.' I asked a number of questions, and I never got the feeling from Ms Maybury in the way that she spoke or acted like she didn't want me to be there.

PN502

Okay. But I put to you that Ms Butler had told you that she was not interested, and despite that you visited her at the store and spoke to her about the campaign and the petition?---Yes.

*** MON MULVENEY

XXN MS MOLONEY

PN503

Thank you. And I put to you that it's likely Ms Maybury has a better recollection of the conversation than you, because you have given evidence that this was one of a number of conversations, whereas Ms Maybury has had two conversations with two people only from RAFFWU?---I don't know that I can necessarily agree or disagree with that.

PN504

Yes, thank you. And would you agree that when Ms Maybury indicated she didn't want to do something in her initial discussions with Ms Butler that she shouldn't repeatedly be asked to do it?---Yes.

PN505

Do you concede that that could be perceived by Ms Maybury as undue pressure from RAFFWU?

PN506

MR CULLINAN: No doubt Ms Maybury will give evidence.

PN507

THE DEPUTY PRESIDENT: Yes, I agree.

PN508

MS MOLONEY: Thank you. Just one point of clarification. You did say earlier in cross-examination, I believe you may have said that you didn't go to Dangerfield Brunswick. Can I take you to page 45, and if I can take you to paragraph 59?---Yes.

PN509

And this is just for a point of clarification?---Sorry. Yes. No, 100 per cent I misremembered. Yes, I did receive one or two signatures at Brunswick. I sincerely apologise.

PN510

Thank you. And just for clarification Brunswick Street, Fitzroy store is different to the Dangerfield Brunswick store?---Yes, it is. I really am sorry about that.

PN511

Thank you. I have no further questions, Deputy President.

PN512

THE DEPUTY PRESIDENT: Thank you. Mr Cullinan.

PN513

MR CULLINAN: Thank you, Deputy President, I will just be a moment.

RE-EXAMINATION BY MR CULLINAN

[12.06 PM]

PN514

You were asked a question, Ms Mulveney, about the position descriptions across brands, and it was put to you that you don't deny that the positions across brands have the same position descriptions. Do you know what the position descriptions are in Gorman?---No.

*** MON MULVENEY

RXN MR CULLINAN

PN515

You were asked questions about the national approach by RAFFWU, and do you understand that the campaign, the subject of this application, is a separate

campaign from any other New South Wales campaign?---It is. I wouldn't necessarily say there is a New South Wales campaign at this moment either. It is something that has been brought up in discussion, but it's not something that anyone has made a decision on.

PN516

Thank you. You were asked about how long you were talking with people before they signed the petition, and your answer was 10 to 30 minutes. Was that in the context of store visits where workers are in store? What was the context of the 10 to 30 minutes?---Yes. So I would walk into store and introduce myself, explaining the purpose of why I was there, and then ask workers if they had time to talk to me or not, and if they said that they did then those conversations could have taken anywhere between 10 to 30 minutes.

PN517

Is that because other things were going on, like why would it take longer for some?---Some people had more questions. Some people took a longer amount of time to - - -

PN518

THE DEPUTY PRESIDENT: Some people might have customers to serve?---Totally. Yes, yes. But any number of reasons.

PN519

MR CULLINAN: You were asked two questions about the contracts and that Gorman workers and Dangerfield workers have the same contract, and your answer was, 'If that's the case, sure.' Did you know?---No, I don't know the details of any contracts of Factory X really.

PN520

They're all of my questions, Deputy President.

PN521

THE DEPUTY PRESIDENT: Thank you. Ms Mulveney, you're now free to go. You can remain in court or you can leave the Commission's building. It's a matter for you. Thank you?---Thank you so much.

<THE WITNESS WITHDREW

[12.10 PM]

PN522

THE DEPUTY PRESIDENT: Just before we call the next witness - sorry, you're free to go, thank you. I thought we would break for lunch at 1 o'clock for 45 minutes, so in terms of witness examination, cross-examination. We might vary that depending where we get to in cross-examination. Thank you.

PN523

MR CULLINAN: Yes.

*** MON MULVENEY

RXN MR CULLINAN

PN524

THE DEPUTY PRESIDENT: Unless there's a view that we should break earlier depending on how long - - -

PN525

MR CULLINAN: Maybe if I could just have a moment just to check in.

PN526

THE DEPUTY PRESIDENT: Yes.

PN527

MR CULLINAN: So we call Natalie Butler.

PN528

THE DEPUTY PRESIDENT: Sure.

PN529

MR CULLINAN: So that's Ms Natalie Butler.

PN530

THE ASSOCIATE: Ms Butler, please state your full name and address.

PN531

MS BUTLER: Natalie Renee Butler, (address supplied)

<NATALIE RENEE BUTLER, AFFIRMED [12.11 PM]

EXAMINATION-IN-CHIEF BY MR CULLINAN [12.11 PM]

PN532

MR CULLINAN: Thank you, Ms Butler. Before you, Ms Butler, you've got a copy of the court book, which is a set of all the documents in the case, and your two statements are in there you probably already noticed. I'm just going to ask you a couple of questions about those two statements. So the first statement is at page 48, if you want to open up to that document. Thank you. Is this your first statement you made in this proceeding?---Yes.

PN533

Is it dated 2 December 2023?---Yes.

PN534

Is it eight paragraphs long?---Yes.

PN535

Is that statement true and accurate in every regard?---Yes.

PN536

Thank you. We tender that statement.

EXHIBIT #A14 FIRST WITNESS STATEMENT OF NATALIE BUTLER DATED 02/12/2023

*** NATALIE RENEE BUTLER

XN MR CULLINAN

PN537

Thank you. Then if you turn to page 72 you will find another statement. Can you just check those pages and the attachments. Is this your second statement in this proceeding?---Yes.

PN538

Is it dated 12 January 2024?---Yes.

PN539

Is it 45 paragraphs?---Yes.

PN540

With two attachments?---Yes.

PN541

And is it true and accurate in every regard?---Yes.

PN542

Thank you. We tender that statement.

EXHIBIT #A15 SECOND WITNESS STATEMENT OF NATALIE BUTLER DATED 12/01/2024

PN543

Deputy President, we seek leave to put one document to Ms Butler. It's in relation to their second statement and a summary they include about not having had rostered shifts, and the area manager being contacted. It's at paragraph 42. This document is just an SMS exchange with the area manager by Ms Butler. It's important context to clarify the business position as to why there hadn't been rostered shifts over the last two or three weeks.

PN544

THE DEPUTY PRESIDENT: You might need to explain a little bit more clearly for my benefit. I'm likely not getting it why it's significant. Yes, I have read it.

PN545

MR CULLINAN: So what we're seeking to do is to tender this document and to simply have Ms Butler confirm that's the exchange they had with the area manager, and it completes the circle of what happened at paragraphs 41, 42 and 43.

PN546

THE DEPUTY PRESIDENT: The witness states that she's had a dramatic reduction in the shifts that have been offered to her, and this text message seeks to round that out.

PN547

MR CULLINAN: Yes, Deputy President.

*** NATALIE RENEE BUTLER

XN MR CULLINAN

PN548

THE DEPUTY PRESIDENT: What particular aspect of the case does this go to? Apart from an employee being aggrieved at not receiving shifts does it go to any one of the particular statutory requirements, or is this more about - my words - this may not be what you're putting - there's some perception that this witness has been unfavourably treated for reasons of involvement in a campaign?

PN549

MR CULLINAN: We're not prosecuting that in this space.

PN550

THE DEPUTY PRESIDENT: Yes.

PN551

MR CULLINAN: There's two elements to it. The first is that - - -

PN552

THE DEPUTY PRESIDENT: Sorry, I wonder if the witness needs to leave while we have a discussion. Sorry. Could you just leave the room for a minute. Thank you.

<THE WITNESS WITHDREW

[12.18 PM]

PN553

THE DEPUTY PRESIDENT: Sorry, I should have asked - yes. Thank you.

PN554

MR CULLINAN: There's two elements. The first is that, perhaps by our choice, we identified the cover off part of the Act - sorry, I don't have it in front of me - - -

PN555

THE DEPUTY PRESIDENT: Yes. Go on.

PN556

MR CULLINAN: Reasonable in all the circumstances.

PN557

THE DEPUTY PRESIDENT: Yes.

PN558

MR CULLINAN: And we included in that a range of characteristics including the casual nature of work. And so we submit that it's reasonable in all the circumstances because they're casual, and because of the way that they're rostered as casuals. And so we think that these paragraphs is information that assists the Commission with that.

PN559

THE DEPUTY PRESIDENT: Yes.

*** NATALIE RENEE BUTLER

XN MR CULLINAN

PN560

MR CULLINAN: The second is – and we're just to hear this fully fleshed out by the respondent – that they allege that there has been a change in the number of employees employed by the respondent over the period before Christmas and we deal with that in our reply submissions as no doubt that's going to change in the future. This evidence assists the Commission to understand there has been a remarkable reduction, so much so that someone with six months of regular shifts is no longer being rostered at all. That, we would submit, is evidence that helps make clear to the Commission - - -

PN561

THE DEPUTY PRESIDENT: All right. Ms Moloney.

PN562

MS MOLONEY: Thank you. Deputy President, I too - whilst having heard from Mr Cullinan in terms of the relevance, I do think it's a very long bow in terms of the statutory questions, the questions under statute that you need to be satisfied of or the circumstances that you need to be satisfied of but under cover of that objection in relation to relevance which obviously we can make submissions on, I don't object to it being put into evidence.

PN563

THE DEPUTY PRESIDENT: Yes, I can't see that harm is done by admitting it in evidence and I propose to do so. So, yes, I'll – just let me find the document. I've got to keep a running sheet here.

PN564

MR CULLINAN: Do you want me to bring Ms Butler back first?

PN565

THE DEPUTY PRESIDENT: Yes, please.

<NATALIE RENEE BUTLER, RECALLED

[12.20 PM]

EXAMINATION-IN-CHIEF BY MR CULLINAN, CONTINUING [12.20 PM]

PN566

Thank you.

PN567

MR CULLINAN: So we seek to tender that document.

PN568

THE DEPUTY PRESIDENT: Yes, I'll mark the text message exchange between the witness and I believe a Ms Lauren Benstead, dated 14 January – I'll mark that A16.

EXHIBIT #A16 TEXT MESSAGES BETWEEN NATALIE BUTLER AND LAUREN BENSTEAD DATED 14/01/2024

*** NATALIE RENEE BUTLER

XN MR CULLINAN

PN569

MR CULLINAN: I'm sorry, I probably should have put it to the witness first. I'm sorry about that. Thank you, Deputy President. You've got a document in front of you, Ms Butler, that is titled, 'Lauren Benstead'. Is that a document – or can you tell the Commission about what that document is?---It is a WhatsApp text exchange between myself and the Dangerfield area manager that covers my home store, yes, in which I inquire as to why I have suddenly not received any rostered shifts when I previously had worked at least one weekend day for 85 per cent of the weekends since last February and, well, I just always did Sundays, like every week, essentially, except for the few times that I asked for it off. Like, it was a standard and I would work Mondays, whether full day or lunch cover, completely regularly, and they just suddenly stopped with no explanation.

PN570

All right. And that's Lauren's or Ms Benstead's response to you at the bottom?---Yes, it is.

PN571

Thank you. They're all my questions, Deputy President.

PN572

THE DEPUTY PRESIDENT: Thank you. The only thing I would observe is I'm even sparing with my love emojis when I respond to my family but anyway, that's just me, probably. Probably says something more unfavourable about me than anything else but anyway, but that's their complaint. Sorry, please, Ms Moloney.

CROSS-EXAMINATION BY MS MOLONEY

[12.22 PM]

PN573

MS MOLONEY: Good afternoon, Ms Butler. I just have a few questions for you. You've been involved in conducting a petition for RAFFWU, haven't you?---Yes.

PN574

And in fact in your first statement I believe you say you collected 12 signatures plus your own. Does that sound right?---I believe so.

PN575

If you go to page 48 - - -?---Yes, yes, I think 12.

PN576

Thank you. That was at Princess Highway Doncaster, Dangerfield Brunswick and Dangerfield Fitzroy, is that correct?---Yes, and – yes, Dangerfield Fitzroy and Princess Highway Fitzroy.

PN577

Yes. So that's a substantial number of signatures, isn't it?---Mm-hm.

PN578

I put it to you that when you were speaking to people, you didn't clearly explain the purpose of the petition, did you?---I did explain it clearly.

PN579

Okay, and what do you say was the purpose of the petition?---I said like I stated on the petition, essentially, that we were preparing to ask Factory – we as in RAFFWU and the Dangerfield members and Princess Highway members of our union – were preparing to ask Factory X is they would bargain with us. We were hoping that they would say yes but in the event they would say no, that the petition would, you know, if you sign the petition you will be expressing support for bargaining and with the petition I had a list of the claims that we are interested in pursuing and told people clearly that it is not compulsory to sign, if you would like to sign this is what you're signing for. It also read on the petition: 'And please have a read of what it says on the petition', as I said, 'And if you are interested in the actual claims that we have here, that we are interested in pursuing, they are here for you to read and look at for as long as you want and it is entirely your decision'.

PN580

But you didn't specifically explain the relationship between the claims document and the petition, did you?---Can you clarify?

PN581

Did you make it clear to people that signing the petition was a separate step to the claims?---Yes, the claims being what we would hope to pursue in bargaining for an EBA and what we would be kind of aiming for, essentially, but that the claims would not necessarily – you know, 'Signing this doesn't mean that these claims will happen', or anything like that.

PN582

And so you made it clear to every person you spoke to that signing the petition would – doesn't make it – sorry, if you can say what you said again? I just missed the exact wording?---I've already forgotten, I apologise.

PN583

Perhaps if we rephrase it: you didn't say to every person, did you, that signing this petition doesn't guarantee we will get those claims?---Correct: I explained that this is not a guarantee, this is just what we're aiming for, essentially, and I said that signing the petition, as written on the petition, would express support for an EBA and for bargaining and that the claims were kind of what we were – know, what we would hope to bring to the table in that bargaining but signing the petition is not like saying like not necessarily supporting these exact claims but are supporting bargaining but these claims are what we are kind of working with.

PN584

And did you explain that to every person who signed the petition?---Yes.

PN585

Thank you. You've said in your statement that you've never seen any RAFFWU delegates behave in a way that would pressure, threaten or intimidate anyone, haven't you?---Correct.

PN586

If I could just – you certainly weren't there with other delegates at the time they were collecting signatures, were you?---No.

PN587

So you don't actually know whether they engaged in such behaviour do you?---No, though I do – when like I've spoken with delegates and I've spoken with people who have spoken with delegates, when I have seen, like, you know, when I have been delivered petitions by RAFFWU people, every interaction I have had with RAFFWU has been like respectful and like clear, I suppose, like just – yes.

PN588

But you weren't there for numerous conversations that the delegates had with staff?---Not outside of my own, no.

PN589

Yes, and there were a number of people, employees, who collected petitions who weren't delegates, weren't there?---Yes.

PN590

I put it to you that some staff did feel pressured to sign the petition, didn't they?---I cannot speak on that. I don't think that anyone did but that is – like, I don't know what other people think. I can't speak for them.

PN591

If I could just turn to a conversation that you had with Hannah Maybury, you're aware, aren't you, that you and Ms Maybury have very different perceptions of your interactions?---Yes.

PN592

And you accept, don't you, that it's possible for someone to have a conversation and for both parties to have a different perspective on what was said, don't you?---Yes.

PN593

And you say you first met with Ms Maybury on 24 August, didn't you?---Yes.

PN594

And you discussed the issue of uniforms, didn't you?---Yes.

PN595

And you and Ms Maybury disagreed about that issue, didn't you?---Yes.

PN596

And she said she didn't have a problem with uniforms, didn't she?---Yes.

*** NATALIE RENEE BUTLER

XXN MS MOLONEY

PN597

And you – so on the second occasion you met with Ms Maybury, Ms Maybury's evidence will be that you repeatedly raised RAFFWU and a potential petition, didn't you?---Yes.

PN598

And Ms Maybury's evidence will be that she made it clear she wasn't interested. That's correct, isn't it?---Yes, that she was not interested in being a union member necessarily.

PN599

Okay, well - - -?---She did express interest in the fact that – she I believe said something along the lines of, 'I support what you guys are doing and I hope it's good for the workers but I don't want to get like involved in the union'.

PN600

But she expressed to you clearly that she wasn't interested in signing the petition, didn't she?---Not on the second interaction, we didn't have the petitions yet.

PN601

At any time did she express that to you?---Yes, when I took the petition – not on that second interaction.

PN602

And you then had a conversation with Mx Mulveney about that, didn't you?---Yes, I believe so, yes. My memory is not amazing.

PN603

And you told Mx Mulveney that Ms Maybury was not interested in signing the petition?---I believe so, yes.

PN604

And despite this, you have knowledge, don't you, that Ms Maybury then went to – sorry, Mx Mulveney – then went to Ms Maybury's store to seek to have her sign the petition?---Yes, I believe so.

PN605

Thank you. So if I could take you to Ms Maybury's statement, and I'll just give you a page reference – that is starting at page 341?---Three four one, was it?

PN606

Yes, that's correct. So at paragraph 11, I put it to you that Ms Maybury's evidence will be that she made it very clear to you that she's not interested in joining RAFFWU, is that correct?---She did.

PN607

And I put it to you that at paragraph 14, Ms Maybury's evidence is that whilst there may not have been a formal petition at that stage but rather a list of demands, she made it clear to you that she was not interested?---First of all, claims.

*** NATALIE RENEE BUTLER

XXN MS MOLONEY

PN608

That's correct, isn't it?---Yes, she was not – yes, she was not interested – not extremely interested but she did also discuss with me the claims that we had. Like, I mentioned before she said, 'Not interested', that she like – like, I would mention one and she would discuss back with me about her perspective on it and then I would do the same and we would, you know, talk about it.

PN609

I put it to you at a point in time, Ms Maybury told you that she was not interested to talk about a list of claims or to become a member of RAFFWU?---I believe so.

PN610

Thank you. Despite that, you text Ms Maybury numerous times in relation to an event that RAFFWU was organising, didn't you?---If by numerous times you mean a group text that I sent to every single Dangerfield and Princess Highway contact I had in my phone and then a follow up one that (indistinct) I can find it, it's in there somewhere – that basically said, 'I know you're probably not interested but I don't want you to be excluded', because I assumed that if – you know, and to pass it on to her casuals because they were also potentially invited to the event.

PN611

But I put it to you - - -?---And that if I had not sent that to her and she had spoken to someone else in like – who had received the text and who for example said, like, 'Oh, hey, are you going to that event', and she had not heard anything about it, that would be exclusionary and would, you know – it's not a nice feeling and so I wanted to make sure. I was just like, 'I will send this', and leave it - - -

PN612

I put it to you that you had clearly – you had clear indication from Ms Maybury that she wasn't interested yet you chose to send that text?---I chose to send that text - - -

PN613

Yes, thank you?---Not on the basis that I thought she would be interested but on the basis that she could pass it along to people who may be and so that if she heard about it from other people that she would not have been excluded from something.

PN614

Thank you, but you've given evidence that you were sending this text to multiple people, haven't you?---Yes.

PN615

Yes, thank you?---I believe I - - -

PN616

And Ms Maybury never responded to those text messages, did she?---No.

*** NATALIE RENEE BUTLER

XXN MS MOLONEY

PN617

And you sent a third text message on 18 October even though she hadn't responded to those first text messages?---Where is it?

PN618

If you look at paragraph 18?---Yes.

PN619

Yes, thank you. So do you accept that by this stage, Ms – sorry, no, that's correct, the second message. Sorry, I'll just clarify: at paragraph 15 was the first text message inviting Ms Maybury to a short film premier. Yes, a group message – is that correct?---It was sent to like – yes, as in sent to many people not within a group chat but sent like en masse group text, yes.

PN620

Then on 12 October, despite not receiving a response to that text, you then emailed Ms Maybury again?---Texted.

PN621

Texted?---And I'd like to note that 12 October is the same day that I sent the other message. I believe I sent it very, very quickly afterwards. I do not have my phone with the date, with the timestamp, but I sent the message and then I did not send – not receive. It was not a case where I sent and then did not receive a reply and then like sent her another one to try and follow up, like a day later or two days later. I sent it immediately saying, 'I know that you are likely not interested. This is just information for you to have'. I think that it is fair for her to have received the information.

PN622

Thank you, and you didn't receive a response to that text, did you, the second text?---No.

PN623

And despite that you sent a third text on 18 October, saying, 'I'm just wondering if you're coming', amongst other words, didn't you?---Yes, 'If you're coming or any of your casuals'.

PN624

Thank you, yes, thank you. So I put it to you that in circumstances where it was already clear to you that Ms Maybury was not interested in receiving RAFFWU information, becoming a RAFFWU member, or speaking to you about claims, that she may feel that she's being pressured by you with these three text messages?---I would disagree.

PN625

Okay, thank you. At that stage, I put it to you it's very, very clear to you that Ms Maybury was not interested in RAFFWU's campaign, wasn't it?---Yes.

*** NATALIE RENEE BUTLER

XXN MS MOLONEY

PN626

Thank you?---Though she had expressed that she was at some level in support and that she cared for her workers and wanted them to be protected.

PN627

I put it to you that by 4 October you knew she was not interested in signing a petition and yet you persisted with these text messages, didn't you?---Yes, it's almost like the text messages didn't ask her to sign the petition.

PN628

No, I understand the difference, thank you. Now, Ms Maybury will give evidence that she's not a confrontational person. So what exactly did she do to have to stop you raising these issues and sending text messages?---I stopped of my own accord, she didn't reply. We have not had a text exchange since that exchange. We have not spoken since that exchange.

PN629

And is this the way you've interacted with other people where you've been seeking to get them to sign the petition?---No.

PN630

And how many of the 14 signatures did you have to ask twice, three or four times before they gave up and signed the petition?---None – every single person I asked who signed the petition signed – signed upon first ask.

PN631

Okay, so they signed with you in their presence shortly after you'd asked them?---Yes, after they asked follow up questions and many read the claims.

PN632

And these people – at least some of these people – are your colleagues, aren't they?---Yes.

PN633

And do you concede that it might be difficult for people - and there will be evidence in this proceeding that the vast majority of Factory X employees are under 25 – do you concede that it might be difficult for those people to push back, given you have a collegiate relationship with those people?

PN634

MR CULLINAN: Deputy President, we object. This line of questioning is asking for speculative opinion. There's no evidence in - - -

PN635

THE DEPUTY PRESIDENT: I agree.

PN636

MS MOLONEY: I withdraw that?---Also I'm 23, so same.

PN637

So you then told Mx Mulveney that you'd spoken to Ms Maybury and she'd said multiple times that she wasn't interested, didn't you?---Interested in?

*** NATALIE RENEE BUTLER

XXN MS MOLONEY

PN638

Interested in becoming a RAFFWU member or receiving information about RAFFWU or signing a list of claims or petition?---Yes.

PN639

And did you tell Mx Mulveney that you'd messaged Ms Maybury multiple times with no response?---I don't remember.

PN640

Thank you. You're aware that Factory X has three store brands?---As in brands for which they have physical stores, not brands which they sell, correct?

PN641

Yes?---Yes.

PN642

And those brands are Dangerfield, Gorman and Princess Highway. That's right, isn't it?---Yes.

PN643

And each is a separate brand of Factory X, isn't it?---I don't know how to put it in business terms but, I mean, Princess Highway is sold in Dangerfield so they have a very close relationship but they are different stores with different names.

PN644

Yes. I put it to you there are three brands: Dangerfield, Gorman and Princess Highway?---Yes.

PN645

And they are separate brands?---I would suppose separate entities though again, Princess Highway is sold in Dangerfield stores. Like, Princess Highway and Dangerfield, you can do exchanges for Princess Highway at Dangerfield and vice versa.

PN646

THE DEPUTY PRESIDENT: Hang on, hang on: can you just – just confine yourself to the question. There'll be an opportunity, if Mr – if your representative wants to ask follow up questions, thank you.

PN647

MS MOLONEY: Thank you. And do you have any knowledge about which entity employs people at Factory X?---Factory X, yes?

PN648

Yes, and so do you accept that employees for each of the three brands are employed by the same Factory X entity?---Yes.

*** NATALIE RENEE BUTLER

XXN MS MOLONEY

PN649

You'd accept, based on your knowledge, that store employees in each brand are arranged in the same way, with a store manager, second in charge, occasionally a

third in charge and sales assistants, wouldn't you?---I wouldn't know for Gorman so I can't answer that correctly or honestly.

PN650

Thank you. Evidence will be put by Ms Chapman that that is the case for Gorman as well as for Dangerfield and Princess Highway. You can't dispute that, can you?---No.

PN651

Evidence will also be put that the three brands use the same training, the same assessments and mystery shoppers and have the same operational systems. You can't dispute that, can you?---No, I can't.

PN652

Evidence will also be put that employees in each store are required to follow the same code of conduct. Again, you can't dispute that, can you?---Can't dispute.

PN653

Evidence will also be put that a store manager in a Gorman-branded store has the same position description as a store manager as a store manager in a Princess Highway-branded store or a Dangerfield-branded store. You can't dispute that, can you?---Can't dispute.

PN654

If I can direct you to EC5, which is on page – just lost my index for a minute. What page? Sorry, 369, so just a few pages forward from where we were. What you should see before you is a position description?---Yes.

PN655

Ms Chapman will give evidence that that position description is the same position description used for Dangerfield, Gorman and Princess Highway. You can't dispute that, can you?---I can't dispute that.

PN656

Thank you. And it wouldn't surprise you to learn, would you, that applicants who apply for through the Dangerfield website may be appointed to a role in a Gorman store or vice versa, would it?---That would surprise me.

PN657

That would surprise you. Well, you couldn't dispute that if I told you that would be Ms Chapman's evidence, could you?---I couldn't dispute that but I would be sceptical of it.

PN658

All right, thank you. And would it surprise you to learn that in December there are approximately 1,000 employees across Factory X, Gorman, Dangerfield and Princess Highway stores?---Yes, I have on concept of the numbers, so yes.

*** NATALIE RENEE BUTLER

XXN MS MOLONEY

PN659

So you couldn't say how many of those people who have worked in both Gorman and Dangerfield or both Gorman and Princess Highway, can you?---I couldn't.

PN660

Thank you. Your evidence is that you've not been in a Gorman store so you don't know how similar they are, do you?---No.

PN661

And you're not familiar with Gorman products so you don't know how similar or different they are to Dangerfield or Princess Highway?---No, my level of familiarity, yes, is essentially walking past the store window and seeing bright colour. That is it.

PN662

Thank you. That might be an opportune time for the witness to be shown R2 and R3.

PN663

THE DEPUTY PRESIDENT: Yes, I think that – yes.

PN664

MS MOLONEY: Thank you. You should have before you two photos, one of a Dangerfield store and one of a Gorman and Princess Highway store or stores. So, Ms Butler, you say in your statement that you collected a signature at Dangerfield Fitzroy. That's correct, isn't it?---Yes.

PN665

And if I told you that Dangerfield Fitzroy is at 202 to 204 Brunswick Street, you wouldn't dispute that, would you?---No.

PN666

And on that same petition you collected two signatures at Princess Highway Fitzroy, didn't you?---Yes.

PN667

And if I told you that the address of Princess Highway Fitzroy is 188 Brunswick Street, you wouldn't dispute that, would you?---No.

PN668

And if I told you that the address of Gorman Fitzroy is also 188 Brunswick Street Fitzroy, you wouldn't dispute that, would you?---No.

PN669

So in fact as you're collecting signatures for Dangerfield and Princess Highway, you're literally walking past a Gorman store, aren't you?---Yes.

PN670

And the Princess Highway shopfront, if you look at R3, is actually part of a whole building that appears split into Gorman and Princess Highway?---Mm-hm.

*** NATALIE RENEE BUTLER

XXN MS MOLONEY

PN671

That's correct, isn't it?---Yes.

PN672

And if I could ask you to look at the left-hand side, that first window in Gorman: I put it to you that those clothing's on the models are clothing that we would describe as feminine clothing?---Yes, look like it.

PN673

Thank you. I put it to you based on your knowledge of Princess Highway that it's primarily if not only women's wear. That's correct, isn't it?---Yes.

PN674

I have no further questions, thank you very much.

PN675

THE DEPUTY PRESIDENT: Yes, Mr Cullinan.

RE-EXAMINATION BY MR CULLINAN

[12.47 PM]

PN676

MR CULLINAN: Thank you, Deputy President. I'll just be a moment. Ms Butler, could you take up the court book at page 344?---Mm-hm.

PN677

So Ms Maybury's evidence is that you first worked with her in August of 2023 and had some conversations?---Mm-hm.

PN678

And then some time later covered another shift and had further conversations and it was put to you that Ms Maybury had made it clear to you that they were not interested?---Mm-hm.

PN679

At paragraph 23 Ms Maybury says she then attended the store in October to talk about the petition and I think your evidence was that – or you were asked whether they were interested in RAFFWU or the claims. At paragraph 24, did Ms Maybury ask if they could sign for some of the things?---Yes.

PN680

But not others? What were they referring to there in terms of some of the things?

PN681

MS MOLONEY: I object on the basis that this should properly have been put in reply material.

*** NATALIE RENEE BUTLER

RXN MR CULLINAN

PN682

MR CULLINAN: My learned friend has put a great deal of emphasis on having the witness explain that Ms Maybury was not interested when it came to signing

the petition but Ms Maybury's evidence is that they were interested in something and we'll ask Ms Maybury about that but - - -

PN683

THE DEPUTY PRESIDENT: The applicant's had an opportunity – sorry, the witness has had an opportunity to file material in reply on that very point, hasn't she? But even so, I mean, my understanding of the evidence is that the witness believed that Ms Maybury was sympathetic to some of the claims.

PN684

MR CULLINAN: Yes.

PN685

THE DEPUTY PRESIDENT: Right – but did not want to get involved in the campaign, either by way of signature – so I understand that there might have been sympathy there. But ultimately she declined to participate in the campaign, which, I mean, even if she said, 'Well, I like that claim but I don't like that claim but I don't want to be involved', I'm not sure that assists me.

PN686

MR CULLINAN: I understand. I think there's a point to be made about why a union would seek to ask again.

PN687

THE DEPUTY PRESIDENT: In my experience, so far, from what I've heard, the pressure – if it can be described as that – is far less than I observed from my early years in industrial relations but I know things have moved on since the 80s. Thankfully.

PN688

MR CULLINAN: We don't have any further questions.

PN689

THE DEPUTY PRESIDENT: Thank you. All right, you are released from giving evidence, you're free to go. You can remain in the court and observe the rest of the proceedings if you are interested. Otherwise you can go, thank you once again?---(Indistinct) thank you very much.

<THE WITNESS WITHDREW

[12.52 PM]

PN690

Now might be a good point to break. Just before we go – you can sit down, Mr Cullinan – we've got as I see at least three more witnesses for the applicant: Ms Wickham, Mr Howard and Ms Thiery, is that how I pronounce it? Thiery, yes. How long do you think you might be with your cross-examination of those witnesses?

PN691

MS MOLONEY: I believe I – if you don't hold me to this – I'd be finished all within the hour.

*** NATALIE RENEE BUTLER

RXN MR CULLINAN

PN692

THE DEPUTY PRESIDENT: Okay.

PN693

MS MOLONEY: They'll certainly be shorter than what has occurred to date.

PN694

THE DEPUTY PRESIDENT: Yes, so there's certainly some prospect that all of the witnesses who at this stage appear will be examined will be completed within an hour, maybe an hour and a half.

PN695

MR CULLINAN: For the applicant.

PN696

THE DEPUTY PRESIDENT: Yes, yes. And so have you arranged for either of the two witnesses for the respondent to be available for today or not?

PN697

MS MOLONEY: We were very optimistic, Deputy President. We arranged for both of them.

PN698

THE DEPUTY PRESIDENT: Okay.

PN699

MR CULLINAN: I can confirm that the medical report is very unlikely.

PN700

THE DEPUTY PRESIDENT: Okay, all right. Just again for my sort of planning, have you got a sense of how long you might require for Ms Maybury and Ms Chapman?

PN701

MR CULLINAN: I think it is less than an hour.

PN702

THE DEPUTY PRESIDENT: For each or both?

PN703

MR CULLINAN: All together.

PN704

THE DEPUTY PRESIDENT: Okay, all right. Final question: we've allocated two days for this proceeding. Now, I hadn't indicated to the parties prior to today's proceeding whether closing submissions would be orally or in writing. I'm relaxed about the way that it's done. If the parties are comfortable to proceed with oral closing submissions we could do that subject to finishing witnesses today. We could certainly do that tomorrow. But if the parties have a view about – my preference is always to deal with it by way of closing orals in most matters before me only because it doesn't result in additional delay by the time transcript is provided to the parties, there's an exchange of material, replies, et cetera.

PN705

But I'm happy to hear from the parties at this stage for the purpose of planning the rest of the proceeding whether they have a preference. Mr Cullinan.

PN706

MR CULLINAN: I have always had a preference for written closing. I think on this occasion, considering the timeline and the – after everything washes away, the narrowness of the issues, I think we would be happy with closing submissions tomorrow morning.

PN707

THE DEPUTY PRESIDENT: Thank you. Ms Moloney.

PN708

MS MOLONEY: There does seem a little bit of appeal in written submissions given we might finish all the evidence today but I'm in your hands.

PN709

THE DEPUTY PRESIDENT: All right, well, I'll reserve my views on that. We'll see where we get to with the witness evidence today. I mean, sometimes when there's a fair bit of time left over, I don't have to start at 10 o'clock tomorrow morning, for example. The parties could seek some additional time to prepare their oral closing. So that's an option as well. But once the witnesses are finished – and hopefully that will be this afternoon – we'll just talk about programming for tomorrow, all right? We'll return at 1.45.

LUNCHEON ADJOURNMENT [12.55 PM]

RESUMED [1.47 PM]

PN710

THE DEPUTY PRESIDENT: Ready to call your next witness, Mr Cullinan?

PN711

MR CULLINAN: Yes, we recall Renee Thiery, or Ms Renee Thiery.

PN712

THE ASSOCIATE: Ms Thiery, can you say your full name and address?

PN713

MS R THIERY: Renee Thiery, (address supplied).

<RENEE THIERY, AFFIRMED [1.48 PM]

EXAMINATION-IN-CHIEF BY MR CULLINAN [1.48 PM]

*** RENEE THIERY

XN MR CULLINAN

PN714

MR CULLINAN: Thank you, Ms Thiery. I'm going to ask a couple of questions about your two statements. In front of you you've got a folder. Could you open

that up to page 53? So this document here, is that the first statement you made in this proceeding?---Yes, it is.

PN715

Is that statement dated 2 December, 2023?---Yes, it is.

PN716

And is it seven paragraphs long?---Yes.

PN717

Is that statement true and accurate in every regard?---Yes.

PN718

Thank you. We tender that statement, Deputy President.

PN719

THE DEPUTY PRESIDENT: I'll mark Ms Thiery's first statement A17.

**EXHIBIT #A17 WITNESS STATEMENT OF RENEE THIERY
DATED 02/12/2023**

PN720

MR CULLINAN: Then if I have you turn over to page 303, and if you look at 303 and 304, is that the second statement you made in this proceeding?---Yes.

PN721

Is that dated 12 January 2024?---Yes.

PN722

Is it nine paragraphs long?---Yes.

PN723

Is that statement true and accurate in every regard?---Yes.

PN724

Thank you. I tender that statement.

PN725

THE DEPUTY PRESIDENT: I'll mark that second statement of Ms Thiery A18.

**EXHIBIT #A18 SECOND WITNESS STATEMENT OF RENEE
THIERY DATED 12/01/2024**

PN726

MR CULLINAN: Thank you, Deputy President.

PN727

THE DEPUTY PRESIDENT: Thank you.

CROSS-EXAMINATION BY MS MOLONEY

[1.50 PM]

*** RENEE THIERY

XXN MS MOLONEY

PN728

MS MOLONEY: Thank you, Deputy President. Good afternoon, Ms Thiery. I'd just like to ask you a few questions regarding your two statements. Ms Thiery, obviously you're aware of a petition that's been organised by RAFFWU in this matter, aren't you?---Yes.

PN729

And you were asked to sign that petition, I believe, you said by Natalie Pillar, is that correct?---Yes.

PN730

And that was around early October, is that right?---Yes – I'm not sure. Around that time. Yes, around that period.

PN731

Thank you?---I don't think there was a date.

PN732

And you've set out in your second statement, which begins at page 303, you've set out at paragraph 4 of that statement your memory of what Ms Pillar told you, haven't you?---Yes.

PN733

Now, I put it to you that that second statement, which was provided on 12 January 2024 was several months after that so you don't recall the exact details of the conversation now, do you?---I think I have a pretty good idea about what happened. I remembered that quite well.

PN734

Okay, but you don't recall the exact details months later, do you?---I remember quite a bit of the conversation I had.

PN735

I put it to you that Ms Pillar didn't tell you that you didn't have to sign the petition, did she?---She did tell me that.

PN736

I put it to you that you weren't told by signing the petition you wanted to bargain for an agreement, were you?---I was told that I did by signing.

PN737

Ms Thiery, I believe your evidence is you were involved in collecting signatures on a blank petition. That's correct, isn't it?---Yes.

PN738

And you collected five signatures on that petition, is that correct?---Yes.

PN739

You're currently a RAFFWU delegate, aren't you?---Yes, but I wasn't at the time of signing or collecting.

*** RENEE THIERY

XXN MS MOLONEY

PN740

Thank you. So at that time had you had any experience conducting a petition of this nature?---No, I had not.

PN741

So I believe it's your evidence that you followed the example of Ms Pillar. Is that correct?---Yes.

PN742

She wasn't herself a delegate, was she?---I don't believe so, no.

PN743

Is it true to say that in collecting those signatures, they were from people that you know, that you've worked with, that you have a collegiate relationship with?---Yes.

PN744

Thank you. I put it to you that you didn't tell every person that you spoke to that they didn't have to sign the petition, did you?---No, I didn't tell everybody they had to sign.

PN745

You didn't tell them that it was in support of bargaining, did you?---I did tell them it was in support of bargaining.

PN746

And you didn't tell them they had to read the petition, did you?---I told everybody they had to read the petition.

PN747

Okay, thank you. Now, I just want to go and clarify some things. In your first statement you don't include information of what Ms Pillar told you you had to do in terms of collecting signatures, do you?---No, I don't believe so. I think that was in the second statement.

PN748

And you didn't say what you told others in your first statement, did you?---Can I refer to my statement?

PN749

Of course, of course – page 53?---No, I didn't detail that in the first statement and then the second.

PN750

Yes, so it's only in the second statement that you explain the content of the discussions, isn't it?---Yes.

*** RENEE THIERY

XXN MS MOLONEY

PN751

By that time you've learned exactly what should have been said in those discussions, haven't you?---I already knew what should have been said in those discussions.

PN752

And isn't it possible several months later that you've remembered not what was actually said but what should have been said?---I believe I remembered the exchanges quite clearly.

PN753

But you chose not to put those exchanges in your first statement?---I did decide to do a following statement, yes.

PN754

You're aware that Factory X has three store brands, is that correct?---Yes.

PN755

And they are Dangerfield, Gorman and Princess Highway. That's correct, isn't it?---Yes.

PN756

Each is a separate brand of Factory X, isn't it?---Yes.

PN757

So in the same way that Gorman is a separate brand from Princess Highway, Dangerfield is also a separate brand from Princess Highway?---Yes, as well there's other brands owned by Factory X.

PN758

Yes, thank you. And you accept that each of Gorman, Princess Highway and Dangerfield have retail stores, don't you?---Yes.

PN759

And you accept that employees in each brand are employed by the same entity, being Factory X?---Yes.

PN760

Now, evidence will be put by Emma Chapman in this matter that the stores are in – the three brands of stores are arranged in exactly the same way with a store manager, second in charge, occasionally a third in charge and sales assistants. You wouldn't dispute that, would you?---No, however, I've only ever worked in Dangerfield so I can't say anything about other store structures.

PN761

Yes, thank you. Evidence will also be put that employees have the same or substantially similar training in respect of all three – so employees of each of the three different branded stores have similar training. You couldn't dispute that, could you?---No, because I've only ever worked in Dangerfield so I can't compare.

*** RENEE THIERY

XXN MS MOLONEY

PN762

Yes, and similarly, evidence will be put that there's similar sales training, mystery shopping, operational systems applying throughout all of the three branded stores. So you couldn't dispute that either, could you?---No, because I can't compare.

PN763

Yes, thank you. If I told you that employees in each store are required to follow the same code of conduct, that wouldn't surprise you, would it?---As I've only worked in Dangerfield, I can't comment.

PN764

Yes. If I told you there will be evidence that a store manager in a Gorman store has the same position description as a store manager in a Dangerfield store, you couldn't dispute that, could you?---No. As well as a casual, I've never seen a contract of a store manager.

PN765

Thank you. It wouldn't surprise you to learn that if you apply for a job through a Dangerfield website you may be appointed to a role in a Dangerfield or a Gorman store or vice versa?---I can't comment as that wasn't my experience.

PN766

Yes, thank you. You'd accept, wouldn't you, that an employee who works in a Gorman store might transfer to a Princess Highway store or a Dangerfield store or vice versa?---I don't believe I've ever seen it happen but I don't dispute it.

PN767

Well, there's evidence that will be led that Factory X employs over 1,000 retail staff. Does that – you can't dispute that, can you?---No, I'm not sure about the numbers.

PN768

Yes, so given the significance of those numbers, you can't say for certain that those transfers between stores don't happen, can you?---No, because I haven't encountered it.

PN769

Thank you. Nothing further, thank you, Deputy President.

PN770

THE DEPUTY PRESIDENT: Thank you. Mr Cullinan.

PN771

MR CULLINAN: No re-examination, Deputy President.

PN772

THE DEPUTY PRESIDENT: Well, Ms Thiery, thank you for attending today. You're free to stay or you may leave the court, thank you.

<THE WITNESS WITHDREW

[1.59 PM]

*** RENEE THIERY

XXN MS MOLONEY

PN773

Next witness.

PN774

MR CULLINAN: Yes, we call Ms Stephanie Wickham. Deputy President, am I supposed to stand when the witness is giving affirmation or do I sit for that?

PN775

THE DEPUTY PRESIDENT: Sorry?

PN776

MR CULLINAN: Do I stand during the affirmation or do I sit?

PN777

THE DEPUTY PRESIDENT: You may sit.

PN778

THE ASSOCIATE: Ms Wickham, please state your full name and address.

PN779

MS S WICKHAM: Stephanie Margaret Wickham of (address supplied).

<STEPHANIE MARGARET WICKHAM, AFFIRMED [1.59 PM]

EXAMINATION-IN-CHIEF BY MR CULLINAN [1.59 PM]

PN780

MR CULLINAN: Thank you, Ms Wickham. You've got in front of you there a folder which is what's called the court book and that has all the statements in it, including yours, so I'm just going to take you to your two?---Yes.

PN781

The first statement is at page 55? You're already there, fantastic. So is this your first statement in the proceeding?---Pardon?

PN782

Is this your first statement in the proceeding?---This is my second statement.

PN783

This particular document?---This particular one, yes, sorry.

PN784

That's all right. And is that dated 5 December?---Yes, it is, yes.

PN785

Great and is that seven paragraphs long?---Yes, with the first page.

PN786

Is that statement true and accurate in every regard?---Yes.

*** STEPHANIE MARGARET WICKHAM

XN MR CULLINAN

PN787

Thank you. We seek to tender that, Deputy President.

PN788

THE DEPUTY PRESIDENT: I'll mark that witness statement A19.

EXHIBIT #A19 WITNESS STATEMENT OF STEPHANIE WICKHAM DATED 05/12/2023

PN789

MR CULLINAN: And then if I get you to turn over to page 308?---Yes.

PN790

So here we're looking at pages 308, through to page 311?---Yes.

PN791

Is this your second statement - - -?---This is my second statement, yes.

PN792

And is that statement dated 12 January 2024?---Yes, that's correct.

PN793

Is it 37 paragraphs long?---Yes, it is.

PN794

Is that statement true and accurate in every regard?---Yes.

PN795

Thank you. We seek to tender that statement.

PN796

THE DEPUTY PRESIDENT: I'll mark the second statement of Ms Wickham A20.

EXHIBIT #A20 SECOND STATEMENT OF STEPHANIE WICKHAM DATED 12/01/2024

PN797

MR CULLINAN: Thank you, they're our questions.

PN798

THE DEPUTY PRESIDENT: Ms Moloney.

CROSS-EXAMINATION BY MS MOLONEY

[2.02 PM]

PN799

MS MOLONEY: Thank you. Good afternoon, Ms Wickham. I'm just going to ask you a few questions about your statement?---Yes.

*** STEPHANIE MARGARET WICKHAM

XXN MS MOLONEY

PN800

You're obviously aware of the petition that was organised by RAFFWU in this matter, aren't you?---Yes, I am.

PN801

And you were involved in collecting two signatures on that petition in addition to your own, weren't you?---Yes.

PN802

And you're a RAFFWU delegate, aren't you?---Yes, I am.

PN803

And you're also a store manager, is that correct?---Yes, that's correct.

PN804

And that position has some authority within the store, doesn't it?---Within my store, yes.

PN805

And employees would you say typically follow your requests?---Yes.

PN806

And what would you say if I said that employees had reported hearing RAFFWU delegates say that store managers needed to sign the petition?---I was never demanded or like told that I have to sign the petition.

PN807

But you accept, don't you, that if store managers have signed the petition that might make it easier to convince other staff within the store to sign the petition?---I mean, I wouldn't be too sure.

PN808

Can I ask the two signatures that you collected, were they people within your store?---In the one that I had given to Leo on 30 September – is that the one that you're referring to?

PN809

Yes?---No, they weren't a part of my store.

PN810

Were they people that you knew?---I'm not too sure. I don't recall at the time.

PN811

Okay, thank you. But you witness those people sign the petition?---Hang on, may I just refer to – sorry, I'm - - -

PN812

No, take your time?---I remember one (indistinct). Sorry, I got a little bit confused – no, I did witness those two signatures.

PN813

But they were not employees from your store?---I'm sorry, they were employees at my store. I got that (indistinct).

*** STEPHANIE MARGARET WICKHAM

XXN MS MOLONEY

PN814

So they were employees that report to you?---Yes.

PN815

Thank you. In your second statement you've also given some evidence regarding the history of Princess Highway management, haven't you?---Yes.

PN816

And you're aware, weren't you, that prior to the COVID pandemic Factory X operated a greater of number of Princess Highway stores - - -?---Yes.

PN817

- - - including in New South Wales, Queensland and Western Australia?---I wasn't aware of the interstate ones but I was knowledgeable about the Victorian ones.

PN818

And some of those stores have closed, haven't they?---Yes.

PN819

And are you aware that since then Factory X is seeking to rebuild the Princess Highway brand?---I am aware, yes.

PN820

Yes, thank you. And you'd agree that there have been various different arrangements for the current Princess Highway stores, wouldn't you?---Could you elaborate? Arrangements?

PN821

Perhaps if I take you to your statement, and this is your second statement at – commencing at page 308?---Yes.

PN822

From paragraph 5 you talk about the arrangements – management arrangements – of the Princess Highway store?---Yes.

PN823

That's correct, isn't it?---Yes.

PN824

And you'd agree there have been various different arrangements for the current Princess Highway stores, wouldn't you?---Yes.

PN825

And there's been a succession of two cluster managers, haven't there?---Yes.

PN826

And then the stores were temporarily assigned to Lily Monks, who was state Dangerfield manager?---Yes.

*** STEPHANIE MARGARET WICKHAM

XXN MS MOLONEY

PN827

That's correct? And that was a temporary arrangement, wasn't it?---Yes, it was.

PN828

And then the store was assigned to Taylor Pederson, who is a Gorman state manager. Is that correct?---That is correct.

PN829

And that arrangement has been made permanent now, hasn't it?---I don't – I'm not too sure (indistinct).

PN830

That's fine. Ms Wickham, we will hear evidence today from Ms Chapman that that arrangement is now permanent and you couldn't dispute that, could you?---I wouldn't be too sure because there was a cluster role advertised online for Princess Highway.

PN831

Yes, thank you. And Ms Chapman will give evidence that this – that since Ms Pederson has been in the role Princess Highway stores have performed better. That's correct, isn't it?---Yes - - -

PN832

MR CULLINAN: Deputy President, that's just not the evidence. There is no evidence of this.

PN833

THE DEPUTY PRESIDENT: (Indistinct) call that evidence.

PN834

MS MOLONEY: No, well, this is matters arising out of this – these reply statements that will be put to her.

PN835

THE DEPUTY PRESIDENT: All right, put the question.

PN836

MS MOLONEY: Thank you. Ms Chapman will give evidence that since the Princess Highway stores have been under a Gorman state manager that they're performing better?---So - - -

PN837

You can't dispute that, could you?---No.

PN838

No. In terms of the budgets, you're a store manager so you're aware of your store's budget, aren't you?---Yes.

*** STEPHANIE MARGARET WICKHAM

XXN MS MOLONEY

PN839

And has that budget recently increased?---I can't say for sure because of our short opening. We haven't been open for very long so we can't have any figures comparative to last year, for example.

PN840

Certainly. Well, Ms Chapman will give evidence that the Gorman state manager has been able to significantly lift Princess Highway budgets and you can't dispute that, can you?---(Indistinct reply)

PN841

You've said in your statement that the aesthetic of Gorman garments is very different from Princess Highway or Dangerfield, haven't you?---Yes.

PN842

I put it to you that Princess Highway garments are aesthetically different from Dangerfield garments?---Yes.

PN843

But I put it to you that there are a number of aesthetic similarities between Princess Highway and Gorman, aren't there?---I wouldn't say so.

PN844

I put it to you that Princess Highway stocks predominantly women's wear?---Yes.

PN845

And I put it to you that Gorman is in the same situation, where they stock predominantly women's wear?---Yes.

PN846

If I could take you to attachment MM3, at page 90. Sorry, if I could take you to page 222. Have you managed to find that?---Yes.

PN847

That's an advertisement for an assistant store manager, isn't it?---Yes.

PN848

If I take you a few pages further forward to page 226, you'll see a list of current positions for Gorman; that's correct, isn't it?---Yes.

PN849

I put it to you if you look at the top of those two advertisements, both Princess Highway and Gorman, that the layout of the website is very similar, isn't it?---Yes.

PN850

You accept, don't you, that employees, whether they work at Gorman, Dangerfield or Princess Highway, are employed by the same Factory X entity, don't you?---Yes.

*** STEPHANIE MARGARET WICKHAM

XXN MS MOLONEY

PN851

Do you accept that store employees within each of these three branded stores are arranged in the same way, that is, with a store manager, a second in charge, occasionally a third in charge, and sale assistants?---Yes.

PN852

If I said to you that Emma Chapman was giving evidence that the stores for each brand have similar training, similar assessments, mystery shoppers and use the same or similar operational systems, you couldn't deny that, could you?---No.

PN853

If I told you that employees in each store are required to follow the same code of conduct, that wouldn't surprise you, would it?---No, it wouldn't.

PN854

Similarly, if I told you that stores in each brand have the same position description, that again wouldn't surprise you, would it?---No.

PN855

What that means is a store manager in a Gorman branded store has the same position description as a manager in a Princess Highway branded store, doesn't it?---Sorry, could you repeat that.

PN856

That a store manager in a Gorman branded store would have the same position description as a store manager in a Princess Highway branded store?---So it wouldn't surprise me, no.

PN857

It wouldn't surprise you to learn that an applicant might apply for a job through the Dangerfield website but then be appointed to a role in a Gorman store or vice versa?---No.

PN858

It wouldn't surprise you that, regardless of which store an employee works in, they receive the same contract of employment?---No.

PN859

There will be evidence in this proceeding that currently Factory X employs approximately 1000 employees across their Gorman, Dangerfield and Princess Highway stores. You couldn't dispute that, could you?---No.

PN860

You couldn't say how many of those people have worked in both Gorman and Dangerfield or Gorman and Princess Highway?---No.

PN861

I have no further questions.

PN862

THE DEPUTY PRESIDENT: Thank you. Mr Cullinan.

*** STEPHANIE MARGARET WICKHAM

XXN MS MOLONEY

PN863

MR CULLINAN: Yes, thank you.

RE-EXAMINATION BY MR CULLINAN

[2.14 PM]

PN864

You were just asked a question, Ms Wickham, about not being surprised that workers that applied through a Dangerfield website might be appointed to a Gorman role. Are you aware of anyone having applied through the Dangerfield website being appointed to a Gorman role?---I had a friend of mine that had applied to the Dangerfield website that got given a trial shift at Gorman but wasn't received employment.

PN865

Is that the only person you know of?---That's the only person that I know of.

PN866

You are a store manager at - sorry?---Princess Highway.

PN867

Your evidence is that you're a store manager at Princess Highway and you've worked in Dangerfield stores?---Yes.

PN868

Are you aware of anyone else that you've worked with that applied through the Gorman website having a role - - -?---No, not at all.

PN869

Thank you, we don't have anything further.

PN870

THE DEPUTY PRESIDENT: Thank you.

PN871

Ms Wickham, you are free to go, or you can leave the Commission. Thank you.

<THE WITNESS WITHDREW

[2.15 PM]

PN872

MR CULLINAN: We call Ms Rhiannon Howard.

PN873

THE ASSOCIATE: Ms Howard, please state your full name and address?

PN874

MS HOWARD: Rhiannon Leigh Howard, (address supplied).

*** STEPHANIE MARGARET WICKHAM

RXN MR CULLINAN

*** RHIANNON LEIGH HOWARD

XN MR CULLINAN

<RHIANNON LEIGH HOWARD, AFFIRMED

[2.16 PM]

PN875

Thank you, Ms Howard. The folder you have got in front of you, which you are already opening up to, is a court book, and that just means it's got all the documents for the case, including your statements. Your first statement is at page 54. Can I get you to turn to that?---Yes.

PN876

Is this your first statement in this proceeding?---Yes.

PN877

Is it dated 2 December 2023?---Yes.

PN878

Is it eight paragraphs long?---Yes.

PN879

Is this statement true and accurate in every regard?---Yes.

PN880

Thank you. We tender that statement, Deputy President.

PN881

THE DEPUTY PRESIDENT: I will mark the first witness statement of Ms Howard A21.

**EXHIBIT #A21 WITNESS STATEMENT OF RHIANNON HOWARD
DATED 02/12/2023**

PN882

MR CULLINAN: Thank you.

PN883

Can I get you to turn to page 305, pages 305 to 307. Is this document your second statement in the proceeding?---Yes.

PN884

Is that statement dated 12 January 2024?---Yes.

PN885

Is it 15 paragraphs long?---Correct.

PN886

Is that statement true and accurate in every regard?---Yes.

PN887

We tender that statement, Deputy President.

*** RHIANNON LEIGH HOWARD

XN MR CULLINAN

PN888

THE DEPUTY PRESIDENT: I will mark that statement A22.

**EXHIBIT #A22 WITNESS STATEMENT OF RHIANNON HOWARD
DATED 12/01/2024**

PN889

MR CULLINAN: Thank you, Deputy President.

PN890

THE DEPUTY PRESIDENT: Thank you, Ms Moloney.

PN891

MS MOLONEY: Thank you very much.

CROSS-EXAMINATION BY MS MOLONEY

[2.18 PM]

PN892

Good afternoon, Ms Howard?---Good afternoon.

PN893

I am just going to ask you a few questions about your two statements?---Mm-hm.

PN894

You are aware, obviously, of a petition organised by RAFFWU in this matter, aren't you?---Yes.

PN895

You were involved in collecting signatures for that petition, weren't you?---Yes, that is correct.

PN896

You collected, I believe, seven signatures on the petition you held, and obviously your own signature; is that correct?---Correct.

PN897

You are a RAFFWU delegate, aren't you?---That is correct.

PN898

When did you become a RAFFWU delegate?---Probably late 2021, I believe. I can't recall the exact time.

PN899

At the time you were collecting these signatures, had you had any experience conducting a petition like this?---Some experience, but only within one store.

PN900

You say you followed the advice and examples of Mr Johnstone, don't you?---That is correct.

*** RHIANNON LEIGH HOWARD

XXN MS MOLONEY

PN901

At paragraph 2 of your second statement on page 305 - - -?---Yes.

PN902

Have you got that in front of you? You have been very specific about the matters that Mr Johnstone raised with you when he gave you the petition, haven't you?---Yes.

PN903

And you've said you did all of these things, haven't you?---Yes, that is correct.

PN904

I put it to you that you didn't take these steps with every single one of the seven workers where you witnessed this petition, did you?---Sorry, could you repeat the question?

PN905

Certainly. Sorry, there was a brushing of paper at the same time as I was speaking. I put it to you that you didn't take these steps with every single person where you witnessed them signing the petition?---To the best of my knowledge, I believe I did.

PN906

These seven people that signed the petition, are they people that you work with?---Yes.

PN907

So they are people within the same store as you?---I cannot recall exactly who the seven people were that signed, but I have worked with each of them probably on a regular basis.

PN908

But is it likely that at least some of these people were your colleagues?---Yes.

PN909

Did you ask every worker to read the petition before they signed it?---I asked and encouraged them to read it.

PN910

If a worker wasn't comfortable signing the petition, you didn't tell them they didn't have to, did you?---Sorry?

PN911

If a worker was not comfortable signing the petition, you didn't tell them they didn't have to sign the petition, did you?---I said if they were not comfortable, they didn't have to sign the petition.

PN912

In your first statement, you didn't set out what Mr Johnstone told you, did you?---Let me just flick back.

*** RHIANNON LEIGH HOWARD

XXN MS MOLONEY

PN913

Certainly. That's page 54?---I did not set out what Mr Johnstone told me, no.

PN914

That has only appeared in your second statement; that's correct, isn't it?---Correct.

PN915

I put it to you that, since then, you have understood what should have been said in those discussions, haven't you?---When collecting signatures?

PN916

Between your first statement and your second statement, you have learned what should have been said in those discussions you had with employees?---Yes, I learnt what - how to go about it when collecting the petition from Mr Johnstone.

PN917

Is it possible, given - I believe your evidence is - - -

PN918

THE DEPUTY PRESIDENT: Just before we move on, I'm not sure the question may have been understood - or misinterpreted.

PN919

MS MOLONEY: I will repeat it.

PN920

THE DEPUTY PRESIDENT: Yes.

PN921

MR CULLINAN: Thank you.

PN922

THE DEPUTY PRESIDENT: I just want to be clear because I think the suggestion you are trying to make may not have been understood.

PN923

MS MOLONEY: Yes, certainly.

PN924

The question I am putting to you is that - perhaps I will put it again. Your first statement does not deal with what Mr Johnstone told you, nor does it deal with what you told employees when they were signing the petition; that's correct, isn't it?---That's correct.

PN925

Your second statement does deal with both of those things?---Yes.

*** RHIANNON LEIGH HOWARD

XXN MS MOLONEY

PN926

What I put to you is you've remembered not what you actually said but what you've now realised you should have said at the time?---I'm not following. Do you mean that - - -

PN927

I am putting it to you that you didn't say all those things to every person?---To the best of my knowledge, I followed what I said in my second statement.

PN928

But you didn't feel it was necessary to put that in your first statement; is that correct?---No, because this, I felt, was the statement on collecting signatures. I was the person who collected the signatures.

PN929

I would just like to ask you a few questions about Factory X's operations?---Yes.

PN930

Would it surprise you to learn that, in December, there are approximately 1000 employees across Factory X's Gorman, Dangerfield and Princess Highway stores?---That would not surprise.

PN931

MR CULLINAN: I don't believe that's the evidence. I believe the evidence is a thousand employees across Factory X, not across the three stores.

PN932

MS MOLONEY: I withdraw that. I will just check that, thank you. I won't be a moment.

PN933

Perhaps while we are checking that, perhaps if I could take you to page 352?---Was that 352?

PN934

352, yes, and if I take you to 22(c), it states there that there are 1000 employees nationally in Dangerfield, Princess Highway and Gorman stores?---Mm-hm.

PN935

Now you can't dispute that figure, can you?---I wouldn't be able to, not having seen anything to back it up, no.

PN936

Thank you. You are aware that Factory X has three store brands; that's correct?---Yes, among some older ones they used to run.

PN937

So that's Dangerfield, Gorman and Princess Highway; that's correct, isn't it?---Yes.

*** RHIANNON LEIGH HOWARD

XXN MS MOLONEY

PN938

And each is a separate brand of Factory X, isn't it?---Yes, though Dangerfield and Princess Highway are sometimes merged.

PN939

Yes, thank you. You accept, don't you, that there are retail stores for each of Gorman, Princess Highway and Dangerfield?---Yes.

PN940

You would accept that employees in each brand are employed by the same Factory X entity?---Yes.

PN941

Evidence will be put that store employees, irrespective of which store they - sorry, stores - irrespective of which store we're talking about, are arranged in a certain way with a store manager, second in charge, occasionally a third in charge, and sales assistants. You don't dispute that, do you?---Sorry, is that for each brand?

PN942

Yes?---I can only confirm that for Dangerfield.

PN943

Yes, but if that was put by Ms Chapman, you couldn't dispute that, could you?---Not without knowing what - without having worked in the other stores.

PN944

Yes, of course. And you would accept that stores in each brand - or perhaps - I withdraw that. Ms Chapman will give evidence that the stores in each brand have the same sales training, assessments, mystery shoppers and operational systems, such as AP21 for sales and Kepler to measure foot traffic. Given that is the evidence that Ms Chapman will give, you couldn't dispute that, could you?---Not to my knowledge.

PN945

You would accept that employees in each store, all of whom are employed by Factory X, are required to follow the same code of conduct, don't you?---I cannot dispute that.

PN946

And it wouldn't surprise you, would it, that stores in each brand have the same position descriptions?---No.

PN947

It wouldn't surprise you, would it, to learn that applicants may apply for a job through the Dangerfield website but be appointed to a role in a Gorman store?---I can't dispute it, but I would be surprised.

PN948

Evidence will be given that, irrespective of the brand of the store an employee works in, they all receive the same contract. You can't dispute that, can you?---Sorry, repeat the question.

*** RHIANNON LEIGH HOWARD

XXN MS MOLONEY

PN949

Irrespective of what brand an employee is working for, they will receive the same contract of employment; you can't dispute that, can you?---Not to my knowledge.

PN950

Just before you there are two pictures. If I could just ask you to look at the picture that is not of the Dangerfield store but of the Gorman and Princess Highway store. You have given evidence that you are not familiar with Gorman stores and you don't know how similar they are and you're not familiar with Gorman products. Could I ask you to look at the far left-hand side of a window in the Gorman store?---Mm-hm.

PN951

I put it to you that they are female clothes in that window, aren't they?---They are feminine presenting clothing, yes.

PN952

If you look at the photo more broadly, I put it to you that that is an example of a Gorman store being next door to a Princess Highway store and, in fact, in the same building?---I wouldn't know. I have only been in the Gorman store, so I haven't seen them. Like do you mean you can pass from one store to the other within that same building?

PN953

No, no, just that, if you look at that photo, they are next door to each other?---Yes, yes.

PN954

All right, thank you. I don't have any further questions. Thank you very much, Ms Howard?---Thank you.

PN955

THE DEPUTY PRESIDENT: Mr Cullinan?

PN956

MR CULLINAN: No, we don't have any further questions.

PN957

THE DEPUTY PRESIDENT: Thank you.

PN958

You are spared any further questions. You may leave or stay in the court - it's a matter for you. Thank you.

<THE WITNESS WITHDREW

[2.30 PM]

PN959

MR CULLINAN: Deputy President, this is where we return to the issue of Ms Natalie Pillar and the status of her statement. The first available appointment for their doctor is Thursday, so they are not going to be here for today.

*** RHIANNON LEIGH HOWARD

XXN MS MOLONEY

PN960

We heard you earlier refer to allowing material in. We are going to have a lot to say about the material of the respondent. So we're just - - -

PN961

THE DEPUTY PRESIDENT: In terms of - sorry, when you say 'allowing material in', what sort of material? Witness statements or other - - -

PN962

MR CULLINAN: The other witness statements, the witness statements we have already tendered, and there's an open question about Ms Isabella Cox's statement and, for us - - -

PN963

THE DEPUTY PRESIDENT: Well, I mean parties can make submissions about what weight, if any, should be given to witness statements of the other side in circumstances where they are not able to be cross-examined.

PN964

MR CULLINAN: Do we need to do something with that document formally? Do we need to give it a number or tender it, because Ms Pillar has two statements?

PN965

THE DEPUTY PRESIDENT: Well, yes, I accept that. Then I would adopt the same approach in relation to the statement of Isabella Cox.

PN966

MR CULLINAN: We understand that.

PN967

THE DEPUTY PRESIDENT: Yes.

PN968

MR CULLINAN: We understand that. We will have some things to say, but we understand the limits.

PN969

THE DEPUTY PRESIDENT: All right. Well, before we move on, what do you say in relation to what Mr Cullinan is putting, Ms Moloney, whether the statements of Ms Pillar and, by extension, Ms Cox, should be marked in evidence?

PN970

MS MOLONEY: Deputy President, our position is - we have obviously - I think it's common ground that we've got two employees who, because of mental health reasons, are not able to give evidence, and what I would suggest is, in those circumstances, it is appropriate for them to be put in as exhibits, but for you to give that appropriate weight and, in particular, knowing that neither party has had the opportunity to cross-examine the other.

PN971

THE DEPUTY PRESIDENT: Mm.

PN972

MS MOLONEY: Now, because we are both in that position, that might be a fairer position to adopt than if it was just one of our witnesses. I may have a different submission if it was just the witness of the applicant, but, in those circumstances, that does seem to be a fair position to adopt.

PN973

THE DEPUTY PRESIDENT: All right. Anything else you want to say, Mr Cullinan?

PN974

MR CULLINAN: No, Deputy President.

PN975

THE DEPUTY PRESIDENT: All right, well, I will mark the witness statements of Ms Pillar. Just let me find them first. Of course, I will do the same in relation to Ms Cox.

PN976

MR CULLINAN: They are documents 13 and 26.

PN977

THE DEPUTY PRESIDENT: Yes. Okay, so I have the first statement of Natalie Pillar. I will mark that A23.

EXHIBIT #A23 FIRST WITNESS STATEMENT OF NATALIE PILLAR

PN978

And the second statement, of course, will be marked A24.

EXHIBIT #A24 SECOND WITNESS STATEMENT OF NATALIE PILLAR

PN979

MR CULLINAN: Thank you, Deputy President. That is the evidence of the applicant.

PN980

THE DEPUTY PRESIDENT: Thank you. Ms Moloney.

PN981

MS MOLONEY: Thank you very much, Deputy President. I now call Emma Chapman.

PN982

THE DEPUTY PRESIDENT: Thank you.

PN983

MS MOLONEY: She's just on the way up, Deputy President.

PN984

THE DEPUTY PRESIDENT: Thank you.

PN985

MS MOLONEY: I have just been informed that Ms Maybury is also here as well. Obviously she will stay out of the court.

PN986

THE DEPUTY PRESIDENT: Thank you.

PN987

MS MOLONEY: Thank you.

PN988

THE ASSOCIATE: Ms Chapman, please state your full name and address.

PN989

MS CHAPMAN: My name's Emma Angela Chapman, (address supplied).

<EMMA ANGELA CHAPMAN, AFFIRMED [2.36 PM]

EXAMINATION-IN-CHIEF BY MS MOLONEY [2.36 PM]

PN990

Thank you very much, Ms Chapman. Before you, you have a court book that has a series of statements and documents in it. Can I ask you to please turn to page 349. The page numbers are down the bottom?---Yes.

PN991

Is that your witness statement that you've prepared in these proceedings?---That's correct, that's my witness statement.

PN992

Is that a 10-page statement with 47 paragraphs?---Correct.

PN993

Behind that statement, up to and including 375 - 376?---Yes.

PN994

375, apologies. Are they the attachments to your statement, seven attachments?---That looks correct, yes.

PN995

Are there any amendments that you wish to make to your statement?---I think I made an error in the description of the number of area managers in Victoria. I've noted five when it should have been four.

PN996

Thank you, Ms Chapman. Deputy President - - -

*** EMMA ANGELA CHAPMAN

XN MS MOLONEY

PN997

THE DEPUTY PRESIDENT: Which paragraph is that?

PN998

MS MOLONEY: Paragraph 22. At 22(a), there is a reference in brackets.

PN999

THE DEPUTY PRESIDENT: I see. Thank you.

PN1000

MS MOLONEY: Deputy President, I request leave to just ask two further questions arising from the applicant's reply materials.

PN1001

THE DEPUTY PRESIDENT: Yes.

PN1002

MS MOLONEY: I am happy to outline the nature of those questions. The first is in relation to the cluster manager position where evidence has been provided by Ms Wickham that that's a temporary position.

PN1003

THE DEPUTY PRESIDENT: Yes, I recall that question, yes.

PN1004

MS MOLONEY: Yes. And the second, also by Ms Wickham - sorry, by Ms Wickham and Ms Mulveney in the second - is just in relation to a topic we have discussed this morning and that is the aesthetics of Gorman garments that was put into contention by Ms Wickham, which says that they are very different from - the aesthetics of Gorman garments are very different from Princess Highway.

PN1005

THE DEPUTY PRESIDENT: Okay.

PN1006

MS MOLONEY: Thank you.

PN1007

If I can take you to the statement of Ms Mulveney, and that is the second statement which begins at page 80. I am just finding the appropriate paragraph. Apologies, I had a note that it was Ms Mulveney; it's actually Ms Wickham. So if I can take you to the witness statement of Ms Wickham, and that is the second statement at page 308. If I can direct you on page 308 to read paragraphs 6, 7, 8, 9 and 10, actually down to 15 in relation to the Princess Highway cluster manager role. Thank you.

PN1008

THE DEPUTY PRESIDENT: Have you read them already?---Yes, I've read them. I'm a fast reader.

*** EMMA ANGELA CHAPMAN

XN MS MOLONEY

PN1009

You're a faster reader than me, but you've previously read them, obviously?---Yes.

PN1010

Thank you.

PN1011

MS MOLONEY: Again there's an advertisement for the cluster manager role that was contained in Ms Mulveney's statement, which is where I got confused, so apologies. That's at page number 86. I'd just ask what you can tell us about that advertisement and that role?---The role? To my understanding, I think it's outlined in the statement. We have had cluster managers at Princess Highway in the past. There was Mia, who was a store manager in Fitzroy, who was promoted to cluster manager. My understanding is she was underperforming in that role, she resigned and we hired Rebecca. I never met Rebecca. She'd left the business before I started in this role - restarted in this role. My understanding was that, after that, Lily Monks was looking after - who's our Dangerfield state area manager - was looking after the Princess Highway stores for a few months.

PN1012

When I started in this role, those stores were underperforming - they were about 64 per cent of budget - so we looked at putting someone else in the role for a trial to see if we could improve the figures. We put Taylor from Gorman into that role with the feeling that she would be - she had had good success in Gorman - and also with the feeling that Gorman and Princess are more alike than Danger and Gorman, so Taylor was put into that role in November. She did have success in that role, she lifted the figures to about 86 per cent in about a month's time, and months to date, they're trading at about that sort of level. So around December, we renegotiated Taylor's contract and signed her on as the area manager for Princess Highway as well. That was only finalised last week.

PN1013

The ad that's up at the moment, we often have ads up running for - obviously we had someone trialling that role, so we kept the ad running. To my knowledge, we haven't had any applicants for that role, and once - they're currently reviewing all our vacancies. At the end of the Christmas period, we always get quite a few people leaving the business and then we'll refresh the website in the coming weeks once we've got all those vacancies listed.

*** EMMA ANGELA CHAPMAN

XN MS MOLONEY

PN1014

MS MOLONEY: Thank you very much. One point of clarification. You said Taylor was from Gorman. Could you just explain?---Yes, so Taylor is a state manager. She used to work for Dangerfield in New Zealand and for Gorman in New Zealand, so she's worked across a few brands. She relocated to Australia - I think it was earlier this year - I'm not a hundred per cent sure - and she's working in a role for Gorman, so she looks after Gorman and Princess Highway. So she does have some background with Dangerfield and some background with Princess Highway, but our motivation for putting Taylor in the role was that she was a competent manager, first of all, and we thought she'd get a good lift from the

stores, and also we consider Gorman and Princess Highway to be more similar than Gorman - sorry, than Dangerfield and Princess Highway, and we wanted to build the brand around sort of her management style and what she'd done with Gorman in Victoria.

PN1015

Thank you very much. Ms Chapman, you are aware that Ms Wickham has said in her reply statement that she considers the aesthetics of the Gorman garments to be very different from Princess Highway and Dangerfield garments. Do you have any comment about that?--I might say that all brands are different and they have a distinct brand aesthetic. Dangerfield is a more grungy, youth-orientated brand, so 50 per cent of our range would always have a black base. We sell menswear as well as womenswear. We sell different sorts of accessories to the other brands. We used to sell kidswear; we're moving out of that category.

PN1016

Dangerfield have what we call like a gothic element, which is not present in any of the other brands at all. The other brands have more of a cottage - we use a lot of bright florals in Princess Highway and we have floral prints in Gorman as well. Both produce like a geo print. Princess Highway and Gorman have similar fabrications, they both use a lot of linen fabrications, which we don't use in Dangerfield at all.

PN1017

What else is similar? Quite similar print styles. We have the same print artist who works at both Gorman and Princess Highway. Her name's Tara Whalley. We outsource to her, and we have done since at least 2018 - I know that from working in the business - and she's done prints for Gorman and for Princess Highway. Sometimes she'll do a print for Gorman and Gorman might not use it and then we give that print to Princess Highway to use in their collections.

PN1018

So in terms of aesthetics, I would say they are quite similar. There's dresses that came out for the first drop of summer '22 with a love heart print. It was a hot pink base with a red heart. Princess Highway at that print, Gorman had that print. They were almost identical and very similar in terms of customer demographic. So, yes, I would actually think that Princess Highway and Gorman have more in common than Gorman and Dangerfield in terms of an aesthetic.

PN1019

MS MOLONEY: Thank you very much. No further questions.

PN1020

THE DEPUTY PRESIDENT: Thank you. Mr Cullinan.

PN1021

MR CULLINAN: Thank you, Deputy President.

CROSS-EXAMINATION BY MR CULLINAN

[2.46 PM]

*** EMMA ANGELA CHAPMAN

XXN MR CULLINAN

PN1022

Ms Chapman, I understand that you made a change to your statement to have four area managers?---Yes, that's correct.

PN1023

Are those four area managers Lauren, Lily, Taylor and another person?---Lauren, Lily, Taylor and Jasmine, Jasmine Bulte - B-u-l-t-e.

PN1024

Your evidence just now was that you contracted Taylor last week for the role of area manager?---We updated her contract last week. We'd been negotiating with her for several weeks.

PN1025

What is she contracted as now?---She's still contracted as a state manager, but we've increased her role to include those locations and increased her salary.

PN1026

Each of the three brands, Gorman, Princess Highway and Dangerfield, have their own separate websites, don't they?---That's correct. We have three different websites for each brand and we have a Jack London website as well.

PN1027

And all of the employees in stores are required to wear their uniform, aren't they?---Employees in stores are encouraged to wear a branded product. We have an incentive scheme to facilitate that.

PN1028

Can I ask you to open up page 305, paragraph 12 of Rhiannon's statement. Can you read that sentence?---Would you like me to read it?

PN1029

Just to yourself?---Yes, I've read - I have read Rhiannon's statements; I'm aware of that.

PN1030

So you understand that Rhiannon understands and her evidence is that she must wear three items at all times. Do you dispute that?---That's what - well, that is not our policy. That's not something that we would manage staff on, 'You're not wearing three items of clothing today; that's unacceptable.' As I said, we encourage our staff to wear branded product and full-time staff members receive an allowance and then casual team members receive what we call our SWC, storewear credits program, where they have vouchers to enable them to purchase a product. In visiting stores in the last eight weeks, I've observed staff who are not wearing branded product and it hasn't been something that I have pulled them up on; it's not been something that they've been managed or reprimanded for. So it's encouraged, but it's not a hard and fast, 'You must be wearing product to be working in the store.'

*** EMMA ANGELA CHAPMAN

XXN MR CULLINAN

PN1031

If I can get you to turn over three or four pages to page 310 and paragraph 26. This is a statement from your store manager of the Princess Highway store, Stephanie Wickham?---Mm-hm.

PN1032

She says:

PN1033

I must wear new season product and preferably a full outfit.

PN1034

She says who told her that, what the obligation is and what the obligation she imposes on her casual employees is. Do you dispute all of that?---I can't dispute what Kira-Leigh said to Stephanie, but that is not our policy and our policy doesn't reflect that. That might be something that people at individual level decide to implement in their store. It might be an area manager focus. Sometimes we'll do a focus on who's best dressed for the month, et cetera, so it might have been surrounding that, but that is not the policy. As I said, I've witnessed people not wearing product in store, some people wearing a mix of product, and it hasn't been an issue. Staff are strongly encouraged. It's important to see our brands represented. We prefer our staff to be wearing branded product; hence we have a generous incentive program to enable staff to purchase products without being severely - without their having to pay for them, but we don't - I would dispute that - yes, that's not our current policy.

PN1035

When did the policy change?---I reviewed the policy when I commenced in this role and, to my understanding, that rule of three is like a verbal thing that people say to each other. It wouldn't be something that's written as a policy.

PN1036

Are you aware that contracts of employment used to have clauses in them about wearing a uniform, about wearing product?

PN1037

MS MOLONEY: I object. That evidence is not before the Commission.

PN1038

THE DEPUTY PRESIDENT: It's not before the Commission, is it, Mr Cullinan?

PN1039

MR CULLINAN: We have a witness who gives inordinate detail about what the contracts of employment are.

PN1040

THE DEPUTY PRESIDENT: Whereabouts is that? If there's particular evidence going to what the contract says, I think it's reasonable to put that proposition or question to the witness. Can I just pause things there.

*** EMMA ANGELA CHAPMAN

XXN MR CULLINAN

PN1041

Could you leave the room for a minute?---Yes, of course.

<THE WITNESS WITHDREW

[2.52 PM]

PN1042

THE DEPUTY PRESIDENT: Mr Cullinan, does this question go to supporting RAFFWU's contention that, in all the circumstances, taking into account the rates of pay and the conditions of employment, the casual nature of employment, that should weigh in favour of the grant of the MSD and that the issue of the uniforms, in RAFFWU's submission, highlights that employees of Factory X are, if not on the award, potentially below it because of - is that - I'm trying to understand - - -

PN1043

MR CULLINAN: It goes to credibility, Deputy President.

PN1044

THE DEPUTY PRESIDENT: Right. Okay.

PN1045

MR CULLINAN: I am going to be putting this quite directly to the witness.

PN1046

THE DEPUTY PRESIDENT: All right.

PN1047

MR CULLINAN: Because, whilst we haven't led the evidence, we are well aware that every contract up until April 2022 - - -

PN1048

THE DEPUTY PRESIDENT: Well, well aware doesn't help me without the evidence.

PN1049

MR CULLINAN: I am - - -

PN1050

THE DEPUTY PRESIDENT: Where in the evidence currently before me - if it's there, going to what the contracts have in them, I'm happy for you to put the question.

PN1051

MR CULLINAN: Maybe it was just in the cross-examination of our witnesses. I had thought that there was a specific reference. There is at paragraph 25.

PN1052

THE DEPUTY PRESIDENT: Where, sorry?

PN1053

MR CULLINAN: Ms Chapman's statement, paragraph 25 goes to the contract templates, what they - - -

*** EMMA ANGELA CHAPMAN

XXN MR CULLINAN

PN1054

THE DEPUTY PRESIDENT: 25 of whose statement, sorry?

PN1055

MR CULLINAN: Ms Chapman's.

PN1056

THE DEPUTY PRESIDENT: Okay. Let me find it, please.

PN1057

MR CULLINAN: On page 353. And, notably, the PDs were included but not the contracts.

PN1058

THE DEPUTY PRESIDENT: So you're wanting to put a question about the content of the contract templates?

PN1059

MR CULLINAN: Yes.

PN1060

THE DEPUTY PRESIDENT: Okay.

PN1061

MR CULLINAN: And what they previously had in them.

PN1062

THE DEPUTY PRESIDENT: To the extent that she may have knowledge prior to - - -

PN1063

MR CULLINAN: That she may have knowledge.

PN1064

THE DEPUTY PRESIDENT: Ms Moloney?

PN1065

MS MOLONEY: I don't accept that that is in evidence. I think what is in Ms Chapman's statement is evidence about the current contracts and, therefore, she could only be cross-examined in terms of - well, I just don't think there's any evidence of what the prior contracts were.

PN1066

THE DEPUTY PRESIDENT: No, there's not, but the issue of contracts is in her statement. I'm going to allow the question. It may or may not be relevant. Thank you, I'll have the witness back.

<EMMA ANGELA CHAPMAN, RECALLED [2.55 PM]

CROSS-EXAMINATION BY MR CULLINAN, CONTINUING [2.55 PM]

*** EMMA ANGELA CHAPMAN

XXN MR CULLINAN

PN1067

Thank you, Ms Chapman. The question is: were you aware that until some time in 2022, contracts of employment for Factory X included a section about wearing products from the store that a worker worked in?---They may have. I cannot - I haven't worked in this - I previously worked in this role up until about 2018 and there may have been clauses in all contracts around - around presentation at work and dress standards.

PN1068

Do you think it's important that if that was to change that it be communicated to employees?---A policy change would normally be communicated to employees.

PN1069

Are you aware of any communication to employees about a policy change on uniforms?---I'm not aware because I was not in this role at that time, so it wouldn't have been something that - communication that I would have received. I was working in a different department.

PN1070

What department were you in in 2022?---I was working in planning and design. I worked in retail from 2011 until 2018, early 2018. From 2018 - sorry, 2019 - from 2019 until recently, I was in planning and design for Dangerfield, Princess Highway, Jack London, L'urv. I've worked on a number of brands.

PN1071

When did you then move from planning and design into the current or into the next role?---In November. The role's been vacant since about May of '23.

PN1072

So you were in planning and design for Dangerfield and Princess Highway and Jack London up until - - -?---Well, different brands, mostly Dangerfield, but I've worked across all the brands.

PN1073

Were you in planning and design for Gorman?---No, but I've worked with the Gorman planning team.

PN1074

Is that because planning and design is done by a different group in Gorman?---We have - we have a different - it's a different department and we have people allocated to work on different brands. People move between the brands, just as they do in retail. So we've had people that have worked on Gorman. The last person to work on Gorman had worked on Princess Highway and Dangerfield and Jack London, and Gorman have had people work on Princess Highway and Gorman, so there's a lot of movement between the brands in the company and between roles.

*** EMMA ANGELA CHAPMAN

XXN MR CULLINAN

PN1075

If you were told that you were required to wear a uniform for work, would you expect your employer to pay for it?---When I've been - probably not. I don't think

it would bother me. I've been - in my roles, I've had an allowance for my uniform because I've had to wear different brands and, as a full-time employee, we were all given allowances. I was required to wear up to five or six different brands. I was given an allowance, which I would sometimes use. Sometimes I would purchase items.

PN1076

What's the allowance for a Gorman area manager?---I don't have that in front of me. It would be about 4000 per annum.

PN1077

I think it is. And what's the allowance for a Dangerfield area manager?---That sum would be negotiated. Some would be up to - I've got Dangerfield area managers who are on 5000, I've got some that are on three, so sums that have been negotiated as part of their contract of employment.

PN1078

Workers in stores aren't given their uniforms, though, are they?---Workers in stores are given an allowance if they're a full-time team member, and for casual team members, they're given a credit when they start to enable them to purchase their uniform, and then we have an ongoing SWC program to enable them to purchase items in store to wear, if they so wish to.

PN1079

Does that cover everything that an employee believes - I withdraw that. How many Dangerfield sales assistants in Victoria were offered conversion to ongoing employment in their sale role as a sales assistant in 2023?---I'm not aware of any Dangerfield team members that were offered - that's not true. We offered - we did offer some to some people in December. Approximately 12 people were sent letters prior to Christmas. Some of them would have been Dangerfield employees, and I've had two of them accept casual conversation.

PN1080

To a sales assistant role?---Yes, sales assistant.

PN1081

In Victoria?---Not in Victoria, sorry, that was in Queensland and New South Wales. So in Victoria, we have not had anyone on that list as yet.

PN1082

So no one was offered in 2023 conversion in Dangerfield?---There may have been prior to me starting in November, but, to my knowledge - there was a couple that Becky might have spoken to earlier in the year, but I don't have details of any other particular people.

*** EMMA ANGELA CHAPMAN

XXN MR CULLINAN

PN1083

Are you aware of anyone in Victoria in a Dangerfield that was offered conversion from a casual role into a sales assistant non-casual role?---There would have been people that were promoted from casual to permanent employment - that's quite a

regular process - but I'm not aware of anyone in particular. Like there's no name I can give you of someone that was converted in Victoria.

PN1084

Did you explore it? Your statement goes to some issues to do with conversion and casuals. Did you go and look into it?---I'm currently auditing all aspects of the retail business and casual - and looking at the casual workforce and their longevity as part of that process.

PN1085

Does that mean that you have gone back and looked?---It means I'm in the process of going back and looking.

PN1086

But you haven't identified a single person in Dangerfield or Princess Highway in Victoria who has converted from casual as a sales assistant to a non-casual sales assistant role?---That's not what I've been looking for. I've been looking back at all the staff that we've had on our books for the last 10 years and I've been looking at whether they might now qualify for casual conversion.

PN1087

Is this the first time that Dangerfield or Factory X has done this exercise?---I'm not - I couldn't say if that's the first time. It's just that I'm conducting an audit of all aspects of my role. I've been out of it for quite some time, so I'm reviewing all policies, procedures, et cetera.

PN1088

The general approach of Factory X is that sales assistants are casual, isn't it?---There's a - we have several casual sales assistants. Each store would be made up of, traditionally, store manager, a 2IC, and then we'd have up to 30 hours for casual staffing to cover our Sundays, our late night trade and lunch covers, et cetera, and then, depending on the size of the store, we might expand to a third in charge, who would be a full-timer, and we might - then the casual hours will then open up. So it depends on location, hours of trade, et cetera.

PN1089

THE DEPUTY PRESIDENT: Do I take it from the response that the answer is 'Yes, sales assistants are generally casual'?---Generally - well, yes, I guess that you could say they're generally casual. There are some part-timers in some states.

PN1090

Thank you.

PN1091

MR CULLINAN: From December?---Just in general there's some part-timers in some states.

*** EMMA ANGELA CHAPMAN

XXN MR CULLINAN

PN1092

Are there any in Victoria?---Not to my knowledge. There's probably more classified as a 3IC.

PN1093

Factory X changed its Swanson Street Dangerfield store to a Princess Highway store, didn't it?---Yes, it was flipped in August, I think, '23.

PN1094

A number of the workers from that Dangerfield store continued in the Princess Highway store, didn't they?---I believe that Stephanie was promoted from 2IC to store manager, Stephanie Wickham that is, and then one other person continued, whose name escapes me.

PN1095

In relation to your statement, you include some references in it to things that were reported to you or told to Factory X about the conduct of petitions?---Mm-hm.

PN1096

No allegations of inappropriate conduct have been put to any worker, have they?---I did some area managers to have conversations with staff members who had made store managers and staff feel uncomfortable due to their behaviour, but I can't say there's been a disciplinary meeting with anybody, like I haven't had anyone in for an HR meeting or anything like that.

PN1097

Are you aware of any counselling discussions?---With the RAFFWU members or with the staff?

PN1098

Well, with anyone that is alleged to have - - -?---I have definitely spoken to staff members who are upset if they've reached out to myself or Rebecca, yes.

PN1099

THE DEPUTY PRESIDENT: I think the question is: are you aware of whether any employee who was alleged to have engaged in perhaps inappropriate conduct towards a colleague, are you aware of any of those employees being subject to counselling, disciplinary action, performance management?---No, I am not aware that that actually took place.

PN1100

All right.

PN1101

MR CULLINAN: There's been a significant reduction in the hours available to casual employees since before Christmas, hasn't there?---Due to stores trading down, we've reduced our casual hours from mid-December, and currently we're viewing updates to rosters, as I said, in line with a general rationalisation of the business and looking at where we can make savings and what's most appropriate coming out of busy trading periods of November and December.

*** EMMA ANGELA CHAPMAN

XXN MR CULLINAN

PN1102

In fact, it's been a severe reduction, hasn't it?---I don't know if I would call it severe. As I said, I've been conducting an audit of all areas of the business and

some stores were extremely heavily rostered and it wasn't viable to run stores on that many - the wage bill was way above what was manageable.

PN1103

Have you got a document marked A16 on the front It's an SMS message, or a WhatsApp exchange. That one there at the bottom. If you could just take that. This document is an exchange, an SMS exchange, a message exchange on WhatsApp that Ms Butler had with Lauren Benstead?--Mm-hm.

PN1104

You will see here that Lauren Benstead says:

PN1105

Unfortunately, HQ have severely reduced hours across the board.

PN1106

Do you dispute that?---I guess that's just her interpretation. For me, it wasn't particularly severe. I mean that's - for me it was rational, like that was what we could afford to spend at that time on wages - - -

PN1107

They are just not enough hours - - -?--- - - - and into the next few months.

PN1108

Sorry, you go?---I don't agree that it's a severe wage cut. Sydney - I think this is talking about the Sydney Road store, which was heavily rostered and underperforming, so it would be quite ordinary - - -

PN1109

I think it says 'across the board'?--- - - - to cut the hours. Yes, well, as I said, I'm looking at all areas of the business, so all stores were looked at, they were all given a new base roster, which is something we hadn't had implemented since we moved to our new rostering system, which was prior to me coming to this role. So a system called Dayforce was rolled out, I think during the pandemic, but I'm guessing, I'm not exactly sure of when it came out. I wasn't - I wasn't working in retail at that time, but that was when we all had to start using that app at work, and when we rolled over to that system - we used to have a workforce system called TimeCheck and every store had a base hours, so, you know, you can have a hundred, this store should be operating at 150 hours a week, et cetera, based on, as I said, sales size and location, and then once we moved to DayForce, and I guess as a result of the pandemic and all sorts of things going on, the base hours were - was not something people considered, so rosters were built the same week to week and they were heavily expenditure where it wasn't required.

*** EMMA ANGELA CHAPMAN

XXN MR CULLINAN

PN1110

So there just haven't been enough hours for all the casuals; is that right?---Well, coming out of the peak period of November/December, we'd always reduce our hours and some - we wouldn't be able to have the same head count or number of hours as we would going into December into Jan/Feb trade, which is always much lighter, so it would be half of December's trade, and the operating hours for the

stores would also halve, so in December, from mid-December, some stores are operating till 10 pm/midnight or all night, and obviously that sort of trading pattern doesn't continue into January. Furthermore, in January, we're looking at stores who are underperforming on public holidays and Sundays and we've elected to close the stores on those days; hence those shifts won't be available to staff.

PN1111

So in January, you'd expect to have even fewer casual workers than in October, for example?---October is a peak - is a good trading season for us. Our worst months of trade are traditionally January and February, and then trade would usually increase from Easter.

PN1112

I understand that there are two warehouses for Gorman, both located in Melbourne; is that right?---No. We have a Gorman - well, we have a warehouse which houses Gorman product in Abbotsford, we have a warehouse - - -

PN1113

Sorry, I meant - - -?---Yes, so there is - - -

PN1114

I'm sorry, I meant Factory X, I'm sorry. I understood there was two warehouses for Factory X?---Two warehouses, yes. Sorry. Well, two - yes, I guess two and - two and a-half. We have Gorman products in one warehouse, we have L'urv in another, we have Jack London, Princess Highway section - we have a Jack London section, we have a Princess Highway section, we have a Dangerfield section. So things are - in terms of sourcing product for online and for distribution for stores. When we do that - - -

PN1115

Yes?--- - - - it's sorted by brand.

PN1116

I understood that there was a Zetland - what people call Zetland?---Yes, so the head office - most of the head office offices are in Zetland Street, and there's a warehouse behind that.

PN1117

THE DEPUTY PRESIDENT: Where is that? In Abbotsford?---In Abbotsford. And then we have another warehouse sort of across from that which houses - which is on a separate lease, which houses our L'urv product, which is a brand we don't really - we don't have a shop front for, and then we have a warehouse in Marine Parade, which is about an eight-minute walk away to five-minute drive, which has outlet product, Jack London and Princess Highway in one section and Dangerfield in the other.

*** EMMA ANGELA CHAPMAN

XXN MR CULLINAN

PN1118

MR CULLINAN: Is the other one called Marine or what - - -?---That's Marine Parade.

PN1119

Marine Parade?---The address where the warehouse is located.

PN1120

Zetland is the warehouse that predominantly has Gorman product and Marine Parade is the warehouse which has predominantly Princess Highway, Dangerfield and Jack London; is that right?---That's correct, and a bit of Alannah Hill.

PN1121

Lily Monks, you have made reference to as a state manager for Factory X for Dangerfield; is that correct?---Yes, she works for Dangerfield, yes.

PN1122

She was required to make calls to casual workers about the petition, wasn't she?---No, I don't - when are you referring to? Do you mind clarifying when she made calls?

PN1123

I'm asking if you had required or if Factory X had required Lily Monks to make calls to workers about the petition?---So we did put some calls in to some staff, like some welfare checks, which I've noted in my statement, because we'd had it reported to us that people were feeling anxious, intimidated and unhappy and not willing to be at work with some of the RAFFWU members, delegates and signatories, so Rebecca and I put some welfare checks in and Lily did some follow-up calls.

PN1124

Lily did follow-up calls. She's in Melbourne this week, is she?---Lily?

PN1125

Yes?---Yes, yes.

PN1126

She would have been available to come today, I take it?---Yes, she would have been available if asked.

PN1127

You are aware that Lily told some people that Factory X had the names of workers who signed the petition, aren't you?---No, I'm not aware of that.

PN1128

No one has raised with you that concern?---No.

PN1129

MS MOLONEY: I object in that this evidence is not before the Commission at all in any form, either in the original materials or the reply materials. This is the first we've heard about it.

*** EMMA ANGELA CHAPMAN

XXN MR CULLINAN

PN1130

THE DEPUTY PRESIDENT: Well, I'm not sure that every question that was put to the applicant's witnesses was dealt with in the employer's - - -

PN1131

MS MOLONEY: Well, in fairness, that's because we hadn't got to Ms Chapman, whereas, as I understand, the applicant has closed their case.

PN1132

THE DEPUTY PRESIDENT: Yes, I see. This is not covered in any other evidence, is it, Mr Cullinan?

PN1133

MR CULLINAN: No, I don't - I'm sorry, Deputy President, but I'd be assisted by understanding the objection. I don't understand. I understood - - -

PN1134

THE DEPUTY PRESIDENT: Do you want to clarify the objection?

PN1135

MR CULLINAN: As in my understanding is that we can ask questions of a witness. It doesn't have to have arisen out of our evidence, so I'm misunderstanding.

PN1136

MS MOLONEY: Had these matters been dealt with in reply material, then we would have led evidence from Ms Chapman. What I'm now hearing is that there's evidence that Mr Cullinan is aware of in relation to Lily Monks that we are not aware of and therefore could not have called Ms Monks, and there now seems to be a suggestion, by the line of questioning in terms of Ms Monks could be available to attend, that there's some wrongdoing on our part, and I think that that's unreasonable in circumstances where we haven't been put on notice of this.

PN1137

MR CULLINAN: It's a different point being made, it's a different question.

PN1138

THE DEPUTY PRESIDENT: Well, I will allow the question and then we'll move on and I'll see what I do with the answer.

PN1139

MR CULLINAN: Thank you, Deputy President.

PN1140

Did Isabella Cox raise with Factor X that Lily had told her that Factory X was aware of the names of those who'd signed the petition?---No, not to my knowledge. I'm not aware of any signatories to the petition, unless the people who have given evidence and are listed are signatories, but that's - we have no evidence of who's on that petition.

*** EMMA ANGELA CHAPMAN

XXN MR CULLINAN

PN1141

You earlier made reference to a dress, a pink dress with red hearts?---Mm-hm.

PN1142

Are you aware that Kmart sells a kid's dress that's pink and has red hearts?---As I said, fashion - like things will be repeated in all sorts of different brands, but the similarity between Dangerfield and - but I'm not aware of the Kmart dress because I don't shop at Kmart, but the - what I was noting was the similarity between those two styles, and there's plenty of other styles I can draw attention to, or categories, if you'd like me to start listing them in terms of use of embroidery on denim, in the use of a white palette for Princess Highway and a white - so a white base for Princess Highway and for Gorman, in terms of, yes, the fabrication categories. There are much more aligned brands than Dangerfield in terms of their category mix, and that's an area of the business I worked in in category and merch planning for several years.

PN1143

There's lots of other outlets that sell women's clothing, aren't there, an unlimited number - Myer, Suzanne Grae, Cotton On - there's all sorts of outlets?---There's all sorts of women's clothing stores, that's correct.

PN1144

You give some evidence about - - -

PN1145

THE DEPUTY PRESIDENT: What paragraph, sorry?

PN1146

MR CULLINAN: I just need a moment.

PN1147

THE DEPUTY PRESIDENT: Sure.

PN1148

MR CULLINAN: No, I don't think I'll ask those questions. That's it, thank you.

PN1149

THE DEPUTY PRESIDENT: Thank you. Any re-examination?

PN1150

MS MOLONEY: No, Deputy President.

PN1151

THE DEPUTY PRESIDENT: Well, you are free to go?---Thank you.

PN1152

You can remain in the courtroom. That's a matter for you. Okay?---Thank you.

PN1153

Thank you.

*** EMMA ANGELA CHAPMAN

XXN MR CULLINAN

<THE WITNESS WITHDREW

[3.17 PM]

PN1154

MS MOLONEY: Thank you, Deputy President. I now wish to call Hannah Maybury.

PN1155

THE DEPUTY PRESIDENT: Thank you. Please come to the witness box, Ms Maybury, thank you. There have been a number before you who have emerged unscathed, Ms Maybury, so it's okay.

PN1156

THE ASSOCIATE: Ms Maybury, please state your full name and address.

PN1157

MS MAYBURY: Hannah Jane Maybury, (address supplied).

<HANNAH JANE MAYBURY, AFFIRMED

[3.18 PM]

EXAMINATION-IN-CHIEF BY MS MOLONEY

[3.18 PM]

PN1158

Thank you, Ms Maybury. I may ask you, because you have quite a soft voice, if you - I'm not sure it amplifies, but does it need to be - - -

PN1159

THE DEPUTY PRESIDENT: There are two benefits: firstly, for the transcription, but, secondly, so that parties at the Bar table and up here can hear. Thank you.

PN1160

MS MOLONEY: Thank you.

PN1161

Can I please ask you to tell us your name?---Hannah Maybury.

PN1162

What's your position at Factory X?---I am a store manager at Princess Highway, Doncaster.

PN1163

Have you made a witness statement in this proceeding?---Yes.

PN1164

You have before you a folder, what we call a court book, and if I could ask you to turn to page 341 of that court book. Do you have that page?---Yes.

PN1165

Is that your witness statement?---Yes, it is.

*** HANNAH JANE MAYBURY

XN MS MOLONEY

PN1166

Does that witness statement run to 36 paragraphs?---Yes, it does.

PN1167

Are there any amendments you wish to make to that statement?---Yes.

PN1168

Please tell the Commission?---So in - I'll just quote the right line. So in 31, the conversation between Mon and myself, towards the end there, when they're asking me about - they have the - like, 'I'll give you my phone number.' It says, 'Well, here's my phone number.' I actually said, 'Oh, I actually should have your phone number already from when you worked', as a sort of attempt to end the conversation, and their response was, 'Oh, I have a new phone number for the position at RAFFWU', and so then I took that phone number and they left. So, potentially, the statement in 32, where I say that I estimate about approximately five to eight times in that conversation I've said 'No' or implied 'No', potentially is more four to five times, and that's my only change.

PN1169

With those amendments made, is that statement true and correct to the best of your knowledge?---Yes.

PN1170

Deputy President, I tender that statement, and I confess I may well have neglected to tender Ms Chapman's statement, so I apologise for that.

PN1171

THE DEPUTY PRESIDENT: I have marked it as A4.

PN1172

MS MOLONEY: Perfect.

PN1173

THE DEPUTY PRESIDENT: Sorry, R4.

PN1174

MS MOLONEY: R4. Thank you.

PN1175

THE DEPUTY PRESIDENT: If I didn't do it on transcript, I do mark the statement of Emma Chapman R4.

EXHIBIT #R4 WITNESS STATEMENT OF EMMA CHAPMAN

PN1176

And I will mark the statement of Ms Maybury R5.

EXHIBIT #R5 WITNESS STATEMENT OF HANNAH MAYBURY

*** HANNAH JANE MAYBURY

XN MS MOLONEY

PN1177

MS MOLONEY: Thank you very much.

PN1178

THE DEPUTY PRESIDENT: Mr Cullinan.

CROSS-EXAMINATION BY MR CULLINAN

[3.22 PM]

PN1179

Ms Maybury, just taking up the change where you were on page 346, so I understand your evidence is that Mon said, 'Here's my phone number' and you now said, 'I should already have your phone number from when you worked' and Mon then says, 'I'm in a new job, I've got a new phone number' and you took it and Mon left. Is that correct?---Yes, I took it so that she would leave.

PN1180

So you didn't say to her, 'I'm not going to call you, I'm not going to text you'?---Not in that part of the conversation, no.

PN1181

When you say 'not in that part of the conversation', when was it said, if it wasn't then?---So in the section 31, I say that I don't remember the exact details of the conversation, and so this is just sort of a brief, point by point - - -

PN1182

For my clarity then, where you've got italicised quotation marks, you're not quoting, it's your brief, point by point of the things that were covered?---Yes, that is true.

PN1183

Just to further explain this to me, because the struggle I'm having is, 'They say, "Here's my phone number"' and you say, 'I've already got it because you used to work here', or, 'I've got it through work.' Mon says, 'I'm now in this different job.' You say, 'Okay' because you want Mon to leave?---Mm-hm.

PN1184

And you take it. I don't follow - then Mon left - I don't follow at what point you say - it sounds quite confrontational - I don't understand at what point do you actually say, 'I'm not going to call you, I'm not going to text you'?---So throughout the entire conversation, my intention initially was when - the moment I realised it was for RAFFWU and visiting regarding signing the petition, I said - I mentioned a few times I assumed that they would have already informed people that my - like I was somebody who had already said 'No' a few times to signing the petition.

PN1185

Understood. So it was - can I ask, you believe that that should have been clear to Mon, rather than you actually saying it to Mon?---No, I said that in that conversation, that I assumed that it would have already been something that she would have known.

*** HANNAH JANE MAYBURY

XXN MR CULLINAN

PN1186

That you weren't interested?---Yes, because I had previously had volunteers already come and ask both myself and the other regular workers at my store.

PN1187

Was that Nat Butler?---Nat did visit on an occasion, yes.

PN1188

What I'm focusing on - I understand your point now about not being interested - what I'm focusing on is this sentence: 'I'm not going to call you, I'm not going to text you'?---Yes, so we - - -

PN1189

What I'm asking with that is: did you feel that was inferred, but you didn't actually say that?---I do believe - I feel that it was inferred.

PN1190

Thank you. Can I just take you back a page?---Of course.

PN1191

We're at paragraph 24 here. You say:

PN1192

If I was able to sign a petition for some of the things they were asking for but not others...

PN1193

You asked about that?---Yes, I did.

PN1194

So you were interested in the campaign, you thought that some of it was worthwhile, but you weren't prepared to put your name to everything; is that right?---Yes.

PN1195

Do you understand why Mon might have come and visited after you've said 'No' to Natalie?---Not fully.

PN1196

In that context that you've said, 'I support some of it, but not all of it', that Natalie might arrange for the organiser for RAFFWU to come and say 'Hello', you don't understand that that's ordinary?---If it was more - if that was said or mentioned, like, 'Hey, we heard that you have some concerns', then I would have understood, but that wasn't a part of the conversation.

PN1197

That wasn't communicated?---Yes.

PN1198

Thanks for that. Do you wear the Princess Highway uniform at work?---Do you mean the clothing, the branded clothing?

*** HANNAH JANE MAYBURY

XXN MR CULLINAN

PN1199

Yes?---Yes, I wear the clothes.

PN1200

Do all of your casual workers that work in your store have to wear that uniform?---Yes, but there are discretions that I provide for my staff when people can't afford things, and I have disclosed that to upper management so that they're aware and that no one would get in trouble for that because that's silly.

PN1201

So some people just can't afford Princess Highway clothes?---At some points, at times, they can't afford it immediately, or new stock when it immediately arrives, so we provide - so I allow them to wear stock that they already have. I encourage they wear the brand, as that's important in any retail. I've worked in a few stores, not just for this company.

PN1202

So for your casual workers, if they've got a particular need, you help them with not having to wear the uniform at that time and you have explained that to senior management; is that right?---Yes, I just - if a staff member comes in and they're not in full Princess Highway, they usually will just explain to me, or I might mention, 'Oh, is everything okay?' and sometimes it's as simple as, like, 'I've had a really big week, I haven't been able to dry my washing' and I'd rather them just come to work and have fun at work than worry about their washing.

PN1203

But, over time, it's expected that they wear three items of the Princess Highway clothing at each shift?---The three items is not - I'm not strict on the three items because, if they're wearing a dress, it's hard to wear two more items, unless there are some accessories, but also not everything goes together and I don't want them to look over-dressed or silly.

PN1204

You have heard of the rule of three, though, haven't you?---I've heard of the rule of three, but I have never been personally - like had a conversation about it with anyone, from someone to me or me to anyone else.

PN1205

There are structures to provide credits, but workers sometimes have to spend their own money on those uniforms, don't they?---Yes, but it's their choice if they want to spend their own money.

PN1206

How is it their choice?---If they want to buy an item and don't have credits, they can purchase it at the discounted rate.

PN1207

Are they required to wear a uniform?---Yes, but they don't have to purchase anything new if they can't afford it.

*** HANNAH JANE MAYBURY

XXN MR CULLINAN

PN1208

Is that because of the way you apply it in your store?---That's the way I apply it in my store, and I've communicated in the two stores that I've managed over my time to upper management, in both departments that are separate - - -

PN1209

Yes?--- - - - but, if that's the case, then that's what I will do.

PN1210

In paragraph 14 - you talk about your status on page 343?---Mm.

PN1211

You talk here about an interaction you had with Natalie heading to the car park?---Mm.

PN1212

Natalie told you that they'd parked in the car park, didn't they?---Yes.

PN1213

They explained to you that they hadn't parked in the car park before, didn't they?---Yes.

PN1214

Do you understand that they might have needed help getting to the car park?---I completely understand that they would be - that they would need to find the car park from the store to the car park, but, once we get to the car park - it's a multi-level car park - that I assume I don't need to help her find her car.

PN1215

So your concern is more that Natalie kept on talking about the campaign rather than heading off home?---My concern was more that, as I attempted to split off once we arrived at the car park and say, you know, 'See you next time, goodbye', whatever, the end of me - whatever me closing that conversation was, she continued to trail behind me as I attempted to get to my car, and I felt like I wasn't able to leave the conversation, regardless.

PN1216

You didn't say, 'I need you to stop now'?---No, but I'm a really unfrontational person, so sometimes I do get myself in situations where I feel incredibly uncomfortable and I don't know how to end the conversation.

PN1217

So sometimes people can't read those cues?---I completely understand that.

*** HANNAH JANE MAYBURY

XXN MR CULLINAN

PN1218

Just in that paragraph 14, but going back to 10, so the second occasion, 10 to 14 talks about these interactions with Natalie and you're talking about what happened, but here we're talking about the claims, aren't we, we're not talking about a petition yet?---I think, at some point, like there potentially will be, as I

said, a potential petition, there may be a potential petition that will come about. I think that would have come up in conversation throughout the day, yes.

PN1219

But, other than that, it was about the claims?---Yes, yes, of course, the claims that then - which is the petition, or at least that's how I understand it.

PN1220

So you understood that the claims were the petition?---I understood that, when signing the petition, you were agreeing to all the claims.

PN1221

Did someone tell you that?---I have - after this occasion, I did receive the list of claims, and that's what I understood it to be.

PN1222

Who sent you the list of claims?---I received it from my 2IC.

PN1223

So when someone came into the store, Nat - or, sorry, Natalie Butler - or Mon Mulveney, did you read the petition document itself?---No, because it wasn't offered to be left with me.

PN1224

Well, I think you give evidence about the claims not being left with you, but do you know that there's a separate petition document?---No, they didn't mention a separate petition document.

PN1225

Can I maybe just get you to go earlier in the court book to page 47. Do you see that document there with MM1 at the top?---Yes.

PN1226

Can you just have a read of that first - just to yourself?---Okay.

PN1227

Do you agree that that is a separate petition document?---Yes.

PN1228

Do you understand what it's asking for? Can you explain to us what you see that that is asking for?---It's asking for signatures and names of staff members that work for the company, Factory X.

PN1229

If they signed that, what would they be signing on to?---To want to bargain for a new enterprise agreement.

PN1230

You have never seen that before?---No.

*** HANNAH JANE MAYBURY

XXN MR CULLINAN

PN1231

Thank you. In terms of the text messages, you didn't ask Natalie to not send you any more messages, did you?---No, but the reason I didn't is because I had some conversations with HR about it and I felt that there wasn't really a policy in place that I could necessarily discipline or say it's not appropriate, but I just highlighted that I was uncomfortable.

PN1232

Natalie's evidence is that she sent you the messages to include you because she was concerned that, if she didn't send them to you, she would be excluding you, and so she sent it to everyone in her list, the first text message. Did you ask HR to communicate something to Natalie?---We spoke about it and it was - me speaking to HR was more about just having - feeling a little bit - like having a conversation about it and sort of trying to understand, like, the situation, but it wasn't - I thought I would let it go unless there was something more that came through, and I thought ultimately there's no point in starting a confrontation, rather best for everyone, especially if she has to work with my team, that I just not reply at all. That was our decision.

PN1233

So you could manage it yourself in the end?---Yes.

PN1234

When Natalie came into - here at paragraph 26, you refer to the claims document, so not the petition, that the document was long. You didn't ask Natalie - - -

PN1235

THE DEPUTY PRESIDENT: Sorry, what paragraph?

PN1236

MR CULLINAN: 26, on page 344.

PN1237

You didn't ask Natalie to arrange for a copy to be emailed to you or sent to you, did you?---No.

PN1238

You said, 'Just don't leave it with me'?---I said, if she was only going to give me 10 minutes, don't leave it with me, and no alternative option was offered.

PN1239

You understood that you were being asked to sign on to all those claims?---That's how I understood it, yes, and I specified that I would need to know everything and I would need to agree with all of the things for how I feel.

*** HANNAH JANE MAYBURY

XXN MR CULLINAN

PN1240

We have already spoken a little bit about your paragraph 31 on page 345. Mon's evidence is that they never said that you needed to hear how horrible everyone else is being treated. I put it to you that they didn't actually use those words, they didn't say that to you. That's true, isn't it?---No, they did say that to me.

PN1241

Do you have any particular non-retail qualifications?---Yes.

PN1242

What's your qualification?---I have a Bachelor's in Fine Arts, specialising in film and television, and I have a Bachelor's in Design, specialising in fashion and costume.

PN1243

Fantastic. Do you believe that there's a difference in the aesthetic of each brand of Factory X?---A hundred per cent, yes.

PN1244

There's a big difference between the brands of Gorman and Dangerfield?---The aesthetic is different across all the brands.

PN1245

Each brand has its own aesthetic?---Yes.

PN1246

Thank you. They are all our questions.

PN1247

THE DEPUTY PRESIDENT: Thank you, Mr Cullinan. Ms Moloney?

PN1248

MS MOLONEY: I have no re-examination, thank you.

PN1249

THE DEPUTY PRESIDENT: Ms Maybury, you are free to leave. We're getting towards the end of the day, but you may stay or you may leave. Thank you?---Thank you.

<THE WITNESS WITHDREW

[3.40 PM]

PN1250

THE DEPUTY PRESIDENT: That's it, Ms Moloney, your witnesses?

PN1251

MS MOLONEY: Yes. I think we just need to deal with the issue of Isabella Cox's statement.

PN1252

THE DEPUTY PRESIDENT: Yes. As I have done with Ms Pillar's statement, I will mark the statement of Ms Cox R6.

EXHIBIT #R6 WITNESS STATEMENT OF ISABELLA COX

PN1253

MS MOLONEY: Thank you.

*** HANNAH JANE MAYBURY

XXN MR CULLINAN

PN1254

THE DEPUTY PRESIDENT: All right. Mr Cullinan?

PN1255

MR CULLINAN: We had some short conferral and I take it - - -

PN1256

MS MOLONEY: We didn't really. We were just talking about submissions, and I think, Deputy President, you were going to make a decision whether they would be written or oral, so perhaps we will hand it to you.

PN1257

THE DEPUTY PRESIDENT: I'm relaxed about it either way, but I always like to get the views of the parties in a contested matter such as this, so - - -

PN1258

MS MOLONEY: I think we both expressed a preference for written submissions, but we are both, I think, available to present tomorrow, if that's more suitable, to get it all done in one day.

PN1259

THE DEPUTY PRESIDENT: All right. The parties should know this: if I sit tomorrow and you close in orals, because of a number of other matters I have over the next few weeks, there's a good chance I won't get to the decision quickly, i.e. in the next couple of weeks. I might be able to get the decision more quickly in a few weeks' time, in which case, there may be utility in the parties providing written submissions.

PN1260

MR CULLINAN: Eternally hopeful, as a union, that the decision might come tomorrow afternoon.

PN1261

THE DEPUTY PRESIDENT: The season of good will has evaporated quickly, Mr Cullinan, on my return from Christmas, and I just have a couple of urgent priorities involving some, as it turns out, some contested agreement matters unrelated to RAFFWU.

PN1262

MR CULLINAN: I will be here next week as well.

PN1263

THE DEPUTY PRESIDENT: Yes, I know, I know. So I've got a number of urgent matters - this is also one of those, I appreciate.

PN1264

MR CULLINAN: Yes, I think we would say that some short time for written submissions would be suitable.

PN1265

THE DEPUTY PRESIDENT: Is seven days either side all right?

PN1266

MR CULLINAN: Yes, that's - - -

PN1267

MS MOLONEY: Yes, Deputy President.

PN1268

THE DEPUTY PRESIDENT: Post receipt of transcript or - - -

PN1269

MS MOLONEY: That would be useful.

PN1270

THE DEPUTY PRESIDENT: Okay. Well, I will, at great expense for the Commission, I will ask the transcription to be expedited.

PN1271

MS MOLONEY: Thank you. I note you have made some savings on the clock, so - - -

PN1272

THE DEPUTY PRESIDENT: The general manager doesn't like me requesting urgent transcript, but to hell with the expense, we'll get - - -

PN1273

MS MOLONEY: Thank you, that's very much appreciated.

PN1274

THE DEPUTY PRESIDENT: So what I will do, if the parties are in agreement, I will request expedited transcript. When I send the transcript to the parties, the seven days will run from that date. Are you content with that?

PN1275

MS MOLONEY: Yes, thank you very much, Deputy President.

PN1276

MR CULLINAN: Thank you, Deputy President.

PN1277

THE DEPUTY PRESIDENT: All right. Nothing else?

PN1278

MS MOLONEY: No.

PN1279

THE DEPUTY PRESIDENT: All right. Thank you to the parties, thank you for the efficient manner in which the evidence has been led from the witnesses. I always acknowledge with persons who haven't been before the Commission before that the giving of evidence can be a little bit daunting, and I acknowledge that. I do try and make it as easy as possible for the parties. I hope they felt comfortable to do so and not threatened by the process.

PN1280

I thank them for giving evidence, those that are still here. I will have regard to all of that evidence, along with the submissions put forward by the applicants.

PN1281

With that, I will now adjourn. Thank you very much.

ADJOURNED INDEFINITELY

[3.44 PM]

LIST OF WITNESSES, EXHIBITS AND MFIs

EXHIBIT #A1 WITNESS STATEMENT OF LEO MOE DATED 05/12/2023	PN62
EXHIBIT #A2 WITNESS STATEMENT OF FREYER BLACK DATED 05/12/2023	PN65
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