



DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Stephen Lake

v

Wildwalks

(U2024/1163)

COMMISSIONER YILMAZ

MELBOURNE, 22 MAY 2024

Application for an unfair dismissal remedy – whether an employee or volunteer - whether dismissed – application dismissed.

[1] This decision concerns an application by Mr Stephen Lake (Applicant) for an unfair dismissal remedy pursuant to s.394 of the *Fair Work Act 2009* (Act) in relation to his alleged employment with Wildwalks (the Respondent).

[2] Mr Lake describes himself as an experienced bushwalker having been bushwalking since the mid 1960’s including experience with bushwalking search and rescue, as a bushwalking assessor and managing a bushwalking club. He submits that he is self-employed in writing, investing and managing a small business. Having previously managed printing for the Victorian police and other industries, he offered to sub-edit a magazine called *Bushwalk* hosted on bushwalk.com having first seen the publication in late 2013 and observing a number of edits which would enhance the publication. In 2014 Wildwalks accepted Mr Lake’s offer to sub-edit the magazine.

[3] Mr Matthew Laird McClelland is the sole proprietor and owner of the registered business name Wildwalks. Wildwalks is a free online bushwalking and camping guidebook. Mr McClelland as a sole operator that offers bushwalking consultancy services, is a publisher of walking guidebooks, provides other bushwalking resources and operates a range of websites.

[4] Mr Lake contends that he was employed by Wildwalks to edit the *Bushwalk Magazine* which is located on the *Bushwalk* website and was paid \$1 per year. He contends that he was an employee of Wildwalks that was dismissed.

[5] Mr McClelland contends that Mr Lake commenced volunteering as sub-editor of the online *Bushwalk Magazine* and in other projects from October or November 2013.¹ He further submits that on 16 January 2024 he “dismissed” Mr Lake from the volunteer sub-editing role for *Bushwalk Magazine*, but Mr Lake continues to actively volunteer on other projects including moderating the bushwalk.com forum.² Mr McClelland contends that Mr Lake is not an employee capable of being “dismissed” and he did not receive a wage or salary for his contribution as volunteer. He acknowledges that Mr Lake invoiced Wildwalks for \$1 per year

and the last invoice paid was on 30 June 2023. He further submits that he proposed to pay for Mr Lake's internet plus other offers were made such as training or costs incurred for volunteering which were ultimately not taken up by Mr Lake.³

[6] Both Mr Lake and Mr McClelland have in common their active engagement in environmental conservation and the bushwalking community.

[7] The issue in dispute is whether Mr Lake was an employee covered by the unfair dismissal protections and is therefore capable of being dismissed pursuant to Part 3-2 of the Act.

[8] Both Mr Lake and Mr McClelland had personal physical challenges in respect to the filing of materials and engaging in the ordinary procedural process of the Commission. Consequently, this decision takes into account the application, response, written submissions and written answers to supplementary written questions posed by the Commission.

The Respondent's evidence and submissions

[9] Mr McClelland is a sole operator and is registered as an individual/ sole trader since 2000 for tax purposes.⁴ Wildwalks is a registered trading name for 'McClelland, Matthew Laird'; it is used when consulting and is the name of one of the websites.

[10] Mr McClelland consults to National Parks Association NSW, to state and local government departments, and clubs. He also partners with a large number of other organisations in environmental campaigns. Mr McClelland is known to the bushwalking community and has published various guidebooks.

[11] In addition to paid work, Mr McClelland performs work or engages in activity that is not paid including participation as a member of the Walking Volunteers and most of his work on the Wildwalks and Bushwalk websites is free to the bushwalking community. While there was no evidence of employment, he did submit that he relies on contractors as required.

[12] The trading name Wildwalks used for the website wildwalks.com offers a free online bushwalking and camping guidebook. An extract from the Wildwalks website is as follows:

“About Wildwalks

Wildwalks is an online Bushwalking Guide Book with the aim of helping more people get out and safely enjoy the many great bushwalks and camping opportunities in NSW. It does not matter if you are new to bushwalking or experienced, there is something here for everyone.

Wildwalks is developed by small group of people who are passionate about the outdoors. We want to encourage people to “get out there” and enjoy the great places on offer.

Our goal is build a massive database of bushwalking tracks from around Australia. I am conscious we are a long way from there now, but over the next few years I hope to grow this site.

Learn more about our [Vision](#) and [Values](#).

We are committed to supporting businesses and organisation with similar goals. Wildwalks just provides information, there are many other hard working people out there who build, maintain and support these tracks and campsites.

We currently get about 1300 unique people a day using this service, thanks for your encouragement.”

[13] Mr McClelland also operates bushwalk.com. This website provides information on walking tracks across Australia, maps, practical educational information, a community forum and various online publications including the Bushwalk Magazine, calendars and Apps. It is on this website that the Bushwalk Magazine is situated. The website description is as follows:

“Bushwalk.com is an online Bushwalking community and virtual guidebook. The aim is to help more people get out and safely enjoy the many great bushwalks across Australia. It does not matter if you are new to bushwalking or experienced, there is something here for everyone.

Bushwalk.com is run as a small business out of my home office. I want to keep it fun whilst providing information that helps people get out and explore amazing places. Across my network of bushwalking websites, there were about 1 million visitors during 2020.”

[14] The bushwalk.com website holds current and past editions of the Bushwalk Magazine. The Editor is listed as Matt McClelland and where Mr Lake sub-edited, he was given recognition as Sub-editor. I note that the email address listed for both the Editor and Sub-editor is bushwalk.com. The Magazine contains various articles on walking tracks and other matters bushwalking from various contributors. The featured articles are from a diverse group of authors and there does not appear to be any visible advertisements.

[15] Despite that bushwalk.com is described as a small business on the website, the materials are free to the public and there is no evidence of paid subscriptions or advertising. The Magazine on which Mr Lake sub-edited is not a revenue earner for Wildwalks, rather it is a free service to the bushwalking community. Mr McClelland describes the value of the Magazine to his business in the following terms:

“I am yet to really work out how to make Bushwalk.com a valuable part of my business. I purchased the forum and domain name in May 2012, from a bushwalker who did not want to run it any more. I have since added the magazine and, in the past few years, started to add detailed information for specific walks. I am developing an app for these walks. Bushwalk.com generates some revenue through advertising on the forum, but overall operates at a loss. I had hoped to sell advertising space in the magazine when I started, but I was not able to make that viable. People seemed to really enjoy contributing to and reading the magazine, so I continued to publish it as it seemed a helpful and fun

project for the bushwalking community. I hope that the walking app, which is unrelated to the magazine, will become the main source of income in time.”⁵

[16] In his supplementary written answers, Mr McClelland reinforces that neither the Magazine or the work of Mr Lake generates any income and the Magazine is not integral to the business. He states that the Magazine in all likelihood creates goodwill among bushwalkers but its value to the business is not measurable. He further states that despite efforts to sell advertising space, the Magazine failed to produce any income.⁶

[17] Mr McClelland disputes that there is a contract of employment between him and Mr Lake and relies on *Bergman v Broken Hill Musicians Club Ltd.*⁷ In respect to the formation of the relationship, Mr McClelland submits that it was Mr Lake having seen the first edition of the Magazine sent a message on 1 October 2013 saying he was happy to assist, and on the same day was informed that the offer was appreciated. Unprompted on 3 October 2013 Mr Lake sent a review of the magazine and a suggested draft style guide for the magazine.

[18] Mr Lake continued to voluntarily sub-edit the magazine and on 4 May 2015 via email advised that he enjoys sub-editing Bushwalk Australia and wishes to continue. Mr Lake further wrote “*I would like to say that I work for BWA. This entails payment, and I'm hoping that \$1.00 per edition would not be an undue impost. Can you please advise if this is possible?*” Mr McClelland responded with

“Great - glad you are enjoying it - It has been great to have your help and encouragement. Sure happy to do the payment - no worries - how about you invoice me (wildwalks) each edition as 'Freelance Sub editor' and I can organise the payment -- Happy to even chuck in GST :). Shall we do some business cards as well??

My plan is to start including advertising again in a few editions - once we get the magazine website set up. My hope is that the emag can then start paying it's way -- that would be very nice.”

[19] On 9 June 2015 Mr Lake sent an email advising he wished to invoice for the period ending 30 June 2015. It was agreed between the Parties to invoice Wildwalks and the message accompanying the invoice read “*Attached please find invoice, I hope that your cashflow is up to the amount.*” Instead of invoicing \$1 per edition (6 editions per year), Mr Lake invoiced once each year in June since 2015 until 2023 with the exception of 2021. The only other email regarding the reasoning for the invoice dates back to 6 June 2016 having already invoiced, Mr Lake wrote “*The only reason I need a dollar is so I can truthfully say that I work for you.*”

[20] According to the emails there was no disagreement over the payment and even though it was agreed to pay \$1 for each edition, Mr Lake only invoiced once per year. The emails containing these discussions are jovial between the Parties.

[21] Mr McClelland further submits that there were no obligations or terms agreed to between the parties either when the relationship commenced or since. No legal obligation was created after agreeing to pay the invoice, it “*only created an obligation to pay the invoice.*”⁸ He further submits that in addition to there being no application of an industrial instrument or legal obligations, and while there was an implicit understanding that Mr Lake sub-edited the 6

editions of the Magazine according to the schedule for publication, there were no clear, explicit terms or conditions (such as hours of work, how the work is conducted, the scope of work) concerning “*obligations on delivery, timing, quality or scope of work.*”⁹ Mr McClelland submits that the “contract of employment is to be interpreted objectively according to its terms and not on the subjective beliefs of the parties.”¹⁰ Taking this principle, he submits that on the evidence there were no certain and complete terms of a contract of employment that can be discernible on any objective basis.

[22] Mr McClelland disputes that the \$1 per year satisfies the requirement of consideration, as there was no clear promise for the fee, the sum was unrelated to the hours of work, nor was there any measure of the contribution.¹¹ He also submits that the payment of the invoice did not create a legally enforceable contract, the payment cannot be construed as a meaningful contribution for a service. Rather the arrangement was more akin to a moral agreement with a volunteer which had no legal binding ongoing service.¹²

[23] In response to Mr Lake’s submission that the payment was subject to tax and volunteers are not paid, Mr McClelland submits that the payment was unrelated to hours of work or the actual performance of work and taking into account the following, the payment can only be characterised as an honorarium for reasons other than wages:

- The amount was nominal and did not change with time worked or any measure.
- I have never paid tax to Mr Lake nor paid any superannuation.
- Mr Lake’s invoices were never itemised.
- The payments were made voluntarily with no obligations expected of Mr Lake.
- My offers to pay to improve Mr Lake’s technology and training were not accepted.
- In his submission, Mr Lake says in section 6, when referring to the \$1 a year payment, ‘These costs are pro rata mainly for computer use – repairs, ISP, capital expenditure, etc.’¹³

[24] Mr McClelland contends that Mr Lake worked as a volunteer and that the \$1 per year payment was an honorarium.¹⁴ As to the reasons why Mr Lake volunteered his services, Mr McClelland only speculates that the non-monetary benefits that Mr Lake alludes to include the social value of saying that he works for the Magazine, a sense of contribution and enjoyment and the friendship between them.¹⁵

[25] As Mr Lake also compares his relationship as an employee with that of an independent contractor, Mr McClelland responded to each of the characteristics relied on to demonstrate the absence of control that applies in an employment relationship, he further noted the independence of the relationship that enabled Mr Lake to continue his small business activities.

The Applicant’s evidence and submissions

[26] Mr Lake submits that it takes him some time and effort to sub-edit the Magazine. There is no written agreement between the Parties relating to the relationship, although Mr Lake made the offer to sub-edit the magazine at a small nominal amount which was accepted by Mr McClelland. He submits that the \$1 per year forms a contract including offer, acceptance and consideration. He further submits that he has performed and continues to work as a volunteer for Mr McClelland on other projects such as moderating the website forum.¹⁶

[27] Mr Lake disputes that as sub-editor he is a volunteer based on the view that volunteers are not paid. He refers to and distinguishes his work as a volunteer over the years on book projects where he received no payment with the \$1 per year for sub-editing the Magazine.¹⁷

[28] According to tax advice, Mr Lake submits that the \$1 per year is taxable income from which he can claim tax deductions associated with the sub-editing work, including repairs, capital expenditure and use of his personal computer. It is expenses such as these that Mr Lake submits the \$1 per year represents a pro rata value.¹⁸

[29] Prior to filing the first set of submissions, Mr Lake contends that he was unclear whether he was an employee or subcontractor. He attached to his submissions a table from the Commission's Unfair Dismissal Bench book that contains the indicia comparing an employee from independent contractor. He highlighted selected indicia from both sides of the table to describe the relationship. Mr Lake contends the relationship comprised the following features:

- Employer exercises, or has the right to exercise, control over the manner in which work is performed,
- Employee works solely for the employer,
- Employer advertises the goods or services of its business,
- Employer has the right to suspend or dismiss the worker,
- Worker wears their own uniform or other clothing of their choice,
- Worker responsible for own tax affairs
- Worker provides invoices after the completion of tasks,
- Worker does not receive paid holidays or sick leave,
- The work of the employee creates goodwill or saleable assets for the employer's business,
- The employee does not spend a significant portion of their pay on business expenses.¹⁹

[30] It appears from the points raised above, Mr Lake acknowledges that some characteristics of the relationship may be characterised as one of independent contractor, while other features represent an employment relationship. He relies on the decision of *Rabba v PeleGuy Pty Ltd*²⁰ as best resembling his circumstances. In this decision Commissioner Gooley assessed the different features of the relationship against the common law approach as summarised in *Abdalla v Viewdaze Pty Ltd*.²¹

[31] In view of the above, Mr Lake submits that in his situation, as the features reflect both employee and sub-contractor the situation ought to be assessed on its merits. Further he contends that as sub-editor for 10 years working 10-20 hours per week "subbing Bushwalk", there is an implicit "commitment that the work will continue indefinitely with an agreed pattern of work." In contrast he says this is more than what a sub-contractor would expect.²²

[32] In addition, Mr Lake describes the relationship as one between casual, part-time and permanent work and being dismissed without warning and on false information is a factor to consider in favour of the Commission having jurisdiction to hear his application. However, I do observe that Mr Lake details the communication between the parties about alleged shortcomings in the sub-editing work from November 2023. In critiquing the February edition

of the Magazine (after the alleged dismissal) he describes the drop in professional standards that was created by his professional service over the years.²³

[33] In respect to the additional questions from the Commission, Mr Lake offered further information of which the following is of relevance:

- Recollection of how the \$1 was agreed to is likely to be as described by Mr McClelland because old emails are unable to be accessed. The \$1 was for sub-editing the Magazine and whether the sum was \$1 per year or per issue was of no importance as the likely rationale was to enable Mr Lake to claim tax deductions.
- There were no set hours of work or hours to perform the job. No expenses were claimed from Wildwalks and working from home expenses such as electricity were never claimed as tax deductions.
- Contrary to Mr McClelland's submission that no standards were set, Mr Lake submits that the standard was "*good English, spelling, grammar, and punctuation, with some input into the layout....*"
- Mr Lake has not put a name to the payment; he says he did the work and was paid.
- In relation to the question on what was the benefit to Mr Lake in sub-editing the Magazine if he was not being paid a wage for the work performed, the reasons he provided include payback to the bushwalking community for assistance he received when he did not have sufficient bushwalking experience, and the magazine is a suppository of entertainment and reference, not to mention promotion of conservation to which Mr Lake's values align. He further listed self-esteem and self-respect from others, self-actualisation and belonging to a group. Due to Mr Lake's deafness- the interaction with bushwalkers online filled a void due to his restricted lifestyle. Solo bushwalking was only possible and access to family and friends was limited.²⁴

[34] Mr Lake responds to the authorities cited by Mr McClelland by distinguishing the features of the relationship against the facts found in the cases. In summary he submits that he was not a casual but a part-time employee working significant hours, the Respondent engaged Mr Lake and he was not engaging in his own business activities, the basic elements of a legally enforceable contract was implicit and agreed between the parties, non-monetary benefits existed in the relationship, the relationship lasted 10 years and he disputes that invoices were not itemised.²⁵

Consideration

[35] Part 3-2 of the Act concerns unfair dismissal protections which apply to a national system employee. An employee means a national system employee²⁶ and the Object of the Part concerns employers and employees.²⁷

[36] Section 382 of the Act provides that a person is protected from unfair dismissal, if at the time of being dismissed the person met the minimum employment period and an industrial instrument applied or their annual rate of earnings is less than the high-income threshold. Section 382 refers to a person that is dismissed and certain conditions apply. Relevantly s.385 of the Act provides that in order for the Commission to be satisfied a person has been unfairly dismissed the person firstly needs to have been dismissed. The threshold issue is whether the

person was dismissed from their employment as defined pursuant to s.386 of the Act. Therefore, the Unfair Dismissal protections are for employees that have been dismissed.

[37] Mr McClelland is a natural person, operating as a sole trader in New South Wales. An employee of McClelland, Matthew Laird, trading as Wildwalks would be a national system employee. Mr Lake commenced his submissions by raising the question whether he was an employee or independent contractor. Having assessed the materials tendered by both parties, the relationship is unlikely to be one of principal and independent contractor.

[38] The legal principles of whether a person is an employee or independent contractor was considered by the *High Court in Construction, Forestry, Maritime, Mining and Energy Union v Personnel Contracting Pty Ltd*²⁸ (Personnel Contracting) and *ZG Operations Australia Pty Ltd v Jasek*²⁹ (Jamsek). Where the rights and duties of the persons (independent contractor and principal) are exclusively in a written contract and the terms are not challenged as a sham or varied, the contract is to be the decisive factor.³⁰ The central premise is the obligations of the parties under the contract at the time the contract was entered into, and not how the relationship has “come to play out in practice but bearing no necessary connection to the contractual obligations of the parties.”³¹ Established principles of contractual interpretation are important³² and consideration of subsequent conduct is for the purpose of assessing legal rights and obligations.³³ The High Court further made observations of the judgement in *Stevens v Brodribb Sawmilling Co Pty Ltd* (Stevens),³⁴ where the totality of the relationship must be considered finding that the discussion was to emphasise the right of one party to control another was not the only factor, but it also was not an invitation to broaden the inquiry beyond contractual rights and duties. The Court noted that in Stevens the relationship was not confirmed in writing.³⁵

[39] In this matter, no rights and obligations were reduced to writing prior to the commencement of the relationship, nor is there any evidence of any verbal agreement to engage as principal and sub-contractor. The facts do not support a principal and sub-contractor relationship, nor do the parties advocate that such a relationship was formed.

[40] Mr Lake has made this application with the objective of seeking a remedy for unfair dismissal. To access a remedy, a person has the protections if they have been dismissed. An employee can be dismissed. Mr McClelland submits that Mr Lake was a volunteer and not an employee. Volunteers are not captured by the protections for unfair dismissal.

[41] It is not in dispute that Mr Lake applied his professional skills (his labour) to sub-edit the digital Magazine held on the bushwalk website, a website owned by Mr McClelland. Mr Lake submits that the payment of \$1 per year was the remuneration provided for his labour and formed an employment relationship. Under the Act, in an employment relationship, an employee is entitled to a minimum wage, the National Employment Standards and any terms that may be applicable under any modern award or enterprise agreement where it applies. Neither party identified a modern award or enterprise agreement, clearly no minimum wage applied over the course of the relationship and no application of the National Employment Standards was evident.

[42] Where there is an employment relationship, the parties are subject to the minimum conditions under the Act, even where the parties agree to conditions less than the minimum

required. Unpaid work or conditions less than those prescribed by the Act may only be permissible where there is no employment relationship.

[43] In 2013, after reading the first edition of the digital Bushwalk Magazine, Mr Lake contacted Mr McClelland offering his services as a volunteer to help improve the quality of the Magazine. The evidence shows that Mr Lake was motivated by their shared interest in bushwalking and environmental conservation. It is reasonable to conclude on the evidence of the parties that remuneration at this stage was not a motivator, instead the motivations were altruistic.

[44] It was not until mid 2015 that Mr Lake expressed his ongoing enjoyment of sub-editing each edition and he proposed to invoice Mr McClelland \$1 per edition, a small nominal sum in order to truthfully acknowledge his work with the Magazine. Each of Mr Lake's reasons for sub-editing the Magazine cannot objectively be identified as financial or legal in nature. Those reasons included enjoyment in belonging to a shared community, giving back, promoting shared values, actualisation and meaningfully engaging with his community online due to his physical limitations. All of these reasons are moral- notable and significant in their own right, but do not give rise to legal obligations in an employment relationship.

[45] In 2013 and 2014 Mr Lake was a volunteer consistent with the definition - 'someone who enters into any service of their own free will, or who offers to perform a service or undertaking for no financial gain.'³⁶ In 2015, Mr Lake proposed a payment unrelated to his hours of work. While an agreement was struck to pay \$1 per edition, Mr Lake only invoiced \$1 per year from 2015 with the exception of 2021. If the hours of work were 10 – 20 per week as Mr Lake describes, the \$1 per year is hardly considered wages or financial gain on any objective basis.

[46] While a volunteer may work for no wages/ financial gain, at times a benefit may be applicable which is more aptly described as an honorarium- this may take the form of a stipend, allowance, gift,³⁷ grant, lodgings,³⁸ reimbursement of expenses³⁹ or other benefit.

[47] Despite what appears to be a volunteer relationship, it is apt to assess whether a binding employment relationship is met against the four key elements:

Intention to reach agreement as to the terms of the contract

[48] Where a contract is not evidenced in writing, the tribunal or court must infer from the parties conduct whether they reached agreement.⁴⁰

[49] Upon reading the first edition of the Magazine Mr Lake approached Mr McClelland the editor and offered his services to improve the Magazine. Unprompted Mr Lake sent edited pages and a suggested style guide. The Magazine is a free resource for the bushwalking and conservation community, of which both Mr Lake and Mr McClelland are actively engaged and share the interest.

[50] Even though the Magazine does not produce a financial return, Mr Lake realised a value in connection with its production. Mr Lake wrote "*I would like to say that I work for BWA. This*

entails payment, and I'm hoping that \$1.00 per edition would not be an undue impost. Can you please advise if this is possible?" In response Mr McClelland wrote: *"Great - glad you are enjoying it - It has been great to have your help and encouragement. Sure happy to do the payment - no worries - how about you invoice me (wildwalks) each edition as 'Freelance Sub editor' and I can organise the payment."*⁴¹ The Magazine is a benefit to the bushwalking community but is not an integral part of Mr McClelland's small business. Rather his income is derived from his consultancy work and publication of books. The website Wildwalks and Bushwalk are depositories of free resources available to the community at large. Other than the plan to issue 6 editions per year, there were no firm agreed terms or conditions between the parties. While Mr Lake applied his skill at a high standard, this standard was not measured or required by the Respondent. Both parties acknowledge that Mr Lake had scope to apply his skills as he saw fit. It was also optional for Mr Lake to continue to provide his services as long as he wanted to do so. The value of the Magazine appears to be altruistic for both Mr Lake and Mr McClelland.

[51] No evidence of legally binding employment conditions were agreed at any stage between the parties, except for in the form of personal satisfaction in the product. The agreement to pay \$1 per edition or per year does not satisfy conditions of an employment relationship, it is best characterised as an honorarium.

The agreement must involve consideration by each party

[52] Each party must agree to provide a benefit or reward in exchange to the other. Ordinarily the worker provides labour and the employer provides remuneration/ wages in return in satisfaction of the hours worked. The employer in an employment relationship benefits from the labour, although in this matter there was no financial or business benefit. No such valuable consideration is evident on an objective basis in this matter. Mr McClelland described the Magazine in the following terms: *"I had hoped to sell advertising space in the magazine when I started, but I was not able to make that viable. People seemed to really enjoy contributing to and reading the magazine, so I continued to publish it as it seemed a helpful and fun project for the bushwalking community."*⁴²

The agreement must be intended to be legally enforceable between the parties

[53] To be enforceable, clear terms and conditions are necessary. Neither party identified clear terms, other than their own expectations in terms of how they contributed. Mr Lake had his standards which he maintained in the delivery of his profession. Mr McClelland was grateful for any help he had in getting a Magazine that provides community information in an enjoyable format out to the public 6 times per year. The \$1 per year was also not a term or condition of the relationship, Mr Lake asked if it was possible, but based on the relationship did not expect it from Mr McClelland and he himself did not require it as a reward. No material gain in the relationship is evident for either party.

The terms of the agreement must be certain and complete and there must be no element of illegality

[54] Neither party identified certain and complete terms characteristic of an employment relationship. No minimum conditions of employment provided for under the Act were identifiable in the relationship.

Conclusion

[55] The relationship between the parties evolved since 2013 when Mr Lake expressed an interest to volunteer his editorial skills to enhance the Magazine for the bushwalking and conservation community which represented their shared values. The Magazine was not and is not a business, both contribute not for financial gain, but altruistic benefits. I am not satisfied that the parties at any stage intended to create an employment relationship.

[56] I am satisfied that Mr Lake was a volunteer consistent with the definition - ‘someone who enters into any service of their own free will, or who offers to perform a service or undertaking for no financial gain.’⁴³ Had it not been the case that the parties disagreed on matters concerning the editing of the Magazine, both parties would still be enjoying their collective contribution to the Magazine and its non-monetary rewards.

[57] I am also satisfied that the payment made of \$1 per year to Mr Lake is an honorarium and does not change the legal status of volunteer.

[58] Having read the emails between the parties, it was pleasing to see the respect and joy between the parties. While it is unfortunate that the collaboration on the Magazine has ended, it is positive to see that the differences have been respectfully set aside for ongoing collaboration on other projects that benefit the community broadly and the parties, albeit for altruistic reasons.

[59] Consequently, having considered the submissions and material submitted by the parties, I have taken them into account in my assessment and find that Mr Lake was not an employee and was not dismissed pursuant to s.386 of the Act and therefore is not subject to the unfair dismissal protections under Part 3-2 of the Act.

[60] Accordingly, the application for an unfair dismissal remedy is dismissed.

[61] An order⁴⁴ to that effect will be issued with this decision.



COMMISSIONER

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¹ Respondent's Form F3, question 1.2.

² Ibid, question 1.3.

³ Ibid, question 1.6.

⁴ ABN 38 078 966 976.

⁵ Respondent's supplementary submissions dated 25 April 2024, [4].

⁶ Ibid, [7].

⁷ *Bergman v Broken Hill Musicians Club Ltd T/A Broken Hill Musicians Club* [\[2011\] FWA 1143](#) (Steel C, 21 February 2011).

⁸ Respondent's submissions dated 4 April 2024, pg., 2.

⁹ Ibid.

¹⁰ *Akee, Helen v Link-Up (Queensland) Aboriginal Corporation* [\[2015\] FWC 555](#) at [8] referencing *Toll (FGCT) Pty Limited v Alphapharm Pty Limited* (2004) 219 CLR 165 at [40].

¹¹ Respondent's submissions dated 4 April 2024, pg., 2.

¹² Ibid.

¹³ Ibid.

¹⁴ Respondent's submissions dated 4 April 2024, pg., 1.

¹⁵ Respondent's supplementary submissions dated 25 April 2024, [8].

¹⁶ Applicant's submissions dated 25 March 2024, [7].

¹⁷ Ibid, [8].

¹⁸ Ibid, [6].

¹⁹ Ibid, [9]-[11] & Appendix B.

²⁰ *Tomer Rabba v PeleGuy Pty Ltd T/A PeleGuy* [\[2013\] FWC 70](#).

²¹ *Abdalla v Viewdaze Pty Ltd T/A Malta Travel*, PR927971 (AIRC FB, Lawler VP, Hamilton DP, Bacon C 14 May 2003) [(2003) 122 IR 215].

²² Applicant's submissions dated 25 March 2024, [13]-[15].

²³ Ibid, [18].

²⁴ Applicant's supplementary submissions dated 29 April 2024, [8.1] – [8.6].

²⁵ Ibid.

²⁶ *Fair Work Act 2009* (Cth), s.380.

²⁷ *Fair Work Act 2009* (Cth), s.381.

²⁸ [2022] HCA 1.

²⁹ [2022] HCA 2.

³⁰ OpCit, [43].

³¹ Ibid, [61], [174].

³² Ibid, [60].

³³ Ibid, [52] – [55].

³⁴ (1986) 160 CLR 16.

³⁵ Ibid, [56].

³⁶ The Macquarie Dictionary Online.

³⁷ *Bergman v Broken Hill Musicians Club Ltd T/A Broken Hill Musicians Club* [\[2011\] FWA 1143](#) (Steel C, 21 February 2011), [43].

³⁸ *Teen Ranch v Brown* (1995) 11 NSWCCR 197, (1995), 87 IR 308 pp. 310-311.

³⁹ *Fratini v Mission Imports* [2000] SAIRComm 20 916 May (2000).

⁴⁰ *Walker v Salomon Smith Barney Securities Pty Ltd & Anor* [2003] FCA 1099.

⁴¹ Email dated 4 May 2015 at 09:44am from Mr Lake to Mr McClelland.

⁴² Respondent's supplementary submissions dated 25 April 2024, [4].

⁴³ The Macquarie Dictionary Online.

⁴⁴ [PR775255](#)