

From: Kerry O'Brien [kobrien@mccullough.com.au]
Sent: Tuesday, 31 January 2023 7:17 AM
To: Grace Morgan-Cocks [gmorgancocks@raffwu.org.au]; Chambers - Gostencnik DP [Chambers.Gostencnik.DP@fwc.gov.au]
CC: Josh Cullinan [jcullinan@raffwu.org.au]; Amber Sharp [asharp@mccullough.com.au]
Subject: RE: AG2022/5615 Application by Gusset - Application to terminate Apple Retail Enterprise Agreement 2014

Dear Associate

We refer to Ms Morgan-Cocks' communication to you below.

The Respondent employer did not consent to that email being sent, was not aware that any email to the associate would be sent other than exercising liberty to apply to seek a directions hearing, and considers it an inappropriate submission.

It would be in error for the Commission to make the directions sought and instead of granting the request for directions to be made in chambers, without affording the Respondent procedural fairness, the Commission should list the matter for the directions if it is minded to do so.

The Applicant's representatives are copied to this email.

Kind regards,

Kerry O'Brien

Senior Associate

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From: Grace Morgan-Cocks <gmorgancocks@raffwu.org.au>
Sent: Monday, 30 January 2023 5:34 PM
To: chambers.gostencnik.dp@fwc.gov.au
Cc: Josh Cullinan <jcullinan@raffwu.org.au>; Amber Sharp <asharp@mccullough.com.au>; Kerry O'Brien <kobrien@mccullough.com.au>
Subject: AG2022/5615 Application by Gusset - Application to terminate Apple Retail Enterprise Agreement 2014

Dear Associate

We refer to the above matter and Order 1 of the Directions made by the Deputy President on 25 January 2023 that Apple distribute the Directions by way of sharing the link to the Fair Work Commission's site for the present termination application to employees, accompanied by a short note *"alerting the employees to the fact that an application to terminate the Agreement has been made, that the Agreement currently applies to the employees and that information about the application (including*

directions enabling the employees to have input into the application) may be accessed by using the link to the dedicated matter page for the application on the Fair Work Commission website.”

We are concerned that Apple has not complied with the Directions by making accompanying comments, which may confuse and influence employees while the Application is still being determined.

We have been advised that Apple distributed that link to employees on either 27 or 28 January 2023 in a post entitled “A message from Ade” on Apple’s app function “Hello”. The message said (our emphasis in bold):

“Hi Team,

I have an important update for you regarding the application made to terminate the 2014 Retail Enterprise Agreement and revert our in-store Retail team members’ employment terms to those in the Retail Award.

This agreement covers all of our in-store Retail team. As you may remember from my note last week, the Fair Work Commission (FWC) would like you to have the option to review and share your feedback on the application to terminate our current agreement. If you'd like to participate and share your view, either in support or opposition, the FWC portal contains all of the information you need. The deadline to respond is March 1st 2023, however participation is not mandatory. The FWC owns this process and has asked us to share the link to a dedicated webpage, which can be found at the bottom of this update.

Many of you have asked me for Apple’s view. **The basis of the application is that the continued operation of our current agreement would be unfair to our team. We simply don’t agree. Apple pays its team members significantly higher minimum hourly rates of pay than the base rates of pay under the Retail Award, and provides many benefits and programs that are not available under the Award.**

This application is a distraction from our ongoing bargaining which we’re on track to resume in February. We have heard your feedback and Apple is committed to continuing bargaining to deliver a new Enterprise Agreement.

We appreciate that the FWC portal contains a lot of information and that you may have concerns or questions. Please don’t hesitate to reach out to your leaders if you have any questions.

Application to terminate the Apple Retail Enterprise Agreement 2014 | Fair Work Commission (fwc.gov.au)”

We are concerned that Apple has stepped outside the remit of the Directions by asserting that the Agreement is fair to workers because:

- Apple states that it pays workers a much higher rate than the relevant Award. This is a critical issue in dispute within the Application, the relevance of which remains to be determined by the Fair Work Commission.
- Apple states that it provides workers ‘benefits and programs’ that are not available under the Award. Apple has a suite of ‘benefits programs’ for its retail employees, such as discounted

private health coverage. These programs are not related to, and do not arise under, the Agreement. That is, the continued provision of these benefits programs are not contingent on the Agreement being in operation.

The current framing will, we fear, confuse workers into thinking that termination of the Agreement will necessarily lead to lower pay for workers, and that workers will not have access to its 'benefits and programs' if they are Award covered, rather than Agreement covered.

Finally, Apple also told workers that the Application proceedings are 'a distraction from bargaining'. We understand that is Apple's position. We are of the view that it is inappropriate however, in a note advising employees of their right to participate in the Application process, for Apple to tell employees that the Application is in fact a distraction. This comment implies that participating in the Application process is not important, and certainly less so than bargaining. This comment may convince employees not to share their views with the Commission and in turn undermine the Application proceedings. In circumstances where employee views will feature centrally in the Commission's determination under s 226(3)(a), it is inappropriate that Apple make any comment to employees on the merits of participating in the proceedings.

We have communicated the foregoing position to Apple, and it has advised us that it does not agree. Consequently, we ask that the Commission make the following further Directions in Chambers:

1. Apple Pty Ltd (Respondent Employer) shall remove the post entitled "A message from Ade" made on 27 or 28 January 2023 relating to the Application from any shared communications platform.
2. The Respondent Employer shall serve a copy of the Directions made on 25 January 2023 to all employees covered by the *Apple Retail Enterprise Agreement 2014* by providing them with a copy of the relevant link to a dedicated matter page on the Fair Work Commission website via its "Hello" application by no later than 12pm 31 January 2023. The provision of a copy of the link to employees is to be accompanied by a short note alerting the employees to the fact that an application to terminate the Agreement has been made, that the Agreement currently applies to the employees and that information about the application (including directions enabling the employees to have input into the application) may be accessed by using the link to the dedicated matter page for the application on the Fair Work Commission website **only**.

We have copied the Respondent's representatives to this email.

Kind regards

Grace Morgan-Cocks
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