



# DECISION

*Fair Work Act 2009*  
s.394—Unfair dismissal

**Paramjit Brownson**

**v**

**Australian International Islamic College Ltd**  
(U2024/314)

COMMISSIONER CRAWFORD

SYDNEY, 14 JUNE 2024

*Application for relief from unfair dismissal – alleged misconduct by teacher – complaints from students - teacher’s evidence preferred – no valid reason - dismissal unfair – reinstatement ordered with continuity and lost pay.*

## **Background**

[1] Paramjit Brownson (**Ms Brownson**) commenced employment as a teacher for the Australian International Islamic College Ltd (**College**) on 21 January 2021. The College operates several schools in Queensland and the Northern Territory. Ms Brownson worked at the College’s school at Durack, which is a suburb of Brisbane. Ms Brownson was assigned the additional role of Year 9 Pastoral Coordinator on 17 April 2023.

[2] Ms Brownson was summarily dismissed for alleged serious misconduct on 21 December 2023. The alleged misconduct constituted four allegations of unprofessional behaviour relating to the treatment of students and one allegation of breaching a confidentiality obligation.

[3] On 9 January 2024, Ms Brownson made an application to the Fair Work Commission (**Commission**) under s.394 of the *Fair Work Act 2009* (Cth) (**FW Act**) for a remedy, alleging that she was unfairly dismissed from her employment with the College.

[4] The College filed a Form F3 employer response on 29 January 2024. The College did not raise any jurisdictional objections to Ms Brownson’s application.

[5] Ms Brownson’s application was not resolved during conciliation. I listed the application for Mention/Directions on 6 March 2024. The College sought permission to be legally represented at the Mention/Directions and at any future proceedings. Ms Brownson opposed this request. After hearing from the parties, I decided to grant permission for the College to be legally represented at the Mention/Directions and future proceedings. I was satisfied granting permission would enable the matter to be dealt with more efficiently. I was particularly swayed by the likelihood of a significant number of witnesses being called and being required for cross examination. I also decided to conduct a hearing in relation to the application after both parties

indicated they consented to this. I issued directions for the filing of material and listed the application for hearing via video on 2 May 2024.

[6] Ms Brownson subsequently filed an application for the College to produce documents. A hearing was convened via video to determine that application on 19 March 2024. Ultimately, I was not required to make a production order because the College agreed to provide the relevant documents to Ms Brownson.

[7] Ms Brownson was represented by Mark Moorhead (Industrial Officer – Independent Education Union of Australia – Queensland and Northern Territory Branch) at the hearing on 2 May 2024. The College was represented by Nicole Visedo from Citation Legal.

[8] Hearing the evidence from both parties took most of the day on 2 May 2024. As a result, I proposed to the parties that the transcript be ordered, a direction be issued for the filing of written closing submissions, and that a further brief hearing be listed for oral closing submissions. This was not opposed by the parties. The further hearing occurred via video on 31 May 2024. There was no change to the appearances.

[9] The College requested at the beginning of the hearing on 2 May 2024 that there be no reference to the names of the students involved in the allegations against Ms Brownson in the written decision. That request was not opposed by Ms Brownson. I agreed to this request and do not consider it is necessary to identify the relevant students in the decision. The parties are clearly aware of who the students are in relation to the relevant incidents. I will refer to the relevant students as Students A, B, C, D, E and F.

## **Material relied upon**

### ***Ms Brownson***

[10] Ms Brownson relied on the following evidence in support of her application.

[11] Ms Brownson relied on her witness statement dated 2 April 2024. The statement had the following documents attached:<sup>1</sup>

**PB-1:** A Notice of Investigation letter from the College to Ms Brownson dated 23 November 2023. The letter refers to complaints being made about Ms Brownson's conduct and that she will be suspended on full pay while the complaints are investigated. The letter states: "All matters relating to this investigation are confidential and you are not to discuss this matter with any other staff member, ex-staff member, or person connected with the Company without my express consent." The letter is signed by Mohsin Khan (Head of Operations and Shared Services) (**Mr Khan**).

**PB-2:** A Letter of Allegation from the College to Ms Brownson dated 28 November 2023. The letter raises the following five allegations against Ms Brownson:

- 1. Engaging in conduct that is unprofessional and a breach of the Staff Code of Conduct.**

Firstly, it is alleged that “several students from 9A and 9B have shared their experiences during the well-being sessions concerns regarding the behaviour and treatment of students by Ms Brownson from the beginning of Term 4. The students expressed amongst other concerns over how they are spoken to, unjust punishment for micro behaviours and an overall disregard for their well-being and emotional development under her care as year 9 pastoral leader, causing the students to feel targeted, scared and concern of retribution.”

Secondly, reference is made to a written statement from Student A dated 13 June 2023 which complains that Ms Brownson’s behaviours in a maths class “have been consistently detrimental to not only our learning but to our wellbeing.” The statement goes on to complain about Ms Brownson yelling and screaming at the students for not doing their homework or understanding revision sheets. The statement refers to the students accepting the work should have been completed and that being kept in for a morning tea was understandable. However, the statement alleges Ms Brownson stated the students’ other subject periods and morning teas and lunch time will be taken for the next couple of days and additional lessons scheduled in week 9 and states these measures are not necessary. The statement refers to students feeling measures taken by Ms Brownson have been aggressive and disproportionate and that they feel uncomfortable around her.

- 2. Engaging in conduct that amounts to physical and emotional harm of students.**
- 3. Engaging in conduct that amounts to being a risk to the health and safety of students.**

Firstly, it is alleged that Ms Brownson screamed at Student B: “I’ll make your life a living hell” on 20 October 2023. This led to the student needing counselling, losing appetite, and not attending school from 24 to 27 October 2023.

Secondly, it is alleged that Ms Brownson stated to Student C on 8 November 2023: “I’ll make your life miserable.” This caused the child to feel targeted, scared, and anxious.

Thirdly, it is alleged that during a detention on 30 October 2023, Student C pleaded to be allowed to eat some food and this was denied by Ms Brownson.

Fourthly, it is alleged that in well-being sessions students have referred to feeling that Ms Brownson lacks kindness and they feel humiliated and uncomfortable in her presence.

**4. Engaging in conduct that amounts to neglect of professional duties and confidentiality.**

It is alleged that after being notified of her suspension on 23 November 2023 and that the investigation process was strictly confidential, Ms Brownson shared information about the process in the staff room.

**5. Engaging in conduct that amounts to intimidation and harassment of staff and students.**

Firstly, it is alleged that Ms Brownson stated to the middle school coordinator, Hanif Sipho Ramautswa (**Mr Hanif**), in an intimidating tone: “Why do you listen to these students? I’ve told you many times not to listen to them.” The statement was allegedly made in a coordinator meeting on 2 November 2023 at a time when Pastoral Leaders and Renee Lazarus (Head of Secondary) (**Ms Lazarus**) were discussing causes of lateness amongst students. It is alleged two staff made complaints about Ms Brownson’s conduct during the meeting.

Secondly, it is alleged Ms Brownson stated to Mr Hanif on 3 November 2023: “Between me and Patricia who are you more scared of?”. The statement allegedly led to Mr Hanif feeling publicly humiliated and targeted.

Thirdly, it is alleged that in term 3 Ms Brownson was conducting a random search of the school bags of Student C and Student D when one of the students stated: “You can’t take things from my bag without permission” and Ms Brownson replied: “Don’t question me, empty your bags.” The search was done publicly in the corridor and Ms Brownson allegedly demonstrated a lack of care, privacy, and compassion and left the students feeling intimidated, embarrassed, and anxious.

The Letter of Allegation requests a response from Ms Brownson by 29 November 2023 and states the investigation will be conducted by Imam Mohammed Azhari (Director of Colleges) (**Mr Azhari**) and Dr Raihana Ferdous (Deputy Principal) (**Dr Ferdous**) and the investigation will be ratified by a third party. The letter puts Ms Brownson on notice that she is required to keep the issues confidential and not discuss them with other staff and students at the College.

**PB-3:** Ms Brownson’s response to the Letter of Allegation dated 30 November 2023. After raising some procedural fairness concerns with the process, Ms Brownson provided the following responses to the allegations.

**1. Engaging in conduct that is unprofessional and a breach of the Staff Code of Conduct.**

In relation to the first incident, Ms Brownson indicated she was unable to respond without specific contexts and details. Ms Brownson states she is

required to ensure the College's norms are followed up and appropriate consequences given as required.

In relation to the second incident concerning Student A's complaint, Ms Brownson notes the complaint is being raised with her some five months after it was raised by Student A. Ms Brownson admits raising her voice in class but denies it was unreasonable or fear-provoking. Ms Brownson states she was frustrated that all students in the maths class had failed to complete the required work. Ms Brownson also refers to reflecting on what occurred after the class and making changes to how the classes were run to try and assist the students. Ms Brownson states she advised the students about her change in approach in the next lesson. Ms Brownson complains that there is a lack of guidance from the College regarding how persistent low-level behaviours that impact learning should be addressed, and this causes frustration from teachers given they are held accountable for the students' academic outcomes.

- 2. Engaging in conduct that amounts to physical and emotional harm of students.**
- 3. Engaging in conduct that amounts to being a risk to the health and safety of students.**

Ms Brownson raises concerns with the delay in her being notified of these allegations.

Ms Brownson denies making the alleged statement to Student B and admits stating: "why are you making my life a miserable hell? Not just my life but also your other teachers." Ms Brownson states that she explained that Student B's misbehaviour means she and the other teachers must follow up and give him consequences which makes his life miserable because he misses out on break or play time. Ms Brownson states many complaints had been made to her about Student B in her role as Year 9 Pastoral Co-Ordinator. Ms Brownson refers to recent instances of the student defying College policy, disruptive behaviour, bullying and harassment, and fighting.

Ms Brownson denies making the alleged comment to Student C and admits stating "why are you making my life miserable", which she admits she has stated on several occasions to misbehaving students.

Ms Brownson denies preventing students from eating when on detention. Ms Brownson states she always gives students five minutes before the end of the detention to go to the toilet and get something to eat unless the student has brought food to detention.

Ms Brownson complains about a lack of detail regarding the alleged comments by students in well-being sessions and says these issues have never been raised with her.

**4. Engaging in conduct that amounts to neglect of professional duties and confidentiality.**

Ms Brownson denies breaching confidentiality. Ms Brownson admits she told colleagues she was being stood down but stated she could not have disclosed any of the specific details because she did not have the details at this point. Ms Brownson also complains about being pressured to leave the College immediately even though her stand down was not meant to take effect until the next day.

**5. Engaging in conduct that amounts to intimidation and harassment of staff and students.**

Ms Brownson admitted stating words to the effect of: “Why do you listen to these students? I’ve told you many times not to listen to them” to Mr Hanif on 2 November 2023. However, Ms Brownson stated the Letter of Allegation misrepresents the context. Ms Brownson explained that three students, including Student C and Student D, saw Ms Brownson approaching when they were defying an instruction about what to do between periods. Ms Brownson stated the three students turned and ran away when they saw her approaching. During the coordinator meeting Mr Hanif stated the students had told him they had been coming to see Ms Brownson to provide her with Student C’s after school detention form. Ms Brownson’s statement about not listening to the students was made in the context of them clearly providing a false excuse to Mr Hanif.

Ms Brownson admitted asking Mr Hanif on 3 November 2023: “Between me and Patricia who are you more scared of?” However, Ms Brownson stated this was part of banter between staff members and not an indication she is trying to be scary to the students.

Ms Brownson denied any wrongdoing in relation to the random bag search for Student C and Student D. Ms Brownson stated the two students were coming out of D block toilets which were out of bounds from them and where male students had previously been caught vaping. Ms Brownson denied stating: “Don’t question me, empty your bags.” Ms Brownson said she asked to check the student bags in accordance with College policy. The bag check was done in public because she was a female teacher searching the bags of male students in accordance with College policy. Ms Brownson stated Student C and Student D were protesting and arguing but eventually allowed the check to occur and no issues arose.

**PB-4:** An Invitation to Show Cause Meeting from Mr Khan to Ms Brownson dated 19 December 2023. The letter states the College had completed its investigation and

concluded “In relation to the Allegations, it has been found that the events occurred in the manner described in the Allegations.” The letter states Mr Khan is satisfied the conduct, either jointly or severally, amounts to serious misconduct which justifies the termination of your employment without notice. The letter invites Ms Brownson to a meeting on 20 December 2023 to show cause as to why her employment should not be terminated.

**PB-5:** An email sent by Ms Brownson to Mr Khan and Phillip Burgess dated 20 December 2023. The email is a written response to the show cause letter dated 19 December 2023.

Ms Brownson generally stated the proposed termination was unreasonable and disproportionate to the gravity of the conduct. Ms Brownson also stated the penalty is unreasonable because she has not been provided with sufficient particulars. Ms Brownson provided the following further responses to the specific allegations.

**1. Engaging in conduct that is unprofessional and a breach of the Staff Code of Conduct.**

Ms Brownson complained about not being provided with examples of the “unjust punishments” or “micro behaviours”. Ms Brownson stated Mr Hanif should have raised any concerns with her immediately after they were raised so she could respond and adjust her behaviour if required. Ms Brownson stated: “Sometimes, correction and enforced boundaries are not well received by adolescents, and while their concerns should be heard, teachers should be able to have the concerns put to them and to have an opportunity to explain their version of events.”

In relation to Student A’s complaint, Ms Brownson stated: “I admitted to raising my voice in frustration. This allegation is simply a difference of opinion between the student and myself, over the measures in response to the uncompleted work... How to manage a class is at the discretion of the teacher as long as the measures are reasonable.” Ms Brownson also referred to Student A’s complaint in June 2023 not being brought to her attention until the Letter of Allegation.<sup>2</sup>

**2. Engaging in conduct that amounts to physical and emotional harm of students.**

**3. Engaging in conduct that amounts to being a risk to the health and safety of students.**

Ms Brownson again denied stating she would make Student B’s life a “living hell”. Ms Brownson reiterated what she had stated was: “Why are you making my life a miserable hell? Not just my life but also your other teachers.”

In relation to Student B's alleged absence due to her conduct, Ms Brownson queried why the student was allowed to return to her classes if there was a genuine safety risk and queried why the issues had not been raised with her when the parents complained on 26 October 2023.

Ms Brownson denied telling Student C she would make his life "miserable" and denied preventing Student C from eating during a detention.

Ms Brownson stated she had no details of what the students had stated in well-being sessions and could not respond to this allegation. Ms Brownson stated any issues should have been raised with her at the relevant time.

**4. Engaging in conduct that amounts to neglect of professional duties and confidentiality.**

Ms Brownson denied revealing any content of the investigation and stated she only told colleagues she had been asked to leave the school. Ms Brownson also stated she was in shock about the stand down.

**5. Engaging in conduct that amounts to intimidation and harassment of staff and students.**

Ms Brownson relied on her earlier responses and highlighted that any issue with the bag check should have been brought to her attention at the relevant time.

Ms Brownson's response ended by stating she never intended to make students uncomfortable and that she apologises if they have felt this way. Ms Brownson stated none of the conduct issues were raised with her at the relevant times and hence she was given no opportunity to improve her behaviour. Ms Brownson stated the alleged safety risk posed by her behaviour was inconsistent with the College's conduct in not doing anything about the alleged conduct until the investigation process.

Ms Brownson declined the invitation to attend the show cause meeting on 20 December 2023 because she was on annual leave and asked that the decision be made on the material provided.

**PB-6:** A copy of Ms Brownson's termination letter dated 21 December 2023. The letter states five allegations of misconduct have been substantiated on the balance of probabilities and that Ms Brownson is being summarily dismissed for serious misconduct.

**PB-7:** An email from Mr Hanif to Dr Ferdous, Mr Khan and Ms Lazarus dated 15 November 2023. Mr Hanif's email communicates that several students from the 9A and 9B classes have raised concerns about Ms Brownson's behaviour during well-being sessions. Specifically, Mr Hanif refers to how the students are spoken to by Ms



Brownson, unjust punishment, and an overall disregard for their well-being and emotional development. Mr Hanif requests that the complaints be investigated.

**PB-9:** These are the documents relating to the complaint by Student A. Student A sent an email to Dr Ferdous and Andrew Taylor (Principal) at 9:21am on 13 June 2023 raising concerns about Ms Brownson's conduct in a year 12 maths class. Mr Taylor sent an email to Dr Ferdous at 10:20am on 13 June 2023 which directed Dr Ferdous to tell Student A her concerns will be taken seriously. Mr Taylor asked Dr Ferdous to arrange for Catherine Mellor (then Head of Secondary) to meet with Student A and Ms Brownson and to review the College's complaints policy prior to the meeting. Mr Taylor also asked that Ms Mellor reviews the curriculum and assessments. Mr Taylor's email states: "The students need to attend tutorials as part of a solution." Dr Ferdous sent an email to Student A at 11:43am on 13 June 2023. Dr Ferdous' email relevantly stated:

"Thank you for raising your concerns to us. InshaAllah we will address your concerns to Mrs Brownson as soon as possible. In the meantime, I request you and your classmates to focus on your study and follow teachers' instruction. I also request you all to attend all the additional lessons that Mrs Brownson organised."

Dr Ferdous sent an email to Ms Mellor at 11:45am on 13 June 2023 which provided the relevant emails to Ms Mellor and asked Ms Mellor to take the actions suggested by Mr Taylor.

**PB-10:** This is a copy of emails from Student A and Mr Taylor which are contained within the previous attachment.

**PB-11:** There are several emails within this attachment.

At 3:56pm on 6 October 2023, Ms Brownson sent an email to Dr Ferdous and Mr Hanif. Ms Brownson's email indicates entries have been made into the College's TASS recording system regarding several students. Ms Brownson identifies that Student B has been bullying another child, committing truancy, has been caught out of bounds, and has been disruptive and disrespectful. Ms Brownson identifies that Student C has been engaging in ongoing disruptive behaviour in class. Ms Brownson identifies that Student D has been committing truancy, has been caught out of bounds, and has been disruptive and disrespectful. Ms Brownson identifies that Student E has been bullying another child, committing truancy, has been caught out of bounds, and has been disruptive and disrespectful. Ms Brownson identifies that Student F has been committing truancy, has been caught out of bounds, and has been disruptive and disrespectful.

At 1:01pm on 10 October 2023, Ms Brownson sent an email to Dr Ferdous indicating she had been trying to arrange a meeting with Student D's father to discuss his behavioural issues.

At 11:11am on 16 October 2023, Ms Brownson sent an email to Dr Ferdous and Mr Hanif. Ms Brownson's email raises serious concerns about the behaviour of Student B,

Student C and Student E. Ms Brownson identifies several behavioural issues and that the students are disrupting their class. Ms Brownson states:

“I have kept them in for morning tea today for the entire 15 minutes. I quite frankly do not know what else to do as they have shown no effort to improve in their behaviour or to meet even basic classroom expectations.

Please advise as to the next course of behaviour management with regards to these 3 boys.”

At 1:11pm on 23 October 2023, Ms Brownson sent an email to Ms Lazarus, Mr Hanif and Dr Ferdous. Ms Brownson raises serious concerns about the behaviour of Student B and Student E. Ms Brownson states:

“I would like to draw your attention to the fact that these 2 students have shown persistent disrespectful behaviour. To date just for Term 4, in the past 3 weeks, these 2 boys have garnered 20 and 17 negative TASS entries from various teachers – subject teachers and teachers on duty. Please refer to attached document.

I have highlighted their escalating behaviour and there has been little to no change in their behaviour or attitudes. They need to be removed from all classes until such time as they are able to meet basic classroom expectations of punctuality, being ready for every lesson with their books and materials, wearing their uniforms correctly and being able to engage with all their teachers in a respectful manner.

Their continued presence in class is impacting negatively on the learning of all the other students in the class and taking time away from all subject teachers who must continuously interrupt lessons to deal with their persistent disrespectful and disruptive behaviours in almost every lesson.

Thank you for your continued support and advice.”

At 4:03pm on 24 October 2023, Ms Brownson sent an email to Ms Lazarus, Mr Hanif and Dr Ferdous. Ms Brownson states that she believes Student B and Student E need to be suspended. Ms Brownson states:

“The blatant defiance of these 2 boys is impacting the other boys in the classroom and they too are pushing the boundaries of simple classroom rules and expectations. This in turn is negatively impacting the learning of the other 13 students.”

At 8:00am on 25 October 2023, Dr Ferdous sent an email to Ms Brownson, Ms Lazarus and Mr Hanif. Dr Ferdous stated:

“Both [Student E and Student B] will be suspended for at least a day. They are setting a very wrong example to the other students.

Please see them today and give them morning tea and lunch detention. Please organise parents meeting for both of them. They will be internally suspended on Friday.”

At 11:41am on 27 October 2023, Ms Brownson sent an email to Dr Ferdous and Ms Lazarus which stated:

“As both [Student B and Student E] are both absent from school today, which is the day they were both supposed to be internally suspended, I would like to ask that they be suspended on Monday or their first day back at school next week.”

At 12:41pm on 2 November 2023, Ms Brownson sent an email to Dr Ferdous, Ms Lazarus and Mr Hanif regarding Student C, Student D and Student E. Ms Brownson’s email states:

“I would like to strongly recommend that [Student C, Student D and Student E] be taken out of class for the whole of Week 6, whether it is external suspension or withdrawn. This is in light of their continually escalating dangerous and disruptive behaviour (on TASS) and the fact that it is impacting the learning of the rest of the students in that class, as well as disrupting the lessons of all the 9B subject teachers, especially since Week 6 is revision week before summative assessments in week 7.

I have spoken to both [Student C and Student E’s] father this week but have seen no improvement in attitude or behaviour... “

At 11:07am on 3 November 2023, Ms Lazarus sent an email regarding Student C, Student D and Student E which stated:

“Raihana and I met all three boys this morning. They were sent home today and if they do come in next week I will be placing each one in a primary class and they will follow the primary school day. Teachers will provide them with revision if they come to school in week 6.

They will come in week 7 to write their exam in session 1 and 2 and must leave after that.”

At 12:43pm on 3 November 2023, Ms Brownson sent an email to Ms Lazarus, Mr Hanif and Dr Ferdous which stated:

“Thank you so much for all your support. I really appreciate all of you.”

At 6:44pm on 6 November 2023, Ms Lazarus sent an email to a large group of people at the College, including Dr Ferdous, Mr Hanif and Ms Brownson. Ms Lazarus states she and Dr Ferdous met with the mums of Student C, Student D and Student E during the morning. The email states:

“We explained how they are not engaged in their learning and this is now affecting their subject teachers and other students in class. All three mums were very supportive of us for trying with their sons.

They left school after the meeting. It was decided that they will return tomorrow on the condition that:

- They arrive to school on time.
- The (sic) arrive to each lesson on time.
- They wear their correct uniform.
- Do not disturb the rest of the class or the teachers.
- All three are not to sit near each other during class time.

They will be assessed on a daily basis. If tomorrow any subject teacher informs me that they are not following our school rules and her (sic) breached the conditions stated above, then they will not return to school on Wednesday. Raihana communicated this very strongly to them.”

**PB-13:** This is an excerpt from the TASS recording system which shows various entries concerning Student B, Student C and Student D from Ms Brownson and other teachers during October and early November 2023.

**PB-14:** A copy of the College’s Child Risk Management Policy.

**PB-15:** A copy of the College’s Behaviour for Learning Policy.

**PB-16:** A copy of a position description for the College’s Secondary Year Level Coordinator role.

**PB-17:** An undated document purportedly prepared by Dr Ferdous raising concerns with Ms Brownson’s behaviour during 2021, 2022 and 2023.

**PB-19:** There are several emails in this attachment.

There is an email from Mr Azhari sent to Dr Ferdous, Mr Taylor, Ms Lazarus, Ursula Muncaster, Ms Brownson and Patricia Semmens at 6:18pm on 3 November 2023. Mr Azhari’s email relates to a Jalsa Day event at the College and raises concerns about a lack of assistance being provided by Ms Brownson and Ms Semmens during the event.

At 9:15pm on 3 November 2023, Ms Semmens sent an email to the same group requesting a meeting on Monday to discuss the matter. Mr Azhari sent an email at 9:45am on 6 November 2023 agreeing to meet later that day. There are further emails regarding the location and time of the meeting.

Ms Brownson then sent an email to the same group plus Phillip Burgess at 4:06pm on 7 November 2023. Ms Brownson’s email responds to the concerns raised by Mr Azhari about the event and defends her actions and those of the other teachers involved.

**PB-20:** This attachment contains case notes regarding the following meetings:

- 16 November 2024 (this is meant to be 2023): Meeting between Mr Hanif and Mr Khan regarding concerns about Ms Brownson's behaviour with students and teachers.
- 24 November 2024 (this is meant to be 2023): Meeting between Mr Khan, Mr Azhari and Aboo Baker Mahomed (**Imam Aboo**) regarding concerns with Ms Brownson's behaviour.
- A note that refers to a phone call with Mohammed Ruhuy (Administration and Interpreter) on 27 October 2024 (this is meant to be 2023). The note states Student B's mother phoned the College to state Student B was scared to come to school because of Ms Brownson's behaviour.

**PB-21:** A document that indicates the document containing case notes was created on 26 March 2024.

**PB-22:** Emails exchanged between Mr Moorhead and Amanda Curatore from Citation Legal on 26 and 27 March 2024 regarding the computer files for the case notes contained in Attachment PB-20.

**PB-25:** A copy of diary entries made by Mahamat Younous Abderahman (**Imam Younous**) regarding concerns with Ms Brownson's behaviour.

**PB-26:** A written complaint made by Student C which was received by Mr Hanif on 15 November 2023. The complaint refers to Ms Brownson yelling at Student C in an arts class and states Ms Brownson has made the following statements to him:

“I will make your life a living hell till you change.”

“You might want me to leave you alone but I will never leave you guys alone.”

**PB-27:** This is another copy of a complaint made by Dr Ferdous to Mr Taylor about Ms Brownson's behaviour in 2021, 2022 and 2023.

I marked Ms Brownson's statement dated 2 April 2024 as **Exhibit A1**.

[12] Ms Brownson's statement indicates she enjoyed her job at the College and seeks reinstatement. Ms Brownson states: “I work well with all staff, even those who have provided evidence against me, and I do not foresee any difficulties in regard to those professional relationships if I were to be reinstated.” Ms Brownson states she has applied for more than 20 jobs since being dismissed but it is difficult to find another job with comparable remuneration and with no reference from the College.

[13] Ms Brownson's statement indicates Mr Azhari apologised for how he spoke to Ms Semmens at the Jalsa Day event during the meeting on 6 November 2023.

[14] Ms Brownson also relied on her further witness statement dated 26 April 2024. The statement had the following documents attached:

**PB-28:** A further copy of the email sent by Ms Brownson to Ms Lazarus, Mr Hanif and Dr Ferdous on 24 October 2023 regarding a potential suspension of Student B and Student E. There is also a reply email from Ms Lazarus to Mr Hanif that states:

“Please contact [Student B’s] parents to arrange a meeting with you, Parajmit and I. His behaviour is becoming unbearable to them, and he is refusing to follow instructions. Hopefully the meeting can be done tomorrow. @Paramit Brownson please TASS all entries so that we have a record. If he is non compliant then he may need to stay home for a few days to reflect on his behaviour.”

**PB-29:** Emails exchanged between Mr Moorhead and Ms Curatore on 28 March 2023, 2 April 2023, 23 April 2023, and 24 April 2023 regarding the accuracy of documents provided by the College to Ms Brownson.

**PB-30:** An email from Mr Moorhead to Ms Curatore on 24 April 2024 which requests further documents from the College regarding its investigation process and external advice from HR Assure. The documents requested were not provided.

I marked Ms Brownson’s statement dated 26 April 2024 as **Exhibit A2**.

[15] Ms Brownson was cross-examined on her evidence during the hearing on 2 May 2024.

[16] Ms Brownson provided the following evidence during cross-examination in relation to the allegations of inappropriately yelling at students:<sup>3</sup>

“Well, perhaps referring to the allegations that you've yelled at them and the allegations that you told them that you would make their life miserable, those type of comments?---As I have said in my response, when – there are times when a teacher does have to raise her voice and usually it is because a student is either not following instructions or putting other students into danger or is doing something that is disrupting the entire class and/or if it's – I have had to get their attention as they're running across the oval or across the corridor. Yes, I've had to raise my voice, and yes I have yelled at students. But I have also had many talks with them about their behaviour before and after. Practically every day I see these students and I have to talk to them and I talk to them and I counsel them and I speak to them about what is appropriate and what is not appropriate behaviour.

What about your behaviour, raising your voice and yelling – is that appropriate?---Probably not all the time but as I said I do not raise my voice and yell all the time otherwise I would not be able to teach.

And have you ever - - -?---(Indistinct) I have, yes, raised my voice.

Have you ever apologised for raising your voice or yelling?---Yes, I have, to students and to classes. I have apologised to my classes when I have yelled at them. I've said I'm sorry to them on several occasions.”

[17] Ms Brownson also relied on a witness statement from Ms Mellor dated 26 April 2024. Ms Mellor’s statement provides evidence about steps she took in relation to the complaint from Student A in June 2023. Ms Mellor states she observed Ms Brownson in classes after the complaint was made and did not identify any issues with her teaching. Ms Mellor states she informed Dr Ferdous that she concluded the complaint against Ms Brownson was not justified and that she “was and is firm with her expectations in a difficult and challenging classroom environment, but is fair at all stages.” Ms Mellor’s statement has notes she made about her observations of Ms Brownson’s teaching attached. Ms Mellor speaks highly of Ms Brownson as a teacher in her statement. I marked Ms Mellor’s statement **Exhibit A3**.

[18] Ms Mellor was cross-examined during the hearing on 2 May 2024.

[19] Ms Brownson also relied on the following written submissions:

- Outline of submissions dated 2 April 2024.
- Reply Submissions dated 26 April 2024.
- Final written submissions filed on 28 May 2024.

[20] Mr Moorhead made oral submissions on behalf of Ms Brownson during the hearing on 31 May 2024.

### *The College*

[21] The College relied on the following evidence in opposing Ms Brownson’s application.

[22] A witness statement from Mr Khan dated 19 April 2024. Mr Khan’s statement had the following documents attached:<sup>4</sup>

**MK-1:** A copy of a position description for the Secondary Year Level Coordinator role.

**MK-2:** An email from Mr Hanif to Dr Ferdous, Mr Khan and Ms Lazarus dated 15 November 2023. Mr Hanif’s email indicates students have raised concerns about Ms Brownson’s conduct during well-being sessions.

**MK-3:** Case notes of a meeting between Mr Khan and Mr Hanif on 16 November 2024 (this is meant to be 2023) regarding Ms Brownson’s behaviour towards students.

**MK-4:** A written complaint made by Student B regarding Ms Brownson's behaviour. Student B complains about many punishments imposed by Ms Brownson and indicates he feels targeted. Student B claims he asked Ms Brownson whether he could eat during a detention, and she said he couldn’t. Student B claims Ms Brownson stated to him that: “I will make your life miserable just how you’re making mine.” The document records that it was received by Mr Hanif on 8 November 2023.

**MK-5:** A copy of Student C's complaint received by Mr Hanif on 15 November 2023.

**MK-6:** A case note of a meeting between Mr Khan and Mr Hanif on 16 November 2024 (this is meant to be 2023). The notes refer to Mr Hanif complaining about Ms Brownson asking who he is more scared of out of Ms Brownson and Ms Semmens. Mr Hanif complains about other interactions with Ms Brownson and refers to her stating: "I have told you not to listen to the students. I don't understand. Why are you still listening to them?" Mr Hanif then states he queried whether Ms Brownson was bullying him because of his skin colour or race.

**MK-7:** The complaint made by Student A about Ms Brownson on 13 June 2023.

**MK-8:** A copy of Mr Taylor's email to Dr Ferdous on 13 June 2023 regarding Student A's complaint.

**MK-9:** A copy of the internal emails concerning the management of Student A's complaint.

**MK-10:** An email from Mr Hanif to Mr Khan dated 21 November 2023. The email states: "[Student B] was absent in the following week 24 October to 27 October."

**MK-11:** A copy of the case note relating to Mr Ruhuy's phone call with Student B's mother on 27 October 2024 (this is meant to be 2023).

**MK-12:** A document signed by Mr Khan and Mr Ruhuy and dated 22 November 2023. The note records what Student B's mother had said about him being upset at home and crying many times because of his treatment by Ms Brownson. The note refers to Student B's mother stating he doesn't want to go to school because of how he is being treated.

**MK-13:** A copy of the Notice of Investigation and suspension letter to Ms Brownson dated 23 November 2023.

**MK-14:** A copy of the case note from a meeting between Mr Khan, Mr Azhari and Imam Younos on 24 November 2024 (this is meant to be 2023) regarding Mr Hanif's concerns about Ms Brownson being a safety risk. The note refers to Imam Younas raising concerns about Ms Brownson's aggressive approach and states her actions are not befitting of a pastoral leader and teacher.

**MK-15:** A case note of a meeting between Mr Khan, Mr Azhari, and Imam Aboo on 24 November 2024 (this is meant to be 2023). The notes detail Mr Hanif's concerns and Imam Aboo refers to concerns about Ms Brownson's conduct during a bag search in term 3.

**MK-16:** A copy of the Letter of Allegation to Ms Brownson dated 28 November 2023.

**MK-17:** A copy of Ms Brownson's response to the Letter of Allegation.



**MK-18:** A handover email from Mr Azhari to Mr Khan and Intaz Hussien which provides documents relating to the investigation into Ms Brownson. These include a document headed “Investigation findings.”

**MK-19:** A copy of the College’s Staff Code of Conduct.

**MK-20:** A copy of the College's Child Protection Policy.

**MK-21:** A copy of a letter dated 11 December 2023 inviting Ms Brownson to a show cause meeting on 12 December 2023.

**MK-22:** An email from Ms Brownson to Mr Khan and others dated 11 December 2023. Ms Brownson’s email raises various concerns with the investigation process and requests that the meeting be moved to 13 December 2023 and held via video.

**MK-23:** An email from Ms Brownson to Mr Khan and others dated 12 December 2023. The email indicates Ms Brownson is unwell but still able to attend the meeting on 13 December 2023 via video. A medical certificate is attached to the email. There are also emails exchanged between Mr Khan and Ms Brownson about whether Ms Brownson should attend the meeting in person.

**MK-24:** An email from Ms Brownson to Mr Khan and others dated 13 December 2023. Ms Brownson expresses confusion about the purpose of the meeting held earlier in the day. Ms Brownson states no findings have been made and queries how it can be proposed that she should be dismissed in the absence of findings.

**MK-25:** An email from Mr Khan to Ms Brownson dated 15 December 2023. Mr Khan responds to Ms Brownson’s email raising confusion about the meeting on 13 December 2023 and states that a final decision has not been made.

**MK-26:** A copy of the letter to Ms Brownson dated 19 December 2023 which invites her to attend a show cause meeting on 20 December 2023.

**MK-27:** Ms Brownson’s response to the show cause letter dated 19 December 2023 sent via email to Mr Khan and others on 20 December 2023.

**MK-28:** A copy of Ms Brownson’s termination letter dated 21 December 2023.

**MK-29:** A copy of diary notes made by Mr Khan concerning his meetings with Mr Hanif, Imam Younous and Imam Aboo.

**MK-30:** A copy of diary notes made by Mr Khan concerning his meetings with Mr Hanif, Imam Younous and Imam Aboo.

**MK-31:** A copy of diary notes made by Mr Khan concerning his meetings with Mr Hanif, Imam Younous and Imam Aboo.

I marked Mr Khan’s statement **Exhibit R1**.

[23] Mr Khan was cross-examined during the hearing on 2 May 2024.

[24] The College relied on a witness statement from Mr Azhari dated 19 April 2024. The statement had the following documents attached:

**MA-1:** A copy of the Letter of Allegation dated 28 November 2023.

**MA-2:** A copy of Mr Azhari's email to Mr Khan and Intaz Hussien on 8 December 2023 providing a handover for the investigation into Ms Brownson and attaching relevant documents.

**MA-3:** Emails exchanged between Mr Azhari and Ms Brownson from 30 November 2023 until 11 December regarding the progress of the investigation.

**MA-4:** A copy of the written complaint from Student C.

**MA-5:** A copy of the written complaint from Student B.

I marked Mr Azhari's statement **Exhibit R2**.

[25] Mr Azhari was cross-examined during the hearing on 2 May 2024.

[26] The College relied on a witness statement from Imam Younous dated 19 April 2024. Attached to Imam Younous' statement was a wellbeing case note dated 8 November 2023. The note refers to Student B complaining about his treatment by Ms Brownson. I marked Imam Younous' statement **Exhibit R3**.

[27] Imam Younous was cross-examined during the hearing on 2 May 2024.

[28] The College relied on a witness statement from Mr Hanif dated 18 April 2023. Mr Hanif's statement had a copy of the written complaints from Student B (HR-1) and Student C (HR-2) attached and an email from Mr Hanif to Dr Ferdous, Mr Khan and Ms Lazarus dated 15 November 2023 which conveys the concerns raised by students about Ms Brownson during well-being sessions (HR-3). I marked Mr Hanif's statement **Exhibit R4**.

[29] Mr Hanif was cross-examined during the hearing on 2 May 2024.

[30] The College relied on a witness statement from Iman Aboo dated 19 April 2024. Imam Aboo's statement had a file note of a meeting with Student B on 20 October 2023 attached. The note records Student B raising concerns about his treatment by Ms Brownson. I marked Imam Aboo's statement **Exhibit R5**.

[31] Imam Aboo was cross-examined during the hearing on 2 May 2024.

[32] The College relied on a witness statement from Ms Lazarus dated 19 April 2024. I marked Ms Lazarus' statement **Exhibit R6**.

[33] Ms Lazarus was cross-examined during the hearing on 2 May 2024.

[34] The College also relied on the following written submissions:

- Outline of submissions dated 19 April 2024.
- Closing submissions filed on 28 May 2024.

[35] Ms Visedo made oral closing submissions on behalf of the College during the hearing on 31 May 2024.

### **Statutory provisions – initial matters**

#### When can the Commission order a remedy for unfair dismissal?

[36] Section 390 of the FW Act provides that the Commission may order a remedy if:

- (a) Ms Brownson was protected from unfair dismissal at the time of being dismissed; and
- (b) Ms Brownson has been unfairly dismissed.

[37] Both limbs must be satisfied. I am therefore required to consider whether Ms Brownson was protected from unfair dismissal at the time of being dismissed and, if I am satisfied that Ms Brownson was so protected, whether Ms Brownson has been unfairly dismissed.

#### When is a person protected from unfair dismissal?

[38] Section 382 of the FW Act provides that a person is protected from unfair dismissal if, at the time of being dismissed:

- (a) the person is an employee who has completed a period of employment with his or her employer of at least the minimum employment period; and
- (b) one or more of the following apply:
  - (i) a modern award covers the person;
  - (ii) an enterprise agreement applies to the person in relation to the employment;
  - (iii) the sum of the person's annual rate of earnings, and such other amounts (if any) worked out in relation to the person in accordance with the regulations, is less than the high income threshold.

#### When has a person been unfairly dismissed?

[39] Section 385 of the FW Act provides that a person has been unfairly dismissed if the Commission is satisfied that:

- (a) the person has been dismissed;
- (b) the dismissal was harsh, unjust or unreasonable;
- (c) the dismissal was not consistent with the Small Business Fair Dismissal Code (SBFDC); and
- (d) the dismissal was not a case of genuine redundancy.

**Consideration – initial matters**

[40] There was no dispute Ms Brownson was terminated by the College effective 21 December 2023. I am therefore satisfied that Ms Brownson has been dismissed within the meaning of s.385(a) of the FW Act.

[41] Under s.396 of the FW Act, the Commission is obliged to decide the following matters before considering the merits of the application:

- (a) whether the application was made within the period required in subsection 394(2);
- (b) whether the person was protected from unfair dismissal;
- (c) whether the dismissal was consistent with the SBFDC; and
- (d) whether the dismissal was a case of genuine redundancy.

[42] There is no dispute and I find that Ms Brownson’s application was filed within the relevant 21-day period.

[43] Ms Brownson had completed the minimum employment period of six months when she was dismissed on 21 December 2023. The *Australian Islamic College Collective Enterprise Agreement 2022* applied in relation to Ms Brownson’s employment with the College and her earnings were below the high-income threshold. I find Ms Brownson was a person protected from unfair dismissal.

[44] The College’ Form F3 response states it had 248 employees when Ms Brownson was dismissed. That means the SBFDC is not relevant.

[45] The College has not argued Ms Brownson’s dismissal was a case of genuine redundancy and it clearly was not.

[46] Having considered each of the initial matters, I am required to consider the merits of Ms Brownson’s application.

**Statutory provisions - harsh, unjust or unreasonable**

[47] Section 387 of the FW Act provides that, in considering whether it is satisfied that a dismissal was harsh, unjust or unreasonable, the Commission must take into account:

- (a) whether there was a valid reason for the dismissal related to the person's capacity or conduct (including its effect on the safety and welfare of other employees); and
- (b) whether the person was notified of that reason; and
- (c) whether the person was given an opportunity to respond to any reason related to the capacity or conduct of the person; and
- (d) any unreasonable refusal by the employer to allow the person to have a support person present to assist at any discussions relating to dismissal; and
- (e) if the dismissal related to unsatisfactory performance by the person – whether the person had been warned about that unsatisfactory performance before the dismissal; and
- (f) the degree to which the size of the employer's enterprise would be likely to impact on the procedures followed in effecting the dismissal; and
- (g) the degree to which the absence of dedicated human resource management specialists or expertise in the enterprise would be likely to impact on the procedures followed in effecting the dismissal; and
- (h) any other matters that the FWC considers relevant.

[48] I am required to consider each of these factors, to the extent they are relevant to the factual circumstances before me.<sup>5</sup> I set out my consideration of each below.

### **Findings – evidence**

[49] While it is understandable that the College did not wish to call any of the relevant students as witnesses in this case, that decision has consequences in terms of the evidence. It means that for Allegations 1, 2, and 3, the College is left relying on the written complaints filed by Student A, Student B and Student C, and hearsay evidence from College staff about what they were told by the relevant students and in some cases their parents. The situation is different for Allegation 4 and 5 because the allegations relate at least in part towards Ms Brownson's alleged conduct towards staff members. Students have been called as witnesses in other cases before the Commission.<sup>6</sup>

[50] I consider Ms Brownson presented as a truthful and credible witness. I do not consider Ms Brownson's evidence was undermined to any significant degree during cross-examination. Ms Visedo also accepted during the hearing on 31 May 2024 that Ms Brownson had no history of being dishonest during her employment at the College, which was appropriate given no evidence of dishonesty had been provided by the College. Ms Brownson admitted during cross-examination that she has raised her voice and yelled at students but explained that this is a

necessary part of being a teacher and that she has apologised to the students where she considered she may have been too harsh. Ms Brownson also explained that she would have separate private discussions with students about their behaviour to try and assist them.<sup>7</sup> In addition, Ms Brownson did not deny all the alleged conduct, Ms Brownson made various admissions about her conduct during the investigation process and before the Commission. This strengthens the credibility of her evidence.

**[51]** I am astounded that the College preferred the evidence of Students B and C to Ms Brownson's evidence in relation to Allegations 1, 2, and 3. It is apparent from a range of evidence that the students had been exhibiting extremely poor and disruptive behaviour at school and as a result were being regularly disciplined by Ms Brownson and other teachers. That means the students had an interest in causing trouble for Ms Brownson because that may prevent her being able to continue disciplining them. I accept schools need to be very cautious about student safety and treat all complaints seriously, even if students with disciplinary problems are making the complaints. However, I do not consider it was reasonable or appropriate for the College to reject the evidence of an experienced teacher with no prior conduct or disciplinary issues in favour of uncorroborated evidence by students who had been frequently misbehaving and hence being disciplined by the teacher. There is no evidence of Student A misbehaving, but I have concluded the complaint from Student A was investigated and found to be not substantiated.

**[52]** I accept Ms Brownson's evidence regarding the events associated with each allegation.

**[53]** Specifically, with reference to the paragraph numbering in the Letter of Allegation, I make the following findings regarding the allegations against Ms Brownson:

#### **Allegation 1**

1. I do not find the evidence and particulars provided by the College are sufficient to establish misconduct by Ms Brownson based on vague hearsay evidence from Mr Hanif.
2. I accept Ms Mellor's evidence that Student A's complaint was investigated by Ms Mellor and found to be not substantiated. I have no reason to doubt Ms Mellor's evidence about observing Ms Brownson teaching and determining she was behaving firmly but fairly and appropriately. I accept Ms Brownson's evidence that she was trying to assist students who were not completing the required work. The emails from Mr Taylor and Dr Ferdous do not suggest they considered the complaint revealed serious misconduct by Ms Brownson and their responses indicate they perceived there was a degree of dissatisfaction with having to do more work from Student A and the other students.<sup>8</sup>

#### **Allegation 2 and 3**

1. I accept Ms Brownson's evidence that what she stated to Student B was "why are you making my life a miserable hell? Not just my life but the other teachers?"

2. I accept Ms Brownson's evidence that what she stated to Student C was "why are you making my life miserable?"
3. I accept Ms Brownson's evidence that she did not prevent Student C from eating food during detention.
4. I do not find the evidence and particulars provided by the College are sufficient to establish misconduct by Ms Brownson based on vague hearsay evidence from Mr Hanif about what he was told in well-being sessions.

#### **Allegation 4**

1. Ms Brownson admitted she told staff members she had been stood down and told to leave the school immediately. Ms Brownson denied disclosing any details of the investigation. I accept Ms Brownson's evidence.

#### **Allegation 5**

1. Ms Brownson admitted stating to Mr Hanif on 2 November 2023: "Why do you listen to these students? I've told you many times not to listen to them." However, I accept Ms Brownson's evidence about the context to her statement, which was that the students had told a clear lie about trying to hand a detention form to Ms Brownson when they had run away from her. I consider Ms Brownson's statement reflects frustration at the ongoing misbehaviour of the students, as opposed to an attempt to undermine Mr Hanif.
2. Ms Brownson has admitted asking Mr Hanif on 3 November 2023: "Between me and Patricia who are you more scared of?" I accept Ms Brownson's evidence that this was banter and not a serious question.
3. I accept Ms Brownson's evidence regarding what occurred with the bag search and what she stated to the students.

#### **Consideration – harsh, unjust or unreasonable**

##### Was there a valid reason for the dismissal related to Ms Brownson's capacity or conduct?

[54] In order to be a valid reason, the reason for the dismissal should be "sound, defensible or well founded"<sup>9</sup> and should not be "capricious, fanciful, spiteful or prejudiced."<sup>10</sup> However, the Commission will not stand in the shoes of the employer and determine what the Commission would do if it was in the position of the employer.<sup>11</sup>

[55] Where a dismissal relates to an employee's conduct, the Commission must be satisfied that the conduct occurred and justified termination.<sup>12</sup> The question of whether the alleged conduct took place and what it involved is to be determined by the Commission on the basis of the evidence in the proceedings before it. The test is not whether the employer believed, on reasonable grounds after sufficient enquiry, that the employee was guilty of the conduct which resulted in termination.<sup>13</sup>

**[56]** Based on my factual findings above, the relevant conduct that I have found did occur is the following:

- Ms Brownson stated to Student B: “why are you making my life a miserable hell? Not just my life but the other teachers?”
- Ms Brownson stated to Student C and other students: “why are you making my life miserable?”
- Ms Brownson told staff members she had been stood down and told to leave the school immediately on 23 November 2023 and this conduct was contrary to the confidentiality direction in a letter she had been given earlier that day.
- Ms Brownson stated: “Why do you listen to these students? I’ve told you many times not to listen to them” to Mr Hanif on 2 November 2023.
- Ms Brownson stated: “Between me and Patricia who are you more scared of?” to Mr Hanif on 3 November 2023.

**[57]** I find that none of the conduct identified above comes close to providing a valid reason for dismissal, considered in isolation. I also find that the conduct considered collectively does not provide a valid reason for dismissal.

**[58]** The statements made by Ms Brownson to Student B, Student C, and Mr Hanif cannot be considered serious enough to provide a valid reason for dismissal when viewed in the context of the misbehaviour Ms Brownson was having to deal with.

**[59]** While a breach of confidentiality can constitute a valid reason for dismissal in many circumstances, Ms Brownson’s breach can only fairly be described as extremely minor. The College did not suffer any significant prejudice because Ms Brownson told staff she had been stood down, which was completely true. There is also some doubt regarding whether Ms Brownson’s suspension can be legitimately subject to a confidentiality direction given it was inevitable that staff and students would have become aware of Ms Brownson’s absence. It appears the College was directing Ms Brownson to leave the College without saying anything to anybody about why she was leaving. That’s an extremely difficult position to be placed in and it is not surprising Ms Brownson told some staff members she had been stood down particularly given she was understandably upset. I do not accept this disclosure constitutes a serious enough breach of Ms Brownson’s obligations concerning confidentiality to provide a valid reason for dismissal.

**[60]** To the extent that Ms Brownson’s conduct technically breached any of the College’s policies, I do not find that the policy breach was of sufficient gravity to provide a valid reason for dismissal, for the reasons identified above.

**[61]** I find there was not a valid reason for Ms Brownson’s dismissal.

Was Ms Brownson notified of the reason for dismissal?



[62] Proper consideration of s.387(b) requires a finding to be made as to whether Ms Brownson “was notified of that reason”. Contextually, the reference to “that reason” is the valid reason found to exist under s.387(a).<sup>14</sup>

[63] Notification of a valid reason for termination must be given to an employee protected from unfair dismissal before the decision is made to terminate their employment,<sup>15</sup> and in explicit<sup>16</sup> and plain and clear terms.<sup>17</sup>

[64] As I am not satisfied that there was a valid reason for dismissal, this factor is not relevant to the present circumstances.<sup>18</sup>

Was Ms Brownson given an opportunity to respond to any valid reason related to her capacity or conduct?

[65] An employee protected from unfair dismissal should be provided with an opportunity to respond to any reason for their dismissal relating to their conduct or capacity. An opportunity to respond is to be provided before a decision is taken to terminate the employee’s employment.<sup>19</sup>

[66] The opportunity to respond does not require formality and this factor is to be applied in a common-sense way to ensure the employee is treated fairly.<sup>20</sup> Where the employee is aware of the precise nature of the employer’s concern about his or her conduct or performance and has a full opportunity to respond to this concern, this is enough to satisfy the requirements.<sup>21</sup>

[67] As I have not found that there was a valid reason for dismissal, this factor is not relevant to the present circumstances.<sup>22</sup>

Did the College unreasonably refuse to allow Ms Brownson to have a support person present to assist at discussions relating to the dismissal?

[68] The College did not unreasonably refuse to allow Ms Brownson to have a support person present at the discussion on 13 December 2023 and the College was prepared to allow her to have a support person at the meeting on 20 December 2023 if it proceeded.

Was Ms Brownson warned about unsatisfactory performance before the dismissal?

[69] As the dismissal relates to misconduct, this factor is not relevant.

To what degree would the size of the College’s enterprise be likely to impact on the procedures followed in effecting the dismissal?

[70] I have not made findings regarding the procedures followed in effecting the dismissal, this factor is not relevant.

To what degree would the absence of dedicated human resource management specialists or expertise in the College’s enterprise be likely to impact on the procedures followed in effecting the dismissal?

[71] I have not made findings regarding the procedures followed in effecting the dismissal, this factor is not relevant.

What other matters are relevant?

[72] Section 387(h) requires the Commission to take into account any other matters that the Commission considers relevant.

[73] Neither party argued there are any other matters that are relevant. I have not identified any other relevant matters.

**Conclusion - harsh, unjust or unreasonable**

[74] I have made findings in relation to each matter specified in s.387. I must consider and give due weight to each as a fundamental element in determining whether the termination was harsh, unjust or unreasonable.<sup>23</sup>

[75] Having considered each of the matters specified in s.387 of the FW Act, I am satisfied that the dismissal of Ms Brownson was unjust and unreasonable because there was no valid reason for dismissal related to Ms Brownson's conduct.

[76] If I had found that there was a valid reason for dismissal, I would have found that the dismissal was harsh. I would have found the dismissal was a disproportionate response to the gravity of the conduct, particularly when the documentary evidence clearly establishes Ms Brownson was having a very difficult time managing some misbehaving students and was notifying superiors about the situation and seeking assistance.

[77] I am therefore satisfied that Ms Brownson was unfairly dismissed within the meaning of s.385 of the FW Act.

**Remedy**

[78] Being satisfied that Ms Brownson:

- made an application for an order granting a remedy under s.394;
- was a person protected from unfair dismissal; and
- was unfairly dismissed within the meaning of s.385 of the FW Act,

I may, subject to the FW Act, order Ms Brownson's reinstatement, or the payment of compensation to Ms Brownson.

[79] Under s.390(3) of the FW Act, I must not order the payment of compensation to Ms Brownson unless:

- (a) I am satisfied that reinstatement of Ms Brownson is inappropriate; and

- (b) I consider an order for payment of compensation is appropriate in all the circumstances of the case.

### **Is reinstatement of Ms Brownson inappropriate?**

[80] In considering an appropriate remedy in a case of unfair dismissal, regard must be had to the legislative object set out in s.381 of the FW Act. This includes an emphasis on the remedy of reinstatement<sup>24</sup> and on ensuring that a “fair go all round” is accorded to both the employer and employee concerned.<sup>25</sup>

[81] Ms Brownson seeks reinstatement to her previous position. The College opposes reinstatement. The basis of the opposition is that Ms Brownson has demonstrated she cannot control her emotions and behave appropriately towards students. In addition, the well-being of relevant students may be impacted if Ms Brownson is reinstated. The College submits it has lost trust and confidence in Ms Brownson.

[82] A Full Bench in *Nguyen v Vietnamese Community in Australia t/a Vietnamese Community Ethnic School South Australia Chapter* [2014] FWCFB 7198, identified the following propositions relevant to the impact of a loss of trust and confidence on the appropriateness of an order for reinstatement:

“Whether there has been a loss of trust and confidence is a relevant consideration in determining whether reinstatement is appropriate but while it will often be an important consideration it is not the sole criterion or even a necessary one in determining whether or not to order reinstatement.

Each case must be decided on its own facts, including the nature of the employment concerned. There may be a limited number of circumstances in which any ripple on the surface of the employment relationship will destroy its viability but in most cases the employment relationship is capable of withstanding some friction and doubts.

An allegation that there has been a loss of trust and confidence must be soundly and rationally based and it is important to carefully scrutinise a claim that reinstatement is inappropriate because of a loss of confidence in the employee. The onus of establishing a loss of trust and confidence rests on the party making the assertion.

The reluctance of an employer to shift from a view, despite a tribunal’s assessment that the employee was not guilty of serious wrongdoing or misconduct, does not provide a sound basis to conclude that the relationship of trust and confidence is irreparably damaged or destroyed.

The fact that it may be difficult or embarrassing for an employer to be required to re-employ an employee whom the employer believed to have been guilty of serious wrongdoing or misconduct are not necessarily indicative of a loss of trust and confidence so as to make restoring the employment relationship inappropriate.”<sup>26</sup>

**[83]** The Full Bench concluded that, “[u]ltimately, the question is whether there can be a sufficient level of trust and confidence restored to make the relationship viable and productive. In making this assessment, it is appropriate to consider the rationality of any attitude taken by a party.”<sup>27</sup>

**[84]** I accept Ms Brownson's evidence that she works well with staff, and she is clearly an experienced and competent teacher. I consider Ms Brownson will be able to manage the inevitable degree of awkwardness that will arise with some staff and students if she is reinstated. I do not accept the College has reasonable grounds to submit it could no longer have trust and confidence in Ms Brownson as a teacher. I consider any remaining concerns about Ms Brownson’s management of students or interactions with staff can be addressed via discussions and training. I do not accept there is a genuine risk to the safety of any students if Ms Brownson is reinstated. Further, if any issues arise in relation to Ms Brownson’s conduct if she is reinstated, the College will be able to take action to address them.

**[85]** I do not consider that the requisite level of trust and confidence cannot be restored to make the relationship viable and productive. I believe it is appropriate and consistent with the objects of the FW Act that I reinstate Ms Brownson. I am satisfied that I should make an order that the College must reappoint Ms Brownson to the position in which she was employed immediately before the dismissal within fourteen days of the date of this decision, pursuant to s.391(1)(a) of the FW Act. An order to that effect will accompany this decision.

**[86]** I will also make an order to maintain the continuity of the employment and the period of continuous service of Ms Brownson with the College pursuant to s.391(2) of the FW Act. I consider the order is appropriate to ensure Ms Brownson is not further disadvantaged by what I have found was an unfair dismissal.

**[87]** Section 391(3) of the FW Act provides that, if the Commission makes an order for reinstatement and considers it appropriate to do so, the Commission may also make any order that the Commission considers appropriate to cause the employer to pay to the Applicant an amount for the remuneration lost, or likely to have been lost, by the Applicant because of the dismissal.

**[88]** Section 391(4) of the FW Act provides that, in determining an amount for the purposes of such an order, the Commission must take into account:

(a) the amount of any remuneration earned by the Applicant from employment or other work during the period between the dismissal and the making of the order for reinstatement; and

(b) the amount of any remuneration reasonably likely to be so earned by the Applicant during the period between the making of the order for reinstatement and the actual reinstatement.

**[89]** An order to restore lost pay does not necessarily follow an order for reinstatement. The Commission may only make an order if it considers it appropriate to do so and only make an order that the Commission considers appropriate.<sup>28</sup> Where an employee has engaged in misconduct, the Commission may refuse to make any order to restore lost pay.<sup>29</sup>

[90] I consider it to be appropriate in the circumstances to make an order for the College to make a payment to Ms Brownson to restore her lost pay. Such amount should take account of each of the matters referred to in s.391(4) of the FW Act. I accept Ms Brownson's evidence that she has applied for at least 20 jobs since being dismissed and that it is difficult to find another job as a teacher in circumstances where Ms Brownson's most recent employment was terminated for serious misconduct associated with her management of students. I accept Ms Brownson has taken reasonable steps to mitigate her loss. I also consider it is relevant that Ms Brownson's reputation has been damaged by the dismissal and that this damage is unlikely to be entirely reversed by a reinstatement order.

[91] I do not consider it appropriate to reduce the amounts otherwise payable in circumstances where Ms Brownson has lost income and there was not a valid reason for her to be dismissed.

[92] I will make an order that the College makes a payment to restore Ms Brownson's lost pay. The amount of the order is to be agreed between the parties or will be subsequently determined by the Commission if required. The amount will be payable within 14 days of agreement being reached between the parties, or within 14 days of the amount being determined by the Commission. The parties are directed to contact my chambers to request a hearing date if agreement cannot be reached as to the amount of lost pay.

[93] Orders reflecting my decision will issue separately.



COMMISSIONER

*Appearances:*

*Mr Moorhead* from the Independent Education Union representing Ms Brownson.

*Ms Visedo* from Citation Legal on behalf of the College.

*Hearing details:*

2024.

*Via video.*

2 May.

31 May.

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- <sup>1</sup> Documents PB-1 to PB-27 are outlined in this decision consistently with how they were numbered in Ms Brownson's materials. There were no attachments labelled PB-12, PB-18, PB-23, or PB-24.
- <sup>2</sup> Although this content appears under the Allegation 2 heading in Ms Brownson's email, it is clearly directed at Student A's complaint which forms part of Allegation 1.
- <sup>3</sup> Transcript at PN73 to PN76.
- <sup>4</sup> I won't describe some of this evidence in detail because it duplicates evidence relied on by Ms Brownson.
- <sup>5</sup> *Sayer v Melsteel Pty Ltd* [2011] FWAFB 7498, [14]; *Smith v Moore Paragon Australia Ltd* [PR915674](#) (AIRCFCB, Ross VP, Lacy SDP, Simmonds C, 21 March 2002), [69].
- <sup>6</sup> For example, *Trustees for the Roman Catholic Church, Archdiocese of Canberra and Goulburn v Michael Crowley* [2019] FWCFB 7890.
- <sup>7</sup> Transcript at PN73 to PN76.
- <sup>8</sup> Exhibit A1, PB-9.
- <sup>9</sup> *Selvachandran v Peteron Plastics Pty Ltd* (1995) 62 IR 371, 373.
- <sup>10</sup> *Ibid.*
- <sup>11</sup> *Walton v Mermaid Dry Cleaners Pty Ltd* (1996) 142 ALR 681, 685.
- <sup>12</sup> *Edwards v Justice Giudice* [1999] FCA 1836, [7].
- <sup>13</sup> *King v Freshmore (Vic) Pty Ltd* Print S4213 (AIRCFCB, Ross VP, Williams SDP, Hingley C, 17 March 2000), [23]-[24].
- <sup>14</sup> *Bartlett v Ingleburn Bus Services Pty Ltd* [2020] FWCFB 6429, [19]; *Reseigh v Stegbar Pty Ltd* [2020] FWCFB 533, [55].
- <sup>15</sup> *Crozier v Palazzo Corporation Pty Ltd* (2000) 98 IR 137, 151.
- <sup>16</sup> *Previsic v Australian Quarantine Inspection Services* Print Q3730 (AIRC, Holmes C, 6 October 1998).
- <sup>17</sup> *Ibid.*
- <sup>18</sup> *Chubb Security Australia Pty Ltd v Thomas* Print S2679 (AIRCFCB, McIntyre VP, Marsh SDP, Larkin C, 2 February 2000), [41]; *Read v Cordon Square Child Care Centre* [2013] FWCFB 762, [46]-[49].
- <sup>19</sup> *Crozier v Palazzo Corporation Pty Ltd t/a Noble Park Storage and Transport* Print S5897 (AIRCFCB, Ross VP, Acton SDP, Cribb C, 11 May 2000), [75].
- <sup>20</sup> *RMIT v Asher* (2010) 194 IR 1, 14-15.
- <sup>21</sup> *Gibson v Bosmac Pty Ltd* (1995) 60 IR 1, 7.
- <sup>22</sup> *Chubb Security Australia Pty Ltd v Thomas* Print S2679 (AIRCFCB, McIntyre VP, Marsh SDP, Larkin C, 2 February 2000), [41]; *Read v Cordon Square Child Care Centre* [2013] FWCFB 762, [46]-[49].
- <sup>23</sup> *ALH Group Pty Ltd v/a The Royal Exchange Hotel v Mulhall* (2002) 117 IR 357, [51]. See also *Smith v Moore Paragon Australia Ltd* [PR915674](#) (AIRCFCB, Ross VP, Lacy SDP, Simmonds C, 21 March 2002), [92]; *Edwards v Justice Giudice* [1999] FCA 1836, [6]-[7].
- <sup>24</sup> s 381(1)(c).
- <sup>25</sup> *BlueScope Steel Limited v Sirijovski* [2014] FWCFB 2593 at [73].
- <sup>26</sup> At [27].
- <sup>27</sup> At [28].
- <sup>28</sup> *Aurora Energy Pty Ltd v Davison* [PR902108](#) (AIRCFCB, Watson SDP, Williams SDP, Holmes C, 8 March 2001), [25].
- <sup>29</sup> See, eg, *Regional Express Holdings Ltd v Richards* [2010] FWAFB 8753, [29].