



DECISION

Fair Work Act 2009
s.365—General protections

Lara Blomberg

v

**Omni Pathways Pty Ltd The Trustee for Omni Pathways Unit Trust T/A
Silk & Macro Consulting**
(C2023/2355)

COMMISSIONER HUNT

BRISBANE, 1 DECEMBER 2023

Application to deal with contraventions involving dismissal – respondent raised jurisdictional objection that application was made outside of 21-day time limit – decision issued dismissing jurisdictional objection - application for costs

[1] This decision concerns an application by Ms Lara Blomberg made on 12 July 2023 seeking an order for costs against Omni Pathways Pty Ltd The Trustee for Omni Pathways Unit Trust T/A Silk & Macro Consulting (the Respondent) pursuant to s.375B of the *Fair Work Act 2009* (the Act).

Background to the substantive application

[2] On 26 April 2023, Ms Blomberg made an application to the Fair Work Commission (the Commission) under s.365 of the Act, by way of a Form F8 – General protections application involving dismissal, alleging that she had been dismissed from her employment with the Respondent in contravention of a general protection provided by the Act.

[3] Ms Blomberg was represented throughout the proceedings by Mr Matthew Lynch of Gorval Lynch. The Respondent was represented throughout the proceedings by Mr Kris Williams, Chief Operations Manager.

[4] Ms Blomberg alleged that she was dismissed by the Respondent in contravention of ss.340 and 351 of the Act.

[5] In its Form F8A Employer Response, the Respondent stated that the dismissal took effect on 5 April 2023, and objected to the application on the basis that the application had been made outside of the 21-day time limit in which to bring an application.

[6] Section 366 of the Act states:

“366 Time for application

- (1) An application under section 365 must be made:
 - (a) within 21 days after the dismissal took effect; or
 - (b) within such further period as the FWC allows under subsection (2).
- (2) The FWC may allow a further period if the FWC is satisfied that there are exceptional circumstances, taking into account:
 - (a) the reason for the delay; and
 - (b) any action taken by the person to dispute the dismissal; and
 - (c) prejudice to the employer (including prejudice caused by the delay); and
 - (d) the merits of the application; and
 - (e) fairness as between the person and other persons in a like position.”

[7] The application was allocated to me to determine whether the application was made within the statutory time frame and if it was not, whether an extension of time should be granted.

[8] At 9:00am on 16 June 2023, my Chambers sent correspondence to the parties, noting the Respondent’s jurisdictional objection and advising as follows:

“The Commissioner notes that the dismissal occurred on 5 April 2023, and to be within time, the application would have needed to have been made by 25 April 2023. However, 25 April 2023 is a declared public holiday being ANZAC Day. Please see below the following information from the Fair Work Commission’s General Protections Benchbook regarding the final day, noting that the final day to bring the application was 25 April 2023.

How is 21 days calculated?

The 21 days for lodgement does not include the date that the dismissal took effect. This means that day one commences the day following the dismissal.

Weekends and public holidays

If the **final day** of the 21 day period falls on a weekend or on a **national public holiday** (when the Commission is closed) the timeframe will be extended until the next business day. Public holidays or weekends that fall during the 21 days will not extend the period of lodgement.

The Commission is closed on the following **national public holidays** (or substitute public holiday):

- New Year’s Day
- Australia Day
- Good Friday
- Easter Monday
- ANZAC Day
- Christmas Day

- Boxing Day

On state or local public holidays (such as the Queen's Birthday) the local Commission offices will be closed however the other Commission offices nationally will be open and able to accept applications electronically.

The Respondent is requested to advise by no later than **12:00pm (AEST) on Monday, 19 June 2023** whether it presses its jurisdictional objection that the application has been made out of time."

[9] At 9:52am on 16 June 2023, the Respondent sent the following email to chambers, copying in Ms Blomberg and her representative:

"Good Morning Commissioner Hunt,

Thanks for your email.

We will be proceeding with our jurisdictional objection."

[10] Private correspondence was sent from Ms Blomberg's representative to the Respondent at 11:47am on 16 June 2023 as follows:

"Dear Mr Williams

C2023/2355 - Ms Lara Blomberg v Omni Pathways Pty Ltd The Trustee for Omni Pathways Unit Trust T/A Silk & Macro Consulting

We refer to the above and we act for Ms Lara Blomberg.

Considering the email received from Commissioner Hunt's Chambers this morning, 16 June 2023 at 9:00am, regardless of whether dismissal occurred on 4 April 2023 or 5 April 2023 our client's application is within time. This is because as outlined in the email, the 21 days for lodgement does not include the date that the dismissal took effect and 25 April 2023 was a public holiday.

Considering the above, your jurisdictional objection is baseless and is a waste of our and commission resources. In turn if your jurisdictional objection is not withdrawn **by close of business, Monday the 19th of May 2023**, we will seek costs on an indemnity basis.

This offer is made pursuant to the principles of *Calderbank v Calderbank* [1975] 3 All ER 333. In the event that this offer is not accepted we will rely on this letter in any application for indemnity costs."

[11] At 1:30pm on 16 June 2023, the Respondent replied by email to Ms Blomberg's representative as follows:

"Thanks for your email.

We will proceed if not overturned as no one has come back to my supporting evidence.

We are also continuing with the lines of the false claims made as per our witness statements of the events that took place, Lara was terminated within min term of employment purely based on failure to meet KPIS as discussed over 2 disciplinary meetings prior to this road trip. These conversations and meetings were with the director Daniel Pellegrino and not Mr Peter Smith.

Lara's final termination was based on not meeting the reduced KPIS set by Daniel the director in the time frame agreed between Lara and Daniel, this has been well documented our side and was not held out by Mr Smith.

And was the sole bases of the termination

Who will pay our compensation for this false claim that has been made by Lara?

Lara has also not raised these complaints with me or the Director on termination or in any form throughout all our conversation both pre- and post-employment with us. In fact on Termination, she quoted to myself she was leaving anyway and was purely working till termination for extra money and was intending on calling in sick till receipt of last payment.

Further, the claim has been made to the incorrect company as I have stated prior, she was not engaged by Silk and Sacro at any time.

Prior to termination of the agent, we also spoke with Fair Work around the ground of which we were terminating her and other staff for failures to meet kpi objectives as it was within min term of employment and advised we had grounds,

As previously mentioned, we are only willing to look at 1 week in lieu of notice and again I can provide all witness statements, Coaching Events, Exit Interview etc that support the false claims made towards us and our staff."

[12] At 3:48pm on 16 June 2023, Ms Blomberg's representative sent to the Respondent an offer to resolve all matters between Ms Blomberg and the Respondent on a without prejudice save as to costs basis. The letter encouraged the Respondent to obtain legal advice.

[13] On 19 June 2023, I issued directions to the parties for the filing of material in relation to the jurisdiction of the application addressing the objection that the application was made out of time. The directions also required the parties to provide their views on whether a hearing was required for determination of the jurisdictional objection.

[14] The Respondent filed its material in accordance with the directions on 21 June 2023. Ms Blomberg filed her material on 23 June 2023. On 26 June 2023, Ms Blomberg advised that she did not consider a hearing was required for the jurisdictional issue and that she was content for the matter to be determined on the papers. The Respondent did not provide a view as to whether a hearing was required. Accordingly, I considered it appropriate for the matter to be determined on the papers.

[15] Mr Peter Smith, a manager of the Respondent gave evidence on behalf of the Respondent that Ms Blomberg's employment was terminated on 4 April 2023. Ms Blomberg contended that she was terminated on 5 April 2023, but for the purposes of the jurisdictional objection, Ms Blomberg was prepared to agree that the dismissal occurred on 4 April 2023.

[16] Accepting that the dismissal occurred on 4 April 2023, the last day of the 21-day period that Ms Blomberg had to file her application was 25 April 2023, that being ANZAC Day, a public holiday.

[17] In determining the timeframe for the filing of Ms Blomberg's application, I had regard to s.40A of the Act, which relevantly states as follows:

“40A Application of the Acts Interpretation Act 1901

- (1) The *Acts Interpretation Act 1901*, as in force on 25 June 2009, applies to this Act.
- (2) Amendments of the *Acts Interpretation Act 1901* made after that day do not apply to this Act.”

[18] Section 36 of the *Acts Interpretation Act 1901*, as in force on 25 June 2009, provided as follows:

- “(1) Where in an Act any prescribed period of time, including from a given day, act or event, is prescribed or allowed for any purpose, the time shall, unless the contrary intention appears, be reckoned exclusive of such a day or the day of such act or event.
- (2) Where the last day of any period prescribed or allowed by an Act for the doing of any thing falls on a Saturday, on a Sunday or on a public holiday or a bank holiday in the place in which the thing is to be or may be done, the thing may be done on the first day following which is not a Saturday, a Sunday or a public holiday in that place.”

[19] Considering that the final day for the filing of Ms Blomberg's application fell on a public holiday, and that the application was filed the following day on 26 April 2023, I determined that the application was filed within the statutory timeframe, having regard to s.36 of the *Acts Interpretation Act 1901*.

[20] A decision to that effect was issued on 28 June 2023 in [\[2023\] FWC 1564](#).

The costs application

[21] On 12 July 2023, Ms Blomberg lodged a Form F6 – Application for costs.

[22] In addition to the background outlined above, the costs application set out that on 16 June 2023, Ms Blomberg made a without prejudice settlement offer to the Respondent, offering to settle the proceedings fully and finally, referred to at [12].

[23] The costs application was listed for hearing by video using Microsoft Teams on 5 September 2023. Mr Lynch appeared for Ms Blomberg, who attended the hearing towards the end. Mr Williams and Mr Daniel Pellegrino appeared for the Respondent.

Relevant legislation

[24] Section 375B of the Act states as follows:

“375B Costs orders against parties

- (1) The FWC may make an order for costs against a party (the *first party*) to a dispute for costs incurred by the other party to the dispute if:
 - (a) an application for the FWC to deal with the dispute has been made under section 365; and
 - (b) the FWC is satisfied that the first party caused those costs to be incurred because of an unreasonable act or omission of the first party in connection with the conduct or continuation of the dispute.
- (2) The FWC may make an order under subsection (1) only if the other party to the dispute has applied for it in accordance with section 377.
- (3) This section does not limit the FWC’s power to order costs under section 611.”

[25] Section 377 of the Act provides:

“377 Applications for costs orders

An application for an order for costs in relation to an application under section 365 or 372 must be made within 14 days after the FWC finishes dealing with the dispute.”

[26] Section 611 of the Act provides:

“611 Costs

- (1) A person must bear the person’s own costs in relation to a matter before the FWC.
- (2) However, the FWC may order a person (the first person) to bear some or all of the costs of another person in relation to an application to the FWC if:

- (a) the FWC is satisfied that the first person made the application, or the first person responded to the application, vexatiously or without reasonable cause; or
- (b) the FWC is satisfied that it should have been reasonably apparent to the first person that the first person's application or the first person's response to the application, had no reasonable prospect of success.

Note: The FWC can also order costs under sections 376, 400A, 401 and 780.

- (3) A person to whom an order for costs applies must not contravene a term of the order.

Note: This subsection is a civil remedy provision (see Part 4-1)."

[27] In her Form F6 application, Ms Blomberg did not indicate that she sought costs pursuant to s.611 of the Act. The application only indicated that costs were sought pursuant to s.375B of the Act. Therefore, only a costs application pursuant to s.375B had been made within the time required by the Act.¹

Costs application material

[28] Annexed to Ms Blomberg's costs application was an outline of submissions in relation to costs. She submitted that the Respondent's jurisdictional objection was made without reasonable prospects of success, such that a costs order ought to be made against the Respondent.

[29] Ms Blomberg noted that the decision to award costs is a two-stage process. The Commission must firstly be satisfied that it has jurisdiction to awards costs, and secondly be satisfied that it is appropriate to exercise its discretion to awards costs.

[30] Ms Blomberg submitted that the calculation of the timeframe for lodgement of a general protections application involving dismissal is a "simple counting exercise", and that "even to an unrepresented litigant it should have been clear" that the application was made within the statutory timeframe. She argued that this is especially the case given that my Chambers wrote to the parties on 16 June 2023, outlining the relevant timeframe, thereby notifying the Respondent of an error in its jurisdictional objection and allowing it the opportunity to withdraw the objection. Finally, Ms Blomberg submitted that the without prejudice offer made to the Respondent again should have made it reasonably apparent to the Respondent there was no reasonable prospect of success.

[31] The Commission's General Protections Benchbook was referred to by Ms Blomberg. It relevantly states:²

"An unreasonable act or omission can include a failure to discontinue a general protections dispute application or a failure to agree to terms of settlement.³ What is unreasonable will depend on the circumstances.⁴ It is intended that costs only be ordered where there is clear evidence of unreasonable conduct."⁵

[32] Given the means by which the Respondent had to inform itself of the error in its jurisdictional objection, Ms Blomberg submitted that it was unreasonable for the Respondent not to consider her settlement offer and withdraw its objection.

[33] In response to Ms Blomberg's submissions, Mr Williams submitted a statement as follows:

“Dear Commissioner Hunt,

I appreciate your understanding and guidance as I navigate through this matter. I would like to provide further insight into my perspective on the jurisdictional objection and the events that have transpired.

Initially, I believed that the jurisdictional objection was appropriate due to my misunderstanding regarding the inclusion of the day of termination in the 21-day notice period. This oversight led me to believe that the objection was within the allowable timeframe. However, upon receiving your response, I took immediate action to seek clarification by contacting the Fair Work General Enquiries lines.

Their advice echoed the information you provided, and they encouraged me to respond with a "No" if I still had any uncertainty about the timeliness of the objection. I followed their recommendation, not to challenge your authority, but rather to ensure that the process was conducted accurately and in accordance with the regulations. I apologize if this step seemed contrary to your guidance—I genuinely wanted to ensure a proper course of action.

Please allow me to clarify that my intention was never to disrespect your response or delay the proceedings. I hold your expertise and authority in high regard, and any actions that may have appeared otherwise were due to my lack of understanding of the process. I apologize for any confusion or offense my initial communication may have caused.

I was genuinely taken aback by the complaint from Ms. Lara Bloomberg from receipt of the initial complaint, and I believed that the objection was submitted outside the allowable timeframe. Our perception was that no complaint would arise given our communications with Lara on and after Termination. I assure you that our intent was never to disregard the process or delay any aspect intentionally.

Regarding the cost of application raised by Ms. Lara Bloomberg, I respectfully maintain the belief that it should not be considered. We had no intention to cause any delays or incur any costs.

I hope this message provides a clearer understanding of my perspective and the sequence of events that led to my actions. I value your guidance immensely and aim to rectify any misunderstandings that may have arisen. Your expertise is vital to the proper resolution of this matter, and I am committed to working collaboratively to address the situation.

Thank you for your continued patience and assistance.”

[34] Following the hearing on 5 September 2023, Mr Williams confirmed that he had contacted the office of the Fair Work Ombudsman (the FWO) to receive the advice mentioned above. Considering it necessary to review the audio recording of the conversation between Mr Williams and the FWO, I sought Mr Williams’ permission to access the FWO audio recording, if it was available, and for the recording to be provided to Ms Blomberg. Mr Williams consented to this course of action.

[35] On 15 September 2023, I issued an order requiring the FWO to produce a copy of the audio recording of the telephone conversation between Mr Williams and the FWO made on or after 14 June 2023. On 25 September 2023, the FWO advised it conducted a search of its records and could not identify a recording within the scope of the order.

[36] Following receipt of the FWO’s advice, my Chambers issued correspondence to the parties, confirming that the FWO did not have any records of a telephone call made by Mr Williams on or after 14 June 2023. The parties were invited to provide any further submissions arising out of the FWO’s advice. On the basis of the FWO’s advice, Ms Blomberg affirmed her position that the costs order should be made. The Respondent provided no further submissions in relation to the FWO’s advice.

Costs sought

[37] Ms Blomberg seeks an order for the following costs:

Item No.	Date	COSTS Description of work done	Amount
1.	5 June 2023	Conferring with Matthew Lynch, Merna Aziz and Lara Blomberg regarding jurisdictional objection	\$200
2.	5 June 2023	Emails from FWC and review matter	\$90
3.	15 June 2023	Conferring with Lara Blomberg re next steps, telephone to the Fair Work Commission and email to commissioner Hunt regarding date to deal with Jurisdiction Issues	\$120
4.	16 June 2023	Conferring with Matthew re commissioner response to jurisdictional objection, preparing letter of offer and follow-up email to kris from Omni Pathways	\$160
5.	21 June 2023	Reviewing material from Omni Pathways, conferring with Matthew regarding out submissions.	\$120

6.	22 June 2023	Discussion with Lara and preparing submissions before commissioner Hunt regarding the jurisdictional issue	\$800
7.	23 June 2023	Reviewing, editing and finalising submissions for Lara Blomberg re jurisdictional issue	\$160
8.	30 June 2023	Email to Matthew Lynch re submission on costs and update to Lara Blomberg	\$80
9.	6 July 2023	Preparing Costs Submissions	\$480
10.	12 July 2023	Preparing and finalizing Costs Submissions	\$800
TOTAL			\$3,311.00

Applicable case law

[38] Cost orders in proceedings under the Act are rare. In *Australian Workers Union v Leighton Contractors Pty Ltd (No 2)*,⁶ the Full Court of the Federal Court observed in relation to s.570 of the Act, but with such observation being equally apposite to the costs provisions the subject of consideration in these proceedings, as follows:

“In our view the authorities establish the following principles:

- (1) The purpose or policy of the section is to free parties from the risk of having to pay their opponents’ costs in matters arising under the Act, while at the same time protecting those parties who are forced to defend proceedings that have been instituted vexatiously or without reasonable cause.
- (2) It follows from the protection offered by s 570(2) that a person will rarely be ordered to pay the costs of a proceeding. But it is not necessary to prove that there are exceptional circumstances warranting the making of an order: *Spotless Services Australia Ltd v Senior Deputy President Jeanette Marsh* [2004] FCAFC 155 (Spotless) at [12]–[15] (to the extent that the Full Court in *Council of Kangan Batman Institute of Technology and Further Education v Australian Industrial Relations Commission* (2006) 156 FCR 275 (Kangan) held otherwise, we would respectfully disagree).”

[39] In *Neil Keep v Performance Automobiles Pty Ltd (Keep)*,⁷ the Full Bench of the Commission observed that:

“[11] Section 375B was inserted into the FW Act by the *Fair Work Amendment Act 2013 (Cth)*. The new provision came into effect on 1 January 2014 and applies to dismissal which took effect from that date.”

[40] The Full Bench in *Keep* then referred to the following passages from the Supplementary Explanatory Memorandum to the *Fair Work Amendment Bill 2013*:⁸

“[12] The Supplementary Explanatory Memorandum to the *Fair Work Amendment Bill 2013* (Cth) states as follows:

“New section 375B allows the FWC to order costs against a party to a general protections dismissal dispute (the first party) if it is satisfied that the first party caused the other party to the dispute to incur costs by an unreasonable act or omission in connection with the conduct or continuation of the dispute. New section 375B is similar to the costs orders that are available against parties in relation to unfair dismissal matters (see section 400A).

57. This power to award costs is in relation to the dispute before the FWC and does not include costs associated with a general protections court application.

58. The power to award costs under new section 375B is not intended to prevent a party from robustly pursuing or defending a general protections dispute before the FWC. Rather, the power is intended to address the small proportion of litigants who pursue or defend disputes in an unreasonable manner. The power is only intended to apply where there is clear evidence of unreasonable conduct by the first party.

59. The FWC’s power to award costs under subsection 375B(1) is discretionary and is only exercisable where the first party (whether the applicant or respondent) causes the other party to incur costs because of an unreasonable act or omission.

60. However, the power to award costs is only available if the FWC is satisfied that the act or omission by the first party was unreasonable. What is an unreasonable act or omission will depend on the particular circumstances but it is intended that the power only be exercised where there is clear evidence of unreasonable conduct by the first party.

61. New subsection 375B(2) provides that the power to award costs against one party in these circumstances is only exercisable if the other party to the dispute makes an application in accordance with section 377. New subsection 375B(3) makes it clear that the new power to award costs under subsection 375B(1) operates in addition to subsection 611(2), which enables the FWC to make costs orders against a person in certain circumstances, such as where an application is made vexatiously or without reasonable cause.”

[13] It is apparent from the Supplementary Explanatory Memorandum that the legislature intended that the power to order costs provided by s.375BB only be exercised where there is clear evidence of unreasonable conduct. Such an approach is entirely consistent with the jurisprudence relating to the other costs provisions in the FW Act (such as s.611).”

[41] In *Cadd*,⁹ Commissioner Ryan said:

“[10] [...] In 2013 ss.375B and 779A were introduced into the Act [...]. The 2013 amending legislation had the effect of copying s.400A which only applied in relation to unfair dismissal matters and repeating the provision so that it applied to general protection matters and to termination of employment matters. Any consideration of the operation and scope of s.375B will be assisted by having regard to the purpose and scope of operation of s.400A.

[...]

[16] The trigger action to enliven s.375B is “an unreasonable act or omission of the first party in connection with the conduct or continuation of the dispute” and this is the same as the second trigger action identified in s.376. Given that s.375B and s.400A use exactly the same wording to identify the trigger action to enliven the section, namely, “the first party caused those costs to be incurred because of an unreasonable act or omission of the first party in connection with the conduct or continuation of the” dispute/matter, then it is appropriate to also look at the Explanatory Memorandum to the 2012 amending legislation which introduced s.400A. That Explanatory Memorandum included the following:

“170. The FWC’s power to award costs under this provision is discretionary and is only exercisable where the first party (whether the applicant or respondent) causes the other party to incur costs because of an unreasonable act or omission. This is intended to capture a broad range of conduct, including a failure to discontinue an unfair dismissal application made under section 394 and a failure to agree to terms of settlement that could have led to the application being discontinued.”

[42] In *Zosel v The Trustee for the Grace Freeman Nelson Trust T/A Landsculpture Design & Construction Pty Ltd* [\[2016\] FWC 6513](#) (*Zosel*), Deputy President Kovacic made the following remarks which are relevant to the distinction between s.375B and s.611:

“[11] Section 400A(1) of the Act provides that the Commission may make an order for costs against a party (the first party) to a matter arising under Part 3-2 – Unfair Dismissal of the Act if it is “satisfied that the first party caused those costs to be incurred because of an unreasonable act or omission of the first party in connection with the conduct or continuation of the matter.” The Costs Applicant in its application did not point to any such unreasonable act or omission by Mr Zosel in pursuing his unfair dismissal application. Rather, the Costs Applicant appeared to contend in its costs application that Mr Zosel’s application had been made vexatiously or without reasonable cause and had no reasonable prospect of success. While those considerations may have been relevant had the costs application been made under s.611 of the Act, as previously noted the costs application was made under s.400A. Against that background and in the absence of any submissions pointing to “an unreasonable act or omission of the first party in connection with the conduct or continuation of the matter”, the Commission cannot be satisfied that the grounds in s.400A(1) have been made out.”

Consideration

[43] The consideration in this matter is not, as put by Ms Blomberg whether the Respondent's jurisdictional objection was made without reasonable prospects of success, it is whether the Respondent, in pressing its jurisdictional objection beyond my chambers' communication of 16 June 2023, was an unreasonable act or omission of the Respondent in connection with the continuation of the dispute which cause Ms Blomberg's costs to be incurred.

[44] I consider that the Respondent was given clear advice on the morning of 16 June 2023 that the application appeared to have been made within time. In under one hour of that communication having been sent, the Respondent pressed its jurisdictional objection.

[45] Contrary to the evidence given by Mr Williams, no phone call was received from the FWO in relation to the Respondent. It is my understanding that detailed records are kept by the FWO. Mr Williams stated that upon receiving the communication from my chambers, he took immediate action to seek clarification. That is not demonstrated on the evidence.

[46] Following the Respondent's insistence to pursue the jurisdictional objection, Ms Blomberg was put to expense to again try and encourage the Respondent from withdrawing the jurisdictional objection. The Respondent refused to, in the face of a threat of a costs order seeking indemnity costs against it. Even if the Respondent is not sophisticated, and may not have understood what this meant, inquiries could have been made.

[47] The Respondent was provided by my chambers with clear information relevant to the ANZAC Day public holiday. The Respondent could have, if it had wanted to, consulted the Commission's unfair dismissal benchbook for further information. The Respondent was then put on notice that costs would be sought if it pursued the jurisdictional objection.

[48] I am satisfied that the act in pursuing the jurisdictional objection, and the omission in withdrawing it, was unreasonable. I am satisfied that there is clear evidence of unreasonable conduct of the Respondent in pursuing the jurisdictional objection, causing Ms Blomberg to incur costs.

[49] Having satisfied myself that the Respondent caused Ms Blomberg to incur costs because of an unreasonable act or omission by the Respondent in connection with the conduct or continuation of the matter, being the jurisdictional objection, I consider it appropriate to, and have decided to exercise my discretion to make an order for costs against the Respondent.

Conclusion

[50] I consider it appropriate to make an order of costs for the period from 16 June 2023.

[51] There is no relevant schedule of costs within the *Fair Work Regulations 2009* with respect to applications made under s.375B of the Act. Accordingly, any award of costs is at my discretion.

[52] I am satisfied the Respondent's conduct warrants the consideration in *Post v NTI Limited T/A NTI*¹⁰ as to a special or unusual feature described at [30] of that decision.

[53] An Order will be made concurrent with this decision for the Respondent to pay Ms Blomberg’s costs on an indemnity basis as follows:

Date	COSTS Description of work done	Amount
16 June 2023	Conferring with Matthew re commissioner response to jurisdictional objection, preparing letter of offer and follow-up email to kris from Omni Pathways	\$160
21 June 2023	Reviewing material from Omni Pathways, conferring with Matthew regarding out submissions.	\$120
22 June 2023	Discussion with Lara and preparing submissions before commissioner Hunt regarding the jurisdictional issue	\$800
23 June 2023	Reviewing, editing and finalising submissions for Lara Blomberg re jurisdictional issue	\$160
30 June 2023	Email to Matthew Lynch re submission on costs and update to Lara Blomberg	\$80
6 July 2023	Preparing Costs Submissions	\$480
12 July 2023	Preparing and finalizing Costs Submissions	\$800

TOTAL \$2,600.00

[54] The Order will require the costs to be paid within 28 days of the date of the Order. An Order [\[PR768947\]](#) to that effect will be issued with this Decision.



COMMISSIONER

Appearances:

M Lynch of Gorval Lynch for Ms Blomberg.
K Williams and *D Pellegrino* for the Respondent.

Hearing details:

2023.

Video using Microsoft Teams.
Brisbane.
5 September.

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¹ *Knight v Murrayway Pty Ltd* [2022] FWC 959 at [32], [36]–[39]; *Cadd v Millenium Cleaning (Vic) Pty Ltd* [2017] FWC 2473 at [4]–[5].

² Fair Work Commission General Protections Benchbook, 176.

³ Explanatory Memorandum, Fair Work Amendment Bill 2012 [170].

⁴ Explanatory Memorandum, Fair Work Amendment Bill 2012 [171].

⁵ Revised Explanatory Memorandum, Fair Work Amendment Bill 2013 [234].

⁶ (2013) 232 FCR 428 at 430–431.

⁷ [2015] FWCFCB 1956.

⁸ [2015] FWCFCB 1956 at [12].

⁹ *Cadd v Millenium Cleaning (Vic) Pty Ltd* [2017] FWC 2473.

¹⁰ *Post, Steven Patrick v NTI Limited T/A NTI* [2016] FWCFCB 6765.