



DECISION

Fair Work Act 2009
s.394 – Application for unfair dismissal remedy

Wen-Kuan Wang

v

Springtime Poultry Pty Ltd

(U2024/12332)

DEPUTY PRESIDENT DOBSON

BRISBANE, 24 MARCH 2025

Application for relief from unfair dismissal – whether dismissal harsh, unjust and unreasonable

[1] Mr Wen-Kuan Wang (**Mr Wang**) has made an application for an unfair dismissal remedy under s.394 of the *Fair Work Act 2009* (Cth) (**FW Act**). Mr Wang was employed by Springtime Poultry Pty Ltd (**Springtime**). Springtime provide labour hire services to a poultry processing plant in Mareeba, North Queensland. Springtime deny that Mr Wang was unfairly dismissed and instead say that they terminated Mr Wang’s employment on the 8th of October 2024 on the grounds of serious misconduct for both creating disharmony in the team and for committing fraud by claiming he had completed more work than he otherwise had and gaining financial advantage for himself in doing so.

Permission to appear

[2] Springtime sought leave to be represented before the Commission by a lawyer. Mr Wang was represented by his Union who did not require leave.

[3] The Act provides that a party may be represented in a matter before the Commission only with the permission of the Commission.¹ It also provides the reasons that permission may be granted.² Previous cases determined by the Commission or superior courts give guidance as to how these reasons should be considered.³

[4] I provided the parties with an opportunity to make submissions about these issues. Mr Wang made no objection to leave being granted and I was satisfied, having regard to all relevant matters,⁴ that it would assist the Commission to deal with the matters more efficiently with the granting of the leave sought and on that basis leave was given to Springtime to be legally represented.

The hearing

[5] The matter proceeded to a hearing before me on 9 January 2025.

[6] At the hearing Mr Wang was represented by Mr Craig Buckley of the Australasian Meat Industry Employees' Union (AMIEU) and Springtime was represented by Ms Evelyn Loan Cam Ong of EDA Lawyers. The Applicant was also assisted by a Mandarin interpreter.

[7] Mr Wang gave evidence on his own behalf.

[8] The following witnesses gave evidence on behalf of Springtime:

- Mr Quoc Thai Tran (**Mr Tran**)
- Ms Chou Shu Ting (**Ms Ting / Aidan**)

[9] Both parties filed submissions and also made oral closing submissions following the witness evidence and cross examination of all of the witnesses. Springtime failed to file any witness statement from its Director Mr Tran. Instead, Mr Tran swore into evidence the Respondent's Form F3, submissions and the annexures to those submissions at the hearing.⁵

Has the Applicant been dismissed?

[10] A threshold issue to determine is whether the Applicant has been dismissed from their employment. There was no dispute and I find that the Applicant's employment with the Respondent terminated at the initiative of the Respondent.

[11] I am therefore satisfied that the Applicant has been dismissed within the meaning of s.385 of the FW Act.

Initial matters

[12] There is no dispute and I am satisfied that the application was filed within the required 21 days.⁶

[13] There is no dispute and I am satisfied that Mr Wang is protected from unfair dismissal.⁷

[14] There is no dispute and I am satisfied that Springtime is not a small business⁸ and that the dismissal was not a case of genuine redundancy.⁹

[15] The Commission must now proceed to consider the merits of the application and decide whether the dismissal was harsh, unjust or unreasonable, taking account of the matters in s.387 of the Act.¹⁰

Findings

[16] I acknowledge the submissions and evidence made by both parties in writing, which are set out in the Digital Court Book. This evidence and other relevant matters were further tested and explored at hearing. I note that at hearing, Mr Wang's evidence at Exhibit A1 was contested but not its annexures (the termination letter and Springtime payslips), nor Exhibit A2 (Mr Wang's new employer payslips). Of Springtime's evidence at hearing, Exhibits R1-5 were uncontested and Exhibit R6, the witness statement of Ms Shu-Ting Chou, was partially contested by Mr Wang. I do not intend to detail all of the submissions and evidence here however they have all been considered and these are my findings.

[17] Mr Wang was employed as a poultry process worker, working in a poultry processing area licenced by Springtime, located in an industrial building operated by Bartter Enterprises Pty Ltd (part of the Baiada Group) (BMA). Mr Wang commenced employment with Springtime on 15 October 2021 and submits his English is limited and his first language is Mandarin.

[18] Employees at Springtime are paid bonuses for performing various poultry processing tasks.¹¹ The highest bonus is paid for deboning a chicken. Each time a chicken is deboned, the tail of that chicken is placed in a crate under the worktable of that employee. When the employee finishes their shift, they are required to count the number of tails in their crate and report the number of tails by writing them on a tally sheet that they then place inside the crate. Bonus payments are calculated on the number of tails counted. Random counts are carried out to check the accuracy of the reported counts.¹² Mr Wang claims that crates often overflow and tails fall out. Springtime rejects this assertion and claims that employees can use a second crate if the first one becomes full. Despite working there for almost 3 years, Mr Wang claims that he was unaware he could grab a second crate. I am not persuaded that Mr Wang, knowing that he is paid a bonus for every tail he places in a crate, would allow it to overflow and spill on the floor. At hearing, I found Mr Wang answered questions clearly when the answers favoured him, however when the answers did not favour him, his answers were vague and difficult to understand, even with the assistance of the interpreter. An example of this is when he was asked what the difference was between being a casual and being full time. Mr Wang claimed not to know. However, when he was later asked why he had requested becoming full time, he explained that he would be paid for public holidays, leave and would be paid for a guaranteed 38 hours every week. Further, in Mr Wang's own witness statement, he himself refers to using a second crate.¹³ I am persuaded that a second crate was available for use should the first one overflow and that a crate will fit 700 (large) to 800 (Small) tails before it is full.

[19] At hearing, Springtime submitted the tally sheet from the day it is alleged Mr Wang falsified his count, Monday 30 September 2024.¹⁴ There was some cross examination of Mr Wang and Ms Ting however the Applicant's representative declined to cross examine Mr Tran. In considering their evidence, it is apparent that there is a count of tallies at certain times that day as follows:¹⁵

Springtime Tail Tally 30 September 2024

Time	Mr Wang	Other Employees	Average
7.30am	275	111-248	189
10am	245	71-239	165
12.30pm	230	78-210	147

[20] The tally sheet that day shows that Mr Wang deboned consistently more chickens than any other staff member at each time slot and also significantly above the average.¹⁶ At hearing Mr Wang confirmed that he had placed his signature on the tally sheet on 30 September 2024, confirming that his count was accurate.¹⁷ Mr Wang identified his signature under the column titled "Signed" on that tally sheet.¹⁸ A random audit was performed by Springtime's client, BMA, at the end of Mr Wang's shift. The audit by the BMA Team Leader found that Mr Wang's crate contained 24 fewer tails than he had reported, entered "-24" and initialled their findings under the column titled "TL Check".¹⁹ A further two people, the BMA back up Team Leader and a Springtime Supervisor, also checked the count (unaware that the crate belonged to Mr Wang, to avoid bias)²⁰ and they each signed the tally sheet confirming their findings to the right of the "TL

Check” column.²¹ A search was conducted for lost tails to no avail²² and the cleaner at the end of Mr Wang’s shift did not find any lost tails during the clean.²³

[21] I accept that there was a shortfall of 24 tails counted in Mr Wang’s crate compared to the number he claims to have completed and counted.

The meeting on 8 October 2024

Disharmony in the Team

[22] It is uncontested that this was brought to the attention of Mr Wang on 8 October 2024. Mr Wang was asked to report to Springtime’s Director, Mr Tran.

[23] In the meeting, in relation to the issue of creating disharmony in the team, Mr Tran:

- told Mr Wang that another employee reported that Mr Wang had told them “not to listen to the boss”;²⁴
- contended Mr Wang he had been “saying bad things about Thai (Mr Tran);²⁵ and
- contended Mr Wang had said that “he is a bad boss and doesn’t look after his staff.”²⁶

[24] Mr Wang denied that he had said this to anyone.²⁷ Mr Wang asserted that he had not been provided with enough information about these allegations. I do not accept this proposition. The employer is required to provide sufficient particulars to enable the employee to provide a meaningful response to the allegations. The employer is not required to prepare written particularised complaints nor to give detailed evidence to the employee. On these allegations, Mr Wang was provided with a number of examples. In the meeting Mr Wang was provided the examples at paragraph 23 of this decision and in response he blanketly denied them.²⁸ Mr Wang’s response weighs in favour of a finding that Mr Wang had the information he required when he chose to deny them.

Incorrect Tail Count

[25] In the meeting, in relation to the counts:

- Mr Tran provided Mr Wang with a copy of his employment contract to confirm that Mr Wang had signed it;²⁹
- Mr Tran then showed Mr Wang the tally sheet showing the over reported count incorrect by 24 and the checks. He provided Mr Wang an opportunity to check that his debone numbers were correct;³⁰
- Mr Wang denied his count was inaccurate;³¹
- Mr Wang claimed that he asked Ben Dickson to check his count with the inference that he had double checked that his count was indeed correct,³² however Mr Tran concluded that Mr Wang was being untruthful as Mr Tran had confirmed that the error was discovered as a result of a random audit³³ and that 3 people had checked and verified that the count was incorrect by a margin of 24 in Mr Wang’s favour,³⁴ that 2 of the 3 checks had been performed by Springtime’s client³⁵ and 2 of the 3 checks had been performed by people who were unaware whose crate they were counting to avoid any bias;³⁶

- Mr Tran advised Mr Wang that a count variance in excess of 5 would result in the termination of his employment;³⁷
- Mr Tran explained to Mr Wang that 3 people had checked his count;³⁸
- Mr Wang asked for the cameras to be checked;³⁹
- Mr Tran explained to Mr Wang that the company policy needed to be followed in respect of counts and where gross misconduct has been proven, it would result in the termination of employment;⁴⁰
- Mr Wang requested a copy of the relevant documents. Mr Tran provided them to him and Mr Wang checked those documents;⁴¹ and
- Mr Tran told Mr Wang his \$200 bond would be returned and asked him to return his ID card which Mr Wang did.⁴²

[26] I accept Mr Tran's comments about the employment contract reference to the policy and procedure and consequences of incorrect counts are correct because Mr Tran's contemporaneous record of the meeting⁴³ was not contested. Further, the record correlates with the evidence of the Applicant and what⁴⁴ the uncontested termination letter⁴⁵ states. That is, the termination letter points to section 6.6 in Mr Wang's employment contract that spells out:⁴⁶

- Counts will be audited on a random basis to check for accuracy;⁴⁷
- If the audit number doesn't match the number reported by the employee, an investigation will occur;⁴⁸
- A miscount of up to 5 will be considered reasonable due to human error;⁴⁹
- Miscounts greater than this number may be found to be fraudulent;⁵⁰ and
- If this occurs the consequence will be immediate dismissal.⁵¹

[27] Mr Wang was provided a written termination letter at the end of the meeting on 8 October 2024 by hand.⁵² The letter said that Mr Wang was terminated for serious misconduct for both creating disharmony in the team and for the incorrect over-reporting of tails by 24.

[28] Mr Tran's contemporaneous record is signed by Mr Wang on the day of the meeting, 8 October 2024.⁵³

Mr Wang

[29] I have dealt with Mr Wang's evidence where it directly related to the timeline of events leading to his dismissal however there are some additional parts of his evidence that do not neatly fit into that sequence that I will address.

[30] In his statement, Mr Wang gave evidence that he had never been told that his count was incorrect⁵⁴ and he initially confirmed this at hearing under cross examination. He also said in his statement that Ms Ting/Aidan did not like him and that she used to check his count '*all of the time*'⁵⁵ but that his count was '*always ok*.'⁵⁶ However, under cross examination at hearing, Mr Wang, reluctantly and with some perseverance, admitted that supervisor Ms Chou Shu Ting had raised with him that his count was wrong on a number of occasions.

[31] Mr Wang contends that Springtime failed to consider that his tails could have spilled from his crate.⁵⁷ At hearing under cross examination Mr Wang was asked why he wouldn't have started on a second crate if his crate was full and he responded by saying that no one had let him know that he was able to use a second crate and further that he had never used a second crate. I

note that this is contradicted in Mr Wang's own statement that he had indeed previously used a second crate.⁵⁸ Further, Springtime gave evidence that a second crate was available to Mr Wang if required, which in all of the circumstances I accept.

[32] Further, in his statement, Mr Wang claimed that he remembered occasions (more than one) when his Team Leader had discovered other workers with incorrect counts. He stated that someone would be dismissed and others would be given another chance.⁵⁹ He claims that there was a worker who reported a count of 30 more than they had and that they were not dismissed.⁶⁰ At hearing Mr Wang was unable to give specific information and it became apparent this evidence amounted to hearsay and could be given no weight. It was also at odds with the evidence of Springtime.

[33] Mr Wang also stated that he remembered occasions when the team leader had discovered mistakes in the counts and that those employees were permitted to check their own counts.⁶¹ Again under cross examination Mr Wang's statement was evidently hearsay and contrary to the evidence of Springtime.

[34] More specifically Springtime's evidence at odds with Mr Wang's statements was that:

- There had only ever been one other infringement of the count policy;⁶²
- The inaccurate count by Mr Wang was by far the greatest number of inaccuracies ever found by them;⁶³ and
- Employees were not permitted under the count procedure to have access to their crates when an error was found to avoid the potential for tampering. Instead the crate would be checked by at least one independent person;⁶⁴
- Mr Wang had "*on other occasions miscounted tails, always to his advantage*" however it had not exceeded the allowance for human error and thus Springtime had not given Mr Wang formal notice.⁶⁵

[35] I found Mr Wang's evidence to be unreliable and self-serving. These multiple examples demonstrated an unfortunate pattern lacking in honesty.

Ms Ting

[36] In her evidence, Ms Ting explained that Mr Wang had been involved in an incident with her on 2 September 2022 in which she said she threw a chicken cutlet at the table but it had slipped to the ground and touched Mr Wang's belly.⁶⁶ She claims that Mr Wang instead reported that she had thrown a whole chicken at him and that he took sick leave supported by a medical certificate that also said a whole chicken had been thrown at him. Ms Ting said that Mr Wang had claimed that the incident had caused him to have chest pain. Mr Wang contested this evidence at hearing on the basis it had happened a long time before and that it was not relevant to the issues in question. It appears to me that the point of this evidence is to demonstrate that Mr Wang is not honest or truthful.

[37] Ms Ting's evidence also went on to explain that Mr Wang had directly made a number of disparaging assertions to her about Mr Tran.⁶⁷ They were statements that "*you have to be careful about boss*",⁶⁸ and that a lot of people told him about problems with the boss (Mr Tran).⁶⁹ Ms Ting was sincere and open in her cross examination. Under cross examination she did not resile from the fact she wanted to demonstrate her boss was not a bad person. I find Ms Ting's evidence regarding Mr Wang's remarks about Mr Tran to be more credible. On the other hand, I

am unable to accept Mr Wang's denial. Throughout this matter, Mr Wang consistently denied all allegations and provided evidence that was often misleading and contradictory. This decision outlines several instances of such conduct.

Consideration

Was there a valid reason for the dismissal related to the Applicant's capacity or conduct?

[38] The reason must be one that is 'sound, defensible or well founded.'⁷⁰ A reason which is 'capricious, fanciful, spiteful or prejudiced' cannot be a valid reason.⁷¹ '[T]he reason for termination must be defensible or justifiable on an objective analysis of the relevant facts.'⁷² It will not be enough for an employer to say that they acted in the belief that the termination was for a valid reason.⁷³ The valid reason for termination is not to be judged by a legal entitlement to terminate an employee, 'but [by] the existence of a reason for the exercise of that right' related to the facts of the matter.⁷⁴ The Commission does not 'stand in the shoes' of the employer but will need to be satisfied that the termination of the employee was for a valid reason.⁷⁵

[39] Springtime submits there was a valid reason for dismissal relating to Mr Wang's conduct, in creating disharmony amongst their workers, and his allegedly fraudulent discrepancy in the number of tails reported on 30 September 2024.⁷⁶ The number of tails being 24 short is a significant difference to the 5 permitted by company policy as being potentially a result of human error⁷⁷ and the largest error ever found.⁷⁸ Critically, Mr Wang did not suggest that he had made any error when provided with an opportunity to do so. Instead, he just denied his count was wrong.⁷⁹

[40] Further, Mr Wang in his own witness statement also acknowledges being informed about having a count of 5 less than he had otherwise reported on 1 October 2024 and of four less than he had otherwise reported on 3 October 2024.⁸⁰ It does not escape me that all the counts in error were all in Mr Wang's favour.⁸¹ I note that the termination letter, consistent with the evidence given at hearing, was consistent with the company policy that any counts under 5 were considered possible human error.

[41] The case of *Sydney Trains v Gary Hilder*⁸² is a useful reminder that the question of whether there was a valid reason for dismissal cannot be resolved by considering only whether certain conduct was in breach of company policy. The relative importance of any policy breached must also be considered, as well as whether the conduct, considered in totality, was of sufficient gravity to constitute a sound, defensible, well-founded and so valid reason for dismissal.

[42] Under cross examination Mr Wang acknowledged that he had refused to cut nibbles. Nibbles are smaller parts of the chicken and it was uncontested that nibbles pay less per hour than deboning whole chickens.⁸³ Mr Wang gave evidence that he refused to cut nibbles because it paid less per hour and deboning whole chickens paid the most. Mr Wang acknowledged the company's position when he accepted his employment contract and he was reminded of it on 30 August 2024 by text message, 1 month before the incorrect count, in a text message that said: "Team make sure your counts are 100% correct everyday. If you are unsure ask a supervisor to double check or another team member to check for you."⁸⁴ Mr Wang acknowledged the reminder by return text "Yes" a couple of hours later.⁸⁵ In all the circumstances set out in my decision, this weighs in favour of a finding that Mr Wang acted contrary to company policy to maximise his income.

[43] The tally sheets show that he was a diligent worker, consistently performing at the top of his team. On its own, there is nothing wrong with an employee taking advantage of a bonus scheme to maximise their income. Whilst Mr Tran’s concerns about Mr Wang’s conduct in respect to creating disharmony in the workplace in isolation might not be enough to constitute a valid reason, when considered in conjunction with the breach and its magnitude, destroyed the trust and confidence Mr Tran had in Mr Wang. This supports a finding that there was a valid reason for his dismissal.

Was the Applicant notified of the valid reason?

[44] Proper consideration of s.387(b) requires a finding to be made as to whether the applicant “was notified of that reason”. Contextually, the reference to “that reason” is the valid reason found to exist under s.387(a).⁸⁶

[45] Notification of a valid reason for termination must be given to an employee protected from unfair dismissal before the decision is made to terminate their employment,⁸⁷ and in explicit⁸⁸ and plain and clear terms.⁸⁹

[46] It is uncontested that Mr Wang met with Mr Tran on 8 October 2024 and during the meeting Mr Wang had the two allegations put to him for response.⁹⁰ Mr Tran advised Mr Wang that his employment was terminated⁹¹ and also provided a termination letter by hand⁹² that explained the reasons for termination.⁹³

[47] In all the circumstances, I find that Mr Wang was notified of the reason for his dismissal.⁹⁴

Was the Applicant given an opportunity to respond to any valid reason related to their capacity or conduct?

[48] Mr Wang submits that he was not afforded any effective opportunity to respond to the matters relied upon by Springtime for the dismissal on 8 October 2024, and that he was not afforded any possibility of verifying whether or not his count was inaccurate. Mr Wang’s assertions were unsupported by evidence as set out in the preceding paragraphs. I find that at the meeting on 8 October 2024 Mr Wang had an opportunity to respond to the allegations against him. He was provided the tally sheet to check and respond to. He requested documentation that he was consequently provided to examine.

[49] In all of the circumstances, I find that Mr Wang was given an opportunity to respond to the reasons for his dismissal prior to the decision to dismiss being made.⁹⁵

Did the Respondent unreasonably refuse to allow the Applicant to have a support person present to assist at discussions relating to the dismissal?

[50] This consideration is irrelevant on the facts of this case. In any event, there was no unreasonable refusal by Springtime to allow Mr Wang a support person for the discussion relating to the dismissal and nor has any such refusal been alleged.⁹⁶

Was the Applicant warned about unsatisfactory performance before the dismissal?

[51] Mr Wang submitted that the miscount should be considered an unsatisfactory performance issue rather than misconduct. I reject this contention. Uncaught by an audit, it would have resulted in a financial benefit to Mr Wang to which he was not properly entitled. He would have been paid for performing work he did not perform. Springtime submits that its business operates on the basis that a high degree of trust is placed in its employees to accurately record the number of tails.⁹⁷

[52] In all of the circumstances, an over-report of 24 is significant. Where there is a clear financial benefit to Mr Wang and a financial detriment to Springtime and it occurs in circumstances where an employee has been made aware that incorrect reporting of this nature is considered gross misconduct that would result in instant dismissal,⁹⁸ the issue cannot be properly said to be only a performance issue. The Fair Work Regulations define that serious misconduct includes fraud.⁹⁹ Fraud arises for many reasons including when a person falsifies or creates misleading information in order to receive a benefit.

[53] As the dismissal did not relate to unsatisfactory performance, this factor is not relevant to the present circumstances.

To what degree would the size or the absence of dedicated human resource management specialists or expertise of/in the Respondent's enterprise be likely to impact on the procedures followed in effecting the dismissal?

[54] Mr Wang submits that the size of Springtime should not have impacted the procedures that it ought to have followed in the circumstances of Mr Wang's termination. Springtime denies that it should not have had an impact but did not provide submissions on why.

[55] Springtime was a relatively small business¹⁰⁰ and the disciplinary action was undertaken by its Director himself, Mr Tran. It is my finding that Mr Tran lacked the sophistication and specialist expertise of a larger organisation and that this impacted on the imperfect termination process.

[56] For example, neither a copy of Mr Wang's employment contract nor the relevant policy were put before the Commission. References to the relevant aspects of the employment contract that warned Mr Wang of the potential for instant dismissal in the circumstances that the employer found a fraudulent count had occurred were found in the contemporaneous meeting record¹⁰¹ and the termination letter¹⁰². I do not draw a negative inference from this because I am of the view that this is a consequence of Springtime being a small business that lacks specialist expertise.

[57] In considering the circumstances, I find that Springtime's size had a negative impact resulting in poor procedures being followed in effecting the dismissal including in how it had dealt with previous issues that might have warranted more formal warnings.¹⁰³

[58] Further, I find that Springtime does not employ any dedicated human resources staff and therefore its poor procedures, particularly in relation to previous warnings, the investigation of the circumstances of 30 September 2024, including its timing, need to be considered.¹⁰⁴

What other matters are relevant?

[59] Mr Wang submitted that Springtime failed to consider that an incorrect count could have occurred as a result of human error, tails being dislodged from the crate, other employees

bumping the crate, tails overflowing from an overfull crate or fallen tails being washed from the area by cleaners.¹⁰⁵ Mr Wang did not provide any of these responses on the 8th of October when he was asked about the count.¹⁰⁶ I have previously noted some of the contradictions in Mr Wang's evidence and I have also had regard to Springtime's evidence that a second crate was available to Mr Wang if required, that a search was conducted for lost tails to no avail¹⁰⁷ and that the cleaner at the end of Mr Wang's shift did not find any lost tails during the clean.¹⁰⁸

[60] Mr Wang submits that in circumstances where a valid reason for the termination is found to exist, that the termination is still unfair as the decision was harsh, unjust and unreasonable.¹⁰⁹

[61] Mr Wang submits that there was a lack of procedural fairness and contended that some 9 days elapsed before the incorrect count of 30 September 2024 was brought to his attention.¹¹⁰ This is applicable to the concept of condonation which embraces the notion that an employer might waive their right to claim that conduct amounts to serious misconduct by electing not to act immediately when they become aware that such conduct may have occurred. The principles applicable to this issue are set out in *Cannan & Fuller v Nyrstar Hobart Pty Ltd*.¹¹¹ Springtime submit that they took 9 days because they were thoroughly investigating the concerns before raising them with Mr Wang. It is well established that in circumstances where it believes an employee has engaged in conduct so serious it would warrant termination if proven, they should have stood the employee down (ordinarily on full pay), while that investigation is underway. This is a flaw in the termination process.

[62] Whilst I accept the termination process was imperfect, I am persuaded that the essential core elements were adequately addressed when weighed in all the circumstances.

Conclusion

[63] I have made findings in relation to each matter specified in section 387 as relevant. Having considered and weighed those matters arising I am not satisfied that Mr Wang has discharged his onus of demonstrating that his dismissal was harsh, unjust or unreasonable.

[64] Accordingly, I am not satisfied that Mr Wang was unfairly dismissed within the meaning of s. 385 of the FW Act. Mr Wang's application is therefore dismissed.



DEPUTY PRESIDENT

Appearances:

Mr Craig Buckley, AMIEU for the Applicant
Ms Evelyn Ong, EDA Lawyers, for the Respondent.

Hearing details:

9 January 2024

In person
Mareeba Court House

Printed by authority of the Commonwealth Government Printer

<[PR785386](#)>

¹ *Fair Work Act 2009* (Cth) s.596(1) (the **FW Act**).

² Section 596(2) of the FW Act provides that the Commission may grant permission for a person to be represented by a lawyer or paid agent in a matter before the Commission only if:

- (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 The decision to grant permission is not merely a procedural step but one which requires consideration in accordance with s.596 of the FW Act (see the decision in *Warrell v Fair Work Australia* [2013] FCA 291). The decision to grant permission is a two-step process. First it must be determined if one of the requirements in s.596(2) have been met. Secondly, if the requirement has been met, it is a discretionary decision as to whether permission is granted (see the decision in *Warrell v Fair Work Australia* [2013] FCA 291).

⁴ Including s.596(2) (a)-(c) and both Note (a) and (b) of the FW Act.

⁵ Digital Court Book (DCB) pp.41-56; Noting the Applicant declined to cross examine Mr Tran and s.590 of the FW Act.

⁶ FW Act s.394(2).

⁷ Ibid s.382.

⁸ Ibid s.396(c).

⁹ Ibid s.396(d).

¹⁰ Section 387 of the FW Act provides that, in considering whether it is satisfied that a dismissal was harsh, unjust or unreasonable, the Commission must take into account:

- (a) whether there was a valid reason for the dismissal related to the person's capacity or conduct (including its effect on the safety and welfare of other employees); and
- (b) whether the person was notified of that reason; and
- (c) whether the person was given an opportunity to respond to any reason related to the capacity or conduct of the person; and
- (d) any unreasonable refusal by the employer to allow the person to have a support person present to assist at any discussions relating to dismissal; and
- (e) if the dismissal related to unsatisfactory performance by the person – whether the person had been warned about that unsatisfactory performance before the dismissal; and
- (f) the degree to which the size of the employer's enterprise would be likely to impact on the procedures followed in effecting the dismissal; and
- (g) the degree to which the absence of dedicated human resource management specialists or expertise in the enterprise would be likely to impact on the procedures followed in effecting the dismissal; and
- (h) any other matters that the FWC considers relevant.

¹¹ Exhibit R5.

¹² DCB p.7.

¹³ DCB p.26 at [25].

¹⁴ Exhibit R4.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid. Mr Wang also confirmed that this was his signature at hearing.

¹⁹ Ibid.

²⁰ DCB p.46 Exhibit R1.

²¹ Exhibit R4.

²² DCB p.50 at [10] Exhibit R1; see also DCB p.53 (last paragraph) Exhibit R1.

²³ DCB p.50 at [10] Exhibit R1.

²⁴ DCB p.55 Exhibit R2.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid Exhibit R2.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ DCB p.53 at [35] Exhibit R1.

³⁴ Ibid.

³⁵ Ibid

³⁶ Ibid.

³⁷ DCB p.55 Exhibit R2.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ DCB p.31 Exhibit A1, at hearing the parties agreed that the termination letter incorrectly referred to Mr Wang being terminated on 8 August 2024 and instead was a typographical error that should have said 8 October 2024.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² DCB pp.30-32 Exhibit A1.

⁵³ DCB p.55 Exhibit R2.

⁵⁴ DCB p.26 at [25] Exhibit A1.

⁵⁵ Ibid at [26] Exhibit A1.

⁵⁶ Ibid.

⁵⁷ DCB pp.14-15 at [11].

⁵⁸ DCB p.26 at [25].

⁵⁹ Ibid at [27] Exhibit A1.

⁶⁰ Ibid.

⁶¹ DCB p.26 at [27] Exhibit A1.

⁶² DCB p.53 at [35] Exhibit R1.

⁶³ Ibid.

⁶⁴ DCB p.50 at [12] Exhibit R1.

⁶⁵ DCB p.51 at [19] Exhibit R1.

⁶⁶ DCB p.58 Exhibit R6.

⁶⁷ DCB pp.58-59 Exhibit R3.

⁶⁸ DCB p.59 Exhibit R3.

⁶⁹ Ibid.

⁷⁰ *Selvachandran v Peteron Plastics Pty Ltd* [1995] IRCA 333 (7 July 1995), [(1995) 62 IR 371 at p. 373].

⁷¹ Ibid.

⁷² *Rode v Burwood Mitsubishi Print R4471* (AIRCFB, Ross VP, Polites SDP, Foggo C, 11 May 1999) at para. 19.

⁷³ Ibid.

⁷⁴ *Miller v University of New South Wales* [2003] FCAFC 180 (14 August 2003) at para.13, [(2003) 132 FCR 147].

⁷⁵ Ibid at para. 64. See also *Walton v Mermaid Dry Cleaners Pty Limited* [1996] IRCA 267 (12 June 1996), [(1996) 142 ALR 681 at p. 685].

⁷⁶ *Fair Work Regulations 2009* (Cth) regs 1.07(2)(a), (b) and (e).

⁷⁷ DCB p.31 at last paragraph.

⁷⁸ DCB p.53 Exhibit R1.

⁷⁹ Ibid.

⁸⁰ DCB p.26 at [24].

⁸¹ DCB p.50 at [19].

⁸² *Sydney Trains v Gary Hilder* [\[2020\] FWCFCB 1373](#) (Hilder).

⁸³ Exhibit R5.

⁸⁴ DCB p.56 Exhibit R3.

⁸⁵ Ibid.

⁸⁶ *Bartlett v Ingleburn Bus Services Pty Ltd* [\[2020\] FWCFCB 6429](#), [19]; *Reseigh v Stegbar Pty Ltd* [\[2020\] FWCFCB 533](#), [55].

⁸⁷ *Crozier v Palazzo Corporation Pty Ltd* (2000) 98 IR 137, 151.

⁸⁸ *Previsic v Australian Quarantine Inspection Services* Print Q3730 (AIRC, Holmes C, 6 October 1998).

⁸⁹ Ibid.

⁹⁰ DCB p.55 Exhibit R2.

⁹¹ Ibid.

⁹² DCB pp.30-32.

⁹³ DCB p.31 Exhibit A1. “As per employment agreement outlined section 6.6 Employees numbers will be counted on a random basis to check for accuracy. Where an employee's number does not match reported amount, an investigation will ensue and if employee is found of fraudulent reporting it will result in immediate dismissal. It is up to the employer to determine allowable miscounts within reason of human error. As per company policy any counts under 5 is permissible as human error. As your count was found to be fraudulent your employment with Springtime Poultry PTY Ltd is terminated effective immediately.”

⁹⁴ FW Act s.387(b).

⁹⁵ Ibid s.387(c).

⁹⁶ Ibid s.387(d).

⁹⁷ DCB p.52 Exhibit R1.

⁹⁸ DCB p.31 Exhibit A1.

⁹⁹ *Fair Work Regulations 2009* (Cth) reg 1.07.

¹⁰⁰ DCB p.44 Exhibit R1 at [1.7].

¹⁰¹ DCB p.55 Exhibit R2.

¹⁰² DCB p.31 Exhibit A1.

¹⁰³ FW Act s.387(f).

¹⁰⁴ Ibid s.387(g).

¹⁰⁵ DCB pp.14-15 at [11].

¹⁰⁶ DCB p.55 Exhibit R2.

¹⁰⁷ DCB p.53 (last paragraph), Exhibit R1.

¹⁰⁸ DCB p.50 at [10] Exhibit R2.

¹⁰⁹ DCB p.26; see also *Makin v Glaxosmith Kline Australia Pty Ltd* [\[2010\] FWA 2211](#).

¹¹⁰ DCB p.15 at [12].

¹¹¹ [\[2014\] FWC 5072](#) at [255]-[256].