



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 24 Sep 2024 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: B41/2024
File Title: Australian Competition and Consumer Commission v. J Hutch
Registry: Brisbane
Document filed: Form 27B - Appellant's joint chronology (B41/2024 and B42/
Filing party: Appellant
Date filed: 24 Sep 2024

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

Australian Competition and Consumer Commission
Appellant

Part II: LIST OF PRINCIPAL EVENTS LEADING TO THE LITIGATION

Date	Event	References
10 May 2012	J Hutchinson Pty Ltd (ACN 009 778 330) (Hutchinson) entered into an enterprise bargaining agreement (EBA) with the Construction, Forestry and Maritime Employees Union (CFMEU) for the period 2011 to 2015.	Core Appeal Book (CAB): 14 [4], 37 [119]-[120]
1 September 2015	Hutchinson makes request for tender for waterproofing on the Southpoint A Project (Southpoint Project).	CAB: 39 [127]
9 September 2015	Email from Lindsay Ashton to John Berlese stating that Waterproofing Industries Qld Pty Ltd (WPI) had confirmed it would provide pricing for the tender before 14 September 2015.	CAB: 39 [128]
13 September 2015	WPI submits initial tender to Hutchinson for waterproofing on the Southpoint Project.	CAB: 39 [129]
1 October 2015	Lindsay Ashton requests that WPI revise its price and exclude certain items.	CAB: 39 [130]
16 October 2015	Lindsay Ashton sends an invitation for a meeting on 21 October 2015 between Lindsay Ashton, Charlie Hadfield and Raul Paez to discuss the review of WPI's tender.	CAB: 39 [130]
23 October 2015	WPI issues revised quotation to Hutchinson.	CAB: 39 [131]
9 November 2015	EBA between Hutchinson and the CFMEU is approved.	CAB: 40 [134]
5 January 2016	EBA between Spanos (Qld) Pty Ltd (Spanos) and its employees is approved.	CAB: 41 [138]
2 March 2016	A new list of subcontractors which had an EBA was issued. The list included Spanos in its list of waterproofers.	CAB: 41 [139], 86 [340(10)], 221 [119(10)]
11 March 2016	The formal instrument of agreement is executed by Hutchinson for the Southpoint Project.	CAB: 41 [141]
21 March 2016	Email from Lindsay Ashton to Charlie Hadfield, copied to Ray Hadfield, attaching an unsigned subcontract agreement between Hutchinson and WPI for the Southpoint Project.	CAB: 41 [142]
22 March 2016	WPI and Hutchinson sign the subcontract for the Southpoint Project.	CAB: 15 [7], 41 [142], 86 [340(11)], 208 [97(7)], 222 [119(11)]
22 March 2016	Email from Lindsay Ashton to Henk Thone, John Swift, Peter Meland and Raul Paez stating that WPI is	CAB: 42 [143]

Date	Event	References
	the waterproofing contractor for the Southpoint Project.	
Around April or May 2016	Peter Meland, Justin Steele and Damon Clarke met at the Southpoint Project site. Peter Meland informs Justin Steele that WPI had previously been engaged as a subcontractor.	CAB: 42 [145]-[148], 86 [340(13)], 222 [119(13)]
Around mid-May 2016	Damon Clarke is elected as the CFMEU delegate.	CAB: 87 [340(15)], 222 [119(15)]
25 May 2016	Charlie Hadfield (WPI) is inducted onto Southpoint Project site.	CAB: 46 [167]
Around May 2016	WPI commences some waterproofing work in the lift pit.	CAB: 46 [167]-[168]
Around late May or June 2016	Justin Steele, John Berlese and Damon Clarke meet at the Hutchinson headquarters in Toowong. Justin Steele raises concerns with safety and scheduling issues at the Southpoint Project and states that the CFMEU was not consulted before WPI, who did not have an EBA, was appointed as the subcontractor.	CAB: 46 [165]-[166], 87 [340(16)], 222 [119(16)]
1 June 2016	Email from Ray Hadfield to Peter Meland stating that WPI would be paying its workers EBA rates and that any onsite workers would be financial members of the CFMEU before they are inducted.	CAB: 48 [177]
7 June 2016	Email from Peter Meland to Ray Hadfield seeking an update on registrations for the building industry superfund (BUSSQ), Building Employees Redundancy Trust (BERT) and Construction Income Protection Queensland (CIPQ).	CAB: 48 [179]
7 June 2016	Email from Ray Hadfield to Peter Meland stating that Ray Hadfield would be meeting with his business partner to resolve the issue.	CAB: 48 [180]
10 June 2016	Email from Peter Meland to Ray Hadfield advising that BUSSQ, BERT and CIPQ registrations needed to be sorted that day.	CAB: 48 [181]
11 June 2016	Conversation between Damon Clarke and Peter Meland at the Southpoint Project site that Hutchinson would 'sit the job down' if WPI came on site and that WPI did not have an EBA.	CAB: 49 [186], 50 [188], 50-52 [192]-[197], 55 [207], 87 [340(18)-(19)], 184 [11], 222 [119(18)-(19)]

Date	Event	References
Around 11 June 2016	Conversation between Peter Meland and Ray Hadfield about WPI needing to push the CFMEU to get an EBA.	CAB: 49 [186], 86 [340(9)] Appellant's Book of Further Material (ABFM): 15 [53]
From around 11 June 2016	No further work is completed by WPI on the Southpoint Project.	CAB: 15 [10], 63 [249], 64 [252], 70 [275], 88 [340(22)], 185 [14], 199 [71], 223 [119(22)]
13 June 2016	Peter Meland sends an email to John Berlese summarising the conversation with Damon Clarke on 11 June 2016 and stating that the CFMEU delegate approached him about WPI being onsite and was under instructions from Justin Steele to sit the job down if WPI comes on site.	CAB: 49 [187], 87 [340(20)], 222 [119(20)]
13 June 2016	Peter Meland sends an email to Ray Hadfield re 'BUS', BERT, CIPQ and EBA rates.	CAB: 77-78 [310] ABFM: 493
Around 18 June 2016	Conversation at the Southpoint Project site between Peter Meland and Justin Steele that Ray Hadfield would not be able to get an EBA. Justin Steele suggests that Meland use Spanos, which had an EBA.	CAB: 59 [225], 88-89 [340(24)], 223 [119(24)] ABFM: 15 [54]-[55]
21 June 2016	Email from Charlie Hadfield to Peter Meland stating that WPI workers have become financial members of the CFMEU and members of CIPQ, BUSSQ and BERT. Charlie Hadfield states 'if theres [sic] anything Ray can do further to try and resolve this issue please let him know as we are eager to continue working'.	CAB: 59 [226], 89 [340(27)], 223-224 [119(27)]
27 June 2016	Email from Peter Meland to Ray Hadfield and Charlie Hadfield stating that 'I have put it in the hands of our IR team to resolve'.	CAB: 65 [256], 90 [340(29)], 186 [15], 224 [119(29)]
Around June 2016	Conversation between Henk Thone and Damon Clarke, in which Henk Thone was told by Damon Clark words to the effect that WPI was not allowed	CAB: 62-63 [243], 63 [249], 90 [340(28)], 224

Date	Event	References
	back on site and that the reason for this was that it did not have an EBA.	[119(28)] ABFM: 88 [27]
Around June 2016	Conversation between Henk Thone and Peter Meland about whether WPI was required to be an EBA subcontractor.	CAB: 63 [244]-[249] ABFM: 88 [29]
Around late June 2016	Conversation between Peter Meland and Henk Thone. Henk Thone states that he needs a waterproofer and asks for 'the next person on the list'.	CAB: 63-64 [250], 90 [340(30)], 224 [119(30)] ABFM: 88 [34]
13 July 2016	Spanos is inducted onto the Southpoint Project site.	CAB: 70 [277], 90 [340(30)], 185 [19], 224 [119(30)]
13 July 2016	Email from Ray Hadfield to the CFMEU seeking further information about being unable to work at the Southpoint Project site.	CAB: 90 [340(31)], 185-186 [19], 224 [119(31)]
20 July 2016 onwards	Spanos commences waterproofing works on the Southpoint Project.	CAB: 70 [277], 90 [340(30)], 224 [119(30)]
Around 19 July / before 26 July 2016	Conversation between Peter Meland, John Berlese and Raul Paez about terminating WPI. John Berlese says words to the effect of 'deal with it'.	CAB: 70 [274], 91 [340(33)], 186 [20], 225 [119(33)]
26 July 2016	Meland terminates WPI subcontract pursuant to Termination for Convenience Clause.	CAB: 15 [10], 70 [276], 91 [340(33)], 225 [119(33)]
23 September 2016	Spanos provides quote for waterproofing works on the Southpoint Project.	CAB: 70 [277]
11 to 13 and 15 October 2021	Hearing on liability before the Federal Court (Downes J)	CAB: 6
14 February 2022	Downes J delivers liability judgment	CAB: 6, 10, 96
17 May 2022	Hearing on penalty before the Federal Court (Downes J)	CAB: 101

Date	Event	References
30 August 2022	Downes J delivers penalty judgment	CAB: 99, 103, 150
27 September 2022	Hutchinson files a notice of appeal in the Full Court of the Federal Court of Australia (QUD 335/2022)	CAB: 154
27 September 2022	The CFMEU files a notice of appeal in the Full Court of the Federal Court of Australia (QUD 340/2022)	CAB: 166
25 to 26 May 2023	Hearing before the Full Court of the Federal Court (Wigney, Bromwich and Anderson JJ)	CAB: 178
29 February 2024	The Full Court of the Federal Court delivers judgment	CAB: 176, 180, 260
28 March 2024	The ACCC files an application for special leave to appeal (from QUD 335/2022)	
28 March 2024	The ACCC files an application for special leave to appeal (from QUD 340/2022)	
8 August 2024	The ACCC is granted special leave to appeal	CAB: 274, 279
22 August 2024	The ACCC files a notice of appeal in the High Court of Australia (Proceeding B41/2024)	CAB: 275
22 August 2024	The ACCC files a notice of appeal in the High Court of Australia (B42/2024)	CAB: 280

Dated 24 September 2024



Name: Michael Hodge

Telephone: 02 8039 7209

Email: michael.hodge@omniachambers.com