



DECISION

Fair Work Act 2009

s.365 - Application to deal with contraventions involving dismissal

Emily Martin

v

Scentre Pty Limited

(C2025/10434)

COMMISSIONER CRAWFORD

SYDNEY, 17 MARCH 2026

General protections dismissal dispute – employee resigned – no forced resignation – jurisdictional objection upheld – application dismissed

BACKGROUND

[1] Emily Martin was employed by Scentre Pty Limited (**Scentre**) from 28 March 2022 until she resigned effective 30 September 2025. Scentre is part of the Scentre Group which designs, builds, manages, and operates Westfield shopping centres in Australia and New Zealand. Ms Martin was initially employed as a casual Brand Experience Assistant at Westfield Penrith. Ms Martin commenced a secondment to the position of Community Engagement Assistant on 15 January 2024 and was permanently appointed to this full-time role on around 22 April 2024. Ms Martin alleges she was forced to resign from her employment due to an excessive workload and was hence dismissed within the meaning of s.386(1)(b) of the *Fair Work Act 2009* (**FW Act**). Scentre denies that Ms Martin's resignation was forced. This decision concerns whether Ms Martin was forced to resign from her employment with Scentre.

[2] I conducted a hearing in Sydney on 6 March 2025. Ms Martin relied on evidence from herself. Scentre relied on evidence from Michele Lok (Senior Community Manager) and Pamela Wilson (National Community Manager). I granted permission for Scentre to be represented by a lawyer at an earlier procedural hearing.

AUTHORITIES

[3] The authorities establish that a resignation will be considered forced where:

- (i) There was some action on behalf of the employer which was intended to bring the employment relationship to an end; or
- (ii) Resignation was the probable result of the employer's conduct.¹

[4] A Full Bench of the Australian Industrial Relations Commission in *ABB Engineering Construction Pty Limited*² stated the following regarding the “narrow line” between a forced resignation and a discretionary choice by an employee to resign:

“Often it will only be a narrow line that distinguishes conduct that leaves an employee no real choice but to resign employment, from conduct that cannot be held to cause a resultant resignation to be a termination at the initiative of the employer. But narrow though it be, it is important that that line be closely drawn and rigorously observed. Otherwise, the remedy against unfair termination of employment at the initiative of the employer may be too readily invoked in circumstances where it is the discretion of a resigning employee, rather than that of the employer, that gives rise to the termination.”

ISSUES RAISED BY MS MARTIN

[5] Ms Martin identified the following conduct by Scentre in support of her argument that she was forced to resign:

- From around April 2024, Ms Martin’s workload increased significantly. This was caused by staff shortages, new projects, and additional duties being allocated by management.
- Between August 2024 to September 2025, Ms Martin made multiple attempts to raise concerns about her workload, and the issues were not addressed.
- Ms Martin was forced to ask for work to be distributed to other team members to meet deadlines or to request an extended due date.
- Ms Martin was required to perform an excessive amount of work in a short timeframe on the Westfield Local Heroes program.
- The excessive workload caused Ms Martin to suffer from chronic stress and health impacts, including migraines.
- Ms Martin often felt unable to take leave due to the excessive workload and was inundated with work when she returned from any periods of leave.
- Scentre repeatedly refused to engage additional staff to assist Ms Martin and other staff to deal with the excessive workload.
- Ms Martin was continually allocated additional duties to perform with no increase to her remuneration in recognition of the extra work.
- Ms Martin raised that she was overworked repeatedly in weekly one-on-one meetings with Ms Lok. Ms Lok failed to take action to address the issues or to implement any structural changes.

- Ms Martin had to assume duties Ms Lok had been performing when Ms Lok was assigned a new project directed at creating new community partnerships at a national level.
- Ms Martin offered to withdraw her resignation if Scentre agreed to provide her with a pay increase or reduced her workload. Scentre did not accept these proposals and did not make any counter proposals.

CONSIDERATION

[6] I accept Ms Martin genuinely felt like she had no option other than resigning from her employment with Scentre. It is clear Ms Martin had ongoing concerns about her workload, and Ms Martin appears to have lost all hope that her concerns would be addressed by the time that she communicated her resignation on 31 August 2025.

[7] However, the words used in s.386(1)(b) of the FW Act and the authorities make it clear that the assessment of whether an employee was forced to resign is focused on the **conduct of the employer**.³ That means it is the conduct of Scentre which must be assessed, not the subjective impact of Scentre's conduct on Ms Martin. Specifically, I am required to assess whether Scentre intended to force Ms Martin to resign, and whether Ms Martin's resignation was the probable result of Scentre's conduct.

[8] I do not consider the evidence establishes that Scentre intended to force Ms Martin to resign. Ms Martin accepted in cross-examination that some proposals she suggested during a meeting in September 2024 to try and reduce her workload were implemented by Scentre. Scentre agreed to allow Ms Martin to take a 15-minute walk during the afternoon to try and manage her stress. Ms Martin accepted in cross-examination that Scentre accommodated her requests for time off and extended deadlines where possible if more time was required to complete the relevant work. I do not consider these are the actions of an employer that was attempting to force an employee to resign.

[9] I also do not consider resignation was the probable result of Scentre's conduct based on an objective assessment. Although Ms Martin clearly felt that her workload was excessive, Ms Martin was generally able to start and finish work at her scheduled times, to take around 30 minutes to one hour for her lunchbreak, and to take a 15-minute walk in the afternoon. This was not a case where Scentre was expecting Ms Martin to perform many hours of unpaid overtime or to skip lunch and other breaks during the day. Ms Martin's complaint appears to be that she had to work excessively hard during her normal working hours. I do not consider this is sufficient to establish that resignation was the probable result of Scentre's conduct. The situation may have been different if Ms Martin was being disciplined for not completing work in circumstances where she clearly did not have enough time to complete the relevant work. However, there is no evidence that Ms Martin was ever reprimanded by Scentre for not completing enough work.

[10] The fact that Ms Martin was willing to continue working for Scentre if it agreed to increase her salary rate by around 30% also suggests that Ms Martin felt undervalued and underappreciated in her role, and not that the workload was so excessive that she had no option other than resigning.

[11] It is also relevant that Ms Martin had other options available to her instead of resigning. Ms Martin could have lodged a formal grievance with Scentre about her workload. This would likely have triggered an investigation into the demands of the role. Ms Martin could have sought assistance from the workplace safety regulator if she considered her workload was unsafe. Ms Martin could have applied for anti-bullying orders if she thought Ms Wilson or Ms Lok were acting unreasonably in allocating Ms Martin excessive amounts of work and this was creating a safety risk. I consider these are all options Ms Martin could have explored instead of resigning.

[12] I am not satisfied that Ms Martin was forced to resign due to conduct, or a course of conduct, engaged in by Scentre.

CONCLUSION

[13] I find that Ms Martin was not “dismissed” within the meaning of s.386 of the FW Act.

[14] I uphold Scentre’s jurisdictional objection.

[15] Ms Martin’s application is dismissed.



COMMISSIONER

Appearances:

Ms E Martin representing herself.

Mr M Selinger from Holding Redlich representing Scentre.

Hearing details:

2026.

6 March.

Sydney.

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¹ *Bruce v Fingal Glen Pty Ltd (in liq)* [2013] FWCFB 5279.

² AIRCFB (1996) S Print N6999.

³ *Bupa Aged Care Australia Pty Ltd v Tavassoli* (2017) 271 IR 245; [2017] FWCFB 3941 at [47](2).