



# DECISION

*Fair Work Act 2009*  
s.365—General protections

**Jay Ferrington**

v

**The Trustee For DFT Family Trust T/A Rytrans Repairs and Service Pty Ltd**  
(C2019/5834)

DEPUTY PRESIDENT MILLHOUSE

MELBOURNE, 24 DECEMBER 2019

*Application to deal with contraventions involving dismissal.*

[1] Mr Jay Ferrington (Applicant) has made an application under s.365 of the *Fair Work Act 2009* (Act). He alleges that he was dismissed by The Trustee For DFT Family Trust T/A Rytrans Repairs and Service Pty Ltd (Respondent) in contravention of the general protection provisions of the Act.

[2] I have decided to dismiss the application. The Applicant has failed to pay the lodgement fee or file a completed application for waiver of the lodgement fee (waiver application). The reasons for this decision follow.

## Context

[3] The application was received by the Commission on 19 September 2019.

[4] On 23 September 2019, the Commission:

(a) telephoned the Applicant to discuss the incomplete application. A voicemail message was left; and

(b) emailed a letter to the Applicant and his legal representative, Ms Vanessa Nikolovska of Unfair Dismissals Direct, advising that he must pay the lodgement fee or file a waiver application within 14 days, or the application may be dismissed.

[5] In the absence of compliance by the Applicant or his representative, the Commission contacted the Applicant on two further occasions:

(a) at 4:31pm on 8 October 2019, by telephone. A voicemail message was left; and

(b) at 11:38am on 10 October 2019, by telephone. A voicemail message was left advising that the application remained incomplete and may be dismissed unless the

lodgement fee was paid, or a completed waiver application was received within seven days. A letter to this effect, of the same date, was emailed and posted to the Applicant. The letter was also emailed to Ms Nikolovska.

[6] On 17 October 2019, the Commission telephoned the Applicant. A voicemail message was left advising that the application remained incomplete and it may be dismissed if the Applicant did not contact the Commission by close of business the same day.

[7] In the absence of any contact from the Applicant or his representative, a further telephone call was made to the Applicant on 26 October 2019. The call was unanswered.

[8] Finally, on 12 December 2019 an email was sent to the Applicant advising that the application remained incomplete. The Applicant was advised that in the absence of payment of the lodgement fee, or an application for fee waiver, the matter may be dismissed.

[9] To date, the Applicant has not contacted the Commission, and has not paid the lodgement fee or filed a waiver application.

### **Legislative framework**

[10] In relation to an application made pursuant to s.365 of the Act, s.367 provides:

#### **367 Application fees**

(1) The application must be accompanied by any fee prescribed by the regulations.

(2) The regulations may prescribe:

- (a) a fee for making an application to the FWC under section 365; and
- (b) a method for indexing the fee; and
- (c) the circumstances in which all or part of the fee may be waived or refunded.”

(emphasis added)

[11] Section 587 of the Act provides that:

#### **587 Dismissing applications**

(1) Without limiting when the FWC may dismiss an application, the FWC may dismiss an application if:

- (a) the application is not made in accordance with this Act; or
- (b) the application is frivolous or vexatious; or
- (c) the application has no reasonable prospects of success.

(2) Despite paragraphs (1) (b) and (c), the FWC must not dismiss an application under section 365 or 773 on the ground that the application:

- (a) is frivolous or vexatious; or
- (b) has no reasonable prospects of success.

(3) The FWC may dismiss an application:

- (a) on its own initiative; or
- (b) on application.

(emphasis added)

### **Consideration and conclusion**

[12] The Applicant has failed to pay the lodgement fee or file a waiver application. Accordingly, the application is incomplete. The Applicant or his representative have not responded to attempts by the Commission to contact them regarding the incomplete application.

[13] In these circumstances, I am satisfied that the Applicant has failed to comply with s.367(1). Accordingly, the application has not been made in accordance with the Act. It is therefore dismissed pursuant to s.587(1)(a) of the Act.

[14] An order giving effect to this decision will be issued separately.



DEPUTY PRESIDENT

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