



DECISION

Fair Work Act 2009
s 394—Unfair dismissal

Alyeesha Hall

v

Matic Transport Pty Ltd
(U2025/18818)

DEPUTY PRESIDENT BEAUMONT

PERTH, 3 FEBRUARY 2026

Unfair dismissal application made in the WAIRC; unfair dismissal application filed late; extension of time granted – Applicant blameless regarding the late application

1 The issue and outcome

[1] On 24 November 2025, Alyeesha Hall (the **Applicant**) applied for an unfair dismissal remedy having been dismissed by Matic Transport Pty Ltd (the **Respondent**) on 20 August 2025. The Respondent objected to the unfair dismissal application on the basis that it was made outside of the statutory time limit prescribed by s 394(2)(a) of the *Fair Work Act 2009* (Cth) (the **Act**). This decision deals with the out of time objection.

[2] Section 396 of the Act provides that the Fair Work Commission (the **Commission**) must decide four preliminary matters before considering the merits of an unfair dismissal application. One of those matters is whether the application was made within 21 days after the dismissal took effect. The other three matters are not relevant for present purposes.

[3] Whilst s 394(2)(a) of the Act requires the application to have been made within 21 days of the dismissal taking effect, s 394(2)(b) permits an application to be made within a further period. The Commission may extend the period under s 394(2) if satisfied that there are exceptional circumstances that warrant doing so. To determine whether there are exceptional circumstances, the factors in s 394(3)(a)–(f) are taken into account.

[4] The application was made 75 days outside of the statutory period. There was no disagreement about the date of dismissal and having directed the Respondent to produce documents that I considered relevant to the determination of the matter and having considered the views of the parties, I considered that the application could be dealt with on the papers.

[5] Having considered the factors in s 394(3) of the Act, I have found that the circumstances are exceptional, and I consider it fair and equitable that the time limit for lodgement of the application should be extended. I therefore grant an extension of time under s 394(2)(b) of the Act. The matter will now be programmed in respect of the merits and remedy.

2 Background

[6] The broader context and events leading to the late filing of the Applicant's unfair dismissal application have been drawn from the parties' materials.

[7] The Respondent initially employed the Applicant as a PUD Driver commencing on 23 November 2022. The employment agreement between the Applicant and the Respondent set out, in part, the following:

This agreement dated 18/11/2022 is between the Matic Transport Pty Ltd of 1 Wellard Street, Bibra Lake WA 6162 and Alyeesha Hall of

I am please to offer you fulltime employment in the position of PUD Driver with us at Matic Transport Pty Ltd Resources division on the terms and conditions set out in this agreement.

[8] By a further employment agreement dated 9 September 2024, the Respondent offered the Applicant the position of Operations Admin Support Officer. That employment agreement set out, in part, the following:

This agreement dated 09/09/2024 is between the Matic Transport Pty Ltd of 1 Wellard Street, Bibra Lake WA 6163 and Alyeesha Hall...

I am please to offer you fulltime employment in the position of Operations Admin Support Officer with us at Matic Transport Pty Ltd Resources Division on the terms and conditions set out in this agreement.

[9] As will be evident at this point, the employment agreement from 2022 and the subsequent agreement from 2024, both named 'Matic Transport Pty Ltd' as the employing entity.

[10] By letter of termination of 21 August 2025, the Respondent set out that a meeting had been held with the Applicant and Alistair Outen from the Transport Workers' Union of Australia (TWU) on 20 August 2025. In that meeting the Applicant's non-work-related injury was discussed, as was her six-month absence from work for the same, the Applicant's medical certificate dated 2 July 2025 and an updated medical certificate that was received by the Respondent on 12 August 2025. It was noted that 'Matic' had accommodated the Applicant's absence but that the medical advice provided indicated she would not be able to perform the inherent requirements of her role within the reasonably foreseeable future. The Applicant was informed that her employment would end effective 20 August 2025.

[11] The Applicant gave the following evidence, which I have summarised as follows:

- a) following her dismissal, she spoke with the TWU about lodging an unfair dismissal application;
- b) over the next week or so she had several discussions with Luke Gibson (**Gibson**) an industrial officer of the TWU;
- c) Gibson asked the Applicant to provide copies of her contract and payslips for the period between 15 May 2025 and 22 August 2025 (which she did), and the Applicant provided a copy of her letter of termination;

- d) the Applicant was aware that she was employed by a company called ‘Matic Transport’ with an Australian Business Number (ABN) of 82 690 166 298, which, said that Applicant, was cited on her payslips and letter of termination;
- e) after speaking with Gibson, the TWU assisted the Applicant in preparing an unfair dismissal application which was lodged with the WAIRC (**WAIRC Application**);
- f) on 8 October 2025, the Respondent lodged its response to the WAIRC Application and where it stated ‘jurisdictional objection’ on the response form, the box had not been checked;
- g) on 6 November 2025, the Applicant attended a conciliation conference (presumably before the WAIRC) with a TWU legal officer as her representative. Present at the conference was the Respondent and its representative. The matter did not settle at the conciliation conference;
- h) on 12 November 2025, the Applicant received notification that the matter had been listed for a directions hearing on 19 November 2025;
- i) on 14 November 2025, the Respondent’s representative notified the Applicant (and presumably the TWU) that the Respondent was objecting to the WAIRC Application because it had been lodged in the wrong jurisdiction;
- j) the Applicant did not attend the directions hearing on 19 November 2025, but the Applicant is aware that the Respondent’s representative showed the TWU documents that proved the Respondent was a corporation;
- k) the TWU spent the next few days trying to get final confirmation (that the Respondent was a corporation), by way of obtaining legal documents about the Respondent’s identity; and
- l) on 24 November 2025, the WAIRC Application was discontinued and a new application was lodged with the Commission.

[12] Gibson similarly provided evidence in support of the Applicant’s case. Again, I have opted to summarise his evidence, which sets out:

- a) Gibson provides support to the TWU’s legal officers, which can include conducting research, interpreting and analysing legislation and industrial agreements, and preparing application forms on behalf of members;
- b) in addition, his duties extend to liaising with members about workplace issues, including disciplinary problems, dismissal and underpayment of wages or entitlements;
- c) on 22 August 2025, a TWU organiser forwarded to the TWU industrial relations team a brief regarding the Applicant’s dismissal on 20 August 2025;
- d) during the week ending 28 August 2025, Gibson had several phone conversations with the Applicant in assisting her with lodging an unfair dismissal application;
- e) the Applicant provided Gibson with payslips and a copy of the employment agreement dated 9 September 2024;
- f) Gibson observed that the Applicant’s payslips listed the employer as ‘Matic Transport’ with an ABN of 82 690 166 298, which matched the information on the letter of termination;
- g) Gibson conducted a search on the Australian Business Register website and identified that the ABN belonged to an entity called ‘The Matic Family Trust’, which was a discretionary trading trust trading as ‘Matic Transport’;

- h) Gibson conducted a further search for an entity called 'Matic Transport Pty Ltd' as identified on the employment agreement, but the employment agreement did not include an ABN or Australian Company Number (ACN). He did however find another entity called 'Matic Transport Australia Pty Ltd' with an ABN of 47 636 882 392;
- i) due to the discrepancy between the business name on the two sets of documents, he contacted Jodi Hopkins (**Hopkins**), the Respondent's HR Manager by email, on 4 September 2025, and on 5 September 2025 received a response as follows:

Thank you for your email regarding Ms Alyeesha Hall's employment with Matic Transport. I can confirm that Ms Hall was employed by Matic Transport, operating under the ABN 82 690 166 298. This ABN is registered to The Matic Family Trust, which trades as Matic Transport, and is the correct entity associated with her employment.

- j) Gibson expressed that as he received confirmation from the Respondent that the correct entity was 'The Matic Family Trust', he completed a Form F2 based on his understanding that the WAIRC is the correct jurisdiction for matters involving family trusts in Western Australia;
- k) as an unfair dismissal application needs to be lodged in the WAIRC within 28 days of an employee's dismissal, the application was lodged within time, namely on the 22nd day after the Applicant was dismissed;
- l) on 1 October 2025, the TWU received confirmation that the matter had been listed for a conciliation conference on 6 November 2025;
- m) on 7 October 2025, the WAIRC wrote to the Respondent seeking an update about when the Form 2A – Employer Response would be lodged. This form was subsequently lodged on 8 October 2025;
- n) the Respondent did not raise any jurisdictional objection in its Employer Response and the matter proceeded to a conciliation conference on 6 November 2025;
- o) the Applicant attended the conference with a TWU legal officer and to the best of Gibson's understanding, the Respondent did not raise any issue with the application or any jurisdictional objection in the conference;
- p) no settlement arose from the conference, and the matter was listed for a directions hearing on 19 November 2025;
- q) on 14 November 2025, the Respondent's representative emailed the WAIRC and gave notice that it raised a jurisdictional objection on the basis it was a constitutional corporation and therefore the WAIRC was absent jurisdiction;
- r) Gibson is aware that at the directions hearing on 19 November 2025, the Respondent's lawyer showed the TWU legal officer in attendance some documents confirming the Respondent was a corporation;
- s) the TWU notified the WAIRC that it would discontinue the application lodged on 12 September 2025 after the Respondent's details were confirmed;
- t) on 20 November 2025, Gibson was directed to locate documents related to the Respondent's corporate identity, specifically to confirm the Respondent's ACN as none of the documents the TWU received had included it;
- u) Gibson did another search on the Australian Business Register (**ABR**) but was unable to locate the entity by name;
- v) on 21 November 2025, Gibson emailed the Respondent's lawyer and asked for confirmation about the Respondent's ACN, legal name and registered address;

- w) on 24 November 2025, the TWU received a response from the Respondent's lawyer which attached the 'ASIC historical company extract', a deed, and two copies of the Applicant's employment contract;
- x) Gibson stated that the ASIC company extract confirmed that the Respondent was an entity called Matic Transport Pty Ltd with an ACN of 131 766 062; and
- y) the TWU discontinued the application in the WAIRC and lodged a new application in the Commission on the same day (presumably 24 November 2025).

[13] For its part the Respondent observed that the Applicant had until 10 September 2025, to lodge her application with the Commission, having had her employment terminated on 20 August 2025.

[14] It further submitted that the Applicant had signed two employment contracts which specified that the employer was a corporate entity, hence she should have been aware of the same, and that the WAIRC Application was made outside of the 21-day period as provide in the Act.

[15] The Respondent pressed that the Applicant was informed a trust was the owner of the business, but neither the Applicant nor her representative enquired as to the identity of the trustee for the Matic Trust. According to the Respondent, the Matic Trust cannot enter into an agreement in its own right and can only do so through a trustee.

3 Extension of time

[16] As noted, for the Applicant's unfair dismissal application to now proceed, it is necessary for her to obtain an extension of time in which to make the application. Section 394(3) of the Act provides that the Commission may allow a further period for the application to be made if it is satisfied that there are exceptional circumstances, taking into account the following:

- (a) the reason for the delay; and
- (b) whether the person first became aware of the dismissal after it had taken effect; and
- (c) any action taken by the person to dispute the dismissal; and
- (d) prejudice to the employer (including prejudice caused by the delay); and
- (e) the merits of the application; and
- (f) fairness as between the person and other persons in a similar position.

[17] Under s 394(2)(b) of the Act, the Commission has the power to extend the time within which an application for unfair dismissal can be made, if it is satisfied that there are 'exceptional circumstances'. The meaning of this term was considered in *Nulty v Blue Star Group Pty Ltd*, where it was said that in order to be exceptional, the circumstances must be out of the ordinary course, or unusual, or special, or uncommon, although they need not be unique or unprecedented.¹ It is accepted that 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, can be considered exceptional.²

[18] In *Stogiannidis v Victorian Frozen Foods Distributors Pty Ltd*, clarification was provided by the Full Bench regarding the assessment of exceptional circumstances:

As we have mentioned, the assessment of whether exceptional circumstances exist requires a consideration of *all* the relevant circumstances. No *one* factor (such as the reason for the delay) need be found to be exceptional in order to enliven the discretion to extend time. This is so because even though no *one* factor may be exceptional, *in combination* with other factors the circumstances may be such as to be regarded as exceptional.³

3.1 Reason for the delay

[19] The Commission is directed to take into account the ‘reason for the delay’ under s 394(3)(a) of the Act. The relevant delay is the period between the expiry of the time limit imposed by s 394(2)(a) and the filing of the application and does not include the period from the date the dismissal took effect to the end of the 21-day period.⁴ The circumstances and events from the time of the dismissal, and perhaps earlier, may be considered but only for the purposes of determining or assessing the reason for the delay beyond the 21 day period and ultimately whether that reason supports a finding that there are exceptional circumstances.⁵ Circumstances or events that take place between the dismissal and the expiry of the 21 day time limit will be relevant to the extent that they cast light on the reasons for the delay in filing the application after the time limit had passed.⁶

[20] In respect of the reason for the delay, the Act does not specify what reasons for delay might tell in favour of granting an extension. However, decisions of the Commission have referred to a credible,⁷ acceptable,⁸ or reasonable⁹ explanation. The absence of any explanation for any part of the delay will usually weigh against an applicant in the assessment of whether there are exceptional circumstances, and a credible explanation for the entirety of the delay will usually weigh in the applicant’s favour, however, *all of the circumstances* must be considered.¹⁰

[21] In Western Australia, it does not appear to be an uncommon occurrence that applicants will, at times, lodge an unfair dismissal application in the WAIRC, only to later file one in the Commission.¹¹ In *Gelvin v Mandurah Lotteries House Inc.*, I outlined several of the decisions of this Commission that have considered this very circumstance of initially filing an unfair dismissal application in the incorrect jurisdiction. Those decisions warrant repeating - noting that the Commission has previously expressed that there is nothing exceptional about lodging an unfair dismissal application in the WAIRC when the application should have been lodged in the Commission.¹²

[22] In *Welthy v J Factor Holdings Pty Ltd*, it was said that ‘[i]t is not *unusual* for employees in Western Australia to confuse the WAIRC and Fair Work Commission’.¹³ While the Commission has observed that there is nothing unusual or exceptional about mistakenly lodging an unfair dismissal application in the WAIRC, this proposition should not be read as a *carte blanche* statement that all applications mistakenly lodged in the WAIRC are by their nature unexceptional or that the mistaken lodgement in an ‘equivalent’ state jurisdiction may not constitute a plausible reason for the delay or part thereof.

[23] In *Palmer v RCR Engineering Pty Ltd*, the applicant requested an extension of time primarily on the ground that he had wrongly lodged an application in the WAIRC.¹⁴ In arriving at his decision to allow an extension of time, Deputy President McCarthy considered that the applicant had taken action to contest his dismissal almost immediately but in the wrong jurisdiction and that was the primary reason for the delay¹⁵. Further, having lodged the

application in the WAIRC, the respondent whilst compliant with the timeframes within that jurisdiction for lodging a response, took some 20 days to notify of its jurisdictional objection to the WAIRC dealing with the application.¹⁶ The effect of this was that the respondent had lodged the jurisdictional objection in the WAIRC beyond the time allowed for the applicant to lodge an application in Fair Work Australia.¹⁷ The Deputy President observed that on becoming aware of the jurisdictional objection, the applicant lodged his application in Fair Work Australia within three days.¹⁸ Having considered the other factors, the Deputy President determined the circumstances to be exceptional.¹⁹

[24] In *Snyder v Helena College Council, Inc* (*'Snyder'*),²⁰ the applicant, Mr Snyder, had initially made an unfair dismissal application in the WAIRC. The Full Bench considered whether the Commissioner at first instance had fallen into error in the consideration of the delay period. The Full Bench outlined that the evidence indicated that Mr Snyder:

- was on notice regarding the Respondent's jurisdictional objection from at least 12 March 2018;
- was then in immediate contact with his lawyers;
- received advice from his lawyers that the *Educational Services (Teachers) Award 2010* was likely to apply to his employment, at 5.28pm on 13 March 2018;
- received a preliminary view from his lawyers that the [sic] neither the WA Agreement nor the WA State Award applied to his employment, at 5.43pm on 13 March 2018; and
- received advice from his lawyers on 14 March 2018 which variously stated:
 - "...Your former employer is incorporated and provides education services for fees. This means the legal argument that it is within the federal industrial relations system, rather than within the Western Australian industrial relations system, is strong and persuasive."
 - "Based on your instructions to us about your employment law matter, we advise that there is a strong legal argument that the Former Employer (the Respondent) is a national system employer and you are a national system employee, which means the FWC, rather than the WAIRC may be the appropriate tribunal for your dismissal dispute."
 - "On the other hand, the Helena College (Inc) Collective Agreement is registered with the WAIRC, supporting the legal argument that your employment is within the Western Australian industrial relations system and the WAIRC should have jurisdiction and power to determine your employment disputes."²¹

[25] The Full Bench further articulated that it did not agree with Mr Snyder's proposition that in spite of having received the Form 5 and legal advice from his lawyers, his explanation for the delay between 12 March and 22 March 2018 was acceptable on the basis of the Respondent's previous misrepresentation as to the applicable industrial instrument.²²

[26] The Full Bench found that the Mr Snyder was on notice from 12 March 2018, that the Respondent had raised a jurisdictional objection to the WAIRC application and from 14 March 2018, he had received advice from his lawyers (as outlined above). As to the respondent's agreement to proceed to the conciliation conference before the WAIRC on 22 March 2018, the Full Bench considered it was not a matter of great moment because ultimately the decision as to whether the Applicant either continued to pursue or withdraw the WAIRC application was a matter for him, not the Respondent.²³

[27] The Full Bench in *Snyder* concluded that the Commissioner reasonably concluded on the material before him that Mr Snyder was aware of the jurisdictional hurdle before him but chose to allow the WAIRC application to continue in the hope of reaching agreement with the respondent at the conciliation on 22 March 2018.²⁴ In these circumstances, the Full Bench was unpersuaded that the Commissioner erred in his conclusion that Mr Snyder had failed to provide an acceptable explanation for the delay from the time he received the Form F5 until 22 March 2018.²⁵

[28] In *King v Gourmet Beef Pty Ltd*, the applicant's employment ended on 8 December 2016; and on 9 December 2016, he filed an application in the WAIRC asserting that he was harshly, oppressively or unfairly dismissed by the respondent.²⁶ On 16 May 2017 that application was dismissed by the WAIRC for want of jurisdiction.²⁷ Regarding the reasons proffered for the delay, the applicant submitted he was unaware he was employed by a constitutional corporation and, as a consequence, filed an application for an unfair dismissal remedy in the wrong jurisdiction. Further, the applicant asserted that he was unaware that he could voluntarily withdraw his application from the WAIRC and maintained that he was of a strong understanding that his employer was an unincorporated entity.

[29] In his consideration of the reason for the delay, Deputy President Gostencnik, as he was then, was prepared to accept that the erroneous lodgement of the application in the WAIRC was understandable given the applicant was unrepresented and unfamiliar with the niceties of the legal fiction that is a corporation, and the quite complex divide between that which is covered by state industrial law in Western Australia and that which is covered by federal law.²⁸ The Deputy President observed that the Applicant had acted expeditiously in lodging the application after his resignation took effect and therefore, the Deputy President was prepared to accept that up until the respondent filed its response to the application in the WAIRC, there was nothing to alert the applicant to the fact he had filed the application in the incorrect jurisdiction.²⁹

[30] In respect to the response filed by the respondent, the Deputy President accepted that there was reasonable explanation for the delay notwithstanding that the response raised the jurisdictional objection to the application.³⁰ The Deputy President stated that the response (Notice of Answer) contained little more than an assertion and the applicant was not given any documents to support the respondent's objection.³¹ The Deputy President further stated that no document was produced to suggest that the company was the applicant's employer or that it was a trading corporation, and the response was expressed in legalese and difficult for an unrepresented person to comprehend.³²

[31] The Deputy President similarly considered that there was a plausible reason for the delay until the time that final documents were filed with the WAIRC regarding the jurisdictional objection.³³ Prior to that date, the Respondent had filed in the WAIRC and served on the applicant its written submissions and supporting documents. A hearing had been held, but the WAIRC required further documentation to be filed after the hearing.³⁴ As noted, as of the date of the lodgement of final documents, the Deputy President considered there was plausible reason for the delay to that point. However, after the lodgement of the final documents, the Deputy President considered that it should have been reasonably apparent to the applicant that there was a real risk that his application might have been lodged in the incorrect jurisdiction. The Deputy President expressed that at this stage, the applicant had possession of all necessary documents, which should have alerted the applicant to seek legal advice or other advice about

whether his application had been lodged in the correct jurisdiction.³⁵ As the applicant did not take that step, it was not accepted that the applicant had provided an acceptable explanation for the period between the lodgement of final documents and the date on which the application was made.³⁶

[32] It is relevant at this juncture to observe that the Applicant's evidence demonstrates that as of 9 September 2025, she had in her possession two employment agreements that identified her employer as Matic Transport Pty Ltd. One employment agreement was provided to the TWU, which again evinced that the employer was Matic Transport Pty Ltd. It would not be unreasonable to contemplate that a lawyer or industrial officer of a union would conduct a company search on the ASIC registers. If one did so, one might find after three seconds that 'Matic Transport Pty Ltd' is listed with an ACN of 131 766 062. Of course, after a rather convoluted expedition through the WAIRC, the Applicant and the TWU became aware of this point on 24 November 2025, after having been provided by the Respondent with the ASIC company extract which confirmed that the Respondent entity was 'Matic Transport Pty Ltd' with an ACN of 131 766 062'. This was some 75 days after the Applicant's unfair dismissal application was due to be filed.

[33] In my view, it was the confluence of the conduct of the Respondent, and to a lesser extent the TWU, that contributed to the period of the delay. However, the conduct of the Applicant must first be examined because there are a number of principles which apply to cases concerning representative error in the context of an application.³⁷

[34] In *McConnell v A & PM Fornataro*,³⁸ a Full Bench decision that considered an out of time application under s 365 of the Act, but which is relevant for present purposes, it was said by the majority:

Even if representational error was accepted, we consider that the application of the approach set out in *Clark v Ringwood Private Hospital* remains apposite. We have adopted that approach in so far as it was summarised by a Full Bench of the Australian Industrial Relations Commission in *Davidson v Aboriginal and Islander Child Care Agency* in the following terms:

- (i) Depending on the particular circumstances, representative error may be a sufficient reason to extend the time within which an application for relief is to be lodged.
- (ii) A distinction should be drawn between delay properly apportioned to an applicant's representative where the applicant is blameless and delay occasioned by the conduct of the applicant.
- (iii) The conduct of the applicant is a central consideration in deciding whether representative error provides an acceptable explanation for the delay in filing the application. For example it would generally not be unfair to refuse to accept an application which is some months out of time in circumstances where the applicant left the matter in the hands of their representative and took no steps to inquire as to the status of their claim. A different situation exists where an applicant gives clear instructions to their representative to lodge an application and the representative fails to carry out those instructions, through no fault of the applicant and despite the applicant's efforts to ensure that the claim is lodged.

(iv) Error by an applicant's representatives is only one of a number of factors to be considered in deciding whether or not an out of time application should be accepted.³⁹

[35] It is correct to say that, even when representative error is relied upon as an explanation for the delay, it is necessary to examine the conduct of the applicant to ascertain the reason for the delay. The conduct of the applicant will be relevant only to the extent that it contributed to or explains the delay.⁴⁰ As was explained by the Full Bench in *Clark v Ringwood Private Hospital*, 'a distinction should be drawn between the delay properly apportioned to an applicant's representative where the applicant is blameless and delay occasioned by the conduct of the applicant'.⁴¹

[36] I now turn to the conduct of the Applicant. Whilst the Applicant had in her possession two employment agreements that evinced the name of the Respondent, I appreciate that she similarly held payslips that referred to 'Matic Transport' with an ABN of 82 690 166 298, and that this may have led to some confusion on her behalf. In circumstances where the Applicant was supported by the TWU at the disciplinary meeting that gave rise to her dismissal, had promptly sought industrial and legal advice from the TWU following the termination of her employment, and, upon instruction from the TWU had promptly provided documents that it requested and doing so, provided instruction to lodge an unfair dismissal application, she was entitled to rely upon the TWU to act on her behalf. I therefore consider that she was blameless for the delay in lodgement of the application.⁴²

[37] To explain further, in the period after the dismissal (within the 21-day statutory time frame) and in the relevant delay period, the Applicant was being assisted by the TWU who was, at times, corresponding with the Respondent regarding the issue of the correct identity of the employing entity, and was also engaging with the WAIRC and the Respondent regarding the WAIRC Application.

[38] As I have observed, I do not consider it unreasonable to have expected the TWU to have conducted a search of the ASIC registers for the Respondent's name. I emphasise the 'TWU', with no criticism levelled toward Gibson, who strikes me as endeavouring to be diligent. When confronted with the information on the Applicant's payslip of Matic Transport (ABN 82 690 166 298) and having identified through reasonable enquiry on the ABR website that the ABN belonged to an entity called 'The Matic Family Trust', a discretionary trading trust trading as 'Matic Transport', the question which likely may have surfaced was what was the identity of the trustee of the trust and whether Matic Transport Pty Ltd was the trustee or otherwise the employer.

[39] Gibson did make the following enquiry which was reasonable in the circumstances for someone in his position:

I write on behalf of our member and former employee of Matic Transport, Alyeesha Hall. Ms Hall wishes to have a greater understanding of who she was employed with while she was working for Matic.

Her pay slips and termination letter show the 82 690 166 298 as the ABN Number for Matic Transport, which appears to be the ABN for "The Matic Family Trust," a Discretionary Trading Trust.

Her original contract of employment from 18 November 2022 states that she is employed by Matic Transport Pty Ltd. However, after searching the Australian Business Register, it appears that no such company exists. There is a similarly named company, Matic Transport Australia Pty Ltd, with the ABN of 47 636 882 392.

Can you please confirm which entity could most accurately be described as Ms Hall's employer at the time she was dismissed?

[40] The response of the Respondent, which I have set out below, was far from helpful in respect of clarifying the Respondent's identity:

Dr Mr Gibson

Thank you for your email regarding Ms Alyeesha Hall's employment with Matic Transport. I can confirm that Ms Hall was employed by Matic Transport, operating under the ABN 82 690 166 298. This ABN is registered to The Matic Family Trust, which trades as Matic Transport, and is the correct entity associated with her employment.

You can view the ABN details directly via the Australian Business Register at the following link: <https://abr.business.gov.au/ABN/View?id=82690166298>

Please let me know if you require any further clarification.

[41] Gibson received the abovementioned email from Hopkins on 5 September 2025, but it was not until approximately 12 September 2025 that he filed the WAIRC Application in the WAIRC. The delay in filing the WAIRC Application after having received the email dated 5 September 2025, appears to have been attributed to the statutory period in the WAIRC for unfair dismissal applications being some 28 days and therefore one presumes the TWU was in no rush to file it at that earlier date (in compliance with the Commission's timeframe).

[42] Having lodged the WAIRC Application on or around 12 September 2025, on 8 October 2025 the Respondent filed its WAIRC Response which identified at part 2 of the WAIRC Response that the Respondent did not have a jurisdictional objection. The WAIRC Response disclosed that at that time the Respondent was not legally represented.

[43] The matter proceeded to a conciliation conference before the WAIRC on 6 November 2025 and again the Respondent did not raise a jurisdictional objection. On 14 November 2025, the Respondent finally raised a jurisdictional objection, placing the Applicant and the TWU on notice that it disputed that the WAIRC had jurisdiction in circumstances. However, it took the TWU from 14 November 2025 to 24 November 2025 to satisfy itself through its enquiry with the Respondent's legal representative both at the directions hearing in the WAIRC on 19 November 2025 and later through correspondence sent to the Respondent's legal representative on 21 November 2025, that the Respondent was a national system employer.

[44] On 24 November 2025, when the response was received from the Respondent's legal representative, the TWU, on behalf of the Applicant, discontinued the WAIRC Application and made the unfair dismissal application in the Commission.

[45] At all material times during this period, the TWU had been providing industrial and legal advice to the Applicant. It is unrealistic and unreasonable to suggest that the Applicant

was preferably placed in comparison to the TWU to determine the legal status of the Respondent – that is, to determine for the purpose of making an unfair dismissal application whether the Respondent was a National System Employer. Furthermore, I find that the conduct of the Respondent contributed to the period of delay – after all the Respondent failed to appropriately inform the Applicant (through the TWU) as to the entity that employed her, then failed to make a jurisdictional objection when filing the WAIRC Response, then participated in a conciliation conference before the WAIRC – again purportedly failing to identify that there was a jurisdictional issue, and only raised the jurisdictional objection on 14 November 2025. Whilst the TWU could have acted with greater expedience after 14 November 2025 and could have taken the initial step as detailed at paragraph [32], the conduct of the Respondent warrants consideration in the circumstances, regarding the delay period between 5 September 2025 and 24 November 2025, noting that the unfair dismissal application was required to be filed by the Applicant in the Commission by 10 September 2025.

[46] In the circumstances of the present case, there is nothing more that the Applicant could reasonably have been expected to do to ensure her unfair dismissal application was filed within time. In respect of the period of the delay, I consider that the Applicant has provided a plausible reason for the delay period and this finding weighs toward a finding of exceptional circumstances.

3.2 Whether the person first became aware of the dismissal after it had taken effect

[47] It is not a disputed fact that the Applicant received notification of her dismissal on 20 August 2025, and the dismissal took effect that same day, despite the letter of termination being dated 21 August 2025. Whilst appreciative of the Applicant submissions that the Respondent did not provide the Applicant with notice of its intention to make allegations against her prior to the meeting on 20 August 2025 and that she was expecting to return to work, it remains that the Applicant had the full 21-day period to lodge her application for an unfair dismissal remedy and therefore, this is not a factor that weighs toward a finding of exceptional circumstances.

3.3 Action taken by the person to dispute the dismissal

[48] This consideration enquires as to whether the respondent was somehow forewarned of the application in the period between dismissal and the application. That is, if an applicant disputes a dismissal with her or his employer before lodging the application and after the dismissal takes effect, the effect of that dispute is to at least put the employer on notice that there is a controversy about the dismissal.⁴³ It has been said before, that if such circumstances arise, the fact that there was notice of a dispute about the dismissal prior to the making of the unfair dismissal application, may weigh in an applicant's favour, even though the application was lodged out of time.⁴⁴

[49] In all the circumstances, while I find that the Applicant took action to dispute the dismissal after it occurred by filing the WAIRC Application, that application was filed outside of the statutory period set by s 394(2) of the Act. In all the circumstances, I consider this factor is a neutral consideration.

3.4 Prejudice to the employer

[50] When considering the factor of prejudice to the employer, the Commission considers whether the delay has caused the employer to suffer prejudice and whether the purported prejudice would not have been suffered had the application been made within 21 days of the dismissal taking effect.

[51] In *GHD Pty Ltd v Black*, it was said that it is well accepted that a lengthy delay gives rise to a general presumption of prejudice.⁴⁵ In that case, the Full Bench held on appeal that a 168-day delay may impair the recollection or availability of witnesses and thereby give rise to a relevant prejudice.⁴⁶ The length of the delay in this matter is 75 days. I am therefore not content to adopt the general assumption that the delay period may impair the recollection and availability of witnesses in this case.

[52] Having considered the material before me, I consider that this factor to be neutral.

3.5 Merits of the application

[53] In *Telstra-Network Technology Group v Kornicki*,⁴⁷ the Full Bench of the Australian Industrial Relations Commission considered the principles applicable to the extension of time discretion under the former s 170CE(8) of the *Workplace Relations Act 1996* (Cth). In that case, the Full Bench said in respect to the merits of an application:

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.⁴⁸

[54] Evidence on the merits is rarely called at an extension of time hearing. There is evidently argument between the parties as to whether the Applicant was able or unable to meet the inherent requirements of her substantive position with the Respondent in circumstances where she had experienced a non-work related injury, had been absent from work for a notable period, and had, according to the Applicant, provided the Respondent with a ‘full clearance’ in the medical certificate dated 12 August 2025. The Respondent for its part submitted that it carefully considered all the medical evidence provided by the Applicant and her treating doctors of choice and the information provided by her at a meeting on 20 August 2025 and thereafter decided to terminate her employment based on her capacity to perform the role (or lack thereof).

[55] The Commission ‘should not embark on a detailed consideration of the substantive case’ for the purpose of determining whether to grant an extension of time to an applicant to lodge her or his application.⁴⁹ Clearly, in this case, the parties are apart as to whether the reason for dismissal was valid and whether procedural fairness was afforded. Should an extension of time be granted and the matter proceed, the merits of the application more generally would need to be scrutinised. This, of course, would include consideration of the circumstances of the dismissal. As such, the merits in this case are a neutral factor.

3.6 Fairness as between the person and other persons in a similar position

[56] The criterion of ‘fairness as between the person and other persons in a similar position’, was considered by Deputy President Gostencnik, as he then was, in *Morphett v Pearcedale Egg Farm*, where it was said:

[C]ases of this kind will generally turn on their own facts. However, this consideration is concerned with the importance of an application of consistent principles in cases of this kind, thus ensuring fairness as between the Applicant and other persons in a similar position, and that consideration may relate to matters currently before the Commission or matters which had been previously decided by the Commission.⁵⁰

[57] Whilst I have addressed previous decisions of the Commission, I do not consider that these cases weigh in favour of, or against, granting an extension of time. This particular case turns on its own facts and therefore this factor is neutral.

4 Conclusion

[58] The test of exceptional circumstances in s 394(3) of the Act is a stringent one.

[59] Based on the evidence before me, the Applicant has provided a satisfactory explanation for the period of the delay in making her unfair dismissal application. The remaining matters I need to consider are otherwise neutral, with one weighing against a finding of exceptional circumstances. However, having considered all materials, I find there are exceptional circumstances such that an extension of time should be granted, and that the exercise of discretion to grant a further period until 24 November 2025 is warranted, particularly when the reason for the delay is considered.



DEPUTY PRESIDENT

Matter determined on the papers

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¹ [\[2011\] FWA FB 975](#), [13].

² *Ibid.*

³ [\[2018\] FWC FB 901](#), [38] (*‘Stogiannidis’*) (emphasis in original).

⁴ *Shaw v Australia and New Zealand Banking Group Ltd* [\[2015\] FWC FB 287](#), [12] (*‘Shaw’*); *Long v Keolis Downer* [\[2018\] FWC FB 4109](#), [40] (*‘Long’*).

⁵ *Shaw* (n 4) [12].

⁶ *Jordan v Multiplex Australasia Pty Ltd* [\[2024\] FWC FB 440](#), [32] (*‘Jordan’*).

⁷ *Stogiannidis* (n 3) [39]; *Blake v Menzies Aviation (Ground Services) Pty Ltd* [\[2016\] FWC 1974](#), [9] (*‘Blake’*).

⁸ *Blake* (n 7) [9].

⁹ *Roberts v Greystanes Disability Services* [\[2018\] FWC 64](#), [16].

¹⁰ *Stogiannidis* (n 3) [39].

¹¹ cf: *Trudi Ridge v Morrgul Pty Ltd* [\[2024\] FWC 29](#); *Mr Kevin Jones v Mary Donald Nominees Pty Ltd As Trustee for the DJ Maccormick Family Trust* [\[2025\] FWC 2671](#); *Ms Linda Maureen Gelvin v Mandurah Lotteries House Inc.* [\[2025\] FWC 3125](#); *Ms Linda Maureen Gelvin v Mandurah Lotteries House Inc.* [\[2025\] FWC FB 286](#).

¹² *Robertson v Zeugma Electrical & Communication Services Pty Ltd* [\[2010\] FWA 4525](#), [12].

¹³ [\[2016\] FWC 1978](#), [15] (emphasis added).

¹⁴ *Palmer v RCR Engineering Pty Ltd* [\[2009\] FWA 1431](#), [2].

¹⁵ *Ibid* [8].

¹⁶ *Ibid* [9].

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid* [10]–[12].

²⁰ [\[2018\] FWC FB 4734](#).

²¹ *Ibid* [56].

²² *Ibid* [57].

²³ *Ibid* [60].

²⁴ *Ibid* [63].

²⁵ *Ibid.*

²⁶ [\[2017\] FWC 3866](#), [2] (*‘King’*).

²⁷ *Ibid*, citing 2017 WAIRC 00272.

²⁸ *King* (n 26) [37].

²⁹ *Ibid.*

³⁰ *Ibid* [38].

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid* [39].

³⁴ *Ibid.*

³⁵ *Ibid* [40]

³⁶ *Ibid* [42].

³⁷ See, eg, *Davidson v Aboriginal & Island Child Care Agency* (1998) 105 IR 1; *Robinson v Interstate Transport Pty Ltd* [\[2011\] FWA FB 2728](#) (*‘Robinson’*); *Qantas Ground Services Pty Ltd v Rogers* [\[2019\] FWC FB 2759](#); *Melios v Qantas Airways Ltd* [\[2019\] FWC 5029](#); *Burgess v General and Window Cleaning Pty Ltd* [\[2011\] FWA 2802](#); *Long* (n 4).

³⁸ [\[2011\] FWA FB 466](#).

³⁹ *Ibid* 65 [35].

⁴⁰ *Jordan* (n 6) [33].

⁴¹ *Clark v Ringwood Private Hospital* (1997) 74 IR 413, 419.

⁴² *Robinson* (n 37); *Jordan* (n 6).

⁴³ *Chumber v Laverton Cold Storage* [\[2024\] FWC 238](#), [20].

⁴⁴ *Ibid.*

⁴⁵ *GHD Pty Ltd v Black* [\[2023\] FWCFB 38](#), [51] (**'GHD'**), citing *Brisbane South Regional Health Authority v Taylor* (1996) 186 CLR 541, 556, and *Brodie-Hanns v MTV Publishing Ltd* (1995) 67 IR 298, 299-300.

⁴⁶ *GHD* (n 45) [51].

⁴⁷ (1997) 140 IR 1.

⁴⁸ *Ibid* 11.

⁴⁹ *Kyvelos v Champion Socks Pty Ltd* (Australian Industrial Relations Commission, Giudice J, Acton SDP and Commissioner Gay, 10 November 2000) [14]; *Collier v Saltwater Freshwater Arts Alliance Aboriginal Corporation* [\[2016\] FWC 2899](#), [37]–[38].

⁵⁰ [\[2015\] FWC 8885](#), [29].