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▶▶ Employers can make more than one attempt to strike out dismissal claims on jurisdictional grounds

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Employers have the right to make more than one attempt to knock out unfair dismissal applications on jurisdictional grounds, following a full bench ruling yesterday.

Victoria Radio Network Pty Ltd failed in its first attempt to have an unfair dismissal claim rejected on the basis that it had fewer than 100 employees.

Commissioner Brendan Eames [ruled](#) in late September last year that VRN's evidence didn't enable him to ascertain whether the workers were employees or contractors.

The company then provided a second notice of motion, on November 7, seeking to dismiss the case on the same basis and soon after provided an affidavit with 27 supporting documents.

But Commissioner Eames declined to deal with the matter further and reminded VRN of its appeal rights.

The full bench - Vice President Graeme Watson, Senior Deputy President Rob Cartwright and Commissioner Dianne Foggo - said that VRN was entitled to lodge the second notice of motion.

It said Commissioner Eames was obliged to "at least" provide VRN with the opportunity to provide further evidence, though such an application "would not be granted automatically".

The bench said the Commission had the power to "truncate the second proceedings", but didn't have the right to decline to deal with it at all.

Employees are excluded from the unfair dismissal jurisdiction under Work Choices if they are employed by an organisation that has fewer than 100 employees, haven't served the qualifying period, the employer had genuine operational reasons for dismissing them, they are short term or casual employees, are employed by other than a constitutional corporation, or earn more than the remuneration cap.

[Victoria Radio Network Pty Ltd v Bruce Eva \[2008\] AIRCFB 26 \(31 January 2008\)](#)

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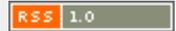
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