



DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Rose Nagy

v

ProQuest Recruitment Pty Ltd

(U2024/8784)

COMMISSIONER SLOAN

SYDNEY, 10 JANUARY 2025

Application for an unfair dismissal remedy – labour hire employee – whether termination of assignment amounted to a dismissal – dismissal found – whether dismissal harsh, unjust or unreasonable – whether remedy ought to be ordered – neither reinstatement nor compensation appropriate

[1] In late 2015, Rose Nagy commenced employment as a casual labour hire worker with Workforce Recruitment Labour Services Pty Ltd. That company was a labour hire business. It engaged casual employees such as Mrs Nagy to be placed on assignment with clients. It assigned Mrs Nagy to work as a Store Worker with Central HealthCare.

[2] At some stage during Mrs Nagy’s employment, the staff of Workforce Recruitment, including Mrs Nagy, “transitioned” to ProQuest Recruitment Pty Ltd.¹ Throughout her employment with Workforce Recruitment and ProQuest, Mrs Nagy worked exclusively on placement to Central HealthCare, which at some point became known as Sigma HealthCare.² Mrs Nagy worked 37.5 hours per week, Monday to Friday. She occasionally worked overtime on Saturdays.

[3] On 15 or 16 July 2024, Mrs Nagy made a mistake at work. She inadvertently swapped the delivery labels on two boxes. The result was that each was delivered to the wrong address.

[4] On 19 July 2024, Sigma requested that ProQuest no longer assign Mrs Nagy to perform work for it. The request was made to Hema Mahe, ProQuest’s Business Manager.

[5] Mr Mahe called Mrs Nagy on 21 July 2024. He informed her that Sigma had asked to have her removed from its site and that consequently her assignment with Sigma had ended. He told Mrs Nagy that she remained employed by ProQuest, and that the business would look to find her other employment based on her experience and availability.

[6] Mrs Nagy did not accept that she remained employed by ProQuest. She regarded the telephone call on 21 July 2024 as terminating her employment.

[7] On 29 July 2024, Mrs Nagy commenced these proceedings by filing an unfair dismissal application.³

The questions I need to determine

[8] It is perhaps self-evident that a person bringing an unfair dismissal application must have been dismissed.⁴ ProQuest denied that it dismissed Mrs Nagy. It objected on that basis to the Commission hearing the matter. In short, it argued that the termination of Mrs Nagy's assignment at Sigma did not result in the termination of her employment with ProQuest.

[9] It follows that I must answer three questions:

1. Did ProQuest dismiss Mrs Nagy?
2. If so, was the dismissal unfair?
3. If so, should I order a remedy to Mrs Nagy?

[10] I have determined that those questions should be answered as follows:

1. ProQuest dismissed Mrs Nagy on 21 July 2024, when it terminated her assignment with Sigma.
2. The dismissal was unfair.
3. In the circumstances of Mrs Nagy's employment, it is not appropriate that I order a remedy for the unfairness of the dismissal.

[11] My reasons follow.

Why I have found that Mrs Nagy was dismissed

[12] A dismissal may occur in one of two ways. First, where a person's employment with their employer is terminated on the employer's initiative.⁵ Second, where the person has resigned from their employment, but was forced to do so because of conduct, or a course of conduct, engaged in by their employer.⁶

[13] There was no suggestion that Mrs Nagy resigned. It follows that the question is whether Mrs Nagy's employment was terminated at ProQuest's initiative.

[14] A termination will be "on the employer's initiative" if it is brought about by an employer without the employee's agreement. The question is whether an action on the part of the employer was the principal contributing factor which resulted, directly or consequentially, in the termination of the employment.⁷

The basis of ProQuest's objection in outline

[15] The essence of ProQuest's argument was that its employment relationship with employees such as Mrs Nagy is separate to and not to be conflated with individual client assignments. That is, the termination of an assignment does not result in a termination the employment relationship.

[16] ProQuest tendered a contract that it has with Sigma titled “Labour Hire Services Agreement”. It drew my attention to a provision in that agreement which required it to replace a candidate as soon as possible if Sigma determined that the candidate was “unsuitable”.⁸ ProQuest contended that this provision was the basis of Sigma’s instruction to ProQuest to no longer assign Mrs Nagy to perform work for it.

[17] ProQuest also tendered a document titled “Casual Employment Agreement”, which I understand to be the standard or template employment contract under which it hires its casual staff. ProQuest contended that the document reflected the terms on which it employed Mrs Nagy. It drew my attention in particular to provisions of the agreement which allow ProQuest to place an employee on assignment with a client, and which govern the termination of such assignments.

[18] ProQuest submitted, in effect, that the termination of Mrs Nagy’s assignment with Sigma was consistent with the arrangements contemplated by the Labour Hire Services Agreement and the Casual Employment Agreement. The result was said to be that the employment relationship between ProQuest and Mrs Nagy continued despite the termination of that assignment.

[19] As evidence of the continuation of the employment relationship, ProQuest relied on contact that Mr Mahe initiated with Mrs Nagy on 2 September 2024. On that day, Mr Mahe sent Mrs Nagy an email.⁹ It outlined the work that ProQuest then had available, including a short-term assignment doing “rework”. The email invited Mrs Nagy to call Mr Mahe if she was interested in the “rework project”. Mr Mahe followed up his email with a call to Mrs Nagy on or about the same day. Mrs Nagy told Mr Mahe that she did not wish to be assigned to the rework project.

[20] ProQuest also relied on the fact that under cross-examination at the hearing, Mrs Nagy accepted that during her conversation with Mr Mahe on 21 July 2024, he did not tell her that her employment was terminated. She also accepted that she had received nothing from ProQuest informing her expressly that her employment was terminated.

[21] ProQuest maintained at the hearing that Mrs Nagy was still in its employ.

Mrs Nagy’s position in outline

[22] Mrs Nagy argued that each time ProQuest assigns an employee to a client, a new employment contract is created. It follows that the termination of an assignment involves the termination of the employment relationship then existing between ProQuest and the employee.

[23] Mrs Nagy contended that this was particularly the case in her circumstances. The termination of the Sigma assignment brought to an end a longstanding, full-time work arrangement. In its place, Mrs Nagy was offered nothing but assurances that ProQuest would endeavour to find another placement for her. The only work that had been offered to her was the short-term rework project referred to in Mr Mahe’s email of 2 September 2024.

Consideration

[24] It is not possible to determine the precise terms on which Mrs Nagy was first employed by ProQuest. She gave evidence that she had no recollection of receiving or signing an employment contract with ProQuest. Mr Mahe stated that he had endeavoured to locate an employment contract signed by Mrs Nagy, without success. He also gave evidence that the version of the Casual Employment Agreement in the form before the Commission did not come into operation until 2022. However, he also said that it was the latest of several iterations of that contract.

[25] It follows that I cannot find that the Casual Employment Agreement *in the form before me* governed the terms of Mrs Nagy's employment, as ProQuest contended. It did not appear in that form until some years after Mrs Nagy's employment commenced.

[26] It would also be difficult to find conclusively that any contract provided to Mrs Nagy on the commencement of her employment with ProQuest would have been in terms equivalent to those in the Casual Employment Agreement. That said, this was a premise of the case ProQuest advanced. For present purposes, I am prepared to proceed on that basis.

[27] The Casual Employment Agreement includes the following provisions:

“BACKGROUND

The Employer offers specialist labour hire and professional placement services. In its labour hire business, the Employer employs casual employees for on-hire to its clients (Client) to fill such work assignments (Assignment) as its Clients require from time to time according to their operational requirements. At all times *when an employee is on Assignment with a Client*, the Employee is and remains an employee of the Employer and not the Client although employees will usually be given day to day instructions about the performance of work by the Client.

A. The Employer has offered me the opportunity to register as a candidate for casual work in its labour hire business.

B. The Employer and I have agreed that *on each and every occasion that the Employer offers me employment and I accept it*, the terms and conditions in this Agreement shall apply to my employment.

...

AGREEMENT

It is agreed as follows:

1. COMMENCEMENT AND OPERATION

...The Employer and I agree that the terms and conditions of this Agreement will apply *on each occasion when I am employed by the Employer* even though I may from time

to time be employed by the Employer on a number of separate Assignments and on Assignments for different clients.

...

3. NATURE OF EMPLOYMENT

...

3.2 I acknowledge and agree that:

a) By entering into this Agreement the Employer does not guarantee that I will be offered employment;

...

e) I am not entitled to any expectation of on-going employment with the Employer;

...

4. ASSIGNMENTS

...

4.4 The Employer may offer me Assignments with different positions and duties and may change my position and duties during the course of an Assignment. This Agreement will continue to govern *each period of my employment* until it is terminated, varied or replaced.

...

22. TERMINATION OF ASSIGNMENTS

...

22.4 On the termination of an Assignment:

a) the Employer will pay the wages owing to me;

b) the Employer will not be liable to pay me any other amount unless required to under any law, modern award or enterprise agreement;

c) I will return all property of the Employer and the Client in my possession or under my control:

- d) Obligations in this Agreement about confidentiality, restraint, intellectual property, moral rights and return of property continue to operate;
- e) *My employment will end* and unless the Employer and I advise otherwise, the Employer will retain my details for other Assignment opportunities.

...

34. GENERAL

34.1 The Background forms part of this Agreement.

...

34.3 This Agreement is intended to apply to a series of casual employment contracts and does not terminate by the termination of an employee's employment on Assignment."

(Emphasis added)

[28] Read as a whole, the Casual Employment Agreement does not support ProQuest's contention that it has an ongoing employment relationship with Mrs Nagy which subsists despite the termination of the Sigma assignment. As recital A states, ProQuest offers little other than an opportunity for an individual to register as a candidate for casual work. Clause 3.2 makes it clear that ProQuest has no obligation to provide the employee with work and that the employee can have no expectation of "on-going employment". That is, it does not promise any employment at all.

[29] The clear purpose and effect of the Casual Employment Agreement is to establish the contractual framework that will apply to each separate period of a person's employment, if ProQuest offers an assignment to that person and they accept it. This is made clear in recital B and clauses 1 and 4.4. Clause 34.3 is to be read in that context.

[30] Clause 22.4 of the Casual Employment Agreement is explicit that the employment comes to an end on the termination of an assignment. In effect, the agreement falls into abeyance pending another assignment being offered to the employee.

[31] Mrs Nagy submitted that her circumstances were analogous to those considered by Deputy President Asbury (as the Vice President then was) in *Kim Star v WorkPac Pty Limited*.¹⁰ In that case, the Deputy President found that Ms Star was dismissed at the initiative of WorkPac when her assignment with one of WorkPac's clients was brought to an end. Significantly for present purposes, in her decision the Deputy President observed:

1. In some cases, the employment relationship between a labour hire company and its employees may subsist in periods where the employee is not placed at a client company. However, whether this is so depends on the applicable contractual arrangements and the factual matrix in which they operate. In that case, the contractual arrangements between

Ms Star and WorkPac did not establish that there was a subsisting employment relationship which existed independently from a particular assignment.¹¹

2. The contract between the parties in that case was “in the form of a standing or framework agreement under which an employment relationship or a series of employment relationships may be entered into”.¹²
3. Under that contract, each assignment which commenced a new employment relationship was subject to an offer by WorkPac and acceptance by the employee; when the assignment ended, so did the employment relationship; the terms and conditions in the document applied to each assignment offered to the employee but did not operate independently of the employment relationship formed when an employee was offered and accepted a particular assignment; it did not guarantee that a further assignment would be offered creating a new employment relationship when an earlier assignment ended; rather, it specifically provided that each assignment is a separate employment relationship.¹³
4. Ms Star worked at the one site for over four years on a regular roster on a full-time basis, notwithstanding that she was engaged as a casual employee.¹⁴
5. The fact that WorkPac made contact with Ms Star two days after the termination of the assignment to discuss other assignments did not establish that Ms Star was still employed. At best that contact “was an attempt to find an alternative assignment for Ms Star which had it been accepted by Ms Star, would have brought a new employment relationship into effect”.¹⁵

[32] The matters identified by the Deputy President are analogous to Mrs Nagy’s circumstances. They are particularly apposite as to the effect of the terms and conditions said by ProQuest to govern Mrs Nagy’s employment.

[33] Consistent with the Deputy President’s reasoning, I do not consider that Mr Mahe’s email to Mrs Nagy of 2 September 2024 and his follow-up telephone call to her evidences an ongoing employment relationship. That contact did no more than explore the possibility of Mrs Nagy being offered another assignment, which would have brought about a new employment relationship. It is significant that in *Kim Star v WorkPac*, the employer initiated contact with the employee within two days of the cessation of the assignment. In the present case, ProQuest made no contact with Mrs Nagy for nearly two months.

[34] In this context I observe that the Commission has held that if a labour hire employer does nothing to find and offer an employee other work at the conclusion of a placement, then it may be found that there has been a termination employment at the initiative of the employer.¹⁶

[35] Having regard to all of these matters, noting in particular the terms of the Casual Employment Agreement and the duration and full-time nature of Mrs Nagy’s assignment with Sigma, I am satisfied that Mrs Nagy was dismissed by ProQuest when it brought that assignment to an end on 21 July 2024. I find accordingly.

Why I have found the dismissal to be unreasonable and harsh

[36] I turn now to explain why I have found the dismissal to be unfair.

[37] Before considering the merits of the application, I am required to decide four matters.¹⁷ In that regard, I find as follows:

1. Mrs Nagy's unfair dismissal application was made within the statutory time period.¹⁸ She was dismissed on 21 July 2024 and filed her application on 29 July 2024;
2. Mrs Nagy was a person protected from unfair dismissal;¹⁹
3. ProQuest is not a small business employer.²⁰ The Small Business Fair Dismissal Code is not applicable; and
4. the dismissal was not a case of genuine redundancy.

[38] A person will have been unfairly dismissed if the Commission is satisfied of four things: the person was dismissed; the dismissal was harsh, unjust or unreasonable; the dismissal was not consistent with the Small Business Fair Dismissal Code; and the dismissal was not a case of genuine redundancy.²¹ Given my earlier findings, the only matter left to be determined is whether the dismissal was harsh, unjust or unreasonable.

[39] In determining that question, I am required to have regard to certain criteria.²² The extent to which I am required to consider those criteria depends on the extent to which they are relevant to the case.²³ Not all of them are relevant in this case.²⁴ I do not need to traverse those that are not. I will address the others in turn.

Whether there was a valid reason for the dismissal related to Mrs Nagy's capacity or conduct (including its effect on the safety and welfare of other employees)²⁵

[40] In order to be a valid reason, the reason for the dismissal should be sound, defensible or well founded. It should not be capricious, fanciful, spiteful or prejudiced.²⁶ However, the Commission will not stand in the shoes of the employer and determine what the Commission would do if it were the employer.²⁷

[41] The dismissal was related to Mrs Nagy's capacity. Sigma's permission for her to work in its business was essential to her capacity to work.²⁸ The withdrawal of that permission, evidenced by Sigma's instruction to ProQuest, meant that Mrs Nagy was no longer capable of performing the inherent functions of the role she was employed to perform.²⁹

[42] Given the terms of the Labour Hire Services Agreement between ProQuest and Sigma, ProQuest had no contractual basis to dispute Sigma's instruction. It was obliged to obey. As a result, it is not appropriate in the context of these proceedings to seek to determine whether Sigma had a valid reason for giving such an instruction. That would be tantamount to asking whether, had Mrs Nagy been employed by Sigma, it would have had a valid reason for dismissing her. That is not the question I need to answer.

[43] To some extent, that is a flaw in Mrs Nagy's case. That is, she conflated the process and reasoning behind Sigma's instruction to ProQuest with that resulting in ProQuest's decision to terminate the assignment. This is seen, for example, in her contention that her dismissal was unfair because she was not given an opportunity to improve. ProQuest was not in a position to give her that opportunity. Sigma may have done so, but it was not Mrs Nagy's employer.

[44] Suffice it to say, the evidence does not suggest that Sigma’s instruction was capricious. Mrs Nagy admitted that she made an error on 15 or 16 July 2024. She accepted that she had committed similar errors twice before during her employment. Mr Mahe gave evidence that in the three months prior to Mrs Nagy’s dismissal, there had been a number of “pick errors” at the Sigma site. This had resulted in Sigma discussing the issue with the workers “as a group” and implementing retraining.³⁰

[45] I am satisfied, and I find, that there was a valid reason for the dismissal related to Mrs Nagy’s capacity.

*Whether Mrs Nagy was notified of the reason for dismissal and given an opportunity to respond*³¹

[46] I am required to consider whether Mrs Nagy was notified of the reason for her dismissal before ProQuest made the decision to terminate.³² Being “notified” requires ProQuest to have put the reason to Mrs Nagy in explicit, plain and clear terms.³³ The requirement that Mrs Nagy be given an opportunity to respond requires ProQuest to have given her a real opportunity to respond to the reason for dismissal.³⁴

[47] It is clear that on 21 July 2024 Mr Mahe told Mrs Nagy that Sigma had asked for her to be removed from its site due to the dispatch error that she had made the previous week. It is equally clear that he presented the termination of the assignment as having been decided. I have found that this amounted to a dismissal. It follows that Mrs Nagy was not notified of the reason for her dismissal *prior to* the dismissal being effected. She was consequently not provided with an opportunity to respond to that reason or to show cause as to why her employment ought not be terminated.

*The degree to which the size of ProQuest’s enterprise, or the absence of dedicated human resource management specialists or expertise at ProQuest, would be likely to impact on the procedures followed in effecting the dismissal*³⁵

[48] There is nothing to suggest that the procedure ProQuest followed to effect the dismissal was in any way impacted by the size of its enterprise or its lack of dedicated human resource management specialists or expertise. The fact that ProQuest was represented in the proceedings by its National Industrial Relations Manager suggests the contrary.

*Any other matters that I consider relevant*³⁶

[49] There is no evidence that ProQuest did anything to question Sigma’s instruction to remove Mrs Nagy from its site. I acknowledge, as I have already stated, that there was no contractual basis on which it could dispute that instruction. Still, I find it remarkable that ProQuest showed absolutely no resistance to a direction that would result in the termination of an employment relationship which had lasted eight and a half years and was relatively trouble-free. I would have expected ProQuest to have made at least some attempt to secure Mrs Nagy’s ongoing employment, if only in recognition of her length of service.

Conclusion

[50] On balance, I find that the dismissal was unreasonable. ProQuest did not consult with Mrs Nagy before it made the decision to terminate her employment. It made no attempt to explore alternatives to dismissal, including asking Sigma to reconsider its instruction that Mrs Nagy be removed from its site. This was particularly unreasonable in light of her tenure and employment record.

[51] I also find that the dismissal was harsh in its consequences. Mrs Nagy had more than eight years' service. She is 68 years of age. She gave evidence of the difficulties that she has encountered in securing and maintaining employment since ProQuest dismissed her.

[52] Mrs Nagy and her husband also gave some evidence of the financial impact that the dismissal has had on them. I have taken this into account, although the evidence does not reveal a level of hardship beyond that which may be expected to be encountered by any employee who is unexpectedly dismissed.

Remedy

[53] I have found that Mrs Nagy was a person protected from unfair dismissal and that she was unfairly dismissed. It follows that I have the discretion to order Mrs Nagy's reinstatement, or to order that ProQuest pay her compensation.³⁷ Importantly, a finding of unfairness in the dismissal does not oblige me to order one or the other. The question of whether to order any remedy is a matter within my discretion.³⁸

[54] Mrs Nagy did not seek reinstatement. I am satisfied that it would not be appropriate to make such an order. This is predominantly due to the nature of her employment with ProQuest. Any order for reinstatement would effectively impose an obligation on Sigma (or another of ProQuest's clients) to have Mrs Nagy work in its business.

[55] It does not automatically follow, however, that I should order that ProQuest make a payment of compensation to Mrs Nagy. I must be satisfied that an order for payment of compensation is appropriate in all the circumstances of the case.³⁹ And I am, reluctantly, not so satisfied.

[56] This is due to the circumstances of Mrs Nagy's employment. She was employed by ProQuest on a casual basis. Her continued employment was tied to the Sigma assignment – that is, the termination of her assignment with Sigma would result in the termination of her employment with ProQuest. That is what Mrs Nagy argued in these proceedings and which I have found to have been the case.

[57] Importantly, the continuation of the Sigma assignment was not entirely within ProQuest's control. It depended on Sigma continuing to have a need for labour hire services and it continuing to accept Mrs Nagy as one of the workers to provide those services. As I have already stated, once she was no longer permitted to work on Sigma's site, she was unable to perform the inherent requirements of the job she had been employed to perform. ProQuest had no contractual right to refuse Sigma's instruction to cancel Mrs Nagy's assignment.

[58] I am mindful that I have found Mrs Nagy's dismissal to have been unfair. This is in large part due to the failure by ProQuest to attempt to influence Sigma in its decision to direct

that Mrs Nagy no longer be assigned to be removed from the site, and in presenting the termination of her assignment as a *fait accompli*. But I cannot conceive of an order for compensation to remedy that unfairness that would be consistent with the contractual relationship between her and ProQuest.

[59] This is the corollary of me accepting Mrs Nagy’s contention that the termination of the Sigma assignment amounted to her dismissal by ProQuest. There is no basis to find that she could have had an expectation of that her employment with ProQuest would have continued despite the termination of the assignment. There was no ongoing employment relationship. Mrs Nagy had no entitlement to continue to receive remuneration.

[60] It follows that any loss that Mrs Nagy has suffered as a result of her dismissal stems from Sigma’s instruction to ProQuest. The termination of the assignment itself, and the resultant dismissal, were not matters within ProQuest’s control. Even had ProQuest “gone in to bat” for Mrs Nagy (as one might have expected it to do), Mrs Nagy had no entitlement to be paid while she was not performing services. That is, she could not have expected to be paid while ProQuest sought to influence Sigma to change its position.

[61] In the circumstances, any order for compensation would be punitive rather than compensatory.

[62] For these reasons, I have reluctantly concluded that Mrs Nagy has not suffered a loss for which ProQuest ought to be held responsible through an order that it make a payment of compensation to her.

Conclusion

[63] I have found that Mrs Nagy was dismissed, and that her dismissal was unfair. However, I have determined that it is not appropriate to exercise my discretion to order a remedy to Mrs Nagy in respect of that unfairness.

[64] These proceedings are concluded.



COMMISSIONER

Appearances:

Rose Nagy, the Applicant

Michael O'Shaughnessy, for the Respondent

Hearing details:

5 December
Sydney (in person)
2024

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¹ Transcript 5 December 2024, PN593

² In this decision, a reference to “ProQuest” will include Workforce Recruitment Labour Services Pty Ltd as relevant. Similarly, a reference to “Sigma” will include Central HealthCare as relevant.

³ The application was brought under Part 3-2 of the of the *Fair Work Act 2009* (“Act”). Unless otherwise stated, all references to legislative provisions in this decision are to provisions of the Act

⁴ Section 385(a)

⁵ Section 386(1)(a)

⁶ Section 386(1)(b). This provision is intended to reflect the common law concept of constructive dismissal: Explanatory Memorandum for the Fair Work Bill at par 1530; *City of Sydney RSL & Community Club Limited v Roxana Balgowan* [2018] FWC 5 at [9] and [13]

⁷ *Saeid Khayam v Navitas English Pty Ltd* [2017] FWC 5162 at [75], citing *Mohazab v Dick Smith Electronics Pty Ltd (No 2)* (1995) 62 IR 200

⁸ Exhibit 7, clause 5.5

⁹ The email is reproduced in the statement of Hema Mahe, which is Exhibit 8

¹⁰ [2018] FWC 4991

¹¹ *Kim Star v WorkPac Pty Limited t/a WorkPac Group* [2018] FWC 4991 at [69]

¹² *Kim Star v WorkPac Pty Limited t/a WorkPac Group* [2018] FWC 4991 at [60]

¹³ *Kim Star v WorkPac Pty Limited t/a WorkPac Group* [2018] FWC 4991 at [60]-[61]

¹⁴ *Kim Star v WorkPac Pty Limited t/a WorkPac Group* [2018] FWC 4991 at [70]

¹⁵ *Kim Star v WorkPac Pty Limited t/a WorkPac Group* [2018] FWC 4991 at [64]

¹⁶ *Wendy Bradford v Toll Personnel Pty Ltd* [2013] FWC 1062 at [55], citing *Diana Sherwin v Adesse Pty Ltd* [2008] AIRC 900 at [11], noted with approval in *Jayleen Kool v Adecco Industrial Pty Ltd T/A Adecco* [2016] FWC 925 at [57]

¹⁷ Section 396

¹⁸ Section 394(2)

¹⁹ Within the meaning of s 382 This was not a matter of controversy between the parties.

²⁰ As defined in s 23

²¹ Section 385

²² Section 387

²³ *Sayer v Melsteel Pty Ltd* [2011] FWAFB 7498 at [14]

²⁴ Those referred to in s 387(d) and (e)

²⁵ Section 387(a)

²⁶ *Selvachandran v Peteron Plastics Pty Ltd* (1995) 62 IR 371 at 373

²⁷ *Walton v Mermaid Dry Cleaners Pty Ltd* (1996) 142 ALR 681 at 685

²⁸ See *Donald Pettifer v MODEC Management Services Pte Ltd* [2016] FWC 5243 at [32]-[33]

²⁹ *Donald Pettifer v MODEC Management Services Pte Ltd* [2016] FWC 5243 at [37]

³⁰ Transcript PN479ff

³¹ Section 387(b) and(c)

³² *Sydney Trains v Trevor Cahill* [\[2021\] FWCFB 1137](#) at [60]

³³ *Sydney Trains v Trevor Cahill* [\[2021\] FWCFB 1137](#) at [60]

³⁴ *Gibson v Bosmac Pty Ltd* (1995) 60 IR 1 at 7; *Mark Bartlett v Ingleburn Bus Services Pty Ltd T/A Interline Bus Services* [\[2020\] FWCFB 6429](#) at [19(3)]

³⁵ Section 387(f) and (g)

³⁶ Section 387(h)

³⁷ Section 390(1)

³⁸ *Nguyen v Vietnamese Community in Australia t/a Vietnamese Community Ethnic School South Australia Chapter* [\[2014\] FWCFB 7198](#) at [9]

³⁹ Section 390(3)(b)