

Form F3—Employer Response to Unfair Dismissal Application

Fair Work Commission Rules 2013, rules 19, 20, 23, 46 and Schedule 1

This is a response to an unfair dismissal remedy application lodged at the Fair Work Commission in accordance with Part 3-2 of the [Fair Work Act 2009](#).

The Applicant



These are the details of the person who is making the application. You can find this information on the application Form F2.

First name(s)	John
Surname	Smith
Commission matter number	U2015/9555

The Respondent



These are the details of the business or organisation responding to the application.

Legal name of business	Acme Widgets		
Trading name of business	Acme Widgets Pty Ltd		
ABN/ACN	123 123 1234		
Contact person	Peter Citizen		
Postal address	112 Dooortown Road		
Suburb	Dover Heights		
State or territory	QLD	Postcode	4899
Phone number	(07) 3555 1234	Fax number	
Mobile number			
Email address	Peter.citizen@acmewidgets.com.au		
What industry is the Respondent in?	Manufacturing		

Note: If you provide a mobile number the Commission may send reminders to you via SMS.

Does the Respondent need an interpreter?



If the Respondent requires an interpreter (other than a friend or family member) in order to participate in conciliation, conference or hearing, the Commission will provide an interpreter at no cost.

Yes—Specify language
 No

Does the Respondent require any special assistance at the hearing or conference (e.g. a hearing loop)?

Yes—Please specify the assistance required
 No

Does the Respondent have a representative?



A representative is a person or business who is representing the Respondent. This might be a lawyer, an employer association or a family member or friend who will speak on behalf of the Respondent. There is no requirement to have a representative.

Yes—Provide representative’s details below
 No—Go to question 1

Respondent’s representative



These are the details of the person or business who is representing the Respondent.

Name of person			
Firm, employer organisation or company			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Email address			

1. The Applicant’s employment

1.1 Was the Applicant covered by an award or an enterprise agreement?



[The Fair Work Ombudsman](#) can help you find out which, if any, [award](#) or [enterprise agreement](#) covers your employees.

Yes
 No

If you have answered yes to question 1.1—Please provide the title of the award or enterprise agreement.

Acme Widgets Enterprise Agreement 2014

1.2 What date did the Applicant begin working for you?

14 May 2010

1.3 What date did you notify the Applicant of their dismissal?

29 June 2015

1.4 What date did the dismissal take effect?

29 June 2015

1.5 What was the Applicant's wage or salary at the time of the dismissal?

\$67,050.72

1.6 In addition to their salary or wages, was the Applicant entitled to any other monetary amount(s) or any non-monetary benefit(s) at the time of the alleged dismissal?

Yes

No

If you answered yes to question 1.6—Please provide details (for example provision of a vehicle, mobile phone etc.)

1.7 How many employees did you have at the time the Applicant was dismissed?



Count the number of employees **either** at the time you gave the Applicant their notice **or** the time immediately before their dismissal, **whichever was earlier**. Count all full-time and part-time employees plus any casuals who are engaged on a regular and systematic basis.

Not a small business under the Fair Work Act

2. Jurisdictional Objections

2.1 Do you have any jurisdictional or other objection(s) to the application?



Jurisdictional objections relate to why an employee is not eligible to make an application to the Commission. An objection is not simply that you think that the employee's dismissal was fair. The Commission's [Unfair Dismissals Benchbook](#) has more information on jurisdictional objections.

Yes

No

2.2 On what basis do you object? If you object on multiple grounds you can select more than one from the list below:

The application is out of time (i.e. lodged more than 21 days after the dismissal took effect)

The Applicant was not an employee

The Applicant was not dismissed

The dismissal was a case of genuine redundancy

The Applicant's employment does not meet the minimum employment period

The Applicant earned more than the high income threshold (currently \$136,700 per annum)

The business is a small business, and the dismissal was consistent with the Small Business Fair Dismissal Code

Other

Explain why you object on these grounds

3. Dismissal

3.1 What were the reasons for the dismissal?



Using numbered paragraphs, specify the reason(s) for dismissing the Applicant. Attach any letter of dismissal and/or separation certificate given to the employee. Note that the Commission may send copies of any documents you provide to the Applicant. Attach extra pages if necessary.

- 1: The applicant was dismissed due to arriving late for work.
- 2: The applicant has a history of turning up late, and was put on a performance improvement plan in an attempt to correct this. He completed the performance plan without incident, though relapsed a week ago.

3.2 What is your response to the Applicant's contentions?



Using numbered paragraphs, set out your response to the Applicant's contentions as to why the dismissal was unfair.

- 1: It is true that the applicant has been "clocking on" late for work from the time that he commenced employment, and that it was 'overlooked' by the previous General Manager
- 2: When Peter Citizen took over the role as General Manager, he was aware that a number of employees believed that the starting time was a 'suggestion', and that as long as they stayed back at the end of their shift, things would balance out.
3. Mr Citizen send a company wide memo out letting all employees know that this practice was to cease and that after a period of 28 days had passed from the date of the memo, any employee continually 'clocking on' late would be managed under the relevant company policy.
- 4: The memo also asked that any employee who would experience difficulty in 'signing on', on time to raise their concerns with Mr Citizen directly, and the company would assist them in finding a suitable solution to this.
5. The situation with Ms Jones is confidential and not applicable in this circumstance.

Attach additional pages if necessary.

Disclosure of information

I **consent** to my contact details being provided to an external provider for the purposes of participating in research. The Fair Work Commission undertakes research with participants in unfair dismissal matters to ensure a high quality process. Some research may be undertaken by external providers on behalf of the Fair Work Commission.

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	
Name	
Capacity/Position	
Date	



Where this form is not being completed and signed by the Respondent, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS