



# DECISION

*Fair Work Act 2009*

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

**Rosalind Marulanda**

v

**Peter Rowland Group Pty Ltd**

(C2020/3108)

DEPUTY PRESIDENT GOSTENCNIK

MELBOURNE, 19 MAY 2020

*Application to deal with a dispute in relation to JobKeeper.*

[1] On 1 May 2020 Ms Rosalind Marulanda applied under s.789GV of the *Fair Work Act 2009* (the Act) for the Commission to deal with a dispute about the operation of Part 6-4C of the Act. The Respondent is Peter Rowland Group Pty Ltd, the Applicant's employer.

[2] In answer to question 2.2 of the Form F13A, which asks the Applicant to set out what the dispute is about, Ms Marulanda relevantly states:

“I was sent a form to be able to get Job keeper payment. I was then told that I didnt (*sic*) qualify That on the basis of a casual employee on a regular and systematic basis for more than 12 months (as at ! (*sic*) march 2020)...”

[3] In answer to question 3.1 of the Form F13A, which asks the Applicant to set out the remedy they are seeking, Ms Marulanda states:

“To be able to access the job Keeper Payment.”

[4] On 1 May 2020 my Associate contacted the Applicant by telephone and advised, among other things, that the dispute as notified to the Commission appears to be a dispute about eligibility for the JobKeeper payment and does not appear to be a dispute about the operation of Part 6-4C of the Act. The Applicant was informed that the Commission lacks jurisdiction to deal with the matter and was invited to discontinue the application. Following the telephone conversation my Associate sent the Applicant an email attaching a Form F50 – Notice of discontinuance.

[5] The application was not discontinued and on 4 May 2020 my Associate again contacted the Applicant by email attaching a Form F50 – Notice of discontinuance.

[6] On 7 May 2020 my Associate attempted unsuccessfully to contact the Applicant by telephone to ascertain whether she intended to withdraw or press the application.

[7] On 12 May 2020, in the face of an ongoing absence of any response from the Applicant, my Associate contacted Ms Marulanda by email indicating that on the face of the application lodged the dispute about which she complained did not appear to be within the Commission's jurisdiction. Ms Marulanda was directed to file a submission addressing this issue by 5pm on Wednesday, 13 May 2020.

[8] At the time of this Decision, the Applicant has not responded to the email of 12 May 2020.

[9] I have decided to dismiss Ms Marulanda's application, for the reasons that follow.

[10] Part 6-4C was introduced into the Act by the *Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020*. The Part allows employers to give certain directions to employees and make certain requests of them. It also allows employees to make particular requests of their employer about other employment and training.

[11] The Part also contains provisions which are civil remedy provisions enforceable in the Federal Court of Australia or the Federal Circuit Court of Australia pursuant to the provisions in Part 4-1 of the Act.

[12] Section 789GV of the Act allows the Commission to deal with disputes about the operation of the new Part. The provisions of the new Part are confined to an employer that is a 'national system employer' and to an employee who is a 'national system employee' (s.789GC). An extended meaning of these terms is found in Division 2A of Part 1-3 of the Act.

[13] Part 6-4C does not deal with whether an employer is eligible for a JobKeeper payment in respect of a particular employee or whether a particular employee is an "eligible employee" for the purposes of the JobKeeper scheme.

[14] These matters are addressed primarily by the *Coronavirus Economic Response Package (Payments and Benefits) Rules 2020* made by the Treasurer under s.20 of the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*.

[15] Disputes about whether an employer is eligible for a JobKeeper payment in respect of a particular employee or whether a particular employee is an "eligible employee" for the purposes of the JobKeeper scheme, without more, are not disputes with which the Commission is empowered to deal under the power conferred on it by s.789GV of the Act.

[16] The dispute the subject of this application is a dispute about eligibility to participate in the JobKeeper scheme. That is not a dispute about the operation of Part 6-4C of the Act. The Commission has no power to deal with the dispute. The application is dismissed.



DEPUTY PRESIDENT

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