



# DECISION

*Fair Work Act 2009*

s.394 - Application for unfair dismissal remedy

**Adam Eales**

v

**RB Enterprises Pty Ltd**

(U2025/13952)

COMMISSIONER REDFORD

MELBOURNE, 12 JANUARY 2026

*Application for an unfair dismissal remedy*

[1] Mr Adam Eales has made an application to the Fair Work Commission under s 394 of the *Fair Work Act 2009* (Cth) (**the Act**) for an order granting a remedy, alleging he was unfairly dismissed by RB Enterprises Pty Ltd (**RB Enterprises**).

[2] RB enterprises objected to the application on the basis that it said Mr Eales, a casual employee, had not met the minimum employment period when he was dismissed. This is because, in RB Enterprises' submission, Mr Eales was never a "regular casual employee" and did not have had a reasonable expectation of continuing employment on a regular and systematic basis<sup>1</sup>.

[3] For the reasons set out in [\[2025\] FWC 3346](#), I have dismissed this objection. I also consider there appears to be no basis upon which it can be said that Mr Eales is not a person protected from unfair dismissal within the meaning of s 382 of the Act. The application was made within the period required by s 394(2) of the Act, and it is not claimed the dismissal occurred as a result of a genuine redundancy. RB Enterprises is not a small business within the meaning of s 23 of the Act<sup>2</sup>.

[4] After the objection was dismissed, I listed the matter for further hearing which occurred on 4 December 2025. Mr Eales appeared for himself at the hearing and Mr Bressan appeared along with Mr Khatri for RB Enterprises. The hearing was conducted by way of determinative conference. Prior to the hearing, both parties were afforded the opportunity to file material in addition to that which they had already filed in the matter, and they did so. I have had regard to all of the material filed by the parties in this matter, even if not specifically referred to in these reasons for decision.

**Background**

[5] Mr Eales was employed by RB Enterprises on about 24 October 2023. He was employed as a Guest Service Agent at the Airport Tourist Village Melbourne (ATVM) which is a hotel accommodation facility located near the Tullamarine Airport in Melbourne. He was employed on a casual basis providing front office and overnight support.

[6] Over the past year or so, RB Enterprises has sought to transition the operation of the ATVM from a traditional caravan park to accommodation that operates more like a hotel or motel<sup>3</sup>. On 20 June 2025, Mr Khatri was employed as General Manager across two parks operated by RB Enterprises, including ATVM, where he commenced working on 21 July 2025<sup>4</sup>.

[7] When he was onboarded, Mr Khatri recommended to RB Enterprises' Director, Mr Bressan, that a Front Office Supervisor be hired, and said he knew someone suitable for the role. Ms Amarasinghe was hired and commenced working at ATVM on 4 August 2025<sup>5</sup>.

[8] As explained in [\[2025\] FWC 3346](#), Mr Eales had, since the commencement of his employment in November 2023, worked at ATVM almost every fortnight, in the same or similar duties, including for a large portion of the period performing regular overnight work. His hours were not uniform, but he worked constantly over nearly a two-year period.

[9] On Friday 15 August 2025, Mr Eales approached Mr Khatri at work and asked him to publish the roster for the coming week, commencing 18 August 2025. According to Mr Eales, ordinarily, a roster was displayed on a noticeboard two weeks in advance, but this had not occurred. Mr Eales said Mr Khatri said in reply "OK".

[10] Later, on Friday 15 August 2025, after Mr Eales had clocked off for the day, he again asked Mr Khatri whether he was working the following Monday 18 August 2025, because the roster still had not been issued. Mr Khatri said, "due to budget, there will be no more hours for you for the next few weeks". Mr Eales said he asked Mr Khatri whether the newly hired front office person, Ms Amarasinghe, would be sharing in the reduced hours using words to that effect. Mr Eales said Mr Khatri said she was a supervisor and "helps me here". Mr Eales said he said, "call me when you need me" and left.

[11] There was a slight disagreement in the evidence about this conversation. Mr Khatri said Mr Eales questioned why Ms Amarasinghe was hired when he could have done the job, to which Mr Khatri said he was looking for a specific set of skills, which Ms Amarasinghe had. Mr Khatri said that during this conversation Mr Eales was "agitated and confrontational" and said he was "red faced". Mr Eales disputes this. Mr Khatri said Mr Eales left the workplace "mid conversation". Mr Khatri said Mr Eales did not say "call me when you need me".

[12] Mr Khatri said that on 18 August 2025 he placed an advertisement for a casual receptionist. He said this was not to immediately replace Mr Eales as there were no hours immediately available but was intended as a "future coverage measure in the context of the operational needs of the park". In submissions, RB Enterprises (through Mr Bressan) conceded that after a reasonable recruitment process (perhaps two weeks) there may well have been hours available for this role.

[13] On 19 August 2025, Mr Eales sent Mr Khatri a text message which said:

*“Hi Vikas, I’ve just seen a job ad for a new front office role? What is that about. You said budget was limited. Do I still have a job?”*

[14] Later, on 19 August 2025, Mr Khatri sent Mr Eales a reply message which said:

*“Hi Adam*

*After careful consideration and with the new direction for ATVM, we’re made the difficult decision to end your employment. I truly appreciate the effort and time you’ve contributed, and this decision was not made lightly. While a job was posted as a backup, there will not no shifts available unless specifically required.”*

[15] Mr Khatri said Mr Eales was asked on 19 August 2025 to return all company property, including keys and uniform. It was not clear how this occurred. Mr Khatri said Mr Eales did not return these items until 30 August 2025, which created a security concern for the property. Mr Eales said when asked on 27 August 2025 to return an item, he said he would do so when next in the area and offered that Mr Khatri could come to Craigieburn to collect them. He returned the items on 30 August 2025.

[16] From this background, I consider the crucial matters are as follows:

- a. Mr Eales worked regularly for RB Enterprises, during most weeks for just under two years.
- b. On 15 August 2025, at the end of a working week, and after having earlier pressed for his roster for the following week (to no avail) Mr Eales was rather unceremoniously told of budget issues, and that no further shifts would be available to him for the next few weeks. He was naturally frustrated, and left work that day upset.
- c. On 18 August 2025, Mr Eales discovered what appeared to be his job advertised, and on 19 August 2025 contacted his manager to ask whether he still had a job. Then he was told his employment was “ended” via a text message.

### **Was Mr Eales dismissed?**

[17] There was some suggestion made by RB Enterprises that when Mr Eales left work on the afternoon of Friday 15 August 2025, after having been told there was no more work for him for the next few weeks, his conduct was such that he should be taken to have resigned his employment. Mr Khatri made the claim in his evidence that “my genuine belief at that time was that the Applicant no longer wished to continue working at ATVM”<sup>6</sup>.

[18] It is difficult to reconcile this assertion with Mr Eales evidence that he said to Mr Khatri “call me when you need me”. However, Mr Khatri disputes Mr Eales said this.

[19] However, even if Mr Khatri really believed Mr Eales had resigned, he was presumably disabused of this notion after the weekend, on Tuesday 19 August 2025, when Mr Eales contacted him to ask if he still had a job. Indeed, in his response, Mr Khatri made no mention whatsoever of his “belief” that Mr Eales had resigned – rather, he advised, via text message, of the “difficult decision” to end Mr Eales’ employment.

[20] RB Enterprises referred in its submissions to the decision of a Full Bench of this Commission in *Bupa Aged Care Australia Pty Ltd t/a Bupa Aged Care Mosman v Shahin Tavassoli*<sup>7</sup>, submitting that whether an employee resigned is to be assessed objectively by reference to what a reasonable employer would have understood in the circumstances. In that decision, the Full Bench cited a passage from a decision of the Federal Court as follows<sup>8</sup>:

*“The question whether a resignation did or did not occur does not depend upon the parties’ subjective intentions or understandings. Rather, it depends upon what a reasonable person in the position of the parties would have understood was the objective position immediately after Mr Pollett left the Koutalis’ business’ premises on the morning of 5 May 2014, based on what each party to the conversation had said or done, in light of the surrounding circumstances.”*

[21] On the evidence before me, I do not agree that on any objective assessment it can be said Mr Eales resigned his employment on 15 August 2025. After nearly two years of regular work he was rather abruptly told there would be none available for the next few weeks. If he was upset, it was understandable. He may have said “call me when you need me” although this is disputed. Even if he didn’t, his conduct was consistent with having been told there was no work available for him for a few weeks. In any event, only a few days later he contacted his employer to ask whether he still had a job, evincing a state of mind that he thought he still had one. He was then told, unequivocally, his employment was ended. Mr Eales did not resign. He was dismissed by RB Enterprises through Mr Khatri on 19 August 2025.

#### **Statutory provisions - unfair dismissal**

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

- a. whether there was a valid reason for the dismissal related to the person’s capacity or conduct (including its effect on the safety and welfare of other employees); and
- b. whether the person was notified of that reason; and
- c. whether the person was given an opportunity to respond to any reason related to the capacity or conduct of the person; and
- d. any unreasonable refusal by the employer to allow the person to have a support person present to assist at any discussions relating to dismissal; and

- e. if the dismissal related to unsatisfactory performance by the person – whether the person had been warned about that unsatisfactory performance before the dismissal; and
- f. the degree to which the size of the employer’s enterprise would be likely to impact on the procedures followed in effecting the dismissal; and
- g. the degree to which the absence of dedicated human resource management specialists or expertise in the enterprise would be likely to impact on the procedures followed in effecting the dismissal; and
- h. any other matters that the Commission considers relevant.

[23] Having determined that Mr Eales’s employment was terminated at the initiative of RB Enterprises, I am required to consider each of these factors, to the extent they are relevant to the factual circumstances before me<sup>9</sup>.

**Was there a valid reason for dismissal related to Mr Eales’ capacity or conduct?**

[24] It is well established that order to be a valid reason, the reason for the dismissal should be “sound, defensible or well founded” and should not be “capricious, fanciful, spiteful or prejudiced”<sup>10</sup>. In *Rode v Burwood Mitsubishi*<sup>11</sup> a Full Bench of the Australian Industrial Relations Commission held: “... the meaning of s 170CG(3)(a) the reason for termination must be defensible or justifiable on an objective analysis of the relevant facts. It is not sufficient for an employer to simply show that she or she acted in the belief that the termination was for a valid reason.” Where a dismissal relates to an employee’s conduct, the Commission must be satisfied that the conduct occurred and justified termination<sup>12</sup>. In so far as a Respondent says a valid reason exists based on the proposition as to an evidentiary fact, it is reasonably clear it bears an onus to adduce evidence to prove that fact<sup>13</sup>.

[25] RB Enterprises’ submissions in this matter rest heavily on the notion, which I do not accept, that Mr Eales resigned his employment. This being the case, it did not say a great deal about the validity of any reason it may have had if I were to find Mr Eales employment was terminated at its initiative. At the most, there was some suggestion of “budget issues” about which there was no further explanation or evidence. It is established in the evidence that on 18 August 2025, Mr Khatri posted an advertisement for the same role as Mr Eales had been employed in, albeit RB Enterprises says this was a contingency, and there were no actual hours available for at least a period of a couple of weeks. I do not consider RB Enterprises has established that Mr Eales was dismissed because of a budget issue, or because his role was not required.

[26] On the evidence before me, when Mr Khatri advised Mr Eales on 19 August 2025 that his employment was ended and, through this conduct, RB Enterprises terminated Mr Eales employment there was no valid reason for this decision. This weighs in favour of a finding that the dismissal was unfair.

**The matters referred to in s 387(b) – (e) of the Act**

[27] Mr Eales employment was not dismissed as a result of performance, and thus the question posed by s 387(e) of the Act – whether he was warned about unsatisfactory performance – is not relevant.

[28] RB Enterprises submits that decisions of this Commission which establish the proposition that an employee is entitled to be notified of the reason for their dismissal before it is made (in accordance with s 387(b) of the Act)<sup>14</sup>, and given a chance to respond before the decision is made (in accordance with s 387(c) of the Act)<sup>15</sup>, are “distinguishable” in circumstances where “the employer must first determine whether the employee has resigned or abandoned the employment”<sup>16</sup>. I do not accept this submission. There was no reasonable basis upon which it was necessary for RB Enterprises to make a determination as to whether Mr Eales had resigned or abandoned his employment, because he clearly hadn’t – something which should have been evident at least when he contacted his employer to ask whether he had a job. He was told at this point – unequivocally – that he did not have a job and was not provided a reason for the dismissal or a chance to respond before the decision was made. This weighs in favour of a finding that the dismissal was unfair.

[29] As to s 387(d) of the Act, which requires me to consider any unreasonable refusal by the employer to allow the Mr Eales to have a support person present to assist ay any discussions relating to dismissal, Mr Eales was not refused the opportunity to have a support person present in any discussion. Given the circumstances of the dismissal, this is a neutral consideration in this matter.

**To what degree would the size of the enterprise or the absence of human resources management specialists be likely to impact on the procedures followed in effecting the dismissal?**

[30] RB Enterprises submitted that any procedural imperfections in the circumstances of Mr Eales dismissal should be assessed with regard to ss 387(e) and (f) of the Act, which require the Commission to consider the degree to which the size of the employer’s enterprise or the absence of dedicated human resource management specialists or expertise would be likely to impact on the procedures followed in effecting the dismissal. In this regard, it also pointed out that the text message exchange which occurred between Mr Eales and Mr Khatri on 19 August 2025 occurred late in the evening. Mr Khatri also said that if he had not been labouring under the impression that Mr Eales was not a ‘regular casual’ he would have used a different approach. RB Enterprises also said that it has recently taken steps to improve its human resources capacity, engaging an external firm for that purpose. It has expressed a level of regret for the manner in which Mr Eales employment ended.

[31] In these circumstances, I consider the considerations in ss 387(e) and (f) compel some weight to be given against a finding that the termination of Mr Eales employment was unfair. However, there is a difference between the ignorance which may result from a small business not having access to human resources expertise, and a failure to adhere to basic standards of decency with respect to an employee<sup>17</sup>. It is also the case that in most circumstances, a cursory text message or email is not an appropriate means of conveying information as serious as the dismissal of a person’s employment<sup>18</sup> - and in my view this extends to all employees, whether regular or irregular casual, or otherwise. In the circumstances, the weight I consider should be

given against a finding that the termination of Mr Eales' employment was unfair because RB Enterprises is a small sized business without (at the time) dedicated human resources specialisation or expertise is not significant.

**What other matters are relevant?**

[32] RB Enterprises submitted, in effect, that Mr Eales' conduct contributed to the end of his employment. I do not consider the evidence supports this proposition. Even if Mr Eales was agitated and confrontational on 15 August 2025, which he denies, I consider it understandable, for reasons explained above. And even in these circumstances, the conduct alleged – which he denies – does not rise to a level even close to misconduct.

[33] I was not taken to any other matter I consider relevant for the purposes of s 387(h) of the Act.

**Is the Commission satisfied that the dismissal of Mr Eales was harsh, unjust or unreasonable?**

[34] I have made findings in relation to each matter specified in s 387 of the Act. I must consider and give due weight to each as a fundamental element in determining whether the termination was harsh, unjust or unreasonable<sup>19</sup>. The weight of these considerations bears in favour of a finding that the dismissal of Mr Eales was harsh, unjust and unreasonable and I find Mr Eales was unfairly dismissed.

**Remedy**

[35] Being satisfied that Mr Eales:

- a. made an application for an order granting a remedy under s 394;
- b. was a person protected from unfair dismissal;
- c. and was unfairly dismissed within the meaning of s 385 of the Act,

I may, subject to the Act, order Mr Eales' reinstatement, or the payment of compensation to Mr Eales.

[36] Under s 390(3) of the Act, I must not order the payment of compensation to Mr Eales unless: (a) I am satisfied that reinstatement of Mr Eales is inappropriate; and (b) I consider an order for payment of compensation is appropriate in all the circumstances of the case.

**Is reinstatement of Mr Eales inappropriate?**

[37] Mr Eales does not seek reinstatement, particularly because of the breakdown he said has occurred in his relationship with RB Enterprises and the fact that he has now found another job. I find in these circumstances that reinstatement is inappropriate.

**Is an order for payment of compensation appropriate in all the circumstances of the case?**

[38] Mr Eales has suffered financial loss in circumstances where I have found he was unfairly dismissed. Whilst it does not automatically follow that a payment of compensation is appropriate<sup>20</sup>, in all the circumstances, I consider that an order for payment of compensation is appropriate.

**Compensation – what must be taken into account in determining an amount?**

[39] Section 392(2) of the Act requires all of the circumstances of the case to be taken into account when determining an amount to be paid as compensation to Mr Eales in lieu of reinstatement including:

- a. the effect of the order on the viability RB Enterprises;
- b. the length of Mr Eales’s service;
- c. the remuneration that Mr Eales would have received, or would have been likely to receive, if he had not been dismissed;
- d. the efforts of Mr Eales (if any) to mitigate the loss suffered because of the dismissal;
- e. the amount of any remuneration earned by Mr Eales from employment or other work during the period between the dismissal and the making of the order for compensation;
- f. the amount of any income reasonably likely to be so earned by Mr Eales during the period between the making of the order for compensation and the actual compensation; and
- g. any other matter that the Commission considers relevant.

[40] I consider each of these matters below.

**Effect of the order on the viability of the enterprise.**

[41] Mr Bressan conceded that an order of compensation would not have a significant financial effect on RB Enterprises but would result in negative “optics”. In these circumstances, I consider this to be a neutral factor.

**Length of Mr Eales’s service**

[42] Mr Eales was employed for just under two years. This is not a long period of service but is not an insignificant period either. The length of Mr Eales's service does not add particular weight for or against an order of compensation in this matter.

**Remuneration that Mr Eales would have received, or would have been likely to receive, if she had not been dismissed.**

[43] In determining the remuneration that Mr Eales would have received, or would have been likely to receive, I am required to address myself to the question of whether if Mr Eales's employment had not been terminated, the employment would have been likely to continue or would have been terminated at some time by another means, and in doing so, make an assessment as to the anticipated period of employment<sup>21</sup>.

[44] There is some evidence before me as to a level of uncertainty about the operational need for hours to be worked in Mr Eales' casual role in the immediate couple of weeks following his dismissal. However, RB Enterprises immediately began a process to hire a new employee into the role it said it thought had been vacated (and was vacant after Mr Eales was dismissed), anticipating that hours would be available after that recruitment process had taken its course. On this evidence, it is difficult to predict with certainty the number of hours Mr Eales may have been required to work if he had not been dismissed, but there is little to suggest against the proposition that the employment itself would not have continued for some time. Mr Eales said he liked the role and it was close to home. RB Enterprises said Mr Eales was not a high-level performer but was not underperforming either. There is no evidence that until the interaction on 15 August 2025, there was any deterioration in working relationship or conduct concerns. I consider that on the evidence before me; there is nothing to suggest Mr Eales' employment would not have continued for at least another 12 months.

[45] From this period, I do however consider it appropriate to deduct the first two weeks because I know with some certainty, on the evidence before me, that RB Enterprises did not intend to allocate hours to the role Mr Eales held during that period. I do consider however that, having advertised to fill that role, it would have begun to allocate hours after that period.

[46] It was agreed by the parties that Mr Eales hourly rate of pay was \$33.38 per hour. What was not agreed was the number of hours Mr Eales can properly be said to have worked each week – how that figure should be averaged – given he was a casual employee. RB Enterprises argued that an appropriate methodology was to use the average hours worked in the preceding six months, because that was the period more reflective of the changes in its business it says are intended to continue into the future – a period in which Mr Eales worked fewer hours than he had in the past. It said at worst, a 12-month average could be used. Mr Eales contended that the methodology to be used should take his average hours over the entire period of his employment. He said that over the thirty pay periods 19 November 2023 to 29 December 2024, he averaged 43.9 hours per fortnight. He said from pay period ending 12 January 2025 to pay period ending 24 August 2025 he averaged 30.8 hours per fortnight. He said if the period from 19 November 2023 to 15 August 2025 was used, his average hours 38.7 were per fortnight. RB Enterprises does not dispute these calculations.

[47] I consider it most appropriate to take the third of these calculations – the period of about 21 months between November 2023 to 15 August 2025, during which time Mr Eales average hours of work were 38.7 per fortnight (or 18.9 per week) - to inform an assessment as to the number of hours Mr Eales would have worked had his employment not been terminated. This takes into account the more immediate period in which the business had changed, but also an earlier period when it appears things were more settled. I assume a period of stability is what RB Enterprises is aiming to return to at some point in the future.

[48] Using this methodology, I calculate the remuneration Mr Eales would have been likely to receive working for RB Enterprises for a further 12 months (save for the first two weeks) to be \$31,544.10 gross (plus superannuation).

#### **Efforts of Mr Eales to mitigate the loss suffered by Mr Eales because of the dismissal**

[49] Mr Eales has found a new job and commenced on about Monday 17 November 2025. This was obviously the product of efforts he had made to find a new job – in those circumstances mitigating his loss arising from dismissal.

#### **Amount of remuneration earned by Mr Eales from employment or other work during the period between the dismissal and the making of the order for compensation**

[50] In his new job, Mr Eales said he is working 25 hours a week, at about \$8 less per hour than his job with RB Enterprises (or about \$30.00 per hour). He will therefore earn about \$15,750.00 between his commencement in that role and the date of this decision (a period which will be about 21 weeks in total).

[51] Mr Eales also said that for some time he has conducted his own mowing business, which has continued, earning him what he described as “pocket money”.

[52] Section 392(2)(e) provides that I must take into account “the amount of any remuneration earned by the person from employment or other work during the period between the dismissal and the making of the order for compensation”. Mr Eales’s income from his mowing business is plainly “other work”. It mitigates, to some extent, the effect of the unfair dismissal of Mr Eales’s employment because he was not entirely without income following that dismissal. However, this income does not detract from the loss Mr Eales suffered as a result of the dismissal. It is well established that the fundamental purpose of compensation is to attempt to place the wronged party in the position they would have been in, but for the wrong or breach<sup>22</sup>. Applying this principle within the context of the Act, I will not deduct from the compensation I intend to award Mr Eales in this matter the amount of remuneration he has earned from his mowing business.

#### **Amount of income reasonably likely to be so earned by Mr Eales during the period between the making of the order for compensation and the actual compensation**

[53] The Order I intend to make in this matter will be expressed such that it must be complied with within 14 days. As I have said above, Mr Eales will likely continue to earn remuneration from his new job during this period at the rate of about \$750.00 per week.

**Other relevant matters and misconduct.**

[54] No other matter was raised with me I consider relevant to the question of compensation in this matter. It was said by RB Enterprises that Mr Eales “conduct” contributed to his dismissal. As I have said above, I do not agree with this submission and I am not satisfied Mr Eales engaged in misconduct, such that the amount of compensation I otherwise intend to award in this matter should be reduced in accordance with s 392(3) of the Act

**Application of the *Sprigg* formula.**

[55] Below, I adopt the *Sprigg* formula to calculate the amount of compensation which should be awarded to Mr Eales in respect to this matter<sup>23</sup>. The formula is as follows:

- a. Step 1: Estimate the remuneration the employee would have received, or have been likely to have received, if the employer had not terminated the employment (remuneration lost).
- b. Step 2: Deduct monies earned since termination. Workers’ compensation payments are deducted but not social security payments. The failure to mitigate loss may lead to a reduction in the amount of compensation ordered.
- c. Step 3: Discount the remaining amount for contingencies.
- d. Step 4: Calculate the impact of taxation to ensure that the employee receives the actual amount she or she would have received if they had continued in their employment.

**Step 1**

[56] I have estimated that Mr Eales would have remained employed by RB Enterprises for at least a further twelve months. I have also accepted that in the first two weeks of that period he would not have worked and earned remuneration. The remuneration Mr Eales would have received or would have been likely to have received during this period is \$31,544.10 gross plus superannuation.

**Step 2**

[57] On the basis of the calculations above, during the approximately 21 weeks since termination, Mr Eales will have earned about \$15,750.00 from his new employment. When this amount is deducted from amount calculated in accordance with step 1, the result is \$15,794.10.

**Step 3**

[58] Mr Eales was engaged on a casual basis and the methodology used to determine his likely period of ongoing employment and the hours he would have worked involves a significant exercise in speculation<sup>24</sup>. I have also determined it not appropriate to take into account any income earned since termination of employment through his mowing business, although I note this income mitigates against his loss to some small extent. I consider it appropriate to apply a 25% discount to the amount of compensation I will order in this matter, taking into account those contingencies. Applying this discount results in an amount of \$11,845.54.

#### **Step 4**

[59] I have considered the impact of taxation but have elected to settle a gross amount of \$11,845.54, plus superannuation, and leave taxation for determination.

#### **Compensation – how does the compensation cap apply?**

[60] The compensation cap<sup>25</sup> in this matter for the purposes is the total amount of remuneration received by Mr Eales or to which he was entitled in the 26 weeks immediately before the dismissal. Shortly before issuing this decision, I contacted parties about this matter. Mr Eales submitted that on his calculations, in the six months immediately before dismissal he earned \$15,141.70. His calculations were based on records of his hours considered during the hearing of RB Enterprises' objection to Mr Eales application, which RB Enterprises accepted. After having received this submission from Mr Eales I provided both parties a further opportunity to comment on his calculations. No further comment was received. Given that RB Enterprises earlier agreed with the records of hours used for this calculation and did not decide to make further comment after Mr Eales provided his monetary calculation, I accept that the figure for the purposes of s 392(6) is \$15,141.70.

[61] This figure does not require an adjustment in the amount of compensation I have calculated should be awarded in this matter.

#### **Is the level of compensation appropriate?**

[62] Having applied the formula in *Sprigg*, I am nevertheless required to ensure that “the level of compensation is an amount that is considered appropriate having regard to all the circumstances of the case”<sup>26</sup>.

[63] The application of the *Sprigg* formula has resulted in an outcome where Mr Eales would be awarded compensation of \$11,845.54, plus superannuation.

[64] I am satisfied that the amount of compensation that I have determined above takes into account all the circumstances of the case as required by s 392(2) of the Act and is appropriate.

#### **Compensation order**

[65] Given my findings above, I will make an Order that RB Enterprises must pay Mr Eales \$11,845.54 less taxation as required by law, plus a superannuation contribution into his nominated fund of \$1,421.46, within 14 days of the date of the Order.

[66] An Order<sup>27</sup> will be issued to that effect.



COMMISSIONER

*Appearances:*

*Mr Eales*, for himself

*Mr Khatri* and *Mr Bressan*, for the Respondent

*Hearing details:*

2025  
Melbourne  
Thursday 4 December

Printed by authority of the Commonwealth Government Printer

<PR795593>

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<sup>1</sup> *Fair Work Act 2009* s 383 & 384

<sup>2</sup> See Form R3 Employer Response to Unfair Dismissal Application, item 1.7

<sup>3</sup> Witness Statement of Dominic Robert Bressan, 27 November 2025 [3] – [4]

<sup>4</sup> *Ibid* [8]

<sup>5</sup> *Ibid* [10] – [12]

<sup>6</sup> Witness Statement of Mr Vikas Khatri, 27 November 2025 [15]

<sup>7</sup> [\[2017\] FWCFB 3941](#)

<sup>8</sup> *Koutalis v Pollett* [2015] FCA 1165 [43]

<sup>9</sup> *Sayer v Melsteel Pty Ltd* [\[2011\] FWAFB 7498](#) [14]

<sup>10</sup> *Selvachandran v Peteron Plastics Pty Ltd* (1995) 62 IR 371 [373]

<sup>11</sup> Print R4471

<sup>12</sup> *Edwards v Giudice* [1999] FWC 1836 [7]

<sup>13</sup> *Advanced Health Invest Pty Ltd T/A Mastery Dental Clinic v Mei Chan* [2019] FWCFB 5104 [43] cited in *NSW Trains T/A NSW Trainlink v Wael Al Buseri* [2023] FWCFB 165 [21]

<sup>14</sup> *Newton v Toll Transport* [2021] FWCFB 3457 [182]

<sup>15</sup> *Crozier v Palazzo Corporation* (1996) 98 IR 137 [73]

<sup>16</sup> Respondent's Outline of Submissions, 25 November 2025 [23]

<sup>17</sup> *Pecker Maroo Verano Pty Ltd v Stevens* [2024] FWCFB 147 [110]

<sup>18</sup> *Anita Cachia v Scobel Pty Ltd ARF the S&I Trust t/a Emerse Skin & Laser* [2018] FWC 2648 [88]

<sup>19</sup> *ALH Group Pty Ltd t/a The Royal Exchange Hotel v Mulhall* (2002) IR 117 357 [51]; *Edwards v Giudice* [1999] FCA 1836 [6] – [7]

<sup>20</sup> *Nguyen v Vietnamese Community in Australia t/a Vietnamese Community Ethnic School South Australia Chapter* [2014] FWCFB 7198 [9]

<sup>21</sup> *He v Lewin* [2004] FCAFC 161 [58]

<sup>22</sup> See for example *Merewether v Scottish Australian Mining Co Ltd* (1907) 4 CLR 953

<sup>23</sup> *Sprigg v Paul's Licensed Festival Supermarket* (1998) 88 IR 21

<sup>24</sup> *Ibid* [37]

<sup>25</sup> *Fair Work Act 2009* s 392(5) and (6)

<sup>26</sup> *Double N Equipment Hire Pty Ltd t/a A1 Distributions v Humphries* [2016] FWCFB 7206 [17]

<sup>27</sup> [PR795594](#)