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FW: FWC Letter - Acknowledgement Letter - U2020/8619 - Bruce-Clarke v Australian Automotive Group
Georgia-Rose Purtill**Sent:** Monday, 29 June 2020 3:30 PM**To:** Mark Janus; David Berlusconi**Attachments:** U_Matter_Resp_Letter_ElecO~1.doc (554 KB); A235B0E7B1D448103FED47D04~1.docx (92 KB); 70EEB8D85387E24245533D04AB~1.pdf (56 KB); 70EEB8D85387E24245533D04AB~2.jpg (94 KB); 70EEB8D85387E24245533D04AB~3.jpg (102 KB); 73BF390F4240808A71F7F3A400~1.doc (619 KB);**Georgia-Rose Purtill**

Customer Service and New Vehicle Coordinator

City Ford Sydney

60 O'Riordan Street Alexandria NSW 2015

Phone: (02) 9331 5000 – Fax: 9332 8195

cityford.com.au

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From: 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 GroupPlease 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.



Notice of Listing

Section: s.394 - Application for unfair dismissal remedy
Title of Matter: Bruce-Clarke, Blake v Australian Automotive Group T/A City Ford Alexandria
Matter Number(s): U2020/8619

Conciliation Details:

The above matter is listed for Conciliation, by Telephone, before a Fair Work Commission conciliator at:

09:15 am
Tuesday, 21 July 2020
Australian Eastern Standard Time
(NSW Time)

NOTE:

Any requests for adjournment of this listing must be made in writing and be based on substantial grounds.

The parties should forward contact telephone numbers to the Fair Work Commission within **7 days** of receipt of this notice.

The parties will be contacted via the telephone numbers they have provided at the time listed above.

The parties do not need to attend the Fair Work Commission.

Inquiries and contact details:

All inquiries relating to this notice are to be directed to Mitchell Cody on 1800 759 566, Email UDT@fwc.gov.au or Facsimile (03) 9655 0441.

29 June 2020 03:11 pm

To:

Notified:	Address/fax no.:
Mr Blake Bruce-Clarke	42 Roberts Avenue Mortdale NSW 2223
Mr Mark Janus Dealership Principal Australian Automotive Group T/A City Ford Alexandria	60 O'Riordan Street Alexandria NSW 2015



Australian Automotive Group Pty Limited
ABN 84 088 817 912 - GPO Box 5369, Sydney, NSW, 2001 Australia
Registered Office - 60 O'Riordan Street, Alexandria, NSW, 2016 Australia
(T) +61 2 9332 8300 (F) +61 2 9360 5376 (E) info@australgroup.com.au

Tuesday, 26 May 2020

Mr Blake Bruce-Clark
42 Roberts Avenue
Mortdale, NSW, 2223
DELIVERED BY HAND

Dear Blake

RE: Request to attend a show cause meeting regarding your continuing employment.

The purpose of this letter is to formally advise you that allegations of poor workplace performance and attitude have been brought to our attention.

It is alleged that on 25 May 2020, you left the workplace without the permission of your manager, nor did you advise an authorised person that you were leaving.

It is also alleged that morning you were specifically told you were expected to remain at work until your rostered time which was 5.30 pm. Later that day that you were formally advised again by the business, that you were required to work your rostered hours and your conduct was of concern. I note later reports that you had also had additional discussions on this with our Payroll department who confirmed the view expressed by the business to which you disagreed with.

I point out in the recent past, you have received both informal and formal warnings on this matter and you were advised at the time, and in the presence of others, that leaving the business without advising management would be considered, as serious and wilful misconduct if this occurred again and quite likely, lead to the termination of your employment.

The business believes at approximately 4.01 pm you clocked off and shortly after, left the premises without advising your manager.

Prior to any decision being made, and to enable a full and detailed investigation of this matter, we request your attendance at a formal meeting which has been specifically convened for you, to provide a suitable opportunity for you to respond to these allegations and where you will be required to show cause as to why the business should not terminate your employment.

This disciplinary meeting is to be conducted at **10.00 pm on Monday 1 May** in the ground floor meeting room at City Ford.

You are expected to make every effort to attend this meeting and are placed on notice that the Company reserves the right to make a determination in your absence if you fail to attend this meeting for whatever reason.

I will have sole responsibility for the conduct of this meeting, together with any resulting decision which is to be made.

You are of course welcome to bring a support person to this meeting should you choose.

All matters and information relating to this allegation are confidential and you are directed not to discuss them with any other person without my express prior consent. Any failure by you to maintain confidentiality may lead to disciplinary action.

If you have any enquiries in relation to this matter, please contact me on 02 9332 8167.

Yours sincerely

David Berlusconi
Human Resources Manager



Australian Automotive Group Pty Limited
ABN 44 088 817 912 - GPO Box 5368, Sydney, NSW, 2001 Australia
Registered Office - 60 O'Riordan Street, Alexandria, NSW, 2015 Australia
T: +61 2 9332 8300 F: +61 2 9380 5375 E: info@austautogroup.com.au

Thursday, 16 January 2020

Mr Blake Bruce Clark
42 Roberts Avenue
Mortdale, NSW, 2223
DELIVERED BY HAND.

Dear Blake

RE: Letter of Concern

After discussions with your manager on 25 May 2020, I am writing to underline my concerns regarding your recent workplace conduct and attitude.

As you are aware, the Covid-19 Pandemic has changed the way in which businesses in Australia operate and of particular assistance to AAG, was the Federal Governments business subsidy, for businesses. As social distancing and lockdown laws within NSW are now being relaxed, technicians and apprentices are being recalled back into the workplace to resume work as per normal.

Your employment has been conditional on and subject to, working 38 ordinary hours and any reasonable additional hours as required each week. This is also noted in your employment contract. Since commencing your employment with the Group, these additional hours have been worked on a regular basis and generally, you had commenced at 7.00 am and concluded at 5.30 pm (essentially a 9.5 hour day).

Towards the end of May and on numerous occasions, it has been alleged that you have been directed to now start 15 minutes later than your normal time (i.e. 7.15 am until 5.30 pm.) however you have refused and made disparaging comments regarding the business in this regard, to fellow co-workers including your manager.


I have been advised that your conduct and attitude in relation to your reluctance to work in accordance with your employment contract is based on your belief, that laws surrounding the Federal Governments business subsidies, do not allow overtime payments noted above, to be included in that payment.

My view on this matter is quite clear and contrary to yours. You are only being asked to work the same hours (in fact less) than what you would normally have worked prior to being stood down. As such I expect you to work the hours being directed in accordance with your employment contract and any failure to do so will lead to disciplinary action leading up-to and including dismissal.

This letter is not intended to be a formal warning and does not form part of the company's disciplinary procedure, however, it will be kept in your personnel file and thus takes the form of what I consider to be a reasonable written management instruction.

If you have any enquiries in relation to this matter, or should you wish to provide me with legislative information confirming your views, I am more than happy to "re-explore" this and encourage you to contact myself or your manager.

Yours sincerely


David Berlusconi
Human Resources Manager

BRAD GARLUCK FORD - RYDE • RYDE HYUNDAI - RYDE • RYDE SUZUKI UTE - RYDE • CRY FORD - ZEALANDRIA • CITY FORD - ROCKDALE • ROCKDALE CITY KIA - ROCKDALE •
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FairWork
Commission

Form F2 – Unfair Dismissal Application

Fair Work Act 2009, s.394

This is an application to the Fair Work Commission for an unfair dismissal remedy in accordance with Part 3-2 of the Fair Work Act 2009

Lodgment details

Lodgment date: 22/06/2020
Lodgment time: 7:30 PM AEST
State: NSW
Reference number: 105452

Matter classification

Category: Unfair dismissal
Code: Unfair dismissal
Type: s.394 - Application for unfair dismissal remedy (Form F2)

Applicant Worker

Applicant Name: Mr Blake Bruce-Clarke

Address: 42 , Roberts avenue,
NSW, Australia, 2223

Contact Number: 0402153002

Secondary Contact Number: 0295944497

Email: blakebc99@yahoo.com

How would you like to receive documents from the Fair Work Commission?: Email

Will the applicant need an interpreter? No

Interpreter Language:

Does the applicant require any special assistance at the hearing or conference (eg a hearing loop)? No

Details:

Is this applicant being represented? I don't know

The Respondent

Company Name:	Australian automotive group Trading as city ford Alexandria
ABN/ACN:	
Address:	60 O'Riordan st Alexandria, Alexandria, NSW, Australia 2015
Phone Number:	0293315000
Fax Number:	
Contact:	Mr Mark janus dealership principal Phone: 0293315000
Contact Address:	60 O'Riordan st Alexandria, Alexandria, NSW, 2015

1. Your Employment

1.1 What date did you begin working for your employer?	06/08/2018
1.2 What date were you notified of your dismissal?	09/06/2020
1.3 What date did your dismissal take effect?	09/06/2020
1.4 Are you making this application within 21 calendar days of your dismissal taking effect?	Yes
1.6 Have you made another claim to the Commission or to any other organisation regarding your dismissal(e.g. a general protections application)?	No

2. Remedy

2.1 What outcome are you seeking by lodging this application?

1. Vindication that I am not at fault
2. Financial compensation for disruption of education, Incomplete second year of apprenticeship

3. Dismissal

3.1 What were the reasons for the dismissal, if any, given by your employer?

It was alledged I left the work place without notifying any of the authorised staff.

3.2 Why was the dismissal unfair?

1. I notified authorised staff who did not corroborate my claim
2. I had already worked appropriate hours on the day they say I left without notifying an authorised staff member. approximately 9 hours
3. I recieved no officeial warning other than a letter of concern inviting me to a meeting which I attended prior to my dismissal.
4. My concerning attitude was in regards to asking why I had to work unreasonable hour for the jobkeeper payment
5. Correspondance has incorrect dates on them.

Comments

At present I am looking for empolyment so I have an open calender.

4. Disclosure of Information

The Fair Work Comission will serve a copy of this application on the other parties in this matter.

This includes:

- The Respondent
- Any legal representative

I understand that 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.

I do not object to my contact details being provided to an external provider for the purposes of inviting me to participate in this research.

Signature

I declare that the information contained in this form is true and correct.

Name: Blake bruce-Clarke

Capacity/Position: apprentice mechanic

Date: 22/06/2020

About the F3 Employer response form

Unfair dismissal

About unfair dismissal

To make an unfair dismissal application to the Fair Work Commission (Commission), an employee must be covered by the national unfair dismissal laws and [must be eligible to make an application](#).

To be eligible to make an application, an employee must have worked for the minimum employment period and, in some cases, earned less than the [high income threshold](#).

The Commission will consider the following when assessing an unfair dismissal application:

- was the employee covered by the national unfair dismissal laws and
- was the employee eligible to make an application and
- has the employee been dismissed and
- was the dismissal harsh, unjust or unreasonable and
- any objection the employer may raise.

The employer can object to an unfair dismissal application on a number of jurisdictional grounds. A jurisdictional objection is not simply that the employer thinks the dismissal was fair. For example, the employer may object because the employer does not think the employee is eligible to make the application.

If the employer is a small business (employing fewer than 15 people), the employer may be required to show that it followed the [Small Business Fair Dismissal Code](#).

For more information about unfair dismissals and objecting to an application see the Commission's [unfair dismissal guides](#) and [Unfair Dismissal Benchbook](#).

Who can use this form

Use this form if you are an employer or are responding for an employer and the Commission has served the employer with an unfair dismissal application (Form F2).

If the employer has been served with two or more Form F2 unfair dismissal applications concerning the same circumstances (such as where the employment of a number of employees is terminated at the same time), you can lodge one response for all of the applications if your response is the same for each application. If necessary, you can attach details of each individual applicant to whom your response relates (including name, date of commencement and entitlements) in a separate sheet.

Lodgment and service of your completed form

1. **Lodge this response form and any supporting documents** with the Commission within **7 calendar days** after the employer was served with the Form F2 application. You can lodge this form by post, fax, or email, or in person at the [Commission's office](#) in your state or territory.
2. **Serve a copy of your response and any supporting documents** on the Applicant within **7 calendar days** after the employer was served with the Form F2 application. You can serve this

response and supporting documents on the Applicant in a number of ways, including by email or by express or registered post. Make sure you send the documents to the email or postal address specified in the Form F2 application.

Where to get help

Commission staff & resources

Commission staff cannot provide legal advice. However, staff can give you information on:

- Commission processes
- how to make a response to the Commission
- how to fill out forms
- where to find useful documents such as legislation and decisions
- other organisations that may be able to assist you.

The Commission's website www.fwc.gov.au also contains a range of information that may assist.

Throughout this form



This icon appears throughout the form. It indicates information to help you complete the form.

Legal or other representation

Representation is where another person (such as a family member or friend, lawyer or paid agent, or employee of an employer organisation) speaks or acts on a party's behalf, or assists the party in certain other ways in relation to a matter. There is no requirement to be represented at the Commission.

You will need permission from the Commission Member dealing with your matter if you wish to be represented by a lawyer or paid agent at a conference conducted by the Commission Member or a hearing, unless the lawyer or paid agent is one of your employees or officers, or an employee or officer of an employer organisation, an association of employers or a peak council that is representing you. If you want to seek permission, you must lodge a Form F53A – Notice that a person will seek permission for lawyer or paid agent to participate in a conference or hearing.

You do not need permission to have a lawyer or paid agent prepare and lodge this application with the Commission.

For more information about representation by lawyers and paid agents, see section 596 of the [Fair Work Act 2009](#), rules 11, 12 and 12A of the [Fair Work Commission Rules 2013](#) and the Commission's [practice note on representation by lawyers and paid agents](#).

Glossary of common terms

Applicant – This is the person or organisation that is making an application.

Jurisdictional objection – This is a type of objection a Respondent can raise to an application. A Respondent can make this kind of objection if they think that the Commission, for a technical or legal reason, cannot hear the matter.

Lawyer – This is a person who is admitted to the legal profession by a Supreme Court of a State or Territory.

Paid agent – in relation to a matter before the Commission, is an agent (other than a bargaining representative) who charges or receives a fee to represent a person in the matter.

Party – A party is an Applicant, a Respondent or another person or organisation involved in a matter or case that is brought to the Commission.

Respondent – The person or organisation responding to an application made by an Applicant.

Service – Serving a document means giving a copy of the document to a person or organisation, usually to the other party to the matter. You can serve a document in a number of ways, including by email, fax, express or registered post, or in person. Parts 7 and 8 of the Fair Work Commission Rules 2013 deal with service.

Privacy

The Commission collects the information (including personal information) provided to it in this form in order to deal with the unfair dismissal application. The information will be included on the case file and the Commission may disclose the information to the other parties to this matter and to other persons. For more details of the Commission's collection, use and disclosure of this information, please see the [Privacy notice](#) for this form, or ask for a hard copy to be provided to you.



Remove this cover sheet and keep it for future reference – it contains useful information.

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)	
Surname	
Commission matter number	

The Respondent (the employer)



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

Legal name of employer			
Employer's ACN (if a company)			
Trading name or registered business name			
ABN			
Contact person			
Postal address			
Suburb			
State or territory		Postcode	
Phone number		Fax number	
Mobile number			
Email address			
What industry is the employer in?			

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

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.

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

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

1.4 What date did the dismissal take effect?

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

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.

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.

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.

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	
Name	
Capacity/Position	
Date	

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

29 June 2020

Mr Mark Janus
Dealership Principal
Australian Automotive Group T/A City Ford Alexandria
gpurtill@cityford.com.au



Dear Mr Mark Janus

We have received an unfair dismissal application

Case name Bruce-Clarke, Blake v Australian Automotive Group T/A City Ford Alexandria

Case number U2020/8619

On 22 June 2020, Blake Bruce-Clarke sent us an application saying they were unfairly dismissed from Australian Automotive Group T/A City Ford Alexandria.

We have attached a copy of the application.

We need to hear your side of the case

Please tell us your side of the case. There is a checklist of things you need to do below.
You have 7 days from the date of this letter to respond.

If your business has been impacted by coronavirus (COVID-19) and you are having trouble responding, please let us know. Call 1800 759 566 or email udt@fwc.gov.au.

What you need to do

1. Download and complete the [Form F3 Employer response to unfair dismissal application](#). ☐
2. Lodge your completed Form F3 with the Commission along with any supporting documents. ☐

3. Send a copy of the completed form and supporting documents to Blake Bruce-Clarke at the same time. Use the contact details they've listed in their application form.



If Australian Automotive Group T/A City Ford Alexandria has fewer than 15 employees, you can also download and complete the [Small Business Fair Dismissal Code Checklist](#) and include this with your response.

What happens next?

At this point, most people take part in what's known as conciliation run by a conciliator at the Commission. Conciliation is a time for you and Blake Bruce-Clarke to discuss the case.

The conciliation will be held at 09:15 on Tuesday, 21 July 2020. A notice of listing is attached.

About conciliation

Conciliation is an informal, flexible and confidential process for resolving cases. Conciliation is usually done over the phone. It can take up to 2 hours.

By taking part, you could avoid preparing submissions and evidence, and attending a conference or hearing. 4 out of 5 cases are resolved by conciliation.

If you don't wish to take part in conciliation, please let us know within 7 days.

You can find out more [about conciliation](#) on our website.

How & where to lodge your documents

You can email or fax your documents. Contact details for where to send your documents are at the bottom of this page. Please mark your documents with your case number U2020/8619.

When sending documents to Blake Bruce-Clarke, use the contact details listed on their application form (Form F2).

If you don't do this, we will forward any documents you send us to Blake Bruce-Clarke. This is to ensure cases are run fairly. If you are worried about particular information being passed on, you should contact us before sending it.

Find out more

You can find out more in our [Guide to preparing for a conciliation](#) which you can download from our website.

You can also find out more on our website about [the unfair dismissal process and termination of employment](#).

These guides may also help you:

- [Guide to responding to an application](#)
- [Guide to objecting to an application](#)

Free legal help

Our Workplace Advice Service may be able to help.

The service has been created to help small business employers and self-represented individuals. It will connect you with a lawyer who can give you free advice about the case.

To find out more, including whether you're eligible to use the service, go to the [Workplace Advice Service](#) page on our website.

If you're not eligible but still need help, you can find out [where to get legal advice](#) on our website.

Special assistance



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.

Within 7 days, remember to:

- Send your completed [Form F3](#) to the Commission and to Blake Bruce-Clarke
- Send your completed [Small Business Fair Dismissal Code Checklist](#) to the Commission and to Blake Bruce-Clarke (if applicable)
- Tell us your phone number for conciliation or tell us if you don't wish to take part

If you have any questions about this letter, please call 1800 759 566 or email udt@fwc.gov.au.

Yours sincerely

Fair Work Commission