

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 23/07/2020 4:07:00 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	VID488/2020
File Title:	PAUL BRADSHAW & ANOR v BSA LIMITED
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



Dated: 24/07/2020 9:41:42 AM AEST

A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. 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.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



**Originating application starting a representative proceeding under
Part IVA of the Federal Court of Australia Act 1976**

No. of 20

Federal Court of Australia
District Registry: Victoria
Division: Fair Work Division

Paul Bradshaw and another
Applicants

BSA Limited (ACN 088 412 748)
Respondent

To the Respondent

Each of the Applicants, for himself and on behalf of each of the Group Members, applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place:

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party) Paul Bradshaw and Scott Uren, Applicants

Prepared by (name of person/lawyer) Vicky Antzoulatos

Law firm (if applicable) Shine Lawyers Pty Ltd

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Address for service Level 6, 299 Elizabeth Street, Sydney, NSW, 2000
(include state and postcode)



Details of claim

On the grounds stated in the accompanying Statement of Claim, the Applicants claim on their own behalf and on behalf of Group Members:

1. A declaration that the Applicants and Group Members were employees of the Respondent.
2. A declaration that the Group Members, and each of the Applicants, were covered by the *Telecommunications Services Award 2010* (or such other Award that covers the Group Members and each of the Applicants).
3. A declaration that the Respondent contravened s 44 of the *Fair Work Act 2009* (Cth) (***Fair Work Act***) by reason of the matters set out in paragraphs 56 to 73 of the Statement of Claim.
4. A declaration that the Respondent contravened s 45 of the *Fair Work Act*, by reason of the matters set out in paragraphs 56 to 64, and 74 to 93 of the Statement of Claim.
5. A declaration that the Respondent contravened s 357 of the *Fair Work Act*, by reason of the matters set out in paragraphs 64 and 94 to 95 of the Statement of Claim.
6. A declaration that the Respondent breached the *Telecommunications Services Award 2010*, by reason of the matters set out in paragraphs 56 to 64, and 74 to 91 of the Statement of Claim.
7. An order, under s 545 of the *Fair Work Act*, that the Respondent pay compensation to the Applicants and Group Members.
8. An order, under s 546 of the *Fair Work Act*, that the Respondent pay a pecuniary penalty to the Applicants and Group Members in such sum as may be determined by the Court.
9. Further, and in the alternative to orders 1 to 8, an order, under s 16 of the *Independent Contractors Act 2006* (Cth), varying the Pleaded BSA Agreements (as defined in the Statement of Claim) by inserting a term that BSA pay a sum to each of the Applicants and Group Members such that they would be placed in the position they would have been in had they been employees of the Respondent.
10. Costs.
11. Interest.
12. Any further order appropriate to the nature of the case.



Common questions

The questions of law or fact common to the claims of the group members are:

1. Whether the Respondent controlled and directed, or had capacity to control and direct, the manner in which the Applicants and Group Members performed work.
2. Whether the Respondent superintended the Applicants' and Group Members' finances.
3. Whether the Applicants and Group Members were integrated into the business of the Respondent.
4. Whether the completion, by the Group Members and the Applicants, of Work Orders was represented as the activity of BSA.
5. Whether the Group Members and the Applicants had limited scope to carry on an enterprise in order to generate profit.
6. Whether any goodwill inured in activities carried out by the Group Members and the Applicants.
7. Whether the Respondent negotiated rates of pay with the Group Members and the Applicants.
8. Whether the Group Members and the Applicants were economically dependent upon, and provided services exclusively, or to an extent that was almost exclusive, to the Respondent.
9. Whether, the relationship as between the (i) Group Members and the Applicants and (ii) the Respondent was one of employment.
10. Whether the Respondent was a "*national system employer*" within the meaning of s 14 of the *Fair Work Act*.
11. Whether the Applicants and Group Members were "*national system employees*" within the meaning of s 13 of the *Fair Work Act*.
12. Whether the Applicants and Group Members were "*casual employees*" within the meaning of s 86 of the *Fair Work Act*.
13. Whether the Respondent contravened s 44 of the *Fair Work Act*.
14. Whether the Respondent contravened s 45 of the *Fair Work Act*.
15. Whether the Respondent contravened s 357 of the *Fair Work Act*.



16. Whether the Respondent is liable to pay a pecuniary penalty under s 546 of the *Fair Work Act*.
17. Whether any of the Pledged BSA Agreements was “*unfair*” or “*harsh*” within the meaning of s 12 of the *Independent Contractors Act*.
18. Whether an order should be made under s 16 of the *Independent Contractors Act* and, if so, what form of order is appropriate.

Representative action

The Applicants sue in a representative capacity, pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth), being on behalf of more than 7 persons who:

- a. are natural persons;
- b. in the period 2003 to the date of filing this Statement of Claim, have provided services as telecommunications technicians to the Respondent;
- c. did not receive payments or benefits which were required to be made or provided by the Respondent to employees; and
- d. are an Ordinary Group Member (as defined in paragraphs 5 to 7 of the Statement of Claim) or a Subprime Group Member (as defined in paragraphs 8 to 10 of the Statement of Claim).

Applicants' address

The Applicants' address for service is:

Place: Level 6, 299 Elizabeth Street, Sydney, NSW, 2000

Email: vantzoulatos@shine.com.au

The Applicants' address is Level 6, 299 Elizabeth Street, Sydney, 2000.

Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 23 July 2020

A handwritten signature in blue ink, appearing to read "V. Antzoulatos", is written over a dotted line.

Signed by Vicky Antzoulatos
Lawyer for the Applicants

**Schedule**

No. of 20

Federal Court of Australia
District Registry: Victoria
Division: Fair Work Division

Applicants

First Applicant: Paul Bradshaw

Second Applicant: Scott Uren

Respondent

BSA Limited (ACN 088 412 748)

Date: 23 July 2020