



DECISION

Fair Work Act 2009

Section 789GV - Application to deal with a dispute under Part 6-4C

Mr Mathew Mazzitelli

v

Qantas Airways Limited

(C2020/3189)

DEPUTY PRESIDENT ANDERSON

ADELAIDE, 11 MAY 2020

Application to deal with a dispute under Part 6-4C

[1] On 8 May 2020 I dismissed a challenge by Qantas Airways Limited (Qantas) to the Commission's jurisdiction to hear and determine Mr Mazzitelli's application.¹

[2] Following the Decision on Jurisdiction, I conducted further conciliation on 8 May 2020 at 4.15 pm ACST. The matter did not resolve.

[3] Following the further conciliation on 8 May 2020, I issued Directions dated 8 May 2020 listing the matter for hearing of the merits at 2.15 pm ACST Tuesday 12 May 2020. I directed that Mr Mazzitelli and Qantas submit any further materials on merit by 5.00pm ACST 11 May 2020 (later extended to 12.00 noon 12 May 2020).

[4] On 11 May 2020 Qantas filed a F7 Notice of Appeal against the Decision on Jurisdiction, including seeking a stay of the merit hearing and Directions pending determination of the appeal. The appeal has been listed for hearing on 18 May 2020.

[5] Qantas has separately requested that, in light of its appeal, I vacate the scheduled merits hearing and associated directions.² This decision concerns that request.

Merits hearing

[6] I provided Mr Mazzitelli an opportunity to respond (by 5.00pm ACST 11 May 2020) to the request by Qantas that the merit hearing be vacated and related Directions be set aside. Mr Mazzitelli did so³. He opposes that course on three grounds: that prolonging proceedings will create undue personal stress and anxiety; that his application has already been before the Commission for six days; and that he seeks resolution of a discrete issue about the JobKeeper legislation and related payment rules.

¹ Decision on Jurisdiction [2020] FWC 2413

² Email to Chambers Anderson – DP 11 May 2020 12.35pm and 4.42pm

³ Email to Chambers Anderson – DP 11 May 2020 4.32pm

[7] The appeal by Qantas is the exercise by the responding employer of its rights under the *Fair Work Act 2009*. Notwithstanding that Part 6-4C applications need to be dealt with promptly, I consider that it would be inconsistent with the principle of the orderly conduct of proceedings for there to be a merits arbitration alongside a parallel appeal proceeding. It would also be inefficient to the parties and the Commission to conduct a merits hearing if it were to be found that there was no jurisdiction to do so. My decision was not a mere procedural matter; it went to jurisdiction. Whilst there is some potential prejudice to Mr Mazzitelli in a delay, his application is still capable of being dealt with to finality on the merits should the appeal be unsuccessful, and should the matter remain unresolved between the parties. Whilst, in the absence of an appeal I listed this matter promptly and rejected earlier requests by Qantas for more time, the balance of convenience now favours not proceeding with the scheduled merits hearing, pending determination of Qantas's appeal on jurisdiction.

[8] Accordingly, I will issue a further direction that the merits hearing scheduled for 2.15pm ACST 12 May 2020 be vacated, with re-scheduling to a later date being subject to the outcome of the appeal.

[9] I also set aside the related Direction that parties file further materials by 12.00 noon ACST 12 May 2020.

Representation

[10] Finally, on 9 May 2020 Qantas filed a F53 Notice that it has a lawyer acting in this matter and that "permission will be sought for participation in all future conferences or hearings."

[11] Unsolicited, on 11 May 2020 Mr Mazzitelli filed a written objection to this Notice and stated his grounds of objection.

[12] I subsequently directed that Qantas file grounds in support of its request by no later than 12.00 noon ACST 12 May 2020.

[13] In light of my decision to vacate the merits hearing scheduled for 12 May 2020, it is also appropriate to set aside my current direction that Qantas place before me submissions on representation.

[14] Noting Mr Mazzitelli's objection to representation by Qantas at the merits hearing, I adjourn consideration of the request by Qantas to a later date once the outcome of the appeal is known and should the matter return to me.

[15] My decision to adjourn consideration of the request for representation only concerns proceedings before me. Representation on the appeal is a matter for the Commission's full bench.

[16] I issue a further direction giving effect to this Decision.



DEPUTY PRESIDENT

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