



DECISION

Fair Work Act 2009
s.365—General protections

Joel Minchin

v

Civmec Construction & Engineering Pty Ltd
(C2024/3969)

DEPUTY PRESIDENT BEAUMONT

PERTH, 12 FEBRUARY 2025

Application to deal with contraventions involving dismissal — jurisdictional objection — whether Applicant was dismissed or voluntarily resigned — jurisdictional objection dismissed.

1. Dispute and outcome

[1] Mr Joel Minchin (the **Applicant**) applied under s 365 of the *Fair Work Act 2009* (Cth) (the **Act**) for the Commission to deal with a general protections dispute involving dismissal. The Applicant submitted that Civmec Construction & Engineering Pty Ltd (the **Respondent** or **Civmec**) contravened the general protections provisions in Part 3-1 of the Act.

[2] The Respondent objected to the application on two grounds. The first was that there was no dismissal because the Respondent was not the Applicant's former employer; the Applicant's former employer was Multidiscipline Solutions Pty Ltd (**MSP**). The second was that there was no dismissal because the Applicant had voluntarily resigned from his employment. On 20 August 2024, I dismissed the first jurisdictional objection.¹ The Respondent appealed that decision and on 8 January 2025 the appeal was dismissed, the Full Bench of the Commission stating that the remaining jurisdictional objection would now be determined.²

[3] The Respondent's remaining objection has implications for the application on foot because it is accepted that a person *must* have been dismissed to be entitled to make a general protections dismissal dispute application.³ Section 365 relevantly provides:

365 Application for the FWC to deal with a dismissal dispute

If:

- (a) a person has been dismissed; and
- (b) the person, or an industrial association that is entitled to represent the industrial interests of the person, alleges that the person was dismissed in contravention of this Part;

the person, or the industrial association, may apply to the FWC for the FWC to deal with the dispute.

[4] Where there is a dispute about whether a person was dismissed, the Commission is obliged to determine that point before exercising its powers under s 368 of the Act.⁴ Therefore, the discrete issue for determination is whether the Applicant was ‘dismissed’ from his employment within the meaning of s 386(1)(a) or/and (b) of the Act.

[5] Given the factual dispute over whether the Applicant was or was not dismissed, the matter proceeded to hearing on 7 February 2025. The Applicant clarified at hearing that he considered he had been forced to resign. Having considered the evidence of the parties and their submissions, I have found that the Applicant was dismissed. It follows that the matter will now be listed for conference.

2. Background

[6] In respect of the broader context leading to the cessation of the Applicant’s employment, evidence was received from the Applicant and, on behalf of the Respondent, from:

- a) Owen Wakefield;
- b) Wayne Blackshaw, Construction Manager;
- c) Jamie Daghish, Senior Supervisor;
- d) Paul Cliffe, HSE Advisor; and
- e) Kym Truong, Senior Project Administrator.

2.1 The Applicant

[7] The Applicant asserts that he was forced to resign under duress after raising serious safety concerns at work, noting that despite his efforts to address these issues, he was coerced into resigning as a condition of receiving the wages he was owed.⁵

[8] MSP employed the Applicant as a ‘Rigger Advanced’ on a full-time basis at the Pilgangoora Project. As was noted in my first decision, MSP is a wholly owned subsidiary of Cimtec.⁶ The Applicant commenced employment on or around 24 May 2024.

[9] The Applicant gave evidence that in the first week of June 2024 he had concerns about the operation of a crane. According to the Applicant, the crane operator, ‘Paul’, had been operating the crane whilst watching the series ‘1923’ via Paramount on his iPad. The Applicant said that he removed himself from the site until the matter was addressed and the work site made safe.

[10] The Applicant admits having sent an email to Ms Truong at 2:27PM on 5 June 2024. That email stated:

I’ve resigned today. I won’t be in an EWP with loads around me and crane ops watching iPads with loads on the hook.
All you need to do is look at his iPad screen time or Netflix screen time to provide I’m 100% correct.
It’s so far past dangerous I can’t even believe Jamie Daghish let him stay in the crane even after knowing there is an iPad in his cab.

I was lead rigger on the flotation pad.

All you need to do is ask the Management at Pilbara minerals what sort of work I was conducting and how it was being done.
Then you will realise that there should have not even been an iPad in the cab of his crane.
We were absolutely flat out.
My life and safety is worth more than that.⁷

[11] In respect of that email, the Applicant explained that it was a shot across the Respondent's bow, and he was expecting something sensible, that is, that someone would get back to him. However, he said that he received no email in reply or correspondence about his resignation, until asked to sign resignation papers.

[12] The Applicant acknowledged that a series of text messages passed between him and Mr Blackshaw as set out at paragraph [23] of these reasons. The Applicant noted that between 5 June 2024 up until the next morning on 6 June 2024 when he flew out from site, he was attempting to resolve the situation.

[13] The Applicant adamantly refutes that he resigned and states that he was asked to resign, or made to resign, by Ms Tonya Miller (personnel in the Respondent's Human Resources department) so that he could gain access to his wages. The Applicant said that he was informed by Ms Miller that he had to sign certain papers, or the Respondent was not going to pay him.

[14] Included in the text messages referred to at paragraphs [12] and [23] of this decision was a photograph of a pro-forma document that had been sent by the Applicant to Mr Blackshaw on 11 June 2024. The Applicant confirmed that he had sent the document to payroll and others. The document set out the following:

...I hereby submit my resignation from the position of *Advanced Rigger* with Civmec Construction & Engineering Pty Ltd.

I would like to give the required notice period of *6-6-2024* effective from *7-6-2024*. My last day of work will be *06-6-2024*.

Employee Comments: *I've been made to resign Due to safety concerns Kindest Regards Joel Keith Minchin*
(italics hand written)⁸

[15] When giving evidence the Applicant was asked about a conversation he had with Mr Daghish. The Applicant admits that he had approached Mr Daghish and asked about a leading hand position but refutes that he said he was resigning.

2.2 Mr Wakefield

[16] Mr Wakefield was present on 5 June 2024 when the Applicant interacted with the crane operator, Paul.

[17] An abridged version of Mr Wakefield's evidence follows:

- a) at 11.30AM Mr Wakefield arrived at the flotation area where the crew had been erecting steel;

- b) Paul, the crane operator, was out of the crane returning from the toilet and Mr Wakefield stopped him to ask how everything was going;
- c) the Applicant walked by Mr Wakefield and Paul and notwithstanding the two were talking, interrupted them both and told Paul to get back into the crane. The Applicant then walked away into the area;
- d) Paul slewed the crane around within sight of Mr Wakefield, stopped, got out of the cab and said that he could not do this anymore, noting that the Applicant had been rude and disrespectful for over a week;
- e) the Applicant walked toward the crane and Paul said to him, 'isn't that right, you're rude and disrespectful', to which the Applicant responded with angry and abusive behaviour;
- f) Mr Daghish attempted to calm the Applicant down and then the Applicant raised his voice at Mr Daghish shouting profanities about Paul and threatening to knock him out;
- g) whilst Mr Wakefield and Mr Daghish continued to attempt to diffuse the situation, the Applicant walked off the job still shouting abuse; and
- h) Mr Wakefield caught up with the Applicant in the crib room and on being asked if he was okay, the Applicant asked Mr Wakefield to take him back to the camp, which Mr Wakefield did.⁹

2.3 Mr Blackshaw

[18] Mr Blackshaw said he received a phone call from Mr Daghish at around 11:50 on 5 June 2024 informing him that the Applicant had walked off the job front and said that he wanted to resign. Mr Blackshaw was further advised by Mr Daghish that the Applicant had a verbal altercation with the Sarens 275T crane operator, Paul.

[19] In his witness statement, Mr Blackshaw stated that he arranged flights for the Applicant on 6 June 2024 as he did not want to keep the Applicant on site for his notice period due to the chance of further altercations.¹⁰ At hearing, Mr Blackshaw confirmed that the Applicant was becoming verbally threatening and that he considered it best to remove him from site as quickly as possible after his resignation, as he could not have someone making threats on the site. Whilst Mr Blackshaw acknowledged that the Applicant may have resigned in the heat of the moment, it remained that, as the Applicant was making threats to people, the best thing to do was to remove him so it did not escalate further.

[20] At 14:28 on 5 June 2024, Mr Blackshaw received an email from site administration that had been sent by the Applicant informing of his resignation. Mr Blackshaw confirms having seen the email on 5 June 2024 (albeit initially stating he saw it on 6 June 2024). Mr Blackshaw noted that in the email the Applicant had made accusations that the crane operator, Paul, was 'watching an iPad with loads on the hook.'

[21] At 15:19, Mr Blackshaw called the Applicant to discuss his resignation and to discuss his accusations of Paul watching an iPad in his crane. Mr Blackshaw stated:

Joel was very argumentative during the conversation and would not let me talk. He was saying that Paul was on his iPad with loads on the hook, setting up screens so no one could see him doing so and that he was smarter than everyone else. Joel told me this had been happening for a week. I asked Joel why he did not report this when he first observed Paul watching his iPad.

Joel had no response to this. He threatened to send emails to Pilbara Minerals, the media, and Sarens reporting his accusations. I told Joel we would investigate his accusations and at the time of the phone call that's all they were, his accusations.¹¹

[22] Mr Blackshaw said that after his phone call with the Applicant, the Applicant sent him multiple text messages which he said contained threats of engaging lawyers and the statement 'this is not the end of this situation.'¹²

[23] The text messages that Mr Blackshaw referred to include the following:

Joel Minchin 05/06/2024 3:39PM:

I spoke to Paul the other day about coming up to fast and down to fast . He blamed the crane and the computer I know hand on heart that the things I was concerned about is due to that iPad. Ask yourself this question . With how much work we have been doing and the work load we've had on why would he even have an iPad in the cab of that crane and when would he get to even use it . I'm a smart guy mate and that iPad has a time stamp the apps have a time stamp of when they are open and what's being used when . You're going to be shocked if you get that info which should be a part of the investigation. Sarens just rang me and they are applauded he would even have an iPad in the crane on work hours .

This kind of thing 100% needs to stop in the industry . I understand heavy lift got nothing on and things get boring . There would have been no time for him to watch or use an iPad and or his phone . So far past unacceptable it's disturbing . That's why I resigned.

I kept all them boys safe mate no injuries no near misses on a work load and our time frame like that is almost un heard of . Mo will tell you how safe I am . I'm guilty of no tool lanyards a couple times and only one tag line on a couple loads . Oh and vaping every now and then .

Joel Minchin 05/06/2024 5:48PM:

What's the verdict mate . I don't want to leave . Mo has even verified that he saw the iPad and even said himself that there was times it was taking to long for him to make crane movements . I like this project but I can't work with dangerous ops and that behaviour is so far past dangerous it's insane .

Wayne Blackshaw 05/06/2024:

We're conducting an investigation at the moment getting statements. I'll get a statement from Mo too.

Joel Minchin 05/06/2024:

I can move onto smileys crew if need be . I've spoken to Sarens and they can not believe that he even had an iPad in that crane with such a busy workload . I don't want to cause any dramas but I shouldn't have to resign and be made to feel like I'm in danger or the crew is and was in danger . No worries . I've seen some bad things happen with cranes mate I've seen people get injured I've seen companies and workers lose contracts I've been on jobs where people have been killed due to lack of attention . There is no excuse and the way his crane was set up with that insulation speaks volumes .

Joel Minchin 06/06/2024 4:46AM:

I take it that window seat still has my name on it mate .

Best of luck with the investigation . I'll be speaking with Sarens cranes and Pilbara minerals staff over the coming days also .

What baffles me is that if I was seen on my phone dogging a load or on the job front with loads on I'd be down the road with no explanation needed. I spoke to Mo last night he's willing to make a statement as he Admitted last night that he 100% sore the IPAD set up weirdly at Paul's feet. If it was lawful and innocent and being used at a safe time and in a proper manner

Why would he not have just had it on his lap like every other iPad user on the planet ?

I'll answer that for you . Because it's hard to use or watch an iPad when your hand are on crane levers . It would be so much easier to have it hidden behind insulation in a crane cab at your feet especially when the cab is in recline position .

Where myself and Mo and I'm sure other people sore it being used .

The shit thing is this behaviour will continue because management staff supervisor don't really care until it's to late and someone's dead injured or it's coming back to affect them . That's when they step in and pretend to care or fo the right thing . I've been around construction since my dad set up his own construction company Warren river stabilised earth when I was 8 years old .

...

I'll be getting on the plane but I can't 100% guarantee this matter will be taken as far as I can take it and who ever is involved who did not take immediate action . Like pulling Paul from the crane instantly until the investigation was completed will 100% be a part of my own process of investigation . I've spoken to the union also I'm speaking with a friend that's works for a media outlet when I get off the plane . The things I've heard seen and know is going to end careers I'm sick to death of this bullshit and the way these things get handled it's the most putrid gutless behaviour all for profits and greed and gutlessness .

You were gentlemen enough to ring me but I've been told first hand by more than one person you spoke to Paul at his crane in his crane and continued to let him work . I've got my own statements . Someone will be in contact I'm sure .

Have a good day

It's no longer just about me it's about every single person on that site in those offices from top to bottom that should have immediately stopped operation and removed those involved until the investigation was complete . That's just to start . No ones done a thing . Quick to get me my flights and accomodation cancelled that's all that's been done .

Wayne Blackshaw 06/06/2024

Hi Joel

That's fine if you don't want to take my call.

Just remember like I said to you yesterday, if you had of reported this to me when you first thought something

wasn't right I would have had the opportunity to take action straight away. You are on the plane today as you resigned. Not because we put you there.

All the best.

Joel Minchin:

I reported it yesterday and investigation was issued and that operator never left his cab at any stage I have witness statements . By law 100% illegal . Like I said you will be hearing from someone I can guarantee it .

At legal standing it would be improper for myself to conduct any formal or informal conversations at this point these are the exact words from the legal advice I was given yesterday by my family lawyer .

Wayne Blackshaw:

There was a load on the hook that was pinned one end...¹³

2.4 Mr DGLISH

[24] Mr DGLISH gave evidence that he was the supervisor of the crane crew at the Civmec Pilgangoora Project at the time when the Applicant was working in June 2024.

[25] Before ‘smoko’ on the morning of 5 June 2024, the Applicant is said to have approached Mr DGLISH in the field and asked him who was going to be the leading hand in his crew.¹⁴ Mr DGLISH said he told the Applicant that he had someone coming up in a couple of weeks.¹⁵

[26] After ‘smoko’, Mr DGLISH was out in the field again when the Applicant approached him and said, ‘I’ve had enough and I’m finishing up at the end of the swing.’ Mr DGLISH said he was unsurprised, having been told by other employees that the Applicant was unhappy, and said to the Applicant that he would get a resignation for him.¹⁶

[27] Mr DGLISH informed Mr Blackshaw that the Applicant intended to resign at the end of the swing, to which Mr Blackshaw replied that the Applicant could finish earlier if he wanted.¹⁷ Mr DGLISH said he never got the opportunity to discuss this with the Applicant because that was when the Applicant started to complain about a crane operator.¹⁸

2.5 Mr Cliffe

[28] Mr Cliffe gave evidence that he was waiting at the camp for the bus to Wodgina airport for his flight and was approached by the Applicant. An abridged version of Mr Cliffe’s evidence follows. The Applicant informed him:

- a) he was forced to resign as he had a run in with Paul the Sarens crane operator about Paul allegedly using an iPad when operating the crane; and
- b) he had advised Jamie, Owen and Wayne, if they did not remove Paul from site he would resign.

2.6 Ms Truong

[29] Ms Truong noted that in June 2024 she was working at the Civmec Pilgangoora Project when, at 14:27 on 5 June 2024, she received an email from the Applicant advising that he had resigned from his employment.¹⁹ On receiving the email, Ms Truong forwarded the email to Mr Blackshaw and subsequently arranged a flight for the Applicant to leave the Pilgangoora Project site.²⁰ The email dated 5 June 2024 from ‘Joel Minchin’ to ‘Kim Truong’ stated:

I’ve resigned today. I won’t be in an EWP with loads around me and crane ops watching iPads with loads on the hook.

All you need to do is look at his iPad screen time or Netflix screen time to provide I'm 100% correct.

It's so far past dangerous I can't even believe Jamie Darglish let him stay in the crane even after knowing there is an iPad in his cab.

I was lead rigger on the flotation pad.

All you need to do is ask the Management at Pilbara minerals what sort of work I was conducting and how it was being done.

Then you will realise that there should have not even been an iPad in the cab of his crane.

We were absolutely flat out.

My life and safety is worth more than that.²¹

3. Consideration

[30] Section 386(1) of the Act defines what constitutes a dismissal for the purpose of Part 3-2, which concerns unfair dismissal. That section is relevant for present purposes given the acceptance by the Federal Circuit Court²² and Federal Court²³ that the definition of the word 'dismissed' in s 386(1) of the Act, is equally relevant to the meaning of the term as used in s 365 of the Act. The word 'dismissed' as defined in ss 12 and 386 of the Act reads:

A person has been dismissed if:

(a) the person's employment with his or her employer has been terminated on the employer's initiative; or

(b) the person has resigned from his or her employment but was forced to do so because of conduct, or a course of conduct, engaged in by his or her employer.

[31] There are exceptions under s 386(2) regarding when a person has been dismissed; however, those exceptions do not appear relevant to this case.

[32] The definition of dismissal in s 386(1) of the Act has two elements, both of which have been subject to consideration. The first traverses 'termination on the employer's initiative' and the second, 'resignation in circumstances where the person was forced to do so because of conduct, or a course of conduct'. This bifurcation was explained by the Full Bench in *Bupa Aged Care Australia Pty Ltd v Tavassoli (Bupa)*,²⁴ and in *Lipa Pharmaceuticals Ltd v Jarouche*,²⁵ where the Full Bench endorsed the principles established in *Bupa* in respect of s 386(1)(b). In *Bupa* it was said:

"[47] Having regard to the above authorities and the bifurcation in the definition of "dismissal" established in s.386(1) of the FW Act, we consider that the position under the FW Act may be summarised as follows:

(1) There may be a dismissal within the first limb of the definition in s.386(1)(a) where, although the employee has given an ostensible communication of a resignation, the resignation is not legally effective because it was expressed in the "heat of the moment" or when the employee was in a state of emotional stress or mental confusion such that the employee could not reasonably be understood to be conveying a real intention to resign. Although "jostling" by the employer may contribute to the resignation being legally ineffective, employer conduct is not a necessary element. In this situation if the employer simply treats the ostensible resignation as terminating the employment rather

than clarifying or confirming with the employee after a reasonable time that the employee genuinely intended to resign, this may be characterised as a termination of the employment at the initiative of the employer.

(2) A resignation that is “forced” by conduct or a course of conduct on the part of the employer will be a dismissal within the second limb of the definition in s.386(1)(b). The test to be applied here is whether the employer engaged in the conduct with the intention of bringing the employment to an end or whether termination of the employment was the probable result of the employer’s conduct such that the employee had no effective or real choice but to resign. Unlike the situation in (1), the requisite employer conduct is the essential element.”²⁶

[33] While a summary of the position under s 386(1) was proposed in *Bupa*, a later decision of the Full Bench in *City of Sydney RSL & Community Club Ltd v Balgowan* considered the operation of s 386(1)(a):

“[10] It seems clear...that the concept of constructive dismissal is to be accommodated by s.386(1)(b) and that concept is not subsumed in s.386(1)(a).

[11] Section 386(1)(a) seems plainly to be intended to capture the case law determining the meaning of termination (of the employment relationship) at the initiative of the employer. In *Mohazab* the Court considered that the expression “termination at the initiative of the employer” was:

“... a reference to a termination that is brought about by an employer and which is not agreed to by the employee. Consistent with the ordinary meaning of the expression in the Convention, a termination of employment at the initiative of the employer may be treated as a termination in which the action of the employer is the principal contributing factor which leads to the termination of the employment relationship. We proceed on the basis that the termination of the employment relationship is what is comprehended by the expression “termination of employment.”” (references omitted)²⁷

[34] Whether the Applicant was dismissed requires an objective finding of fact.

[35] The evidence supports a finding that, on the morning of 5 June 2024, the Applicant was highly emotive. By his own evidence, it would appear that the Applicant had become agitated regarding the operation of the crane in the ‘EWP,’ the Applicant noting that ‘Paul’ had been engaging in the behaviour of watching the iPad for a week. The Applicant did not deny asking Mr Wakefield to take him back to the camp.

[36] Mr Wakefield’s evidence was that there was an interaction between the Applicant and ‘Paul’ and that the Applicant had raised his voice and was shouting profanities.²⁸ Mr Wakefield said that both he and Mr Daghish attempted to calm the Applicant down. Mr Wakefield said that the Applicant walked to the crib rooms, where he ultimately caught up with him. On having asked the Applicant if he was okay, Mr Wakefield said that the Applicant informed him that he wanted to be taken back to the camp.²⁹ Mr Daghish similarly gave evidence that the Applicant threatened to punch out Paul several times before storming off and requesting a flight home whilst using profanities and threats through the whole ordeal.³⁰

[37] After the initial interaction between the Applicant and Paul, and thereafter between the Applicant and Mr Wakefield and Mr DGLISH, the Applicant had, by email time stamped 14:27, communicated to Ms Truong that he had resigned that day (namely on 5 June 2024). The timeframe between the initial interaction on the morning of 5 June 2024 and the sending of the email later in the day, was relatively short. The email to Ms Truong was forwarded by her to the attention of Mr Blackshaw, and it is evident from Mr Blackshaw's evidence that he considered that the Applicant had resigned – having received an email from Ms Truong (with the Applicant's resignation email attached).

[38] The resignation was tendered at a time when the Applicant was evidently riled by what he perceived to be egregious safety breaches by Paul and a failure to call the job to an immediate halt. I find that the resignation was given in the 'heat of the moment', an apt description of which has been outlined at paragraph [32] of this decision by reference to the Full Bench decision of *Bupa*.

[39] This finding is reinforced by the evidence adduced by the Respondent – that is the text messages that passed between Mr Blackshaw and the Applicant. Those text messages demonstrate that the Applicant was, as he suggested, trying to resolve the issue and that he had not, at that time intended to resign. In this regard, I observe that in the first text message time stamped 05/06/2024 15:39, the Applicant explained why he had resigned, and then at 17:48 on that same date stated in his text message to Mr Blackshaw:

What's the verdict mate . I don't want to leave . Mo has even verified that he saw the iPad and even said himself that there was times it was taking to long for him to make crane movements . I like this project but I can't work with dangerous ops and that behaviour is so far past dangerous it's insane. (bold my emphasis)

[40] This text message was followed by a subsequent text message to Mr Blackshaw where the Applicant offered to move onto 'smileys crew' if need be, and that the Applicant did not want to cause any dramas but he 'shouldn't have to resign and be made to feel like I'm in danger or the crew is and was in danger'. By text message at 04:46 on 6 June 2024, the Applicant again enquired about his job, stating, 'I take it that window seat still has my name on it mate. Best of luck with the investigation...'.

[41] Whilst the resignation was tendered by the Applicant in circumstances where the Applicant was in a state of emotional stress and heightened agitation, the Respondent did not clarify or confirm with the Applicant after a reasonable time that the Applicant genuinely intended to resign. In fact, the Respondent was given ample opportunity to clarify whether the Applicant intended to resign, Mr Blackshaw having received several text messages from the Applicant that indicated contrary intent – that the Applicant had not intended to resign and wanted to remain employed.

[42] In this respect, no criticism is levelled at Mr Blackshaw who was clearly confronting challenging circumstances when, on 5 and 6 June 2024, he decided to accept and act upon the Applicant's communication of his resignation. Those circumstances included an initial purported safety incident involving a crane (as reported by the Applicant) and, thereafter, a report of a purported aggressive altercation between the Applicant and the crane operator from Sarens.

[43] However, treating what was an ostensible resignation as terminating the employment of the Applicant, rather than clarifying or confirming with the Applicant after a reasonable time that he genuinely intended to resign, resulted in the Applicant having been dismissed as of 5 June 2024. It follows that the Applicant's employment was terminated at the initiative of the employer (*see* s 386(1)(a) of the Act).

[44] Finally, whilst appreciative of Mr Daglish's evidence that the Applicant had advised him he intended to resign at the end of the swing and that Mr Daglish had communicated this to Mr Blackshaw, I do not accept that this evidence evinces an unequivocal resignation by the Applicant at that time. Furthermore, notwithstanding the Applicant's protestations that he was forced to resign by Ms Miller on or around 11 June 2024, such a finding is unavailable on the evidence given the Applicant was dismissed on 6 June 2024.

4. Conclusion and next steps

[45] The Respondent's jurisdictional objection that the Applicant was not dismissed and therefore the Commission is absent jurisdiction to deal with the application, is dismissed. Accordingly, an Order³¹ issues concurrently with this decision.

[46] It is worth outlining s 370 of the Act, which, in setting out the pre-requisites for the making of a general protections court application, provides an overview of the next steps for the conduct of the Applicant's application:

370 A person who is entitled to apply under s 365 for the FWC to deal with a dispute must not make a general protections court application (as defined in s 368(4)) in relation to the dispute unless:

(a) both of the following apply:

(i) the FWC has issued a certificate under paragraph 368(3)(a) in relation to the dispute;

(ii) the general protections court application is made within 14 days after the day the certificate is issued, or within such period as the court allows on an application made during or after those 14 days; or

(b) the general protections court application includes an application for an interim injunction.

[47] The precursor to the issuing of the required certificate under s 368(3)(a) is that the Commission must deal with the dispute by conducting a conference³² and reach a level of satisfaction 'that all reasonable attempts to resolve the dispute (other than by arbitration) have been, or are likely to be, unsuccessful'.³³ Hence for present purposes and as a result of my determination, this matter will now be listed for conference in order to explore the possibility of resolution. A notice of listing will be issued shortly.

[48] Finally, while I have determined the Applicant was dismissed by the Respondent and is therefore entitled to apply under s 365 of the Act for the Commission to deal with his dismissal dispute, it should be noted that the Full Court in *Coles Supply Chain Pty Ltd v Milford*³⁴ made observations of the following nature regarding s 370 of the Act and the making of a general protection court application:

- a) the Act establishes multiple alternate pathways for an applicant and prospective litigants;
- b) s 370 of the Act is to be interpreted against the background that while the Commission may determine the question of a person's entitlement to make an application to it, this may not be conclusive; and
- c) this is because a Court may ultimately decline to recognise an 'application' or resulting certificate granted by the Commission as valid, if called upon by a Respondent to determine a subsequent objection to the competency of a general protections court application under s 370 of the Act.



DEPUTY PRESIDENT

Appearances:

J Minchin, Applicant
A Randles of the Respondent

Hearing details:

2025.
Perth (by video using Microsoft Teams):
7 February.

Printed by authority of the Commonwealth Government Printer

<PR784305>

¹ *Joel Minchin v Civmec Construction & Engineering Pty Ltd* [2024] FWC 2204.

² *Civmec Construction & Engineering Pty Ltd v Joel Minchin* [2025] FWC 2.

³ *Coles Supply Chain Pty Ltd v Milford* (2020) 279 FCR 591, 603 [54], special leave to appeal declined in [2021] HCASL 37 (**Milford**).

⁴ Ibid 602 [51].

⁵ Digital Hearing Book Part 1, 2.

⁶ *Joel Minchin v Civmec Construction & Engineering Pty Ltd* [2024] FWC 2204 [22].

⁷ Digital Hearing Book - Part 2, 16 (**DHB Pt 2**).

⁸ Ibid 22.

⁹ Ibid 4-5.

¹⁰ Ibid 6.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid 19-26.

¹⁴ Ibid 9.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid 16.

²⁰ Ibid.

²¹ Ibid.

²² *Morris v Allied Express Transport Pty Ltd* [2016] FCCA 1589, [117].

²³ *Milford* (n 3) 603 [54].

²⁴ *Bupa Aged Care Australia Pty Ltd v Tavassoli* (2017) 271 IR 245 (**Bupa**).

²⁵ (2023) 324 IR 375, 381 [18].

²⁶ *Bupa* (n 24) 268–9 [47].

²⁷ (2018) 273 IR 126, 130 [10]– [11].

²⁸ DHB Pt 2 (n 7) 4.

²⁹ Ibid 5.

³⁰ Ibid 9.

³¹ [PR784305](#).

³² *Fair Work Act 2009* (Cth) ss 368(1), (2).

³³ Ibid s 368(3).

³⁴ *Milford* (n 3) 607 [74]-[75].