



DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Applicant

v

Woolworths Group Ltd
(U2025/11339)

DEPUTY PRESIDENT DEAN

CANBERRA, 4 SEPTEMBER 2025

Application for an unfair dismissal remedy – extension of time – no exceptional circumstances.

[1] The Applicant has made an application pursuant to s 394 of the *Fair Work Act 2009* for an unfair dismissal remedy in respect of her dismissal from Woolworths Group Ltd (the Respondent).

[2] The Applicant was dismissed on 29 May 2025 and this application was lodged on 8 July 2025.

[3] The Respondent made a jurisdictional objection to the application, being the application was made outside the time limit allowed by the Act.

[4] Section 394(2) of the Act states that an application for an unfair dismissal remedy must be made within 21 days after the dismissal took effect, or within such further period as the Commission allows pursuant to s 394(3). The Applicant filed this application 19 days beyond the 21-day period and so the application can only proceed if the Commission grants a further period for it to be made.

[5] The matter was listed for hearing on 25 August 2025 to deal with whether to extend time for the application to proceed.

[6] At the hearing, the Applicant was represented by Mr Khushaal Vyas of Youth Law Australia (YLA) and the Respondent was represented by Ms Kirsten Taylor.

[7] At the beginning of the hearing, Mr Vyas made an application that the Applicant's name not be published because of the impact it may have on other legal proceedings which were underway. The Respondent did not object to the suppression of her name. In the circumstances I consider it appropriate to do so and a Confidentiality Order has been made in respect of the Applicant.¹

[8] For the reasons set out below, I have decided not to extend time and will dismiss the application.

Evidence on behalf of the Applicant

[9] The Applicant gave evidence that she had been sexually harassed at work by her supervisor from June 2024 until March 2025. She also gave evidence that her supervisor sexually assaulted her on 18 March 2025.

[10] In early April 2025 she informed the Store Manager of the harassment she had experienced, and following an investigation the supervisor was dismissed.

[11] The Applicant made a report to police on 1 April 2025.

[12] The Applicant continued to perform work for the Respondent over this time period.

[13] On 13 April 2025 the Applicant was doing her weekly grocery shopping at the Respondent's Gungahlin store and failed to scan and pay for a packet of toilet paper.

[14] On 19 May 2025 she was asked to attend a meeting with her store manager and was shown a video of her failing to pay for the toilet paper. She was given a show cause letter a few days later to which she provided a written reply. She was subsequently dismissed during a meeting on 29 May 2025.

[15] The Applicant's evidence was that after the meeting on 29 May she was in shock, deeply distressed, and not motivated to do anything.

[16] The Applicant's father wrote to the Respondent on 2 June 2025 asking for a review of the decision to dismiss her.

[17] When no reply was received from the Respondent, the Applicant's father wrote again on 18 June 2025.

[18] On 30 June the Applicant's father arranged an appointment for the Applicant with a lawyer from YLA, which was held on Friday 4 July 2025.

[19] The Applicant gave evidence that she authorised her father to speak on her behalf as her mental health state was very fragile.

[20] The Applicant said her mental health condition intensified over the weekend of 5 and 6 July which included suicidal ideation. She received medical assistance from the ACT Home Assessment and Acute Response Team (HAART) and was given a sedative.

[21] On Monday 7 July 2025 the Applicant and her father had a further conference with a lawyer from YLA.

[22] On 8 July 2025 the Respondent wrote to the Applicant's father advising that a review had been undertaken and as a result, the findings relating to the reason for the Applicant's dismissal had been overturned and she was offered reinstatement.

[23] After considering this proposal, the Applicant instructed YLA to proceed with making this application, which was lodged later on 8 July 2025.

[24] The Applicant gave evidence that she did not have capacity to file an application before 8 July due to the substantial negative impact her dismissal had on her mental health. She provided a medical certificate from her GP dated 12 August 2025 which stated:

"I have consulted her on 09/5/2025. She was sexually assaulted at work on 18/3/2025. She has lost her job on 29/5/2025. Following the assault, experienced significant mental distress, social withdrawal and poor sleep. She had suicidal ideation which prompted her to contact hospital. She was seen on 21/7/2025 and prescribed medication".

[25] She also said she saw her GP on 9 July 2025 and was given a mental health care plan and a referral to a psychologist. The referral was in the following terms:

"Thank you for seeing [Applicant] for an opinion and management for her anxiety. She has been struggling a lot for last few years. She has seen you before. In last year she has been sexually assaulted twice. She has reported about her co worker and got fired. Her sleep is really bad and she is not coping well. She has current mental health plan and eligible for 6 sessions."

[26] The Applicant's father gave evidence that he attended the meeting with the Applicant during which she was dismissed, and that she went home and cried and would not leave the house over the following days. He said she stopped taking her sisters to school and only did the bare minimum of household chores. He said she "went into a dark hole and was not snapping out of it. She wanted to end her life. It was a really scary situation. She wasn't herself. She was argumentative with her sisters and couldn't converse with anyone". He said he wrote to the Respondent because she was not in a frame of mind to do anything about the situation herself, and he wanted to clarify that not paying for the toilet paper was an honest mistake.

[27] The Applicant's father explained that he called HAART over the weekend of 5 and 6 July 2025 because the Applicant's mental health had declined to the point where she was suicidal. HAART conducted a home visit and prescribed medication.

[28] During the hearing, the Applicant's father confirmed that no medical assistance or treatment was sought for the Applicant prior to 5-6 July.

Extension of time

[29] The Act allows the Commission to extend the period within which an unfair dismissal application must be made only if it is satisfied that there are 'exceptional circumstances'. Briefly, exceptional circumstances are circumstances that are out of the ordinary course, unusual, special or uncommon but the circumstances themselves do not need to be unique nor unprecedented, nor even very rare.² Exceptional circumstances may include a single exceptional matter, a combination of exceptional factors, or a combination of ordinary factors

which, although individually of no particular significance, when taken together can be considered exceptional.³

[30] The onus of establishing exceptional circumstances lies with the Applicant, and the test of ‘exceptional circumstances’ establishes a high hurdle

[31] Section 394(3) requires that, in considering whether to grant an extension of time, the Commission must take into account the following:

- (a) the reason for the delay;
- (b) whether the person first became aware of the dismissal after it had taken effect;
- (c) any action taken by the person to dispute the dismissal;
- (d) prejudice to the employer (including prejudice caused by the delay);
- (e) the merits of the application; and
- (f) fairness as between the person and other persons in a similar position.

[32] The requirement that these matters be taken into account means that each matter must be considered and given appropriate weight in assessing whether there are exceptional circumstances. Further, the Commission must find that there are exceptional circumstances before the discretion to extend time is enlivened. That is, even when exceptional circumstances are established, there remains a discretion to extend or refuse an extension of time.⁴

[33] I now consider these matters in the context of this application.

Consideration

Reason for the delay

[34] The Act does not specify what reason for the delay might tell in favour of granting an extension, however decisions of the Commission have referred to an acceptable or reasonable explanation. The absence of any explanation for any part of the delay will usually weigh against an applicant in the assessment of whether there are exceptional circumstances, and a credible explanation for the entirety of the delay will usually weigh in the applicant’s favour, however all of the circumstances must be considered.⁵

[35] A recent decision of the Commission also noted that “events or circumstances occurring within the 21 days after the dismissal, or before the dismissal, may have an effect that continues into the period of the delay. Those circumstances or events should not be disregarded in deciding whether there are exceptional circumstances, simply because of when they occurred”.⁶

[36] Having considered the evidence, I am of the view that the Applicant was not incapacitated to such an extent that this application could not have been filed within time.

[37] I accept that the Applicant experienced genuine and significant shock and distress following her dismissal. However, it is not uncommon for employees to experience such an emotional response after dismissal.

[38] The Applicant's oral evidence was that her mental health deteriorated over time, from the date of her dismissal until 5-6 July 2025. The medical evidence does not demonstrate that she was incapacitated throughout the entire period of the delay. No medical assistance or treatment was sought for the Applicant until 5 July which was 16 days after the end of the 21 day time limit.

[39] It is unclear why the Applicant's father, who was actively involved in supporting her during the relevant period, could not have assisted her in filing the application earlier. It is not in contention that he was aware of the 21-day time limit and had the capacity to correspond with the Respondent on the Applicant's behalf.

[40] I have given careful consideration to the extent to which the Applicant's assault in March 2025 impacted her ability to make her application within time. However, the evidence shows that the Applicant continued to perform work and engage in normal activities such as grocery shopping following the assault. Had she been unable to work and perform normal tasks after the assault, I would have formed a different view about the reason for the delay.

[41] Having considered the matters raised by the Applicant, I am not satisfied that the Applicant has adequately explained the entirety of the delay. This weighs against the granting of an extension of time.

Whether the person first became aware of the dismissal after it had taken effect

[42] The Applicant was aware of her dismissal when it took effect and was therefore afforded the full period of 21 days to lodge the application. This weighs against a finding that there are exceptional circumstances.

Action taken to dispute the dismissal

[43] As outlined earlier, the Applicant's father sent correspondence to the Respondent disputing the dismissal. This weighs in favour of an extension of time.

Prejudice to the employer

[44] The delay is not short, however I cannot identify any prejudice that would accrue to the Respondent if an extension of time were to be granted. The mere absence of prejudice is not in my view a factor that would point in favour of the grant of extension of time. However, if one were to consider the absence of prejudice as favouring of an extension, I would attribute it little weight in the consideration of whether there are exceptional circumstances.

Merits of the application

[45] The Act requires me to take into account the merits of the application in considering whether to extend time. For the purpose of determining whether to grant an extension of time for the Applicant to file his application, the Commission should not embark on a detailed consideration of the substantive case.

[46] The Respondent submitted that it dismissed the Applicant following a procedurally fair process, in which it was found that the Applicant had failed to pay for an item. This was a breach of its Code of Conduct and warranted dismissal. The Respondent submitted that the dismissal had nothing to do with the Applicant's complaint of sexual harassment, and that at best this was a neutral consideration in determining whether exceptional circumstances exist.

[47] The Applicant submitted that there was no valid reason for her dismissal, because the incident occurred outside the course of her employment and the failure to pay was an honest mistake. She said when the incident was brought to her attention, she immediately offered to pay to rectify the matter. She said her dismissal was harsh in light of her disclosure in early April to the store manager about being sexually harassed and assaulted.

[48] On the evidence before me, it is not possible to form a concluded view about the merits of the application. I therefore consider the merits to weigh neither for nor against a finding of exceptional circumstances.

Fairness as between the person and other persons in a similar position

[49] This consideration may relate to matters currently before the Commission or to matters previously decided by the Commission. It may also relate to the position of various employees of an employer responding to an unfair dismissal application. However, cases of this kind will generally turn on their own facts.

[50] Neither party suggested there was any person in a similar position, and so I consider this criterion is a neutral consideration in the present matter.

Conclusion

[51] The Applicant must demonstrate that exceptional circumstances exist before I can extend time. As noted earlier, the test of 'exceptional circumstances' establishes a high hurdle.

[52] Having regard to the matters I am required to take into account under s 394(3), and all of the matters raised by the Applicant, I am not satisfied that there are exceptional circumstances, either when the various circumstances are considered individually or together. Because I am not satisfied that there are exceptional circumstances, there is no basis for me to allow an extension of time. I decline to grant an extension of time under s 394(3). Accordingly, the application for an unfair dismissal remedy is dismissed.



DEPUTY PRESIDENT

Appearances:

K Vyas of Youth Law Australia for the Applicant.
K Taylor for Woolworths Group Ltd.

Hearing details:

2025.

By telephone:

August 25.

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¹ [PR791422](#).

² *Nulty v Blue Star Group Pty Ltd* [\[2011\] FWAFB 975](#) at [13].

³ *Ibid.*

⁴ *Ibid* at [15].

⁵ *Stogiannidis v Victorian Frozen Foods Distributors Pty Ltd* [\[2018\] FWCFCB 901](#) at [39].

⁶ *Wales v Thejo Australia Pty Ltd* [\[2025\] FWCFCB 178](#).