



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**JUSTICE HATCHER, PRESIDENT**

**AG2023/1009**

**Sch. 3, Item 20A(4) - Application to extend default period for agreement-based transitional instruments**

**Application by Nine2Three Employment Solutions Pty Ltd T/A CIRCLE Recruitment & HR  
(AG2023/1009)**

**Sydney**

**10.00 AM, FRIDAY, 30 JUNE 2023**

PN1

JUSTICE HATCHER: Good morning. Ms McMillan, you appear for the applicant, which is Nine2Three Employment Solutions Pty Ltd, correct?

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MS K McMILLAN: Correct, I'm the managing director.

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JUSTICE HATCHER: Yes, you're the director. All right. Do you have a copy of your application with you?

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MS McMILLAN: I can bring that up.

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JUSTICE HATCHER: There's just a technical matter which I need to address on page 3 of the application.

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MS McMILLAN: Okay. Just let me - it's my original application. Sorry, I didn't realise that I would need that. I will just search for it. Do you happen to know the - because I sent it through to you twice. I sent it earlier and I couldn't get a response, and I sent it through again just recently. Do you happen to know when my second email was?

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JUSTICE HATCHER: Put it this way, is it easier if we just email you back the application and then you can open it?

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MS McMILLAN: Yes, that would be fine.

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JUSTICE HATCHER: Just give me a second, we will try to organise that.

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MS McMILLAN: Okay. Sorry about that.

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JUSTICE HATCHER: That's all right. We have just sent that, Ms McMillan.

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MS McMILLAN: Okay. Yes, just received.

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JUSTICE HATCHER: When you're ready can you open that up and just go to page 3 of 8.

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MS McMILLAN: Yes, I'm on page 8.

PN15

JUSTICE HATCHER: So if you're on that page you will see halfway down it says, there's a section 2 'The application' and 2.1, 'Which application is being made?' Do you see that?

PN16

MS McMILLAN: Sorry, not on - okay, sorry, 1 of 8, 2 of 8 and then 3 of 8, got it. Okay, 2.1 'Which application is being made?' So I (audio malfunction) the default period for the enterprise agreement.

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JUSTICE HATCHER: Yes. So as I understand it this agreement - I'm sorry this is all a bit technical, but this agreement was made in 2007, correct?

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MS McMILLAN: Correct.

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JUSTICE HATCHER: All right. So I think what it is, is that it falls into the first category, not the third category. So the third category applies to the bridging period. That was in 2009. It was actually in the first category.

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MS McMILLAN: Right, okay.

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JUSTICE HATCHER: Can I just take it that your application is amended to move it across from the third box to the first box?

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MS McMILLAN: Correct.

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JUSTICE HATCHER: Yes, all right. The application is amended in that way. Now, I just want to clarify with you the basis upon which the application is brought. You don't contend, do you, that employees are better off under the agreement, but under the relevant award, which would seem to be the Clerks Award?

PN24

MS McMILLAN: No, they are better off because when we adjust the pay rates each year to the Clerks Award we are always above the Clerks Award, so they are minimally, but, yes, better off.

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JUSTICE HATCHER: When you say you adjust it in that way you do that by your own initiative, that is does that adjustment occur pursuant to any provision of the agreement?

PN26

MS McMILLAN: No, it doesn't. Initially when the agreement was put in place the legal firm that created the agreement did adjustments every year. They also

reviewed the agreement for me some years later to confirm that it was corresponding to the Clerks Award. That was where the coverage was. Because it's been going for so long and I realised what the legal firm were doing, which was the rates of the Clerks Award, because it's only the casual rates that we specifically work in, and then just increasing them slightly, and charging me an awful lot of money to do that every year, so then I began just doing that myself. So we're compliant and slightly better off every year in regards to rates. And in addition we follow the National Employment Standard, so anything - you know, we work to the National Employment Standard, so anything that was not in that agreement because it was not in existence at the time we comply with as well.

PN27

JUSTICE HATCHER: All right. Just taking account what you have just said can you explain why you actually need this agreement to continue; that is, if you're paying above award rates and you're complying with the NES what's the purpose of the continuation of this agreement?

PN28

MS McMILLAN: Yes. So the purpose of the continuation is that we are a recruitment and HR consultancy. We're a small business. I've got seven internal staff and we have on-hired staff, and we use the agreement for our on-hired staff. We are in a particularly difficult, difficult time at the moment. We've been going nearly 20 years, but in 2019 I had to undergo a number of operations and I was out of the business for about six months which was a major hit on such a small business. Then of course 2021 and 22 we had the pandemic. You can imagine people did not recruit much during those years, so extremely damaged by that, and we're virtually on the brink of trying to survive.

PN29

Now, currently while I'm trying to put all my focus into business development recruitment is specifically hard. Because it is such a tight employment market my staff need to work extra, extra hours in regards to trying to fill roles for clients. We currently don't have enough work because the economic conditions of the increasing interest rates and increase in the cost of living is impacting all the businesses who are our clients. So therefore they are not recruiting as much, and when they do recruit the time that it takes us to fill the roles because of the lack of candidates is so low that it basically - we're not making any money, because I have to pay such wages and the searching is so hard.

PN30

So the way that we work currently the staff all know that ECA they get their rates every year, which we do for them, the new rates, so that they know what to pay. If we are going to change that right at this point in time I'm going to go back and have to train them more on the Clerks Award, the understanding of the award, which at the moment I just can't afford to do. So I'm pleading financial hardship for a small business and, you know, I myself my wages in the business are the very, very minimum. Many people would not work for what I earn. Sorry.

PN31

JUSTICE HATCHER: I understand the general issues you're raising, but what I don't understand is what is it in the agreement that either helps you or makes the position better or is different from what's in the award. That is I am not seeing what it is in the agreement that is particularly beneficial or - - -

PN32

MS McMILLAN: It's that I can't afford right now the time to train the team in a new circumstance, you know, as something new that they have to follow that they have not - you know, they don't know about Clerks Award essentially because I do all of that. So if I now have to say we're not using that, you know, I now have to go and retrain them, put a whole lot of things into place, because it will be a change. So it's actually the change. I don't have a problem eventually doing that, but please to God not right at this moment. The world seems to have forgotten how tough it is for small businesses after three years of the pandemic and trying to stay afloat.

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JUSTICE HATCHER: All right. Ms McMillan, today has only been a preliminary hearing just for me to get an understanding of the application. The Commission has to determine it. Have you said everything you want to say in support of the application, or do you seek a further opportunity to make a more detailed submission?

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MS McMILLAN: Look, I think I would just like to say that, you know, we have always been a good employer. We always have, I have always followed and been compliant with the law all along. The issue for me is the timing which is inconsiderate considering what small businesses have been through in the last number of years. If I go under, you know, because I can't focus on what we need to in these very difficult times, you know, seven employees will lose their jobs through me, and it's the timing is the major issue I have, which is why I am applying for an extension. I understand that it will happen, but my application is around the timeframe.

PN35

In such a difficult market as it is at the moment in difficult economic times when are clients are dropping like flies we just cannot cope with other legislative compliance issues. We need to be left alone to try to survive what we've been trying to survive for the past three years to get into a better position and potentially we could look at this - another 12 months would be perfect.

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JUSTICE HATCHER: All right.

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MS McMILLAN: If the Commission felt so generous.

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JUSTICE HATCHER: Again I just want to make it clear that you get the opportunity to say everything. So it doesn't have to be today. If you want to put something in writing or have another hearing that's a matter for you, but I just

want to ensure that you get the chance to say everything you want to say and then we make a fully informed decision.

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MS McMILLAN: No, look, I think that's fine, and I'm just reading what I wrote originally in my application. I had more staff when I wrote that application. We had to downsize because of economic pressures. I think in essence it's my same argument.

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Just one final thing, you know, everything with Fair Work often seems to be skewed towards the benefit of employees, and I don't have a problem with that, but I think Fair Work needs to look at the business owners and how hard it is for small businesses in Australia to manage with the amount of legislative compliance that is put on us and the very little help that we get, and that's it.

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JUSTICE HATCHER: All right. Have you spoken to your employees about this issue?

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MS McMILLAN: No, not particularly, because I thought that I would work that out with you first.

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JUSTICE HATCHER: All right, well if there's nothing further and you don't want to make any further submissions I will consider what has been put and the Commission will issue a decision.

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MS McMILLAN: Okay. Can you let me know the timeframe for your decision?

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JUSTICE HATCHER: It will be well before the end of the year, hopefully in the next few weeks.

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MS McMILLAN: Okay, terrific. Thank you for hearing my case and we will look to your decision. Hopefully it assists me.

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JUSTICE HATCHER: All right. Thank you for your attendance. We will now adjourn which means you can simply disconnect.

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MS McMILLAN: Okay.

**ADJOURNED INDEFINITELY**

**[10.27 AM]**