



DECISION

Fair Work Act 2009
s.365—General protections

Kunal Balhara

v

EZYDental Australia Pty LTD
(C2025/7442)

DEPUTY PRESIDENT FAROUQUE

MELBOURNE, 16 OCTOBER 2025

General protections – jurisdictional objection – whether applicant was an employee – applicant was an employee of the respondent – jurisdictional objection dismissed – application to proceed

Background

[1] Mr Balhara (the applicant) has filed a general protections dismissal application under s 365 of the *Fair Work Act 2009* (the Act) to which EZYDental Australia Pty Ltd (**EZY**) is the respondent. Section 365 is contained within Part 3-1 (General Protections) of the Act.

[2] Mr Balhara’s engagement by EZY was terminated by EZY effective 10 July 2025.

[3] EZY has made a jurisdictional objection to the application on the basis that Mr Balhara was not an employee of EZY.

[4] A jurisdictional pre-requisite of a general protections dismissal application is that an applicant must have been “*dismissed*”. Section 386 sets out the meaning of the term “*dismissed*”. Section 12 applies the meaning of the term “*dismissed*” in s 386 to a general protections application. The meaning of the term “*dismissed*” in s 386 requires that the person is an employee. This is apparent from the various references to “*employment*” and “*employer*” in s 386(1)¹.

[5] Consequently, for the Commission to be satisfied that Mr Balhara has been dismissed within the meaning of s 386, it is necessary to determine whether Mr Balhara was an employee of EZY. If Mr Balhara was not an employee of EZY, he cannot have been dismissed within the meaning of s 386.

[6] Therefore, the issue to be determined in this decision is whether Mr Balhara was an employee of EZY. The evidence and submissions in relation to this issue were received at a Determinative Conference on 5 October 2025.

[7] Section 335 provides that in Part 3-1 “*employee*” and “*employer*” have their ordinary meanings.

[8] Section 15AA of the Act is entitled “*Determining the ordinary meanings of employee and employer*”. Section 15AA relevantly provides:

15AA Determining the ordinary meanings of employee and employer

(1) For the purposes of this Act, whether an individual is an employee of a person within the ordinary meaning of that expression, or whether a person is an employer of an individual within the ordinary meaning of that expression, is to be determined by ascertaining the real substance, practical reality and true nature of the relationship between the individual and the person.

(2) For the purposes of ascertaining the real substance, practical reality and true nature of the relationship between the individual and the person:

(a) the totality of the relationship between the individual and the person must be considered; and

(b) in considering the totality of the relationship between the individual and the person, regard must be had not only to the terms of the contract governing the relationship, but also to other factors relating to the totality of the relationship including, but not limited to, how the contract is performed in practice.

...

[9] In determining whether Mr Balhara was an employee of EZY, it is necessary to apply the approach required by s 15AA. This involves a multifactorial test in the nature of that set out in *Jiang Shen Cai trading as French Accent v Do Rozario*.²

Factual Findings

[10] Mr Balhara was engaged by EZY commencing on 25 November 2024. Mr Balhara predominantly performed work for EZY in relation to Malvern Smile Studio (the Studio). The Studio is a dental practice. EZY acquired the Studio effective 1 November 2024.

[11] The background to Mr Balhara’s engagement by EZY has a connection to EZY’s acquisition of the Studio.

[12] Mr Balhara and his sister Dr Saloni are shareholders in a company known as SKBTB Pty Ltd (**SKBTB**). Dr Saloni is a dentist. Prior to November 2024, SKBTB owned Malvern Smile Studio and Mr Balhara was employed by SKBTB as Practice Manager of the studio and Dr Saloni performed work as a dentist at the Malvern Smile Studio.

[13] During 2024, SKBTB and EZY entered into an agreement in which SKBTB sold Malvern Smile Studio to EZY.

[14] Mr Rubab Ashraf and Mr Wahab Ashraf are directors of EZY. Mr Rubab Ashraf and Mr Wahab Ashraf are brothers. The families of Mr Balhara and Dr Saloni on the one hand, and the Ashraf brothers on the other, are apparently known to each other. The evidence indicates that those families have other business relationships.

[15] It is apparent that the Ashraf brothers or their associated entities hold a significant shareholding in EZY. Dr Saloni, through a trustee company, also holds a 20% shareholding in EZY. Other persons may also have a shareholding interest in EZY.

[16] However, Mr Balhara denied that he holds or has ever held a shareholding interest, either directly or indirectly, in EZY. I accept Mr Balhara's evidence in this regard.

[17] During negotiations regarding the sale of the Studio, Dr Saloni recommended to the Ashraf brothers that her brother Mr Balhara be engaged as Practice Manager after the sale.

[18] In late November 2024, Mr Balhara and Mr Wahab Ashraf had a discussion including with respect to his engagement by EZY. A rate of remuneration was discussed, being a sum of in order of \$75,000 annually. The discussion between Mr Balhara and Mr Ashraf also appears to have dealt with arrangements for the engagement by EZY of a nurse and receptionist who were then employed by SKBTB and performing work at the Studio. In any event, the discussion concluded with Mr Balhara and Mr Wahab Ashraf agreeing that Mr Balhara would prepare and send to Mr Wahab Ashraf proposed agreements for EZY to engage Mr Balhara, the nurse and the receptionist.

[19] Mr Balhara had available to him some template documents previously used by SKBTB to engage employees at Malvern Smile Studio. Mr Balhara used those templates to prepare documents to send Mr Wahab Ashraf. Those templates were apparently documents obtained some years ago by Mr Balhara from the Australian Dental Association.

[20] Initially, Mr Balhara emailed Mr Wahab Ashraf proposed documents for EZY to engage the nurse and the receptionist.

[21] On 29 November 2024, Mr Balhara emailed Mr Wahab Ashraf two documents concerning his (Mr Balhara's) own engagement by EZY.

[22] The first document sent on 29 November 2024 was entitled "Terms and conditions – Employees other than dentists" (the **Draft Contract**). The Draft Contract had, amongst other things, the following features:

- (a) the cover page identified the "Employer" as "Malvern Smile Studio / EZYDental Australia Pty Ltd" and the "Employee" as "Kunal Balhara";
- (b) The document variously described the position or role as "dental receptionist", "front office coordinator" and "practice manager", an infelicity likely due to the inattentive use by Mr Balhara of a template or precedent document;
- (c) clause 3.1 included a reference to an attached job description document, but no job description was attached;
- (d) clause 3.3 states "*We may require you perform other tasks which are not included in your job Description*";

- (e) the document variously uses terminology such as “employed”, “employment”, “employee”, “employer”, and “national employment standards” ;
- (f) the document makes provision for various conditions such as paid personal/carer’s leave in accordance with Act, annual leave in accordance with the Act or the relevant modern award, long service leave as per legislation, parental leave as per the Act, express provisions regarding “Termination of Employment” and “Redundancy”, and express provisions for dispute resolution including arbitration by “Fair Work Australia”; and
- (g) clause 18 provides as follows:

18 ACCEPTANCE OF OFFER

18.1 Should you consider that this document does not accurately state the terms and conditions of your employment, please discuss those terms with Malvern Smile Studio before you sign this letter. IF you have any questions concerning the position or any other terms of this letter please contact ().

18.2 Otherwise please sign the duplicate of this document and initial each as evidence that you agree that it accurately sets out the terms and conditions of your employment. The signed documents must be returned to Malvern Smile Studio before you commence work.

[23] The second document sent on 29 November 2024 was a proposed composite document in several parts including the following features:

- (a) space for insertion of various personal details such as employee name, address and contact details;
- (b) a “Policies and Procedures” document containing various instructions; and
- (c) the following table entitled "Employment Agreement Highlights":

Employment Agreement Highlights

<i>The Employer:</i>	<i>Malvern Smile Studio</i>
<i>The Employee:</i>	<i>Kunal Balhara</i>
<i>Employment commencement Date:</i>	<i>25/11/2024</i>
<i>The Employee’s Position</i>	<i>Practice/ Business manager</i>
<i>Term of Employment:</i>	<i>Full time</i>
<i>Employee’s remuneration:</i>	
<i>Annual Leave:</i>	<i>As per prescribed in the relevant legislation</i>
<i>Personal Leave(sickness):</i>	<i>As per prescribed in the relevant legislation</i>
<i>Long Service Leave :</i>	<i>As per prescribed in the relevant legislation</i>
<i>Maternity/Paternity Leave:</i>	<i>As per prescribed in the relevant legislation</i>
<i>Superannuation:</i>	<i>As per prescribed in the relevant legislation</i>
<i>Personal Grooming:</i>	<i>Must be immaculately presentable</i>

[24] In early December 2024, Mr Wahab Ashraf and Mr Balhara met at the premises of the Studio. During this meeting, Mr Wahab Ashraf indicated that he wanted Mr Balhara to be

remunerated upon provision of a fortnightly invoice by him (Mr Balhara) to EZY. There is some dispute between the parties as to the degree of choice Mr Balhara had in relation to this mechanism of invoices. Mr Balhara gave evidence that he was not comfortable with an invoice arrangement but he agreed to it because Mr Wahab Ashraf indicated that it would put the relationship to a bad start if he did not agree to it.

[25] In any event, clause 7.1 of the Draft Contract was finalised to insert the underlined terminology “*7.1 Your salary/hourly rate is (\$75,000 i.e \$40/hour on ABN or \$70,000+Super on TFN)*” per annum and is above the minimum rate prescribed in the NES “award” for a (Practice manager employee and includes payments in respect of the following awards entitlements; (exclude those which do not apply)”. The finalised document (the **Final Contract**) was then signed by Mr Balhara on his own behalf and Mr Wahab Ashraf on behalf of “Malvern Smile Studio”. Mr Balhara and Mr Wahab Ashraf each dated their signatures as 25 November 2024, albeit the document was signed in early December 2024. This backdating was apparently intended to give retrospective effect to the terms of the engagement, being 25 November 2024.

[26] Mr Balhara and Mr Wahab Ashraf also completed and signed various parts of the composite document referred to in paragraph [23] above including inserting in the table at 22(c) the terminology “*(\$75,000 i.e \$40/hour on ABN or \$70,000+Super on TFN)*” . The final table in that document (the **Final Composite Document**) was in the following terms:

Employment Agreement Highlights

<i>The Employer:</i>	<i>Malvern Smile Studio</i>
<i>The Employee:</i>	<i>Kunal Balhara</i>
<i>Employment commencement Date:</i>	<i>25/11/2024</i>
<i>The Employee’s Position</i>	<i>Practice/ Business manager</i>
<i>Term of Employment:</i>	<i>Full time</i>
<i>Employee’s remuneration:</i>	<i>(\$75,000 i.e \$40/hour on ABN or \$70,000+Super on TFN)</i>
<i>Annual Leave:</i>	<i>As per prescribed in the relevant legislation</i>
<i>Personal Leave(sickness):</i>	<i>As per prescribed in the relevant legislation</i>
<i>Long Service Leave :</i>	<i>As per prescribed in the relevant legislation</i>
<i>Maternity/Paternity Leave:</i>	<i>As per prescribed in the relevant legislation</i>
<i>Superannuation:</i>	<i>As per prescribed in the relevant legislation</i>
<i>Personal Grooming:</i>	<i>Must be immaculately presentable</i>

[27] Other than filling in of personal details, signatures and the insertion of the terminology “*(\$75,000 i.e \$40/hour on ABN or \$70,000+Super on TFN)*” in both the Final Contract and the Final Composite Document, those documents were otherwise unchanged from the draft versions emailed by Mr Balhara to Mr Wahab Ashraf on 29 November 2025. Therefore, the Final Contract included all of the terms, conditions and terminology set out in paragraph [22] above.

[28] In his oral evidence, Mr Wahab Ashraf indicated that he did not read the Draft Contract emailed by Mr Balhara on 29 November 2024. However, he acknowledges that he had sufficient opportunity to do so.

[29] Despite the inconsistencies in the Final Contract description of the position or role, I find Mr Balhara was engaged by EZY as a Practice Manager.

[30] The duties Mr Balhara undertook included marketing and front desk coordination at the Malvern Smile Studio. The front desk coordination duties involved matters related to sterilization, tracking laboratory work, devising patient payment plans, providing information for patients to obtain release of their superannuation to fund dental treatment Mr Balhara also undertook duties formulating new processes for a new dental clinic to be opened by EZY in Footscray including setting up practice management software and a working on marketing plan for the Footscray clinic.

[31] Mr Balhara was generally required to work between 9:00am – 5:00pm each day.

[32] Mr Rubab Ashraf provided Mr Balhara a template invoice to be sent fortnightly to EZY. As discussed with Mr Wahab Ashraf, Mr Balhara would send EZY fortnightly invoices. The template invoice had a preset hourly rate and formula. Mr Balhara would enter his hours worked in the template and the formulas would generate the amount the subject of the invoice. In the first few invoices, Mr Balhara used an ABN of an entity that he had previously set up with his sister but had never otherwise operated. Thereafter, Mr Balhara ceased inserting an ABN in the invoices.

[33] Mr Balhara's engagement was terminated in writing by letter dated 10 July 2025.

Whether Mr Balhara was an employee

[34] I consider that Mr Balhara was an employee of EZY. I have reached this view having assessed the true substance, practical reality and true nature of the relationship between Mr Balhara and EZY, having regard to the totality of the relationship between Mr Balhara and EZY including the terms of the contract and how it was performed in practice.

[35] In his role at EZY, Mr Balhara was not in business on his own account. He was engaged by EZY in the position Practice Manager. Mr Balhara is not in the business of providing practice management services to dental practices outside of his engagement with EZY. Furthermore, he has no business interest in EZY. These matters are indicative of a relationship of employment.

[36] Further, the title of Practice Manager, the work performed in that role and the hours generally worked are indicative of a relationship of employment.

[37] There is some dispute between EZY and Mr Balhara as to the degree to which he attended work at the premises of the Malvern Smile Studio. In cross-examination, Mr Rubab Ashraf attempted to obtain some concession from Mr Balhara that he was not regularly in attendance at the Studio and that absented himself without seeking permission. This line of questioning was apparently intended to establish that Mr Balhara could work as per his own wishes, which was more akin to an independent contracting relationship than one of

employment. Mr Balhara denied that he was not regularly in attendance at the Studio, indicated that he was absent for a period when he was overseas to get married, but that he informed Mr Wahab Ashraf of this absence, and provided explanation for occasions when he was not in attendance at the Studio premises. It is not necessary for me to resolve any difference with the parties in relation to these matters. Any failure by Mr Balhara to attend the Studio regularly (which he denies) or to obtain permission for any absence (which he denies) may equally indicate nothing more than that Mr Balhara was not compliant with his obligations as an employee.

[38] The Final Contract is replete with references to terms such as “employed”, “employment”, “employee”, “employer”. Furthermore, as identified in paragraphs [22] and [27] above, the Final Contract sets out a multiplicity of express conditions referable to employment and which are not conditions of an independent contractor. The existence of this terminology and employment conditions is indicative of a relationship of employment.

[39] Clause 3 of the Final Contract conferred an express power on EZY to direct Mr Balhara in the performance of his duties. The existence of a right to control is indicative of a relationship of employment. Mr Balhara said that he was allocated tasks by Mr Wahab Ashraf. Mr Wahab Ashraf denied that he in fact ever exercised such a right of control but conceded that the contract conferred this right on EZY. Whether or not such a right or control was exercised in fact, I find that EZY has the right to direct Mr Balhara in the performance of his duties. In any event, the Final Composite Document contained a section headed “Policies and Procedures” contained various instructions from EZY to Mr Balhara related to the manner in which his duties should be performed.

[40] Clause 4 of the Final Contract required Mr Balhara to “*devote the whole [of his] time and attention during working hours to [his] responsibilities and duties.*” This requirement is indicative of a relationship of employment.

[41] The Final Contract made no provision for Mr Balhara to delegate his work as Practice Manager to third parties and it is apparent that he did not delegate that work. The absence of a provision permitting delegation is indicative of a relationship of personal service in the nature of employment rather than the provision of services in the nature of independent contracting.

[42] Mr Balhara did not use significant tools or equipment of his own. Mr Balhara at best used his own laptop computer, which cannot be regarded as use by him of a significant tool or equipment. The absence of Mr Balhara’s use of significant tools or equipment is indicative of a relationship of employment.

[43] Mr Balhara was not creating any goodwill or saleable assets of his own in the course of his performance of his work for EZY. This is indicative of a relationship of employment.

[44] Mr Balhara was remunerated by periodic payments. These payments were paid on provision by Mr Balhara of an invoice to EZY. This mode of remuneration by invoice and use of an ABN in initial invoices, is indicative of a relationship of principal and independent contractor as between EZY and Mr Balhara. However, I do note that the template form of the invoice was provided to Mr Balhara by Mr Wahab Ashraf, which tends to ameliorate the force of any contention by EZY that the use of invoices was indicative of independent contracting.

Conclusion

[45] Having regard to the above matters, my overall impression of the true substance, practical reality and true nature of the relationship between Mr Balhara and EZY is that it was a relationship of employment. Mr Balhara was an employee of EZY commencing on 25 November 2024 until his termination on 10 July 2025.

[46] Consequently, I order that the Respondent's jurisdictional objection be dismissed. The application will now be listed for a Conference under s 368 of the Act. A Notice of Listing will be issued by my Chambers in due course.



DEPUTY PRESIDENT

Appearances:

A Ryan, solicitor, for the Applicant

R Ashraf and *W Ashraf*, for the Respondent

Hearing details:

2025.

Melbourne (by video using Microsoft Teams):

October 6.

Printed by authority of the Commonwealth Government Printer

<PR792716>

¹ *Dickson v Kovacs & Cespedes* [2025] FWC 1218 at [6]

² *Jiang Shen Cai trading as French Accent v Do Rozario* [2011] FWAFB 8307; See also *Murray v 239 Brunswick Pty Ltd and Raffoul* [2025] FWC 978