



DECISION

Fair Work Act 2009

s.394 - Application for unfair dismissal remedy

Mr Baydon Smith

v

Thunder Tax Pty Ltd

(U2025/11868)

DEPUTY PRESIDENT BUTLER

BRISBANE, 13 NOVEMBER 2025

Application for unfair dismissal remedy – request for permission to be represented by a paid agent – permission declined

[1] If a party wants to be represented by a paid agent, they need the Commission’s permission. The Applicant in these proceedings, Mr Baydon Smith, has applied for permission to be represented by a paid agent. Thunder Tax Pty Ltd opposes Mr Smith’s application for permission.

[2] The Commission may grant permission only if:¹

- (a) it would enable the matter to be dealt with more efficiently, taking into account the complexity of the matter; or
- (b) it would be unfair not to allow the person to be represented because the person is unable to represent himself, herself or itself effectively; or
- (c) it would be unfair not to allow the person to be represented taking into account fairness between the person and other persons in the same matter.

[3] Deciding whether to grant permission is a two-step process:²

- First, the Commission decides if at least one of the above requirements has been met. If so, that activates the discretion about whether to give permission.
- Second, the Commission decides whether to exercise the discretion and grant permission.³

[4] On the question of representation the Applicant submitted that the involvement of a representative would allow the matter to be dealt with more efficiently. He submitted this matter is extremely complex in nature, and turns primarily on the correct standard of proof an employer should be required to demonstrate for time-theft. He submitted that the remote working context of the matter is novel. He submitted the involvement of a representative would help to keep the hearing focused on the legally relevant issues, therefore allowing this matter to be dealt with more efficiently.

[5] The Applicant also submitted that it would be unfair not to allow him to be represented because he is unable to represent himself effectively. He submitted this is a complex and nuanced legal matter which he is not equipped to navigate himself. He submitted the involvement of a representative would address this concern.

[6] The Applicant submitted that it would be unfair to not allow him to be represented based on the relationship between the Applicant and the Respondent. He made assertions about the Respondent's conduct and said that there had been a breakdown in relations. He submitted it would be unfair to force the Applicant to confront the Respondent directly at a hearing, and that therefore, he should be allowed to be represented.

[7] The Respondent submitted that the general rule under section 596(1) is that parties must appear on their own behalf and permission for representation should only be granted in limited circumstances where representation would assist the matter without causing unfairness to the other party.

[8] It disagreed that this is a matter that contains sufficient complexity to grant permission. It submitted that this matter initially involves a jurisdictional issue for which the Applicant can prepare prior to the hearing, with their paid agent. It said these are routine matters within the Commission's expertise and do not require complex legal submissions or formal advocacy, and in that regard drew the Commission's attention to the matter of *Karmakar v Australian Campus Network Pty Ltd* [\[2013\] FWC 2340](#).

[9] It submitted that the Commission has been dealing with cases involving remote working matters in a variety of contexts for 15 years or more, citing various single Member decisions in that regard.⁴ It submitted there is nothing novel in this matter involving remote work.

[10] The Respondent disagreed with the Applicant's submission that "the involvement of a representative will keep the hearing focused on the legally relevant issues." It pointed out that the paid agent has previously made numerous errors, including ex-parte conversations contrary to instruction, documentation errors, and failure to follow instructions in relation to filing materials. It pointed out that the paid agent had indicated during the mention that it might not call any witnesses. It submitted that this paid agent's involvement would prolong the matter rather than expedite it. It disputed the paid agent's characterisation of what this case is about.

[11] The Respondent pointed out that the paid agent has sought permission to participate in the hearing remotely. It submits this is obviously not efficient. It intends that its relevant officer, Mr Jeffery will travel to Brisbane to attend in-person, and submits it does not seem efficient to have a paid agent granted permission to represent remotely.

[12] The Respondent disputes the proposition that the Applicant cannot effectively represent himself due to the matter's complexity. It points out the applicant is 55 years old, has an undergraduate and a Masters degree, and operates in the same industry as the Respondent. It submits that the Applicant appears to have had greater experience than the Respondent (presumably a reference to Mr Jeffery), and has had the benefit of paid assistance to prepare his case. The Respondent submits that it is extremely unlikely that Mr Smith meets any criteria of being unable to represent himself.

[13] The Respondent submits that allowing paid representation here would create an imbalance, particularly as the Respondent is a small business employer with limited resources and without access to paid advocates. It submits the experience of both the Applicant and the Respondent (again, presumably a reference to Mr Jeffery) is roughly equivalent, and the addition of paid representation would create an imbalance.

[14] The Respondent submitted the Commission regularly conducts hearings where employment relationships have broken down. This is not sufficient to justify professional representation. It referred the Commission to *Warrell vs Walton* [2013] FCA 291 as authority for the proposition that allowing representation “is a decision which may fundamentally change the dynamics and manner in which a hearing is conducted. It is apparent from the very terms of s 596 that a party “in a matter before FWA” must normally appear on his own behalf.” It also referred to a single Member decision in *Tas Manoleskos v Valspar Paint (Australia) Pty Ltd* [2020] FWC 5576 noting an imbalance if one party was represented.

[15] The Respondent also submitted it is a small business employer. It submits the Parliament designed the Small Business Fair Dismissal Code to simplify unfair dismissal processes for small employers. It submitted that the Commission is expected to ensure such matters remain accessible, informal, and cost effective. In that regard it referred the Commission to paragraphs 2291 and 2292 of the Explanatory Memorandum to the *Fair Work Bill 2008*. It submits that allowing professional representation to the Applicant where the Respondent does not hold representation directly undermines that policy.

Consideration and disposition

[16] I have carefully considered the parties’ submissions.

[17] I am not persuaded that allowing the Applicant to be represented by a paid agent would enable the matter to be dealt with more efficiently, taking into account the complexity of the matter. The paid agent firm has attempted to file documentary evidence without annexing it to a witness statement as directed, sent ex parte correspondence to my chambers, and seemed to have given limited consideration, prior to the mention in this matter, as to whether and if so how many witnesses would be called. These matters suggest a lack of familiarity that militates against a finding that their participation in the hearing or determinative conference would enable the matter to be dealt with more efficiently, taking into account the complexity of the matter.

[18] On the Applicant’s own case, as set out in his application, he was employed as “Head of Portfolio Construction” and his duties involved identifying investment opportunities, constructing model portfolios, and supporting financial planners in delivering investment advice to clients. He has not provided any material on which I could be satisfied that he would be unable to represent himself effectively.

[19] As to fairness as between the parties I do not consider that the state of their relationship gives rise to some issue of fairness as between the two of them that would make it unfair for Mr Smith not to be represented by a paid agent.

[20] It follows that the discretion under section 596 of the Fair Work Act is not enlivened. As it is not enlivened, the application for permission for the Applicant to be represented by a paid agent is dismissed. I order accordingly.



DEPUTY PRESIDENT

Hearing details:

On the papers.

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¹ *Fair Work Act 2009*, section 596(2)

² *Warrell v Fair Work Australia* [2013] FCA 291.

³ *Ibid.*

⁴ *Wright, Damian Andrew v Runge ICT Group Pty Ltd T/A Runge Networks* [2010] FWA 3148, *Barnett, Simon v FMG T/A Fortescue* [2015] FWC 1508, and *Karbowiak, Kirsten v 1000 Mile Travel Group Pty Ltd* [2019] FWC 6112.