DECISION

Fair Work Act 2009
s.365—General protections

Fahad Ullah
v
OM Security Pty Ltd, Meriton Properties Pty Ltd
(C2025/11024)

DEPUTY PRESIDENT BOYCE SYDNEY, 19 JANUARY 2026

Application to deal with contraventions involving dismissal – application filed well past the 21-day statutory time limit – request for an extension of time – ordinary principles applied - no exceptional circumstances – general protections involving dismissal application dismissed

[1] On 4 November 2025, Mr Fahad Ullah (**Applicant**) filed a general protections involving dismissal application (**Application**) under s.365 of the *Fair Work Act 2009* (**Act**), alleging that he was dismissed by OM Security Pty Ltd (**First Respondent**) in contravention of Part 3-1 of the Act. Meriton Properties Pty Ltd (**Second Respondent**) has also been named in the Application, including by way of asserted involvement in the First Respondent's alleged contraventions.

[2] Section 366(1) of the Act provides that an application under s.365 must be made within 21 days after a dismissal takes effect, or within such further time period as the Commission may allow (subject to satisfaction as to the existence of "exceptional circumstances", as required by s 366(2) of the Act).

[3] The Applicant contends that he was dismissed by the First Respondent on 4 January 2025.[1] This is not disputed by the First Respondent.[2] However, mention was made in the Applicant's materials as to his dismissal date possibly (i.e. alternatively) being either 6 January 2025,[3] or 21 March 2025.[4] For the purposes of this decision, whether the Applicant's dismissal date be 4 or 6 January 2025, or 21 March 2025, it matters not. All of these three dates place the lodgement of the Application well outside the 21-day statutory time limit. In this regard:

(a) If the Applicant's dismissal date was 4 January 2025, he should have lodged his Application by 25 January 2025.[5] Given the Application was lodged on 4 November 2025, it has been lodged 283 days (or over 9 months) past the 21-day statutory time limit (or over 300 days post the date of the Applicant's dismissal).

(b) If the Applicant's dismissal date was 6 January 2025, he should have lodged his Application by 27 January 2025.[6] Given the Application was lodged on 4 November 2025, it has been lodged 281 days (or over 9 months) past the 21-day statutory time limit (or over 300 days post the date of the Applicant's dismissal).

(c) If the Applicant's dismissal date was 21 March 2025, he should have lodged his Application by 11 April 2025.[7] Given the Application was lodged on 4 November 2025, it has been lodged 206 days (or over 6 months) past the 21-day statutory time limit (or over 220 days post the date of the Applicant's dismissal).

[4] Directions were issued to program the matter to hear the Applicant's request for an extension of time.[8] At the hearing on 16 January 2026, the Applicant appeared for himself. Mr *Sebastian McIntosh*, of Counsel, instructed by Mr *Steven Penning*, Partner, and Ms *Sofia Bryan*, Solicitor, HWL Ebsworth Lawyers, appeared with permission for the First Respondent. Mr *Daniel Delimihalis*, of Counsel, instructed by Ms *Holly Grant*, Solicitor, Tom Howard Legal, appeared with permission for the Second Respondent.

Legal Principles

[5] Granting an extension of time requires the Commission to be "satisfied" that there are "exceptional circumstances". The Full Bench of this Commission in *Nulty v Blue Star Group Pty Ltd* [2011] FWAFB 975 (**Nulty**), in relation to the term "exceptional circumstances", stated:

> "[13] In summary, the expression "exceptional circumstances" has its ordinary meaning and requires consideration of all the circumstances. To be exceptional, circumstances must be out of the ordinary course, or unusual, or special, or uncommon but need not be unique, or unprecedented, or very rare. Circumstances will not be exceptional if they are regularly, or routinely, or normally encountered. Exceptional circumstances can include a single exceptional matter, a combination of exceptional factors or a combination of ordinary factors which, although individually of no particular significance, when taken together are seen as exceptional. It is not correct to construe "exceptional circumstances" as being only some unexpected occurrence, although frequently it will be. Nor is it correct to construe the plural "circumstances" as if it were only a singular occurrence, even though it can be a one-off situation. The ordinary and natural meaning of "exceptional circumstances" includes a combination of factors which, when viewed together, may reasonably be seen as producing a situation which is out of the ordinary course, unusual, special or uncommon.
>
> [14] Mere ignorance of the statutory [21 day] time limit in s.366(1)(a) is not an exceptional circumstance..."
>
> [15] A finding that there are "exceptional circumstances", taking into account the matters specified in paragraphs 366(2)(a) to (e), is necessary before the discretion to extend time is enlivened. That is, even when "exceptional circumstances" are established, there remains a discretion to grant or refuse an extension of time. That discretion should be exercised having regard to all the circumstances including, in particular, the matters specified in paragraphs 366(2)(a) to (e) and will come down to a consideration of whether, given the exceptional circumstances found, it is fair and equitable that time should be extended."

[6] The matters the Commission needs to take into account in reaching a state of satisfaction as to the existence of exceptional circumstances are set out under s.366(2) of the Act, which reads:

> **366 Time for application**
>
> … (2) The FWC may allow a further period if the FWC is satisfied that there are exceptional circumstances, taking into account:
>
> (a) the reason for the delay; and
> (b) any action taken by the person to dispute the dismissal; and
> (c) prejudice to the employer (including prejudice caused by the delay); and
> (d) the merits of the application; and
> (e) fairness as between the person and other persons in a like position.

[7] Each of the matters under s.366(2) of the Act need to be considered individually, and in combination, prior to forming an ultimate view as to the existence or non-existence of exceptional circumstances.[9]

[8] In *Mohammed Ayub v NSW Trains*,[10] a Full Bench of this Commission described "exceptional circumstances" (in the context of an out of time application) as being a "very high bar" and "strictly limited". The onus is upon an Applicant (i.e. employee) to convince the Commission that exceptional circumstances exist, and that the Commission should thereafter exercise its discretion to extend time for the filing of an out of time application.[11]

[9] It is well settled that the statutory words "have regard to" or "take into account" (as used in s.366(2) of the Act) require the Commission to give a matter(s) weight as a fundamental element in the decision-making process. However, as Kitto J noted in *Rathborne v Abel:*[12]

> "Finally, to require that regard be had to a particular matter in making a discretionary judgment is not to require that that matter shall be allowed an actual influence upon the ultimate result. The matter is to be considered for such bearing as it may have upon the question to be decided, and it is to be allowed such weight (if any) as the tribunal thinks it ought to be given; but if the tribunal thinks it ought to have no weight, then no weight is required to be given to it: cf. *Beresford v Ward* [1961] VR 632, at 634."

Reasons for delay[13]

[10] On the criteria of reason for delay, I adopt the following principles set out by Deputy President Easton in *Bianca Mamo v ICLED Australia Pty Limited T/A Signs National Group*:[14]

> "[11] The test invariably applied in such matters is whether an applicant has a 'credible or reasonable' explanation for the delay. The reasonableness of an applicant's explanation is not measured in a vacuum: it must be assessed firstly as part of an inquiry into whether exceptional circumstances exist, and then secondarily in deciding whether the Commission should exercise its discretion to grant the extension.

> [12] Recognising that the reason for delay is only one of several factors to be considered, it is not essential that an applicant provide a credible or reasonable explanation for the delay. That said, if an applicant does not have a credible explanation the Commission is generally less likely to find that exceptional circumstances exist (at least exceptional circumstances that support an extension of time).
>
> [13] A good, credible or even reasonable explanation for delay might ultimately count for nought if the Commission is not satisfied that exceptional circumstances exist. Indeed, many applicants with good explanations for delay do not receive an extension of time because they cannot firstly establish that there are exceptional circumstances."

[11] Reasons for delay are not in and of themselves required to be exceptional. They are just one of the factors that must be weighed in assessing whether, overall, there are exceptional circumstances.[15] An Applicant need not provide reasons for the entire period of a delay. Depending upon all the circumstances, an extension of time may be granted where the Applicant has not provided any reason for any part of the delay,[16] but this would be most unusual. The focus is upon the period of delay following the expiry of the 21-day period, albeit circumstances arising prior to the delay may be relevant.[17]

[12] The Applicant's reasons for delay are summarised as follows:

a) he is a litigant in person, with no legal knowledge or training, and has confronted jurisdictional complexity;

b) there is confusion around the wording of s.365 of the Act by reference to the words "may apply". This confusion led the Applicant to believe that he could commence proceedings in the Federal Court of Australia without first filing a s.365 application, attending upon a conciliation conference, and obtaining a certificate under s.368 of the Act.[18] These are genuine misunderstandings, not deliberate, and only constitute procedural errors.

[13] In finding that the Applicant's reasons for delay do not weigh in favour of a finding as to the existence of exceptional circumstances in this case, I note that the Applicant:

a) filed proceedings in the Federal Court of Australia on 8 April 2025 (**FCA Proceedings**).[19] He subsequently amended his originating application on 21 May 2025, adding in a dismissal in contravention of Part 3-1 of the Act (**Dismissal Contravention**);[20]

b) was invited by the First Respondent to discontinue the FCA Proceedings, on 12 June 2025, and 23 June 2025, on the basis that he had not first obtained a s.368 certificate from the Commission (noting s.370 of the Act);[21]

c) was advised by Justice Halley of the Federal Court of Australia, in no uncertain terms, on 9 October 2025, that he needed to file a s.365 application with the Commission, and obtain a s.368 certificate from the Commission, prior to advancing

the Dismissal Contravention;[22]

d) attended upon a two-day hearing before Justice Halley on 9 and 10 October 2025 in respect of the FCA Proceedings. Justice Halley published his decision (in respect of this two-day hearing) on 3 November 2025.[23] The FCA Proceedings are on-going, with a further case management hearing before Justice Halley set down for 6 February 2026. The Applicant has also filed an appeal against Justice Halley's decision of 3 November 2025.[24]

[14] The reasons for delay put forward by the Applicant in this case are not reasonable and/or credible explanations in the sense that they do not adequately justify his substantial delay in filing of his Application,[25] having regard to his conduct set out in paragraph [13] above. This is not a case where the Applicant, upon being notified of a defect in his case, has moved to immediately correct same by filing a s.365 application with the Commission. The evidence before me is that the Applicant made a choice to continue on with the FCA Proceedings in respect of the Dismissal Contravention. The Applicant's conduct (reasons for delay) cannot weigh in favour of a finding as to the existence of exceptional circumstances because he made a choice (election) not to file a s.365 application with the Commission (prior to 4 November 2025), despite being on notice of the need to do so as early as 12 June 2025.[26]

Action taken by the Applicant to dispute the dismissal[27]

[15] There is evidence before me that the Applicant took various steps to dispute his dismissal. I treat this criterion as a neutral consideration, that weighs neither for, nor against, any finding as to the existence of exceptional circumstances.

Prejudice[28]

[16] I concur with the submissions of the First and Second Respondents on the issue of prejudice.[29] I consider that the lengthy delay will cause prejudice to both Respondents in having to prepare their cases (including evidence) if an extension of time is granted in this case. That said, I treat the issue of prejudice in this case as a neutral consideration.

Merits[30]

[17] In *Kornicki v Telstra-Network Technology Group*,[31] a Full Bench of the Australian Industrial Relations Commission considered the principles applicable to the merits of a case where an extension of time is being considered.[32] In this regard, the Full Bench (relevantly) said:

> "If the application has no merit, then it would not be unfair to refuse to extend the time period for lodgement. However, we wish to emphasise that a consideration of the merits of the substantive application for relief in the context of an extension of time application does not require a detailed analysis of the substantive merits. It would be sufficient for the applicant to establish that the substantive application was not without merit."

[18] Whilst substantive evidence as to the merits of the Applicant's case, and the Respondents' defences, is not before me, there are a voluminous amount of materials that have been filed.[33] I also have the benefit of the decision of Justice Halley of the Federal Court.[34]

[19] The Applicant relevantly presses claims against the First Respondent under ss.340 and 352 of the Act.[35]

[20] Having regard to the submissions of the Second Respondent,[36] by reference to the decision of Justice Halley,[37] I find that the Applicant's case is not only very weak, but wholly without merit, as it concerns the Second Respondent.

[21] The First Respondent, despite raising various defensive arguments, is content for the merits of the Application to be treated as neutral consideration.[38] I also reach this conclusion.

[22] All in all, I treat merits of the Application in this case as a neutral consideration.

Fairness as between the Applicant and other persons in a similar position[39]

[23] I am required to consider fairness as between the Applicant and other persons in a similar position. This requires me to take into account matters where there have been the same, or similar, characteristics and/or circumstances.[40] No submissions were provided as to this criterion by the parties. Nor am I aware of any case with the same or similar circumstances to this case. I treat this criterion as a neutral consideration.

Conclusion

[24] I have taken into account and considered each of the criteria set out under s.366(2)(a)-(e) of the Act. In my view, none of these criteria, considered individually, point towards there being any exceptional circumstances enlivening my power to grant an extension of time. I am equally not satisfied that there are exceptional circumstances considering the requisite criteria on a collective basis (i.e. one criterion weigh against a finding as to the existence of exceptional circumstances, and the remaining four criteria are neutral).[41]

[25] On the basis of the reasons set out in this decision, and having regard to the evidence and the submissions of the parties, I am not satisfied as to the existence of "exceptional circumstances" in this case as that term has been described or defined in *Nulty*.[42] In view of this finding, there is no power at law for me to exercise my discretion to grant an extension of time. I therefore decline the Applicant's request for an extension of time. The Application filed by the Applicant on 4 November 2025 is dismissed, and an Order to that effect will be issued contemporaneously with this decision.

DEPUTY PRESIDENT

Appearances:

The Applicant, Mr *Fahad Ullah*, appeared for himself.

Mr *Sebastian McIntosh*, of Counsel, instructed by Mr *Steven Penning*, Partner, and Ms *Sofia Bryan*, Solicitor, HWL Ebsworth Lawyers, appeared with permission for the First Respondent (OM Security Pty Ltd).

Mr *Daniel Delimihalis*, of Counsel, instructed by Ms *Holly Grant*, Solicitor, Tom Howard Legal, appeared with permission for the Second Respondent (Meriton Properties Pty Ltd).

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[1] Form F8, at Item 1.3, Digital Hearing Book/ Court Book (**CB**), pp.10-11.
[2] CB, p.96.
[3] CB, p.12. See also *Ullah v OM Security Pty Ltd & Ors* [2025] FCA 1347, at [35]-[41], CB, p.65.
[4] By reference to the Applicant's state of mind or belief (see footnote 7 below).
[5] The 21-days post the Applicant's dismissal date was Saturday, 25 January 2025, and there was a public holiday on Monday, 27 January 2025. Even if one applies 28 January 2025 as the end of the 21 day timeframe, it makes no material difference to the period of delay.
[6] The 21-days post this dismissal date was Monday, 27 January 2025, which was a public holiday. Even if one applies 28 January 2025 as the end of the 21 day timeframe, it makes no material difference to the period of delay.
[7] The date of 21 March 2025 may go to a 'belief' by the Applicant as to this date being his date of dismissal, or an assertion by him that he only became aware of his dismissal on that date (per closing oral submissions of Mr McIntosh).
[8] CB, pp.3-4.
[9] *Stogiannidis v Victorian Frozen Foods Distributors Pty Ltd* [2018] FWCFB 901.
[10] [2016] FWCFB 5500.
[11] *McGuire v Sandfire Resources NL* [2020] FWCFB 6492, at [9] and [32]; *Stogiannidis v Victorian Frozen Foods Distributors Pty Ltd* [2018] FWCFB 901.
[12] (1964) 38 ALJR 293, at 301.
[13] Section 366(2)(a) of the *Fair Work Act 2009* (**Act**).
[14] *Bianca Mamo v ICLED Australia Pty Limited T/A Signs National Group* [2021] FWC 3903.
[15] *Stogiannidis v Victorian Frozen Foods Distributors Pty Ltd* [2018] FWCFB 901, at [39]-[40].
[16] Ibid, at [40].
[17] *Shaw v ANZ Bank* [2015] FWCFB 287, at [12].
[18] Ullah Statement, 11 December 2025, CB, pp.151-156, and Form F8, Item 1.4, CB, p.11.
[19] Accepted for filing on 16 April 2025, Matter Number: NSD571/2025. CB, pp.175-184.
[20] CB, pp.185-206. See especially at CB, p.203, paragraph [67] of the Amended Application.
[21] CB, pp.421-426. See also, First Respondent's submissions to Federal Court, 23 June 2025, at [30]-[32], CB, pp.840-841 (this was a further notice to the Applicant about ss.368 and 370 of the Act (i.e. as at 23 June 2025)). The Applicant says that he did not read the whole of these submissions. But that was the Applicant's choice not to read a court document that he had been duly served with. Not reading a document provided to you in a court case is not an explanation, let alone a credible explanation, for delay.
[22] Federal Court Transcript, 9 October 2025, P43 L20 – P44 L5, CB, pp.893-894. See also Federal Court Transcript, 10 October 2025, P180 L30 – L31, CB, p.1030.
[23] *Ullah v OM Security Pty Ltd & Ors* [2025] FCA 1347, CB, pp.58-80.
[24] Statement of Sofia Rose Bryan, 8 January 2026, CB, pp.169-173. See also Notice of Appeal, CB, pp.81-87.
[25] Note also undisputed background factual findings made by Justice Halley in *Ullah v OM Security Pty Ltd & Ors* [2025] FCA 1347, at [11]-[41], CB, pp.62-65.

[26] See paragraph [13(b)] of this decision.
[27] Section 366(2)(b) of the Act.
[28] Section 366(2)(c) of the Act.
[29] Meriton Submissions (7 January 2026), at [21]-[25], CB, pp.160-161. OM Security Submissions (8 January 2026), at [23], CB, pp.166-167.
[30] Section 366(2)(d) of the Act.
[31] *Kornicki v Telstra-Network Technology Group Print* PR3168, 22 July 1997 (Ross VP, Watson SDP, Gay C).
[32] Albeit under s.170CE(8) of the (now repealed) *Workplace Relations Act 1996* (Cth).
[33] The Digital Hearing Book alone constitutes some 1099 pages. The Applicant also relied upon his Chronology of 77 pages.
[34] *Ullah v OM Security Pty Ltd & Ors* [2025] FCA 1347, CB, pp.58-80.
[35] CB, pp. 9-12, and 149.
[36] Meriton Submissions (7 January 2026), at [31]-[33], CB, p.161.
[37] *Ullah v OM Security Pty Ltd & Ors* [2025] FCA 1347, at [56], and [63]-[68], [77]-[87], CB, pp.69-74.
[38] OM Security Submissions (8 January 2026), at [24]-[29], CB, p.167. Note also the decision in *Kyvelos v Champion Socks Pty Ltd* (1995) 67 IR 298, at 299-200.
[39] Section 366(2)(e) of the Act.
[40] *Pitrau v Barrick Mining Services Pty Ltd* [2012] FWA 8363; (2012) 255 IR 144, per McCarthy DP, at 151-152, [37]. See also, *Robert Csontos v Kewarra Lifestyles Pty Ltd* [2024] FWC 1687 at [30] citing *Perry v Rio Tinto Shipping Pty Ltd* [2016] FWCFB 6963 at [41].
[41] See *Stogiannidis v Victorian Frozen Food Distributors Pty Ltd T/A Richmond Oysters* [2018] FWCFB 901.
[42] [2011] FWAFB 975, at [13]-[14].