# DECISION

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

**Sophia (Marttea) Baker**
**v**
**Bodhicorp Pty Ltd ATF The Gadens Service Trust No 2 T/A Gadens Lawyers Brisbane**
(U2018/10767)

DEPUTY PRESIDENT LAKE BRISBANE, 17 APRIL 2024

*Application for an unfair dismissal remedy – interim decision and orders made – incapacity – medical evidence provided as reason for adjournment – excessive delay – matter to be determined.*

**[1]** On 17 October 2018, Sophia Marttea Baker (the **Applicant**) lodged an application with the Fair Work Commission (the **Commission**) seeking a remedy pursuant to s.394 of the *Fair Work Act 2009* (the **Act**) in relation her dismissal from Bodhicorp Pty Ltd t/a Gadens Lawyers (the **Respondent**).

**[2]** On 31 October 2023, the Respondent lodged an application under s.609 of the Act and Rule 7 of the *Fair Work Commission Rules 2013* requesting timetabling of the matter for submissions and hearing. The matter was allocated to me for consideration. The Applicant sought a further adjournment of the matter.

**[3]** A significant period of time has elapsed from the filing date. The reasons for this lie wholly with the Applicant, who has presented a series of medical certificates and requested extensions, which the Commission has accepted. Whilst being sensitive to the significant health issues that the Applicant is dealing with, this has resulted in the extended period of delay. It warrants an examination of the reasons for delay to ensure the matter proceeds fairly.

**Background and Procedural History**

**[4]** The matter has a long procedural history given the Applicant's continual delay of the matter. The Applicant has not filed any materials beside her Form F2 and her attachments during this period. I provide the matter history below.

- The Applicant lodged her Form F2 with the Commission on 17 October 2018. The Form F2 contains attachments including:
    - Email correspondence regarding the Applicant's failure to attend an Independent Medical Examination (IME) on 26 September 2018.

  - A termination letter dated 26 September 2018 for the failure to attend an IME on 19 June 2018, 27 June 2018, 25 July 2018, 10 August 2018 and 26 September 2018. The Applicant only provided a medical certificate on 10 August 2018 which alleged that there were no particulars.
  - Email correspondence and letter regarding request to attend an Independent Medical Examiner due to the Applicant's continual absence, and refusal to provide the Respondent authority to contact the Applicant's medical team on 12 June 2018.
  - Email correspondence from the Applicant contesting the IME, arguing that it was not a lawful and reasonable direction, and that Dr Reece would be her prescribing doctor and would provide the independent examiner report on her medical condition.

- A Form F3 was lodged by the Respondent on 25 October 2018.

- The matter was listed on 12 November 2018 for a staff conciliation. The matter was not resolved. The Applicant was represented at this conciliation.

- The matter was indefinitely adjourned considering the Applicant's medical situation on 27 November 2018. The Applicant was no longer represented.

- A status update was requested by the Commission on 19 March 2019 regarding the Applicant's medical situation. The matter continued to be adjourned indefinitely upon receiving a response on 23 March 2019.

- The matter was listed for mention on 20 June 2019 before Deputy President Clancy. Directions were issued and a hearing was scheduled for 28 August 2019, 29 August 2019 and 30 August 2019.

- The Commission received a medical certificate from the Applicant stating that she was not medically fit to attend or prepare for a Hearing for a duration of six months on 16 July 2019. The Respondent requested access to the medical records that the Applicant filed to the Commission and opposed the adjournment for six months on 24 July 2019.

- The Applicant wrote submissions on the reasons of why she requested an adjournment because of her incapacity on 31 July 2019. The Applicant stated that her friend assisted her in writing these submissions.

- The hearing was adjourned to February 2020 on 31 July 2019. The Deputy President granted the Applicant's extension request based on the medical report provided on 11 July 2019, and the Respondent's access to the medical certificate was refused. The Directions were amended reflecting the extension.

- The matter was then reallocated to Vice President Catanzariti's chambers. The Applicant requested a further extension of time on 30 January 2020 providing a medical certificate. The Applicant's conditions and incapacity were described by Dr Stuart Reece in detail to the Commission. There was mention of having a formal assessment,

but this was not reflected in the certificate. The extension was granted, and the Applicant was to file her material by 29 May 2020.

- The Applicant sent a letter on 27 May 2020 requesting another six-month extension due to ongoing difficulties with complying with the deadlines. In this letter, the Applicant states that she has 200 documents, over 100 pages of which have not been checked for completeness, accuracy or relevance due to her incapacity. The matter was adjourned until 30 November 2020.

- The Applicant requested a further adjournment of twelve months due to medical circumstances on 30 November 2020. The matter was listed for mention on 15 December 2020. The Applicant attended this mention.

- A Confidentiality Order was issued on 18 December 2020 in relation to the service of the medical documents on the Respondent regarding the Applicant's incapacity to file materials with the Commission.

- The Respondent sought to vary to the confidentiality order on 18 December 2020. The Applicant provided a further medical certificate on 5 February 2021. The matter was listed for a further mention on 26 February 2021. The Applicant's support worker stated the Applicant was not well and asked for the mention to be vacated.

- A letter was sent by the Applicant's support worker on 24 March 2021 with four different support workers regarding a response to the Respondent's request to vary a confidentiality order but had minimal understanding of legal processes and the background of the case.

- The matter was followed up on 6 July 2021 regarding the variation of the confidentiality order. The Applicant requested a twelve-week extension attaching another medical certificate. This was granted.

- The Commission sought an update from the Applicant on 18 October 2021. The Applicant requested a further extension on 24 October 2021 attaching a medical certificate. The Applicant was granted an extension until 15 January 2022 to provide a response regarding the variation of a confidentiality order.

- The Applicant requested a further extension on 14 January 2022 stating that she is reliant on support arrangements to meet her obligations and participate in proceedings. The Respondent opposed the Applicant's request on the basis that it is continually prejudiced by the delay caused by the Applicant and appeared to have limited prospects of being heard in the future.

- The matter was listed for mention on 25 January 2022. The Applicant stated that she was not medically fit to participate in the mention on 24 January 2022. She also wrote (stating that she received significant assistance):

> "*We note the proceedings have been listed for telephone mention.*

*We note that the FWC has been provided with documents from qualified medical professionals, that state the Applicant is not medically fit to participate in the proceedings, including in telephone hearings, at this time.*

*The Applicant is currently very unwell. The application does not have support or representation.*

*Are you directing the Applicant to attend the hearing against medical advice?"*

- An update was sought from the Applicant regarding the matter on 11 April 2022. The Applicant sent an email on 4 May 2022 seeking an adjournment for three months. The matter was adjourned.

- An update was sought from the Applicant on 9 December 2022. The Applicant sent an email seeking an adjournment for six months. The matter was further adjourned.

- An email was sent via the Applicant asking for the matter to be adjourned for another 6 months on 2 June 2023.

- The Respondent lodged an application for timetabling the matter on 31 October 2023 and the matter was allocated to me on 7 November 2023.

- My Chambers issued directions regarding whether the matter should be determined on 15 November 2023. The Applicant sent another medical certificate asking for a six-month adjournment.

**[5]** The Applicant provided a further response regarding the following letter on 22 November 2023:

"*Ms Baker currently has progressive and serious health concerns and deteriorating functional capacity and is currently awaiting treatment. It should not be deemed appropriate by the Commission to allow Ms Baker to proceed with any serious decision making or legal proceedings at this time, as she would not have the mental or physical capacity to comprehend the information presented and would be unable to provide supporting evidence or defence. It should therefore be considered fair and reasonable that Ms Baker remains incapacitated and is unfit to attend a hearing to present her case at this time.*

*Ms Baker shared her documentation with me so I could assist her, and I can see that significant work has been done in drafting documentation to be filed at the next step pending access to appropriate supports and medical clearance. It is clear that this matter is very important to Ms Baker.*"

**[6]** Ms Baker wrote the following to my Chambers on 22 November 2023:

"*Ms Baker has asked me to contact you to clarify that the purpose of my previous response did not purport to reply to Gaden's application, rather to provide to the Commission documentation that her medical professionals prescribe that Ms Baker is*

*not medically cleared to attend to legal matters and will require more than 7 days' notice to be able to provide response to any correspondence due to her accessibility needs.*

*Could the Commission confirm if the Deputy President requires Ms Baker to respond to Gadens' application prior to completing the paper review and if so, can you please confirm any timeframes to complete? Ms Kitto is not a legal representative although when reviewing documents to assist Ms Baker with responding to the Commission I identified some areas which appear to have relevance for Ms Bakers case. These areas should potentially be considered when reviewing and determining the application. Due to prior commitments Ms Kitto assistance is limited in the short term to help Ms Baker reply to these correspondences with FWC.*

*Would the Commission please be able to respond to and confirm for Ms Baker the below points using clear precise written communication.*

- *When is the Deputy President considering the application?*

- *Confirmation that the Commission understands that the request for extra time (over 7 days) to respond to any matters is an accessibility request/special measures due to Ms Bakers condition.*

- *Confirmation that the Commission will communicate with clear, specific and simple language with Ms Baker to assist in her ability to access support, and for any available supports to be able to assist her in a timely manner. Information should include a scope and time frames of expectations to avoid any miscommunications.*

- *Ms Baker rejects Gadens position that further delays will prejudice them. Upon review of Ms Baker's documentation from the start of the unfair dismissal proceedings, it appears a number of matters raised by Gadens have already been responded to in documents given to the Commission (various interim applications & communications, related submissions which we can compile a list of if given the opportunity to do so). Gadens' are a large and successful legal firm that operates across Australia with access to financial security and multiple senior legal counsel available at any given time. Therefore, the balance of power is already tipped in the Gadens' favour thus, leaving Ms Baker at further disadvantage more so as she is also very unwell, has significant accessibility barriers and is without counsel.*"

**Consideration**

**[7]** I have decided to exercise s.589 of the Act in issuing an interim Decision and Order on how the matter should be dealt with. I am concerned that further delay will cause issues of procedural fairness, and that the Applicant will continue to further delay the matter. The Commission Member is required to accord procedural fairness to those affected by the decisions that they make and ensure that the decision is made fairly in the circumstances having regard to the Act.[1]

**[8]** I am sympathetic to the fact that the Applicant indicates that she wishes to pursue her matter and is suffering from a complex health situation which has made it difficult for her to prosecute her case. The Commission has been mindful and patient of her circumstances and have accommodated all her requests for adjournment. However, I do not see a further basis of delaying the matter for the following reasons.

*Incapacity*

**[9]** The Applicant has delayed proceedings over an extended period as she claims medical incapacity to provide submissions or participate in a mention or a hearing. Once the adjournment date is reached the Applicant provides further medical certificates from her regular General Practitioner, Dr Albert Stuart Reece. This has meant that the Applicant has had an unbroken period of adjournment for 64 months from staff conciliation.

**[10]** I respectfully do not accept the current medical certificate from Dr Stuart Reece regarding her incapacity to lodge materials with the Commission as a reason for further delaying the matter. An earlier medical certificate, provided by Dr Reece, dated 30 January 2020 contains particulars regarding the Applicant's incapacity. It acknowledges that the Applicant requires significant assistance which I accept.

**[11]** However, subsequent medical certificates provided to the Commission are questionable as to the nature of the incapacity. Most of the Applicant's medical certificates request an adjournment with no reasoning for why the specific period of adjournment is required. The medical certificates lack particulars on both when the Applicant's expected recovery is, and her ability to attend hearings at a future date.

**[12]** Although a medical opinion assists the Commission in determining a delay of the matter, there have been demonstrated instances in the Courts where incapacity has not been accepted as a reason for delay. For instance, Snaden J did not accept a medical opinion regarding capacity as the doctor failed to establish particulars regarding the incapacity in *Bellou v Victoria University (No 6)* [2023] FCA 183 at [6]:

> "*I do not accept Dr Diamantaras's opinion that Dr Bellou "…does not currently have a capacity to undertake the detailed and extensive legal preparations involved in defending [sic] her case and to represent herself in Court". Save for the observations that precede that statement (which concern Dr Bellou's present symptomology), that opinion is unparticularised. Again with due respect, it is not apparent that Dr Diamantaras is apprised of what the present matter entails. I consider that he was at*

*pains, very simply, to impress upon the court the significant and unfortunate medical predicament under which Dr Bellou presently labours*".

**[13]** The Applicant demonstrates some capacity through her ability to understand the notions of prejudice between herself and the Respondent, along with the fact she can recall the Commission's accessibility support requirements:

"*I also understand that the Fair Work Commission has also not been able to provide sufficient accessibility supports for her difficulties to assist Ms Baker and allow her to participate in the proceeding given her circumstances. Ms Baker has advised me that the only support the Commission could offer was a single hour of assistance, and lifts to access the building.*"

**[14]** There is no obligation for a hearing to be perfect or ideal as long as the opportunity to be heard is provided. As noted in *GLJ v Trustees of Roman Catholic Church for Diocese of Lismore* [2023] HCA 12 at [55]:

*"In the civil context, in Holt v Wynter Priestley JA observed:*

*[F]or a trial to be fair it need not be perfect or ideal. That degree of fairness is unattainable. Trials are constantly held in which for a variety of reasons not all relevant evidence is before the court. Time and chance will have their effect on evidence in any case, but it is not usually suggested that that effect necessarily prevents a fair trial."*

**[15]** The Commission can accommodate the Applicant through the following ways, which would not impact procedural fairness:

a) The Hearing can be facilitated through Microsoft Teams which would only require a working smartphone with a camera on. If this cannot be arranged, the hearing can be done via telephone. This means that the Applicant is not required to travel, and it would address her accessibility requirements.

b) The Commission can provide adequate breaks as necessary. The hearing can be listed on multiple days.

c) The Applicant can have a support person who can speak on her behalf.

d) The Commission must hold a hearing regarding an unfair dismissal under s. 397 of the Act. However, the absence of a witness "*whether through death, illness, loss of memory or inaccessibility … will not mean that a fair trial cannot be obtained. Nor does the loss or unavailability of other evidentiary material mean that a trial will be unfair."*[2] If the Applicant has persistent issues with incapacity, the matter can still determine through a hearing with the materials that have been provided.

e) The Commission can consider the initial Form F2 lodged by the Applicant on 17 October 2018 if the Applicant does not lodge her materials. There are instances where the Commission may not have all the material on hand but may still determine the matter as long as the matter is conducted in a procedurally fair manner.

> *"The common law incorporates other principles in recognition of the fact that, in the adversarial system, cases are always decided within the evidentiary framework the parties have chosen and are often decided on incomplete evidence. The legal maxim that "all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other to have contradicted" acknowledges "the problem that in deciding issues of fact on the civil standard of proof, the court is concerned not just with the question 'what are the probabilities on the limited material which the court has, but also whether that limited material is an appropriate basis on which to reach a reasonable decision"*[3]

**[16]** The Applicant has been offered the opportunity to participate in a fair hearing. Robin Creyke, Emeritus Professor from the Australian National University notes in '*Procedural fairness in tribunals and commissions of inquiry'* (2019) 150 Precedent 4:

> "*If procedural fairness applies, the procedures to be followed vary according to the circumstances.*[4] *The content is decided according to the terms of the statute; the particular circumstances; the subject matter; the type of enquiry; and the rules, for example, of the tribunal or enquiry body.*[5]
>
> *At the least, the person affected must be notified, generally in writing.*[6] *The notice should have sufficient details to enable the person affected to respond in a timely fashion, to understand the substance of the case and the potential adverse consequences, and to reply either in writing or in person.*[7] *The person must be given a reasonable time to respond,*[8] *and an opportunity to deal with any information that is 'credible, relevant and significant'.*[9] *The attention of the person should be drawn to any issue critical to the outcome which may not be apparent.*[10] *Adverse information should be disclosed but there is no need to divulge the evaluation of the evidence by the decision-maker.*[11]

**[17]** The Applicant has been afforded substantive notice of what she is required to do in presenting her argument and has been given substantive time to provide a written reply. The Applicant has been given enough time to deal with any information that could be credible, relevant and significant. This decision puts the Applicant on clear notice of what she is required to do to present her case.

**[18]** I am satisfied that making these accommodations will address the Applicant's incapacity in providing a fair hearing.

*Representation*

**[19]** The Applicant has delayed the matter on the basis that she does not have legal representation and is required to review all materials herself before submitting these documents to the Commission.

**[20]** The Applicant initially had legal representation at conciliation but has not obtained representation since. The Applicant stated she did not have the financial means to seek legal

representation. On 30 January 2021, the Applicant noted that she has contacted Legal Aid, Caxton Legal Centre, Queensland Advocacy and a community legal centre but they have provided her limited assistance because of a lack of funding or resources.

**[21]** Legal representation is not a requirement in unfair dismissal proceedings as the Commission must grant leave for a party to be represented under s.596(2) of the Act. The granting of representation is an exercise of discretion with consideration of the relevant factors.[12] The Commission is also designed to be accessible and operate efficiently and informally to accommodate self-represented applicants. The Explanatory Memorandum to the *Fair Work Bill 2008* states the following:

> "*FWA is intended to operate efficiently and informally and, where appropriate, in a non-adversarial manner. Persons dealing with FWA would generally represent themselves. Individuals and companies can be represented by an officer or employee, or a member, officer or employee of an organisation of which they are a member, or a bargaining representative. Similarly, an organisation can be represented by a member, officer or employee of the organisation. In both cases, a person from a relevant peak body can be a representative. However, in many cases, legal or other professional representation should not be necessary for matters before FWA. Accordingly, clause 596 provides that a person may be represented by a lawyer or paid agent only where FWA grants permission.*"

**[22]** I acknowledge that there is an imbalance between the Applicant and Respondent as the Respondent is a large law firm with skilled practitioners in employment law. However, the Respondent is not seeking to be represented and therefore s.596 is not a consideration that I am required to turn my mind to. Furthermore, the informal nature of the Commission addresses this imbalance and allows the Commission member to ensure a 'fair go all round' accorded to the employer and employee.

**[23]** Although the Applicant would benefit from representation considering her condition, there is no requirement in the Act for the Applicant to have legal representation and it should not be a reason for a further delay. It will be sufficient for the Applicant's support person who has reviewed the material to assist the Applicant in presenting her matter at a hearing. The Commission can seek the information it requires to ensure that a 'fair go all round' has been accorded to both parties in ensuring a fair hearing.

*Unnecessary delay would cause further prejudice*

**[24]** The Respondent has raised how the delay has caused prejudice to its ability to defend the unfair dismissal claim. It has been noted in the Courts how unnecessary delay causes prejudice.[13] Allsop P succinctly articulated the implications of delay on providing a just outcome in *Bi v Mourad* [2010] NSWCA 17:

> *"Delay is a feature of litigation intended to be eliminated as far as possible by the statutory enactment of the regime in the Civil Procedure Act. It cannot always be done. This purpose is not through some parliamentary authoritarian or over-prescriptive view of how people should lead their lives; rather, it is through the keen recognition of the conduct of the courts, in particular in the 20th century, of the need to deal with cases*

> *expeditiously if they are to be dealt with justly. Delay and case backlog are not merely factors affecting the costs of delivering justice; they corrode the ability of the courts to provide individual justice. The reforms that have taken place under the Civil Procedure Act and the evident attempt by courts to ensure efficiency can be seen not merely to reflect worthy efforts for efficiency but also to be steps vital for the provision of timely individual justice. Views may differ of justice in any particular case; that is the nature of the term and the value-laden task of a decision-maker to do justice.*[14]

**[25]** Providing a further delay of the matter prevents the Commission from obligating its functions under s.577 of the Act. The Commission has an obligation to perform its functions and exercise its powers in a manner that is:

a) Fair and just
b) Quick, informal and avoids unnecessary technicalities.
c) Open and transparent
d) Promotes harmonious and cooperative workplace relations.

**[26]** Continuing to delay the matter is contrary to the Commission's obligations. The matter has been on foot for 6 years and the Applicant has created technicalities that have caused delay. Some examples of how the Applicant has caused technicalities include seeking a confidentiality order, then delaying a response regarding the order and seeking an adjournment just before she is required to file submissions.

**[27]** Furthermore, the Applicant nor her support person have demonstrated that they intended for the matter to be finalised with a definitive outcome. The Respondent has not received a definitive response, or timeline of when the matter will be determined.

**[28]** The delay affects the Commission's ability to effectively assess relevance, credibility or reliability of witness evidence given by the Applicant and the Respondent. This may prevent a just outcome from occurring. It is already difficult and will become more difficult for the witnesses to recall facts from a specific date six years ago. The High Court notes:

> "*Watson v Foxman is frequently cited because of its continuing importance in identifying that ordinary human experience exposes that human memory is "fallible for a variety of reasons, and ordinarily the degree of fallibility increases with the passage of time."*[15]

**[29]** Allowing a further delay of the matter does not promote harmonious and cooperative workplace relations. Considering the legislative intent of the unfair dismissal claim, the Explanatory Memorandum on the *Fair Work Act Bill 2013* states the following:

> *"The new time limit will align with the 21-day time limit for lodging general protections dismissal and unfair dismissal applications. This will provide greater clarity to applicants and respondents and require applicants to determine at the outset which claim they intend to pursue. Where an employee challenges a dismissal, it is in the interests of both the employee and the employer for the matter to be resolved quickly so that, in the event of a successful challenge, the employee can return to their original position with minimal impact on relationships and management of the business. The*

> *time limits for dismissal applications balance the need to provide sufficient time for employees to consider the most appropriate application, and the need to provide certainty for employers in relation to the types of claims they may be exposed."*

**[30]** The Applicant may seek further delay, but time does not. Further delay of the matter does not assist in the objects of the Act, to either party. If the Applicant is genuinely intending to seek an outcome of her matter, the matter should not be delayed any further.

*Vexatious delay of proceedings*

**[31]** If the Applicant requests a further delay of the matter after publication of this decision, I will consider that the Applicant has been vexatious in extending these proceedings even further. At every opportunity, the Applicant was offered procedural fairness. She was notified in writing of when her materials would be due, and when a hearing date would be listed.

**[32]** There has been continual delay from the Applicant regarding the filing of her material. For example, the Applicant disclosed that she has "200 documents, and are over 100 pages which have not been checked for completeness, accuracy or relevance due to her incapacity" on 20 May 2020. The Applicant has received assistance from support workers who have identified the material. The Applicant has the materials ready to be submitted with the Commission as indicated on 22 November 2023. These were not provided to the Commission.

**[33]** It appears on a preliminary view with the materials provided before me that the Applicant does not have merits to establish a successful claim and has been vexatiously litigating a claim that has limited prospects of success.

**[34]** The Applicant was dismissed after the Respondent requested an independent medical examination (IME) on numerous occasions. The Respondent wrote to the Applicant requesting an IME on 19 June 2018, 27 June 2018, 25 July 2018 and 10 August 2018.

**[35]** A show cause letter was sent on 14 August 2018 as the Applicant failed to attend these examination dates and was provided a final opportunity to attend to an IME on 26 September 2018. The Applicant contested the Respondent's need for IME, sent a Medical Certificate from Dr Stuart Reece and did not attend any of these dates as requested. On 19 September 2018, the Applicant did not attend the IME and the Respondent terminated the Applicant's employment.

**[36]** The Respondent must have a valid reason to substantiate the IME. The Applicant had not worked with the Respondent from 9 June 2017 to her date of dismissal on 26 September 2018. Over a year had passed while the Applicant had not attended work.

**[37]** The employer can question the capacity of the employee if they are not attending work for a prolonged period.[16] A year is a sufficient period of time to request an IME. It appeared to be a lawful and reasonable request.

**[38]** The Applicant's continual failure to comply with this request was a valid reason for dismissal. The Respondent's process indicates that they had tried to accommodate the Applicant in attending the IME appointments and had given her multiple opportunities before dismissal.

**[39]** A Hearing would be required to confirm the procedure that was undertaken, and this view may change pending on the materials provided. However, the substance of the Applicant's claim before me appears to be one which would not support a further adjournment.

**Determination**

**[40]** As a result of the above factors, the Respondent's request for a hearing is granted. In equity and in good conscience, I have determined that the matter should be programmed for hearing after considering the principles of procedural fairness and the objects of the Act.

**[41]** The Applicant has been given every opportunity by the Commission to present her argument but has failed to do so. A fair hearing can still be facilitated with the Applicant's condition, noting that there is uncertainty of whether the Applicant's condition will improve. This matter should reach its natural conclusion with the matter being heard without further delay.

**[42]** Allowing a further delay of the matter sets bad precedent and will only add further prejudice to the Respondent. It would also continue to prevent the parties from reaching a fair outcome. Furthermore, the Commission is a low-cost jurisdiction intended to be accessible to the public to resolve their matter without creating excessive costs or delays. Granting a further delay would only take away more time and resources of the Commission to perform its role in facilitating and determining matters of others.

**[43]** An Order will be issued containing Directions which will require:

A. The Applicant with the assistance of her support person is to file all her material and submissions in support of her unfair dismissal claim by 9 May 2024 to my Chambers. No further adjournment requests will be considered in the filing of materials. If the Applicant wishes to rely on her Form F2, this will be accepted as her submission.

B. The Respondent is to file their material in response to the Applicant's submissions by 23 May 2024.

C. The Applicant may make submissions in reply by 20 June 2024. The Applicant is to inform the Commission who her representative will be. The Applicant does not need to be represented by a lawyer or paid agent. If the Applicant does not identify her representative, it will be assumed to be her support person.

D. In light of the above circumstances, I will refer the matter back to Vice President Catanzariti for consideration as I have expressed a preliminary view.

E. If the Applicant fails to lodge her materials and seeks another adjournment to file her materials, I will dismiss the application on the basis that the Applicant has extended these proceedings in a vexatious manner with no intention to prosecute her matter. As a result, the matter would have no reasonable prospects of success under s.587 of the Act. The Applicant has been given sufficient time and notice on the reasons why a further adjournment will not be granted.

**[44]** I Order accordingly.


DEPUTY PRESIDENT

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[1] *Vilija Burneikis v NGS Super Pty Ltd* [2024] FWCFB 49 at [72].

[2] *GLJ v Trustees of Roman Catholic Church for Diocese of Lismore* [2023] HCA 12 at [53] citing Bell P in *Moubarak* (Kiefel CJ, Gageler and Jagot JJ)

[3] Ibid 58.

[4] *Russell v Duke of Norfolk* [1949] 1 All ER 109 (Russell); CPCF, 622 per Gageler J.

[5] *Kioa v West* [1985] HCA 81; (1985) 159 CLR 550 (Kioa); *South Australia v Slipper* (2004) 135 FCR 259.

[6] *Andrews v Mitchell* [1904] UKLawRpAC 28; [1905] AC 78, 81.

[7] *Commissioner for ACT Revenue v Alphaone Pty Ltd* [1994] FCA 1074; (1994) 49 FCR 576 (Alphaone), 591; *Johnson v Miller* [1937] HCA 77; (1937) 59 CLR 467, 489; *Durani v Minister for Immigration and Border Protection* [2014] FCAFC 79; (2014) 314 ALR 130; *Seiffert v Prisoner Review Board* [2011] WASCA 148*; R v Pharmacy Board of Victoria; Ex parte Broberg* [1983] VicRp 17; [1983] 1 VR 211, 215.

[8] *R v Thames Magistrates' Court; Ex parte Polemis* [1974] 1 WLR 1371, 1375; *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union v Abigroup Contractors Pty Ltd* [2013] FCAFC 148.

[9] *Applicant VEAL of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] HCA 72; (2005) 225 CLR 88, 95-7.

[10] *Commissioner for ACT Revenue v Alphaone Pty Ltd* [1994] FCA 1074; (1994) 49 FCR 576

[11] *SZBEL v Minister for Immigration and Multicultural and Indigenous Affairs* [2006] HCA 63; (2006) 228 CLR 152.

[12] *Kennedy v Qantas Ground Services Pty Ltd* [2019] FWCFB 6094 at 34

[13] *Aon Risk Services Australia Limited v Australian National University* [2009] HCA 27 at [5] and [114].

[14] *Bi v Mourad* [2010] NSWCA 17 at [47].

[15] *GLJ v Trustees of Roman Catholic Church for Diocese of Lismore* [2023] HCA 12 at [59].

[16] See *Dr Amir Reza Zokaei Fard v Royal Melbourne Institute of Technology* [2022] FWC 1375 (Cirkovic C); *Burns v Sacred Heart Mission Inc* [2014] FWCFB 6612