



Internal group transfers of employees from Australia internationally should be documented with the same rigour applied to external onboarding

Don't let a global transfer become a local problem

Rhodes v Stantec Australia Pty Limited [2026] FWC 3372

Internal group transfers of employees from Australia internationally should be documented with the same rigour applied to external onboarding and offboarding. A recent Fair Work Commission decision serves as an important reminder for multinational employers that employment documentation should be clear about the status of the Australian employment and whether the *Fair Work Act 2009* (Cth) (**FW Act**) applies to the employment relationship.

What happened in *Rhodes v Stantec Australia*?

Mr Rhodes originally commenced employment in Australia in 2018. Following a company merger, he became an employee of Stantec Australia. In mid-2021, he relocated to the United Kingdom, and his employment transferred to Stantec UK. His Australian annual leave entitlements were paid out, and he received a final Australian payslip, effectively ending his Australian employment.

In late 2023, Mr Rhodes signed a new employment contract with the US entity, Stantec Architecture Inc, while briefly in Australia. He commenced in that role in February 2024 and, following a short period in Australia (from 3 to 10 February 2024), relocated to the United States where he remained until his dismissal in 2025.

After being terminated, Mr Rhodes filed an application under s.365 of the FW Act. Stantec Australia argued the Commission lacked jurisdiction: Mr Rhodes was not an

"Australian-based employee", and Stantec Architecture Inc. was not a "national system employer" within the meaning of s.14 of the FW Act.

Did the Fair Work Commission have jurisdiction over a US-based employee?

Commissioner Lim dismissed the application on jurisdictional grounds. The critical question was whether Mr Rhodes qualified as an "Australian-based employee" under s.35 of the Act, which provides that the FW Act applies to national system employees whose primary place of work is in Australia.

The Commissioner found that Mr Rhodes was employed by Stantec Architecture Inc, a foreign entity that does not qualify as an Australian employer. His primary place of work was the United States, not Australia. While his US contract was signed in Australia, the contract was formed outside Australia's national system, and his duties were performed predominantly outside Australia. The one-week Mr Rhodes spent performing work in Australia (against 63 weeks spent overseas during the employment) was insufficient to displace that conclusion.

How should employers document international employee transfers to avoid jurisdictional disputes?

The facts of this matter highlight several practical considerations for employers managing international workforce mobility:

- **Document the transfer clearly.** Be clear about termination method

and date of the Australian employment, pay out Australian entitlements, issue final payslips, and ensure new contracts with foreign entities are comprehensive and self-contained. New contracts with foreign entities should contain an entire agreement clause to make clear that the arrangement operates independently of any prior Australian employment.

- **Avoid ambiguity about the nature of the arrangement.** A "secondment" where the Australian entity remains the employer can preserve access to the FW Act's protections if properly documented; however, where the intention is a permanent transfer of employment, the arrangement should not be described as a "secondment" which only serves to create jurisdictional ambiguity.
- **Brief periods of Australian work are not decisive.** Incidental or short-term duties performed in Australia will not bring an otherwise overseas-based employee within the FW Act's reach.
- **Shared branding and systems do not create legal continuity.** Entities that share email addresses and a global HR system do not establish Australian employment.

Employers with globally mobile workforces should review their transfer documentation and ensure that international arrangements are structured and recorded clearly and consistently with the expectations of the parties and the intended legal outcome.

Proven misconduct, harsh dismissal: A warning for employers

Rosales v Secretary, NSW Department of Education (No 2) [2026] NSWIRComm 1086

The NSW Industrial Relations Commission recently found that a teacher's dismissal for misconduct was harsh, even though the employer had valid grounds and followed a proper disciplinary process. Although decided under the *Industrial Relations Act 1996* (NSW), the principles applied, including the "harsh, unjust or unreasonable" test and the proportionality of response, are reflected in s 387 of the *Fair Work Act 2009* (Cth) (**FW Act**) and are directly relevant to private sector employers. A dismissal found harsh, unjust or unreasonable under the FW Act can result in reinstatement or compensation of up to 26 weeks' pay.

What happened in *Rosales v NSW Department of Education*?

Ms Rosales was dismissed from the NSW Teaching Service following 13 findings of misconduct, having been employed since 2008. The Department relied on a pattern of inappropriate behaviour spanning several years, including four historical incidents each resulting in formal directions or warnings. The Commission was also critical of significant delays in the investigation process.

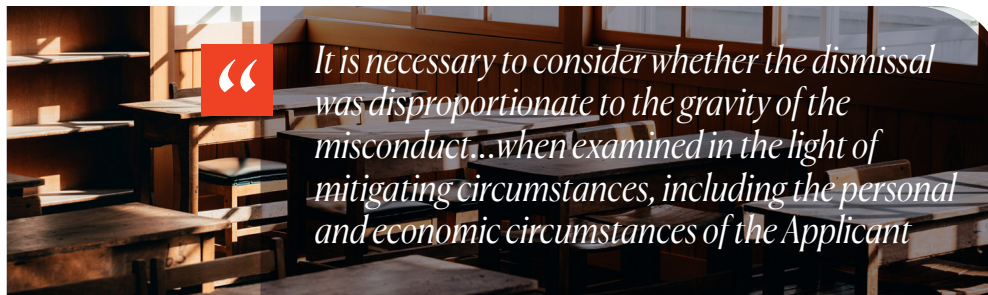
What did the Commission decide?

The Commission confirmed that the evidentiary burden lies on the employer to establish misconduct on the balance of probabilities. It also emphasised that a dismissal may be found harsh even where it is not unjust or unreasonable; the harsh limb requires a separate assessment of whether the outcome was proportionate to the gravity of the conduct in the employee's particular circumstances.

The Commission found the dismissal was not unjust or unreasonable given Ms Rosales' disciplinary history and repeated written reminders of expected standards. However, the misconduct established was minor in nature and warranted a lesser response, such as counselling, a formal warning or a structured improvement program, rather than dismissal. As the Department had not exhausted available remedial options, and given Ms Rosales' personal and economic circumstances, the dismissal was found harsh.

What should employers do before dismissing an employee for misconduct?

- **Dismissal is a last resort.** Before dismissing, consider all available options: warnings, counselling, improvement programs and supervision changes. Tribunals will ask whether you exhausted those options first.
- **Assess the whole picture.** Length of service, age, financial vulnerability and re-employment prospects all factor into proportionality. The more significant those circumstances, the higher the bar for dismissal.
- **Length of service cuts both ways.** It weighs in the employee's favour on harshness, but a long-serving employee with a history of formal interventions will find that record counting against them.
- **Document every step.** Build a paper trail of directions, warnings, counselling sessions and improvement plans to demonstrate proportionality through progressive disciplinary action.
- **Act promptly.** Investigative delay will weigh against you on harshness and may, in some circumstances, render a dismissal unreasonable.
- **Valid grounds and a fair process are necessary but not sufficient.** A dismissal can be procedurally sound and substantively justified and still be found harsh if the outcome is disproportionate.



Variation of the Clerks Award

On 27 August 2026, a Full Bench of the Fair Work Commission proposed a new working from home (**WFH**) clause for the *Clerks – Private Sector Award 2020*, following the Modern Awards Review 2023–24. The Commission rejected union calls for a formal "right to request" framework. The proposed clause (draft clause 5A) instead creates an express right for employees to make a WFH request in writing, with legal obligations on employers remaining effectively unchanged. Importantly, making such a request would constitute the exercise of a workplace right, potentially exposing employers to a general protections claim if an employee is treated adversely for making one. Employers should review and properly document existing WFH arrangements, covering agreed days, location, any Award modifications, and how the arrangement may be ended by either party.

An update on the amendments to the Workplace Relations legislation

The *Workplace Relations Legislation Amendment (Building Cooperative Workplaces No. 1) Act 2026* has amended the *Fair Work Act 2009* (Cth), arguably to the benefit of employees. Section 365 now provides that an application to the FWC may be made where a person alleges that they were dismissed, and s 368(1A) has been inserted, removing the requirement to prove an actual dismissal has occurred prior to the FWC dealing with the dispute. This change overrides the Federal Court precedent in *Coles Supply Chain Pty Ltd v Milford* [2020] FCAFC 152, which previously forced the FWC to determine whether a termination occurred before it could handle the dispute. Now, the FWC can deal with the dispute, whether or not a dismissal occurred. The amending legislation applies to applications made from 7 July 2026 onwards.

Changes to NSW Workers Compensation Scheme Concerning Psychiatric Injuries

As of July 1 changes to the NSW Workers Compensation Scheme mean a primary psychological injury is only eligible for compensation where it results from a defined "relevant event" or "conduct event". The employment must be the main contributing factor to the injury as opposed to the previous significant contributing factor test. Whilst the success rates of claims by applicants may decrease, it is important for employers to maintain their legal obligation to manage psychosocial risks and provide a safe and healthy work environment.