DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Ranya Aljobouri
v
Cosmetique Cosmetic Clinics (Services) Pty Ltd
(U2025/5602)

DEPUTY PRESIDENT O'KEEFFE PERTH, 7 OCTOBER 2025

Application for an unfair dismissal remedy- jurisdictional objection – annual earnings above high income threshold – Applicant has dual employment with Respondent – earnings for principal role as General Manager not above high-income threshold – application made only with respect to that role – jurisdictional objection dismissed.

[1] On 6 May 2025 Mrs Ranya Aljobouri (the Applicant) applied to the Fair Work Commission (FWC) under s.394 of the *Fair Work Act 2009* (Cth) (FW Act) for a remedy, alleging that she had been unfairly dismissed from her employment with Cosmetique Cosmetic Clinics (Services) Pty Ltd (the Respondent). The Respondent objects to the FWC dealing with the application on the basis that the Applicant's annual rate of earnings at the time of dismissal was above the high-income threshold, which was $175,000 at that time.

Background

[2] The Applicant was engaged by the Respondent as its General Manager on an annual contracted salary that was less than $175,000 per annum. However, the Applicant was simultaneously engaged by the Respondent pursuant to a "Contractor Agreement" (CA). This was an arrangement to provide certain services to the Respondent whereby the Applicant would be paid on invoice, meet her own taxation obligations and operate under her own ABN. The total annual rate of earnings under the employment contract plus the CA potentially puts the Applicant over the high-income threshold.

[3] The Respondent says that the CA should be regarded as essentially an extension of the employment contract and thereby part of the Applicant's annual rate of earnings for the purposes of the FW Act. The Applicant says that the CA should be treated as a separate arrangement that is a contract for services and thus not captured by the relevant provisions of the FW Act. In the alternative, the Applicant says that the earnings under the CA are of a kind that is not able to be determined in advance and thus should not be included in the calculation of her annual rate of earnings.

Permission to appear

[4] The Respondent sought leave to be represented, and the Applicant objected to such representation. The Respondent failed to comply with directions to file an F53 and submissions on representation. I advised that on the basis that they had failed to do so I would not allow representation. The Respondent then filed – some 2 weeks late – its Form F53 and submissions. Having reviewed those submissions, I formed the view that representation ought not to be granted.

[5] The Fair Work Act operates with a presumption that parties will represent themselves. Any departure from this position is at the discretion of the Commission if it finds that one (or more) of the conditions in s.596(2) are met. The Respondent made submissions with respect to each of the three conditions in that section.

[6] With respect to the first condition, I did not accept that the Respondent being represented will allow the matter to be dealt with more efficiently. The issues in the case were not so unusual or complex that the FWC's processes would be made more efficient by the presence of counsel. The Commission frequently deals with issues of contractor versus employee and the established principles on what is included in an employee's earnings for the high-income threshold are clear.

[7] With respect to the issue of unable to represent itself, again there is an assumption that parties will represent themselves. The Commission regularly deals with unrepresented parties from all manner of circumstances and is capable of conducting its processes in such a way as to recognise the issues faced by parties with limited experience. The Respondent – according to its website – maintains a number of clinics throughout each of the mainland states of Australia and has expanded its operations to include offices in Perth, Sydney and the Philippines. I thus rejected the submission that there is essentially no-one in the Company who could provide adequate representation in the Commission.

[8] With respect to the third issue of fairness between the parties, the Applicant is not a lawyer and has no apparent industrial advocacy experience. In such circumstances it is difficult to see how the Respondent needs legal representation to put itself on an equal footing with her.

Determining the jurisdictional objection.

[9] Mindful of the findings of the Full Bench in *Lisha Herc v Hays Specialist Recruitment (Australia) Pty Ltd* [2022] FWCFB 234, I have concluded that this matter needs to be assessed as follows. Firstly, there was no dispute, and I am satisfied that the application was lodged within the required 21-day period. While there is no dispute between the parties that the Applicant was an employee with respect to the General manager position, there is a dispute about the status of the Applicant with respect to the duties falling within the scope of the CA. The issue of the high-income threshold can only be addressed if this matter is resolved. As such, I find I must first establish if the Applicant was an employee for all purposes of her engagements with the Respondent.

Was the Contractor Arrangement a contract for services or a contract of service?

[10] This issue is complicated somewhat by the changes to the definition of employee in the FW Act, which took effect on 26 August 2024. Those changes directed the FWC's focus away from the High Court Decisions in *CFMEU v Personnel Contracting (Personnel)* and *ZG Operations v Jamsek*[1] *(Jamsek)* - which essentially stressed primacy of the written contract - and towards an assessment of the practical realities of the relationship based on its actual operation. The transitional arrangements for the new provision in the FW Act (s.15AA) were set out by Commissioner Crawford in *Hayley Smith v Kohli Traders Pty Ltd* as follows (citations removed):

> *"1.Section 15AA applies following commencement to a relationship in existence on 26 August 2024 which was entered into prior to 26 August 2024, and to relationships entered into after 26 August 2024.*
> *2.When determining an individual's length of service and period of employment under the FW Act, whether service prior to 26 August 2024 is to be counted as service as an employee is determined by reference to the High Court precedent in Personnel Contracting and Jamsek, and without reference to s.15AA of the FW Act.*
> *3.The amendments do not apply in relation to applications that were already "on foot" when the amendments commenced on 26 August 2024."*[2]

[11] In this matter, the Applicant had an employment relationship as General Manager throughout the entirety of her engagement which began in November 2021. The CA commenced on 11 November 2023[3]. With both of the Applicant's engagements having ended on 6 May 2025, this means that the CA operated for 289 days pre- 26 August 2024 and 253 days post- 26 August 2024. Therefore, in assessing the CA I find that – given the Respondent is not a small business employer – the CA has existed for a period in excess of the minimum employment period required to make an unfair dismissal claim.

[12] As such, if the effect of the legislative change on 26 August 2024 is such that it changed her status from contractor to employee, she has been an employee long enough to make an unfair dismissal claim with respect to that employment. Although this may not be strictly required in this instance, given the unusual circumstance of two contemporaneous contracts of engagement, I am confident I can proceed to make an assessment of the reality of the CA relationship based on how it operated in practice post 26 August 2024 and using s.15AA.

Submissions and Evidence

[13] Witness evidence for the Respondent was provided by Ms Kal Eranki. Ms Eranki is a Director of the Respondent. It was her evidence that the CA entered into between the parties in November 2023 had the effect of appointing the applicant as both a Director and Chairperson of the Clinical Governance Committee. Ms Eranki states that these roles carried responsibilities that were linked to the Applicant's employment obligations. However, she states that they were provided under the CA because this was a sector-standard means of remunerating governance and oversight responsibilities as distinct from operational duties.

[14] However, Ms Eranki's evidence is that the appointments arising from the CA were conditional upon the Applicant remaining employed as General Manager. She claims it was mutually agreed that if her employment as General Manager ended, so to would those other appointments and this is what actually happened on 6 May 2025.

[15] Ms Eranki states that the services in the CA were paid for at an agreed rate per fortnight based on invoices which were always identical and linked to the Respondent's payroll cycle. She further says that the functions the Applicant undertook pursuant to the CA complemented the duties she was required to perform under her employment agreement and were undertaken in parallel with those duties.

[16] It is Ms Eranki's evidence that the employment duties and CA duties were all performed concurrently and without any particular delineation of time spent in each. Ms Eranki submitted as part of her evidence an email from the Applicant dated 8 April 2024[4] wherein the Applicant describes the payment for her CA duties as "part of her pay" that should be paid fortnightly in the normal pay cycle. Ms Eranki also gives evidence that the Applicant regularly referenced her CA duties when discussing management matters in the context of her employment duties.

[17] In submissions, the Respondent proposed that in assessing the relationship between the parties under the CA, the following matters were relevant (citations removed):

> *a.* *"The Contractor Agreement was entered into around the same time the updated Employment Agreement was signed, which was 11 November 2023.*
>
> *b.* *Two contracts were consistent with governance and legal practice;*
>
> *c.* *The roles and responsibilities the Applicant was required to perform under these two contracts were intertwined,*
>
> *d.* *The Applicant herself considered that the invoices she issued for contractor fees under the Contractor Agreement are part of her overall remuneration.*
>
> *e.* *During the mention of 7 July 2025, the Applicant conceded that she was not aware that she was a director of the Respondent implying that she was, since 11 November 2023, under the impression that the Contractor Agreement is only an extension the updated Employment Agreement.*
>
> *f.* *The Contractor Agreement was conditional upon the Applicant remaining employed as General Manager, which was her role under the Employment Agreement dated 8 November 2021. It was mutually agreed that if her employment ended, her governance roles as a Director and Chair of Clinical Governance Committee would also cease."*[5]

[18] The Respondent submits that, as a consequence, the Applicant was providing the CA services as an employee rather than an independent contractor. The Respondent also submits that the Applicant was, in carrying out the CA duties, performing the work as part of the Respondent's business rather than providing a service as part of her own business and in doing so furthering the interests of that business. It further submits that the CA duties were carried out in such a way as to be subject to control by the Respondent in terms of when, where and how the duties were performed.

[19] The Respondent also drew my attention to the findings of the High Court in *Personnel* where the Court expressed a view that the labels used by parties to describe their relationship are neither determinative, nor arguably relevant, to the proper characterisation of their relationship by a court. As a consequence, the use of "Contractor Agreement" in the present matter was submitted to have no relevance to the FWC's task.

[20] Finally, the Respondent submitted that the tasks performed under the employment arrangement, and the CA were similar and interlinked such that they could not be separated. It noted further that in invoicing the Respondent for the separate duties under the CA, there was no distinction made between the times spent in each role, or indeed, any apportionment of the invoice between the different duties.

[21] The Applicant gave evidence on her own behalf. She stated that the CA had been offered to her when she had requested a pay increase. She claims that she was told that if she wanted to earn more, she would have to take on additional roles outside of her existing role. She says that she understood that these duties were separate and distinct from her employment duties and would be remunerated on a fee-for-service basis. Her further evidence is that Ms Eranki suggested the CA arrangement was somewhat akin to a performance bonus system.

[22] The Applicant states that the CA was not advantageous to her because payments were only made after the work was completed and if the tasks were not completed there would be no payment. Further, she would be responsible for her own superannuation and taxation payments. The Applicant claims that consistent with her understanding, she only ever invoiced for work performed and only ever performed this work outside of the hours she spent working as the General Manager.

[23] The Applicant submitted into evidence a copy of parts of a September 2024 Prospectus issued by the Respondent. In it she notes that the Respondent has claimed the Clinical Governance Committee was operating independently of the corporate structure. The Applicant also states that her CA role was never really involved with directorship but confined to forward-planning and strategic input at the governance level. Her evidence is that she never attended board meetings and did not hold voting rights.

[24] The Applicant's further evidence is that on 18 November 2024 she received a payment of $837.50 rather than the usual $1675 per fortnight because she had not performed work for one week. She also claimed that there were "many other fortnights where I did not receive any payment because not contractor services were performed or invoiced."[6]

[25] The Applicant also states that there was no prior advice to her that one contract (being the CA) was contingent on the other contract (being the employment contract). The Applicant's evidence is that she was never advised that this was the case and she notes that – with respect to independence of the contracts – that the Respondent has failed to pay her the final two invoices submitted pursuant to the CA.

[26] She also submitted as evidence an email from the Respondent regarding invoicing practices,[7] which confirms that the arrangement was one where she was paid based on work done and from invoices submitted.

[27] Throughout her witness statement the Applicant engaged in making submissions. She has also included evidence that goes to the merits of her case and some that may have other significance. However, I have focussed on that which I regard as relevant to the issue of employee versus contractor. With respect to the submissions included within the evidence, I have dealt with those below.

[28] The Applicant submits that her CA payments were contingent and discretionary and strictly performance based. Payment was made on invoices submitted under her ABN and she was responsible for her own superannuation and taxation. She submits that the invoices for the last two periods of her engagement have not been paid on the basis that she did not perform the duties. Inferable from this is a distinction between these payments, and payment of wages to an employee. She submits that the Respondent's efforts to recover payments made to her under the CA is another clear sign that these payments were not wages – which would not be recoverable.

[29] The Applicant also notes the terms of the Prospectus – see [23] above – and suggests that this also reinforces a clear distinction between her salaried role and her CA role. Her submission is that the terms of the CA engagement were quite clear as per the written document, those terms were observed by her and that an inspection of the realities of the relationship confirmed the contractor arrangement. I note specifically her submissions as follows:

> *a) "I operated under my own ABN;*
> *b) I issued invoices for payment only after work was performed;*
> *c) I was not paid unless I submitted an invoice;*
> *d) I was not subject to daily direction or control in my contractor tasks;*
> *e) I had no leave entitlements, and was responsible for my own taxes and super;*
> *f) The contractor role related to governance oversight tasks that were strategic and discrete, not day-to-day operational duties."*[8]

[30] The Applicant further submits that the doctrine of estoppel operates to prevent the Respondent from treating her as a contractor for all relevant purposes and then argue otherwise to escape the jurisdiction of the FWC. She submits that the notion that the roles were intertwined, as argued by the Respondent, is not supported by the written contracts themselves which contain specific and differing terms and conditions.

[31] The Applicant submits that it is not the case that she was operating in the business of the Respondent and not in her own business. She claims that the fact that her work "aligned with the Respondent's business goals does not convert me into an employee. Contractors often work for the benefit of another business while operating independently…"[9] The Applicant submits further that the actual CA document itself is at pains to ensure that no employment relationship is established, citing clause 8.8."[10]

[32] In her submissions, the Applicant rejects the notion that the Respondents could exercise control, in the sense of control over an employee. She claims that there was no right to dictate how, when, or where she performed the CA duties. She claims to have had complete control over her hours of work and how she performed her tasks. She also submits that while the High

Court may have ruled on the issue of "labels," the terms of her contract were such that they were operative legal rights and not merely labels.

[33] Much of the remainder of the Applicant's submissions traversed similar ground and it is not my intention to address them in any detail save to say that I believe the relevant parts of her argument as it pertains to the employee-contractor question is captured above.

[34] In reply submissions, the Respondent provided a detailed examination of the sorts of indicia used by the courts over the years when examining a relationship to determine its true nature. I provide a brief summary of what I find to be the relevant parts of those submissions as follows:[11]

> *Does the putative employer exercise control over the manner in which the work is performed, place of work and hours of work?*
>
> *The Respondent submits that it exercised significant control over how, where and when the Applicant performed her duties because of the governance requirements. It claims – amongst other things - that the Applicant was required to attend team and strategic planning meetings on a scheduled basis, respond to internal performance expectations, and adhere to protocols issued by senior management.*
>
> *Does the worker perform work for others (or have a genuine and practical entitlement to do so)?*
>
> *The Respondent submits the Applicant rendered services to it exclusively for the duration of the Contractor Agreement and was prohibited from undertaking any similar role in the healthcare industry due to legal restrictions including, but not limited to, access to patient records, privacy, restricted drugs and business information.*
>
> *Whether the worker has a separate place of work and/or advertises their services to the world at large?*
>
> *The Applicant did not maintain an independent office, branding, or business infrastructure. She was required to use the Respondent's premises and data because of reasons such as privacy, access to patient records, restricted drugs and business information. She was required to use the Respondent's physical locations for in-person work and its digital infrastructure (including email domain, shared drives, and cloud-based platforms) for all correspondence and record keeping. At no point could the Applicant promote her services to the public, operate a website, or conduct independent advertising elements that are generally indicative of a contractor's external business activity.*
>
> *Whether the worker provides and maintains significant tools or equipment?*
>
> *All necessary equipment and platforms used in the execution of the Applicant's duties were supplied by the Respondent due to reasons such as privacy, access to patient records, restricted drugs and business information.*

Whether the work can be delegated or subcontracted?

The Contractor Agreement did not permit the Applicant to delegate, subcontract, or otherwise assign her governance and committee responsibilities to a third party. The duties were personal in nature and required the Applicant's direct participation.

Whether the putative employer presents the worker to the world at large as an emanation of the business?

The Applicant was publicly presented as a senior executive of Cosmetique. Her signature block, title, and email address all identified her as part of Cosmetique's internal leadership team, not as an external advisor or third-party service provider.

Whether the worker creates goodwill or saleable assets in the course of his or her work?

As these activities were exclusive due to reasons such as privacy, access to patient records, restricted drugs and business information, there could be no saleable assets in the course of his or her work, this would be potentially in breach of healthcare laws.

Whether the worker spends a significant portion of his remuneration on business expenses:

Given the exclusivity of service, there were no expenses that could be incurred by the Applicant.

[35] I have also had the benefit of reading the parties' closing submissions. It is not my intention to summarise them in great detail. I also note that a number of issues arose in cross examination during the hearing. I do not intend to traverse each and every one. Instead, I will provide my assessment of the true nature of the relationship between the parties.

Consideration

[36] Having examined all of the material provided and reviewed the recording of the hearing, I have turned my mind to the proper characterisation of the CA relationship. I have no doubt that it was structured to look like a contractor arrangement rather than an employment relationship and it was described in the CA document accordingly. Looking at that document would tempt one to draw the conclusion that it was a bona fide independent contractor relationship. However, for the reasons that follow, it clearly was not, nor could it be.

[37] I firstly turn to what I find are the realities of the relationship between the parties. The Applicant was not an independent business contracting for services with the Respondent. In the first place, she was already employed as its General Manager which raises any number of questions about independence. Secondly, it is simply not plausible to say that she was running her own independent business for her own purposes. She provided no tools. She incurred no business expenses. She created no goodwill. In any interactions she was not representing her business but rather the business of the Respondent. She was clearly not free to delegate the work to others.

[38] Further, given her responsibilities to the Respondent as General Manager, I cannot see how she could have possibly undertaken work for other clients doing the same work. I am mindful that the Applicant says that while she did not have any such clients, she could have had some in the future. I am not sure what she means by "future" but I note cl.16.1 of her employment contract.[12] This clause would appear to make it impossible for her to carry out such work without consent of the Respondent and I find it inconceivable that the Respondent – given its comments noted above at [34] and particularly point two – would provide such consent.

[39] It appears to me that the Applicant was both in practice and theory, limited to providing services to the Respondent. This counts heavily against the relationship being capable of being characterised as one of independent contracting. There may be some indicia that do count towards such a conclusion, such as the use of invoices and the ABN and the lack of provision for superannuation and paid leave. However, there are a number of practical issues with the invoices that I explored at hearing. There was no itemisation on the invoices or recording of how much time went to one duty or another.

[40] In any given period, it would be impossible to determine how much of the invoice was to duty A and how much was duty B – and indeed there is no suggestion that the Applicant even recorded her time spent on each task. An issue that arises from this is that some of the tasks – for example chairing the committee - took place during what would be normal working hours for the General Manager position. Put another way, if the CA arrangement was one of contracting then the Respondent was allowing the Applicant as contractor to undertake duties pursuant to the contract that meant she was not able to be performing duties as General Manager at times when it would be expected that she was performing those duties.

[41] With respect to issues such as leave, super, and the ABN, I find these are in effect simply extensions of the label the parties applied to the arrangement. Put another way once the parties had labelled it a contractor arrangement, they have then applied payment methods and entitlements consistent with that model. In my view, the use of these methods cannot change the real nature of the relationship where that relationship is clearly one of employment.

[42] If I look at the issue of control, I find that it is difficult to draw a conclusion as to what weight I should give to this issue. The parties disagree on the level of control that applied to the CA role, and both make reasonable arguments in support of their position. In assessing those arguments, I am mindful that the Applicant is a very senior person in the organisation. Her role as General Manager would be subject to certain levels of control but typically a senior position such as hers will be measured on results. While the employer may have control in theory, it is unlikely to be exercised on a daily, weekly or even monthly basis. However, that does not make such an employee a contractor.

[43] I suspect the situation is similar with the CA role. It involved duties at a very high level and again I suspect that it would not in the normal course of things be subject to regular instances of the Respondent exercising control. Given this, I am of the view that the issue of control is one that should remain neutral in my considerations.

[44] Given all of the above, I have concluded that the CA was not an independent contract but rather an employment arrangement. In making this finding I am mindful that there is a

significant amount of irony in the Respondent having proposed and promoted the CA model as an independent contract and now being the beneficiary of a finding that it was in fact an employment relationship. Clearly the Applicant herself is entitled to be aggrieved at this outcome. In that sense it is appropriate that I touch briefly on the Applicant's concerns regarding estoppel.

[45] It is clear to me that the CA was an initiative of the Respondent, and they have – as per cl.8.8 (see [31] above) – sought to make clear that the arrangement was that of independent contractor. Nevertheless, they have come to the FWC and maintained a position that the CA arrangement was in fact an employment arrangement. However, the issue for the FWC is to establish whether it has jurisdiction in the matter. I therefore need to satisfy myself as to the true nature of the relationship between the parties and not be directed by what the parties think the relationship is - even if the circumstances are that one party has openly changed its position.

[46] I do note however that the Respondent has made its pleadings here at the FWC that the Applicant was for all purposes an employee, and the FWC has found that this is the case. Clearly, this has implications for the Respondent's pleadings in other jurisdictions.

How should the employment arrangements arising from the CA be viewed?

[47] Having found that the CA arrangement was an employment relationship, how should that relationship be viewed. More precisely, is this a case of dual employment? As this was not an issue canvassed with the parties at hearing, I sought additional submissions from them as to how the CA arrangement should be treated. Specifically, should it be treated as an entirely separate employment arrangement such that the earnings from this role should not be added to the earnings from the General Manager role to make up the Applicant's annual rate of earnings.

Submissions

[48] The Respondent submitted that the total earnings across both contracts should be aggregated. It submitted that the two roles were:

> *"…inseparably linked in function, location, duties, and execution, and the contractor agreement could not have existed without the full-time employment agreement being active"*[13].

[49] The Respondent claims that this is not a case of multi-hiring across distinct positions, but rather a single employment relationship split across two contractual documents. The Respondent further submits that if the FWC was to take a "substance over form" approach the reality would suggest that the two streams of income should be aggregated.

[50] In terms of case precedent, the Respondent submits that there are no cases which are strictly on point. Rather, it says that the cases which I had identified to the parties deal with whether overtime and other entitlements can be calculated on a cumulative basis and the application of enterprise agreements to particular instances of employment. It further proposes that the Act itself contemplates adding together different sets of earnings by virtue of its specific use of "the sum of the person's annual rate of earnings" in s.382(b)(iii).

[51] The Respondent then submits that the two roles held by the Applicant were a full-time employment agreement (General Manager) and a contractor agreement (CA role). It submits that both contracts:

- *"Commenced on the same date and operated simultaneously;*
- *Were performed in the same location, using the same email, phone, uniform, tools, and resources;*
- *Involved no distinction in time allocation or functional separation;*
- *Shared identical reporting structures and managerial frameworks;*
- *Featured remuneration schedules that were fixed, predictable, and paid on the same PAYG cycle."*[14]

[52] The Respondent submits that the situation with the Applicant can be distinguished from the circumstances found in *Lacson v Australian Postal Corporation* [2018] FCA 51 *(Lacson)* in that the Court found that where the duties were genuinely independent and structured around different duties and operational frameworks they may be treated as separate instances of employment. The Respondent contrasts this with the Applicant who it says had two roles that were part of one continuous indivisible role structure which were functionally and administratively linked. The Respondent further says that the "artificial" distinction between her employer and contractor income did not reflect operational reality and thus *Lacson* is not relevant.

[53] The Respondent cited a number of cases to support the proposition that all remuneration elements can be aggregated when considering the High-Income Threshold. Specifically, the Respondent noted the following decisions:

Monteiro v Valco Group [2019] FWC 2410
Sam Technology v Bernadou [2018] FWCFB 1767
Searle v Moly Mines Ltd [2011] FWA 4798
Hatton v DP World Brisbane Pty Ltd [2014] FWC 5295
Blyth v Remondis Australia Pty Ltd [2024] FWC 1534
Cross v Bechtel Construction (Australia) Pty Ltd (2015) 250 IR 272

It is not my intention to go into the findings of these cases, but I will note my assessment of their relevance below.

[54] In addition to the above cases, the Respondent submits that the recent amendments to the Act – the "Closing Loopholes" legislation - place the focus of the FWC's analysis of the totality / reality of the relationship between parties as a means of determining the actual legal nature of that relationship. The Respondent says that such focus reinforces the rejection of disguised employment and the artificial separation of roles.

[55] In summary, the Respondent says that the Applicant's income from the CA role was regular and predictable, paid in the same cycle as her salary, explicitly acknowledged as part of her earnings and functionally integrated with her salaried role. It cites the High Court decision in *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2, suggesting that the case reaffirms that

> *"…contract characterisation must consider the totality of the relationship, not just its documentation. The FWC has similarly rejected formalistic distinctions that allow employers or employees to avoid the protective provisions of the Fair Work Act."*[15]

Finally, the Respondent says that:

> *"(t)o treat the two contracts separately in this matter would be to disregard the integrated nature of the duties, the reality of the working relationship, and the economic effect of the remuneration structure."*[16]

[56] The Applicant submits that the two streams of income should be regarded as separate. She says that the reality is that she held two distinct contracts with the Respondent and the Respondent's claims that they were "inseparably linked" is inconsistent with the Respondent's conduct and their own submissions. The Applicant submits that:

> *"(t)he respondent deliberately drafted and treated the two contracts as separate, and it is on that basis that the Commission should respectfully proceed. Only my Employment Agreement salary should be assessed against the High-Income Threshold, which is below the statutory limit."*[17]

[57] In support of her submissions that the Respondent is now seeking to depart from its earlier evidence, the Applicant notes the following parts of Ms Eranki's witness statement tendered to the FWC under oath.

> *"Witness Statement (Item 9): Mrs Eranki expressly stated that the Contractor Agreement reflected responsibilities "distinct from operational duties." The current submission reverses that position. The Respondent has shifted its argument to try to artificially push me over the High-Income Threshold.*
>
> *Witness Statement (Item 19): Mrs Eranki stated that there were "legitimate governance reasons for separating employment and governance responsibilities, including different liability profiles, reporting lines, and legal character." The Respondent cannot rely on separation when it suits its corporate structuring, but then deny separation for jurisdictional advantage in this proceeding.*
>
> *Witness Statement (Item 20): Mrs Eranki further admitted it is "common and appropriate for directors and committee members to be engaged under separate agreements to delineate their governance responsibilities from day-to-day operational duties, even where those roles are held by the same individual." This directly contradicts the current claim that the contracts must be merged."*[18]

[58] The Applicant says that the reality of the situation is that the Respondent deliberately drafted and executed two distinct and separate agreements for a clear purpose. She says that having structured and treated the roles in this fashion the Respondent is now attempting to reverse its position simply to avoid the jurisdiction of the FWC.

[59] The Applicant rejects the Respondent's assertion that *Lacson* is not relevant to her situation, submitting that the case is not about physical location or Award coverage but rather

whether the employee holds two distinct and separate contracts with the one employer. She says that this is analogous to her situation where her two roles had different legal character, different payment mechanisms and different entitlements. The Applicant goes on to cite the findings in *Kroeger v Mornington Peninsula Shire Council* [2019] FCCA 2313 *(Kroeger)* which she says applied the *Lacson* principles in a situation even more closely aligned with her own in that the employee in that case was performing roles back-to back and often at the same location.

[60] The Applicant then goes on to provide submissions rejecting the relevance of each of the cases relied upon by the Respondent as set out at [53] above. She also rejects the Respondent's appeal to the "Closing Loopholes" changes, stating:

> *"The Respondent's reliance on the Closing Loopholes Act 2023 is misplaced. That Act was designed to prevent sham contracting, where employers disguise genuine employment as contracting to avoid paying entitlements. Here, Cosmetique is attempting the reverse: to retrospectively disguise a genuine contractor arrangement as employment in order to defeat my unfair dismissal rights. This is an abuse of the principle and contrary to the protective purpose of the legislation."*[19]

[61] In further submissions the Applicant addresses the Respondent's claim about her income being integrated. She submitted as follows:

1. *"Contractor income was not regular or guaranteed*
    - *Contractor payments were only made upon submission of invoices and after services were rendered (Contractor Agreement cl 1.1(c).*
    - *Clause 3.4 expressly allowed Cosmetique to dispute invoices, and in fact invoices were withheld and remain the subject of separate Magistrates Court proceedings. This is the opposite of "guaranteed earnings."*
2. *Different legal and tax treatment*
    - *Employment salary was subject to PAYG and superannuation.*
    - *Contractor payments were invoiced under my ABN, with GST charged and remitted by me. No superannuation applied.*
    - *These fundamental differences demonstrate that the arrangements were not functionally integrated but deliberately separate.*
3. *Authority on contingent payments*
    - *In Jenny Craig Weight Loss Centres v Margolina [2011], the Commission confirmed that contingent and discretionary payments are not "earnings" for HIT purposes. By analogy, my contractor payments, being contingent and disputed, fall outside s.332.*
4. *Misuse of Jamsek and "totality" principle*
    - *The Respondent relies on ZG Operations v Jamsek [2022] HCA 2. That case addressed sham contracting designed to deny protections. Here, the opposite is occurring: Cosmetique is retrospectively collapsing genuine dual contracts to deny me unfair dismissal rights.*

- *The "totality" principle cannot be used to rewrite lawful agreements simply because the Respondent now wishes to avoid jurisdiction.*

5. *Estoppel*
   - *Cosmetique represented and treated the two contracts separately throughout the relationship. They relied on that structure for corporate governance, taxation, and legal purposes, and now seek to deny it here. They are estopped (Waltons Stores v Maher) from shifting their position opportunistically."*[20]

[62] In summary, the Applicant submits that her two roles were separate and distinct, that such arrangements are possible under Australian industrial law, that the Respondent is now departing from positions it has previously taken in various fora to avoid jurisdiction and that the earnings under the two contracts should not be aggregated.

Consideration

[63] In the first instance, I will address the relevance of *Lacson* and *Kroeger.* I find that the decisions in those cases confirm that the concept of dual employment – a situation where one employee has two separate and distinct contracts of employment with the one employer – can operate under Australian employment law. Both cases confirm that the concept can exist. They further confirm that where an enterprise agreement applies to an employee and both roles fall within the coverage of that one enterprise agreement, the jobs may still be regarded as separate and distinct.

[64] If this is the case, then I see no impediment to a scenario such as that of the Applicant – having two different roles with one employer that are both award and agreement free - being treated as dual employment and thereby separate and distinct employment arrangements. I find that in this case the two roles can be clearly distinguished. In the first instance, they had different rates of pay, with the CA role also receiving no payments of superannuation or accruing any forms of leave. On this basis alone it is hard to see how the Respondent can argue that the remuneration was somehow integrated. I note further in this regard that the evidence showed that there was at least one occasion where the Applicant did not submit an invoice for payment for the CA role due to an absence and was not paid. Further, the Respondent saw fit to withhold the final two payments due under the CA role – again calling into question any sense of integration of income.

[65] I also find that – contrary to the submissions of the Respondent – that the CA role was not entered into at the same time as the General Manager role. The Applicant had been working for the Respondent as General Manager for some time before the prospect of the CA role was raised by the Respondent in response to a request by the Applicant for a pay rise. What eventuated from this request was a re-issuing of the General Manager contract at the same time as the CA role agreement was signed.

[66] As such the roles did not materialise at the same time, giving further credence to the notion of the CA role being separate and distinct. In terms of integration, I am somewhat nonplussed at the submissions of the Respondent on this issue. As correctly pointed out by the Applicant - see [57] above – the Respondent's witness gave sworn evidence about the nature of the CA role and was at some pains to distinguish the roles. It is - to say the least - very

difficult to reconcile the dual employment submissions made by the Respondent with this sworn evidence.

[67] I should address some other issues raised by the Respondent. The Respondent claims that this is not a case of multi-hiring across distinct positions, but rather a single employment relationship split across two contractual documents. On that issue I firstly repeat my finding that the two roles did not commence at the same time. Further, it is perplexing that the Respondent seems capable of making this claim in light of the wording of one of those documents. Specifically, clause 8.8 of the CA agreement, which reads in part as follows, with my emphasis:

> *"8.8 Relationship of Parties. This Agreement is not intended to create a partnership, joint venture,* ***employment*** *or agency relationship between the parties…"*[21]

[68] It would appear that the Respondent would have the FWC accept that a document which emphatically states that it does not create an employment relationship should now be regarded as being part of creating an integrated employment relationship that includes the role set out in that document. Such a proposition simply cannot be countenanced.

[69] In terms of the reliance on the "Closing Loopholes" legislation I note that it was that very change that allowed the FWC to make a proper assessment of the relationship between the Parties – with respect to the CA role – and determine that it was not a contractor arrangement but rather a case of employment. That legislation was designed in part to counter the decision made in *Jamsek* whereby the written contract essentially dictated the terms. Its purpose is to ensure that when the FWC is examining that issue of whether the person is an employee or a contractor it looks beyond the written contract to the realities of how the relationship operates.

[70] I am thus uncertain why the Respondent cites it to promote its argument that the two roles held by the Applicant should be regarded as one. I am assuming it is a claim that the FWC should be examining the true nature of the two employment engagements to see if indeed they are one. If this is the case, then then I find that this is not the intended purpose of those legislative amendments. However, even if I do embark on that exercise, I draw the same conclusions as I have above. The roles are sufficiently distinct such that they represent in my view two separate instances of employment with the same employer.

[71] I should also address the case law to which the Respondent drew my attention. It can be disposed of in fairly short order. The case of *Monteiro v Valco Group* [2019] FWC 2410 involves consideration of private versus business use of a motor vehicle provided to an employee as part of his employment package. It does not touch on the issue of dual employment and how the earnings in such a scenario should be treated. There is no suggestion that I can see that the Applicant was in receipt of a motor vehicle allowance. I regard this case as being of no assistance.

[72] In the matter of *Sam Technology v Bernadou* [2018] FWCFB 1767 the Full Bench was again concerned with a motor vehicle allowance paid to an employee and how that allowance ought to be treated. The decision does not touch on the concept of dual employment. Further, to the extent that the Respondent draws on the decision to say the economic effect of remuneration overrides the structure of that remuneration, it is in error. The Act itself – at

s.332(2)(a) - excludes amounts that cannot be worked out in advance. Such amounts include overtime that is not guaranteed. Such payments would clearly have an economic effect but yet are not counted as earnings for the purposes of determining the annual rate of earnings. As such, I do not regard the case as being of assistance.

[73] The Respondent has also cited the cases of *Searle v Moly Mines Ltd* [2011] FWA 4798 and *Hatton v DP World Brisbane Pty Ltd* [2014] FWC 5295. An extensive search of the Commission's internal database and other sources such as Austlii and Lexis + failed to uncover either of these two cases. I thus caused my Chambers to write to the Respondent to ask that it provide the full decisions. In response, the Respondent provided two links, one to some general advice on the website of a law firm and the other being the citations listing of a decision of a Full Bench of Fair Work Australia (as the FWC then was) dealing with constructive dismissal.

[74] In both instances, the case referred to was not *Searle v Moly Mines Ltd* [2011] FWA 4798 but rather *J. Searle v Moly Mines Limited* [2008] AIRCFB 1088. That case deals with the issues of abandonment of employment, constructive dismissal and termination at the initiative of the employer, rather than overlapping duties as contended by the Respondent. As a result, I caused my Chambers to write to the Respondent and ask for an explanation of why this 2008 case was relevant, and also to ask – again - for a copy of the *Hatton v DP World* case.

[75] The Respondent did not provide a response by the required time but did respond some hours later. In that response it noted that it could not find a full copy of *Hatton v DP World* and acknowledged that the FWC would therefore pay no heed to its submissions arising from that case. With respect to the other case, the Respondent provided a full copy of *J. Searle v Moly Mines Limited* [2008] AIRCFB 1088 and asked if the FWC "could include references to *Searle v Moly Mines Ltd* [2011] FWA 4798".

[76] Clearly, I cannot include references to *Searle v Moly Mines Ltd* [2011] FWA 4798 because the Respondent has not provided that case but rather a completely different case decided some three years earlier. Further, the inferences drawn by the Respondent from *Searle v Moly Mines Ltd* [2011] FWA 4798 are not open to be drawn from the case provided – being *J. Searle v Moly Mines Limited* [2008] AIRCFB 1088 – because that case does not deal with the issue of overlapping duties.

[77] In the matter of *Blyth v Remondis Australia Pty Ltd* [2024] FWC 1534 the FWC was looking at a vehicle allowance and how it should be treated for the purposes of earnings. Again, there is no dual employment situation, and the issue relates to private versus work use of a vehicle where an allowance is paid for that vehicle. I repeat my comments regarding the cases above.

[78] The last case is *Cross v Bechtel Construction (Australia) Pty Ltd* (2015) 250 IR 272. In that case the FWC was again concerned with the treatment of a vehicle allowance and apportioning private and business use. As per the cases above, I can find nothing in this case that assists my consideration of the dual employment issue, mindful again that there is no argument from the Respondent that the Applicant received a vehicle allowance.

[79] The final issue to consider is whether an employee in a situation such as the Applicant can make – as she has done – an unfair dismissal application with respect to one of her jobs and

not the other. In this instance, the unfair dismissal claim is clearly specified as being made with respect to the General Manager role. I note again for completeness that this role of itself attracts an annual rate of earnings below the high-income threshold. It seems to me that if the notion of dual employment is accepted, which it appears to be, and the employee cannot aggregate the earnings or time worked under those separate contracts for the purposes of claiming – for example – overtime, then the two roles ought to be regarded as separate and distinct for all purposes of employment.

[80] If this is the case, then there would appear to be no impediment to the Applicant making an unfair dismissal claim with respect to one of her roles. This may raise the question of what would happen if she wanted to make a claim with respect to both roles. However, that matter does not arise in this instance, so I do not need to make a ruling. It may also raise the issue of the relevance of the established notion that termination of employment as contemplated by the Act is termination of the employment relationship, rather than termination of the employment contract. This is an issue that has not been widely canvassed with respect to dual employment.

[81] However, it seems to me that while this may be one of the potential problems with dual employment that has not been resolved, I think there is an argument that the two distinct instances of employment should remain separate for the purposes of unfair dismissal. An example may assist in explaining my thinking. Take the case of *Lacson.* What would be the result of a situation where his job delivering mail was made redundant because Australia Post decided to outsource that function. Clearly, his employment would be terminated by way of redundancy, and it would be said that his employment relationship – at least with respect to that role - ended at that time. But would that automatically terminate his role in the sorting centre? I have concluded that it would not. That role would continue and as such an employment relationship would persist. This suggests to me that the separate instances of employment have separate employment relationships, whereby one relationship can survive the ending of the other.

Conclusion

[82] For the reasons set out above, I find that the CA role held by the Applicant was not an independent contractor arrangement but should be properly classified as an employment relationship. I further find – relying in part of the evidence of the Respondent itself - that it is a sufficiently distinct role such that the Applicant should be regarded as being in a dual employment situation akin to that found in cases such as *Lacson*. Being in that situation, she has nevertheless made an unfair dismissal application with respect to the General Manager role only, and the annual rate of earnings for that role is below the high-income threshold. There is therefore no jurisdictional impediment to the FWC dealing with the merits of the Applicant's claim. The matter will now be programmed for a merits hearing.

DEPUTY PRESIDENT

Appearances:

Ms R. Aljobouri on her own behalf

Ms K. Eranki on behalf of the Respondent

Hearing details:

Via Teams: 31 July 2025

Final written submissions:

Respondent: received 12 September 2025

Applicant: received 19 September 2025

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[1] *Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd* [2022] HCA 1 and *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2.

[2] *Hayley Smith v Kohli Traders Pty Ltd* [2025] FWC 304 at [12].

[3] See Court Book at page 151.

[4] See Court Book at pages 156-157.

[5] See Respondent's Submissions at [15].

[6] See Applicant's Witness Statement at [17].

[7] See Court Book at Page 86.

[8] See Applicant's Submissions at [22].

[9] Ibid at [40].

[10] See Court Book at page 153.

[11] See Applicant's Reply Submissions at [7].

[12] See Court Book at page 143.

[13] See Respondent Submissions on Dual Employment.

[14] Ibid.

[15] Ibid.

[16] Ibid.

[17] See Applicant's Dual Employment Submissions at section 1.

[18] Ibid section 3.

[19] Ibid section 6.

[20] Ibid section 7.

[21] See Court Book at page 153