



Federal Court of Australia

District Registry: Australian Capital Territory

Division: Fair Work

No: ACD47/2018

SIMON ALEXANDER TURNER

Applicant

READY WORKFORCE (A DIVISION OF CHANDLER MACLEOD) PTY LTD (ACN 088 288 037) and others named in the schedule

Respondent

ORDER

JUDGE: JUSTICE MURPHY

DATE OF ORDER: 16 December 2021

WHERE MADE: Melbourne

THE COURT ORDERS THAT:

1. Pursuant to sections 37AF and 37AG(1)(a) of the *Federal Court of Australia Act 1976* (Cth), in order to prevent prejudice to the proper administration of justice:
 - (a) the Applicant have leave to file as a confidential exhibit annexure RMM-1 to the affidavit of Rory Michael Markham dated 6 December 2021 (**Confidential Material**); and
 - (b) the Confidential Material not be required to be served on the Respondent or any other person; and
 - (c) the Confidential Material be placed on the Court file in a sealed envelope marked “*Not to be opened without leave of the Court or a Judge*”.
2. By 20 December 2021:
 - (a) the First Respondent send to the last known email address (or, where no email address is held, via text message to the last known mobile phone number) recorded in its files for each group member; and
 - (b) the solicitors for the applicant, Adero Law send to the last known email address (or, where no email address is held, via text message to the last known mobile



phone number) for each group member who has registered an interest in participating in the action,

a notice in the terms of **Annexure A** to these orders.

3. By 22 December 2021, the Respondents file and serve any short outline of submissions that they wish to be taken into account by the Court in determining the Applicant's application for approval to discontinue the proceeding.
4. By 27 January 2022 the solicitors for the Applicant, Adero Law, shall file and serve an affidavit to inform the Court as to whether any group member has informed the firm that he or she:
 - (a) intends to object to or oppose the application for Court approval to discontinue the proceeding; or
 - (b) is willing, following receipt of legal advice, to be substituted as the applicant in the proceeding, with the proceeding to be continued without the support of the litigation funder, Augusta Ventures Limited.
5. In the event that a group member informs Adero Law that he or she intends to object to or oppose the application for Court approval to discontinue the proceeding or is willing to be substituted as the applicant, the proceeding be listed for a case management hearing forthwith.
6. In the event that no group member informs Adero Law pursuant to Order 4, the application for Court approval to discontinue the proceeding be determined on the papers.

Date that entry is stamped: 16 December 2021


Registrar



Annexure A

NOTICE TO GROUP MEMBERS - PROPOSED DISCONTINUANCE OF CLASS ACTION SIMON ALEXANDER TURNER v READY WORKFORCE (A DIVISION OF CHANDLER MACLEOD) PTY LTD ACN 088 288 037 & ORS (ACD47/2018)

A. The Claim

The Federal Court has ordered this notice to be sent to you because it appears that you were hired by Ready Workforce (A Division of Chandler Macleod) Pty Ltd (**RWF**) as a "casual" employee, and you worked at the Mt Arthur Coal mine in the period from 20 December 2012 to 19 December 2018. This means that you may be a "Group Member" in the Federal Court class action named *Turner v Ready Workforce (A Division of Chandler Macleod) Pty Ltd (Class Action)*.

In the Class Action, Mr Turner has alleged that he and Group Members were not, at law, casual employees, and were therefore wrongly denied paid annual leave and other entitlements provided to non-casuals under the *Coal Mining Industry Award 2010* and/or the *Chandler Macleod Northern District of NSW Black Coal Mining Agreement 2015* (collectively, **Industrial Instruments**). Mr Turner also makes claims with respect to rates of pay applicable to hours worked under the Industrial Instruments.

B. Reasons for Discontinuance

Mr Turner has sought leave of the Court to discontinue the Class Action. He, his solicitors, and counsel have decided that the Class Action no longer has reasonable prospects of success because:

- (a) the High Court has recently decided a case named *WorkPac Pty Ltd v Rossato & Ors*, in which it found that Mr Rossato (another black coal miner working on labour hire assignments) was, at law, a casual employee; and
- (b) the *Fair Work Act 2009* (Cth) has recently been amended in a way that will make it harder for the Class Action to succeed, and the amendments apply retrospectively.

For similar reasons, the litigation funder that has provided funding to run the Class Action has also said it will cease providing any further funding to pay for lawyers, and Adero Law no longer wishes to act as solicitor in the case.

If the Court grants leave to discontinue the Class Action, you will still be able to bring your own court case to make the same claims, either just for yourself, or also on behalf of other Group Members, if you wish. If this is something you think you might want to do then you should get legal advice urgently, because there are deadlines for bringing such claims.

C. What Options Are Available to You?

There are three options. The deadline for taking up one or other of the options is the **close of business, 21 January 2022**. Should you wish to discuss your options, you should obtain independent legal advice and/or contact Adero Law via the details provided at paragraph D of this notice. The options are:

- (1) do nothing, in which case the matter will be discontinued. In this event, you will still be able to bring any individual claim connected to your employment with RWF, if you wish;
- (2) propose yourself or another Group Member to be substituted for Mr Turner as lead applicant in the Class Action, and thereby take over the conduct of the case. The proposed new lead applicant must be willing to conduct the case on his or her own behalf and on behalf of Group Members, and to appoint lawyers to act in the case and to meet the legal costs; or
- (3) object to or oppose the proposed discontinuance of the Class Action.

If you wish to take up option (2) or (3) above, you must so inform Adero Law via email by **close of business on 21 January 2022**. Any email to Adero Law in this regard may need to be shown to the Court and to the other parties to the Class Action (namely RWF, Chandler Macleod Group Limited and Mt Arthur Coal).



D. Contacting Adero Law

Adero Law can be contacted via the following details:

Phone: (02) 6189 1022

Email: cmgcoalaction@aderolaw.com.au



Schedule

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Division: Fair Work

Second Respondent MT ARTHUR COAL PTY LIMITED (ACN 000 181 902)

Third Respondent CHANDLER MACLEOD GROUP LIMITED (ACN 090 555 052)