



TRANSCRIPT OF PROCEEDINGS

Fair Work Act 2009

**VICE PRESIDENT CATANZARITI
DEPUTY PRESIDENT BINET
DEPUTY PRESIDENT WRIGHT**

C2023/1671

s.604 - Appeal of decisions

**Appeal by Rizvi
(C2023/1671)**

Sydney

2.05 PM, WEDNESDAY, 10 MAY 2023

PN1

VICE PRESIDENT CATANZARITI: Yes, good afternoon. I will take the appearances. Mr Rizvi?

PN2

MR RIZVI: Good afternoon.

PN3

VICE PRESIDENT CATANZARITI: Good afternoon. Mr Sebbens?

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MR SEBBENS: Yes, I seek permission to appear for the respondent.

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VICE PRESIDENT CATANZARITI: Yes. Mr Rizvi, do you understand what permission to appear means by Mr Sebbens?

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MR RIZVI: Somewhat I would say.

PN7

VICE PRESIDENT CATANZARITI: I will just explain it to you rather than put you on the spot that way. Mr Sebbens is seeking as a lawyer to appear in this appeal. He doesn't have a right to appear. His firm has put on written submissions. They are entitled to put on the written submissions. The issue is really whether we as a Full Bench should permit him to make any further oral submissions. If you oppose that we will give consideration to that as to whether what we should do with it, but the written submissions are already on. It's a question of whether he's going to be allowed to make any oral submissions. Do you oppose or otherwise have a view in relation to whether the lawyer should be present given that you are not legally represented?

PN8

MR RIZVI: I oppose to that, Commissioner, because like you said I'm representing myself. There isn't any lawyer with me, and Webuild is a global infrastructure company and I'm sure they've got enough staff and they can represent themselves. If they are confident that what they did was right that way they should have represented themselves instead of sending lawyers - - -

PN9

VICE PRESIDENT CATANZARITI: Yes, thank you. We have already received the submissions by the lawyers as to why they should appear. We will just have a conversation now. Yes, okay. We will refuse permission to appear for the lawyers. The lawyers have put on detailed written submissions. They adequately express the submissions they wish to put on, but we do not think that there's any complexity in relation to this case that would otherwise require lawyers to be present. So, Mr Sebbens, Mr Ritchie is with you, and Ms Platten. They can now take over.

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MR SEBBENS: They're not physically with me, Vice President, but they are on the line. So, yes, they - - -

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VICE PRESIDENT CATANZARITI: They're on the line. Yes.

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MR SEBBENS: Thank you.

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VICE PRESIDENT CATANZARITI: They're on the line, that's right. Is it Mr Ritchie or Ms Platten who is the lead for the employer?

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MR SEBBENS: I believe it will be Mr Ritchie, but he can speak up.

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VICE PRESIDENT CATANZARITI: Mr Ritchie?

PN16

MR RITCHIE: Yes, Vice President, I will be the lead for the company.

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VICE PRESIDENT CATANZARITI: Yes, okay. We have had a look at the materials being filed. The matter strikes as being a little unusual in the sense that matters of this nature don't often come before the Commission where there is a circumstance where termination occurred as an employee was departing for overseas. Also circumstances where there were genuine attempts to at least put the application on, and the issue then remained the issue of payment and the issue was subsequently declined.

PN18

We have read the written submissions, Mr Ritchie. Given the unusual circumstances of the matter we would like to hear if there was anything further, you going first rather than Mr Ritchie, in relation to why it is that you say Mr Rizvi's appeal should not succeed. You don't have to say anything further, you can rely upon the written submissions, but I am giving you an opportunity to say anything further you wish to say.

PN19

MR RITCHIE: Sir, I would prefer not to add anything more verbally. The company relies on the written submissions that have been given to this Full Bench.

PN20

VICE PRESIDENT CATANZARITI: All right, thank you. Mr Rizvi, you've read your submissions. You've received the written submissions from the respondent. Is there anything you want to say additionally as to this matter?

PN21

MR RIZVI: Yes, Commissioner, I have. So I know I've written a lot, it's been a lot of submissions, but then again they don't exactly give you the full picture of

exactly what happened. So I was terminated on my last day before going back to Pakistan. That's where I - like I was going back on a holiday. So I was terminated on my last day, 27 December - sorry, January. So, you know, it was obviously a big shock for me, and I went back and over there I applied for the unfair dismissal. I didn't have any - I wasn't given any chance to have - you know, all things were confiscated obviously. So I had to really think about how to file the application, which I did on time on the 17th, and in my email to the Commission when I submitted the application I specifically wrote that I'm overseas and I would not be - I wouldn't have full access to emails or internet or phone calls. Being overseas obviously my number, everything, is, you know, inactive.

PN22

So anyway what happened is at the time of submitting the application no window paid, like I knew there has to be a payment made, (indistinct), but there was no window or anything asking me for a payment. So I thought maybe it's going to like come later. Once the application received I will receive an email or something from the client services team asking for payment. But I received an email from the Commission saying that the payment has not been made, which I tried - the email received was on 20 February. I did that. Like I checked the email, I tried to pay, but it wasn't happening.

PN23

If you can see the submissions I made in the appeal book in detail I showed a screenshot of having sufficient funds and trying to make the payment several times, but it was declining for some reason. I don't know why. So there was some fault on the website or on the payment page for the Fair Work Commission. So I emailed the client services team again showing them what happened, and they replied to me on the 24th like acknowledging that they received my email saying that there's a problem with the payment.

PN24

Three days later they replied even though I wasn't working there, Commissioner, and, you know, considering as they mentioned it's an urgent thing that (indistinct) needs to be done. They took three working days during the week, not a weekend, no public holiday or anything. So three days later they said that to give me a number and to contact that, and basically they provided a 1800 number before which I was trying to contact, but being overseas I couldn't. And then three days later they gave me another number, which because I was travelling at that time and there was a lot going on, like personal and family issues which I haven't disclosed to anyone yet, but if the need be I will have to disclose it to you.

PN25

So I was getting - my parents were pushing me to get married, because it was after four years I went back home, and since I've never told them what happened, being terminated on my last day, you know, before coming. Obviously it will be a huge shock for them. I didn't want to like - I didn't want to make them nervous or, you know. So anyway I just didn't want to tell them what happened to me. So I was carrying that burden all along on my holidays, and when they asked me to marry - so they only - I'll show you something which I haven't shown to anyone.

PN26

VICE PRESIDENT CATANZARITI: You are now moving to wanting to lead new material on an appeal. You can't just lead that without us looking at it first, because we may not grant new material on appeal. But prior to you doing that I just want to make sure I have an understanding of your telephone based on your application. In the decision the Commission says that they rang you on 28 February and left you a voicemail and the call was not answered.

PN27

MR RIZVI: Yes.

PN28

VICE PRESIDENT CATANZARITI: What I'm understanding is - were you using or not using this phone when you were overseas?

PN29

MR RIZVI: I wasn't. It's a local Australian number, so I wasn't using that. Obviously it was inactive. I was using a local Pakistani number. So they called me knowing that I was overseas. That number was inactive, and I don't know if they left a voicemail or not. When I switched it back on I received nothing. So I can't really - - -

PN30

VICE PRESIDENT CATANZARITI: You got correspondence on 24 February and the next communication from the Commission was 28 February, which was a telephone message.

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MR RIZVI: Yes, which I never received.

PN32

VICE PRESIDENT CATANZARITI: And then after that the matter was dismissed. All right. What is the nature of this material you wish to lead?

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MR RIZVI: So it's actually as I mentioned, it's a wedding card.

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VICE PRESIDENT CATANZARITI: Yes.

PN35

MR RIZVI: So it was on - I'll just - - -

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VICE PRESIDENT CATANZARITI: We don't accept it at this point. You have just got to tell us why you think it is relevant on this appeal - - -

PN37

MR RIZVI: I'm coming to that point, Commissioner.

PN38

VICE PRESIDENT CATANZARITI: Yes, but at the moment the factual situation is, that's why I went through it, is that you say in your application and in answer to me directly today, that you had an email communication. Then the next communication with the Commission was a phone message to you, but you could not, because your phone was inactive, deal with that phone message. So that's the state of the evidence which is in front of us. So if you're going to lead evidence about the wedding I want to understand why you say that there's not enough in front of us already, because the wedding - how does that lead to non-communication, if you like, as it's really the issue?

PN39

MR RIZVI: No, it doesn't lead to non-communication, but it's because I was - you know, in my email I wrote that I was travelling remotely and I had some personal issues as well, some - - -

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VICE PRESIDENT CATANZARITI: Yes, we understand that.

PN41

MR RIZVI: - - - just (indistinct) to family. Sorry?

PN42

VICE PRESIDENT CATANZARITI: We understand that, but the only evidence before the Commission at the relevant time, which we have in front of us, is really the sequence where ringing you on 28 February on one view would be of no effect because you did not have an Australian phone in operation at the time, and it's after your non-response to the voicemail that the matter is dismissed. Just speaking for myself I am just struggling to see the relevance of any other thing when the critical issue is the base upon which the trigger occurs in the Commission to dismiss the application, and on the decision it's not answering the voicemail and getting back to the Commission. The silence is what the issue is, right, but you've said today and you've said it previously in your submission really that you didn't have access to the phone.

PN43

MR RIZVI: That's correct.

PN44

VICE PRESIDENT CATANZARITI: So what do you really need to say then about the wedding? That's really where I am coming to, because you're asking us to lead new evidence which is an unusual step on an appeal.

PN45

MR RIZVI: No, it's not - it's not like in evidence, it's like what was happening and the reason - it's not about the phone, Commissioner. It's not related to that phone call which I never received or that voicemail. It's not - - -

PN46

VICE PRESIDENT CATANZARITI: But do you understand what I'm putting to you is that that's the sequence of events, right, the sequence of events. The last communication with the Commission, which is a relevant communication by

which the Commissioner dismisses the matter, is the telephone message you did not get.

PN47

MR RIZVI: Yes.

PN48

VICE PRESIDENT CATANZARITI: There is no evidence before us about you getting that message. In fact you say you haven't got it, right?

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MR RIZVI: I never received that, Commissioner. I don't know even if that's true or not to be honest because I never received it.

PN50

VICE PRESIDENT CATANZARITI: What do you want to say about the wedding and how it ties in, because - - -

PN51

MR RIZVI: I had to cancel my wedding, Commissioner, because of what happened, because of the - - -

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VICE PRESIDENT CATANZARITI: Sorry. Your evidence is, 'I cancelled the wedding because of my termination of employment.' Is that what you want - - -

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MR RIZVI: No, Commissioner. Let me rephrase my - - -

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VICE PRESIDENT CATANZARITI: But even if that was right that doesn't link with what we're dealing with. It doesn't link with what we're dealing with because the cancellation of the wedding - - -

PN55

MR RIZVI: No, no. Sorry - - -

PN56

VICE PRESIDENT CATANZARITI: I need to understand why you want to lead this evidence. I'm struggling for myself as to why you want to talk about the cancellation of the wedding.

PN57

MR RIZVI: It's because of my termination, and there was so much going on. Obviously, you know, if I get married, you know, I had to like - maybe what if my wife wanted to come over to Australia while I'm unemployed without any place to go, I'm homeless, and everything. So that is what happened, and if you are asking about that voicemail or that phone call I never received that. The wedding is more related to that. I'm not saying that, but what was happening like travelling remotely with personal issues going on, with the termination and wedding getting cancelled because of that, that's what I want you to understand. I was under extreme stress, Commissioner.

PN58

VICE PRESIDENT CATANZARITI: All right. I understand that. We will take a short adjournment and we will decide whether to allow that material in or whether it's relevant to the proceedings. Thank you. The Commission is adjourned.

SHORT ADJOURNMENT

[2.21 PM]

RESUMED

[2.31 PM]

PN59

VICE PRESIDENT CATANZARITI: Yes. Thank you, Mr Rizvi, we have considered the material that you wish to lead on the appeal in relation to your cancellation of marriage. We are not going to allow that material in relation to the appeal. We are however minded to allow the other material which is in relation to extracts of your bank account, but we will ask Mr Ritchie what he has to say about that. Mr Ritchie?

PN60

MR RITCHIE: Thank you, sir. If I may with the Appeal Bench's permission I'd just like to cover off a couple of other things too if that's appropriate.

PN61

VICE PRESIDENT CATANZARITI: Yes, just deal with my first question first, because you will have an opportunity to reply in a moment. I am halfway through Mr Rizvi's materials.

PN62

MR RITCHIE: Okay. Thank you. In respect to the question, your Honour, I would say that the process is very clear. Mr Rizvi filled out all the documentation. It clearly stipulates on the documentation - - -

PN63

VICE PRESIDENT CATANZARITI: Mr Ritchie, I have asked you a very direct question, which is about the Commonwealth Bank statement account. The Full Bench is minded to allow that material in which was not available at first instance. That's the question I'm asking you. Your lawyers have taken an objection to it. I am now asking you do you maintain that objection and then we will rule upon it.

PN64

MR RITCHIE: Yes, sir, sorry. We maintain that objection.

PN65

VICE PRESIDENT CATANZARITI: All right, thank you. The Full Bench will allow that material in as it is relevant. You will have an opportunity, Mr Ritchie, in a moment when I finish with Mr Rizvi to respond to what he has just said generally. Mr Rizvi, is there anything further you want to say in support of your appeal?

PN66

MR RIZVI: Yes, Commissioner. So considering, you can see my effort, I was trying to pay. I did not deliberately avoid payment. I had sufficient amount of money in my account I was paying. There was a problem which came through the website, and even the client services team for the Fair Work Commission they were slow in responding to me. Three days later they sent me an email showing - which was again sending me an email which, you know, I mentioned while submitting the application that I'm overseas and I don't have access to emails or phone calls. They tried those measures again and again despite me warning them that I'm overseas and I'm coming back to Australia on the second week of March, and if I could get an extension. I do want to pay. It's not that I want to (indistinct) or anything, I do want to pay.

PN67

VICE PRESIDENT CATANZARITI: In relation to that last statement in reviewing the file that is in the Commission that request for an extension does not appear to have been responded to in those terms. In other words while there's been that answer 'Give us a call', and then they've called you, we can't find any correspondence by the Commission specifically dealing with your specific question. Do you have anything beyond what is in the appeal book, because it doesn't appear on the Commission material?

PN68

MR RIZVI: There is an email, Commissioner. If you check that my response when I showed that screenshot for the bank account, getting the credit card getting declined.

PN69

VICE PRESIDENT CATANZARITI: Yes, I understand. My question really is you asked a specific question, 'Is there a way I can pay through another method to get an extension with this payment until I return to Australia in the second week of March?' That's the question you've asked. On the Commission's file that question in those terms has not been answered. Did you receive anything; is there anything else that you've got that we don't have?

PN70

MR RIZVI: No, I never received - that's what I sent, Commissioner. I never received a response to that.

PN71

VICE PRESIDENT CATANZARITI: You got a response which didn't deal with that question, but it dealt with ringing an Australian phone number, not a 1300 number.

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MR RIZVI: Yes. Also, Commissioner - - -

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VICE PRESIDENT CATANZARITI: Which was after that, right, so we got that.

PN74

MR RIZVI: Yes, but then again, Commissioner, as I mentioned I was travelling remotely and there were some family issues which I just spoke to you about. I won't go into detail now, but it was a lot going on and I could not - I didn't have any measures to get back to them through that number.

PN75

VICE PRESIDENT CATANZARITI: And then you've also said that the 28 February phone call - - -

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MR RIZVI: I never received that, Commissioner.

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VICE PRESIDENT CATANZARITI: - - - was the Australian number.

PN78

MR RIZVI: Yes.

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VICE PRESIDENT CATANZARITI: But you don't have the Australian phone. All right.

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MR RIZVI: I never received that call. Neither did I receive that voicemail which should have received by me once when I activated my local Australian number, but there was nothing. Usually everything, the messages and all, they are saved and they reappear once the phone is active, but nothing, nothing from their side. I don't know if that's even true to be honest, Commissioner.

PN81

VICE PRESIDENT CATANZARITI: Is there anything else you wish to say?

PN82

MR RIZVI: Commissioner, if you look at my circumstances, these are extremely distressing circumstances, getting fired on my last day, being overseas, trying to pay, not getting through the payment, even though I'm trying, and then the client services team trying to contact me again and again on my inactive number and leaving a voicemail which I never received.

PN83

So I humbly request you, Commissioner, that this appeal I'm looking for it to get granted, and what happened to me, the way I was terminated it's in public and trust, Commissioner, to investigate into Webuild and the sort of work culture they have, because I have witnesses willing to testify, at least four of them. I'm sure there are more, I'm trying to track them down, but I have four right now willing to testify, and what happened to me was a (indistinct) planned termination instead of just following the PIP. Everything was orchestrated, Commissioner. So it would be in the Australian public's interest to look into the matter so it doesn't happen to other people. I have suffered a lot, your Honour. It's very easy to say all that, but what I've experienced, you know, I don't - it really brings back bad memories and I don't want that to happen to anyone else.

PN84

VICE PRESIDENT CATANZARITI: All right, thank you. Yes, Mr Ritchie, you can now respond.

PN85

MR RIZVI: Thank you, sir. To the members of the Appeal Bench I just want to point out a number of things. Mr Rizvi started talking about in the public interest. As we submit in our written submissions no public interest factor was ever enlivened on the present application. The appellant's - - -

PN86

VICE PRESIDENT CATANZARITI: Mr Ritchie, there's a public interest in this sense. If the Commission systems have failed and we form the view that as a matter of fairness all round that really is a systems failure that will be a basis for us to enliven the public interest, and that's something that we will have to consider. We are not going to allow some technical internal problem or the Commission to be the blocker, and on one view there is a problem in this matter in relation to the Commission's end of this approach which is outside of that which is in the control of Mr Rizvi. That would enliven the public interest if we form that view.

PN87

MR RITCHIE: Thank you, your Honour. So perhaps if I can conclude. Once again we rely on our written submissions, but to conclude as set out in the original Commission's decisions the appellant was given numerous opportunities by the Commission between initially filing his application back in February and the decision that was finally handed down on 7 March to pay the prescribed fee.

PN88

Now, when I look at the documentation that was submitted he gave his Australian number. He did not give any alternate numbers, and since his return from overseas one would have thought that he would have made the effort to at least send a cheque or make some sort of payment to the Commission to enliven his application. Nothing seems to have occurred in respect to that.

PN89

So to conclude we say that the application wasn't made in accordance with the Fair Work Act, and we say it's invalid. It follows that the decision to dismiss the application under section 587(1)(a) was entirely appropriate. No error has been demonstrated in that regard, and we submit to the Full Bench that the appeal must fail on that basis.

PN90

VICE PRESIDENT CATANZARITI: All right, thank you. What's going to happen now, Mr Rizvi, is we're going to reserve our decision, and in the next few weeks we will publish a decision. Thank you. The decision is reserved. The Commission is adjourned.

ADJOURNED TO A DATE TO BE FIXED

[2.42 PM]