DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Dr Neil Stringfellow

v

Commonwealth Scientific and Industrial research Organisation T/A CSIRO
(U2018/671)

DEPUTY PRESIDENT CLANCY MELBOURNE, 21 FEBRUARY 2018

Application for an unfair dismissal remedy – s.596 of the Fair Work Act 2009 – request for direction pursuant to Rule 12(2) of the Fair Work Commission Rules 2013 – request not granted.

[1] Dr Neil Stringfellow was employed by the Commonwealth Science and Industrial Research Organisation T/A CSIRO (the CSIRO) and was performing the role of Executive Director of the Pawsey Supercomputing Centre (Pawsey). It would appear that Pawsey is a joint venture comprising four universities in Western Australia and the CSIRO, with a board of directors drawn from each, together with two further, independent, directors. It is alleged by the CSIRO that the Pawsey board of directors advised both Dr Stringfellow and the CSIRO on 11 October 2017 that it no longer wished Dr Stringfellow to perform the role of Executive Director. The CSIRO further alleges that over a three month period, it explored both alternative positions within the CSIRO and a severance payment but no alternative position could be agreed. Dr Stringfellow says he continued to seek reinstatement to the position of Executive Director throughout, although he did give the CSIRO an opportunity to provide an offer of a financial settlement. In any event, the parties did not agree on a severance payment.

[2] Dr Stringfellow says he was notified of his dismissal from his employment with the CSIRO on 19 January 2018 and that the dismissal took effect on 23 January 2018. The CSIRO says Dr Stringfellow resigned his employment on 23 January 2018.

[3] On 23 January 2018, Dr Stringfellow made an application (the Application) against the CSIRO for remedy for unfair dismissal pursuant to s.394 of the *Fair Work Act 2009* (the Act).

[4] In terms of the current status of the Application, it has not been the subject of conciliation because Dr Stringfellow did not wish to participate in the conciliation that had been originally scheduled for 20 February 2018, preferring instead for his application to be scheduled for a hearing as a matter of urgency. No directions for the conduct of a hearing have been made to date.

[5] On 25 January 2018, a *Form F53 – Notice of representative commencing to act* was filed by the law firm Norton Rose Fulbright, advising that it was commencing to act for the CSIRO. Dr Stringfellow objects to the CSIRO being represented and seeks a direction from the Commission under Rule 12(2) of the *Fair Work Commission Rules 2013* (the Rules) that the CSIRO not be permitted to be so represented.

[6] Directions were issued by me on 15 February 2018 as follows:

- the CSIRO was directed to file in the Commission and serve on Dr Stringfellow any material upon which it relies in relation to Dr Stringfellow's request for a direction regarding representation by a lawyer or paid agent, by 5.00pm (AWST) on 16 February 2018.

- Dr Stringfellow was directed to file in the Commission and serve on the CSIRO any material upon which he relies in reply to the CSIRO's material, by 3.00pm (AWST) on 19 February 2018.

- the matter was listed for Mention hearing, in relation to Dr Stringfellow's request for a direction regarding representation by a lawyer or paid agent, via telephone on 20 February 2018.

[7] Both parties filed written submissions in accordance with the Directions.

Mention Hearing

[8] The CSIRO sought permission to be represented by Ms S Maddern of Norton Rose Fulbright at the Mention hearing on 20 February 2018. Dr Stringfellow objected to this and I heard the parties in relation to this question.

[9] Ms Maddern submitted that the CSIRO would be unable to represent itself effectively in the Mention hearing (s.596(2)(b) of the Act), with neither the CSIRO senior legal counsel nor Human Resources adviser present having the experience and knowledge required to:

- effectively represent the CSIRO in the Mention;

- deal with the broader question of representation; or

- expand on the submissions filed by both parties.

[10] Ms Maddern further submitted that permission being granted would allow the matter to be dealt with more efficiently (s.596(2)(a) of the Act) because, in the event permission was not granted, an adjournment of the Mention would be sought so the CSIRO could arrange for alternate staff members to make verbal submissions in relation to the Mention.

[11] Dr Stringfellow submitted that the matters to be dealt with in the Mention were not complex (s.596(2)(a) of the Act). He further submitted he is self-represented, with no legal experience and therefore, balance and fairness weighed against permission being granted, having regard to the size and resources of the CSIRO (s.596(2)(c) of the Act). As to

s.596(2)(b) of the Act, Dr Stringfellow submitted that the CSIRO had chosen who from its staff to have present and it would be able to more effectively represent itself than him.

[12] Having considered these submissions, the status of the Application (in terms of its current progression to hearing), the context of the Mention and the provisions of s.596 of the Act, I concluded that there was sufficient complexity attached to the question I was required to determine in the Mention hearing (i.e. the broader issue of representation and whether I should exercise the power under Rule 12(2) of the Rules and make a direction in relation to Rule 12(1), with reference to the recent decision of the Full Bench of the Commission in *Fitzgerald v Woolworths Limited*[1](*Fitzgerald*) that it would be dealt with more efficiently if the CSIRO was granted permission to be represented by Ms Maddern. I stressed to the parties, that the permission I granted was only extended to the making of submissions at the Mention hearing.

[13] I then gave an overview of the procedural pathway the Application would be taking. In particular, I indicated that while I, as Panel Head – Termination of Employment, would oversee the making of directions for the filing and service of the parties' materials and the setting of the dates for the conference/hearing, I would not ultimately be hearing and determining the Application. I advised that the conference/hearing for the Application would be conducted by a member of the Commission based in Western Australia and that it would be for her or him to determine the question of whether permission to be represented by a lawyer at the conference/hearing would be granted to the parties. Having outlined this and relevant provisions from the Act and the Rules, I asked Dr Stringfellow to confirm the nature of the direction he was seeking under Rule 12(2).

[14] In response, Dr Stringfellow advised that he sought a direction that the CSIRO not be allowed to be represented by a lawyer or paid agent during the "submission stage" in the build-up to the hearing, including the making of submissions or an application and he also sought a direction that the CSIRO not be permitted to obtain legal advice in the lead-up to the hearing, in this regard relying on *Fitzgerald*.

Written submissions of the parties

[15] Having regard to what Dr Stringfellow seeks in his request for the direction, the CSIRO's written submissions addressed the following matters:

- section 596(2) of the Act only requires the Commission to be satisfied that one of the criteria set out at subsection (a), (b) or (c) is met;

- Dr Stringfellow was not dismissed but instead resigned of his own volition. This gave rise to its jurisdictional objection and the CSIRO relied on propositions from *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v UGL Resources Pty Limited (Project Aurora)*[2] (*CEPU v UGL*) that jurisdictional issues are prospectively complex in their own right, may require a degree of familiarity with tribunal jurisprudence or authorities and that lawyers familiar with jurisdictional arguments ensure efficiency – being able to give close regard to the boundaries of the matters subject to the dispute and any proposed remedy;

- the dispute is particularly legally complex because of the nature of Dr Stringfellow's employment, in that he was employed by the CSIRO to work as the Executive Director of Pawsey, an unincorporated joint venture with its own Board of Directors. With Pawsey not subject to the control of the CSIRO, a serious question to be determined is whether the Commission would have the power to order the reinstatement of Dr Stringfellow, if its finding is that his dismissal was harsh, unjust or unreasonable;

- the representation of at least one of the parties to the proceeding will allow appropriate argument and assistance to be provided to the Commission; and

- while the CSIRO has in-house resources, this does not automatically mean it has the necessary internal resources to ensure it is effectively represented, in the sense described in from *CEPU v UGL*.[3]

[16] In his written submissions, propositions put forward by Dr Stringfellow included:

- the *Fair Work Bill 2008* Explanatory Memorandum provided guidance on the intent of the Act, stating in relation to s.596 at note 2291, "FWA is intended to operate efficiently and informally and, where appropriate, in a non-adversarial manner. Persons dealing with FWA would generally represent themselves";

- FWA should have regard to considerations of efficiency and fairness rather than merely the convenience and preference of the parties;

- the CSIRO is turning the notion of fairness "completely on its head" by arguing that in the interests of fairness, they, with their large human resources division as well as in-house lawyers, should be the ones to be allowed to have external representation;

- the CSIRO argument that a jurisdictional objection would automatically allow for legal representation, means that anyone who wishes to have representation by a lawyer would just need to raise an arbitrary and spurious jurisdictional objection;

- *CEPU v UGL* did not relate to an application for unfair dismissal;

- the CSIRO's jurisdictional objection is an objection to the existence and provisions of s.386 of the Act; whether he was forced to resign in the circumstances is not a jurisdictional objection but simply part of the case the CSIRO will have to produce in trying to defend its actions;

- the case is not complex;

- if one party being represented by a lawyer is considered to be of great benefit to the Commission and to the conduct of proceedings, the Act should instead have stated that one of the parties should always be represented by a lawyer, rather than its actual wording;

- the CSIRO confirms it has substantial in-house resources, including staff who are experienced in Commission proceedings;

- the CSIRO owns all the assets, negotiates and executes all contracts and employs all staff of Pawsey and from a legal perspective, all of Pawsey's activities are actually activities of the CSIRO;

- the Pawsey Supercomputing Centre is constituted through a Members Agreement, which governs its activities, and clause 10.4(c) of the Members Agreement makes clear that the CSIRO can unilaterally reinstate him or will not be obliged to refrain from reinstating him;

- the CSIRO has substantial resources at its disposal. It is an organisation with an annual budget in excess of $1 billion, has 5,500 employees and sizable in-house resources, including significant human resources and legal teams;

- to allow such a large organisation with such significant in-house resources as the CSIRO to claim that they were unable to effectively represent themselves would suggest that the only entities that would be refused permission to be represented by lawyers would be firms of lawyers who deal in Commission hearings; and

- there is already a heavily skewed imbalance in resources that can be brought to bear on this case by the CSIRO compared to his own self representation and in the interests of fairness, this should not be further exacerbated by allowing the CSIRO to acquire additional representation through an external lawyer.

Oral Submissions at the Mention hearing

[17] At the Mention hearing, the submissions of the CSIRO included:

- the Commission has a discretion and that prima facie, the position under the Rules is that the CSIRO is permitted to have legal representation in the preliminary steps, subject to a direction to the contrary and that the onus is on Dr Stringfellow to satisfy the Commission that the direction he seeks is warranted in all the circumstances;

- contrary to Dr Stringfellow's assertions, there is a very real jurisdictional objection, being whether he was dismissed within the meaning of the Act;

- the Commission usually benefits from the presence of legal counsel in a matter that is complex and in particular, when an applicant is not represented;

- there is a greater risk of the matter going off on tangents, for irrelevant considerations to be raised and for the matter to be dealt with less efficiently;

- there is the threshold issue of whether there was a dismissal and the Commission will need to consider, through submissions rather than evidence, the legal ramifications of the relationship between Pawsey, each of its 5 constituent members and Dr Stringfellow, the status of Pawsey, the terms of the Pawsey Members' agreement and the ability of the Commission to order the reinstatement of Dr Stringfellow to a third party;

- Dr Stringfellow is not as disadvantaged as he submits – his submissions are comprehensive, he refers to Rule 12 and the Explanatory Memorandum and he is not in the same category as those individuals described in the case studies he has referred to;

- due to the complexity and other commitments of its personnel, the CSIRO would not be able to represent itself effectively; and

- whether it is right and proper for the Commission to issue a direction that the CSIRO should not have access to verbal and legal advice should be queried.

[18] Dr Stringfellow's submissions included:

- he has no legal experience or expertise;

- the jurisdictional issue raised is whether he resigned voluntarily or not. Section 386(1)(b) of the Act was intended to capture the common law concept of constructive dismissal and it was put within the remit of the Commission to make these decisions, so to say there is an objection to whether or not the Commission should be able to hear this case is to argue against the intention of parliament and the Act;

- as to the relationship between the CSIRO and Pawsey, it is not an incorporated joint venture, it is not a legal entity in its own right. All employees are employed by the CSIRO and it cannot be blocked from decisions being implemented around its own agreed processes and legislative instruments and its obligations. Therefore, a ruling by the Commission is binding and there is no jurisdictional issue;

- it is speculative to suggest he might wander off on a tangent when it has been put by the CSIRO that his submissions are quite clear;

- the CSIRO would be able to effectively represent itself. It has a large legal team and a very large human resources team and it is a very different matter if it chooses not to effectively represent itself;

- there is no great complexity in this matter and reinstatement could be implemented if the CSIRO is instructed to do so; and

- section 596 was implemented so that matters could be conducted in a non-adversarial manner, without needing to bring in lawyers.

Relevant Legislation and Rules

[19] The question of representation in proceedings before the Commission is governed by section 596 of the Act which is in the following terms:

> "**596 Representation by lawyers and paid agents**
>
> (1) Except as provided by subsection (3) or the procedural rules, a person may be represented in a matter before the FWC (including by making an application or

submission to the FWC on behalf of the person) by a lawyer or paid agent only with the permission of the FWC.

(2) The FWC may grant permission for a person to be represented by a lawyer or paid agent in a matter before the FWC only if:

(a) it would enable the matter to be dealt with more efficiently, taking into account the complexity of the matter; or

(b) it would be unfair not to allow the person to be represented because the person is unable to represent himself, herself or itself effectively; or

(c) it would be unfair not to allow the person to be represented taking into account fairness between the person and other persons in the same matter.

Note: Circumstances in which the FWC might grant permission for a person to be represented by a lawyer or paid agent include the following:

(a) where a person is from a non-English speaking background or has difficulty reading or writing;

(b) where a small business is a party to a matter and has no specialist human resources staff while the other party is represented by an officer or employee of an industrial association or another person with experience in workplace relations advocacy.

(3) The FWC's permission is not required for a person to be represented by a lawyer or paid agent in making a written submission under Part 2-3 or 2-6 (which deal with modern awards and minimum wages).

(4) For the purposes of this section, a person is taken not to be represented by a lawyer or paid agent if the lawyer or paid agent:

(a) is an employee or officer of the person; or

(b) is an employee or officer of:

(i) an organisation; or

(ii) an association of employers that is not registered under the Registered Organisations Act; or

(iii) a peak council; or

(iv) a bargaining representative;
that is representing the person; or

(c) is a bargaining representative."

[20] Rule 12 of the Rules provides:

"**12 Representation by a lawyer or paid agent**

(1) For subsection 596(1) of the Act, a person may be represented in a matter before the Commission by a lawyer or paid agent for the following purposes:

(a) preparing a written application or written submission for the person in relation to the matter;

(b) lodging with the Commission a written application, written submission or other document, on behalf of the person in relation to the matter;

(c) corresponding with the Commission on behalf of the person in relation to the matter;

(d) participating in a conciliation or mediation process conducted by a member of the staff of the Commission, whether or not under delegation, in relation to an application for an order to stop bullying made under section 789FC of the Act.

Note 1: Section 596 of the Act sets out other circumstances in which a person may be represented in a matter before the Commission by a lawyer or paid representative.

Note 2: Subrule 12(3) deals with representation of parties in a conference or hearing before a Commission Member.

(2) However, subrule (1) is subject to a direction by the Commission to the contrary in relation to the matter.

(3) To remove doubt, nothing in this rule is to be taken as permitting a lawyer or paid agent to represent a party in a conference or hearing before a Commission Member.

Note: Section 596 of the Act sets out when the Commission may grant permission for a person to be represented by a paid agent or lawyer, including at a conference or hearing."

[21] Further, s.609 of the Act states:

"**609 Procedural rules**

(1) After consulting the other FWC Members, the President may, by legislative instrument, make procedural rules in relation to:

(a) the practice and procedure to be followed by the FWC; or

(b) the conduct of business in relation to matters allowed or required to be dealt with by the FWC.

(2) Without limiting subsection (1), the procedural rules may provide for the following:

(a) the requirements for making an application to the FWC;

(b) the circumstances in which a lawyer or paid agent may make an application or submission to the FWC on behalf of a person who is entitled to make the application or submission; …" (my emphasis)

Case Law

[22] Apart from having been the subject of various decisions of the Commission, s.596 of the Act and the question of representation has been examined by the Federal Court in *Warrell v Walton*[4] (*Warrell*), in which Flick J found:

"24. A decision to grant or refuse "*permission*" for a party to be represented by "*a lawyer*" pursuant to s 596 cannot be properly characterised as a mere procedural decision. It is a decision which may fundamentally change the dynamics and manner in which a hearing is conducted. It is apparent from the very terms of s 596 that a party "*in a matter before FWA*" must normally appear on his own behalf. That normal position may only be departed from where an application for permission has been made and resolved in accordance with law, namely where only one or other of the requirements imposed by s 596(2) have been taken into account and considered. The constraints imposed by s 596(2) upon the discretionary power to grant permission reinforce the legislative intent that the granting of permission is far from a mere "*formal*" act to be acceded to upon the mere making of a request. Even if a request for representation is made, permission may be granted "*only if*" one or other of the requirements in s 596(2) is satisfied. Even if one or other of those requirements is satisfied, the satisfaction of any requirement is but the condition precedent to the subsequence exercise of the discretion conferred by s 596(2): i.e., "*FWA may grant permission*…". The satisfaction of any of the requirements set forth in s 596(2)(a) to (c) thus need not of itself dictate that the discretion is automatically to be exercised in favour of granting "*permission*".

25. The appearance of lawyers to represent the interests of parties to a hearing runs the very real risk that what was intended by the legislature to be an informal procedure will be burdened by unnecessary formality. The legislative desire for informality and a predisposition to parties not being represented by lawyers emerges, if not from the terms of s 596, from the terms of the *Explanatory Memorandum* to the *Fair Work Bill* 2008 which provided in relevant part as follows:

2291. FWA is intended to operate efficiently and informally and, where appropriate, in a non-adversarial manner. Persons dealing with FWA would generally represent themselves. Individuals and companies can be represented by an officer or employee, or a member, officer or employee or an organisation of which they are a member, or a bargaining representative. Similarly, an organisation can be represented by a member, officer or employee of the organisation. In both cases, a person from a relevant peak body can be a representative.

> 2292. However, in many cases, legal or other professional representation should not be necessary for matters before FWA. Accordingly, cl 596 provides that a person may be represented by a lawyer or paid agent only where FWA grants permission.
>
> ...
>
> 2296. In granting permission, FWA would have regard to considerations of efficiency and fairness rather than merely the convenience and preference of the parties."

[23] More recently, the Full Bench considered s.596 of the Act in *Fitzgerald* and posited that *Warrell* did not deal with the scope of "representation" in s.596 and that the text of sections 596 and 609 of the Act "make it apparent that 'representation' in s.596 is concerned with more than just advocacy at a hearing"[5] on the following bases:

- the concept of representation when used in connection with the activities of a lawyer is not normally understood to be confined to such advocacy;[6]

- sections 596(1) and (2) of the Act refer to a person being represented "in a matter" before the Commission, with the word 'matter' not apt to describe just a hearing, and in a legal context usually descriptive of the whole of a justiciable controversy brought before a court or tribunal for adjudication;[7]

- section 596(1) of the Act expressly provides that representation in a matter includes "making an application or submission to the FWC on behalf of the person", and the exclusion in s.596(3) of the Act from the permission requirement in s.596(1) in respect of written submissions in modern award and minimum wage matters indicates that "submission" in s.596(1) includes written submissions (which are necessarily prepared out of court). Further the making of an application, at least in the formal sense, is also necessarily an out of court activity.[8]

[24] The Full Bench also noted s.609(2)(b) of the Act authorises the making of procedural rules concerning the circumstances in which lawyers and paid agents may make applications and submission on behalf of persons, and considered it to be expressed in terms consistent with s.596(1) of the Act.

[25] The position expressed by the Full Bench in *Fitzgerald* was therefore that "s.596 is not confined to permission for courtroom advocacy, and indeed appears to have been drafted in a way that is deliberately distinct from the predecessor provisions and was intended to put beyond doubt that all aspects of representation in connection with a matter were to be encompassed."[9]

[26] However, the Full Bench imposed a limitation on the scope of the representation, stating "…it must be in a matter *before the FWC*"[10] and further stated that representation in a matter before the Commission "would probably also exclude the provision of legal advice to a party, *inter partes* dealings and other activities which do not involve interaction with the Commission itself even after an application is made to the Commission."[11]

[27] The Full Bench then proceeded to outline how s.596 of the Act operates in conjunction with Rules 11 and 12 of the Rules, at paragraph [45] of the *Fitzgerald* decision:

> "…Where an applicant engages the services of a lawyer or paid agent, representation begins at the point that the application to the Commission is made on the applicant's behalf. All dealings with Commission undertaken on behalf of either party from that point onwards in connection with the application constitute representation. Rule 11(1) operates to require the lawyer or paid agent to lodge a "*notice of representative commencing to act*" as soon as representation in the sense discussed commences. However, notwithstanding that representation has commenced in relation to the application, permission under s.596(2) for any representational activities undertaken prior to or outside of a conciliation conference, determinative conference, or interlocutory or final hearing will generally not be required because rule 12(1) exempts, subject to any contrary direction made under rule 12(2), the making of written applications and written submissions, the lodgment of documents with the Commission and correspondence with the Commission from the general prohibition in s.596(1). If a party considers themselves to be prejudiced by such representational activity on behalf of the opposing party, the remedy is to apply for a direction under rule 12(2) which, if granted, would require the opposing party to seek permission for representation to the necessary extent under s.596(2)."

Consideration

[28] Part of the direction Dr Stringfellow seeks is that the CSIRO not be permitted to obtain legal advice in the lead-up to the hearing of the Application. However, the power to make a direction in Rule 12(2) is, in my view, limited to the representational activity outlined in Rule 12(1) and that representational activity does not extend to the obtaining of legal advice. I am inclined to the same view as the Full Bench in *Fitzgerald*; that the representation for which permission is required pursuant to s.596 of the Act does not extend to the provision of legal advice to a party, even after an application is made to the Commission.[12] I am therefore not persuaded to make a direction that the CSIRO not be permitted to obtain legal advice in the lead-up to the hearing of the Application.

[29] The other part of the direction Dr Stringfellow seeks is that the CSIRO not be allowed to be represented by a lawyer or paid agent during the "submission stage" in the build-up to the hearing, including for the making of submissions or an application.

[30] It may be inferred from the making of his application for a direction that Dr Stringfellow considers he would be prejudiced by such representational activity on behalf of the CSIRO. The remedy said by the Full Bench in *Fitzgerald* to be available to him in such circumstances, is to apply for a direction under Rule 12(2) which, if granted, would require the CSIRO to seek permission for the representation, to the necessary extent under s.596(2) of the Act. This he has done.

[31] As outlined above, s.609(2)(b) of the Act authorises the making of procedural rules concerning the circumstances in which lawyers and paid agents may make applications and submission on behalf of persons. Further, the requirement that a person may only be represented in a matter before the Commission by a lawyer or paid agent in the making of an application or submission with the permission of the Commission, is subject to exceptions provided by the Rules.[13]

[32] For present purposes, the Commission has made such a rule. Rule 12 provides that for s.596(1) of the Act, a person may be represented in a matter before the Commission by a lawyer or paid agent for the purposes of:

- preparing a written application or written submission for the person in relation to the matter;

- lodging with the Commission a written application, written submission or other document, on behalf of the person in relation to the matter; and

- corresponding with the Commission on behalf of the person in relation to the matter.

[33] As to how Rule 12 operates, as outlined above, the Full Bench in *Fitzgerald* stated, "permission under s.596(2) for any representational activities undertaken prior to or outside of a conciliation conference, determinative conference, or interlocutory or final hearing will generally not be required because rule 12(1) exempts, subject to any contrary direction made under rule 12(2), the making of written applications and written submissions, the lodgment of documents with the Commission and correspondence with the Commission from the general prohibition in s.596(1)."[14]

[34] The CSIRO has submitted that the prima facie position under the Rules is that the CSIRO is permitted to have legal representation in the preliminary steps, subject to a direction to the contrary and that the onus is on Dr Stringfellow to satisfy the Commission that the direction he seeks is warranted in all the circumstances. Dr Stringfellow has filed and served written submissions dated 19 February 2018 and made oral submissions at the Mention hearing on 20 February 2018.

[35] Parliament contemplated the making of exceptions to the general requirement for a person seeking to be represented in a matter before the Commission by a lawyer or paid agent to seek the permission of the Commission. Certain exceptions were to be provided through the operation of s.596(3) of the Act, others were contemplated by s.609(2)(b). Rule 12(1) has created some exceptions, subject to a direction by the Commission to the contrary. I have considered the written submissions before me and the oral submissions of the parties and have summarised them above from paragraphs [15] – [18]. I am not persuaded that the circumstances of this case are of such a nature that they warrant a departure from the operation of Rule 12(1) or the making of a direction in the terms sought by Dr Stringfellow.

Conclusion

[36] I am not persuaded to make the directions sought by Dr Stringfellow.

[37] As I have previously indicated to the parties, I will not be the presiding member at the conference/hearing for the Application. Therefore, if either of the parties seek to be represented by a lawyer or paid agent at the conference/hearing, permission pursuant to s.596 of the Act from the presiding member will be required. The Application will be allocated to the presiding member in the coming weeks and the parties will be notified when this occurs.

Directions

[38] As to its future conduct, and in the meantime, this matter is now subject to the following directions:

a) CSIRO (**the Respondent**) is directed to file with the Fair Work Commission, **marked attention UNFAIR DISMISSAL ROSTERS**, and serve on Dr Stringfellow (**the Applicant**):

- the Respondent's Outline of Argument: objections;
- the Respondent's Statement(s) of Evidence; and
- the Respondent's Document List

by no later than noon on Wednesday, 7 March 2018

b) The Applicant is directed to file with the Fair Work Commission, **marked attention UNFAIR DISMISSAL ROSTERS**, and serve on the Respondent:

- the Applicant's Outline of Argument;
- the Applicant's Outline of Argument: objections;
- the Applicant's Statement(s) of Evidence; and
- the Applicant's Document List

by no later than noon on Wednesday, 21 March 2018

c) The Respondent is directed to file with the Fair Work Commission, **marked attention UNFAIR DISMISSAL ROSTERS**, and serve on the Applicant:

- the Respondent's Outline of Argument; and
- Any other material it wishes to file in reply.

by no later than noon on Wednesday, 28 March 2018

d) The unfair dismissal application is listed for **Jurisdiction (No Dismissal; Resignation) and Arbitration** Conference/Hearing, at **10.00am** at the Fair Work Commission, 111 St Georges Terrace, Perth, on each of:

- **Monday 9 April 2018;**
- **Tuesday 10 April 2018; and**
- **Wednesday 11 April 2018**.

DEPUTY PRESIDENT

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[1] [2017] FWCFB 2797.

[2] [2012] FWA 2966.

[3] Ibid at [16].

[4] [2013] FCA 291.

[5] [2017] FWCFB 2797 at [34].

[6] Ibid at [34].

[7] Ibid at [36].

[8] Ibid at [37].

[9] Ibid at [44].

[10] Ibid.

[11] Ibid.

[12] *Fitzgerald v Woolworths Limited* [2017] FWCFB 2797 at [44].

[13] *Fair Work Act 2009 (Cth)*, s.596(1).

[14] [2017] FWCFB 2797 at [45].