

STATEMENT OF CLAIM

No. _____ of 20

**Federal Court of Australia
District Registry : Brisbane
Fair Work Division**

SIMON HICKEY
Applicant

JORDAN LAMACQ
Respondent

STATEMENT OF CLAIM

A: THE PARTIES AND THE EMPLOYEE

The applicant

1. The applicant, Simon Hickey is :

(a) A party to another statement of claim 1072 / 2019 brought under the Fair Work Act

The respondent

2. The respondent, Mr Jordan Lamacq, is and was at all relevant times

(a) A natural person capable of being sued

The employee

PARTICULARS

3. The respondent, Jordan Lamacq, was employed as a trade assistant by the applicants business, Smerff Electrical during the period 23 January 2017 and 16 April 2017 a **total of 83 days.**
4. The respondent, Jordan Lamacq, then sought and found work elsewhere between April 2017 and September 2017 with one Michael Kazda, doing NBN excavations and other assorted labouring tasks. He was employed by Kazda full time during this period.

Filed on behalf of (name & role of party) Simon Hickey
Prepared by (name of person/lawyer) Simon Hickey
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5. The respondent, Jordan Lamacq, was then re-employed by Smerff Electrical on the 6 September 2017 until the 16 May 2018, **a total of 252 days**, when he resigned, rather than divulge information about cash jobs he had been doing with another employee Wouter Van Der Werwe. The total time Lamacq was employed was 83 days the first time, 252 days the second, **totalling 335 days**.

B: DISHONESTY CONCERNS INCLUDING THEFT OF COMPANY MATERIALS AND CUSTOMERS

6. During the first period of employment there were no dishonesty concerns with Jordan's performance as he was always supervised by a qualified tradesman. Around December of the second phase of his employment Jordan was issued a company van and given basic tasks he could complete without supervision such as mounting evaporators for air conditioners, running drain pipes, and lifting roofs so that tradesman could gain access. He was not always supervised after December of 2017. He received a pay rise at that time.

7. Smerff Electrical employed one Wouter Van Der Werwe during the same period as Lamacq. In March 2018 Wouter had his employment terminated due to repeated thefts of company fuel totalling \$3,600. At that time the applicant suspected further thefts of materials and customers, but no evidence was available.

8. In May 2018 The applicant was made aware of cash jobs that Jordan Lamacq had undertaken with Wouter Van Der Werwe during their employment together. Jordan was asked at the time for the details of all the work that had been done. He admitted doing one job with Wouter, in Browns plains, using company vehicles, tools, materials and fuel, but refused to divulge the name or address of the customer. The applicant believes the respondent only admitted the job because there was overwhelming evidence that he was involved. The applicant further believes that the refusal to divulge any more information about that job was to prevent the extent of the thefts being discovered.

9. The respondent, Jordan Lamacq was given until the close of business to give over the customer and job information to Simon Hickey or his employment would be terminated. Jordan Lamacq refused to give the information and instead resigned his job before the end of the day.

10. The respondent, Jordan Lamacq, **admitted all the facts from points 7, 8 and 9 during the Fair Work Commission hearing** into an unfair dismissal claim he made. He still refused to give information about the extent of cash work he had been doing, or any further information about the job he *had already admitted to* in Browns Plains.

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11. The applicant made attempts to identify and total the materials that went into the job in Browns plains by attending the residence, but was refused access by the owner. At that time I saw two Panasonic air conditioners that I believe were the property of the business, as well as all the ducting, brackets and associated materials that go into a complete installation. The applicant can't be sure that the air conditioners belonged to Smerff Electrical, but the actions of Jordan Lamacq and the home owner refusing him any information about the job strongly indicate this to be the case.

C : DISHONESTY WITH PHONE EXPENSES

12. Early in 2018 February, Lamacq was caught over stating phone expenses on his hours sheets when they were handed in so he he could be paid. He was allowed \$40 per month the same as all other employees, as there were many phone companies offering \$40 plans with unlimited calls at that time.
13. During March of 2018 Simon Hickey noticed that Lamacq had been claiming \$40 per week instead of \$40 per month as per the agreement. The weekly claims Jordan was making were not an accident, as all employees knew what the agreement was. Hickey didn't notice at first because he was busy in other areas of the business and simply approved the hours sheets without proper scrutiny. When Lamacq was questioned about the discrepancy he only smiled and admitted that he had been entering the wrong figure. He was told at that time that his phone allowance would be zero from that day forward. The estimated over payment for phone expenses would be around \$200

D : UNPAID FINES ACCRUED BY LAMACQ DURING HIS EMPLOYMENT

14. In April 2018 Hickey received a fine from Sunshine coast city council for Lamacq's company van. At no time did the business have jobs that far from Brisbane City, and Jordan had never asked if he could take it that far from home. Hickey only became aware that there was a fine when he received an overdue notice. The fine was \$169 by then and Lamacq never paid it as he resigned his employment in May 2018
15. Even more disturbing was the fuel expenses that Hickey found after learning of the fine from the Sunshine Coast. Each Friday Lamacq's van would be filled with fuel after work, and again on Monday morning, indicating he had been driving it extensively over the weekends. While personal use around town was approved, extended journeys were all covered in his employment contract that he would ask before he went touring outside Brisbane metro in the company vehicle. The applicant believes several hundred dollars of fuel was stolen in this manner, deceptively bought in the city before and after the journey to the Sunshine Coast. Again this theft was only discovered after receiving the fine, and after Jordan's unfair dismissal claim came to light.

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E : FURTHER FUEL THEFTS BY LAMACQ AND WOUTER VAN DER WERWE

16. When Wouter Van Der Werwe was terminated for fuel thefts from the business, the total stolen was around \$3,600. The card that Wouter had been using to steal the fuel was the one issued to Jordan Lamacq. While Lamacq cannot be held responsible for Wouters actions, some responsibility must lie in him giving over the card for use by Wouter on so many occasions. After January 2018, Wouter had copied the numbers and entered them into an iPhone app, so Lamacq cannot be held responsible after that time, but prior to January, every occasion when Wouter filled his personal car would have to have been with physical access to Lamacq's fuel card. The applicant believes this demonstrates complicity in the thefts along with Wouter.
17. The extent of the fuel thefts was not uncovered until June of 2018, because **Wouter was still using it to fill up his car, three months after being fired**. Queensland police refuse to investigate Wouter Van Der Werwe for stealing as an employee because Wouter is a police informer. The card numbers Wouter was using in June were still the one Lamacq had, but Lamacq had returned the card back in May.

F : INVESTIGATION OF ALL THESE MATTERS IN RESPONSE TO THE FWC UNFAIR DISMISSAL CLAIM

18. On receiving the unfair dismissal claim in 2018 the applicant had to demonstrate the grounds for which Lamacq's employment ended. The applicant doesn't accept the FWC decision in relation to unfair dismissal on the following grounds :
- (a) The Fair Work Act in **section 383B** states : that the minimum employment period for any person lodging a claim for unfair dismissal against a **small business** is one year.
 - (b) The definition of small business under **section 23A** of the Fair Work Act is a business which employs 15 people or more.
 - (c) Smerff Electrical never employed more than 10 people during it's busiest times, and often there were only 5 people on the books. *This fact was agreed upon by all parties at the proceeding, including Hickey Lamacq and Her Honour Asbury.*
 - (d) Jordan Lamacq **was not** employed for a period of one year. The statement of claim lodged by the applicant states that Lamacq was employed from 23 January 2017 until 16 April 2017. Then a second period of employment from 6 September 2017 until 16 May 2018. **The total time employed during both periods is only 335 days.** Made up from 83 Days in the first period and 252 Days in the second period.

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(e) The break in between the periods of employment Jordan Lamacq was employed elsewhere by one Michael Kazda doing NBN work. This was a substantial break of over four months between employment periods. It could not have been the result of any leave, paid leave or sick leave.

(f) **Lamacq resigned his employment** rather than give Hickey information on the cash jobs he had been doing out of hours. This statement can be verified by the transcript of the original hearing. Hickey gave Lamacq the choice of coming clean and telling Hickey the locations of the cash jobs, or he would be fired. Lamacq resigned before Hickey's deadline expired.

(g) Therefore **Jordan Lamacq's claim of unfair dismissal should not have been considered** by the Fair Work Commission as several pre requisites under the legislation had not been satisfied.

(h) The FWC order that Smerff Electrical pay Jordan Lamacq \$11,400 for unfair dismissal is in the respondents contention, null and void.

19. The time spent compiling the details of all the thefts, preparing for the FWC hearing total over eight hours. Taken into account is the administrative costs of the investigation. Estimate is \$850. Further to that the lost productivity in attending both hearings amount to another two full days lost work. The applicant submits that he is entitled to restitution for his lost productivity because the original claim of unfair dismissal made by Jordan Lamacq can be shown to be frivolous and vexatious once all the thefts and dishonesty are taken into account. The lost productivity totals at least two full days of lost work as well as all the associated travel expenses estimated at a total of \$2100

G : TOTAL VALUE OF CLAIM AGAINST JORDAN LAMACQ

(i) Panasonic air conditioners valued at	\$2,700
(j) Copper pipe valued at	\$350
(k) Cable, duct, fixings, brackets valued at	\$350
(l) Inflated phone expenses	\$200
(m) Fuel Valued at	\$650
(n) Fines incurred by Lamacq	\$169
(o) Time spent investigating thefts	\$850
(p) Expenses incurred as a result of FWC action	\$2,100
(q) Total estimated restitution	\$7,369

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Please note the total figure at Gq only takes into account figures for the thefts that we currently know about. In the event that Jordan Lamacq discloses information about further jobs undertaken then that figure may rise accordingly.

The applicant in this claim will be making requests for disclosure on the respondent

Signed : 
DATE : 3 June 2020
Signed by applicant

This pleading was prepared by applicant

APPLICANTS ADDRESS :

The applicants address for service : Simon Hickey F 14587
Locked Bag 2600 Mount Ommaney QLD 4074

SERVICE ON THE RESPONDENT :

It is intended to serve this application on all respondents

DATE 3 June 2020

SIGNED BY : Applicant

A
p
p
l
i
c
a

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