

## David Berlusconi

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**From:** Mark Janus  
**Sent:** Wednesday, 1 July 2020 1:38 PM  
**To:** David Berlusconi  
**Subject:** RE: FWC Letter - Acknowledgement Letter - U2020/8619 - Bruce-Clarke v Australian Automotive Group

Hi David,

Looks correct to me.

Thanks Mark

-----Original Message-----

**From:** David Berlusconi  
**Sent:** Wednesday, 1 July 2020 1:31 PM  
**To:** Mark Janus  
**Subject:** FW: FWC Letter - Acknowledgement Letter - U2020/8619 - Bruce-Clarke v Australian Automotive Group

Hi Mark,

Please find my attached form 3 reply. It's the attached PDF called "blakeBruce-Clark-Form 3.pdf".

If you can read and confirm, i will sign and send it through tomorrow (or today).

Regards.

David Berlusconi  
Human Resources Manager  
Australian Automotive Group Pty Limited  
60 O'Riordan Street, Alexandria  
NSW, 2015, Australia  
P | +61 2 9332 8167 F | +61 2 9360 5375  
M | +61 417 293 398 E | [dberlusconi@aag.com.au](mailto:dberlusconi@aag.com.au)

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**From:** Georgia-Rose Purtill  
**Sent:** Monday, 29 June 2020 3:30 PM  
**To:** Mark Janus; David Berlusconi  
**Subject:** FW: FWC Letter - Acknowledgement Letter - U2020/8619 - Bruce-Clarke v Australian Automotive Group

Georgia-Rose Purtill  
Customer Service and New Vehicle Coordinator City Ford Sydney  
60 O'Riordan Street Alexandria NSW 2015<<https://cityford.com.au/sitemap/>>  
Phone: (02) 9331 5000 – Fax: 9332 8195  
cityford.com.au<<http://cityford.com.au/>>

[\[cid:image002.jpg@01D64E2A.3F8B3910\]](#)<<https://cityford.com.au/new-vehicle-offers/>>

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From: [udt@fwc.gov.au](mailto:udt@fwc.gov.au) [<mailto:udt@fwc.gov.au>]

Sent: Monday, 29 June 2020 3:13 PM

To: Georgia-Rose Purtill

Subject: FWC Letter - Acknowledgement Letter - U2020/8619 - Bruce-Clarke v Australian Automotive Group

Please find attached correspondence regarding the matter U2020/8619 - Bruce-Clarke v Australian Automotive Group

This correspondence was sent automatically from the Fair Work Commission.

Please consider the impact to the environment and your responsibility before printing this email. This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the sender.

## David Berlusconi

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**From:** David Berlusconi  
**Sent:** Friday, 3 July 2020 11:13 AM  
**To:** 'UDT@fwc.gov.au'  
**Subject:** U 2020/8619  
**Attachments:** doc22368420200703105801.pdf

To whom it may concern,

Please find the attached form 3 reply in relation to U2020/8619.

My phone number for the teleconference is 0417 293 398.

Regards.

David Berlusconi  
Human Resources Manager  
Australian Automotive Group Pty Limited  
60 O'Riordan Street, Alexandria  
NSW, 2015, Australia  
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## 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.

First name(s)	Mr Blake
Surname	Bruce-Clarke
Commission matter number	U2020/8619

### The Respondent (the employer)



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

Legal name of employer	Australian Automotive Group Pty Limited		
Employer's ACN (if a company)	84 088 817 912		
Trading name or registered business name	City Ford		
ABN	84 088 817 912		
Contact person	David Berlusconi		
Postal address	60 O'Riordan Street		
Suburb	Alexandria		
State or territory	NSW	Postcode	2015
Phone number	+61293315000	Fax number	N/A
Mobile number	0417 293 398		
Email address	<a href="mailto:legal@aag.com.au">legal@aag.com.au</a>		
What industry is the employer in?	Retail Automotive Industry		

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

**Does the employer need an interpreter?**



If the employer needs 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 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).

Name of person	David Berlusconi		
Firm, employer organisation or company	Human Resources Manager		
Postal address	60 O'Riordan Street		
Suburb	Alexandria		
State or territory	NSW	Postcode	2015
Phone number	+61293315000	Fax number	N/A
Email address	legal@aag.com.au		

**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.

Vehicle Repair, Services and Retail Award 2020

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

6 / 08 / 2018

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

9 / 06 / 2020

**1.4 What date did the dismissal take effect?**

9 / 06 / 2020

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

As at 9 June 2020 (on termination), the applicant was on \$ 26,910.00 p/a. Following a complaint to the FWO (after termination), it was found a clerical error had taken place where the Applicant had not been marked as having completed year 12 resulting in an underpayment. On 24 June 2020, the applicant was back payed and his rate is now calculated at \$ 29,152.72. Evidence of the back payments were sent to the FWO by the payroll department who closed off the matter.



**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.

290 employees

**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 (currently \$148,700 per annum)
- ☐ 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) During December 2019 and January 2020, the Applicant received multiple verbal warnings from his service manager regarding leaving the premises without notifying him.
- 2) On or around 20 January 2020, it was alleged the Applicant left the workplace without notifying his manager. The matter was referred to the companies human resources department where a formal disciplinary meeting was conducted by the Human Resources Manager on or around 22 January 2020.

The Applicant was invited to respond to these allegations. Following that meeting, the Applicant was put on notice that if he left the premises again without informing his service manager, the business would consider the act as serious and wilful misconduct and pending another investigation, termination of employment would be the probable outcome. Both his manager Michael McCauley who is the service manager and workshop controller were present in this meeting. The Applicant confirmed he understood this in a later email.

- 3) On 25 May 2020, it was alleged the Applicant again, left the premises without notifying his manager on 1 June 2020. A show cause meeting was convened to enable the Applicant to respond to the allegations.
- 4) The Applicant alleged to have advised the workshop controller he was leaving and was granted permission by him to do so. When questioned if he was directed to speak to his service manager, the Applicant claims he was not and left the premises on that basis.
- 5) The Applicant was stood down pending the investigation.
- 6) A subsequent investigation concluded there was no evidence to support the Applicant's claims and the evidence strongly suggested the Applicant knew that if he did not obtain permission from the service manager, he would likely be terminated.
- 7) The Applicant left the premises without notifying the service manager and was advised of his termination on 9 June 2020.

#### 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 Respondent argues there was no evidence to support the Applicant's claims.
- 2) The Respondent argues the evidence suggests the Applicant was not being truthful in the disciplinary meeting.
- 3) The Respondent argues the allegations being raised are vexatious in nature and in accordance with the Fair Work Act 2009, the company reserves the right to pursue a cost order should the matter lead to arbitration.

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.

Signature

<b>Name</b>	David Berlusconi
<b>Capacity/Position</b>	Human Resources Manager
<b>Date</b>	3 July 2020

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**