



## DECISION

*Fair Work Act 2009*  
s.394—Unfair dismissal

**Shazia Saleh, Mohamed Namaoui, Hamoda Dayein, Salwa Elshikh, Elhadi Almahadi, Abdelrahman Wedissa, Muhammad Ahmed, Qusai Mubaidin, Elsyaed Ali Eltaher Bashir, Suzanne Maksoud, Mohammed Obaidi, Mohammad Abdul-Hwas, Yassine Belkamel, Zach Kalany, Mu’ammam Ibrahim Najjar, Abdalaal Nassir, Mohamed Ben Mansour, Abdulrazig Osman**

v

**Saudi Arabian Cultural Mission/Saudi Embassy & Embassy Of The Kingdom Of Saudi Arabia, Cultural Mission**  
(U2022/4565)

DEPUTY PRESIDENT EASTON

SYDNEY, 9 MAY 2024

*Applications for unfair dismissal remedy – jurisdictional objections – immunity from Commission jurisdiction – sovereign foreign state – Foreign States Immunities Act 1985 (Cth) – employee v independent contractor – inconsistent contractual terms – permanent resident of Australia – applications said to have been made prematurely prior to any termination taking effect.*

[1] This decision is supplementary to my earlier decision published on 2 May 2024: *Saleh & Ors v Saudi Arabian Cultural Mission/Saudi Embassy & Embassy of the Kingdom of Saudi Arabia, Cultural Mission* [\[2024\] FWC 1152](#).

[2] Eighteen applicants each claim to have been unfairly dismissed by Saudi Arabian Cultural Mission/Saudi Embassy & Embassy of the Kingdom of Saudi Arabia, Cultural Mission. The Respondent raised two jurisdictional objections. Firstly, the Respondent argued that it has immunity from the jurisdiction of the Commission because it is a sovereign foreign state, and it is immune from jurisdiction by virtue of the provisions of the *Foreign States Immunities Act 1985* (Cth) and other statutes and conventions. Secondly, the Respondent argued that the Fair Work Commission does not have jurisdiction to deal with any of the applications because each application was lodged during the notice period and prior to any of the alleged dismissals taking effect.

[3] Every communication to the Commission so far from the Respondent has contained the following qualification, or a similarly worded qualification:

“As per paragraph 10(7)(b) of the *Foreign States Immunities Act 1985* (FSI Act), nothing in this document should be taken to indicate that the Respondent has submitted to the jurisdiction of the Fair Work Commission and/or waived, intentionally or otherwise, the immunity and privileges provided in the FSI Act generally, and specifically by s 9, s 6, s 24, s 25 and s 39 of the FSI Act or any other Act, common law, or under international law and international treaties or conventions or customary international law. All the interventions and steps taken in the proceedings are for the purpose of, or in the course of, asserting immunity only.”

[4] In my decision on 2 May 2024 I rejected almost every jurisdictional objection raised by the Respondent.

[5] Amongst other matters, I was required to determine whether each applicant was a Permanent Resident as defined in s.12(7) of the *Foreign States Immunities Act 1985* (Cth) (FSI Act). Of the 18 applicants the Respondent accepted that 6 applicants were permanent residents and contested the status of the other 12 applicants.

[6] Unfortunately I omitted consideration of the circumstances of one applicant, Mr Almahadi and I did not make any findings about whether he was a permanent resident of Australia as defined in the FSI Act at the time that he signed a written contract and commenced employment with the Respondent.

[7] The relevant provisions of s.12 of the FSI are as follows:

**“12. Contracts of employment**

(1) A foreign State, as employer, is not immune in a proceeding in so far as the proceeding concerns the employment of a person under a contract of employment that was made in Australia or was to be performed wholly or partly in Australia.

...

(3) Where, at the time when the contract of employment was made, the person employed was:

(a) a national of the foreign State but not a permanent resident of Australia; or

(b) an habitual resident of the foreign State;

subsection (1) does not apply.

...

(7) In this section, permanent resident of Australia means:

(a) an Australian citizen; or

(b) a person resident in Australia whose continued presence in Australia is not subject to a limitation as to time imposed by or under a law of Australia.”

[8] Mr Almahadi signed the standard contract on 10 December 2012. The crucial question for his application is whether he was a permanent resident as defined on that day.

[9] In the proceedings I gave Mr Almahadi a fair opportunity to provide evidence to establish that he was a permanent resident in 2012 but he did not do so.

[10] Mr Almahadi filed a copy of a New Zealand passport that was issued to him in 2011. He did not provide any other evidence, such as a Special Category Visa (Subclass 444), that established that his presence in Australia was not subject to a limitation as to time imposed by or under a law of Australia in 2012.

[11] As such I cannot be satisfied that Mr Almahadi was a permanent resident at the time he made an employment contract with the Respondent in 2012.

[12] Mr Almahadi’s unfair dismissal claim cannot continue and must be dismissed because the Respondent is immune from the jurisdiction of the Commission in relation to his claim.

[13] I will separately make an order dismissing the application made by Mr Almahadi.



DEPUTY PRESIDENT

*Appearances:*

*Shazlia Saleh, Mohamed Namaoui, Hamoda Dayein, Salwa Elshikh, Elhadi Almahadi, Abdelrahman Wedissa, Muhammad Ahmed, Qusai Mubaidin, Elsyaed Ali Eltaher Bashir, Suzanne Maksoud, Mohammed Obaidi, Mohammad Abdul-Hwas, Yassine Belkamel, Zach Kalany, Mu'ammam Ibrahim Najjar, Abdalaal Nassir, Mohamed Ben Mansour, Abdulrazig Osman, Applicants*

*C Harris, T Mills, J Noakes and H Wilson of Norton Rose Fulbright for the Respondent*

*Hearing details:*

2024.

Sydney (By Video using Microsoft Teams)

March 14.

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