



DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Haytham M J Remawi

v

Virgin Australia Airlines Pty Ltd
(U2022/11839)

COMMISSIONER MCKINNON

SYDNEY, 23 JUNE 2023

Application for an unfair dismissal remedy – whether dismissal harsh, unjust or unreasonable – application dismissed

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Introduction

[1] Mr Haytham M J Remawi is 47 years old. He was employed in the Pit Crew at Sydney Airport for Virgin Australia Airlines Pty Ltd (Virgin Australia) in February 2018. In this role, Mr Remawi worked in and around the bag room and the ramp area of the airport tarmac, primarily loading and offloading aircrafts.

[2] On 8 December 2022, Mr Remawi was dismissed for serious misconduct. On 14 December 2022, he applied in time for an unfair dismissal remedy under section 394 of the *Fair Work Act 2009* (the Act).

[3] I am satisfied that Mr Remawi was dismissed. He is protected from unfair dismissal because at the time of dismissal, Mr Remawi’s gross annual salary of \$46,446.40 was below the high income threshold; he had completed the minimum employment period of 6 months; and was covered by the *Virgin Australia & TWU Airside Operations Agreement 2020*. The Small Business Fair Dismissal Code did not apply to the dismissal because Virgin Australia is a large business. The dismissal was not a case of redundancy – genuine or otherwise.

[4] The only question is whether the dismissal of Mr Remawi was harsh, unjust, or unreasonable. I am not satisfied that the dismissal was any of these things. The result is that Mr Remawi has not been unfairly dismissed. These are my reasons.

Relevant background

[5] The work of Pit Crew Operators involves sorting checked baggage, loading it onto barrows, and transferring baggage between aircraft and between domestic and international airports. While driving a small tug with luggage barrows, operators are known as “Foxtrots”. They may also drive larger “pushback” tugs that move aircraft around the airport.

[6] The environment in which Pit Crew Operators work is noisy. The auxiliary power units power aircraft and there are aircraft coming and going frequently. There are always vehicles and conveyors being used to move baggage and freight. For their protection, operators wear earmuffs on the tarmac. They communicate with a combination of hand signals, headsets, and loud voices.

Applications for promotion

[7] Mr Remawi has worked in the aviation industry for many years. He has attended many training sessions and received aviation safety and operational certificates relevant to his training and experience in the industry.

[8] In August 2021, Mr Remawi applied for a Leading Hand position. His application was unsuccessful, and Mr Remawi was advised of this by 10 November 2021.

[9] In April 2022, Mr Remawi applied again for a Leading Hand position.

[10] On 14 June 2022, Mr Remawi reported a “Commonwealth crime” to the Australian Federal Police (AFP). He reported hearing a group of his team talking about his application for a promotion and stating they “will not let this Muslim take the position, we will kill him and smash him”. He alleged that there was a strike to stop his promotion to leading hand, leaving only a small number of staff to run the operation, and that false allegations had been made about him having COVID-19 to damage his reputation.

[11] On 19 June 2022, Mr Remawi withdrew the application for promotion made in April 2022, citing concerns about the damage to his career.

[12] On 25 June 2022, Mr Remawi was performing the role of Departure Controller. In response to a request for access to relevant information technology (IT) systems, Mr John Pardey, one of four Ramp Duty Leaders, advised Mr Remawi that the role was an “excellent avenue” for him to pursue to utilise his skills.

[13] On 4 July 2022, although he had withdrawn the application two weeks earlier, Mr Remawi wrote to Mr Pardey asking for an update on the progress of his application for the position of Leading Hand. Mr Pardey responded accordingly.

Regular reporting of incidents

[14] The first few years of his employment appear to have been largely without incident. Mr Remawi worked hard and had good relationships with his peers. He reported to Mr Pardey, who in turn reported to Mr Nigel Sorensen. From July 2022, Mr Paul Daly replaced Mr Sorensen in this reporting role when he became Ramp Manager for Virgin Australia’s Sydney domestic ground handling operations and assumed responsibility for the area in which Mr Remawi worked.

[15] In late 2020, and on an increasingly regular basis from mid-2021, Mr Remawi reported the alleged inappropriate conduct or behaviour of other employees towards him. Many of the reports were made in relation to Leading Hands. Thus began a pattern of behaviour that continued throughout 2022. Mr Pardey initially addressed the reports informally, and often put down to miscommunications or misunderstandings, with apologies sought and given as appropriate. As time went on, however, Mr Remawi’s reports began to make serious and strange allegations. His managers became concerned that Mr Remawi was reporting incidents that were either exaggerated or untrue.

[16] By way of example:

1. On 25 December 2020, Mr Remawi reported Leading Hand Mr, Todd Campbell, for yelling at him without justification rather than using hand signals during a seafood offload the day before. Mr Campbell does not remember the incident. When he was told about the complaint, he was surprised. He told Mr Pardey he had just been giving Mr Remawi directives about what to do. After speaking with them both, Mr Pardey formed the view that the issue was a miscommunication.
2. On 4 July 2021, Mr Remawi reported Leading Hand Mr Perry Ferro, for throwing a tea bag on his tug and causing his T-shirt to become dirty after he approached Mr Ferro as he was pouring a cup of tea on the bag room floor. At the time, Mr Ferro was drinking a cup of tea from his cup when the tea leaves came loose from the tea bag. Mr Ferro spat out a mouthful of tea leaves, and some of it landed on the bonnet of Mr Remawi's tug. Mr Ferro apologised to Mr Remawi and said it was an accident. Mr Remawi took photographs of the tug and the floor, although no tea bag is visible in the photographs. Later that night, Mr Remawi reported Mr Ferro for the incident and stated that the "situation for me closed, however, I reported since it attracted the attention of some other staff in the ramp and bag room". There is no evidence of any other witnesses to the incident.
3. On 11 July 2021, Mr Remawi reported Mr Ferro for allegedly and intentionally "pushing my body without my notice with his Body in an aggressive [sic] way". Mr Remawi alleged that Mr Ferro's actions were intended to cause harm or injury, while also reporting "nothing had happened to me as I left the place for him". On 12 July 2021, Mr Pardey spoke with Mr Ferro about both reports. Mr Ferro said there had been a misunderstanding. He was asked to apologise to Mr Remawi and agreed to do so.
4. On 5 December 2021, Mr Remawi reported an incident where it was alleged that an unnamed colleague had taken his allocated barrows and that bag room staff had released the bags to the wrong person. He claimed responsibility for fixing the errors and ensuring no missed bags or flight delays. He requested a meeting with Mr Pardey to discuss.
5. On 24 June 2022, Mr Remawi reported Leading Hand Mr Michael Kondos for giving him very short notice to deliver a full interline barrow from the domestic to international airport. He reported that despite the short notice, he had completed the task successfully.
6. On 17 August 2022, Mr Remawi complained again about the aggressive approach taken towards him by Mr Kondos and requested that he not work in the bag room until further notice.
7. On 31 August 2022, Mr Remawi complained to Mr Pardey about being given misleading information and being bullied about his tasks by Mr Ferro, resulting in him not having work for almost an hour.

[17] Toward the end of July 2022, Mr Daly received copies of reports made by Mr Remawi about Mr Kondos and Mr Campbell. He asked each of the four Ramp Duty Leaders to provide

him with more information. Two of the Ramp Duty Leaders, Mr Pardey and Mr Huss Hage Obeid, responded by providing “a great deal” of material about Mr Remawi’s reports. Mr Daly began to work through what he had received.

[18] In August 2022, Virgin Australia released a “Workplace Behaviour Policy”. Under the policy, Team Members are expected to work to create an environment in which people are treated fairly and with respect. All forms of inappropriate behaviour are “not allowed and not tolerated”, including the making of false or malicious complaints. The policy covers workplace bullying, sexual harassment, discrimination, victimisation, and other forms of inappropriate behaviour in the workplace.

[19] The Workplace Behaviour Policy appears to have replaced Virgin Australia’s Equal Employment Opportunity (EEO) Policy, last modified in April 2015. Under the EEO Policy, team members were responsible for treating anyone they may come into contact with through their work at Virgin Australia with dignity, courtesy and respect, and to discourage any behaviour which may embarrass others or make them feel uncomfortable or unfairly treated or put their mental or physical health at risk.

The events leading to dismissal

[20] On 3 September 2022, there was a safety incident involving Mr Remawi and another Pit Crew Operator, Mr Rene Tomacruz. At the conclusion of work on that day, Mr Remawi commenced a period of personal leave. He was scheduled to return to work on 17 September 2022, although his leave was extended for medical reasons. As things transpired, Mr Remawi did not return to work.

[21] On 19 September 2022, Mr Daly called Mr Remawi and stood him down on full pay pending an investigation into his conduct. He advised that a letter of allegation would be sent to Mr Remawi. The letter of allegations was subsequently sent to Mr Remawi and his response requested by 21 September 2022.

[22] In summary, the allegations were these:

1. Allegation 1: on 3 September 2022, Mr Remawi deliberately drove into a blind spot of another team member who was completing driving duties in an attempt to create a reportable safety incident.
2. Allegation 2: during the period from 11 June 2021 to 21 July 2022, Mr Remawi deliberately reported multiple false and/or unjustifiable complaints about team members’ conduct.
3. Allegation 3: while talking to Mr Obeid on 22 August 2022, Mr Remawi stated that he was going to resign from the business however had decided to stay and ‘toy’ with the business.
4. Allegation 4: Mr Remawi sent multiple unwelcome and unsolicited Facebook messages to a female team member and continued to send friend requests after she requested that he stop.

[23] Between 19 September 2022 and 8 December 2022, the parties corresponded about the allegations and Mr Remawi’s responses, both in writing and in meetings to discuss the matters.

[24] On 7 November 2022, Virgin Australia advised Mr Remawi that the allegations against him had mostly been substantiated. It asked Mr Remawi to show cause as to why his employment should not be terminated.

[25] On 10 November 2022, Mr Remawi applied for the Commission to deal with a general protections dispute under section 372 of the Act in relation to the matter.

[26] On 16 November 2022, Mr Remawi applied to the Commission for orders to stop bullying at work under section 789FC of the Act.

[27] On 8 December 2022, Mr Remawi's employment was terminated on the grounds of serious misconduct.

Was the dismissal harsh, unjust, or unreasonable?

[28] Whether a dismissal was harsh, unjust, or unreasonable depends on an assessment of all the relevant facts and circumstances, including those set out in section 387 of the Act.

Was there a valid reason for the dismissal related to Mr Remawi's capacity or conduct, including its effect on the safety and welfare of other employees?

[29] Virgin Australia gave five reasons to Mr Remawi for his dismissal, each relating to his conduct. The reasons were these:

1. Deliberately driving in an unsafe manner,
2. Deliberately reporting multiple trivial, false or unwarranted reports about the conduct of other staff members,
3. Stating that he was planning on resigning from the business but had decided to stay and toy with the business,
4. Repeatedly sending unwelcome and unsolicited Facebook messages to a female team member, and
5. Dishonesty.

Reason 1 – Deliberately driving in an unsafe manner on 3 September 2022

[30] It is alleged that on 3 September 2022, Mr Remawi deliberately drove into the blind spot of Mr Tomacruz while he was positioning his pushback vehicle near Bay 32 at Sydney Domestic Airport.

[31] At the time, Mr Tomacruz was driving a pushback tug in and around Bay 32. He was positioned at the tail end of an aircraft while Mr Remawi was closer to its nose, near the bay. Mr Tomacruz saw Mr Remawi driving with three barrows of luggage about 20-30 metres away. He waited for Mr Remawi to clear the area so that he could reverse towards the aircraft to push it back. He saw Mr Remawi drive away from the bay towards the baggage room.

[32] Mr Tomacruz started slowly reversing his tug, looking over his right shoulder to keep the tug away from the aircraft. He heard someone yell "Stop, stop, stop". Mr Remawi beeped

his horn. Mr Tomacruz looked around and saw the middle barrow attached to Mr Remawi's stationary tug an unsafe distance away, with Mr Remawi in the tug and the barrows in his path. Mr Tomacruz stopped and got out of his tug. He did not understand why Mr Remawi had reversed his direction of travel so that his tug was now on the left side of Mr Tomacruz. Mr Remawi also alighted, gesticulating as if to say, "what happened"?

[33] The following exchange occurred, in words to the effect:

Mr Tomacruz: "What are you doing – where are you going?"

Mr Remawi: "What do you think you are doing? You almost hit me."

Mr Tomacruz: "How can I see you in my blind spot?"

Mr Remawi: "Very dangerous. I am going to have to put on a safety report".

[34] Mr Tomacruz then moved his tug away, parked it at the tail of the aircraft, and went to the office to report the incident to management.

[35] At approximately 4.30pm on 3 September 2022, Mr Remawi filed a report of the incident (INC-22-30414). The report said:

"while I was foxtrot towing three full barrows of bags from new bag room Charlei to apron stand 32, on the service road, I found Pushback tug connected with towbar head reversing with full thrust, towards the barrows, I start to move away from the tug way and reduce my reed [sic] to nearly walking speed, however the tug reversing speed still increasing which end up the pushback tug reach me in my tug with near miss distance less that an meter. I keep my hand on the horn until the driver stops and moved forward. bot [sic] the pushback tug and my tug near miss point was service road abeam the equipment staging area of stand 32. the leading hand witnessed the occurrence. when I spoke to the pushback driver about what happened, he was completely disoriented and distracted, and he told me the last time he saw he though I went to the bag room and the driver in complete lack of situational awareness".

[36] Mr Remawi recommended that Mr Tomacruz be DAMP (Drug and Alcohol Management Program) tested as well as that there be training on "human factors" and a review of reversing procedures to include marshalling.

[37] The end of shift report prepared by Ramp Duty Leader Mr Brad Spence contained this extract:

"Haytham came in earlier about an incident with Rene reversing a pushback tug in to position on 32. He said Rene was driving too fast and not aware of who was around him. I took statements from Mark the dispatcher and Todd the Leading hand that Rene did nothing wrong. I heard from a source that Haytham was going to put in another safety report. I went down the right channels and spoke to Rene as well to get his version of events. He said he did nothing wrong and he feels Haytham is trying to pin something on him for some reasons. This is getting to a point where staff members don't want to work with Haytham for fear of getting safety reports put in against them. If anything Haytham caused the situation more due to him not letting Rene to reverse into 32 before

driving barrows up to the front hold. I applauded and encourage Haytham to put in safety events but sometimes I feel he is not using the system in the correct manner.”

[38] Virgin Australia relies on two independent witness accounts to the effect that Mr Tomacruz was driving safely, and that Mr Remawi changed his direction of travel and drove into the path of Mr Tomacruz.

[39] Mr Remawi says that Mr Tomacruz did not follow the right of way rules around aircraft as he was second in sequence and was not engaged in any aircraft movement activity. He refers to his incident report and his sketch of the incident drawn not long after. Mr Remawi says he could not have been in the blind spot of Mr Tomacruz, as he had three barrows attached to the tug. He alleges that Mr Tomacruz reversed in high speed; that Mr Remawi reduced his already slow speed to walking; and used the tug horn to warn Mr Tomacruz.

[40] Mr Remawi agrees that the two tugs ended up at an unsafe distance from each other. He suggests that Mr Tomacruz may have been distracted, stressed, or have lost situational awareness due to past health issues, including short memory lapse and other human factors. He complains that Mr Tomacruz was not DAMP tested, implying that alcohol or drugs may have been a factor at play. Mr Remawi submits that the incident was not properly investigated, including because CCTV footage was not obtained.

[41] There are three key facts in dispute in relation to the incident on 3 September 2022. These are:

1. where Mr Remawi was at the start of the incident,
2. Mr Remawi’s direction of travel, and
3. the timing of the incident – that is, whether it was before or after offloading the aircraft.

[42] Mr Remawi says he was coming towards the nose of the aircraft from the new bag room (which is closer to the tail end of the aircraft) with three full barrows of luggage. But he also says he offloaded the aircraft after leaving the bag room with three full barrows. This does not make sense. The barrows were full because the aircraft had just been offloaded. All witnesses other than Mr Remawi say that he was travelling from the nose end of the aircraft towards the bag room.

[43] In an interview on 7 October 2022, Mr Remawi explained that usually he will do a “u turn and come back to stop”, although his own map of the incident does not record any change in direction. That he may have done so on this occasion is consistent with the incident map drawn by Mr Tomacruz and his evidence that Mr Remawi changed direction between the time he had checked to make sure the path was clear and when he stopped after realising something was wrong.

[44] I prefer the evidence of the witnesses other than Mr Remawi. It makes no sense that Mr Remawi would have been heading towards the aircraft with 3 full barrows of baggage that had just been offloaded from the aircraft. If Mr Remawi was travelling to Bay 32 with a full load, he has not explained what he was going to do with the baggage when he got there. If Mr Remawi was travelling from the new bag room towards the aircraft, he could have driven safely alongside Mr Tomacruz in the same direction with no need to cross into his path. The same can be said for the alternative possibility (not relied on by either party) that Mr Remawi was

travelling from one bag room to another, each of which is located to the east of Mr Tomacruz's path.

[45] One matter that is not in dispute is that Mr Remawi could see where Mr Tomacruz was at all times during the incident, unlike Mr Tomacruz who had to look behind him while reversing his tug. It follows that Mr Remawi was in a position to stay out of the path of Mr Tomacruz had he chosen to. Mr Tomacruz could see Mr Remawi's location before he started reversing and again once he stopped. He waited for Mr Remawi to clear the path before setting off. Once he began reversing, he was looking over his right shoulder to avoid colliding with the aircraft and could not see movements on his left side. He stopped when he heard Mr Remawi beeping his horn and then saw Mr Remawi where he had not expected him to be.

[46] While the eyewitness accounts of witnesses other than Mr Remawi are different, they are not in conflict. Relevant differences can be explained by the obvious fact that each witness observed the incident through their own eyes and ears, and likely between different points in time. As to Mr Remawi's account, it is affected by internal inconsistencies including his description of the direction he was travelling – described at separate times as both “toward” and “away” from the aircraft, and whether the incident occurred before or after the offloading of the aircraft.

[47] I find that Mr Remawi was positioned near the nose end of the aircraft at the start of the incident on 3 September 2022. He was not coming from the new bag room. His initial direction of travel was away from the nose of the aircraft towards the bag room. Once Mr Tomacruz started reversing his tug, Mr Remawi did a ‘u turn’, drove towards the aircraft into the path of Mr Tomacruz, and stopped his tug. The incident occurred after the aircraft had been offloaded, which explains why Mr Remawi was pulling 3 full baggage barrows at the time.

[48] The only available conclusion on these facts is that Mr Remawi drove deliberately into the path of Mr Tomacruz. His action created a risk to health, safety, and property because of the potential for the two tugs to collide as a result. It was serious misconduct. Reason 1 is established.

Reason 2 – Deliberately reporting multiple trivial, false or unwarranted reports about the conduct of other staff members

[49] Virgin Australia allege that 10 of the 11 reports made by Mr Remawi in the period between 11 June 2021 and 21 July 2022 and which formed part of the letter of allegations were false, unjustifiable and/or made despite Mr Remawi not legitimately holding genuine concerns. It says that Mr Remawi's conduct in this regard undermined the trust of his colleagues. Virgin Australia relies on written evidence of the reports and the witness evidence of employees about the incidents described in the reports.

[50] Mr Remawi submits that his reports made over this period were not a valid reason for dismissal. He says that most of the events either did not belong to him or were a long time ago. Mr Remawi claims that the reports relate to things said by other team members, and that he had an excellent relationship with his work colleagues. As a member of the Pit Crew, Mr Remawi submits that he had limited responsibility to establish his reports; that he had followed correct reporting procedures and this should not undermine trust or Virgin Australia's “Just Culture”,

and that team members who had become leading hands may have lied by denying actions they committed. Mr Remawi says it is unfair that Virgin Australia believed the accounts of others over his own versions of events. He observes that the reports mostly relate to a “group of 7 staff members”, suggesting that they may have had it in for him.

[51] It is necessary to consider each report in turn.

- *Report 1 – on 11 June 2021, Mr Fox yelled and was aggressive towards Mr Remawi*

[52] On 11 June 2021, Pit Crew Operator Mr Daniel Fox was preparing for the offload of an aircraft that was about 5 minutes away. As he pulled up to collect empty barrows from one bay and move them to another, he saw Mr Remawi reversing to take them. Mr Fox spoke loudly to Mr Remawi, in words to the effect: “Don’t take those, they’re mine. I’ve got an aircraft in 5 minutes”. Mr Remawi responded to the effect of “I’ve got a flight too”. Mr Fox said, “I don’t care about your flight”. Both Mr Remawi and Mr Fox were seated in their tugs during the exchange. A few days later, Mr Fox apologised to Mr Remawi, saying “Sorry about the other day”.

[53] On 12 June 2021, Mr Remawi reported Mr Fox for his alleged “aggressive behaviour” the day before. Mr Remawi claimed that Mr Fox yelled at him, in words to the effect “It’s mine I bring it her [sic] and I will take it, I do not care about your flight”, and that he stepped back to keep himself safe in case Mr Fox became more aggressive. When the report was brought to Mr Fox’s attention, he was surprised. He responded by saying, in words to the effect: “I was just going about my job”. He denied speaking aggressively to Mr Remawi or saying, “I don’t care about your flight”. Mr Pardey looked into the matter and again concluded that there had been a miscommunication.

[54] I find that Mr Fox spoke loudly to Mr Remawi and that Mr Remawi perceived this to be yelling. However, I do not find that Mr Fox engaged in aggressive behaviour towards Mr Remawi during the exchange. I also do not accept the assertion that Mr Remawi “stepped back to keep himself safe”. At the time of the incident, the two were seated in their tugs. Mr Remawi’s assertion that they had alighted from their tugs at the time of the exchange is inconsistent with Mr Fox’s account of what he saw “as he pulled up” to collect the barrows, which was “Mr Remawi reversing”. I prefer Mr Fox’s recollection in this regard, both because his version of events is the most likely and because I found him to be a credible witness where Mr Remawi was not. The reliability of Mr Remawi’s evidence is a matter to which I will return.

[55] Given my findings in relation to what happened on 11 June 2021, it follows that Mr Remawi’s report of the incident on 12 June 2021 was not accurate. The seriousness of the exchange was exaggerated by Mr Remawi in a way that can only have been intended to get Mr Fox into trouble.

[56] Reason 2 is established in relation to this report.

- *Report 2 – on 9 November 2021, Ms Seru was aggressive towards Mr Remawi*

[57] On 10 November 2021, Mr Remawi reported Ms Jasmyn Seru for her “aggressive approach” towards him the day before. Mr Remawi alleged that Ms Seru had raised her voice

and was “yelling in an angry manner during her request to push the rear conveyer belt after finish the loading”. He also alleged that this was not the first time she had been aggressive towards him. Mr Pardey spoke to Ms Seru and asked if she had been aggressive with Mr Remawi. Ms Seru responded in words to the effect “I don’t remember any interaction with him besides asking him to move something for work”. She agreed that she may have raised her voice so that she could talk to Mr Remawi. Mr Pardey then spoke to Mr Remawi about it. Mr Remawi said, in words to the effect, “I have never been spoken to by a female like that”.

[58] On the evidence, Ms Seru worked “a fair bit” with Mr Remawi on the ramp. She did not like how he treated her and generally avoided him. Ms Seru felt that Mr Remawi treated men more favourably than her. She was upset by a comment he had made to her in 2020, when he discovered that Ms Seru was applying to get her commercial pilot’s licence. According to Ms Seru, Mr Remawi said, in words to the effect: “I don’t think you can be a pilot. Females can’t be pilots.” I accept that Mr Remawi said this to Ms Seru.

[59] The context of their interactions and the loud environment in which they worked make it more likely than not that Ms Seru spoke both directly and loudly to Mr Remawi when she asked him to move a conveyor belt. I do not accept that when she did so, Ms Seru was angry or aggressive towards Mr Remawi. There was no reason for her to be angry or aggressive. She was simply asking a person she found difficult to deal with to do something that she needed done. It is also likely that Mr Remawi’s reaction (and subsequent report) was due to his not liking being told what to do by Ms Seru.

[60] On 13 October 2022 (by letter dated 10 October 2022), Mr Remawi seized on the correction of a typographical error in relation to the allegation about Ms Seru (involving a change in the table of allegations from “substantiated” to “unsubstantiated”) to assert that the allegation against him in this regard was not credible. The typographical error had no bearing on the credibility or validity of the investigation into this allegation. I agree that an error was made in the table summarising Virgin Australia’s conclusions in relation to the report. Once it identified the error, Virgin Australia acknowledged the need for correction and communicated this in a timely way to Mr Remawi. Mr Remawi had adequate opportunity to respond to the allegation and did so.

[61] Reason 2 is established in relation to this report.

- *Report 3 – on 12 December 2021, Mr Remawi was confronted by Mr Kantari*

[62] On 12 December 2021, Pit Crew Operator, Mr Mohamad Kantari, was driving a tug with four-wheel steering from Gate 36 to 38. As he turned the tug, his back wheels flicked out and he hit a concrete pillar. He carried on working and told management what had happened. Over the course of the day, other employees approached him and said that Mr Remawi had been saying the incident should be reported. This upset Mr Kantari and he decided to have a word with Mr Remawi.

[63] Mr Kantari approached Mr Remawi at Gate lounge 36. He asked if they could talk in private, and they went into a closed office. The following exchange occurred, in words to the effect:

Mr Kantari: What is your problem?
Mr Remawi: What are you talking about?
Mr Kantari: Why are you going around talking about me to people?
Mr Remawi: I do not know what you are talking about.
Mr Kantari (yelling): Keep my name out of your mouth and mind your own business.

[64] Mr Kantari walked away. Later that day, he was told by Mr Obeid that Mr Remawi had reported Mr Kantari for trying to assault him and for threatening him.

[65] The two operators were subsequently called into a “mediation” by Mr Obeid. Mr Kantari apologised for yelling at Mr Remawi and for getting angry. They shook hands. According to Mr Kantari, they hugged, and he thought that was the end of the matter.

[66] At 4.54am on 13 December 2021, Mr Remawi reported the incident to Mr Pardey as a “formal concern”. Included in his report were complaints about another employee, Mr Chris Vella. Mr Remawi alleged that after Mr Kantari asked to speak with him alone, Mr Kantari had been “very abusive and aggressive” towards him. He also alleged that Mr Vella had given misleading information to Mr Kantari and stated that as a previous applicant for the post of Leading Hand, Mr Vella should have acted differently. He reported Mr Vella saying, “You did not get the leading hand position because you reported the accident”. He asked for permission to report Mr Kantari to “Group Security” “given his violence action”. Mr Pardey was concerned about the report and thought Mr Remawi was behaving in a paranoid manner. It is unlikely that Mr Vella made the statement alleged, because the accident had not occurred and so could not have been reported before a decision on Mr Remawi’s first application for promotion had been made.

[67] In the early morning of 15 December 2021, Mr Remawi wrote to Mr Pardey again, suggesting that the same “demostic [sic] violence” approach taken by Mr Kantari earlier that week was starting to be followed by other staff, including Leading Hand Mr Zachary Arahu. He complained that Mr Arahu had provided misleading information about having “tug number 515 in the bag room”. At the time of the incident in question, Mr Arahu was working an afternoon shift in the bag room and was using tug 515. At some point during his shift, he noticed Mr Remawi driving tug 515. He approached Mr Remawi and asked why he had swapped his tug for number 515. Mr Remawi replied, in words to the effect: “There was nothing on the tug that said it was yours. What’s the issue?”. Mr Arahu said, in words to the effect: “Mate, I was using it. Why did you swap?”. Mr Remawi then said “Okay, you can have it back.”

[68] Mr Pardey spoke to Mr Arahu about the report and Mr Arahu was extremely surprised. He denied yelling or talking in a derogatory manner to Mr Remawi and described the encounter as a normal conversation.

[69] Later on 15 December 2021, Mr Pardey met with Mr Remawi and Mr Obeid. Mr Remawi was asked about his welfare and whether some of his “alarming” reports had been resolved. Mr Remawi said that Mr Arahu had raised his voice at him and that he thought he “must have been on drugs”. Mr Remawi was asked about the incident with Mr Kantari. He said that Mr Kantari had “very angry eyes” and was yelling at him “why did you report” [me]. He said that he feared Mr Kantari “was going to strike him” and said he was about to “grab

Mohamad and take him to the ground”. He said he had never seen Mr Kantari like this before and that it was “likely that he taken some drugs that day”.

[70] Mr Remawi was asked about the mediation with Mr Kantari and Mr Obeid and whether he thought they could work together now. Mr Remawi said he was happy with the outcome, that he had no issue with Mr Kantari, they had resolved their differences, their relationship was “all good” and they would continue to pray together. Mr Remawi commented that there had been conflicts between Lebanon and Jordan in the past (Mr Remawi is Jordanian, and Mr Kantari is Lebanese), that he was friends with the Jordanian ambassador, and that he had recently taken another company to court for a personal issue and “won”.

[71] Mr Remawi expressed concern that other team members were asking him if he was reporting people because he had missed out on the leading hand position and that there were rumours circulating about him. He was advised to report such instances to the Ramp Duty Leader on duty. Finally, Mr Remawi was asked about his working relationships with Ms Seru and Mr Ferro. He advised that these relationships were “fine”.

[72] On 16 December 2021, Mr Remawi wrote to Mr Pardey to advise that he needed to convey his family to the United Arab Emirates and was grateful for Virgin Australia’s support. He advised the “great concern” of his 95-year-old mother in Dubai about Mr Remawi working on the same shift as Mr Kantari. He wrote that “she does not know any thing about his criminal background and how he penetrate virgin policy to commence demostic violance” [sic]. He requested a change of roster so that he was no longer on the same shift as Mr Kantari. He advised that he was happy to take unpaid leave “if required”. Mr Pardey responded by advising that he would discuss options with the Airside Operations Manager.

[73] On 17 December 2021, Mr Remawi wrote twice to Mr Pardey about being rostered to work with Mr Kantari. He advised that he had spoken with an SNP security officer about the matter and that his mother wanted to “assign a law firm in Sydney to handle the case” as she was very concerned about them working the same shifts.

[74] Also on 17 December 2021, Mr Nigel Sorensen and Mr Pardey called Mr Remawi to discuss his reports of domestic violence and ask for his claims to be put in writing so they could be investigated. Mr Remawi asked why he needed to put it in writing if Mr Obeid had confirmed that Mr Kantari wanted to hit him. Mr Remawi said he would not put his claim about domestic violence in writing.

[75] Mr Remawi said that Mr Pardey had promised him a shift change. When Mr Pardey heard this, he realised Mr Remawi was lying. Mr Remawi was told that his shift pattern could not be changed immediately on request. Mr Sorensen acknowledged the request for 2 week’s unpaid leave and said he was recommending approval for Mr Remawi of 2 full roster periods of paid leave while his safety concerns were investigated. Mr Remawi was told not to come into work that day and to send Mr Sorensen an email outlining his safety concerns so they could be investigated at arms-length. Mr Remawi said he was happy with the decision.

[76] Mr Sorensen followed up the phone call with an email (copied to Mr Pardey) confirming the 2-week paid leave period, requesting specific information about Mr Remawi’s claims of domestic violence and advising that the matter would be investigated. There was then some

back and forth between them, with Mr Sorensen reiterating his requests for information and Mr Remawi providing only short responses with the names of “witnesses” to the incident. Mr Remawi said in the meantime he would fly to Dubai for a “short holiday” and would not be available unless required to attend a formal meeting. Mr Sorensen advised Mr Remawi that this was not acceptable and that he would be expected to remain in the country.

[77] On 21 December 2021, Virgin Australia took steps to commence an investigation into the incident of 12 December 2021. In response to a request from Ms Budd, Mr Remawi completed an “EEO Complaint Form”. The complaint alleged “victimisation” “which may lead to psychological injury & may affect body safety” in relation to the incident of 12 December 2021, which was described in this way (with some corrections to spelling):

“On the 12/12/2021 around 0900 I was the foxtrot for leading hand John Down and when I was taking the bag from bag room to Aircraft stand 38 I saw tug driven by driver Mohamed Kantari and leading hand Zac driving toward Stand 36 in high speed and suddenly hit the beam & concrete support at the stand. I stopped to check they are safe, which they are. There were other also witness the incident. Mohamed continue driving and again hit stand 38, a basket cart did [indecipherable]. I reported to leading hand John what I seen and he said he will Report further. After this on site meeting Zac and Toh was there and another push push operator who was doing bay handling at the time. I continue my job normally or no one ask me for any formal reports. I receive couple of enquiry from friends mainly Hasan and Chris Vella. At around 1300 to 1330PM same day with long room, Mohamed came very angry and ask to speak alone which I did the person near to me say No do not do it. When we were alone he abused me, said why you reported it, and about to use his hand to affect the safety of my body.”

[78] The complaint went on to state that Mr Remawi “did say nothing, try to calm him down so the situation will no [sic] go where a formal fight and then external agencies will be involved such as police, as I am trying to resolve it internally, given I will get support from outside in.” He gave the names of five witnesses: Paul Seeling, Adam Marshall, Mitch Sullivan, Eric San and Hussein Obeid as well as John Pardey (to whom the incident had been reported). He stated his preferred solution as:

“The concern we got after this I felt Mohamed & me should no [sic] be at the same shifts. Give that he stood down from push back driving and he think I reported the matter. The was the main concern by my family in Sydney (my wife) overseas (my mother). This resolved now.

There is a concern from psychological injury to me by my family that’s why asks me and Mohamed should no [sic] stay.”

[79] After reading the report, Ms Budd formed the view that a full investigation of the matter was not required. Mr Remawi returned to normal duties on 6 January 2022.

[80] I find that Mr Remawi’s report of the incident on 12 December 2021 was not an honest representation of what occurred. I accept that Mr Kantari was angry at Mr Remawi and that he expressed this anger orally, in a way that was confrontational and intended to deter Mr Remawi from similar conduct in the future. He then walked away. There was no physical altercation

between them, nor any threat of physical violence towards Mr Remawi. After an informal mediation between them shortly after the event, Mr Kantari apologised to Mr Remawi and there was an understanding between them. The matter was, or should have been, resolved.

[81] And yet in a series of reports about the incident in the days that followed, Mr Remawi repeatedly reported, and increasingly exaggerated, what had transpired. He described Mr Kantari as having been “very abusive and aggressive” and asked for permission to report his “violence action”. He described Mr Kantari’s “very angry eyes” and his “yelling”, saying he feared Mr Kantari was “going to strike” him, such that Mr Remawi was about to “grab” Mr Kantari and “take him to the ground”. He suggested – without foundation - that Mr Kantari had been on drugs. He stated – again without foundation - that Mr Obeid had confirmed that Mr Kantari “wanted to hit him”, and that Mr Pardey had promised him a shift change.

[82] In almost the same breath, Mr Remawi stated that he had no issue with Mr Kantari and that mediation had resolved the issue while simultaneously implying some form of political or legal intervention, including from the Jordanian embassy or the courts. Within four days, Mr Remawi had requested a change of roster to avoid Mr Kantari (at the apparent request of his 95-year-old mother in Dubai), implied that Mr Kantari had a criminal background and that he had engaged in domestic violence, and indicated that a law firm might become involved. It seems likely that Mr Remawi’s original motivation for requesting the change of roster and a period of 2 week’s “unpaid leave” to accommodate the request, was his family’s decision to take an unplanned “short holiday” to Dubai over the Christmas period. When pressed, Mr Remawi initially resisted efforts to obtain precise details of his allegations against Mr Kantari for the purpose of the investigation and only gave in at the urging of Virgin Australia.

[83] On 21 September 2022 and again on 31 October 2022, Mr Remawi denied making any report in relation to the incident on 12 December 2021. The denial is plainly inconsistent with the written records of Mr Remawi’s reports in relation to the matter.

[84] On 8 December 2022, on the day of his dismissal, Mr Remawi again reported the incident involving Mr Kantari, this time to the NSW Police. Mr Remawi alleged that he had been “assaulted” by Mr Kantari and asking how to make an “AVO” application. He sent a copy of a draft Apprehended Personal Violence Order (APVO) application to the Commission on 21 December 2022 and described being “physically approached” and shouted and yelled at by Mr Kantari. In its final form, as lodged on 19 January 2023, the APVO application alleged that Mr Kantari had “pulled him” into a room, “blocked and cornered” Mr Remawi, screamed at him and blamed him, and then “physically abused” him by “suddenly throw a punch”. The reports indicate Mr Remawi’s propensity for hyperbole, in utter disregard for the potential consequences of his actions. However, as these reports were made by Mr Remawi after the dismissal, they could not have formed the basis of a valid reason for dismissal.

[85] Reason 2 is established as it relates to the reports made by Mr Remawi prior to his dismissal about the incident with Mr Kantari on 12 December 2021.

- *Report 4 – on 24 December 2021, Mr Remawi was yelled at by a Leading Hand*

[86] In Mr Remawi’s response to the allegations against him dated 10 October 2022, he claims that under no circumstances could he have reported an incident on 24 December 2021,

as he was stood down from 17 December 2021 to 6 January 2022. On 21 September 2022, Mr Remawi stated that this issue was closed, as Mr Ferro had apologised. On 31 October 2022, Mr Remawi provided a further response that appears to include a typographical date error in relation to the alleged incident (12.12.21 instead of 24.12.21) and which denied making any report on this date. Mr Remawi continues to deny making any report in relation to an incident at work on 24 December 2021, and I accept that Mr Remawi was not then at work. For this reason, his denial must be accepted in relation to the allegation as originally framed.

[87] The issue arises because an error was made in Virgin Australia’s table of allegations concerning the date of the alleged report. It is apparent that this error caused confusion for Mr Remawi about whether the allegation related to the report he made about Mr Campbell on 24 December 2020 or the report about Mr Arahū on 15 December 2021. While the error was identified and communicated to Mr Remawi by Virgin Australia on 10 October 2022 (clarifying that the relevant date was 15 December 2021, in relation to the incident with Mr Arahū), the clarification did not find its way into correspondence between the parties about the matter. As a result, Mr Remawi was not given a proper opportunity to respond to the matter. Reason 2 is not established in relation to this report.

- *Report 5 – on 1 February 2022, Mr Remawi claimed a team member was on drugs because they were yelling and engaging in ‘domestic violence’*

[88] The evidence does not establish the nature of the incident the subject of this report, including who was involved or what occurred. On 21 September 2022, Mr Remawi denied making any report in relation to this matter. Reason 2 is not established as it relates to this report.

- *Report 6 – on 18 March 2022, a team member assaulted Mr Remawi’s wife*

[89] On 18 March 2022, Mr Remawi and another Pit Crew Operator, Mr Roland Massaad, came across each other in the locker room. They had an unremarkable conversation about how busy it was and the need for coffee and cigarettes. Later that day, Mr Remawi walked past Mr Massaad in the lunchroom while he was talking to others and dropped his shoulder into Mr Massaad’s back. Mr Massaad turned around and said, “Mate are you alright?”. Mr Remawi kept walking, turned around and gave Mr Remawi a filthy look. That evening, Mr Remawi reported the locker room conversation to Mr Pardey as “the assault of my wife” by Mr Massaad. He said he would like to report “this assault through the formal channels”.

[90] On 20 March 2022, Mr Pardey spoke to Mr Remawi about the report. Mr Remawi said he was talking to Mr Massaad in the locker room and thought he heard him say “rub your wife” or something similar. He reported being quite unsure of what had been said and asking Mr Massaad several times about the exact phrase. He said this is what he thought he heard, but it was not clear, and he was unsure. Mr Remawi also reported that he went up to Mr Massaad and stood about half a metre away “to see his face and smell him to see if he was on drugs or alcohol”. He alleged that Mr Massaad took a step back and that Mr Remawi then left the locker room without saying a word. Later in the shift, Mr Remawi said that he was walking in the muster room past Mr Massaad who had his back to him; that Mr Massaad unknowingly stepped back and Mr Remawi’s shoulder brushed Mr Massaad’s back by “accident”.

[91] Mr Pardey spoke to Mr Remawi and cautioned him about accusing someone of “assaulting his wife” based on something he did not clearly hear or understand. Mr Pardey also spoke to Mr Massaad. Mr Massaad denied saying anything about Mr Remawi’s wife and reported the shoulder charge of Mr Remawi, which he thought was intentional. He said he had no issues with Mr Remawi and was very surprised by the accusation of assault.

[92] Mr Pardey arranged a meeting between himself, Mr Remawi and Mr Massaad on 24 March 2022. Mr Remawi was asked to explain his version of events, and he said to Mr Massaad “I thought you said go fuck your fucking wife”. Mr Massaad repeated his version of events and denied saying any such thing. Mr Pardey asked if they wanted to take it “upstairs” to Mr Sorensen. Mr Remawi said “No”. After the meeting, Mr Massaad said to Mr Pardey, in words to the effect: “I will keep it civil, but I want nothing to do with him.”

[93] It is abundantly clear from the evidence, and from the concession made by Mr Remawi at the hearing, that there was no basis for his report in relation to Mr Massaad. Mr Remawi’s allegations in relation to this incident oscillated from Mr Massaad’s “assault” of Mr Remawi’s wife, to saying something to the effect of “rub your wife”, to not being clear what he had heard, to alleging that Mr Massaad had said “go fuck your fucking wife” and suggesting that he was under the influence of drugs or alcohol. For reasons known only to Mr Remawi, he then dropped his shoulder into Mr Massaad as he walked past and gave him a dirty look. Mr Remawi downplayed his own conduct in his report of the incident, by describing the shoulder charge as an accident that occurred when Mr Massaad “unknowingly stepped back”. Despite initially stating that he wanted to report Mr Massaad through the formal channels, when given the opportunity to “take it upstairs”, Mr Remawi declined.

[94] On 31 October 2022, Mr Remawi expressed the view that this was a misunderstanding due to language issues, and that it was closed. I do not agree with this characterisation. I find that Mr Remawi made this report knowing it not to be true and that he did so deliberately.

[95] Reason 2 is established as it relates to this report.

- *Report 7 – on 20 April 2022, Mr San made false allegations against Mr Remawi*

[96] On 21 April 2022, Mr Remawi reported that he had been the subject of false allegations by Leading Hand, Eric San, about a misplaced barrow for a cancelled flight, resulting in delays to passenger baggage. Mr Remawi alleged that Mr San had asked to speak with him in a separate room and when Mr Remawi refused (due to the incident with Mr Kantari on 12 December 2021) Mr San made allegations against him in front of all the staff at the lounge. Mr Remawi claimed that he was able to correct the facts and put Mr San on to the right person. Mr San denies asking to talk to Mr Remawi in a separate room. He does not recall the incident but does recall speaking to a leading hand in the bag room about ensuring that foxtrots put barrows behind, rather than in front of, a staging line as per normal operating procedure.

[97] On 21 September 2022 and again on 31 October 2022, Mr Remawi denied making any report in relation to Mr San. I reject these denials. The report Mr Remawi made in relation to Mr San forms part of the evidence in the case.

[98] The report made by Mr Remawi describes what appears to have been a misunderstanding on the part of Mr San, and one that was quickly resolved once Mr Remawi pointed it out. I am not satisfied that Mr San made false allegations against Mr Remawi, or that he asked Mr Remawi to speak with him “in a separate room” just as Mr Kantari had done before. I find that Mr Remawi’s report exaggerated the exchange between Mr Remawi and Mr San in a way that reflected poorly on Mr San.

[99] Reason 2 is established in relation to this report.

- *Report 8 – on 28 April 2022, Mr Ferro yelled at Mr Remawi*

[100] On 27 April 2022, Mr Ferro and Mr Remawi were in the bag room. Mr Ferro received a call asking for Mr Remawi to be sent to bag room zone 4. Mr Ferro spoke loudly to Mr Remawi and said, “You’re on zone 4”.

[101] On 28 April 2022, Mr Remawi reported a “barrow procedure discrepancy” and Mr Ferro’s “surprising action” the day before. Mr Remawi alleged that when he arrived at Belt 3, Mr Ferro was offloading and started yelling at Mr Remawi, asking him to remove his barrow and saying “did we ask for the barrow” or words to that effect. In the same report, Mr Remawi alleged that a “similar scenario” had occurred two days earlier with another Leading Hand, “Saba”.

[102] Mr Pardey spoke to Mr Ferro about the report. Mr Ferro responded, in words to the effect, “I don’t know what he’s talking about. I thought I was just giving him directions”. Mr Pardey advised Mr Ferro: “watch yourself around this guy and keep yourself absolutely professional”.

[103] On 21 September 2022 and again on 31 October 2022, Mr Remawi denied making any report in relation to Mr Ferro. He said his was only an inquiry about procedures. I reject these denials. The report made by Mr Remawi in relation to Mr Ferro forms part of the evidence in the case and contains more than a simple inquiry about procedures. It alleges that both Mr Ferro and another leading hand yelled at Mr Remawi while telling him not to park his tug in certain places. Mr Ferro denies having yelled at Mr Remawi, and I accept his evidence. If Mr Remawi’s report is evidence of anything, it is that Mr Remawi does not like it when leading hands give instructions with which he does not agree.

[104] Reason 2 is established in relation to this report.

- *Report 9 – on 22 May 2022, Mr Remawi was framed in relation to a security screening incident and reported the incident to the Jordanian Embassy*

[105] This is one of the stranger matters reported by Mr Remawi, involving as it does suggestions of terrorism, conspiracy, and undisclosed personal relationships.

[106] On 22 May 2022, Mr Remawi was returning to work from a break on the other side of the airport security gates. He passed a metal detector and body scans and was randomly selected for an explosives scan. He returned two false positive results. Mr Remawi was asked to remove

his safety boots and was tested again, this time returning a negative result. In the meantime, Mr Remawi's Aviation Security Identification Card (ASIC) was removed and then returned.

[107] On 23 May 2022, Mr Remawi went through the security gates again. This time, he was subject only to a body scan. He formed the view that the scan from the day before had been suspicious. He reported the security screenings to the AFP as a "Commonwealth crime", saying that he had been requested by a security agency "to file a report" to the Department of Home Affairs. In his report, Mr Remawi alleged that the positive explosive test results "did not surprise anyone"; that he had a strange feeling two days before about his colleagues not responding to him or his radio calls; and that the security screening of 22 May 2022 was an act of bullying by persons "using their power to influence my management to terminate my service".

[108] On 23 and 25 May 2022, Mr Remawi spoke to Mr Obeid about the security screenings. He expressed concern that he may have been framed for terrorism by Sydney airport security. He mentioned that the person who swabbed him was the same female security staff member that was dating a Virgin ramp team member, and he may have been framed by a few of the Virgin staff. Mr Remawi spoke about reporting the incident to the FBI, Group Security, the Jordanian embassy, and the King of Jordan as well as Sydney Airport Corporation. In their second conversation, he told Mr Obeid about an interview he had with the Sydney Airport Corporation. He said it was now with the Jordanian embassy to ensure the incident was closed out with Sydney Airport. Mr Obeid formed the impression that Mr Remawi's main concern was the potential for future restrictions to be applied on his travel or employment opportunities.

[109] On 26 May 2022, an Event Report containing similar content to Mr Remawi's AFP report was submitted by Mr Remawi and received by Mr Pardey. The same day, Mr Pardey received an email from Mr Obeid recounting his conversations with Mr Remawi on 23 and 25 May 2022.

[110] Other than Mr Remawi's own statements, there is no evidence to support any of these allegations or the assertion that he was contacted by a security agency and asked to file a report about certain matters with the AFP. Further, the speculation and suspicion that underpins these statements does not appear to have any rational foundation. Perhaps it emerged from the context of Mr Remawi feeling pessimistic about his prospects of success in relation to his second application for promotion, which had not yet been finalised or withdrawn. Even so, it seems a long bow to draw to suggest that two false positive security screening results are evidence of a group of individuals acting in concert to achieve the termination of his employment and/or the restriction of his future international travel.

[111] I accept Mr Obeid's contemporaneous report of his conversation with Mr Remawi about the incidents as an accurate record of what he heard. I find that Mr Remawi spoke about reporting the incident to the various entities and agencies identified, including the FBI, the Jordanian embassy, and the King of Jordan. I also find that his reports about the security screenings of 22 May 2022 contained details that were not factual and made unfounded allegations about the people involved in those screenings.

[112] On 21 September 2022 and 31 October 2022, Mr Remawi denied making reports of the kind alleged in this respect. I reject these denials on the basis that the reports form part of the evidence.

[113] Reason 2 is established in relation to Report 9.

- *Report 10 – on 18 July 2022, Mr Kondos found Mr Remawi’s phone and was able to identify it as belonging to Mr Remawi*

[114] On 17 July 2022, Mr Kondos found a mobile phone on a seat in one of the tugs on the tarmac. He picked the phone up and saw that it had a locked screen with Mr Remawi’s face. He took the phone into the bag room office and put it in a drawer. He called Mr Remawi on the radio bag room channel, told him where the phone was and said he could get it when he finished doing what he was doing. Mr Remawi responded by saying “Okay”.

[115] At 12.06am on 18 July 2022, Mr Remawi made a report to Ramp Duty Leader Adam Noble about a conversation with an unnamed member of the “Customer Service Delivery staff”. The conversation was about Mr Kondos talking about Mr Remawi’s mobile phone on the radio. Mr Remawi implied that his mobile phone had been searched because otherwise how would he have known it was his. He asked if Mr Noble was “ok” with his reporting the matter to the “information private section” as suggested by the Customer Service Delivery staff member.

[116] The report made by Mr Remawi in relation to this incident relies on a conversation with an unnamed person, preventing any attempt to corroborate his account. It implies that Mr Kondos sought to embarrass Mr Remawi over a group radio channel and that Mr Remawi’s privacy had been compromised by an unauthorised search of his phone that should be reported. The simple truth of the matter is that Mr Kondos acted in Mr Remawi’s interests when he found his phone abandoned on a tug. He put it in a safe place and let Mr Remawi know where it was so that he could retrieve it, which Mr Remawi did. He did not unlock the phone, or search through its contents. The report made by Mr Remawi in this regard was both unwarranted and unfounded.

[117] On 21 September 2022 and again on 31 October 2022, Mr Remawi denied making any report in relation to Mr Kondos. The denials are rejected on the basis that the reports form part of the evidence.

[118] Reason 2 is established in relation to Report 10.

- *Report 11 – on 21 July 2022, Mr Campbell yelled at Mr Remawi*

[119] On 20 July 2022, Mr Remawi was driving a tug when Mr Campbell stopped him. While on opposite sides of the tug, Mr Campbell asked Mr Remawi loudly about where he had been during the last movement, referring to the work of loading or unloading an aircraft. Mr Campbell’s team was expected to not leave the bay during a movement until he gave the ‘all clear’. Mr Remawi said he didn’t know what Mr Campbell was talking about. When Mr Campbell asked him again, Mr Remawi replied, in words to the effect “Someone said I could go”. Mr Campbell then said “I did not say you could go. If there was a bag search, we would have needed your help. Next time stay on the bay until I let you go.” Mr Remawi was very

polite with Mr Campbell. During this exchange, Mr Campbell was not angry and did not yell at Mr Remawi.

[120] On 21 July 2022, Mr Remawi reported Mr Campbell to Mr Pardey under the guise of “Observations to improve team spirit”. He reported that Mr Campbell had stopped him the day before while he was very angry, had started a heated conversation and was yelling. Mr Remawi said that he “applied as stand by self-defence techniques” by keeping his body away in case Mr Campbell’s level of anger “goes to physical force”, likening it to the incident with Mr Kantari on 12 December 2021. He reported applying “the conflict resolution principle by smiling and accommodating” Mr Campbell and suggesting the use of portable radios. He also stated that he had “big respect” for Mr Campbell and “always appreciate his guidance and feedback”.

[121] Mr Pardey responded by email to advise Mr Remawi that he had passed the information on to the Ramp Manager. Mr Remawi replied that he had received a call from airport security “IOC” asking what had happened, that he had downplayed the issue, and that he had been advised to “call 000 for any life-threatening issues”.

[122] It is apparent from Report 11 that Mr Campbell remonstrated with Mr Remawi for leaving an area without his approval. I accept that this occurred and find that this was reasonable management action on the part of Mr Campbell. Mr Campbell was in charge of the area where Mr Remawi was working. Mr Remawi had left the area without approval, contrary to Mr Campbell’s standing instructions.

[123] Mr Remawi exaggerated the incident in his report when he drew a link between Mr Campbell’s actions and those of Mr Kantari on 12 December 2021, and subsequently advised that airport security had made inquiries about the issue and advised him to “call 000 for any life-threatening issues”. I do not accept that Mr Campbell was yelling at Mr Remawi or that there was any danger, real or perceived, of physical force being used during the exchange. The report was also inconsistent with the statement that Mr Remawi had “big respect” for Mr Campbell and that he appreciated his feedback.

[124] On 21 September 2022, Mr Remawi responded to the allegation in relation to Report 11 by saying that he had met with the Ramp Manager about this occurrence and the case was addressed comprehensively; that he had received a call from Airport Security and Mr Campbell had apologised. On 31 October 2022, Mr Remawi asserted that the issue was closed.

[125] Reason 2 is established in relation to Report 11.

Summary – Reason 2 was a valid reason for dismissal

[126] For the reasons above, I am satisfied that Mr Remawi made a series of false and/or exaggerated reports about his colleagues over a period of approximately 1 year. His reasons for doing so are not explained – probably because in large part, Mr Remawi denies the allegations against him. While some reports appear to have a connection to Mr Remawi’s unhappiness about not being promoted, others (those made before the application for promotion and before any decision in relation to the promotion had been made) cannot be explained in this way.

[127] I do not accept the submission that most of these events either did not belong to Mr Remawi or were so long ago that they cannot be relied upon by Virgin Australia. While some occurred long before the letter of allegations, it was the pattern of behaviour that led to an investigation into Mr Remawi's conduct. In those circumstances, it was appropriate for Virgin Australia to consider matters that on their own, may not have warranted investigation, but taken together, indicated that there may be cause for concern.

[128] I also reject the assertion that as a member of the Pit Crew, Mr Remawi only had limited responsibility to establish his reports. Mr Remawi had an obligation to be honest in his dealings with Virgin Australia and his colleagues and when he made reports about them, to recount the facts truthfully without exaggeration and provide evidence in support of those reports if requested. His conduct in relation to the reports (other than reports 4 and 5) was inconsistent with those obligations.

[129] It is not in dispute that reporting is an important part of Virgin Australia's Just Culture approach. However, rather than acting in accordance with this approach, Mr Remawi's reports undermined the integrity of the Just Culture system by regularly making false or inaccurate reports.

[130] Most difficult to understand is that aside from these reports, Mr Remawi generally did have good relationships with his work colleagues. There were some exceptions, including Ms Seru (after 2020), Mr Kantari (after December 2021) and Mr Massaad (after March 2022). In each case, the relationship appears to have soured because of the inappropriate actions of Mr Remawi. His reasons for reporting fellow team members in a way that might require investigation and/or put their jobs at risk, are unclear. There is no evidence of the existence of a group of employees who had it in for Mr Remawi and wanted his employment terminated. Any contention to that effect is mere speculation.

[131] Reason 2 is established.

Reason 3 –Mr Remawi said he had decided to stay and toy with the business

[132] On 22 August 2022, it is alleged that Mr Remawi told Mr Obeid that he was going to resign from the business but had decided to stay and 'toy' or 'play around' with the business instead. He said that he was going to step down from baggage driving and stay as a loader as this would allow him to observe more and report more incidents. Only 5 days earlier, Mr Remawi had asked Mr Pardey to remove him from shifts in the bag room "until further notice", in connection with alleged aggression on the part of Mr Kondos.

[133] On the day in question, Mr Remawi was driving past Mr Obeid on a tug. He made a hand gesture that Mr Obeid understood to mean someone was in trouble. Mr Remawi said to him, in words to the effect: "I am going to make a safety report." As he did this, he was not looking where he was going. Mr Remawi ran into another tug and caused a scratch (described by Virgin Australia as "a normal scratch occurrence").

[134] Mr Remawi submitted a safety report in relation to the incident. In his report, Mr Remawi took no responsibility for the crash. He instead reported that another tug had stopped

suddenly in front of Mr Remawi without notice. Mr Remawi was also DAMP tested for drugs and alcohol.

[135] While the DAMP testing was underway, Mr Remawi and Mr Obeid had a conversation in Arabic. Mr Remawi said the DAMP test result was guaranteed to be negative. He spoke about how he felt treated differently to other staff who had not been DAMP tested when they were involved in accidents. He said he had reported the matter to his mother and would also make a police report. He said that Mr Sorensen was out to get him and now that he had gone, Mr Daly would be the same. They spoke about his making frequent safety reports and how that might affect the way Mr Remawi worked. Mr Remawi said he was planning to move back to Dubai in December 2022, but had just got off the phone with his travel agent and had extended his plans for another year so that he could stay and “play around with the company”. He said he wanted to step down from baggage driving and work as a loader as this would allow him to observe and report more incidents. Approximately 2 hours later, Mr Obeid reported the conversation by email to Mr Daly.

[136] In the early hours of 23 August 2022, Mr Remawi reported another “Commonwealth crime” to the AFP. The report referred to three serious safety incidents, including one that was “about to take off my leg by the pushback tug we [sic] while I was driving a tug and company did not did do [sic] any thing even on site drug and alcohol test”, as well as his own safety incident of the day before. Mr Remawi wrote:

“...what called the strongest staff who was not in our team came purposly [sic] from my back and hold my both arms to back and try to knock me down without any reason and this was Infront [sic] of other staff and ground handler an Dr passenger. After they fail in these attempts either to terminate my services or create harm or death to me there were rumor [sic] a weapon will be entered to the airport by one of our staff not sure if it is a knife or a gun but this what I heard when I was changing my uniform and staff on the other side speaking, not sure if I am targeted or a fight will occur ignited by one of our staff and the situation now is in high tension and management support this tension although I told them ethically I can not resign by terminate my services if you do not want me”.

[137] Mr Remawi submits that Mr Obeid is either lying or misunderstood what Mr Remawi said to him on 22 August 2022. He says they discussed many things while he was waiting to be DAMP tested after scratching a tug, including his reporting of some occurrences and the quality of his reports. Mr Remawi says Mr Obeid called him for another meeting while he was waiting and started to ask him questions and clarifications, including if he had any intention to resign (to which Mr Remawi said “No”). He claims that Mr Obeid asked if he could stop reporting safety incidents and that in response, Mr Remawi explained to Mr Obeid about safety processes. Mr Remawi claims that Mr Obeid misunderstood him during this discussion and denies making any mention of the police or embassy either to Mr Obeid or Mr Pardey.

[138] Virgin Australia substantiated the allegations that underpin Reason 3 on 7 November 2022, based on a preference for the accounts of witnesses other than Mr Remawi and the apparent consistency between his alleged comment and his conduct of reporting his colleagues without proper basis.

[139] Having heard and observed the evidence of Mr Remawi and Mr Obeid, I accept the evidence of Mr Obeid about what Mr Remawi said to him on 22 August 2022. I do not accept that Mr Obeid misunderstood what Mr Remawi said to him in Arabic because of his different accent or grasp of the Arabic language. The two regularly spoke together in Arabic and had done for many years. They both speak Arabic with proficiency. The explanation given by Mr Remawi about the particular use of the words said in Arabic is not persuasive and I reject it.

[140] Mr Remawi's actions are consistent with his stated intention to 'play' with the business, evident in both his request for a change of duties and his repeated false and/or inaccurate reports to and about Virgin Australia and its employees, including to external agencies such as the AFP.

[141] Reason 3 is established.

Reason 4 – Repeatedly sending unwelcome and unsolicited Facebook messages to a female team member

[142] Virgin Australia alleges that between 28 July 2022 and 14 September 2022, Mr Remawi sent repeated unwelcome and unsolicited Facebook messages and friend requests to a female team member who I will refer to as "AD", including after she had asked him to stop on 30 August 2022. This occurred in the context where they were not friends, did not usually work on the same shifts and had never spoken face to face, and in circumstances where AD is much younger than Mr Remawi. She is one of only twelve female employees in a team of approximately 260 employees working in Virgin Australia's domestic ground handling operations.

[143] After initially ignoring requests from Mr Remawi, AD eventually accepted a friend request on 28 July 2022. Almost immediately, Mr Remawi sent her a message to say, "Good morning!" and a list of some of the "Best Cities in the World to Visit in 2022" with the caption "Very interesting post". Both Dubai (United Arab Emirates) and Doha (Qatar) appeared in the list. AD did not reply. Later that day, Mr Remawi sent further messages to AD, asking if she was at work, saying he was running late and asking how busy it was. AD replied briefly to say she was not at work.

[144] On 29 July 2022, Mr Remawi sent five further Facebook messages to AD. He asked if it was busy inside, said "Have not seen you!", told her that he had left his black jacket at work and asked her to keep it for him. He wrote that he was "off tomorrow" and that he "should be off". AD did not reply.

[145] After midnight (12.24am) on 30 July 2022, Mr Remawi sent AD a "New Islamic year" greeting.

[146] On 31 July 2022, Mr Remawi sent 6 Facebook messages to AD, asking how she was and if she was ok as he had not seen her for a couple of days. AD replied briefly on 1 August 2022 to say, "On holidays". Mr Remawi replied, "Ok that's great enjoy". Later that night Mr Remawi sent AD an image of his enrolment in the "Qatar Buddy Pass Program". He apologised soon after, saying it was "sent by mistake" but then followed up with 3 more messages, asking when she would be back, stating he was taking holidays on 4 September 2022, and that his holidays were for medical reasons.

[147] On 3 August 2022, Mr Remawi sent AD 6 Facebook messages asking when she would be back from leave and suggesting that she might like to pick up one of his shifts, as he had to see his doctor before a medical procedure overseas later that month. When AD said she did not want to pick up any more shifts because of university, he replied:

“For sure uni is more important”
“See you in your next shift”
“Basically I am every day in different role”.

[148] On 5 August 2022, Mr Remawi sent AD 3 more Facebook messages, explaining a new friend request on the basis that he had deleted her name by mistake and was reorganising his groups.

[149] On 9 August 2022, Mr Remawi sent more unprompted Facebook messages to AD. He started by saying “Hi” and when this went unanswered, he added:

“The last couple of days were difficult”
“As my sister passed away”
“Sorry for any thing”.

[150] On 13 August 2022, Mr Remawi again sent a message saying “Hi” to AD and did not receive a response.

[151] At 11.03pm on 14 August 2022 (at a time when the airport is closed), Mr Remawi rang AD through Facebook. AD was awake but did not answer the call. She thought it was weird that Mr Remawi was ringing and did not want to speak to him. The call rang out.

[152] On 18 August 2022, and despite her response two weeks earlier to the effect that she did not want any more shifts, Mr Remawi sent Facebook messages to AD asking if she wanted extra shifts as he had some.

[153] At 7.08pm on 23 August 2022, Mr Remawi sent a ‘waving hand’ emoji to AD and apologised for a “second invitation”, referring to another Facebook friend request. He blamed his son for deleting AD as a friend on Facebook.

[154] Approximately 2 hours later, at 9.15pm, Mr Remawi sent another message to AD asking what time she would be in tomorrow. Then at 11.11pm, he wrote:

“If you are in tomorrow same time I can invite you for a coffee”
“Although I take always decaffeinated”.

[155] On 24 August 2022, Mr Remawi sent AD 13 Facebook messages over a 12-hour period. The messages started with good morning and asked what time she started, if she had left, said he was here, stated that he thought they were on “opposite shifts” and later said he had forgotten his jacket again, asking if she was in tomorrow, saying he was off “doing medical procedure”, and could she keep the jacket with her until he saw her after tomorrow.

[156] On the morning of 25 August 2022, Mr Remawi sent AD 5 Facebook messages asking if she had found his jacket, and then saying he was coming in and she could disregard the message. Later in the day, they came across each other in the baggage room and had their first and only conversation. Mr Remawi asked AD if she needed any help moving bags around or taking anything outside. AD said no. Mr Remawi asked her if she wanted a coffee. Again, AD said no. Later that night, Mr Remawi sent the following messages over the period from 8.08pm to 9.33pm:

“Thanks for today!”

“You are good foxtrot”

“I need to admit this”

“(thumbs up emoji)”

“Have a good night!”

“I need to rest I got a heavy medical procedure tomorrow”

“Take care !”

[157] On 26 August 2022, Mr Remawi sent more Facebook messages to AD:

“Hi [A – name redacted]”

“How are you”

“Please make sure while you drive in the Bag room do not go wrong side against other vehicle”

“There is a memo from JP about this”

“I will get it”.

[158] At 8.45pm that evening, Mr Remawi sent five graphic pictures to AD of his exposed legs undergoing a procedure. He then wrote:

“Externally sorry my son ment [sic] to send to his grandmother,”

“I do not know how to delete”

“This today’s cupping of my legs which I do regularly”

And two hours later:

“Are you in tomorrow”

“I got couple of shift give a way”.

[159] On 29 August 2022, Mr Remawi sent more messages to AD, including “Hi How are you” and “Hope the work and study going well”. Later that same night he forwarded her an image of a baby sleeping on a couch above the caption “Good Night!” with 6 messages, saying “Long day as I am flying to Dubai this Sat”, “Many things to do before my procedure”, “So many medical Xray-MRI etc”, “Tomorrow back to work”, “0530 AM start” and “Are you in tomorrow”.

[160] On 30 August 2022, AD sent a message to Mr Remawi. The message said:

“I would appreciate if you don’t contact me anymore as I feel it’s quite uncomfortable with all the messages”.

[161] Mr Remawi replied on 30 August 2022, saying “Apology yesterday messages were ment [sic] to Rene”, followed by a “thumbs up” emoji, an image of messages exchanged with fellow Pit Crew Operator Mr Rene Tomacruz, and two more messages: “Not sure why you always come I will remove you from my contact list” and “Have great day”. He then removed AD as a friend on Facebook.

[162] In late August or early September 2022, Mr Daly spoke with AD. He said “I hear you’re having some issues with Haytham”. AD showed him some of the messages she had received and said “I’ve asked him to stop. I can handle it.” Mr Daly left it with her but said “If he continues to contact you, or makes you uncomfortable, come and see me.”

[163] After the end of his shift on 3 September 2022, Mr Remawi commenced a period of personal leave and travelled to Egypt for dental treatment. In and around his flights from Sydney to Cairo via Doha, he sent a series of Facebook friend requests to AD as illustrated in the table below (“AD” refers to AD):

Date	Event	Local time	Sydney time
3 September 22	Facebook friend request sent to AD		7.25 pm
3 September 22	Aircraft for Doha departed		9.55 pm
4 September 22	Aircraft arrived Doha	5.08 am	12.08 pm
4 September 22	Facebook friend request to AD	6.00 am	1.00 pm
4 September 22	Aircraft for Cairo departed	8.47 am	3.47pm
4 September 22	Aircraft arrived Cairo	10.58am	6.58pm
5 September 22	Friend request to AD	11.15pm	7.15am

[164] On 5 September 2022, AD sent a message to Mr Remawi:

“Why have you sent me multiple new friend requests?”

[165] On 14 September 2022, Mr Remawi sent another friend request to AD.

[166] Mr Remawi returned to Australia on 15 September 2022. He then took a period of additional personal leave due to complications from the dental treatment he had received overseas.

[167] In mid-September 2022, AD came to see Mr Daly. She said she had been receiving multiple friend requests from Mr Remawi that he would cancel before sending another. This kept pinging her phone with notifications. AD sent screenshots of the friend requests to Mr Daly at his request.

[168] On 21 September 2022, in response to the letter of allegations, Mr Remawi offered Virgin Australia his apology to AD “for any inconvenience caused”. He claimed that his Facebook application was linked to his mobile phone, which his youngest son who has autism always wants to have. He said he was working with his wife for the treatment of his son and on 16 September 2022, ordered a new phone for the claimed purpose of ensuring his son would no

longer have access to Facebook. In the meantime, he said that he restricted a lot of the Facebook functions to prevent inconvenience to AD as well as others and thanked them for their patience.

[169] Mr Remawi's letter of 10 October 2022 asked for the allegations in relation to Facebook activity to be dismissed by Virgin Australia. He claimed that he now had control over his Facebook Messenger messages after the matter was reported to him, although it made his response to work colleagues slower. He said that he sends shift change requests to everyone regardless and referred to evidence he would provide. On 31 October 2022, Mr Remawi said he left his mobile phone at home when he went overseas in early September 2022 as there was no international roaming, and that the messages sent to AD during this period were sent by his son.

[170] On 14 November 2022, Mr Remawi said that some of the information provided by AD was misleading and stated that "under no circumstances these Facebook belong directly to me".

[171] The allegation made against Mr Remawi in relation to his Facebook activity was substantiated by Virgin Australia on 7 November 2022 based on documentary evidence including screenshots and activity logs, as well as its conclusion that Mr Remawi's responses to the allegation were not credible.

[172] I agree with the conclusions of Virgin Australia in this regard. I do not accept that Mr Remawi did not know about the sending of the Facebook messages and friend requests to AD, or that he did not send them (but that his son did, or they were the product of an auto-generated message). It is simply not plausible that a 7-year old boy could have known enough about language of the workplace such that he was in a position to write to, or call, AD, often late at night – to ask if it was "busy inside"; or say he had not seen her; or ask how she was as he had not seen her for a couple of days, signing off "Haytham"; or say "hope the work and study going well"; or explain that he had deleted her by mistake and was sending another friend request as he was "reorganising his groups".

[173] Mr Remawi had more than one device on which he used Facebook, and the activity logs provided by Mr Remawi in support of his denials are incomplete. For example, there are messages sent to AD by Mr Remawi on 5 August 2022 and 23 August 2022 referring to his having sent a friend request. Neither of those requests appears on the activity logs. While Mr Remawi initially denied using Facebook while he was overseas in September 2022, the activity log includes a post on 6 September 2022 that Mr Remawi made about dental treatment he had received that day, including a profile picture that appears to be a close-up of his mouth. Mr Remawi also sent a message to another Facebook friend while in Dubai on 13 September 2022, saying he was leaving the next day.

[174] Mr Remawi's response to the Facebook allegations began with his stated ignorance and flat denials. Over time, it evolved into assertions of impossibility, mistake, and the misdeeds of his son. I do not accept that Mr Remawi did not have a phone when he travelled overseas and could not have sent requests or messages to AD. As he conceded at hearing, Mr Remawi did have a phone for use overseas. The activity logs and screenshots confirm that he used Facebook both while he was travelling and while overseas.

[175] I also do not accept Mr Remawi's evidence to the effect that some of the messages, including multiple consecutive messages sent to the same person, were sent to "everyone", or that they were intended for other employees including one with the same first name as AD, and Mr Tomacruz.

[176] It is readily apparent that Mr Remawi intended the messages for AD. The message on 23 August 2022 asking if AD was in the next day so that he could invite her for a coffee was followed up in person two days later, the first and only time Mr Remawi ever spoke to AD. That night, Mr Remawi sent AD 7 Facebook messages, thanking her "for today", complimenting her work, wishing her goodnight and saying, "Take care!". He forwarded her a clip of a sleeping baby received from Mr Tomacruz 27 minutes later, followed by 6 additional messages along the same lines as previous messages: unsolicited personal information about Mr Remawi's travel overseas, the fact that he was undergoing medical procedures, when he would be back at work, and questions about when AD would be at work.

[177] The possibility that some of his messages intended for a Mr Tserpes was only raised for the first time on 9 December 2022, after the outcome of the investigation into Mr Remawi's conduct had been notified to him, and after he had been dismissed. Further, Mr Remawi sent the messages at issue, and they were personal to the receiver. They were not "group" messages.

[178] To the extent that Mr Remawi's explanation relies on AD's name coming first alphabetically in a contact list, the submission ignores that Mr Remawi is (or was) also Facebook friends with a Mr Adam Marshall and that Mr Marshall's name would appear above the name of AD in any alphabetical list.

[179] Finally, the "apology" sent by Mr Remawi for sending messages to AD (with the assertion they were meant for someone else) only came in response to AD's request to Mr Remawi not to contact her anymore. There is no evidence of any attempt by Mr Remawi to "unsend" any of the messages sent to AD using the option available to him on Facebook Messenger.

[180] Reason 4 is established. In my view, Mr Remawi's conduct in this regard when considered in context bordered on workplace sexual harassment. It was unwelcome conduct towards one of the few much younger female employees in the workplace, involving repeated and unsolicited friend requests, two invitations for coffee, unnecessary familiarity including the requests for AD to look after his jacket and the provision of unsolicited medical and travel information and images of his naked legs.

[181] Even if seen without this lens, Mr Remawi's actions towards AD were inappropriate in the workplace context. For reasons known only to Mr Remawi, he chose to treat AD differently to others and made her feel uncomfortable. He had no reason to repeatedly contact AD in the way that he did, especially late at night and by sharing unsolicited personal information. It should have been apparent to him that his interest in this type of exchange with AD was not an interest shared by AD, and once it became apparent, it should not have continued.

Reason 5 – Not being honest with Virgin Australia in responding to the allegations

[182] The consequence of many of my findings above is that Mr Remawi was not honest with Virgin Australia in his responses to the allegations of 19 September 2022. Mr Remawi evaded, denied, or downplayed the allegations on the basis that they did not happen, or were resolved, or were “closed”. He gave explanations that did not make sense and some that were plainly not true.

[183] In addition to the specific allegations against him, Virgin Australia advised Mr Remawi that it wished to discuss his claims about contacting the Jordanian embassy about his employment and reporting “the vehicle incident in the bag room” to police on 22 August 2022. On 21 September 2022, Mr Remawi denied making any such report to the police or reference to the Jordanian embassy. He suggested these comments had been made by someone else. In his letter of 10 October 2022, Mr Remawi again denied the allegations and claimed that Mr Obeid had made incorrect statements. However, the Jordanian ambassador was referred to by Mr Remawi in his meeting with Mr Obeid and Mr Pardey on 15 December 2021, and I accept their contemporaneous notes of the meeting. Mr Remawi also made a police report on 23 August 2022 about three vehicle-related incidents, including the one of the day before. The evidence is inconsistent with Mr Remawi’s denials.

[184] I find that Mr Remawi was not honest in his responses to Virgin Australia about the allegations of 19 September 2022. Reason 5 is established.

Conduct discovered after dismissal

[185] After his dismissal, Virgin Australia became aware of further alleged misconduct by Mr Remawi in the form of misogynistic comments about female staff during his employment. The matters were never put to Mr Remawi in a way that would permit him a proper opportunity to respond. For this reason, I am not prepared to find that these matters were additional reasons for the dismissal of Mr Remawi.

Conclusion on valid reason

[186] Virgin Australia has established each of the five reasons it gave for the dismissal of Mr Remawi. Both separately and together, these were sound, defensible and well-founded reasons for dismissal. I am satisfied that Virgin Australia had valid reasons to dismiss Mr Remawi. This is despite deficiencies in the investigation of allegations pertaining to aspects of Reason 2 (specifically, Reports 4 and 5).

[187] In reaching these conclusions, I have made findings of fact about what occurred. I have generally preferred the evidence of the witnesses other than Mr Remawi where there is an inconsistency. This is because I found no reason not to believe their evidence, and because Mr Remawi was not a reliable witness. Further, where documentary evidence was available in connection with a matter in dispute, it generally either contradicted or did not support Mr Remawi’s version of events. I deal in more detail with my concerns about the reliability of Mr Remawi’s evidence from paragraphs [209] to [219] below.

[188] Mr Remawi engaged in a repeated pattern of behaviour that was inconsistent with his duty to Virgin Australia to act honestly and to treat others with dignity, courtesy, and respect. Common themes included declaring matters “closed” just as he reported them, reporting someone for “yelling” when he was given an instruction and suggesting that colleagues he had reported may have been affected by drugs, alcohol or mental illness. The making of false and/or exaggerated reports about other operators and leading hands was not only likely to undermine the trust of his colleagues, but also created risks to their health and safety, including psychosocial safety.

Was the valid reason notified to Mr Remawi?

[189] Mr Remawi was notified of the reasons upon which Virgin Australia proposed to terminate his employment in the show cause letter on 7 November 2022 and again in the meeting on 1 December 2022.

Was there an opportunity to respond to any capacity or conduct related reason?

[190] What became the reasons for Mr Remawi’s termination were initially summarised in a letter of allegations sent to him on 19 September 2022.

[191] On 21 September 2022, Mr Remawi provided a written response to the allegations and recommended that they be dismissed. He requested CCTV footage of the incident of 3 September 2022. After inquiries were made, the request was denied on 29 September 2022 on the basis that the footage was no longer available.

[192] On 7 October 2022, there was an online meeting to discuss the letter of allegations between Mr Remawi, Mr Daly and Senior Business Partner Ms Michelle Budd. Mr Remawi requested that Mr Obeid also be investigated in case he was providing inaccurate allegations to Virgin Australia against him.

[193] On 13 October 2022 and 31 October 2022, Mr Remawi provided further written responses to the allegations against him. Among his responses, Mr Remawi foreshadowed a new allegation about Mr Kondos knowingly instructing him to drive a tug to the international terminal without fuel while the fuel gauge was not working, causing the tug to shut down while he was towing two barrows of bags and resulting in risk to life, property, and equipment. This related to his earlier report of another “Commonwealth crime” to the AFP on 5 August 2022, as follows:

“... I would like to report an intentional accident was planned at my work place at the airport by orginsing a tug without fuel but the gauge show it was full with petrol and in that day I was instructed to drive that tug from domestic to international and back with two full Barrow of bags which I am towing and while I am driving suddenly the tug went off leave me with no minimum control and towing two full Barrow in an area which got passenger busses [sic] and other pedestrians. I managed to stop the tug hardly and stop and prevent an injury and could death [sic] at the airpot [sic] Later I hearded [sic] romour [sic] that this tug not belong to bag room and brought for me and organised in this way and possible coordination with staff from the matenanace [sic] to remove

some cable I told the duty manager you do not need to do this you just terminate me and I got a big respect for the company”.

[194] On 7 November 2022, Virgin Australia issued a show cause letter to Mr Remawi in relation to the allegations made against him, most of which had been substantiated. Mr Remawi responded to the show cause letter on 14 November 2022 by denying the allegations in their entirety.

[195] On 14 November 2022, Mr Remawi reported that Mr Obeid had rung him on 1 September 2022 and asked why he was not at, or late for, work, despite Mr Remawi being off duty that day. Mr Remawi suggested that Mr Obeid was targeting him with the aim of having him lose his job.

[196] On 21 November 2022, Mr Remawi sent an email to Virgin Australia with the subject “[AD] alleged entrapment to admit false information”. He alleged that he had received information from one of his (unnamed) colleagues (subsequently identified as Mr Omar Osta) to the effect that AD was under pressure to make false allegations in relation to the Facebook messages, in the form of changes to her roster from driving to loading, denial of leave requests and stand down. The allegation was made after a chance meeting with Mr Osta at a local shopping centre. They had a general conversation, and it was mentioned that Mr Remawi was “going through the courts”. Mr Osta gave evidence that there was no mention of AD during this conversation.

[197] On 25 November 2022, Mr Remawi expressed the view that the involvement of Mr Campbell: as a witness in relation to Allegation 1; and the subject of a complaint in relation to Allegation 2, made his statement “suspicious”.

[198] On 29 November 2022, Mr Remawi provided Virgin Australia with an “activity log” of his Facebook account and alleged that the information provided by AD was misleading and inaccurate. He separately alleged that some of his colleagues had gone on strike due to “rumours” that he was “getting the leading hand position”, and that the staff leading that strike were “similar to the staff providing misleading information” on his behalf in relation to Allegation 2. He later asserted that the alleged strike had occurred on 13 June 2022 and stopped once the staff knew he was not going to be promoted. The difficulty is that they could not have known this at the time, because Mr Remawi’s application for promotion had not yet been finalised or withdrawn.

[199] On 1 December 2022, Mr Remawi provided a further response to the show cause letter. He alleged that the allegations against him were developed in breach of Virgin Australia’s Code of Ethics, Code of Conduct, Safety Management System, Human Factor and Drug and Alcohol Policies and Procedures. He alleged the criminal provision of misleading information by others to the investigation.

1. In relation to Allegation 1, Mr Remawi alleged that the witness statements were incorrect, and that Mr Campbell had provided misleading statements. He requested that his concerns be investigated.
2. In relation to Allegation 2, Mr Remawi alleged that Mr Obeid was involved in his bullying case, and that an accident was reported against “his relative” Mr Kantari. He

alleged that Mr Obeid and Mr Kantari were improperly influencing the investigation into Mr Remawi's conduct.

3. In relation to Allegation 4, Mr Remawi denied the existence of "80" messages and restated his explanation that he was overseas at relevant times. He alleged that AD had provided misleading information which should be investigated. He also alleged that Mr Daly (to whom his show cause response was addressed) had sent two female staff of Virgin Australia "many wrong emails" until one of them had asked that she not be involved in the correspondence. This, Mr Remawi implied, showed that Mr Daly had acted similarly to Mr Remawi in mistakenly sending emails to female staff.
4. Mr Remawi expressed concern that being stood down for reporting safety and occurrences could be seen as a negative reaction towards safety culture. He asked that the allegations against him be dismissed immediately.

[200] On 1 December 2022, there was a meeting between Mr Daly, Head of Workplace Relations Mr Michael Beveridge, Mr Remawi and his support person Mr Ian Dix, Safety Assurance Lead in the Office of the Chief Engineer at Boeing Defence Australia Ltd. The purpose of the meeting was to discuss the allegations, the outcome of the investigation and the request for Mr Remawi to show cause as to why his employment should not be terminated.

[201] I am satisfied that there was an opportunity for Mr Remawi to respond to the reasons given for his dismissal both in writing and then in the meeting on 1 December 2022. The opportunity was given to Mr Remawi before any decision was made by Virgin Australia, and before Mr Remawi was dismissed. Mr Remawi provided a written response to the show cause letter on 14 November 2022 and attended a meeting to discuss the matter with his support person, Mr Dix, on 1 December 2022.

Was there any unreasonable refusal to allow a support person to be present to assist at any discussions relating to dismissal?

[202] There was no unreasonable refusal to allow Mr Remawi to have a support person to assist in discussions about the dismissal. Mr Dix participated in the meeting on 1 December 2022 as Mr Remawi's support person.

Was Mr Remawi warned about relevant unsatisfactory performance?

[203] Each of the reasons for dismissal relate to the conduct of Mr Remawi rather than his performance as a member of the Pit Crew.

Degree to which the size of the business and any absence of dedicated human resources management specialists or expertise in the business would be likely to impact on procedures followed in effecting the dismissal

[204] Virgin Australia has relevant and sophisticated human resources and other specialist expertise to manage and assist with the process of managing employee performance, up to and including termination of employment. These resources were deployed in connection with the dismissal of Mr Remawi. I am satisfied that Mr Remawi was afforded procedural fairness in connection with his dismissal.

Other relevant matters

[205] Mr Remawi was employed for approximately 4 years and 9 months. Because he was terminated for serious misconduct, he was not given notice of termination or paid any amount in lieu of notice. While his employment prospects are no doubt affected by the position he is now in, including because of his age and unemployment status, those prospects are not so slim as to be material to the resolution of this case. Mr Remawi has skills and experience that are valuable to the labour market both in Australia and overseas.

[206] Some of the conduct of Mr Remawi is characterised by what might be described as cultural intolerance. He made much of the differences between people from Jordan and from Lebanon, and of the different dialects of Arabic speakers. He asserted that all Lebanese people are related. From time to time, he gave the impression that for Mr Remawi, women do not hold an equal place in society. None of these were matters acted upon by Virgin Australia before it dismissed Mr Remawi, and they do not carry much weight on the question of whether Mr Remawi was unfairly dismissed. Their only relevance for present purposes is to help explain why Mr Remawi might have made some of the reports that he made.

[207] Mr Remawi advised Virgin Australia during its handling of the allegations against him that he was aware of its Workplace Behaviour Policy and that he regularly reviewed its policies to ensure his compliance. Mr Remawi prides himself on his qualifications in the field of safety. Despite these commitments, Mr Remawi does not appear to have considered the risk to health and safety that his conduct posed to those implicated in his reports, or who were recipients of his unwarranted attention.

[208] It is one of the most curious elements of this case that Mr Remawi's motivations for acting in the way that he did remain elusive. By and large, the people he worked with had no issue with Mr Remawi. They thought he was a good worker and described their relationship with Mr Remawi as good or even great. Although he was unsuccessful in his application for a Leading Hand role, on 12 March 2022 and 26 June 2022, Mr Remawi received positive feedback about his work from other Leading Hands. At least one of his co-workers still has no problem with Mr Remawi and would work with him again, despite knowing about the reports he made. Of course, there are others who hold a contrary view.

[209] The behaviour of Mr Remawi towards Mr Dix is illustrative of what can only be described as a destructive pattern of behaviour towards those he calls his friends. Mr Remawi and Mr Dix have known each other since 2009. They have previously worked together. Mr Dix provided training to Mr Remawi in the Middle East and was one of his supervisors for a Doctor of Philosophy degree that Mr Remawi was studying at Griffith University. At the commencement of these proceedings, Mr Dix was both Mr Remawi's support person and representative.

[210] On 9 March 2023, Mr Dix generated an invoice under the seal of his former company, "Inthink Pty Ltd" and addressed it to Virgin Australia and its lawyers. The invoice was for \$60,000 plus GST for "Legal, Human Resources, Employment Relations, Workplace Investigations advise and support to" Mr Remawi in connection with these proceedings. It was sent to the Commission by Mr Remawi, with a covering note that said, "This invoice already paid to Inthink".

[211] I raised concerns with Mr Remawi about the authenticity of the invoice on the day it was received by the Commission. Mr Dix then sent an “updated” invoice the following day with a different invoice number (“001”) and the expired company seal removed. Not long afterward, Mr Dix engaged and paid for a lawyer to act for Mr Remawi. The lawyer promptly withdrew the invoice on his behalf and then advised the Commission that he no longer represented Mr Remawi.

[212] In answer to questions at the hearing about whether the invoice had been paid to Inthink as asserted, Mr Remawi responded that it was part of a “financial deal” with Mr Dix, originating from a debt owed by Mr Dix of approximately \$22,000, for the purchase of a Honda Accord in the Middle East in 2015. Mr Dix also gave evidence. He agreed that Mr Remawi had assisted with the purchase of a Honda Accord. He denied owing any money to Mr Remawi in connection with the vehicle and denied any connection between that matter and this proceeding. There is no evidence that Mr Remawi made any payment to Mr Dix in connection with the Inthink invoice.

[213] Mr Remawi subsequently produced emails relating to negotiations for the purchase of a vehicle “going to fully finance” in the Middle East, accompanied by an assertion that Mr Remawi had “paid the car cash”, and that a person was flying from Dubai to provide evidence regarding the case in connection with the APVO application against Mr Kantari. As Mr Remawi’s explanations became increasingly incredible, he threatened to sue Mr Dix in the United Arab Emirates, including in criminal proceedings, for alleged damage to the vehicle and for traffic fines.

[214] In this respect, and in many others, the evidence of Mr Remawi did not withstand scrutiny. The most troubling aspect of his evidence came in the form of medical certificates produced in support of the application. There are at least nine discrepancies in those medical certificates when compared with the medical certificates produced under order by the issuing medical practitioner, Dr Abdul Kader El Mohsen. To illustrate the point, extracts from the two sets of certificates are set out in the table below. I have highlighted apparent alterations to the original medical certificates in bold (for additions), or strikethrough (for deletions), as necessary.

Date of certificate	Content produced by Dr El Mohsen	Content produced by Mr Remawi
12 December 2021 (Remawi)	Mr Haytham Mohamed Remawi suffers from Adjustment Disorder with Mixte and Anxiety and Depression. He complains of multiple significant difficulties relating to recent incident of Psychological Trauma.	Mr Haytham Mohamed Remawi suffers from Adjustment Disorder with Mixte and Anxiety and Depression. He complains of multiple significant difficulties relating to recent incident of Psychological Trauma at his workplace at virgin australia.
4 January 2022 (Dr El Mohsen)	This letter to confirm that Haytham Remawi, DOB: 29/11/1975, is Fit for preinjury duties. We closed his insurance	This letter to confirm that Haytham Remawi, DOB: 29/11/1975, is Fit for preinjury duties. We closed his
6 January 2022 (Remawi)		
8 April 2022		

(Dr El Mohsen)	case. His medical condition is stable.	insurance—case. His medical condition is stable
20 September 2022	Mr Haytham Remawi has a medical condition and will be unfit for work from 22/09/2022 to 06/10/2022 inclusive. He has complications after the surgery that he has done overseas.	Mr Haytham Remawi has a medical condition and will be unfit for work from 22/09/2022 to 06/10/2022 inclusive. He has complications after the surgery that he has done overseas
15 November 2022 (Remawi)		Dear Sir/Madam, Virgin Australia,
16 November 2022 (Dr El Mohsen)	Mr Haytham Remawi has a medical condition and will be unfit for work from 15/11/2022 to 20/11/2022 inclusive.	Mr Haytham Remawi has a medical condition and will be unfit for work from 15/11/2022 to 20/11/2022 inclusive. He has complications after the surgery that he has done overseas.
22 November 2022	Mr Haytham Remawi has a medical condition and will be unfit for work from 22/11/2022 to 29/11/2022 inclusive.	
8 December 2022	The medical practice has no record of any certificate of this date.	Dear Sir/Madam, Virgin Australia, Mr Haytham Remawi has a medical condition and will be unfit for work from 08/12/2022 to 13/12/2022 inclusive. He has complications which required lymphatic drainage procedure.

[215] In addition to medical certificates, Mr Remawi produced letters of referral dated 3 September 2022 and 22 November 2022 (including an “Enhanced Primary Care (EPC) Program referral” for individual allied health services under Medicare). The referrals were said to have been made by Dr El Mohsen to Mr Ji Fang Zhou, Psychologist. However, Dr El Mohsen’s evidence was that he did not know of Mr Zhou, had no record of the referrals, had not authored them, and had not referred to Mr Zhou at any time before. At the time of hearing, Dr El Mohsen had last seen Mr Remawi as a patient on 22 November 2022.

[216] Adding to concerns about the reliability of his evidence, Mr Remawi produced to the Commission a notice of eviction for his residential rental property. The obvious inference was that he either had lost, or stood to lose, his home because of the dismissal. When Mr Remawi gave evidence, he gave the same address to which the eviction notice applied. Bank statements indicated the ongoing payment of rent for the property. Mr Remawi subsequently confirmed that he had never been evicted and was still living at the same address. In those circumstances, it is not apparent what the purpose of providing the document to the Commission was if not to mislead.

Events after dismissal

[217] On 12 December 2022, Mr Remawi responded to the letter of termination, confirming his general denial and rejection of each allegation made against him. He provided detailed commentary on each of the allegations against him, including some new and serious allegations.

[218] Mr Remawi subsequently:

1. applied for other jobs, including at Sydney airport,
2. on 8 and 29 December 2022, requested the Australian Transport Safety Bureau to investigate Allegation 1 and on 29 December 2022, alleged that “one of the drivers” (presumably Mr Tomacruz) had been diagnosed with amnesia just before the incident,
3. on 8, 15, 18 and 29 December 2022, asked Sydney Airport Corporation to verify the truth of alleged statements by Mr Obeid to the effect that he had been framed in relation to a security screening incident because he was searched by the girlfriend of an SNP Security staff member working for Virgin Australia,
4. on 8 December 2022, made a report to NSW Police alleging that he was assaulted by Mr Kantari and Mr Campbell and requested information about how to apply for an Apprehended Violence Order,
5. on 9 December 2022, asked NSW Police to investigate the allegations against him by Virgin Australia,
6. on 13 December 2022, made a report to NSW Police forwarding his report to Sydney Airport Corporation of 8 December 2022 and requesting a formal police investigation,
7. On 15 December 2022, wrote to Facebook alleging that evidence against him about the messages sent to AD was misleading,
8. on 20 December 2022, reported Lillian Khan (Senior Legal Counsel) to Facebook, causing her personal Facebook account to be temporarily suspended,
9. on 28 December 2022, claimed to have had a single white envelope containing \$3,150 taken from his work locker in or around 3 September 2022,
10. on 30 December 2022, alleged that a former colleague engaged in sexual harassment at work through Facebook posts,
11. on 30 December 2022, reported the alleged theft of \$3,150 to Sydney Airport,
12. on 30 December 2022, reported AD to the Australian Cyber Security Centre for bullying,
13. on 30 or 31 December 2022, reported the alleged theft of \$3,150 to Crimestoppers,
14. on 4 January 2023, lodged a formal privacy complaint with Virgin Australia in relation to AD and the Facebook messages,
15. on or about 6 January 2023, reported a “privacy violation” to Facebook,
16. on 7 January 2023, attended Mascot Police Station and reported an assault by Mr Kantari on 12 December 2021 and the alleged theft of \$3,150 from his locker,
17. on 8 January 2023, forwarded a copy of a draft APVO application against Mr Kantari to Sydney Airport Policing and to Bankstown, Mascot, and Redfern Police Stations,
18. on 8 January 2023, reported the alleged theft of \$3,150 to Airport Policing at Sydney International Airport,
19. on 9 January 2023, made a complaint to NSW Fair Trading about the alleged theft of \$3,150 from his locker,
20. on 10 January 2023, reported Mr Daly and AD to the NSW Police in relation to the Facebook messages,

21. on 11 January 2023 issued proceedings in the NSW Civil and Administrative Tribunal against Ms Khan personally in relation to the alleged theft of \$3,150 from his work locker,
22. on 13 and 18 January 2023, issued proceedings in the NSW Civil and Administrative Tribunal against Ms Khan for alleged unpaid entitlements on termination of employment,
23. on 12 or 16 January 2023, made a claim for worker's compensation in relation to an alleged right shoulder injury sustained on 4 April 2022,
24. on 19 January 2023, applied for an Apprehended Personal Violence Order (APVO) against Mr Kantari in connection with the incident on 12 December 2021, which included allegations that Mr Kantari physically abused him by throwing a punch; threatened him at 5.00am the next day with the loss of his job if he did not "close the case" and on 16 August 2022, made threats to kill him. At the time, there was no "case" to close, and Mr Remawi had only reported Mr Kantari's conduct by email to Mr Pardey 6 minutes before the alleged threat was made. It is highly unlikely that Mr Kantari could have known about the report at the time it is alleged that he threatened Mr Remawi.
25. on 22 January 2023, made a claim for worker's compensation in relation to an alleged psychological injury sustained on 12 December 2021 (the date of the incident with Mr Kantari),
26. refused to respond to a direct enquiry as to whether he sent confidential information (including Virgin Australia's policies and procedures) to his personal email address,
27. made a complaint to the Office of the Australian Information Commissioner alleging that AD had released his personal confidential information without consent, potentially to cause damage to Mr Remawi, his family and career,
28. on 31 January 2023, alleged that on 6 January 2022, Mr Omar Osta had told him that Mr Obeid was spreading rumours that he was not a capable worker, and he did not want Mr Remawi to continue working at Virgin Australia,
29. on 3 February 2023, asserted that he had raised the missing \$3,150 during an interview before his termination, and again when he was dismissed, and
30. in the course of this proceeding made extraordinary and serious allegations, without any evidence to support them, to the effect that: Mr Daly and AD were in a relationship and that this was a motivation for their investigation against Mr Remawi and his dismissal; that Mr Daly was in a relationship with Ms Seru and this tainted the investigation into her conduct towards him; that Mr Daly has a history of inappropriate relationships with women; and that AD and Mr San may have been "doing acts did not meet Virgin Australia Code of Conduct in the back hold of the aircraft".

[219] The relevance of these matters for present purposes is that they reinforce my concerns about the reliability of Mr Remawi's evidence at the hearing. Taking but one example, Mr Remawi was asked about his allegation of the missing \$3,150. Mr Remawi said firstly that the amount was withdrawn in two separate transactions from his own bank account ahead of his trip overseas. He pointed to evidence of those transactions in bank statements produced to the Commission. Despite earlier claiming that the money had been left in a "single white envelope," he said that the money had been in "two envelopes actually". He subsequently produced statements from a different bank account as evidence of bank withdrawals for the allegedly missing cash.

Conclusion and disposition

[220] There was a valid reason for the dismissal of Mr Remawi arising from his increasingly inappropriate conduct over the period from June 2021 to September 2022, and his subsequent lack of honesty when responding to the allegations made against him. The process undertaken by Virgin Australia to deal with those allegations was a fair one. Mr Remawi had appropriate support and a meaningful opportunity to respond.

[221] I accept that the dismissal had serious consequences for Mr Remawi, most notably a loss of income in the context of his status as primary provider for his family. However, I am not satisfied that the dismissal was harsh, or that it was otherwise unjust or unreasonable. In the circumstances, dismissal was a proportionate response to the wilful, inexplicable, and repeated conduct of Mr Remawi which made his continuing employment untenable.

[222] Mr Remawi has not been unfairly dismissed.

[223] Application U2022/11839 is dismissed.



COMMISSIONER

Appearances:

H M J Remawi on his own behalf.
P Zielinski of Counsel for the respondent.

Hearing details:

2023.
Sydney:
March 27, 28, 29.

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