



# DECISION

*Fair Work Act 2009*

s.394 - Application for unfair dismissal remedy

**Alissa Dodd**

v

**Anglican Aged Care Services Group t/as Benetas**

(U2020/13139)

COMMISSIONER MCKINNON

MELBOURNE, 25 NOVEMBER 2020

*Application for an unfair dismissal remedy – application dismissed for want of prosecution.*

[1] On 2 October 2020, Alissa Dodd filed an application for an unfair dismissal remedy under s.394 of the *Fair Work Act 2009* (the Act).

[2] The matter was referred to me on 22 October 2020. Directions issued on 27 October 2020 requiring the filing of material. On 30 October 2020 the matter was listed for Mention and a Hearing was set down for 27 November 2020 in relation to the Respondent’s jurisdictional objection. The Respondent filed witness statements on 9 November 2020 and an outline of submissions two days later.

[3] On 5 November 2020, Ms Dodd sent an email to the Commission’s Melbourne Registry asking to ‘cancel’ the hearing. The Commission sought clarification as to whether Ms Dodd wished to adjourn the matter or to withdraw her application. No response was received.

[4] The matter was listed for ‘non-compliance hearing’ for 9.30 am on 20 November 2020 after Ms Dodd failed to file material by 16 November 2020 in accordance with the Directions. Ms Dodd did not appear at the non-compliance hearing and did not respond to attempts by the Commission to contact her for the purposes of participation in the hearing.

[5] At the non-compliance hearing, Counsel for the Respondent made application that the matter be dismissed under s.399A of the Act for want of prosecution. Shortly after the hearing, the Commission emailed Ms Dodd providing a further opportunity until close of business on Tuesday 24 November 2020 to file any response to:

- “• The material filed by the Respondent on 9 November 2020 and 11 November 2020 (dealing with its jurisdictional objection to your application); and
- The Respondent’s application under s.399A of the Act;”

[6] The Commission’s correspondence also notified Ms Dodd that her application may be dismissed if no response was received.

[7] Ms Dodd did not file any material prior to close of business on 24 November 2020 and has not contacted the Commission since 5 November 2020.

[8] Section 399A of the Act provides as follows:

**“399A Dismissing applications**

(1) The FWC may, subject to subsection (2), dismiss an application for an order under Division 4 if the FWC is satisfied that the applicant has unreasonably:

(a) failed to attend a conference conducted by the FWC, or a hearing held by the FWC, in relation to the application; or

(b) failed to comply with a direction or order of the FWC relating to the application; or

(c) failed to discontinue the application after a settlement agreement has been concluded.

Note 1: For another power of the FWC to dismiss applications for orders under Division 4, see section 587.

Note 2: The FWC may make an order for costs if the applicant’s failure causes the other party to the matter to incur costs (see section 400A).

(2) The FWC may exercise its power under subsection (1) on application by the employer.

(3) This section does not limit when the FWC may dismiss an application.

[9] In light of the history outlined above and the proximity of the Hearing listed for 27 November 2020, I am satisfied that Ms Dodd has unreasonably failed to comply with my directions to file materials, and failed to attend the non-compliance hearing in this matter.

[10] In the circumstances, the application for an unfair dismissal remedy is dismissed under s.399A of the Act.



COMMISSIONER

*Appearances:*

*M Minucci* of Counsel for the Respondent

*Hearing details:*

2020.

Melbourne (by Microsoft Teams):

November 20

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