



# DECISION

*Fair Work Act 2009*

s.789FC - Application for an order to stop bullying at work

**Murdock**

(AB2024/93)

COMMISSIONER MCKINNON

SYDNEY, 10 JULY 2024

*Application for an order to stop bullying at work – whether reasonable belief of bullying at work – whether bullied at work – application dismissed*

[1] This decision is about whether Ms Tania Murdock has been bullied at work. Ms Murdock is employed in the Australian Public Service (APS) as a Fair Work Commission (FWC) Conciliator. Prior to joining the FWC in the latter half of 2022, she worked in dispute resolution for approximately 7 years, including as an accredited mediator. Ms Murdock has not been at work since October 2023 and is instead on approved unpaid leave.

[2] On 12 February 2024, Ms Murdock applied to the FWC for an order to stop bullying at work by her manager, Mr Danny Gnjdjic. Mr Gnjdjic works in the FWC in the role of Director, National Conciliation Service. Ms Murdock alleges that in response to her seeking support about difficult cases and stakeholders and/or suggesting ideas for better supporting Conciliators, she experienced victimisation, humiliation, intimidation, threats to her job, harassment, abuse, insults, offensive and disparaging name-calling, unjustified criticism, denial of professional development opportunities and training, excessive scrutiny and unequal treatment. Ms Murdock submits that these behaviours have caused her significant distress and related medical symptoms as well as lost time, costs associated with attending medical appointments and impacts on her family and living conditions.

[3] The questions are firstly whether Ms Murdock reasonably believes that she has been bullied at work; secondly, whether I am satisfied that Ms Murdock has been bullied at work by Mr Gnjdjic; and thirdly, whether the behaviour creates a risk to health and safety. It is only necessary to deal with the second of these questions. For the reasons that follow, I am not satisfied that Ms Murdock has been bullied at work by Mr Gnjdjic.

## **The alleged bullying at work**

[4] Part 6-4B of the *Fair Work Act 2009* (the Act) allows a worker who has been bullied at work to apply to the FWC for an order to stop the bullying. Only a worker who reasonably believes they have been bullied at work may apply to the FWC for an order of this kind.<sup>1</sup>

[5] The meaning of “bullied at work” is set out in s.789FD of the Act. A worker is “bullied at work” if, while they are at work in a constitutionally-covered business, an individual or group

of individuals repeatedly behaves unreasonably towards the worker or a group of workers of which they are a member, and that behaviour creates a risk to health and safety.<sup>2</sup> The meaning of “bullied at work” does not apply to reasonable management action carried out in a reasonable manner.<sup>3</sup>

[6] The FWC is a Commonwealth authority and meets the description of a constitutionally-covered business for the purposes of s.789FD(3). There is no dispute that Ms Murdock is a worker and that the alleged bullying behaviour occurred while she was at work in the FWC.

[7] The specific allegations of bullying behaviour made by Ms Murdock are that:

1. in October 2022, Mr Gnjjidic dismissed her problems with the FWC’s IT systems,
2. in June 2023, Mr Gnjjidic discouraged her participation in a “flexible delivery pilot”,
3. on 20 September 2023, Mr Gnjjidic scoffed at her suggestions for debriefing Conciliators and said words to the effect of “maybe the job is not for you”,
4. on 21 September 2023, Mr Gnjjidic threatened her job and repeatedly referred to her as a “failure” using “an aggressive, and intimidating approach”,
5. on 4 October 2023, Mr Gnjjidic gave her misleading information and treated her differently compared to her colleagues in relation to professional development,
6. from 5 October 2023, Mr Gnjjidic made false and aggressive allegations about her,
7. on 6 October 2023, Mr Gnjjidic made 4 simultaneous and inappropriate calls to Ms Murdock while she was conducting an offline staff conciliation, and
8. on 6 October 2023, Mr Gnjjidic subjected her to excessive scrutiny.

[8] When initially interviewed about her complaint against Mr Gnjjidic, Ms Murdock advised staff of the FWC that her first experience of bullying and harassment was the incident on 20 September 2023 described above. And although it does not form part of her complaint, another incident on 24 July 2023 provides relevant context. On that occasion, Ms Murdock was coming to the end of a staff conciliation when a party representative spoke to her loudly and rudely. The behaviour caused Ms Murdock significant distress. She sought support, including through the FWC’s Employee Assistance Program (EAP).

[9] After this incident, the FWC wrote to the representative about its expectation that staff be treated with respect and not be subject to belittling or aggressive language or conduct. In the meantime, Ms Murdock continued to access the EAP for a period that included September and October 2023, which is when most of the alleged incidents of bullying occurred. Indeed, one of the alleged incidents occurred while Ms Murdock was participating in an EAP session, as will be discussed later in these reasons.

### **Has Ms Murdock been bullied at work?**

[10] The eight allegations of bullying behaviour made by Ms Murdock are considered below in chronological order.

Allegation 1 – dismissing IT problems in October 2022

[11] This allegation appears to relate to difficulties accessing or using the FWC’s case management system in Ms Murdock’s early days at the FWC. The incident described in the materials involves Ms Murdock’s preparation for her first conciliation, which she described as “one brief interaction” with Mr Gnjudic. At the time, Mr Gnjudic was a colleague (also working as a Conciliator) and not Ms Murdock’s manager.

[12] Ms Murdock submits that Mr Gnjudic walked into her office and introduced himself. She was stressed and trying to access the case management system without success. She told Mr Gnjudic she did not have time to talk and asked what to do about accessing the system. Mr Gnjudic said he would submit an information technology (IT) request for her, and promptly did so. The system issues were resolved for Ms Murdock by the following day.

[13] Taking Ms Murdock’s version of events at its highest, I cannot identify any conduct of Mr Gnjudic that could be described as dismissive of her problems. It was the opposite. Although not his responsibility, Mr Gnjudic offered to help Ms Murdock by logging an IT request on her behalf and then did so. The exchange occurred in the context of Mr Gnjudic seeking to introduce himself to Ms Murdock as her colleague. His behaviour in this regard was not unreasonable.

Allegation 2 – discouraging participation in a “flexible delivery pilot”

[14] In or about June 2023, the FWC was working on a “flexible delivery” pilot aimed at more flexible options for parties involved in early case conciliation. All Conciliators were asked if they were interested in joining in the pilot while a colleague was on leave, and Ms Murdock responded positively. Ms Lynne Stapylton, who was then in the role of Director, National Conciliation Service, called Ms Murdock and left her a voicemail message:

“Hi, Tanya, it’s Lynn. Just wanted to say thanks for putting your hand up this morning to be involved in that committee. That’s fantastic. I know you also expressed some interest, but didn’t know what the work of the flexible delivery team was. And I know Danny and Michael spoke to you about that work. I’ve organised A conciliation to go into the team to fill the gap when Rita goes off late. But still like to have a chat to you about giving you some more exposure to the work of that team at some stage in the future. So if you’d like to give me a call and we can have a chat about that and see how we might be placed to make that happen so you can spend a couple of days observing the team and what they’re doing, Give me a call when you’re free. Thanks. Bye.”

[15] Ms Murdock submits that by this message, Ms Stapylton was saying “fantastic” to Ms Murdock’s interest in the Pilot, although the words “That’s fantastic” appear to be in response to Ms Murdock offering to be involved in a committee. The nature of the committee and its relationship to the flexible delivery pilot is not apparent on the evidence. Although there appears to be a typographical error in the message as transcribed, such that the words “A Conciliation” should read “a Conciliator”, the voicemail message records Ms Stapylton’s acknowledgement of Ms Murdock’s expression of interest in the pilot, her advice that another person had been identified to fill the existing gap, and her interest in giving Ms Murdock more exposure to the work of the flexible delivery team “at some stage in the future”.

[16] Ms Murdock submits that in Ms Stapylton’s message, she advised that she would arrange for a discussion between Mr Gnjdic and Ms Murdock. The contents of the message indicate that the discussion had already occurred by this time, and it is the content of that discussion that Ms Murdock relies on to establish that Mr Gnjdic was very discouraging of her involvement. Ms Murdock alleges that Mr Gnjdic made comments to the effect that it would be “too much for” her, that she was not “experienced enough” and that it would not be suitable for her to be involved. Ms Murdock submits that in response, she said “I’m better now, I have come a long way” and that Mr Gnjdic then said, in words to the effect: “Yeah, yeah, I know your history.”

[17] Ms Murdock surmises that when Mr Gnjdic said, “I know your history”, he was targeting her or making a personal remark. The evidence does not support the assumption. According to Mr Gnjdic, he knew very little about Ms Murdock on a personal level at the time and there is no evidence to the contrary.

[18] Mr Gnjdic’s account of the discussion is that he spoke with Ms Murdock for 90 minutes or more. He was leading the pilot, but he was not Ms Murdock’s manager. They spoke about what the pilot involved. Ms Murdock had a lot of questions. This led to discussion about a broader range of issues, including Ms Murdock’s early challenges in the role and her progress to date. They discussed the administrative side of the role. As the conversation came to an end, Ms Murdock said she did not wish to pursue her expression of interest at that time. Mr Gnjdic later passed this information on to Ms Stapylton.

[19] I am not satisfied that Mr Gnjdic was very discouraging of Ms Murdock’s involvement of the pilot in this conversation. I consider it likely that he made comments similar to those described at paragraph [16] above, but in the context of a general discussion with Ms Murdock about how she was doing in the Conciliator role, what the flexible delivery pilot involved, the challenges she had faced and whether she would be interested in taking part. These comments were not unreasonable in the circumstances. At the time of the discussion, Ms Murdock was a relatively inexperienced Conciliator. Although she had relevant mediation experience outside of the FWC, she had found it difficult, at least initially, to adjust to the administrative side of the role. The flexible delivery pilot had a heavy emphasis on administrative reporting.

Allegation 3 – scoffing at suggestions for improvement; saying: “maybe the job is not for you”

[20] On 20 September 2023, shortly after Mr Gnjdic had started in his new role as Director, he met with Ms Murdock at approximately 2.30pm. This was one of many ‘meet and greet’ meetings organised between Mr Gnjdic and the team of Conciliators following his commencement in the role. Mr Gnjdic asked Ms Murdock for one suggestion to improve the work of Conciliators. Ms Murdock suggested opportunities for debriefing after difficult cases, such as those involving highly distressing material, or dealing with aggressive parties or abuse.

[21] According to Ms Murdock, Mr Gnjdic scoffed at her suggestion, responding with words to the effect: “Why would you need that?” She explained some situations she had found problematic, and says Mr Gnjdic responded by saying words to the effect: “Well maybe the job is not for you”. Ms Murdock says this caused her offense and made her feel dismissed in relation to a serious matter.

[22] Ms Murdock also says when she asked Mr Gnjudic what he did when he came across a difficult or distressing case, he responded by saying he used “the next parties in the next matter to debrief”. Ms Murdock says she was completely shocked by this response which she characterised as unethical and harmful behaviour.

[23] Mr Gnjudic’s recollection is that his discussion with Ms Murdock was a very positive one. Ms Murdock was smiling, congratulated him on his appointment to the role and said she was happy about it. This is consistent with Ms Murdock’s evidence that she thought Mr Gnjudic was a good appointment at the time, as she thought the Director should be someone who understood the Conciliator role. Mr Gnjudic recalls Ms Murdock suggesting debriefing for Conciliators and says he was not surprised about this, as it was an issue she had raised before. Although he did not adopt the suggestion for a formal debriefing process for Conciliators, he explained that work had recently been done on re-introducing a ‘buddy’ system to give Conciliators more support.

[24] Mr Gnjudic denies saying words to the effect of “Well maybe the job is not for you” and disputes Ms Murdock’s characterisation of his comments about debriefing by using the parties in the next matter. He says he was explaining his method of compartmentalising – closing one file and moving on to the next. He also described other methods, such as going for a walk, getting a coffee or taking a short break.

[25] On the state of the evidence, I am not able to reach a firm conclusion about precisely what was said in this conversation or the manner in which it was said. I cannot be satisfied that Mr Gnjudic scoffed at the suggestions made by Ms Murdock or that he said words to the effect of “maybe the job is not for you”. In my observation, Ms Murdock tends to read more into conversations than is objectively available. I do not find her evidence on the matter wholly reliable although it likely has a seed of truth. Mr Gnjudic’s evidence, as contained in a record of interview when these allegations were investigated, is very general in nature. Although he also responded to direct answers in cross-examination about the conversation, it was touched on only briefly and did not provide any greater clarity on the matter.

[26] The context is important. Mr Gnjudic had recently been appointed to the role. The purpose of his meeting with Ms Murdock was to connect with her as the new Director and to invite her thoughts on possible workplace improvements. Ms Murdock was happy and supportive of Mr Gnjudic in the new role and wanted Mr Gnjudic to know this. They had an open, honest, and congenial exchange. The context seems incongruous with one in which Mr Gnjudic scoffed at suggestions he had directly encouraged Ms Murdock to make.

[27] Perhaps Mr Gnjudic did query whether the job was right for Ms Murdock. If so, it was in the context of Ms Murdock describing how difficult she had found it to deal with some of the content and party interactions in conciliations. And while I accept Ms Murdock may not have agreed with some of Mr Gnjudic’s methods for moving on from difficult cases, that does not mean his description of those methods, in response to her enquiry, was either unreasonable or a kind of bullying behaviour. In each respect, I am not satisfied that Mr Gnjudic acted unreasonably toward Ms Murdock in their conversation.

Allegation 4 – threatening her job and repeatedly referring to Ms Murdock as a “failure”

*Conversation on 21 September 2023*

[28] On 21 September 2023, Ms Murdock spoke to Mr Gnjidic about a case she had dealt with some nine months before. After the case had settled, the applicant exercised their option under a “cooling off period” to withdraw from the settlement agreement. In January 2023, Ms Murdock told the parties in the case that it would be referred to a Member of the FWC. She did not then take the necessary steps and despite follow up from the applicant’s support person in May 2023, the file sat inactive for nine months. A further follow up on behalf of the applicant was made in September 2023. That prompted further action on the file, and on 6 October 2023, the FWC wrote to the parties involved to apologise for the delay.

[29] It is not clear why Ms Murdock did not respond to the initial follow up from the applicant in May 2023. It seems that Ms Murdock thought her responsibility for dealing with the case had come to an end. When the second follow up came in September 2023, Ms Murdock did not know what to do and sought advice from a colleague. She followed their advice to update the case management system in relation to the case, and then arranged to speak with Mr Gnjidic to seek his guidance.

[30] There is a dispute about whether the meeting occurred online or on the phone. Nothing turns on the format of the meeting and so it is not necessary to resolve. At issue is what happened during the meeting on 21 September 2023.

[31] Ms Murdock says Mr Gnjidic was extremely aggressive and that this was completely unexpected. She described him as “hysterical with rage, and furious with” her. She says Mr Gnjidic was yelling at her, demanding answers over and over, and while she was trying to answer his questions, he raised his voice and talked over the top of her, cutting her off without allowing her to finish. Ms Murdock alleges that Mr Gnjidic called her “a failure”; said she had “failed to follow procedure”, and “failed this”, and “failed that”. She says he threatened her job by saying “there will be consequences in relation to your job about this” or words to that effect, and that she would be “hearing from” him. Ms Murdock says she was humiliated and devastated by his intimidating approach but that she tolerated his behaviour because she was worried about her job. She says she was crying profusely while being yelled at by Mr Gnjidic, who offered her no support or guidance on the matter other than telling her to “breathe”.

[32] Mr Gnjidic’s notes of the conversation provide a different account. According to Mr Gnjidic, when Ms Murdock called to say she was unsure what to do about the case, she was flustered; even distressed, and “all over the shop”. He let her talk for a while, mostly listening while she set the context for what was to come, explaining the challenges she had faced at the time. Mr Gnjidic says he asked Ms Murdock for details of the case she was calling about but found it difficult to understand what she was saying. His notes record Ms Murdock explaining that she had not taken further action on the case as she thought it had resolved.

[33] According to Mr Gnjidic’s notes, after listening for a while, he took a “more directive role” in the conversation as he wanted to get to the point, to try and focus Ms Murdock on the facts of what had occurred and give her an opportunity to provide this information. They went over the history of the matter in the case management system. Mr Gnjidic saw that the file had

recently been updated and asked Ms Murdock about this. Ms Murdock returned to discussing the challenges she had faced and said she had considered resigning at the time (late 2022/early 2023) due to lack of support. Mr Gnjdic says he again tried to get the conversation back on track and that while Ms Murdock was clearly upset, he needed information from her about what had happened so that he could decide what to do next. To this end, he asked questions that he hoped would limit Ms Murdock's responses to "yes" or "no".

[34] Mr Gnjdic asked Ms Murdock if she had actioned the follow up request in May 2023. Ms Murdock said she could not find anything in writing but may have spoken to the person on the phone. Mr Gnjdic reminded Ms Murdock of her training about keeping records of party communications after conciliation. They discussed Ms Murdock's understanding that the matter had settled, and Mr Gnjdic queried Ms Murdock's response based on the case file. They talked about how things could have been done differently and the options that were available to Ms Murdock if she was not clear on the process to follow. Ms Murdock said she had tried to contact others for assistance but that no one was available at the time.

[35] Mr Gnjdic brought the discussion to a close by telling Ms Murdock what he was going to do next. He said "what was done was done"; that he would refer the matter to the Regional Coordinator's Chambers and explain the circumstances, and that he would let her know if anything further was required. He assured Ms Murdock that he would take it from here and nothing further was required from her at this stage. They discussed what the rest of the day looked like and whether Ms Murdock was up to conducting a scheduled conciliation that afternoon. Mr Gnjdic concluded by saying, in words to the effect: "Don't worry or stress about this – I will take it from here and deal with Chambers."

[36] Ms Murdock denies being worried or upset going into the conversation, but she must have been at least a little anxious. In the days prior, she had sought guidance from a colleague, updated the case file notes and prepared to discuss the matter with Mr Gnjdic. She would have been alive to the fact that she may have made a mistake, and that this would come up in their conversation. In my view, it was for this reason that so much of her explanation to Mr Gnjdic focused on the difficulties she was having at the time.

[37] I reject Ms Murdock's evidence that during their conversation Mr Gnjdic was "hysterical with rage" and "yelling" at her. What could possibly have provoked emotions of such intensity during the exchange described above? On Mr Gnjdic's version of events, mistakes of the kind made by Ms Murdock were not uncommon in the conciliations team. He was trying (with some difficulty) to understand what had happened so he could decide what to do next.

[38] I accept Mr Gnjdic's evidence that after listening for a while to Ms Murdock, he became more directive of the conversation. His contemporaneous notes record him challenging Ms Murdock on some of what she was saying because it did not align with the case record or her training. As his questions became more pointed, Ms Murdock became increasingly upset and felt his shift in behaviour to be "aggressive" and "intimidating". Objectively, however, Mr Gnjdic was not being aggressive or intimidating. He was acting as any reasonable manager would when faced with a situation of this kind by first seeking to understand what had happened, identifying the problems, explaining how things could have been done differently and then taking responsibility.

[39] Mr Gnjudic agrees that during this conversation, he may have told Ms Murdock that she had failed to do certain things. He denies calling Ms Murdock “a failure”, and I accept his denial. There was nothing in the nature of a personal attack in the exchange between them. Consistent with my observation above, Ms Murdock can sometimes misconstrue conversations and generally I prefer the account of this conversation given by Mr Gnjudic, which is supported by his contemporaneous notes, to that of Ms Murdock. It is likely that when Ms Murdock heard the word “failed”, she understood it as being called a failure although this was not the case.

[40] I do accept Ms Murdock’s evidence to the effect that Mr Gnjudic raised the possibility of consequences in relation to the mistake. Again, his contemporaneous notes are the best evidence of the content of this discussion. They corroborate a discussion about the possibility of consequences, and this makes sense in the context of what they were talking about. Mr Gnjudic was Ms Murdock’s manager. It was both within his remit to have informal discussions about performance issues with Ms Murdock and reasonable for him to do so given what had occurred. This was reasonable management action and it was carried out in a reasonable manner.

[41] Ms Murdock genuinely feels that the raising of ‘consequences’ was a threat to her job, but I do not share this sentiment. It is both common and often necessary for managers to explain potential consequences when a mistake is made by someone for whom they have responsibility. A failure to do so might result in the denial of procedural fairness. And while termination of employment can be a consequence of workplace mistakes, it is not the only one. There are obvious alternatives, such as performance improvement and management processes and formal or informal counselling or training.

*Post-conversation follow up on 26 and 28 September 2023*

[42] After the call with Mr Gnjudic, Ms Murdock messaged the colleague she had initially turned to for advice. She described how Mr Gnjudic had just “smashed” and abused her when she had tried to talk to him as had been suggested. After speaking to the colleague for some time, during which she was mostly sobbing, Ms Murdock:

1. rang the FWC’s Director, People & Culture, Ms Kate Purcell, who was not available. She left a voicemail message and when Ms Purcell called her back, Ms Murdock was trying to access the EAP and missed the call,
2. rang Assistant Director, National Conciliation Service, Ms Susan Robertson, who advised her to contact the EAP, and
3. messaged then Acting Executive Director, Client Services Delivery Branch, Ms Kate Scarlett, to request a return call.

[43] On 26 September 2023, Ms Murdock spoke again with her colleague about how she had been treated by Mr Gnjudic and what to do. The colleague suggested she try to speak with Mr Gnjudic first and let him know how the conversation had affected her.

[44] On 28 September 2023, Ms Murdock spoke with Mr Gnjudic for about 25 minutes. She told him that when he called her a failure, she was humiliated and devastated; that she wanted to do the right thing by him and did not want to be called a failure or spoken to aggressively.



Ms Murdock says Mr Gnjudic minimised his behaviour by saying that he had a direct approach and that she would need to get used to it; that he did not remember calling her a failure but acknowledged that he may have said something to that effect.

[45] Mr Gnjudic describes the conversation on 28 September 2023 as quite a positive one. He recalls Ms Murdock saying that she sensed he had been annoyed or upset with her in their last conversation and responding that he was really sorry she felt that way, and that he definitely wasn't annoyed or upset "because these things happen". He recalls saying that he had been directive in their earlier discussion – asking direct questions to get the information he needed. When Ms Murdock mentioned being called a failure, Mr Gnjudic said he couldn't recall referring to her directly in that way but that they had discussed her failure to action something. Mr Gnjudic says at the end of the conversation, Ms Murdock said, in words to the effect:

"You know what? I'm really glad we had this conversation. I feel a lot better about it."

[46] Mr Gnjudic's account is consistent with Ms Murdock's subsequent email to Ms Purcell at 9.53am on 29 September 2023:

"Good morning Kate,

I hope you are well.

I just wanted to touch base with you to let you know that the matter that I had called you about last week has now been resolved.

I appreciate your assistance.

Thank you,

Tania Murdock  
Conciliator".

[47] People will always have different perspectives of the conversations they participate in. It makes sense that there is some divergence in the accounts of Mr Gnjudic and Ms Murdock given their different entry points into the conversations above, and their differing levels of experience and responsibility. I am not satisfied that Mr Gnjudic behaved unreasonably toward Ms Murdock in their follow up conversation on 28 September 2023. I prefer the contemporaneous evidence from Ms Murdock, which is consistent with Mr Gnjudic's evidence of the conversation ending on a positive note, that after the discussion Ms Murdock felt that her concerns had been resolved.

#### Allegation 5 – misleading information and differential treatment about professional development

[48] On 4 October 2023, Ms Murdock met with Mr Gnjudic for her annual performance and development plan (PDP) discussion and brought up the possibility of doing a short "Advanced Negotiation Skills" training course.

[49] Ms Murdock says she was told by Mr Gnjidic that he was the person who approved training; that no training was paid for by the FWC; and that he was not prepared to approve any skills training for her. Ms Murdock responded by pointing to another Conciliator who had been given approval for partial funding of a law degree and allocated time for study. Ms Murdock recalls Mr Gnjidic saying this was “incorrect” and had “not happened”.

[50] Mr Gnjidic denies making these statements to Ms Murdock. He agrees that they discussed her interest in an advanced negotiation skills training course. He recalls advising Ms Murdock to put the training in her PDP and telling her about the process for requesting external training, including that it was not his decision. They were approved, or not approved, by People and Culture on a case-by-case basis for various reasons.

[51] The *Fair Work Commission Enterprise Agreement 2024-2027* (the 2024 Enterprise Agreement) provides for “Studies assistance” at clauses 291-292. Similar provisions were previously found in clauses 146-147 of the *Fair Work Commission Enterprise Agreement 2017-2020* (the 2017 Enterprise Agreement), which was operative at the time of the alleged incident. Other than in relation to numbering, the clauses are identical in the 2024 and 2017 Enterprise Agreements. Clauses 146-147 of the 2017 Enterprise Agreement are set out below:

- “146. Each employee’s PDP must identify agreed training and learning goals.
147. The Agency supports employees who are undertaking or continuing fields of study which directly contribute to the delivery of Commission services. The employer may provide financial and other assistance to an employee to undertake formal study or vocational educational courses at tertiary and higher education institutions. Further information can be found in Agency policy. Dependent upon the course of study, if studies assistance is approved the employer may provide:
- a. paid study leave up to a maximum of:
    - i. six hours per week, or
    - ii. 12 hours per week for Aboriginal and Torres Strait Islander employees,
  - b. where paid study leave has accumulated during a semester but is unused, access to unused study leave (studybank) for the purpose of preparing for examinations, writing assignments, attending examinations or for other approved study activities. Studybank does not carry over from one semester to the next.
  - c. travel time up to a maximum of three hours per week,
  - d. paid study leave to travel and sit examinations,
  - e. upon the satisfactory completion of study unit(s), up to 50 per cent of the student’s course contribution cost, up to a maximum of 50 per cent of the relevant Student Contribution Band.”

[52] The difficulty is that there is no evidence about the nature of the course proposed by Ms Murdock or whether it meets the description of a formal course of study at a tertiary or higher education institution. Whereas plainly, a law degree would meet that description.

[53] I accept Ms Murdock’s evidence that she had been told one of her colleagues was receiving financial support for a law degree at the time. If true, I am not satisfied that Ms Murdock was treated unfairly by comparison, because it is not apparent that she had the same entitlement to Studies Assistance as her colleague likely had. If there was no entitlement to Studies Assistance, it could not have been unreasonable for Mr Gnjidic to deny funding for the course she was interested in undertaking, or to discourage her in that regard if that is what he did, because his response would have been consistent with the 2017 Enterprise Agreement.

[54] Ms Murdock says she asked Mr Gnjidic how Conciliators were to be reimbursed for their professional accreditation. He responded to the effect that reimbursement was only provided for accreditation done through the FWC. This confused Ms Murdock because she thought there was a right to reimbursement in the 2017 Enterprise Agreement. This caused her to feel that she was being excluded, isolated and treated with inequality.

[55] The 2017 Enterprise Agreement dealt with “Professional memberships” at clause 148 (now clause 293 of the 2024 Enterprise Agreement). Clause 148 said:

“The Agency may approve payment for, or reimbursement of, costs associated with membership of a professional body or association where that membership is required for the role the employee is performing.”

[56] Once again, the issue seems to have arisen from a misunderstanding about the provisions of the 2017 Enterprise Agreement. The 2017 Enterprise Agreement does not state “that all Accreditation requirements necessary for the job [are] to be reimbursed”, and there is no ‘right’ to reimbursement of professional memberships or accreditation because approval of such payments is discretionary. The relevant membership must be “required for the role the employee is performing”. Ms Murdock has not established that the professional accreditation for which she sought reimbursement was a requirement of her role.

#### Allegation 6 – making inaccurate and aggressive allegations

[57] This allegation appears to relate to an interrupted EAP session and a performance management process commenced in relation to Ms Murdock on 10 October 2023.

#### *The interrupted EAP session*

[58] On 5 October 2023, Ms Murdock had a scheduled 10.00am EAP session. The session had been booked on 29 September 2023. Arrangements had been made for Ms Murdock to have the time available by deferring her first conciliation for the day to 11.15am.

[59] Ms Murdock alleges that while she was in the EAP session, Mr Gnjidic started repeatedly messaging her through Microsoft Teams asking questions. She responded, saying it was difficult to participate in the EAP session while he was repeatedly sending her chat questions and seeking her response. Ms Murdock says the EAP session was compromised as half the time was lost to be able to focus on Mr Gnjidic’s repeated interruptions.

[60] Mr Gnjidic agrees that he contacted Ms Murdock during the EAP session and the documentary evidence confirms it. But there is more to the story than Ms Murdock describes.

**[61]** Ms Murdock’s evidence is that the EAP appointment ran over time and she “emailed Susan to advise”, although the email is not in evidence. At 10.55am, 20 minutes before her scheduled 11.15am conciliation, Ms Murdock sent an email to Mr Gnjdic:

“Good morning Danny,

I am currently on my EAP call, and unfortunately the EAP provider was running quite late in calling me.

Would you kindly be able to re-allocate my 11.15am Conciliation because I won’t be finished EAP for at least another 30 minutes.

With kind regards,

Tania Murdock  
Conciliator”.

**[62]** Mr Gnjdic did not see the email straight away because he was in a meeting. By the time he saw the email, there was less than 5 minutes before the scheduled conciliation was due to start. At 11.11am, Mr Gnjdic emailed Ms Murdock:

“Sorry for the delayed response, as I was in another meeting.

Are you able to commence the conference at a later time as it will likely be too late to arrange a reallocation.?

The CMT can contact the parties and notify them of the delay.

Kind regards,

Danny Gnjdic  
Director Conciliations”.

**[63]** Ms Murdock responded 2 minutes later, at 11.13am:

“Hi Danny,

The problem is I am taking time out of the EAP to email, and it’s difficult to engage in the EAP session properly.

With kind regards,

Tania Murdock  
Conciliator”.

**[64]** After receiving this response, Mr Gnjudic must have (reasonably) assumed that Ms Murdock would not be conducting the 11.15am conciliation. The conference was instead adjourned and rescheduled.

**[65]** At 11.30am on 5 October 2023, Ms Murdock emailed Mr Gnjudic again:

“Hi Danny,

Still on the EAP call, and I might need some brief time to reflect on the discussion covered on the call.

Given the time, it may be better to reallocate if possible unfortunately.

With kind regards,

Tania Murdock  
Conciliator”.

**[66]** Mr Gnjudic responded 2 minutes later:

“Hello Tania

The conference has been adjourned by the Case Management Team and will be rescheduled.

Kind regards

Danny Gnjudic  
Director Conciliations”.

**[67]** At 12.10pm on 5 October 2023, at which time it appears the EAP session had concluded, Ms Murdock wrote to Mr Gnjudic:

“Thanks Danny.

The EAP provider apologised for the delay due to recent staff changes, and the current high demand.

With regards,

Tania”.

**[68]** There is no direct evidence about what time the EAP session began, but it seems likely that it also ran over time (although this was not conceded by Ms Murdock in her email to Mr Gnjudic that afternoon). There is nothing unreasonable from Mr Gnjudic in the email exchange above, either in content or tone, or in the fact that it occurred while Ms Murdock was accessing an EAP session. The exchange was initiated by Ms Murdock. It required Mr Gnjudic to deal with a late-made, urgent request for her conference to be reallocated. Mr Gnjudic was

responsive both to her request and to the needs of parties who had made themselves available to attend the conciliation scheduled by the FWC in advance. It was reasonable for Mr Gnjjidic to first seek to find a way for the conciliation to go ahead that day, and to seek Ms Murdock's cooperation in that regard. Ms Murdock did not support his proposal for a later start to the conciliation and Mr Gnjjidic then arranged for the conciliation to be adjourned.

*The performance management process*

[69] Ms Murdock alleges that Mr Gnjjidic reported her to Ms Scarlett for "supposed performance related complaints" that were "fabricated". Ms Murdock says she was then directed to attend a performance meeting with Mr Gnjjidic and Ms Scarlett, after Ms Scarlett sent her an email on 10 October 2023 warning that the performance concerns were serious and that there may be consequences for her job, including that she may be placed on a performance improvement plan. Ms Murdock submits that the process was not consistent with the process set out in the 2017 Enterprise Agreement because she was not afforded an "informal discussion" about the performance concerns before a formal performance management email was sent to her including the threat of a performance improvement plan.

[70] This characterisation of events is not a fair one. It is true that a performance management process was initiated in relation to Ms Murdock by email from Ms Scarlett on 10 October 2023. The concerns set out in that email had come to the attention of Ms Scarlett from Members of the FWC rather than from Mr Gnjjidic, as explained to Ms Murdock at the outset of the process.

[71] Each of the performance concerns related to the conduct of Ms Murdock in her role as Conciliator. Neither was fabricated. The first involved the mistake that Ms Murdock had discussed with Mr Gnjjidic on 21 September 2023 (see allegation 4 above), which came to the attention of Ms Scarlett through the Chambers of former Vice President Catanzariti. The second had recently been the subject of adverse commentary in a published decision<sup>4</sup> of the FWC.

[72] On 10 October 2023, Ms Scarlett wrote to Ms Murdock about the two performance concerns. The email stated that the concerns were serious and that a possible next step was implementation of a formal performance improvement plan. I do not agree with Ms Murdock that the sending of this email was contrary to the 2017 Enterprise Agreement, and even if it was, the question of whether Ms Scarlett's actions were consistent with the 2017 Enterprise Agreement falls outside the scope of this proceeding.

Allegation 7 – receiving multiple calls while conducting a conciliation 'offline'

[73] On 6 October 2023, Ms Murdock was scheduled to conduct a conciliation involving an interpreter. Her previous matter had run over time, and she was late to start the conciliation. She had also experienced IT issues that morning and was using her mobile phone to conduct the conciliation rather than Microsoft Teams, as she was permitted to do if necessary.

[74] The interpreter had many questions, and this caused the start of the conciliation to be delayed. While Ms Murdock was speaking with the interpreter, the applicant's support person called the FWC to say they were waiting on her call. The conciliation commenced shortly thereafter, and while it was underway, Ms Murdock noticed a call on Microsoft Teams from Ms Robertson. She says she then started to receive repeated calls from Mr Gnjjidic. Rather than

responding to the calls, she sent Mr Gnjudic a message to ask if there was something he needed as she was in a conciliation.

[75] According to Ms Murdock, Mr Gnjudic's messages accused her of "not being online" and saying that she was showing as "out of office". She did not believe that she was showing "out of office" and thought Mr Gnjudic was making it up to accuse her of doing something wrong. Ms Murdock has since conceded the possibility that she was showing as offline. Ms Murdock alleges that Mr Gnjudic became hysterical once again and panicked simply because a party had called to say they had not heard from her. Ms Murdock further alleges that Mr Gnjudic knew she was in conciliation because he had access to her calendar, and that he deliberately sought to create much fear for her by harassing her repeatedly while she was trying to conduct a translated conciliation with five parties. She says he told her to call immediately before she went into separate sessions with the parties, and when she called him, Mr Gnjudic accused her of doing something wrong. Finally, Ms Murdock submits that Mr Gnjudic would not have treated other Conciliators in the same way.

[76] I do not accept Ms Murdock's account of this incident or the speculation inherent in her assertions. The fact that Mr Gnjudic had access to her calendar showing a scheduled conciliation does not mean that he knew she was in the scheduled conciliation. He had received information from one of the conciliation parties to indicate that this was not the case. As Ms Murdock was conducting the conciliation on her personal mobile phone due to connection issues, it makes sense that her profile was not showing her as online. There had been no advice from Ms Murdock about the morning's difficulties or the delayed start time for the conciliation. It was reasonable in the circumstances for the FWC (through both Ms Robertson and Mr Gnjudic) to try and contact Ms Murdock to find out what was happening. I do not accept that Mr Gnjudic would have treated others differently to Ms Murdock if faced with the same circumstances.

#### Allegation 8 – being subject to excessive scrutiny

[77] Ms Murdock alleges that Mr Gnjudic was searching through many of her case files despite there being no concerns with those matters. Mr Gnjudic's response is that his actions were part of a 'random audit' of Conciliator files, which was something he did each month.

[78] The only example tendered in evidence by Ms Murdock is Mr Gnjudic's viewing of a case file on the afternoon of 6 October 2023. The case file related to the conciliation conducted by Ms Murdock that morning that had run over time, causing a delay to the start of her next scheduled conciliation. In the circumstances, it is hardly surprising that Mr Gnjudic, in his capacity as her manager, might have been looking into what had happened with Ms Murdock's cases that day.

[79] Although Mr Gnjudic describes his actions in this respect as part of the 'random audit', I think it unlikely given the close proximity of the file review to the events of the same morning. Even so, I could not reasonably conclude that Mr Gnjudic's review of Ms Murdock's case files either on 6 October 2023 or monthly as part of a random audit involved "excessive scrutiny". It was instead reasonable management action and there is no evidence that the action was not carried out in a reasonable manner.

### **Other relevant matters**

**[80]** An important aspect of this dispute is the context in which the allegations of bullying arose. Ms Murdock's concern about how she was being treated by Mr Gnjidic seems to have first emerged after their conversation on 21 September 2023. Although these concerns were largely resolved in their subsequent conversation on 28 September 2023, they re-emerged approximately two weeks later after Ms Scarlett sent the email about performance concerns on 10 October 2023. Ms Murdock formally complained of bullying by Mr Gnjidic on 12 October 2023, with the complaint alleged bullying behaviour on 17 April 2023, 11, 16 and 19 May 2023, 7 June 2023, 24 July 2023, 21 and 28 September 2023, and 4 and 10 October 2023. Some, but not all of these dates coincide with the allegations that form the basis of this application.

**[81]** Ms Murdock asks me to find that a 'Worklogic' preliminary assessment of her bullying complaint against Mr Gnjidic should be disregarded and is invalid because of a conflict of interest. The alleged conflict of interest is Ms Purcell acting as both decision maker and witness in relation to the preliminary assessment. I agree with Ms Murdock that this gave rise to a conflict of interest, but I do not agree that the result is that Worklogic's entire investigation and assessment process is unreliable and invalid.

**[82]** After being interviewed by Worklogic in relation to the complaints made by Ms Murdock, Ms Purcell participated in the decision about whether to accept Worklogic's findings. Although the management of such complaints would ordinarily fall to Ms Purcell as Director, People & Culture, conflicts of interest must be managed when they arise. It would have been preferable for Ms Purcell to be removed from the decision-making process, either by assigning that role to someone else or leaving the decision to others. However, the conflict does not affect the substance of Worklogic's findings. This is because the subject matter of Ms Purcell's interview was limited in scope, and largely gave voice to what was already apparent from a recorded voicemail message and email exchanges with Ms Murdock on 21 and 26 September 2023.

**[83]** The one factual dispute about which Ms Purcell gave evidence was Ms Murdock's emotional state after her conversation with Mr Gnjidic on 21 September 2023. Ms Purcell told Worklogic that in her impression, Ms Murdock had been "quite calm". Upon listening closely to the voice recording, Worklogic found it likely that Ms Murdock had been crying. Its finding in this regard was consistent with the evidence of both Ms Murdock and Mr Gnjidic. Ultimately, nothing turns on the discrepancy because Worklogic preferred the account of Ms Murdock to the account of Ms Purcell and this conclusion was accepted by the FWC.

**[84]** In the hearing, Ms Murdock made much of Mr Gnjidic's use of the phrase "pecking order" in his interview with Worklogic. Ms Murdock sought to infer that Mr Gnjidic was jealous of Ms Murdock given her work history and status in relation to him. The inference is not reasonably available and nor does it align with the context in which the phrase was used. At the time, Mr Gnjidic was explaining the context of his promotion to Director and where he fell in the 'pecking order' in that he felt less senior than others in the conciliation team who had more FWC experience in the Conciliator role. Ms Murdock did not fall into this category.

**[85]** Ms Murdock submits that despite the concerns raised by Ms Scarlett on 10 October 2023, there were no performance issues found. The submission cannot be accepted given the



subject of each performance concern described above and the evidence of what then followed from a meeting between Ms Scarlett and Ms Murdock on 27 October 2023.

[86] Finally, Ms Murdock points to the presence of psychological hazards that can arise for Conciliators relating to support, workload and isolation due to remote working. A causal connection between the workplace environment and Ms Murdock's own psychological safety is not established due to lack of independent medical evidence, although I acknowledge her obvious distress in connection with the proceeding. The one medical report provided by Ms Murdock relies heavily on her own perception of events and lacks important context. Even so, I recommend that the FWC undertake or revisit its risk assessment on workplace psychological hazards to ensure, as far as practicable, a safe working environment for Conciliators.

### Disposition

[87] As I am not satisfied that Ms Murdock has been bullied at work by Mr Gnjudic, no orders to stop the alleged bullying can be made. The application is dismissed.



*T Murdock* on her own behalf.  
*T Finn* of Maddocks for the respondents.

*Hearing details:*

2024.  
Brisbane:  
April 22, 23  
Sydney (by video):  
April 24.

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<sup>1</sup> *Fair Work Act 2009* (Cth), s.789FC(1).

<sup>2</sup> Act, s.789FD(1).

<sup>3</sup> Act, s.789FD(2).

<sup>4</sup> *Shah v MC Security Services Pty Ltd* [2023] FWC 2019 (18 August 2023) at paragraphs [27] to [28].