

## 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 application to the Fair Work Commission (the Commission) for an unfair dismissal remedy under Part 3-2 of the [Fair Work Act 2009](#).

### The Applicant



These are the details of the person who made the application. You can find this information on the unfair dismissal application Form F2.

<b>First name(s)</b>	<b>Umberto</b>
<b>Surname</b>	<b>D'Avanzo</b>
<b>Commission matter number</b>	<b>U1234</b>

### The Respondent (the employer)



These are the details of the employer responding to the application.

<b>Legal name of employer</b>	<b>Left Right Out Industries Pty Ltd</b>		
<b>Employer's ACN (if a company)</b>	<b>Left Right Out Technology</b>		
<b>Trading name or registered business name</b>	<b>12 345 678 901</b>		
<b>ABN</b>	<b>Wayne Manager, Human Resources Manager</b>		
<b>Contact person</b>	<b>100 Example Road</b>		
<b>Postal address</b>	<b>Sydney</b>		
<b>Suburb</b>	<b>Left Right Out Industries Pty Ltd</b>		
<b>State or territory</b>	<b>NSW</b>	<b>Postcode</b>	<b>2000</b>
<b>Phone number</b>	<b>02 9000 000</b>	<b>Fax number</b>	
<b>Mobile number</b>			
<b>Email address</b>	<b>w.manager@leftrightout.com.au</b>		
<b>What industry is the employer in?</b>	<b>Technology</b>		

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

**Has the Applicant given the correct legal name of the employer in their unfair dismissal application (Form F2)?**

- Yes  
 No

**Do you need an interpreter?**



If you have trouble accessing this information, please contact us. We can arrange to provide it in another format. You can find information about [help for non-English speakers](#) on our website.

- Yes – Specify language  
 No

**Does the employer require any special assistance at the hearing or conference (eg a hearing loop)?**

- Yes – Please specify the assistance required  
 No

**Does the employer have a representative?**



A representative is a person or organisation who is representing the employer. This might be a lawyer or paid agent, an employer association or a family member or friend. There is no requirement to have a representative.

- Yes – Provide representative's details below  
 No – Go to question 1

**Employer's representative**



These are the details of the person or organisation who is representing the employer (if any).

<b>Name of person</b>			
<b>Firm, employer organisation or company</b>			
<b>Postal address</b>			
<b>Suburb</b>			
<b>State or territory</b>		<b>Postcode</b>	

<b>Phone number</b>		<b>Fax number</b>	
<b>Email address</b>			

Is the employer's representative a lawyer or paid agent?

Yes

No

## 1. The Applicant's employment

1.1 Did an award or an enterprise agreement apply to the Applicant?



The Fair Work Ombudsman can help you find out which, if any, award or enterprise agreement applies.

Yes

No

If you have answered Yes – Provide the title of the award or enterprise agreement.

**Business Equipment Award 2010**

1.2 What date did the Applicant begin working for the employer?

**13 August 2021**

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

**7 January 2023**

1.4 What date did the dismissal take effect?

**13 January 2023**

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

**\$950 per week**

**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 dismissal?**

Yes

No

If you answered Yes – Please provide details (for example provision of a vehicle, mobile phone etc.)

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



Count the number of employees either at the time the employer 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.

**Twenty five.**

## 2. Jurisdictional objections

### 2.1 Does the employer have any jurisdictional or other objections to the application?



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

Yes

No – Go to question 3

### 2.2 If you answered yes to question 2.1 – On what basis does the employer object? If the employer objects on multiple grounds you can select more than one from the list below:

The application is out of time (ie 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 (\$162,000 for dismissals after 1 July 2022)

The employer is a small business employer and the employer complied with the Small Business Fair Dismissal Code

Other

Explain why the employer objects 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 Applicant. Note that the Commission may send copies of any documents you provide to the Applicant. Attach extra pages if necessary.

- 1. The Applicant was employed as a computer technician on 13 August 2021.**
- 2. From the first day the Applicant worked to the last, there were a number of problems with his performance. On a number of occasions, the Applicant would:**
  - a. arrive at work substantially late**
  - b. misplace equipment**
  - c. forget to write down work done**
  - d. fail to complete work tasks**
  - e. take longer lunches than the agreed one hour**
- 3. The Applicant was repeatedly told that his work was not good enough and that he would need to improve if he wanted to remain with the Respondent.**
- 4. The Applicant received extra training on a number of occasions to assist his performance at work. The Applicant received training in:**
  - a. recording work done**
  - b. use and storage of equipment**
  - c. recording work time.**
- 5. Unfortunately, the Applicant's performance did not improve sufficiently over time.**
- 6. For the reasons above, after repeated warnings and attempts at training, the Applicant was dismissed.**

#### 3.2 What is the employer's response to the Applicant's contentions?



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

**1. The Applicant was told on a number of occasions that there were problems with his performance. In particular, in meetings between the Applicant and various senior staff, problems with the Applicant's performance were raised on:**

- a. 14 December 2021**
- b. 12 April 2022**
- c. 5 July 2022**
- d. 9 September 2022**
- e. 16 December 2022**

**2. There is a system of performance review in place. Each employee is allocated to a manager who trains the employee and monitors their progress. Jo Small trained the Applicant and monitored his progress. The performance of every employee is reviewed on a quarterly basis by their direct superior. After each quarterly review, performance issues are raised with the relevant employee and a plan is put in place to remedy the problems, which may include counselling and/or training.**

**3. During the meetings of 5 July 2022 and 16 December 2022 with Jo Small, the Applicant was warned that his performance was not up to the standard expected and that he would need to improve, as he was in all of the meetings listed at paragraph 1 (a)-(e) above.**

**4. The applicant was given a chance to respond to any complaints made to him about his performance at the meetings listed at paragraph 1(a)-(e) above.**

**5. The Applicant has been consistently warned about his performance since he began working for the Respondent.**

Attach additional pages if necessary.

## **Disclosure of information**

The Commission may provide a copy of this response and any attachments to the other parties to this matter. This includes:

- the Applicant
- any legal representatives.

## **Consent to contact by researchers**

The Commission undertakes research with participants in unfair dismissal matters to ensure a high quality process. Some research may be undertaken by external providers.

Do you consent to the contact details provided on page 1 of this form being provided to an external provider of research services for the sole purpose of inviting you to participate in this research?



Yes

No

## 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.

<b>Signature</b>	<b>Wayne Manager</b>
<b>Name</b>	<b>Wayne Manager</b>
<b>Capacity/Position</b>	<b>Human resources manager</b>
<b>Date</b>	<b>20 January 2014</b>

If you are not the employer and are completing and signing this form on the employer's behalf, include an explanation of your authority to do so in the Capacity/Position section above.

**PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS**