



DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Ryan Scott

v

DFP Recruitment Services Pty Ltd
(U2020/8932)

COMMISSIONER BISSETT

MELBOURNE, 28 OCTOBER 2020

Application for an unfair dismissal remedy – failure to respond to Commission correspondence – application not made in accordance with the Fair Work Act – s.587 – application dismissed.

[1] On 30 June 2020 Mr Ryan Scott made an application to the Fair Work Commission for a remedy for unfair dismissal pursuant to s.394 of the *Fair Work Act 2009* (FW Act). The application was filed on behalf of Mr Scott by Employee Dismissals Claims as paid agent for Mr Scott.

[2] The application form filed by Mr Scott’s representative, stated that Mr Scott was notified of the dismissal and the dismissal took effect on 1 June 2020. In response to question in relation to any reason why the application was filed outside the 21 day period provided for in the FW Act, the representative wrote ‘Representative error’ with no further explanation as to why the application was filed outside 21 days. The file was subsequently allocated to Deputy President Millhouse to deal with the question of whether an extension of time should be granted within to make the application.

[3] On 10 July 2020, Deputy President Millhouse’s Chambers sent a letter and directions to the parties (including Mr Scott’s representative) in relation to the extension of time. Mr Scott was directed to file material relating to why the application was submitted outside 21 days by no later than close of business on Thursday 16 July 2020. A notice of listing was sent on the same day to the parties advising the matter had been listed for an Extension of Time Conference/Hearing by telephone on Monday 20 July 2020 at 3:00pm before Deputy President Millhouse.

[4] On 16 July 2020 Ms Athena Iliades, of the Respondent sent an email to Deputy President Millhouse’s Chambers indicating that on the Respondent’s records “Mr Scott was performing work offshore on 1 June 2020 (the day he says his employment was terminated), and that a discussion in relation to the cessation of his assignment with the host employer instead took place on 18 June 2020.” Further advice from the Respondent and a telephone call to the Applicant suggested that there was some confusion as to the identity of the Applicant’s employer. Given these issues the file was referred to me to attempt to resolve.

[5] On 17 July 2020 my Chambers attempted to contact Mr Scott and Ms Solomon (the named contact person) of Employee Dismissal Claims. There was no answer from either and voice messages were left for each to contact the Commission urgently. An email was also sent following the attempted phone calls to Ms Solomon to contact the Commission.

[6] On 19 July 2020 an email was received from Ms Solomon advising she would attempt to gather relevant material for the extension of time hearing however this would be lodged outside the directions set.

[7] On 20 July 2020 a notice of listing was sent to parties cancelling the Extension of Time Conference/Hearing listed for later that day. A further email was sent to Ms Solomon explaining that there appeared to be some confusion with respect to the identity of the Respondent, requesting she contact the Commission urgently and advising that a failure to do so may result in the application being dismissed.

[8] Soon thereafter Mr John Birmingham, also of Employee Dismissal Claims, representing Mr Scott telephoned my Chambers and attempted to provide a reason for the late filing of the application. It was explained to Mr Birmingham that the last email from the Commission was in relation to confusion surrounding the Respondent and that the extension of time hearing had been cancelled. Mr Birmingham said he was about to commence a conciliation conference in relation to a separate application and he would call the Commission back. Mr Birmingham did not contact my Chambers, despite having undertaken to do so. A follow up email was sent to Mr Birmingham requesting a call back as soon as possible. No response has yet been received from Mr Birmingham.

[9] On 21 July 2020, in a final attempt to resolve confusion over the application, the matter was listed for a Mention by telephone on 24 July 2020 at 2:00pm. Mr Scott and Mr Birmingham were directed to provide contact details for the Mention. Neither provided contact details nor was contactable for the Mention.

[10] On 27 July 2020 directions were subsequently issued to Mr Birmingham requesting clarification with respect to the application by no later than 4:00pm Wednesday, 29 July 2020. Those directions indicated that a failure to comply may result in the application being dismissed under s.587(1)(c) of the FW Act. An email was also sent to Mr Scott advising that an email had been sent to his representative and there was a direction to provide clarification surrounding the Respondent.

[11] To date, no response has been received from Mr Scott nor Mr Birmingham or Ms Solomon.

[12] Section 587 of the FWA provides as follows:

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.

[13] This application for relief from unfair dismissal has taken a substantial amount of Commission time and resources in seeking clarification of the application from the Applicant's representatives at Employee Dismissal Claims. That Mr Birmingham from Employee Dismissal Claims failed at every juncture to provide the Commission with accurate information in relation to an application he filed as a paid agent on behalf of his client is concerning. His failure to comply with directions of the Commission, respond to basic correspondence or return telephone calls does not demonstrate the attention to detail expected of a paid agent in the Commission. The Commission accepts that at times inadvertent errors are made on applications or other material filed. The appropriate course of action, having been made aware of such errors, is to rectify them at the earliest opportunity. In relation to this file that has not been done and requests to do so ignored. An early response, admission of the error and rectification or withdrawal of the application would have saved the Commission much time and effort.

[14] In these circumstances I have determined on my own motion that the application be dismissed pursuant to s.587(1)(a) and (c) of the FW Act. The application was not complete and therefore not made in accordance with the FW Act and, given the Applicant and Mr Birmingham's failure to engage with the Commission, has no reasonable prospects of success. An order¹ to this effect will be issued shortly.



COMMISSIONER

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Endnote:

¹ PR723836