Extension of time in the Fair Work Commission

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Extension time: when is it granted more than 21 days (not often!)

Introduction

You received notice that the employee that you "let go" has filed for an unfair dismissal or adverse action. But it is outside of the 21-day time limit. What do you do?

In the outset, the Fair Work Commission has been very strict on enforcing this 21-day time and extending this time has been limited. However, in recent times there have been a cluster of decisions that have come down in favour of the extension of time being granted.

In this report, I have summarised nine recent cases where the FWC has extended the 21-day time limit and provided the explanations why they have done so. The main reasons being:

- Representational error.
- Not sure of the date of dismissal.
- Lodged the wrong form.
- Sham redundancies.
- Technical and other issues.
- Ill health (possible Coronavirus?).
- Compassionate reasons.

Background

As mentioned, the timeframe (or window of opportunity) for the lodgement of an unfair dismissal or adverse action claim is 21 days after the dismissal takes effect. This is very important that, when dismissing a person, it is done in writing – clearly stating the date that the employment ends, as the 21-day time clock starts ticking from the day following the dismissal date.

However, FWC may allow a further period for lodgement in exceptional circumstances. Where the 21-day period concludes on a weekend or public holiday, the next FWC open-for-business day is the end date.

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In an example provided by the FWC:

"If an employee is given four weeks' notice that they will be dismissed, and they work through the four-week period – then the date that the dismissal takes effect will generally be at the end of that four-week notice period.

HOWEVER, if an employee receives four weeks' pay in lieu of working and is **NOT** required to work through the four-week period – then the date that the dismissal takes effect will generally be the last day worked".

In summary, the Fair Work Act allows the Commission to extend the period within which an unfair dismissal application must be made only if it is satisfied that there are "exceptional circumstances". Briefly, exceptional circumstances are circumstances that are out of the ordinary course, unusual, special or uncommon but the circumstances themselves do not need to be unique nor unprecedented, nor even very rare. Exceptional circumstances may 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.

Only in exceptional circumstances will the Commission consider allowing a further period. Weighing all of the matters set out in s 394(3).

Parliament's intention

The statutory time limitation applicable to the exercise of a person's right to make an unfair dismissal remedy application is an expression of the Parliament's intention that rights must be exercised promptly so as to bring about certainty. Time limitations seek to balance a right to bring an action, against the desirability for prompt action and certainty. This is so that proceedings involving questions about actions that have been taken will be agitated within a particular period, otherwise that right of action is lost.

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A person seeking relief from unfair dismissal must make an application within 21 days after the dismissal takes effect. Only in exceptional circumstances will the Commission consider allowing a further period. Weighing all of the matters set out in s 394(3), this is a case in which I am satisfied that the Applicant has established that there are exceptional circumstances warranting consideration of the exercise of my discretion to allow a further period within which the Applicant may lodge an unfair dismissal remedy application. The Applicant has established by evidence a substantial reason, which I am satisfied is an acceptable and credible reason for the delay. The merits are as yet untested and weigh neutrally. All other factors are neutral. There is no other matter which would suggest that I should not exercise my discretion in favour of the Applicant.

The legal premise

Section 394(3) requires that, in considering whether to grant an extension of time, the Commission must take into account the following:

The reason for the delay

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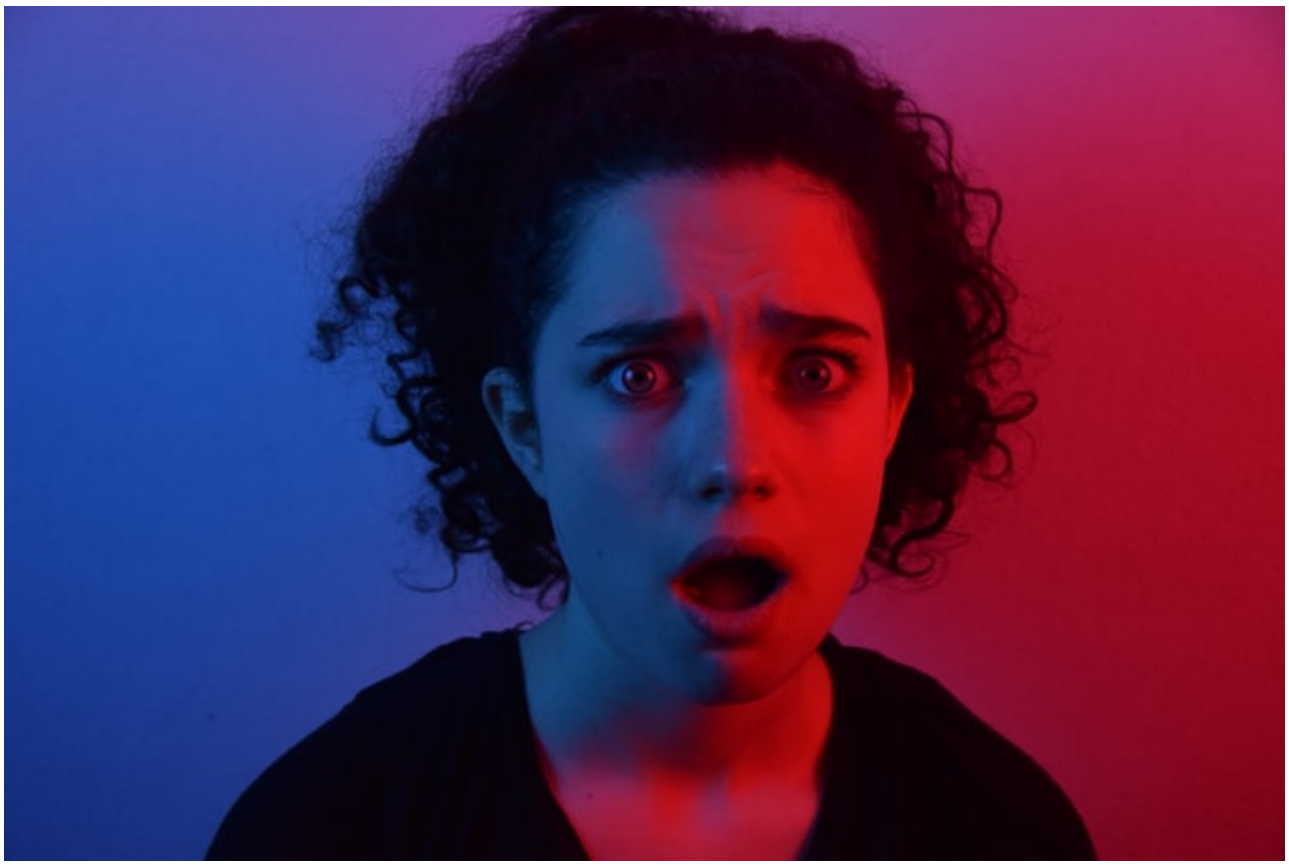
The Act does not specify what reason for delay might tell in favour of granting an extension however decisions of the Commission have referred to an acceptable or reasonable explanation. The absence of any explanation for any part of the delay will usually weigh against an applicant in the assessment 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.

And:

When making a determination regarding reason for delay, the length of the delay has little to do with the determination of exceptional circumstances. In *Ozsoy v Monstamac Industries Pty Ltd*:

"Whilst I accept that the application lodged by the Applicant was late by only one day, that is not to the point. The length of the delay says nothing or very little about whether there are exceptional circumstances."

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



It is important that the dismissal, setting out the end of the contract of employment, is clearly stated – preferably in writing.

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Any action taken by the person to dispute the dismissal

This is where the dismissed employee takes any action to dispute the dismissal prior to filing their application.

Prejudice to the employer (including prejudice caused by the delay)

Prejudice to the employer will weigh against granting an extension of time. However, the mere absence of prejudice to the employer is an insufficient basis to grant an extension of time.

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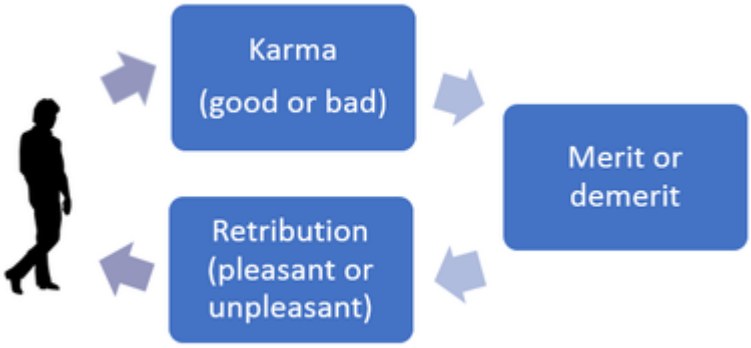
The merits of the application



Not surprisingly, the FWC has deemed that this provision to be null and void given the merits of any application for extension of time would need to be tested (ie testimony, evidence, etc). The FWC has historically limited this provision to where it has deemed the applicant has an "arguable case".

In the matter of *Kornicki v Telstra-Network Technology Group* the Commission considered the principles applicable to the exercise of the discretion to extend time under s.170CE(8) of the Workplace Relations Act 1996 (Cth). In that case the Commission said:

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

And

A Full Bench of the Australian Industrial Relations Commission in Kyvelos v Champion Socks Pty Ltd:

"It should be emphasised that in considering the merits the Commission is not in a position to make findings of fact on contested issues, unless evidence is called on those issues."

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

This consideration may relate to matters currently before the Commission or to matters previously decided by the Commission. It may also relate to the position of various employees of an employer responding to an unfair dismissal application. However, cases of this kind will generally turn on their own facts.]

The FWC considers that it is a requirement that these matters be taken into account, in that each matter must be considered and given appropriate weight in assessing whether there are exceptional circumstances.

Exceptional circumstances

Overall, the FWC is very reluctant to extend the 21-day time limit unless there are "exceptional circumstances" . The meaning of "exceptional circumstances' was considered in Nulty v Blue Star Group Pty Ltd where it was held that:

"To be exceptional, circumstances must be out of the ordinary course, or unusual, or special, or uncommon but need not be unique, or unprecedented, or very rare. Circumstances will not be exceptional if they are regularly, or routinely, or normally encountered. Exceptional circumstances can include a single exceptional matter, a combination of exceptional factors or a combination of ordinary factors which, although individually of no particular significance, when taken together are seen as exceptional. It is not correct to construe "exceptional circumstances" as being only some unexpected occurrence, although frequently it will be. Nor is it correct to construe the plural "circumstances" as if it were only a regular occurrence, even though it can be a on off situation. The ordinary and natural meaning of "exceptional circumstances" includes a combination of factors which, when viewed together, may reasonably be seen as producing a situation which is out of the ordinary course, unusual, special or uncommon."

Extension of time has been allowed for the following reasons:

Sham redundancies

In this matter the application was lodged 15 days after the 21-day limit. The company in this matter had dismissed the employee for reasons of redundancy. However, the company later advertised more or less the same position online. On becoming aware of the advertisement, the applicant immediately filed for unfair dismissal.

This is a high risk for any company using the "redundancy tool" for shedding unwanted workers. Not only does such a company risk the ire of the FWC, but also come under scrutiny of the ATO (as redundancies have a favourable tax treatment).

In another matter, mirroring the previous redundancy issue, the applicant saw his job advertised on Seek following his redundancy. In this case the COVID-19 pandemic was used as an excuse by the respondent to make the applicant redundant.

This caused the applicant to file their application 27 days outside of the 21 days outside of the statutory timeframe. But once he discovered the vacancy advertisement, he immediately filed his claim.

The FWC:

"I accept that [the applicant learned of the vacancy through Seek]. I also accept [the applicant's] direct evidence that this led him to question the genuineness of the redundancy on the basis of his view that the vacancy was the same as the position which he previously held. While I make no findings as to the extent to which the advertised vacancy is similar to [the applicant's] position, or the bearing the vacancy may have upon the genuineness of [the applicant's] redundancy, I am persuaded on the evidence that [the applicant's] view was not unreasonably held".

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Representational error

An extension of time application may be granted where the applicant's presentative does something wrong to delay the process.

In the first matter, a union organiser caused a delay to the an application for unfair dismissal of three days, relying on an internal computer system that did not properly action the process as it should normally would have. In this case, it was the applicant's doggedness in ringing the union on a daily basis that the mistake was finally found.

The FWC noted in this case:

"In *Robinson v Interstate Transport Pty Ltd*, a Full Bench of the Commission held that depending on the particular circumstances of a case, representative error may constitute exceptional circumstances and be a sufficient reason to extend time. The Full Bench stated that the conduct of the Applicant is a central consideration to deciding whether representative error provides an acceptable explanation for delay. In particular the Full Bench distinguished the case of an applicant who leaves the matter in the hands of a representative and takes no steps to inquire as to the status of their claim, from one where an applicant gives clear instructions to the representative to lodge a claim and the representative fails to carry out those instructions, through no fault of the applicant.

"In the latter case an applicant is blameless and it is more likely that representative error will be given significant weight in consideration of whether there are exceptional circumstances justifying a further period to make an application. Representative error can include inactivity or carelessness of an applicant's representative. It is also apparent from the case law concerning representative error as an explanation for delay that it is necessary to balance the nature of the error and to consider the contribution that the applicant's conduct made to the error or the delay.

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"In my view a dismissed employee who seeks support and assistance from a union has every right to expect that the case will be handled with expertise and professionalism, and that necessary steps to prosecute the case will be taken in a timely manner. A union member has as much a legitimate expectation of expertise and professionalism on the part of a union as does the client of a solicitor. It would be unusual or abnormal for a representative who is an officer or employee of a union to act negligently by failing to file an application following a clear instruction to that effect from a client. To find otherwise would allow dismissed employees who instruct a solicitor to rely to a greater degree on representative error as an explanation for filing an application late, to the detriment of dismissed employees who use the services of a union to obtain representation.

"Any professional representative, particularly of a kind recognised in the Act, and a Union which receives fees from members for services, engaged to represent a dismissed employee, would be expected to manage the in-time filing of an unfair dismissal application. A failure on the part of any such representative may constitute an acceptable explanation for delay in making an application for the purposes of establishing that there are exceptional circumstances justifying the grant of a further period in which to make the application".

In the second matter, the application was made four days out of time by the applicant's representative. The applicant had met with their representative immediately following the dismissal; however, the representative sent the information to the wrong FWC email address.

According to the FWC Rules, the application is accepted when it is received by an approved email address when sent by email. The FWC:

"…I am persuaded that the error for the delay is solely attributable to the representative using the wrong email address and the time of lodgement rendered the application out of time as it was referred to Registry four days after receipt in the Commission. I am also persuaded by the arguments advanced concerning merits, which if the extension is denied further disadvantages the applicant who is blameless in the delay".

In a third matter, which was filed four days out of time, the union failed to properly advise the applicant, to the extent that the applicant sought help from a community agency. The FWC finding:

"…the Applicant took steps to seek appropriate advice about her options to contest her dismissal within seven days of being dismissed. The Applicant provided her union with sufficient information to identify the potential basis for [her] claim. However, the Applicant was not advised of this avenue and was advised that there was no legal avenue available to challenge her dismissal. In reliance on the advice of her union the Applicant did not take any further steps until…she first learned of the option to contest her dismissal by making a general protections claim. The Applicant did not then sit on her hands. She acted immediately and without delay by both seeking further advice, from a different source, and instructing her new representative to file this application that same day. The application was filed a short time (just four days) after the expiry of the statutory timeframe".

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Another matter that was 23 days late and found its way to the pages of the Sunday Herald Sun 13 July 2020 news, under the headline "Fair Work Commission says SDA acted against best interests of three former Harris Scarfe workers", the FWC was very critical of the Shop, Distributive and Allied Employees Association, which failed to lodge three unfair dismissal applications amid concerns it would jeopardise a rescue sale.

The FWC, in this decision, made some very interesting comments on the actions of the union, and on consultation during the redundancy process.

"It is not necessary for an applicant to demonstrate that they were "blameless" for the delay in filing an unfair dismissal application beyond establishing the fact that they gave appropriate instructions to a legal practitioner or union in a timely fashion. However, as the Full Bench explained in *Long v Keolis Downer,* 'an applicant cannot simply instruct his solicitor then sit on his hands for an extended period while the prescribed time for filing the application passes by'.

…

"The Applicant is, and was at all relevant times, a member of the SDA. After speaking with Mr Morrow on 30 March 2020, the Applicant immediately called her SDA representative, Mr Andrew Coyle. The Applicant told Mr Coyle that she wanted the SDA to get her job back. The Applicant also told Mr Coyle to do everything he needed to do to get the decision to terminate her employment on the grounds of redundancy reversed and if they could not get the decision changed then to bring an unfair dismissal application on her behalf.

"In the period between 30 March 2020 and the filing of her unfair dismissal application on 14 May 2020, the Applicant spoke to Mr Coyle three or four times in the first 10 days and then about every three weeks to find out what was happening. Mr Coyle told the Applicant that they were going for unfair dismissal on her behalf. At no time during that period did anyone from the SDA tell the Applicant that the SDA had made a decision, or was considering making a decision, to delay the filing of the Applicant's unfair dismissal application until after the sale of Harris Scarfe's business had completed, even though that would result in the application being filed outside the 21 day time limit. The Applicant was not even aware of the existence of the 21-day time limit.

…

"I do not accept this to be a reasonable excuse by the SDA for the further delay in filing the application after 29 April 2020. The SDA should have had the application ready to lodge in the Commission within the 21-day period following the dismissal on 31 March 2020. It is not a difficult or overly time-consuming application to prepare. Lodging the application itself is as simple as sending an email or making a telephone call. The delay from 29 April 2020 until 14 May 2020 is a further representative error by the SDA.

…

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"…I accept that the usual case of representative error arises where a lawyer or union forgets to file an application in time or makes a mistake in calculating the 21-day period. However, they are not the only circumstances in which a representative may make an error. As I have sought to explain above, a representative who fails to address a clear conflict of interest and thereby fails their duty to act in the best interests of their client or member acts in error. More importantly, however, the focus under s 394(3) is on the conduct of the Applicant. In the present case, the Applicant acted immediately on being informed of her redundancy…

"Further, this is not a case where the Applicant gave instructions to her representative to file a claim and then sat on her hands for an extended period while the prescribed time for filing the application passed by. The Applicant engaged in numerous discussions with Mr Coyle to find out what was happening with her case. At no time prior to 28 May 2020 was the Applicant told that the SDA had made, or was considering making, a decision to delay the filing of her application outside the 21-day time period.

"As to the delay in the period from completion of the sale on 29 April 2020 until the filing of the application on 14 May 2020, the SDA does not have an acceptable explanation for the delay. However, the Applicant does have an acceptable explanation for this delay, namely, the error on the part of the SDA in failing to lodge the application during this period.

…

"…The obligation to arrange reasonable redeployment opportunities in s 389(2) does not extend to such third parties…the Applicant has a strong case that the Respondent did not comply with relevant consultation obligations. If it is ultimately found that the redundancy was genuine other than the failure to consult, the remedy is likely to be a small amount of compensation to cover the period during which a proper consultation period should have taken place, but that depends on whether there was a realistic prospect of proper consultation resulting in a different outcome".

The FWC concluding in this case that:

"…The most persuasive factor in the circumstances of this case is the fact that the Applicant has provided an acceptable and reasonable explanation for the whole of the delay in lodging the application. In my view, it is unusual or uncommon for a member of a union to provide clear instructions to their union and then maintain regular communication with their union, but not be informed that **the union had made a deliberate decision to act in a manner inconsistent with their best interests**. I am also persuaded that it is appropriate in the circumstances of this case to exercise my discretion to extend the time for the Applicant's application to be lodged. In my view, it is in the interests of justice that the Applicant, whose conduct did not contribute to the delay in lodging her application, be permitted to pursue her unfair dismissal case…"

Ill health (possible Coronavirus?)

In this matter, which was filed 13 days late, the applicant:

"Both immediately before and in the three weeks following his dismissal, [the applicant] says he was very sick with a bad cough and infection. He believes he may have had **coronavirus** but was not tested. At the time, testing was not widely available and was restricted to particular groups. [The applicant] was also suffering from **severe depression and anxiety**, nightmares and regular panic attacks linked to a history of repeated **family violence**, which escalated as a result of the COVID-19 pandemic and public health orders to stay at home. **The evidence on this issue is confidential but I am satisfied after hearing from [the applicant] that in the weeks following dismissal, he was in a bad way".** [My emphasis].

Added to this was some issue with the FWC's online filing system. The FWC finding:

"I am satisfied that [the applicant's] state of ill health, the effect of the pandemic on his personal safety and an online lodgement error effectively prevented him from making the application earlier than he did".

In in a rare matter where the FWC took the **mental health** the applicant into consideration. This matter was 55 days past the 21-day time limit.

The FWC in allowing the application stated:

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Lodged the wrong form

In this matter the applicant filed the incorrect form with the FWC. Had the applicant filed the correct form, the application would have been made within time.

Despite the protestations of the respondent, the FWC used its discretionary powers to amend the application which had the result of the matter being lodged within the 21-day time frame.

In this case the application was lodged 37 days late. The applicant having file an "unfair dismissal form" instead of an ":adverse action form".

"Mrs Han provided the explanation that she filed the unfair dismissal application within the statutory time frame. The Commission's records verify the submissions of St Basil's Homes that the application was filed on the 20th day after termination of Mrs Han's employment. The conciliation conference before a conciliator was scheduled for 12 March 2020 (29 days after filing). At that point in time, Mrs Han assumed she had filed the correct application before the Commission. Mrs Han was instructed at the conciliation conference that she should have filed a general protections application instead of an unfair dismissal. It is unclear why this advice was given to Mrs Han, as the employer's response to her unfair dismissal application confirms that Mrs Han raised questions concerning valid reason and procedural fairness. On the face of the employer's response there does not appear to be any reason why the application could not have progressed as an unfair dismissal application.

"Mrs Han submits in her written materials that she was very **stressed, English is her second language, and that she did not understand the difference between the unfair dismissal and general protections applications** at the time she filed her first application. Further, during the hearing Mrs Han disclosed the issues she had in respect of the **hearing before the Nursing and Midwifery Council to preserve her registered nursing status**, and her conduct during the hearing before me demonstrated that she **was clearly emotionally distressed"**.

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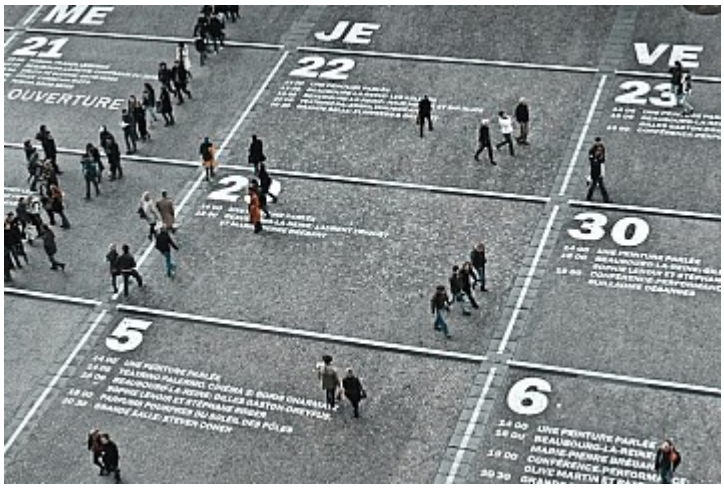
Not sure of the date of dismissal



This matter is demonstrative of the importance of ensuring that all documentation relating to the dismissal of an employee is provided in a clear and timely manner. The application was made some 25 days from the alleged dismissal date. The applicant was not advised of the dismissal until one month after it occurred.

The applicant claiming that:

- Her application was delayed as she needed to borrow money to pay the application fee.
- The application was lodged on 8 May 2020, 14 days after she became aware of her dismissal.

Interestingly, the FWC ruled on the extension of time despite the respondent having no objection to the application. This means that the FWC felt obliged to deal with extension of time issue as a matter of course.

The FWC making a number of points in this decision:

- A dismissal does not take effect unless and until it is communicated to the employee who is being dismissed. A dismissal can be communicated orally.
- In Diotti v Lenswood Cold Stores Co-op Society t/a Lenswood Organic, the Full Bench explained the correct approach by reference to the following example:

"For example, if an applicant is in hospital for the first 20 days of the 21-day period this would be a relevant consideration if the application was filed 2 days out of time as occurred in this matter."

An acceptable explanation for the entirety of the delay is not required to make a finding of exceptional circumstances. However, in considering and taking into account the reason for the delay in accordance with s.394(3)(a) of the Act, it is relevant to have regard to whether the applicant has provided an acceptable explanation for the entirety or any part of the delay. The correct approach to be taken was explained by the

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Full Bench in Stogiannidis v Victorian Frozen Foods Distributors Pty Ltd t/as Richmond Oysters

:

"[38] 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.

"[39] So much is clear from the structure of s.366(2), each of the matters needs to be taken into account in assessing whether there are exceptional circumstances. The individual matters might not, viewed in isolation, be particularly significant, so it is necessary to consider the matters collectively and to ask whether collectively the matters disclose exceptional circumstances. The absence of any explanation for any part of the delay, will usually weigh against an applicant in such an assessment. Similarly, a credible explanation for the entirety of the delay, will usually weigh in the applicant's favour, though, as we mention later, it is a question of degree and insight. However, the ultimate conclusion as to the existence of exceptional circumstances will turn on a consideration of all of the relevant matters and the assignment of appropriate weight to each".

...

"[44] As mentioned earlier, the 'reasons for the delay' is a factor to be taken into account in deciding whether there are exceptional circumstances. There is no statutory basis for the adoption of a decision rule whereby if the applicant does not provide a credible explanation for the entire period of the delay then the matter in s.366(2)(a) tells against the finding of exceptional circumstances. Common sense would suggest otherwise, it is plainly a question of degree and weight.

"[45] What if the period of the delay was 30 days and the applicant had a credible explanation for 29 of those days? It seems to us that such circumstances may weigh in favour of a finding of exceptional circumstances. Of course, as mentioned earlier if there was a credible explanation for the entirety of the delay that would weigh more heavily in favour of such a finding. Conversely, if the applicant failed to provide a credible explanation for any part of the delay that would tend to weigh against a finding of exceptional circumstances."

The FWC finding that the balance of the delay was explained by the applicant's young age, the consideration of her position and securing the funds to lodge her application being unaware that a waiver of fee application could have been made.

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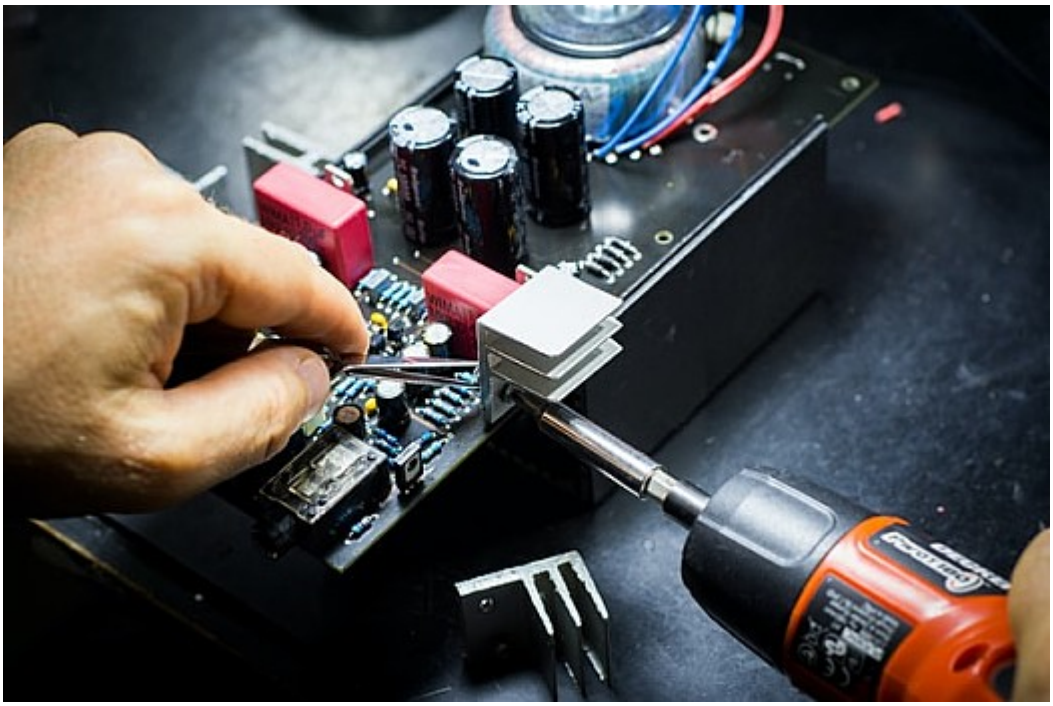
Technical and other issues



In this matter, The application was lodged his unfair dismissal application at “00.00 am” and by the time the process was complete, the application was only late by a few seconds. However, as mentioned earlier, this is not a consideration. An applicant has 21 days to lodge an application, and the fact that they may choose to leave it (in this case literally) to the last minute is not a reasonable excuse for the extension of time to be granted.

This is another case of the FWC determining the matter despite the respondent having no objection.

The applicant argued that the reason for the delay was:

“The first reason for the delay that was advanced by the Applicant involved significant and impactful emotional and psychological issues in relation to his relationship breakdown. These issues occurred tangentially to the termination, or the perceived threat of termination, of the Applicant’s employment”.

And,

“As the ‘primary breadwinner of the family’ the Applicant noted that the prospect of losing his job whilst his wife was pregnant during the COVID-19 pandemic was too much stress too bear”.

This was a general protections matter involving dismissal application was lodged with the Commission 55 calendar days late.

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The FWC gave the benefit of the doubt in this matter stating that an extension of time stating:

"While there is a high bar and not one consideration was necessarily exceptional, the combination of factors in my view warrant an extension of time".

The reasoning in this case being:

"Mr Watson submits that after the dismissal he told Mr Callander that it was "unfair and unlawful". He further submits, "he had advised me that he didn't feel comfortable having me around any longer now that I had raised the issue of **being underpaid**. He told me that he didn't want me around the place any longer in case I bad mouthed him in regard to the error he had made in relation to underpaying me and other employees".

...

"I accept that Mr Watson disputed the dismissal during the discussion on 18 December 2019. Mr Watson made it clear to Mr Callander that the dismissal was unfair and unlawful. Further Mr Watson filed his unfair dismissal application promptly after he conferred with the FWO. This consideration weighs in Mr Watson's favour".

Compassionate reasons

"The FW Act does not specify what reason for delay might tell in favour of granting an extension however decisions of the Commission have referred to an acceptable or reasonable 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".

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In this matter, the FWC took into consideration a number of issues relating to the application, including:

- He said that he had some contact with the **Fair Work Ombudsman** prior to the expiration of the 21 days. He said the staff attempted to help him make an application but he had difficulty in doing so.
- He said that he had contacted Unfair Dismissals Australia (**his representative**) prior to the expiration of the 21-day time limit and asked them to file his application.
- Unfair Dismissals Australia, who represented the Applicant in these proceedings, said that they had tried to gain instructions from the Applicant in order to file his application but had a **range of difficulties in being able to get a telephone connection** without substantial interference or drop outs. The representative said that, for this reason they could not get clear instructions from the Applicant to enable them to file a completed application. The Applicant said that he had understood his application would be filed but, when he did not hear from the Fair Work Commission, he contacted the Commission and found that no application had been made.
- The Applicant said that he **moved house** on 24-25 June 2020 and that, following 25 June 2020 he had to visit **Centrelink** on 4-5 occasions to try and sought out his Jobseeker benefit. The Applicant **does not drive** and is a **single parent**. For this reason, travel to Centrelink took some time and, each time, he had to **arrange for someone to care for his children**. **Centrelink was a priority** for the Applicant as he needed to ensure he had some income so he could care for his children.
- The Applicant said that when he found that his application had not been filed, he sought assistance with making and filing an application. The Applicant said that he was **not computer literate** and he needed help to file the application. He said he did this at the same time as his visits to Centrelink and trying to make his Jobseeker application with Centrelink online which was what Centrelink advised him to do after his visits.

The FWC finding:

"In these circumstances and given the attempts by the Applicant to find information and provide instructions to his representative to file an unfair dismissal application and the circumstances of moving house, attempting to resolve Jobseeker payments with Centrelink and his lack of technical skills, together, to be an acceptable or reasonable explanation for the delay in making the application".

ABOUT THE AUTHOR

Greg Reiffel is a highly knowledgeable and accomplished consultant having:

- More than 30 years' experience in Human Resource Management, Employee and Industrial Relations, and OH&S.
- Greg has worked across many industry sectors, including peak employer bodies such as the Victorian Employers Chamber of Commerce and Industry (VECCI) and Civil Contractors Federation (CCF), Community-Based and Not-For-Profit Organisations, State and Local Governments, manufacturing (including FMCG), civil construction, utilities maintenance, Education and Registered Training Organisations.

Greg's qualifications include:

- Graduate Diploma of Business: Industrial Relations/Human Resource Management (equivalent to Bachelor (Hon's),
- Certificate IV in Training and Assessment,
- OH&S Lead Auditor Certification, and
- Work Effectively with Aboriginal & Torres Strait Islander People Certification.
- Greg is also a Certified Professional member of the Australian Human Resources Institute (AHRI).

Greg takes a pragmatic approach to each and every assignment. He identifies opportunities for improvement in your people management. Whether it be Workplace/Industrial Relations and/or Human Resources Management issues. He draws from his extensive strategic and practical experience to deliver effective solutions tailored to each client's individual needs and circumstances.

Greg's deep understanding of Workplace/Industrial Relations and Human Resources Management systems, legislation, and industry jargon, along with his longstanding commitment to implementing practical, affordable solutions, has made him a valuable asset to many businesses, saving them tens of thousands of dollars over the years.

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