



DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Syed Rizvi

v

Webuild

(U2023/1251)

COMMISSIONER BISSETT

MELBOURNE, 7 MARCH 2023

Application for an unfair dismissal remedy – unpaid application – dismissal at the Commission’s initiative under s.587.

[1] On 17 February 2023 Mr Syed Rizvi 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).

[2] The application was incomplete in that Mr Rizvi did not pay the required fee or file a completed waiver form.

[3] On 17 February 2023 the Commission emailed correspondence to Mr Rizvi’s nominated email address advising that his application required payment of the filing fee or a completed waiver form if he wished to proceed with the application. That correspondence also warned that if payment was not made or a waiver form was not received within 7 calendar days the application may be dismissed.

[4] On 20 February 2023 the Commission emailed correspondence to Mr Rizvi’s nominated email address reminding that the application required payment of the filing fee or a completed waiver form if he wished to proceed with the application. That correspondence also warned that if payment is not made or a waiver form is not received, the application may be dismissed.

[5] On 22 February 2023 the Mr Rizvi emailed correspondence to the Commission advising he was overseas, that he could not get through to the Commission by telephone and his attempt to pay by credit card had not been successful.

[6] On 23 February 2023 the Commission attempt to contact Mr Rizvi on his nominated telephone number but the call was not answered. A voicemail message was left providing the Commission contact number containing the international Australian dialling code.

[7] On 24 February 2023 the Commission emailed correspondence to Mr Rizvi’s nominated email address in response to Mr Rizvi communication regarding inability of making the payment while overseas, the Commission provided international phone number to contact the Commission and make payment over the phone.

[8] On 28 February 2023 the Commission attempted contact Mr Rizvi by telephone to obtain payment or a completed waiver form. The call was not answered. A voicemail message was left advising that payment of the required fee was still outstanding.

[9] To date the required fee has not been paid and a completed waiver form has not been received.

[10] Section 395 of the FW Act, which deals with application fees, provides as follows:

395 Application fees

(1) An application to the FWC under this Division must be accompanied by any fee prescribed by the regulations.

(2) The regulations may prescribe:

- (a) a fee for making an application to the FWC under this Division; and
- (b) a method for indexing the fee; and
- (c) the circumstances in which all or part of the fee may be waived or refunded.

[11] Section 587(1) of the FW Act 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 prospect of success.

[12] I am satisfied that, as the application was not accompanied by the fee prescribed by the FW Act, the application was not made in accordance with the FW Act. As such, I order that the application is dismissed pursuant to s.587(1)(a) of the FW Act.



COMMISSIONER

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