



# DECISION

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

**Robert John Wilson**

v

**Care Park Pty Ltd**  
(U2025/10842)

DEPUTY PRESIDENT MASSON

MELBOURNE, 8 OCTOBER 2025

*Application for an unfair dismissal remedy – jurisdictional objection that application made outside of 21-day time limit – need to determine date of dismissal – found that application made within 21-day time period.*

## Introduction

[1] This decision concerns an application made on 26 June 2025 by Mr Robert John Wilson (the Applicant) for an unfair dismissal remedy pursuant to s 394 of the *Fair Work Act 2009 Cth* (the Act). The Applicant, who was employed by Care Park Pty Ltd (the Respondent), alleges he was dismissed on 23 June 2024. In its Form F3 response, the Respondent raises a jurisdictional objection that the application was made outside the statutory 21-day time period, claiming that the Applicant ceased employment on 26 February 2025.

[2] 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 Fair Work Commission (the Commission) allows pursuant to s 394(2) of the Act. The contest over the date of dismissal must be resolved as a preliminary matter. If the dismissal were found to have occurred on 23 June 2025, then the application will have been made within the statutory 21-day time period. If the dismissal took effect on 26 February 2025 as contended by the Respondent, the period of 21 days will have ended at midnight on 19 March 2025. In this latter circumstance, the application will have been filed 99 days outside the 21-day period, and the Applicant asks the Commission to grant a further period for the application to be made under s.394(3) of the Act.

[3] The application for an extension of time to file the unfair dismissal application was set down for determinative conference on 8 October 2025 in advance of which the parties filed material in accordance with directions issued. At the determinative conference, the Applicant was represented by Mr Darien Wilson of the Tasmanian Aboriginal Legal Service who was granted permission to appear pursuant to s 596 (2) of the Act. Ms Victoria Kordalis, Human Resources Director, appeared on behalf of the Respondent.

## Background and evidence

[4] On 15 January 2024 the Applicant commenced as a Parking Patrol Officer with the Respondent. He was engaged to work in Launceston, Tasmania on 38 hrs per week on a permanent full-time basis<sup>1</sup>.

[5] On 15 November 2024, the Applicant was injured at work when hit by a motor vehicle in the carpark at York Town Square in Launceston while issuing a parking ticket. He called the police who attended and then went to hospital. On examination, no fractures were identified although a torn meniscus in he left knee was subsequently found<sup>2</sup>. The Applicant began receiving workers compensation payments shortly after the incident.

[6] On 30 December 2024 the Applicant was issued with a Police Infringement Notice<sup>3</sup> for causing a traffic hazard as a pedestrian. He elected to have the infringement notice heard in the Launceston Magistrates Court<sup>4</sup>.

[7] On 11 February 2025, the Applicant received correspondence from the Respondent's lawyers in which he was advised that the Respondent disputed liability for his weekly workers compensation payments and had elected to proceed to a hearing under s 81A of the *Workers Compensation and Rehabilitation Act 1998*<sup>5</sup>. Following a hearing before the Tasmanian Civil & Administrative Tribunal (TASCAT), Senior Member L Jack issued an Order<sup>6</sup> (the TASCAT Order) on 26 February 2025 finding there was a reasonably arguable case for the Respondent to dispute liability and ordered that no weekly compensation be paid to the Applicant.

[8] On 6 March 2025 the Applicant sent an email to the Respondent seeking clarification on the status of his employment. He specifically requested confirmation in writing on whether he had ceased to be employed. Ms Catherine Foster who is the Respondent's SA/Tas General Manager, responded in the following terms;

“Good afternoon Bobby

Care Park acknowledge the stats of the tribunal.

Concerning your annual leave, please be advised that, should you choose to resign, we are able to arrange for the payout of any unused annual leave upon termination of your employment.

We are happy to accept your resignation in writing and then arrange for collection all your access cards etc.

.....”<sup>7</sup>

[9] The Applicant did not respond to Mr Forster's resignation ‘invitation’<sup>8</sup>. (A1, 38]

[10] On 23 June 2025 the Applicant's Infringement Notice was dealt with in the Launceston Magistrate's Court. The Tasmanian Police had agreed on 20 May 2025 to not tender evidence and the complaint was dismissed by the Court<sup>9</sup>.

[11] On 23 June 2025 the Applicant states he identified an email from Ms Foster in his junk email folder dated 5 June 2025 and another email from HR Director Ms Victoria Kordalis dated 18 June 2025. The 5 June 2025 email from Ms Foster stated as follows;

“Dear Bobby

Given your extended absence from the workplace and the outcome of your workers compensation claim, Care Park will proceed with the termination of your employment. This action is being taken on the basis that you have not been able to fulfil your duties throughout the year, and there is no foreseeable return to work.

In accordance with company policy and applicable legislation, we will arrange for the payout of your unused annual leave entitlements upon termination.

Please consider this notice as confirmation of the termination of your employment with Care Park, effective immediately. Kindly return all company property, including access cards, uniforms, and any equipment, to the Tasmanian office so we can release your final pay.

.....”<sup>10</sup>

[12] The email from Ms Kordalis dated 18 June 2025 stated as follows:

“Hi Bobby

We kindly request that you return all company property, including your uniform, access cards, and any other equipment, to the Tasmanian office as soon as possible so we can process your final pay without delay.

.....”

[13] The Applicant filed his unfair dismissal application on 26 June 2025.

**Date of dismissal**

[14] As earlier stated, there is a contest over the date of the Applicant’s dismissal. The Applicant contends that he was notified of his dismissal on 23 June 2025 when he found the Respondent’s 5 June 2025 email in his junk email folder. The Respondent contends the date of dismissal was 26 February 2025. The Respondent’s submission on the date of termination has no merit and must be dismissed for the following reasons.

[15] Firstly, the date of 26 February 2025 has no significance beyond that being the date the TASCAT Order was issued in relation to the Applicant’s workers compensation payments. There is no evidence of any correspondence between the Respondent and the Applicant on or about that date indicating a termination of employment or resignation.

[16] Secondly, Ms Forster’s 7 March 2025 email in response to the Applicant’s 6 March 2025 employment status query effectively ‘invited’ the Applicant’s resignation and advised that his annual leave would only be paid out on resignation. No resignation was tendered by the Applicant, and his accrued annual leave was not paid out at that point.

[17] Thirdly, there is no evidence of any further communication between the Respondent and the Applicant until Ms Foster’s email to the Applicant on 5 June 2025. The wording in that email is unequivocal. It advises the Applicant of the termination of his employment and that it

would take immediate effect. It specifically states, “*please consider this notice of your termination*”. The 5 June 2025 email to the Applicant from Ms Foster could not be clearer in my view and is explicit evidence that the Respondent understood the employment relationship remained on foot up to that point.

[18] Finally, the Respondent continued to withhold payment of the Applicant’s accrued leave entitlements until he returned company property in his possession.

[19] I am satisfied that the above circumstances establish beyond any doubt that the Applicant did not resign on 26 February 2025 or subsequently. The Respondent took no action to deal with the Applicant’s prolonged absence from the workplace until 5 June 2025 when it sent him an email confirming his dismissal and that it would take immediate effect. While the Applicant states he did not read the 5 June 2025 email until 23 June 2025, I am satisfied that the termination was communicated on the 5 June 2025 and that dismissal took effect on that date. Once aware of the 5 June 2025 email the Applicant acted promptly and filed his unfair dismissal application on 26 June 2025.

### **Conclusion**

[20] It follows from the foregoing that I am comfortably satisfied that the date of dismissal was 5 June 2025. As the application was filed on 26 June 2025, it was filed within the statutory 21-day filing period as required by s 394(2) of the Act. An extension of time to file the application is consequently not required. As such the jurisdictional objection of the Respondent must be dismissed. Determination of the merits of the application will now proceed to be programmed



DEPUTY PRESIDENT

*Appearances:*

*D Williams*, for the Applicant.

*V Kordalis* for the Respondent.

*Hearing details:*

2025.

Melbourne:

October 8.

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<sup>1</sup> Exhibit A1, Exhibit A1, Witness Statement of Robert John Wilson, at [15], Annexure A, Letter of Offer, dated 15 January 2024

<sup>2</sup> Exhibit A1, at [20]-[24]

<sup>3</sup> Exhibit A1, Annexure B, Tasmania Police Infringement Notice, dated 30 December 2024

<sup>4</sup> Exhibit A1, Annexure C, Court Summons, dated 16 April 2025

<sup>5</sup> Exhibit A1, Annexure D, Letter to Applicant from Page Seager Lawyers, dated 11 February 2025

<sup>6</sup> Exhibit A1, Annexure E, TASCAT Order, dated 26 February 2025

<sup>7</sup> Exhibit A1, Annexure F, Email exchange between Applicant and Catherine Foster, dated 6 -7 March 2025

<sup>8</sup> Exhibit A1, at [38]

<sup>9</sup> Exhibit A1, at[29]-[30]

<sup>10</sup> Exhibit A1, Annexure F, Email from Catherine Foster, dated 5 June 2025