



# DECISION

*Fair Work Act 2009*

s.394 - Application for unfair dismissal remedy

**Sakib Manzoor**

v

**Loan Base Pty Ltd**

(U2025/5931)

DEPUTY PRESIDENT SLEVIN

SYDNEY, 9 JANUARY 2026

*Application for an unfair dismissal remedy - Costs*

[1] This decision deals with an application by Loan Base Pty Ltd (**Loan Base**) under ss.400A and 611 of the *Fair Work Act 2009* (Cth) (**the Act**) for an order for costs against Mr Sakib Manzoor. Mr Manzoor commenced an application for an unfair dismissal remedy against Loan Base and later discontinued the application.

[2] The general rule in s.611(1) of the Act is that parties to proceedings before the Commission bear their own costs. A number of provisions in the Act depart from the general rule. Costs are sought here under s.611(2) on the basis that the unfair dismissal application was made without reasonable cause and it should have been reasonably apparent it had no reasonable prospect of success, and under s.400A on the basis that Mr Manzoor engaged in unreasonable acts or omissions causing Loan Base to incur costs.

[3] For the reasons that follow I find that the preconditions in ss.611 and 400A to depart from the rule that parties bear their own costs have not been made out. I further find that had they been made out I would not have exercised the discretion to make a costs order. I dismiss the application for costs.

## **Background**

[4] Mr Manzoor worked for Loan Base from October 2022 until his dismissal on 28 April 2025. At the time he was dismissed he was CEO of Loan Base and a director of the company. He was dismissed for serious misconduct. He was also removed as a director of the company. The reason for dismissal was performance related. The company's business is in the finance industry, ostensibly mortgage broking. The monthly commissions, the main form of revenue for the company, had dropped dramatically in the time that Mr Manzoor was CEO. There was also a high turnover of brokers working for the company and a reduction in the number of brokers. The company also raised an allegation of serious misconduct as Mr Manzoor was diverting Loan Base clients to another company which he owned, Secure Finance Pty Ltd.

[5] Mr Manzoor filed his unfair dismissal application on 14 May 2025. In his application he denied all allegations and claimed there were a number of procedural deficiencies in the way he was dismissed. In particular, he was not provided with a formal letter of termination from the role as CEO which set out the reasons for his dismissal from that role and so did not have an opportunity to respond to the reasons for dismissal. He accepted that he was given notice of termination as a director but complained that no separate notice was given of his termination as CEO. In his application he claimed that his removal from Loan Base was on the basis of unfounded allegations that lacked merit and were frivolous. He claimed that the board of directors of Loan Base were aware that there was a referral agreement between Loan Base and Secure Finance Pty Ltd. He also asserted that he had not been paid his entitlements on termination.

[6] In its Form F3 response to the application Loan Base relied on the notice given to Mr Manzoor terminating him as executive director which set out the reasons for his removal. Loan Base asserted that there was no question that Mr Manzoor was aware that his role of CEO, which was inextricably linked to the executive director role, was also being terminated. It referred to a lengthy meeting with Mr Manzoor on 23 April 2025 and a further meeting on 24 April 2025 where he was provided with the detail of the allegations of serious misconduct. Loan Base asserted that as a small business it complied with the Small Business Fair Dismissal Code, which permits dismissal without warning or notice for serious misconduct. It said that it was continuing discussions with Mr Manzoor about payment of his entitlements.

[7] The matter was not resolved at conciliation. Directions were issued for the filing of material and the matter was listed for hearing on 10 September 2025. The witness statements and other documents filed provided detail of the matters raised in the originating application and the response. There were factual contests about the performance issues, and the misconduct. The parties were not represented at the hearing. At the hearing witnesses were cross-examined and the case did not conclude within the day allocated. It was adjourned for the parties to provide closing submissions in writing. Mr Manzoor was advised that if he wished to file a notice of discontinuance prior to filing submissions he may do so. On 12 September 2025, Mr Manzoor discontinued the application.

[8] On 18 September 2025 Loan Base wrote to Mr Manzoor foreshadowing a costs application, indicating that it believed it had recoverable costs of \$126,000 and offered to settle the costs application if Mr Manzoor paid it \$50,000.

### **The Application**

[9] The first ground on which Loan Base seeks an order that Mr Manzoor pay its costs is that the application was made without reasonable cause and it should have been reasonably apparent it had no reasonable prospects of success for the purposes of s.611(2). It contends that his dismissal involved a clear case of serious misconduct and that the small business fair dismissal code allows for summary dismissal in the case of serious misconduct. It also contends that as Mr Manzoor was confronted before his dismissal about his misconduct, client diversion and competing business operations meant he was notified of the reasons and was given an opportunity to respond.

**[10]** The second ground for costs is that for the purposes of s.400A(1) Mr Manzoor engaged in unreasonable acts or omissions which caused Loan Base to incur costs. Loan Base contends that Mr Manzoor engaged in serious misconduct by diverting clients to his competing business and that he continued to pursue the unfair dismissal claim despite overwhelming evidence against him. Reference is made to the evidence and submissions filed in the proceedings in support of this contention. Loan Base also refers to its offer to settle the matter of \$50,000 which was made in writing prior to the hearing. The offer was rejected by Mr Manzoor. Loan Base seeks an order for Mr Manzoor to pay the costs of \$75,174.27 and the costs associated with the costs application.

### **Consideration**

**[11]** Section 611(1) of the Act establishes a general rule that parties in proceedings before the Commission must bear their own costs. There are a number of provisions in the Act which operate as exceptions to this general rule and allow costs to be awarded in specific circumstances. Section 611(2) and s400A(1) are two provisions which permit costs to be ordered.

**[12]** Those provisions read:

#### **611 Costs**

- (1) A person must bear the person's own costs in relation to a matter before the FWC.
- (2) However, the FWC may order a person (the first person) to bear some or all of the costs of another person in relation to an application to the FWC if:
  - (a) the FWC is satisfied that the first person made the application, or the first person responded to the application, vexatiously or without reasonable cause; or
  - (b) the FWC is satisfied that it should have been reasonably apparent to the first person that the first person's application, or the first person's response to the application, had no reasonable prospect of success.

Note: The FWC can also order costs under sections 376, 400A, 401 and 780.

- (3) A person to whom an order for costs applies must not contravene a term of the order.

#### **400A Costs orders against parties**

(1) The FWC may make an order for costs against a party to a matter arising under this Part (the first party) for costs incurred by the other party to the matter if the FWC is satisfied that the first party caused those costs to be incurred because of an unreasonable act or omission of the first party in connection with the conduct or continuation of the matter.

(2) The FWC may make an order under subsection (1) only if the other party to the matter has applied for it in accordance with section 402.

(3) This section does not limit the FWC's power to order costs under section 611.

[13] Loan Base has relied upon s.611(2)(a) arguing that Mr Manzoor's case was made without reasonable cause and under s.611(2)(b) on the basis that the Commission should be satisfied that Mr Manzoor's case had no reasonable prospects of success. It relied on s.400A on the basis that the Commission should be satisfied that Mr Manzoor caused it to incur costs through an unreasonable act or omission.

[14] The Full Bench of the Commission in *Keep v Performance Automobiles Pty Ltd* [\[2015\] FWCFB 1956](#) dealing with an application for a costs order under s.611 said this:

[16] The FWC's power to order that a person bear some or all of the costs of another person in relation to an application is only enlivened if the FWC is satisfied as to the matters set out in either s.611(2)(a) or s.611(2)(b).

[17] The proper construction of s.611(2)(a) was recently considered by a Full Bench in *Church v Eastern Health t/as Easter Health Great Health and Wellbeing* (Church). Church is authority for the following propositions:

(i) The power to order costs pursuant to s.611(2) should be exercised with caution and only in a clear case.

(ii) A party cannot be said to have made an application 'without reasonable cause' within the meaning of s.611(2)(a), simply because his or her argument proves unsuccessful.

(iii) One way of testing whether a proceeding is instituted 'without reasonable cause' is to ask whether upon the facts known to the applicant at the time of instituting the proceeding, there was no substantial prospect of success.

(iv) The test imposed by the expression 'without reasonable cause' is similar to that adopted for summary judgment, that is, 'so obviously untenable that it cannot possibly succeed', 'manifestly groundless' or 'discloses a case which the Court is satisfied cannot succeed'.

[18] As to s.611(2)(b), the FWC may make a costs order against a person if satisfied that ‘it should have been reasonably apparent’ to that person that their application had ‘no reasonable prospect of success’. The expression ‘should have been reasonably apparent’ in s.611(2)(b) imports an objective test, directed to a belief formed on an objective basis as opposed to the applicant’s subjective belief.

[19] There is Full Bench authority for the proposition that the Commission should exercise caution before arriving at the conclusion that an application had ‘no reasonable prospects of success’. In *Deane v Paper Australia Pty Ltd* a Full Bench made the following observation about this expression in the context of enlivening a power to award costs under s.170CJ(1) of the *Workplace Relations Act 1996*;

“unless upon the facts apparent to the applicant at the time of instituting the [application], the proceeding in question was manifestly untenable or groundless, the relevant requirement in s.170CJ(1) is not fulfilled and the discretion to make an order for costs is not available”.

[15] Applying the approach of the Full Bench I am not satisfied, for the purposes of s.611 that Mr Manzoor’s application was made without reasonable cause nor that Mr Manzoor’s case had no reasonable prospects of success. Mr Manzoor’s case was that he was not guilty of serious misconduct. Loan Base was aware of the declining revenue in the business before the dismissal and took no steps to address that decline in a manner that led him to believe that the underperformance would lead to his dismissal. He also contended that Loan Base knew that he was referring clients to Secure Finance and that there was a referral agreement in place. He led evidence to that effect, which was disputed. I was not called upon to determine that dispute. I am satisfied however that the making of the argument by Mr Manzoor given his belief that the company was aware both of the failing performance and a referral agreement did not make his case obviously untenable or manifestly groundless.

[16] Loan Base relies on the following conduct by Mr Manzoor for the purposes of s.400A:

- (a) Filing an unfair dismissal application despite documentary evidence of serious misconduct and lack of reasonable prospects of success.
- (b) Continuing proceedings even after being confronted with evidence of misconduct during a disciplinary meeting and after the Fair Work Commission's recommendation to withdraw the application.
- (c) Rejecting the settlement offer of \$50,000, which led to further unnecessary costs.

[17] The Full Bench of the Commission in *Gugiatti v SolarisCare Foundation Ltd* [\[2016\] FWCFB 2478](#) said at [61] that:

...s.400A is concerned with unreasonable acts or omissions in connection with the “conduct or continuation” of a matter already instituted, not with whether it was reasonable to have instituted a matter in the first place.

[and]

Section 400A(1) establishes two pre-conditions for the making of an order for costs under the subsection (in addition to the requirement in s.400A(2)). The first is that the Commission must be satisfied that a party engaged in an unreasonable act or omission in relation to the conduct or continuation of a matter. The second is that such act or omission caused the other party to the matter to incur costs. Once these preconditions are satisfied, a discretionary power to order the payment of such costs is enlivened.

**[18]** In *Livingstones Australia v ICF (Australia) Pty Ltd T/A IC Frith & Associates* [\[2014\] FWCFB 1276](#) the Full Bench dealt with the same test of unreasonable act or omission in s.400A that appears in s.401 of the Act and said at [94] and referred to a decision of the High Court in *Re Minister for Immigration and Ethnic Affairs; ex parte Lai Qin* [1997] HCA 6; 186 CLR 622 where McHugh J described the exercise of the discretion to award costs where a case has not proceeded to trial as follows:

Moreover, in some cases a judge may feel confident that, although both parties have acted reasonably, one party was almost certain to have succeeded if the matter had been fully tried. This is perhaps the best explanation of the unreported decision of Pincus J in *The South East Queensland Electricity Board v Australian Telecommunications Commission* where his Honour ordered the respondent to pay 80 per cent of the applicant's taxed costs even though his Honour found that both parties had acted reasonably in respect of the litigation. But such cases are likely to be rare.

If it appears that both parties have acted reasonably in commencing and defending the proceedings and the conduct of the parties continued to be reasonable until the litigation was settled or its further prosecution became futile, the proper exercise of the cost discretion will usually mean that the court will make no order as to the cost of the proceedings. This approach has been adopted in a large number of cases.

**[19]** Applying these cases to the current application, Loan Base's first ground that Mr Manzoor filed an unfair dismissal application despite documentary evidence of serious misconduct and lack of reasonable prospects of success must be rejected. Section 400A does not go to whether it was reasonable to have instituted a matter in the first place. It requires a finding of unreasonable acts or omissions in connection with the "conduct or continuation" of a matter already instituted. Loan Base seeks a finding of the former and so falls outside the purview of s.400A.

**[20]** Loan Base's second ground that Mr Manzoor continued the proceedings even after being confronted with evidence of misconduct during a disciplinary meeting and after the Fair Work Commission's recommendation to withdraw the application overstates the leave given at the conclusion of proceedings on 10 September 2025 for Mr Manzoor to discontinue the proceedings prior to final submissions. It also ignores the fact that Mr Manzoor actually discontinued the proceedings after the leave was issued. I take the reference to the disciplinary meeting as the meeting on 23 April 2025 in which Mr Manzoor was confronted with allegations of misconduct. There was contest in the evidence filed in the case and in the oral testimony about the meeting. Other material filed would have needed to be considered had the matter proceeded to decision. That material was not ultimately considered given Mr Manzoor's discontinuance. I am not satisfied that Mr Manzoor pressing his case to hearing in those

circumstances amounted to an unreasonable act or omission for the purposes of s.400A and I reject the ground.

[21] Loan Base's third ground that Mr Manzoor rejected the settlement offer that he pay Loan Base \$50,000 in costs, which it says led to further unnecessary costs in it having to proceed with a costs application. This ground is also rejected as the costs application has not succeeded and therefore Mr Manzoor cannot be said to have unreasonable acted by declining to pay the \$50,000 to Loan Base on account of costs.

### **Conclusion**

[22] I find that Loan Base has not made out the preconditions in ss.611(2) or 400A to enliven the discretion to award costs. Had I been satisfied that any of those preconditions had been met I would not have exercised the discretion. My assessment of the material filed and the witness evidence given during the proceedings was that the dispute between Mr Manzoor and Loan Base about the way Mr Manzoor conducted the business and the reasons for Loan Base removing him from the company was not a straightforward matter. It involved fault on both sides. Mr Manzoor clearly performed poorly in the role. Loan Base for its part tolerated the decline in business under Mr Manzoor's leadership for many months prior to acting to remove him. The dispute over the referral of Loan Base business to an entity owned by Mr Manzoor turned on whether Loan Base sanctioned the practice or had knowledge of it. The evidence on this topic was in large part in favour of Loan Base, but it was equivocal. It seems inevitable that the parties would part ways. Whether the manner in which it occurred was fair was a question to be determined and while Loan Base appeared to be justified in ending the relationship a question arose as to the manner in which it did so was fair. Given that context I would not have been inclined to exercise the discretion to award costs to Loan Base even if the preconditions for doing so were met.

[23] The application for costs is dismissed.



DEPUTY PRESIDENT

Printed by authority of the Commonwealth Government Printer

<PR795580>