

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIAN DISTRICT REGISTRY

V No.831/2003

BETWEEN:

FINANCE SECTOR UNION OF AUSTRALIA

Applicant

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED

ABN 11005357522

Respondent

AFFIDAVIT OF RYAN PSAILA

I, Ryan Psaila, Mortgage Assistance Officer of 2 Kingsclere Street, Vermont in the State of Victoria MAKE OATH AND SAY AS FOLLOWS:

1. I commenced employment with the Respondent on 21 January 2002. I am still employed by it and have been engaged full-time since the commencement of my employment.
2. My employment with the Respondent ("ANZ") arose following a recruitment process through Drake Personnel. I had not been previously employed by ANZ.

Filed on behalf of the Applicant by
RYAN CARLISLE THOMAS
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Ryan Psaila

[Signature]

3. I was working for Drake Personnel and was placed by them with the ANZ. I was subsequently advised by Drake Personnel that there was a job vacancy to be employed by the ANZ. I applied for the position and was interviewed by Karen Wilson, Manager with the ANZ. At the time of the interview there were a number of applicants. There was no discussion at that time about the terms and conditions of employment.

4. At around the time of the commencement of my employment as an ANZ employee I received a letter from the ANZ dated 16 January 2002. The letter indicated that my contracted hours would be based on a four-week cycle of 152 hours with applicable benefits being calculated on those hours. The letter required me to sign the original and return it to the ANZ. I signed the letter and returned it. I am advised by Ryan Carlisle Thomas, the solicitors for the Applicant that the Respondent has provided to them for the purpose of these proceedings a copy of the letter dated 16 January 2002 which I signed and returned to the ANZ. I have been shown a copy of that letter. Now produced and shown to me and marked "RP1" is a true copy of the letter of 16 January 2002 which I signed and returned.

5. About a month after commencing employment I was advised Karen Wilson that the letter I had been provided with was wrong and needed amendment. I was issued with a further letter also dated 16 January 2002, that indicated that my contracted hours would be based on a four-week cycle of 152 hours with applicable benefits being calculated on those hours. However, in addition this letter required me to acknowledge that I accepted ANZ's offer to work an additional 8 uncontracted hours each four-week cycle and receive a single time payment quarterly in arrears for those hours. Now produced and shown to me and marked "RP2" is a copy of the second of the letters dated 16 January 2002 forwarded to me which I signed and returned to the bank.

Phil Earle

[Signature]

6. I was unhappy about being required to sign this second letter of appointment. However, I was followed up on a couple of occasions by Karen Wilson and pressed to sign the amended letter. She said the old contract allowed me to have RDO's and they were not to apply. No reason was provided. I finally signed the amended letter on 24 February 2002 and returned it.
7. I was told by Karen Wilson at the time of her telling me about the second letter that my employment was on the basis of 160 hours and that I would be paid for 152 hours and receive an allowance for the extra 8 hours per month. I was not provided with any option but to work the 160 hours and the 160-hour pattern did not arise through mutual agreement between us. There was no discussion about the possibility of employment on what I have only subsequently understood to be a standard 152-hour month with an RDO in the ANZ. It was only in the course of discussions with the Applicant about these proceedings that I learned that the ANZ Agreement provided for a standard 19-day month.
8. Under the arrangements for my employment I regularly worked 160 hours per four-week cycle. I was paid for 152 hours per month and paid for the additional 24 hours each quarter. I am advised by Ryan Carlisle Thomas, Solicitors for the Applicant that the Respondent has provided a document in relation to my pay for the purpose of these proceedings. Now produced and shown to me and marked "RP3" is a true copy of that document headed Payments on People Soft made to me. That document illustrates the basis of my payment for 160 hours per four-week cycle. Namely 76-hours per fortnight and a single time payment quarterly for the 24 additional hours. This was the case until a further arrangement was given effect in about April 2003.

Mark Earl

[Signature]

9. In the period 13 September 2002 to 10 October 2002 I was engaged on the 160-hour basis referred to above. Now produced and shown to me and marked "RP4" is a true copy of my timesheet for the period 13 September 2002 to 10 October 2002. That timesheet records the hours I actually worked, ie 8 hours per day, against the contract hours of 8 hours per day.
10. I was paid in that period for only 152 hours at the time. An additional payment in respect of the other 8 hours was made separately. Now produced and shown to me and marked "RP5" is a copy of an ANZ Payment Return for the period ending 18 November 2002 for 24 hours work, or three months of the extra 8 hours per month. That document was provided to me by the Solicitors for the Applicant who advised that it had been provided to them by ANZ for the purpose of these proceedings.
11. In respect of the period from the commencement of my employment until 27 January 2003 my working hours were 160 per four-week cycle. I only received single time payment in relation to the 160 hours.
12. Neither at the time of the commencement of my employment, or thereafter, did I agree to continue to work an average of 160 hours per four-week cycle in exchange for additional benefits. I was not provided with any alternative but to work the 160 hours. There was no discussion or agreement in relation to additional benefits.
13. I was not paid overtime and was not provided with a pay out for a day off. I would have been entitled to a day off as an RDO had an 152 hour arrangement applied and there had been no requirement to work an additional 8 hours per four-week cycle with a separate payment for the additional hours.

Patricia

[Signature]

14. I am not sure if the additional 8 hours per month were included for superannuation or annual leave calculation purposes. This issue was never discussed.
15. In January 2003 I continued employment but on an alternative basis with the ANZ. This commenced on 27 January 2003 and the basis was set out in a letter from the ANZ dated 12 February 2003. Now produced and shown to me and marked "RP6" is a true copy of the letter of 12 February 2003 from the ANZ.
16. The letter of 12 February 2003 from the ANZ required me in accepting the altered terms of employment to, in addition, accept ANZ's offer to work 160 contracted hours each four weeks in return for a reference to additional benefits. There was also a reference in that letter to me having advised my agreement to working 160 contracted hours in return for additional benefits. Contrary to that reference in the letter I provided no such advice and there was no discussion about additional benefits.
17. The circumstances under which the revised arrangements applied arose following a meeting at which Karen Wilson, an ANZ Manager, called a meeting of 15 to 20 employees engaged in my area. She advised the meeting that adjustments had to be made to all our contracts in relation to hours and RDO's. No details were provided of the changes to be made or the reasons for them. At not time in this period did I agree with Karen Wilson to adopt a 160-hour arrangement. She said that we would need to re-sign amended letters of appointment. A couple of days later I received the letter of 12 February 2003. Karen Wilson asked me to her desk at around that time, provided me with the letter and asked me to sign it immediately. I said that I wasn't prepared to sign the agreement immediately without reading it. I subsequently signed the letter on 27 February 2003 and returned it to Karen Wilson. There was no change in my position as Mortgage Assistance Officer classified as a group 6 grade 4 from that applying at the time of the commencement of my employment in January 2002.

Phil Carr

[Signature]

18. Following the new arrangements the procedure by which I was paid out quarterly in arrears for the extra 8 hours was terminated and I was simply paid 80 hours per fortnight and 160 hours per four-week cycle. I refer to the payments on People Soft Exhibit "RP3" which reflect the payments made to me from April 2003 being on an 80-hour basis.
19. In the period 28 March 2003 to 14 August 2003 I worked on the 160 hours per four-week cycle basis. I was paid for 80 hours per fortnight. This reflects my working pattern from January 2003 to the present. Now produced and shown to me and marked "RP7" are true copies of my timesheets for the period 28 March 2003 to 14 August 2003.
20. My pay slip for 2 May 2003 to 15 May 2003 was representative of the payment arrangement I received in this period. Now produced and shown to me and marked "RP8" is a true copy of my pay slip for the period 2 May 2003 to 15 May 2003.
21. In the period from January 2003 I have not received any overtime payments for the additional 8 hours over the standard 152. Further, I was not paid out for Rostered Days Off I didn't take but would be entitled to under a 152 hour and Rostered Day Off regime.
22. I did not agree from January 2003 to continue to work an average of 160 hours per four-week cycle in exchange for additional benefits. I was paid single time but no additional benefits were discussed, agreed or provided.
23. The letter of 12 February 2003 while referring to 160 contracted hours did not involve agreement on my part to a pattern of work outside 19 days per four-week cycle. I was

Paul Gault

[Signature]

not provided with any option and was not aware of the availability of an RDO arrangement. There was no discussion or agreement on my part to a change from a 19-day month to the 20-day month I have been required to work.

SWORN at Melbourne in the)
State of Victoria)
this day of ~~February~~ April)

5th 2004



BEFORE ME :



PHILIP GARDNER
RYAN CARLISLE THOMAS
80 Collins Street, Melbourne 3000
A current practitioner within the meaning of
the Legal Practice Act 1996