DECISION

Fair Work Act 2009
s.365—General protections

Reece Hoverd
v
M & J D Pty. Ltd.
(C2025/11918)

DEPUTY PRESIDENT LAKE BRISBANE, 25 MARCH 2026

Application to deal with contraventions involving dismissal – jurisdictional objection – objection upheld – use of AI and misrepresentations by Applicant – recommendation for costs application

[1] Mr Reece Hoverd[1] (the **Applicant**) lodged a general protections application involving dismissal with the Fair Work Commission (the **Commission**). The Applicant claims that adverse action was taken against him by M & J D Pty. Ltd (the **Respondent**) in breach of part 3-1 of the *Fair Work Act 2009* (Cth) (the **Act**).

[2] The Respondent raised that the Applicant resigned from his employment on 26 November 20254. I set directions for a jurisdictional hearing to determine whether the Applicant was dismissed in accordance with s.386 of the Act. The Applicant alleges that he was constructively dismissed.

[3] For the reasons that follow, I find the Applicant was not dismissed. I note the Respondent engaged a solicitor to prepare their submissions. I welcome a costs application from the Respondent for this matter. The Applicant has repeatedly displayed a disregard for facts and has relied on incoherent legal arguments in order to contrive a basis to claim compensation.

[4] The Applicant stated in an email to my Chambers: "In response to the Commission's direction, I confirm that I have used AI tools to assist in organising and drafting my submissions. However, all information, evidence, and factual statements provided are based on my own knowledge and documentation."

[5] The Applicant consistently relied upon provisions of his contract and the *Waste Management Award 2020* which do not exist as the basis for his argument of constructive dismissal. Even after being warned in an email from my Chambers that he should not provide false or misleading evidence, he continued to make submissions on this basis.

[6] It was only after I reminded the Applicant that he was providing sworn evidence in the hearing that he accepted that his contract did not say what he contended it did. The Applicant's contract is not an excessively long document. Despite that, he chose to rely on AI to "extract"

terms of the contract which did not exist, instead of reading the contract which he signed. Further, even after being informed in the hearing that the clause from the *Waste Management Award 2020* he was relying on did not exist, he continued to argue that it did and relied on that non-existent clause in his closing submissions.

Background

[7] On 4 September 2025, the Applicant and Respondent executed a contract of employment.

[8] The relevant terms of that contract include:

> **4 DUTIES**
>
> 4.1 You will undertake such duties as determined by the Employer from time to time. A general description of the requirements of your position, including your accountabilities, is set out in the Position Description at Schedule 2. You are also required to diligently and proficiently perform the duties that the Employer considers necessary and incidental to the Position, and otherwise assigned to you by the Employer, which are incidental to the Position, and otherwise assigned to you by the Employer, which are commensurate with your skills and experience.
>
> 4.2 The Employer may vary the Position by adding or subtracting particular requirements or accountabilities of the Position at any time as long as it does not (without your consent) substantially change the nature of the Position or require you to do things which are beyond your competence. If your Position, duties or reporting structure change, this Agreement will continue to apply to your employment unless the parties:
>
> (a) enter a new written employment agreement; or
> (b) vary this Agreement in accordance with clause 34.4.
>
> …
>
> 4.12 Other Duties:
>
> (a) From time to time, the Employer may require you to work in areas that are not your normal work areas and perform functions that are outside of your usual duties. The Employer may require you to do this so long as you have the skills and training to perform the functions that are outside of your usual duties.
>
> **5 HOURS**
>
> 5.1 Your full-time ordinary hours of work are set out in Part B of Schedule 1 or as otherwise agreed between you and the Employer in writing.
>
> 5.2 Under the Award, ordinary hours of work will be up to 8 hours per day and an average of 38 hours per week in a work cycle not exceeding 28 consecutive days and can be worked any time between the spread of hours of 4am to 5pm Monday to Friday.
>
> 5.3 You need to be flexible about how many ordinary hours you work and when you work those hours. You will be required to work reasonable additional hours to meet the operational demands of the business. In particular, you will be required to work outside your ordinary hours (and outside usual business hours) in order to meet the operational needs of the Employer.
>
> …
>
> Schedule 1 - Particulars

Part B Position Details

Position Title: Earthmoving Plant Operator/ Labourer

Hours: Your full-time ordinary hours of work are 38 hours per week, nominal roster daily hours 10.5 hour shifts, plus reasonable additional hours to be worked within the Employer's operating hours as rostered, or as otherwise agreed between you and the Employer in writing.

…

Schedule 2 Position Description

Primary responsibilities will include, but not be restricted to:

…

Site Operations

…

- Maintain silt fencing;

[9] In approximately October of 2025, the Respondent commenced a consultation process in relation to proposed changes to rostered shift times.

[10] On 25 November 2025, the Applicant sent an email to the Respondent refusing to move to the proposed shift time of 7:30am to 6pm. The Applicant had been working 10.5-hour shifts ending at 4:30pm. The email stated that the Applicant cannot move to that shift because of his family and church commitments. The Applicant also assertedly incorrectly that clause 23.2 of *Waste Management Award 2020* requires majority consent for a finishing time beyond 5:00pm (there is no clause 23.2 in the Award, and the Award does not require majority consent for a change of shift time). The Applicant asserted that he felt that he had been pressured to accept and felt that only new hires had been moved to the new shift times. The Applicant said he was "exercising my right to refuse unreasonable additional hours (Fair Work Act s62), given the personal impact and lack of majority support."

[11] Mr Michael Harrison, General Manager replied confirming that the change of start and finish time was not a permanent change and would only be until Christmas. The Respondent pointed out that the Applicant was not being asked to perform additional hours, he was being asked to change the times in which the hours were performed.

[12] On the same day, on 25 November 2025, the Applicant met with Mr Harrison, Mr Wayne Saggus and Mr Bjorn Holmkvist. The Applicant asserted that he had been given an "ultimatum" to accept the shift change. He said he had been threatened with the end of his employment. The Applicant asserted that he could not be required to accept the shift change and needed time to consult with his wife and get advice.

[13] On 26 November 2025, Mr Harrison replied as follows:

> Once again your statements are not correct.
> You were provided last night to discuss with your wife if you would be able to work the 7.30 start and 6pm finish shift until Christmas and provide us your reply today so we could then decide what our response would be including possible termination of employment.

> Please provide us with your answer as to whether you can work the roster that has been discussed with you so we can decide our response.

[14] On 26 November 2025, the Applicant was assigned to work on the silt fencing. The Applicant said that was retaliatory. He then promptly resigned with the following emailed:

> Dear Wayne, Michael, Bjorn,
>
> Following our catch-up today, where Wayne informed me my machine operator role (as per clause 2, Full-Time Landfill Operator) has been reassigned to someone else because I refused the unreasonable 7:30am-6pm hours (FW Act s62), and that only labouring duties remain, I am resigning effective immediately.
>
> This unilateral demotion to significantly less favourable, unskilled work constitutes adverse action under FW Act s342 (altering my position to my prejudice) because I exercised my workplace right to refuse additional hours outside the WMA ordinary spread (clause 23.2). It breaches clauses 2 and 4 of my contract, as labouring is not reasonably incidental to my appointed role.
>
> I treat this as constructive dismissal (s386) and will file a general protections claim (Form F8) with the FWC today, seeking compensation and lost entitlements. Please provide my final pay (including 1 week's notice in lieu per clause 18.3, accrued annual leave per clause 11) within 7 days, as required by the Act.
>
> I enjoyed the operator work and wanted to stay—it's disappointing this retaliation ends it. For any thing further, feel free to contact me.
>
> Kind regards,
> Reece Hoverd

[15] The Applicant "extracted" terms of his employment contract as follows. As can be seen, these are not the terms of the contract which the Applicant signed, set out above. The parts of the contract which are untrue are underlined below. None of the clauses are accurately represented below, but the egregious misrepresentations include changing the position title to omit labouring and suggesting that the Applicant had set contractual hours of 6:00am - 4:30pm Monday to Friday when he did not.

> Clause 2 – Appointment
>
> You are appointed as a Full-Time Landfill Operator. Your employment is full-time and commences on 16 September 2025. Your duties are set out in Clause 4 and Schedule 2.
>
> Clause 4 – Duties
>
> 4.1 You will perform the duties of the position as set out in Schedule 2 and such other duties as may reasonably be required from time to time.

4.3 You will: (e) undertake such other duties as may reasonably be required by the Employer from time to time.

4.12 Other Duties: (a) and (b) identify the works the Employee was asked to perform, including Section 4 Duties: You will undertake such duties as determined by the Employer from time to time. A general description of the requirements of your position, including your accountabilities, is set out in the Position Description at Schedule 2. Section 4.12 Other Duties Section a) and b) clearly identify the works the Employee was asked to perform. Schedule 1 Part B Position Title, Earthmoving Plant Operator/Labourer. Position Description, Site Operations Maintain Silt
Fencing is one of the duties specified.

Schedule 1 – Particulars
Position: Full-Time Landfill Operator
Ordinary Hourly Rate: $42.00
Roster: 6:00am - 4:30pm Monday to Friday

Schedule 2 – Position Description
Position Title: Earthmoving Plant Operator/Labourer

[16] Less than one hour prior to the hearing, the Applicant provided character references from members of his church that he wished to rely upon. I admitted that evidence but noted that I did not consider it particularly relevant to the jurisdictional objection.

Was the Applicant forced to resign under s.386(1)(b) of the Act?

[17] Section 386(1) of the Act relevantly provides that 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.[2]

[18] The Full Bench in *Bupa Aged Care Australia Pty Ltd T/A Bupa Aged Care Mosman v Shahin Tavassoli* outlined the relevant authorities with respect to what it means for an employee to be terminated at the initiative of the employer.[3] In short, it is not sufficient to simply demonstrate that the employee did not voluntarily leave their employment.[4]

[19] While it may be that some action on the part of the employer is intended to bring the employment to an end, it is not necessary to show the employer held that intention.[5] It is sufficient that the employer's conduct, would, on any reasonable view, be likely to bring the employment relationship to an end.[6]

[20] All the circumstances – including the conduct of both the employer and employee – must be examined.[7] In other words, it must be shown that "the act of the employer results directly or consequentially in the termination of the employment and the employment

relationship is not voluntarily left by the employee. That is, had the employer not taken the action it did, the employee would have remained in the employment relationship."[8]

[21] The Full Bench of this Commission in *ABB Engineering Construction Pty Limited v Doumit* (**ABB**) said, in relation to determining whether the ending of an employment relationship is a voluntary or forced resignation:

> *"Often it will only be a narrow line that distinguishes conduct that leaves an employee no real choice but to resign employment, from conduct that cannot be held to cause a resultant resignation to be a termination at the initiative of the employer. But narrow though it be, it is important that that line be closely drawn and rigorously observed. Otherwise, the remedy against unfair termination of employment at the initiative of the employer may be too readily invoked in circumstances where it is the discretion of a resigning employee, rather than that of the employer, that gives rise to the termination.*
>
> *The remedies provided in the Act are directed to the provision of remedies against unlawful termination of employment. Where it is the immediate action of the employee that causes the employment relationship to cease, it is necessary to ensure that the employer's conduct, said to have been the principal contributing factor in the resultant termination of employment, is weighed objectively.*
>
> *The employer's conduct may be shown to be a sufficiently operative factor in the resignation for it to be tantamount to a reason for dismissal. In such circumstances, a resignation may fairly readily be conceived to be a termination at the initiative of the employer. The validity of any associated reason for the termination by resignation is tested. Where the conduct of the employer is ambiguous, and the bearing it has on the decision to resign is based largely on the perceptions and subjective response of the employee made unilaterally, considerable caution should be exercised in treating the resignation as other than voluntary."*[9]

[22] Furthermore, in *Pawel v Australian Industrial Relations Commission,*[10] the Full Bench noted:

> *"Mere "causation" or "motivation" will not satisfy the requirement that the termination be at the initiative of the employer."*

[23] Forced resignation has been interpreted by the Commission in the following ways:

- the actual conduct of the employer forced to do so, such that there was an element of compulsion present;[11]
- a 'critical action' or 'critical actions' of the employer which was intended to bring the employment relationship to an end;[12]
- as a result of some action on the part of the employer intended to bring the employment to an end and perhaps action which would, on any reasonable view, probably have that effect;[13] and
- the employer's conduct (when it is not evidenced was intended to bring about the resignation directly) must be conduct that is in some way or in some manner oppressive or repugnant in the ordinary course, and/or else so impacted on the volition of the

employee such that the resignation was a reasonable response to that conduct in all the circumstances.[14]

[24] The Applicant argued that the Respondent repudiated the contract by assigning him to perform labouring duties and/or that the labouring duties, specifically duties involving silt fencing, constituted a demotion. That argument can be dismissed out of hand. The Applicant was employed in the role of "Earthmoving Plant Operator/ Labourer". His position description includes reference to silt fencing duties. The suggestion that the Respondent had no power to direct the Applicant to perform that work, or that that work is a "demotion" has no basis in reality. The only argument in support of the Applicant's "evidence bundle" which refers to terms of the contract which do not exist. The Applicant admitted during the hearing that, under the contract, he was not employed in the role of "Full-Time Landfill Operator". His contract, which I confirmed he had signed, does not say that.

[25] There is no evidence from the Applicant that the assignment to labouring duties on 26 November 2025 was permanent. The Applicant simply says that he was not told when the labouring duties would end. But a temporary assignment is clearly not the same thing as a permanent assignment to labouring duties. Even if the Applicant was permanently reassigned to labouring duties, I consider that to be within the Respondent's powers under the contract.

[26] The Applicant asserted that Mr Saggus, the Applicant's supervisor, told the Applicant that he had been assigned to labouring duties because of the complaints the Applicant had made. Mr Saggus denied that under cross-examination. I prefer Mr Saggus' evidence over the Applicant's. I hold serious reservations about the Applicant's honesty and credibility as a witness. Those concerns are not ameliorated by the character reference from the Applicant's Bishop nor from the character reference from the Stake President of the local Church of Jesus Christ of Latter-day Saints. The Applicant misrepresented facts to the Commission. Ignorance of the law is one thing. But repeatedly saying that the Applicant's written contract says something which it does not say is not mere ignorance; it is a deliberate misrepresentation. I find that the Applicant was not told that he was assigned to labouring duties because of his emails on 25 November and 26 November 2025.

[27] In relation to the proposed change of hours, there is no requirement for majority agreement when changing start and finish times. What the Award does require is 7 days' notice of a change in start and finish times, as well as the usual consultation requirements for roster changes. It is, however, unnecessary for me to determine whether the Respondent complied with these obligations under the Award given the Applicant precipitously resigned on 26 November 2025. I note that I agree with the Respondent that the Applicant was not being asked to undertake additional hours, he was being asked to undertake his usual nominal shift length at a different start and finish time (which would attract additional payments under the Award).

[28] I do not accept that the Applicant was forced to resign because of the change in start and finish times. It was confirmed by the Respondent that it was a temporary change to apply until Christmas. The Applicant said his wife had health circumstances which impacted on his caring responsibilities for his children. I will not explain the details of the Applicant's wife's condition to preserve her privacy, but I note the Applicant did not explain these circumstances to the employer. He merely referred generally to church and family commitments. It was open to the

Applicant to provide more information to the employer about why he could not finish at 6pm. The employer could then take those circumstances into consideration.

[29] The Respondent submitted, and I accept, that other options were available to the Applicant instead of resigning. The Applicant could have spoken to Mr Harrison to ask if the assignment to labouring duties was permanent. Secondly, the Applicant could have exercised his rights under general protections without resigning. Thirdly, the Applicant could have worked the shift on 26 November 2025 as directed.

[30] I find the Applicant was not forced to resign. He resigned of his own initiative after being assigned a task he did not like and then had the gall to suggest the timing was harsh because of its proximity to Christmas.

Conclusion

[31] As a result, I do not find the Applicant's resignation to meet the threshold of a forced resignation per s.386(1)(b) of the Act. Therefore, the Applicant is not eligible to lodge an application under s.365 of the Act. The jurisdictional objection is upheld, and the Application is dismissed.

[32] I Order accordingly.

DEPUTY PRESIDENT

Appearances:
N R Hoverd for himself as the Applicant
M Harrison for the Respondent

Hearing details:
20 March 2026
Hearing via Microsoft Teams

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[1] I note the Applicant's legal name appears to be Newman Reece Hoverd, but he goes by Reece Hoverd.

[2] *Fair Work Act 2009* (Cth) s 386(1)(b).

[3] *Bupa Aged Care Australia Pty Ltd T/A Bupa Aged Care Mosman v Shahin Tavassoli* [2017] FWCFB 3941.

[4] Ibid

[5] Ibid; see also *Rheinberger v Huxley Marketing Pty Limited* (1996) 67 IR 154, 160-161; see also *O'Meara v Stanley Works Pty Ltd* [2006] AIRC 496 (11 August 2006); *Mohazab v Dick Smith Electronics (No 2)* (1995) 62 IR 200.

[6] *Rheinberger v Huxley Marketing Pty Limited* (1996) 67 IR 154, 160-161 cited in *Bupa Aged Care Australia Pty Ltd T/A Bupa Aged Care Mosman v Shahin Tavassoli* [2017] FWCFB 3941 at [31].

[7] *Whirisky v DivaT Home Care* [2021] FWC 650 at [77].

[8] *Mohazab v Dick Smith Electronics (No 2)* (1995) 62 IR 200 and *Bupa Aged Care Australia Pty Ltd T/A Bupa Aged Care Mosman v Shahin Tavassoli* [2017] FWCFB 3941 at [28].

[9] (1996) PRN6999.

[10] (1999) FCA 1660 at 58.

[11] *Megna v No 1 Riverside Quay (SEQ) Pty Ltd* PR 973462, 11 August 2006.

[12] *Boulic v Robot Building Supplies* [2010] FWA 6905, [16].

[13] *Bupa Aged Care Australia Pty Ltd T/A Bupa Aged Care Mosman v Shahin Tavassoli* (1995) 62 IR 200, 205-206.

[14] *Hastie v Impress Australia Pty Ltd* [2008] AIRC 102 at [48].