



# DECISION

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

**Dean Hampshire**

**v**

**Breakwater Metaland Pty Ltd**  
(U2024/3576)

DEPUTY PRESIDENT O'NEILL

MELBOURNE, 13 AUGUST 2024

*Application for an unfair dismissal remedy – dismissal found to be unfair -reinstatement sought but not ordered – compensation awarded.*

## Introduction

[1] On 27 March 2024, Mr Dean Hampshire made an application to the Commission for an unfair dismissal remedy. He contends that he was unfairly dismissed by Breakwater Metaland Pty Ltd (Breakwater) from his role as an estimator, effective 21 March 2024. The Respondent denies the dismissal was unfair.

[2] After taking into account the views of the parties, I conducted a hearing as the most effective and efficient way to resolve the matter. Both parties were granted permission to be legally represented.

[3] A person has been unfairly dismissed if the Commission is satisfied that the person has been dismissed, the dismissal was harsh, unjust or unreasonable, the dismissal was not consistent with the Small Business Fair Dismissal Code and the dismissal was not a case of genuine redundancy.<sup>1</sup> There is no dispute between the parties and I am satisfied that Mr Hampshire was a person protected from unfair dismissal, that the Small Business Fair Dismissal Code did not apply, that this was not a case involving genuine redundancy and that the application was made within the period required.

[4] The Applicant seeks reinstatement as his primary remedy.<sup>2</sup> The Respondent submits that reinstatement is inappropriate as there has been a loss of trust and confidence in the employment relationship and because there are no positions available.

[5] For the reasons outlined below, I find that Mr Hampshire was unfairly dismissed and have made an order of compensation but have declined to order reinstatement.

## Evidence & factual findings

[6] At the hearing, evidence was given by the Applicant and his brother, Glenn Hampshire. The Respondent called evidence from:

- Mr Bill Winter, CEO & Interim Board Chair
- Mr Grant Tournier, General Manager
- Ms Pagan Howell, Sales Employee
- Mr Malcolm Baird, Sales Employee

[7] There are a small number of instances where there are conflicting versions of what occurred. I set out below, why I prefer the evidence of some witnesses over others, in making factual findings. Broadly speaking, I have preferred the evidence of the Respondent's witnesses over the Applicant and his brother. I found each of Mr Winter, Mr Tournier, Ms Howell and Mr Baird to give truthful and credible evidence. They had no reason to do otherwise. Their accounts are often corroborated by another witness and are inherently plausible. Whilst suggested by the Applicant, there is no credible basis to consider that there was some kind of concerted agenda by the Respondent or its witnesses, to have the Applicant dismissed. I am far less certain that the Applicant's evidence was fulsome and truthful in all respects. In my view, he deliberately downplayed his depiction of some incidents, for example, to be consistent with his claim that reinstatement was a viable option.

[8] The Applicant is not just an employee of Breakwater. He is also a significant shareholder. Breakwater is a steel fabrication business started by the Applicant's grandfather, uncle (Donald Seach) and aunt (Wendy Matthews) in the 1990s. His mother (Debbie Hampshire) later joined the business, and the Applicant and his brother (Glenn Hampshire) have been working in the business their entire working lives, the Applicant since 1997. There are approximately 24 employees.<sup>3</sup>

[9] The Applicant's aunt and uncle are current directors and employees, whilst his grandfather and mother have passed away. Mr Seach is the majority owner of Breakwater, holding 54% of the shares, the Applicant and his brother hold 32% of the shares, with the remaining 14% held by Ms Matthews.

[10] Major tensions and conflict exist between the family members. The Applicant, his brother, their late mother, and aunt commenced a shareholder oppression proceeding against Mr Seach and Breakwater in the Supreme Court of Victoria in late 2022. The proceedings allege that Mr Seach's actions are contrary to the interests of the members or constitute an oppressive conduct of affairs. The remedy sought by the plaintiffs, including the Applicant, is that Mr Seach purchase their shares or alternatively that Breakwater be wound up. As the Applicant's representative describes the remedy sought, "*in the alternative, our clients seek an equitable winding up of [Breakwater] on the basis that there is an irretrievable breakdown of the relationship of the shareholders.*"<sup>4</sup>

[11] In October 2023, the Board appointed Mr Bill Winter as interim chair. He has over 45 years of business experience and was introduced to Breakwater by the outgoing chair who left because of the constant conflict and toxic family relationships. Mr Winter's evidence is that the dysfunction and conflict within the Breakwater board and more broadly within the workplace, was unlike anything he had previously come across. Mr Winter's evidence was that the

Supreme Court proceedings had a significant impact on the workplace, and that because of the conflict, Mr Seach predominantly works from home and rarely attends the office.<sup>5</sup>

[12] The Applicant does not have a high opinion of Mr Winter, although he denied disliking him from the start.<sup>6</sup> That denial is difficult to accept given he (incorrectly) believed that Mr Winter was brought into Breakwater by Mr Seach and was not impartial.<sup>7</sup> When it was put to the Applicant that it would be untenable for him to work under the leadership of Mr Winter, his response was that he believed Mr Winter was only there for a short period and then would be gone. When pressed, he said that he believed he could manage.<sup>8</sup>

[13] Mr Winter moved quickly following his appointment. In an initial review, Mr Winter identified serious compliance and governance issues particularly regarding human resource management and workplace safety and arranged for audits to be conducted. According to the Applicant, Mr Winter said it was his mission to '*clean up the culture*' with a focus on health and safety.<sup>9</sup> Mr Winter was also told by family members, including the Applicant (which he denies), that he had no authority to ask them to modify their behaviours by complying with internal policies and procedures. Because of this, the Board then appointed Mr Winter as CEO on a 12-month contract.

[14] I accept Mr Winter's evidence that the Applicant ignored rules and procedures (for example not wearing required PPE); '*pushed back*' in response to an audit of workplace amenities finding levels of toxic fumes; and saying that by Mr Winter initiating a health and safety audit he had highlighted risks which resulted in costs to the business to mitigate them. The Applicant denies these matters, on the basis that he had little day to day contact with Mr Winter, and that it is in his personal and shareholder interests to improve health and safety compliance of the company. However, Mr Winter's evidence is more credible and detailed compared to the Applicant's self-serving and bare denials. Mr Winter's evidence is also broadly corroborated by Mr Tournier, who also gives evidence of the Applicant's disregard for health and safety.

[15] I also accept Mr Winter's evidence and conclusion that the Applicant failed to distinguish his position as an employee from that as a shareholder. It is inherently improbable that an employee who is also a significant shareholder in a family business would be able to successfully compartmentalise their distinct roles. It is also consistent with the evidence broadly, including Ms Howell's evidence that the Applicant is very possessive when talking about Breakwater, saying things like 'this is my workplace', referring to staff as 'my guys', and that he walks around the workplace arrogantly, looking down on others. During the hearing when asked if he raised his voice with co-workers, the Applicant caught himself from referring to other employees as "my people" and said he was caring 'towards people'.<sup>10</sup> Further, it is consistent with the Applicant's own evidence that he found it strange Mr Winter did not introduce himself when he started '*because he was an owner of the business*'.<sup>11</sup>

[16] In December 2023, Mr Winter also conducted workshops and a confidential survey of employees shortly after he started, to obtain employee feedback. Unlike most employees, the Applicant neither attended the workshops nor completed the questionnaire. The Applicant says he did not do so because he did not feel welcome. Employees described the culture in negative terms including 'not great' and 'negative family behaviour.'

[17] I also accept Mr Winter's evidence that staff told him on multiple occasions that they felt uncomfortable with the way the Applicant treated people. It is true that much of the evidence about the culture and practices of the workplace when Mr Winter commenced is general and non-specific. However, each of the Respondent witnesses gave consistent evidence that arrangements were informal, issues were not dealt with consistently or at all, family members (including the Applicant) were treated favourably and 'got away with' poor performance and behaviour. Further, that the Applicant came across as arrogant, and at times gets angry and raises his voice. In short, the evidence from the Respondent's witnesses establishes that a poor culture existed prior to Mr Winter, and that he has introduced significantly positive changes. For example, Mr Baird's evidence included that there was no consistency in the way people were treated, that the Applicant appeared to 'always get away' with making mistakes and came across as arrogant and chose not to follow processes. Mr Baird said that there were no proper procedures in place and that employee issues were not dealt with appropriately. He said that he felt there was no point in raising concerns or making a complaint because issues were never dealt with. Ms Howell's evidence paints a similar picture of the workplace. She said that the Applicant would talk down to her or ignore her when she was trying to speak to him about work, that there was no way to make internal complaints, and that complaints to the board were disregarded. Similarly, Mr Tournier resigned as General Manager after only 4 months in the role, partly because of the Applicant and the toxic culture at the workplace. He agreed to rejoin Breakwater in September 2022 after being persuaded to do so by Mr Seach on the basis that there had been changes, that the Applicant's mother was no longer at Breakwater and that there was a Supreme Court matter in relation to the company which he said should be over within six months. Mr Tournier's evidence included making a formal complaint about the Applicant in February 2023 which was not dealt with, and finding it difficult when employees came to him and tried to raise their concerns.

[18] Mr Tournier gave evidence that if the Applicant returned to the workplace, other employees would lose trust and confidence in the Respondent's ability to manage workplace issues because of previous experiences. Ms Howell's evidence is that she would feel like she had no option but to resign if he returned and Mr Baird also said he would consider leaving if he was to return.

### **Disciplinary action taken against the Applicant**

At his first board meeting as interim chair in late 2023, Mr Winter advised the board that he had received four complaints from staff about the Applicant, his brother and his mother regarding their behaviour in the workplace, and that he had engaged external lawyers to investigate the matter.<sup>12</sup>

[19] The Applicant was directed to attend a meeting to discuss 13 allegations made against him, his brother and his aunt, of which six were directed at the Applicant. Ultimately, only one allegation was substantiated against the Applicant; "that *when the affected employees attempt to speak with all of you that you disregard them and deliberately ignore them*". Mr Winter's evidence was that the allegation was that the three family members isolated themselves from the rest of the staff and would not communicate properly with staff, were deliberately isolating

the employees and acting as a separate group within the business.<sup>13</sup> The Applicant was issued with a first and final written warning on 20 December 2023.<sup>14</sup>

[20] Just over two months later, the Applicant and his brother were directed by Grant Tournier to attend a meeting on 7 March. At the meeting, Bill Winter gave the Applicant a show cause letter. The letter refers to the previous warning and detailed a new allegation that on 5 March, the Applicant had engaged in inappropriate communications with colleagues despite being given a prior warning. Specifically, he was alleged to have *“raised your voice with [Pagan Howell] and said that you could not keep up with all changes and processes. [The Applicant] continued to cut the employee off as they spoke and stormed into the office. The employee was unable to finish their conversation with [the Applicant] due to [his] response. There were also other employees present when this interaction occurred.”*<sup>15</sup>

[21] There are conflicting accounts of the incident that led to the show cause letter. The differences include whether the Applicant raised his voice, whether he cut off Ms Howell and interrupted her while she was speaking and whether he ‘stormed’ into the office. Ms Howell’s evidence is that when attempting to talk to the Applicant about some missing information on his paperwork, he repeatedly cut her off and raised his voice at her. Mr Baird heard him speak in a raised voice, recounted that he came into the area like ‘a bull at a gate’, and immediately after the incident, Ms Howell came into the area looking ‘taken aback’ and told him that the Applicant had raised his voice at her. Mr Tournier’s evidence is that he saw the Applicant ‘marching’ into the office after having heard him raise his voice, and he saw Ms Howell who looked shocked. Mr Tournier asked if she was alright and she told him that the Applicant had just raised his voice at her when she had asked him to fix his paperwork. The Applicant says that he did not raise his voice directly to Ms Howell but acknowledged that he was frustrated with himself and his ‘tone may have sounded irritated’, and that otherwise the conversation was civil and professional, and that he did not recall interrupting Ms Howell.<sup>16</sup>

[22] Ms Howell was encouraged by Mr Tournier immediately after the incident to escalate the matter to Mr Winter. She did so the next morning. I consider this written account, made soon after the incident, is an accurate description of what occurred. However, it is not a fully detailed account.<sup>17</sup> Ms Howell’s evidence was that she felt threatened and intimidated by the way that the Applicant was speaking to her.<sup>18</sup>

[23] I prefer Ms Howell’s evidence given the visible impact the incident had on her, her immediate account of it to Mr Baird and Mr Tournier, her relatively contemporaneous notes, and the evidence of Mr Tournier and Mr Baird, which is consistent with her account. The parties were well known to each other, and for Ms Howell to be and look visibly upset immediately following a civil and professional discussion with a colleague is more than improbable.

[24] I find that on 5 March 2024 when Ms Howell was attempting to discuss a work matter with the Applicant, he repeatedly interrupted her and raised his voice at her, but do not find that he ‘stormed’ into the office.

[25] There are also conflicting accounts of what occurred at the meeting on 7 March 2024, when Mr Winter issued the Applicant a show cause letter. Mr Winter says that he was unable to read the letter in full because the Applicant and his brother started shouting and got angry and abusive towards himself and Mr Tournier. He says that they were making comments about

legal action and having them both removed from the business. Mr Tournier says that both brothers were acting aggressively and constantly interrupting by yelling and talking over Mr Winter. He says that both men made various threats to the effect that Mr Winter would not be CEO for much longer and they would ‘let a Court sort this out’. He also said that both men were getting worked up and then telling each other to calm down. The Applicant denies that either he or his brother were aggressive or abusive or made threats during the meeting, although acknowledges he did interrupt Mr Winter’s reading of the show cause letter “*to explain that I did not agree*”.<sup>19</sup> Mr Glenn Hampshire also agreed that both he and the Applicant interrupted Mr Winter at various points, and that at different points they told each other to ‘calm down’. Both brothers contended that Mr Winter ‘smirked’ and said that they were being targeted and singled out, and Mr Glenn Hampshire said that Mr Winter had been brought in by Mr Seach for this purpose. I prefer the evidence of Mr Winter and Mr Tournier and find that during the meeting the Applicant was constantly interrupting and shouting during Mr Winter’s attempts to read out the show cause letter and said words to the effect that he would not be CEO for much longer. The Applicant and his brother acknowledge regularly interrupting Mr Winter, and it is evident that he was agitated otherwise there would have been no need for this brother to attempt to ‘calm him down’.

[26] The Applicant was suspended on pay and required to either provide a written or verbal response by 13 March 2024. He requested until 25 March to respond, which was refused although he was given an extension to 15 March 2024. On that date, he responded through his solicitor, denying the allegations. No investigation was then conducted, and other persons present were not interviewed prior to the show cause letter being issued to the Applicant.

[27] The Applicant was subsequently requested to attend a meeting regarding the warning and suspension with Mr Winter and Mr Tournier on 18 March 2024. The Applicant’s solicitor advised that he was willing to meet but could not do so on 18 March. The Applicant was then directed to attend a meeting on 21 March 2024, at which his employment was terminated, having found the allegation regarding his conduct on 5 March 2024 to be substantiated.

### **Was the dismissal harsh, unjust or unreasonable?**

[28] In considering whether Mr Hampshire’s dismissal was harsh, unjust and/or unreasonable, I am required to take into account the matters specified in section 387(a) to (h) of the *Fair Work Act 2009* (Cth) (the **FW Act**).

### ***Was there a valid reason for Mr Hampshire’s dismissal? (s.387(a))***

[29] An employee raising their voice towards another employee, speaking over and interrupting them, and behaving rudely, is not acceptable conduct. It warrants disciplinary action and if it continues, may ultimately constitute a valid reason for dismissal. However, in the present matter, whilst the Applicant’s conduct on 5 March 2024 was unacceptable, and may have warranted some disciplinary action, it fell well short of constituting a valid reason for dismissal. The issuing of the earlier warning, in November 2023 does not assist the Respondent and does not establish a pattern of conduct. The previous warning was issued in relation to a single allegation that was found to be substantiated. The substantiated allegation was not particularised and was therefore not a matter that the Applicant could properly respond to. It cannot be relied upon now to provide a foundation for dismissing the Applicant.

[30] The broader findings I have made about the Applicant's conduct in the workplace also reflects poorly upon him, and as discussed below, is relevant to the question of reinstatement. However, they do not constitute a valid reason for dismissal.

*Notification of reason and an opportunity to respond (s.387(b) and (c))*

[31] The Applicant was notified of the reason for the termination of his employment and given a reasonable opportunity to respond, prior to the decision to dismiss him. The allegation was very specific and narrow, involving one interaction, and sufficient time was allowed to the Applicant to respond. The Respondent was not required to allow him all the time that he requested.

*Unreasonable refusal to allow a support person (s.387(d))*

[32] There is no positive obligation on an employer to offer an employee the opportunity to have a support person attend, for example, a disciplinary meeting. However, the Applicant was not on notice of the purpose of the meeting and had no opportunity to seek to bring a support person. The Respondent erroneously assumed the Applicant's brother would be his support person and invited him to attend, even though the Applicant had previously advised the Respondent that he had nominated another person to be his support person.<sup>20</sup>

*Warnings of unsatisfactory performance (s.387I)*

[33] As the Applicant was not dismissed for unsatisfactory performance, this consideration is not relevant in this case.

*Size of enterprise and absence of human resource specialists or expertise (ss.387(f) and (g))*

[34] The Respondent is not a large business and has no dedicated HR function. The decision to dismiss the Applicant was made by Mr Winter who lacks formal HR training and experience.

*Other relevant matters*

[35] Section 387(h) of the FW Act provides the Commission with a broad scope to consider any other matters it considers relevant. I have taken into account that the Applicant has worked at Breakwater for 27 years, and for his entire adult working life. In this case, the Applicant's dismissal from Breakwater has heightened significance and impact, as a family business that has been at the centre of the Applicant's life for as long as he can remember.

[36] I have also taken into account the Applicant's otherwise unblemished employment history. However, I have done so only to a limited extent, considering my conclusion that prior to the changes introduced by Mr Winter, many issues, including the Applicant's behaviour, were not dealt with appropriately.

[37] I have also taken into account that the Applicant has been unable to secure a full-time position elsewhere, although he was able to obtain casual employment shortly after the dismissal.

## Conclusion

[38] I have made findings in relation to each matter specified in section 387 as relevant. I must consider and give due weight to each as a fundamental element in determining whether the termination was harsh, unjust or unreasonable. Having considered each of the matters, I am satisfied that the Applicant was unfairly dismissed, and that the dismissal was harsh, unjust and/or unreasonable. The absence of a valid reason, the failure to properly investigate the alleged conduct, the refusal to allow him to have a support person present, and the length and nature of the Applicant's employment, outweigh the other considerations.

## Remedy

[39] Having found that the Applicant has been unfairly dismissed, I now turn to the issue of an appropriate remedy.

[40] The Applicant seeks reinstatement to the position he occupied at the time of his dismissal. His evidence is that despite the shareholder action he is taking against his uncle, he believes that once it is over, Mr Seach will want him to continue working there.<sup>21</sup>

[41] The Respondent opposes reinstatement on the grounds that there has been a complete breakdown in the relationship between the parties and that there are no positions available for the Applicant to return to.<sup>22</sup> The Applicant's position as an estimator which involves calculating the costs of projects before work commences by estimating materials, labour and equipment costs, has been filled since the dismissal.

[42] The question is whether the loss of trust and confidence claimed is soundly and rationally based.<sup>23</sup> A finding of a loss of trust and confidence must be made on an objectively reasonable and rational basis. The question of whether there has been a loss of trust and confidence is concerned with that which is essential to make an employment relationship workable. As the Full Bench in *Ngyuen v Vietnamese Community in Australia*<sup>24</sup>, held:

*[28] Ultimately, 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."*

[43] In my view, the evidence establishes that the employment relationship is unworkable and that reinstatement is untenable. Firstly, the Supreme Court proceedings in which the Applicant is a plaintiff, seeks the winding up of his employer, and does so on the basis that there is an irretrievable breakdown of the relationship of the shareholders. Whilst the Applicant submitted that this was only in respect of the relationship amongst the shareholders and has no bearing on his relationship with Breakwater as an employee, I have found that he has not been able to distinguish between the two roles. It would be remarkable for a person in his position to be able to do so. His relationship with his uncle, Mr Seach, who is the majority shareholder, director and also an employee, has entirely broken down with allegations about Mr Seach's actions being the basis of the Supreme Court proceedings. Mr Seach has also not attended the workplace because of the conflict. The Applicant's evidence that once the shareholder action is finalised, and if Mr Seach buys out the Applicant's shares, he will want Mr Hampshire to



continue working there, is fanciful. The Applicant's evidence about his ability to work under Mr Winter's leadership was also telling, with his first response being that Mr Winter would not be there for long. I consider that the Applicant would be unable to work constructively with the current CEO.

[44] The Applicant relied on the decision in *Ngyuen v Vietnamese Community in Australia*,<sup>25</sup> where the Full Bench held that the fact that the applicants were pursuing legal action for alleged underpayments against their employer and that this gave rise to a level of acrimony, was not a matter to be taken into account in determining whether reinstatement is appropriate. However, that decision is distinguishable from the circumstances in this matter. In *Ngyuen*, the Full Bench found it would be anomalous for the exercise of workplace rights to be a barrier to reinstatement, when it is unlawful to terminate employment because they have exercised a workplace right. In the present case, the legal action is not related to the exercise of workplace rights or some other protected action, and it is not the mere fact that legal action is on foot that is relevant, but that the Applicant contends that the relationship amongst shareholders has irretrievably broken down and seeks the winding up of the company.

[45] I also consider the evidence that some employees may resign if the Applicant is reinstated to be relevant but give it little weight. It is speculative and uncertain. I do consider relevant the impact of reinstating the Applicant on the concerted efforts of Mr Winter to address longstanding cultural issues, including on health and safety, in light of the evidence of the Applicant's resistance to some of the changes and his sometimes cavalier attitude towards health and safety.

[46] Although not determinative,<sup>26</sup> a further consideration is that the position the Applicant held is not vacant. Breakwater is not a large employer, with approximately 24 employees, and no alternative position has been identified that he could be appointed to.

[47] Whilst reinstatement is the primary remedy, it does not follow that because I have found the Applicant to have been unfairly dismissed, he is entitled to reinstatement.

[48] I am satisfied that the Respondent's loss of trust and confidence is well-placed and rational, and reinstatement is not an appropriate remedy.

### **Compensation**

[49] I am satisfied that it is appropriate in all the circumstances to make an order for payment of compensation. In assessing the amount, I am required by s 392(2) of the FW Act to take into account all the circumstances of the case including the specific matters identified in paragraphs (a) to (g) of this subsection. I have applied the methodology in *Sprigg v Paul's Licensed Festival Supermarket*<sup>27</sup> as set out below:

- Step 1: Estimate the remuneration the employee would have received, or have been likely to have received, if the employer had not terminated the employment (remuneration lost).
- Step 2: Deduct monies earned since termination.

- Step 3: Discount the remaining amount for contingencies.
- Step 4: Calculate the impact of taxation to ensure that the employee receives the actual amount he or she would have received if they had continued in their employment.
- Step 5: Apply the legislative cap on compensation.

[50] Step 1 involves an assessment of what would have been likely to happen had Mr Hampshire not been dismissed. It involves an element of speculation which is a particularly finely balanced assessment in this case. Mr Winter is determined to significantly change the culture and management at Breakwater. The ensuing changes are likely to be challenging for Mr Hampshire to adapt to. He does not have a high opinion of Mr Winter and believes him to have been appointed by Mr Seach. It is possible that Mr Hampshire will face further disciplinary action for inappropriate behaviour, which would at some point constitute a valid reason for dismissal. Conversely, he may, given his deep commitment to the family business, adapt to the new culture and provide no basis for any future disciplinary action.

[51] Separately, the high level of tension between Mr Hampshire and Mr Seach is unlikely to be resolved until the Supreme Court proceedings are finalised. If resolved in the Applicant's favour, the potential outcomes are that the business is wound up and ceases trading (and possibly bought out by a new entity), or that Mr Seach purchases the Applicant's (and brother's and aunt's) shares. Whilst not entirely clear, each of these outcomes may well involve the Applicant ceasing his employment with Breakwater.<sup>28</sup> The Supreme Court action does not appear to have been set down for trial, so finalisation may well be a considerable amount of time away.

[52] My overall assessment is that the Applicant would have continued to be employed for at least 12 months and would have earned \$98,800 (gross) in that time.

[53] Since the dismissal, Mr Hampshire has earned \$19,725, and deducting this leaves a provisional amount of \$79,075. I do not consider it necessary to make any further adjustment in relation to further income reasonably likely to be earned, or the remaining considerations in s.392(2)-(3).

[54] The amount of \$79,075 is more than half the compensation cap of \$49,400. I therefore reduce the amount of compensation to that amount. I have determined to order compensation as a gross amount, with any required taxation to be dealt with by the parties.

### **Conclusion on compensation**

[55] I am satisfied that the application of the *Sprigg*<sup>29</sup> formula does not result in an amount that is clearly excessive or clearly inadequate.

[56] I consider that an order for compensation in the sum of \$49,400 (less taxation as required by law) in favour of Mr Hampshire is appropriate in this case. An order will be made to that effect.



DEPUTY PRESIDENT

*Appearances:*

*J. Ryan* of Counsel, with permission on behalf of the Applicant.

*J. Lucas* of Counsel, with permission on behalf of the Respondent.

*Hearing details:*

2024

2 July.

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<sup>1</sup> *Fair Work Act 2009* (Cth) ("FW Act"), s.385.

<sup>2</sup> Applicant's Submissions, Digital Hearing Book (DHB) p.43, 52; Form F2 DHB p.7.

<sup>3</sup> Witness Statement of Bill Winter, DHB p.170.

<sup>4</sup> Witness Statement of Dean Hampshire, DHB p.95.

<sup>5</sup> DHB 170-171, Transcript PN847.

<sup>6</sup> Transcript PN98.

<sup>7</sup> Witness Statement of Dean Hampshire, DHB p.54; Reply Witness Statement of Dean Hampshire, DHB p.118.

<sup>8</sup> Transcript PN199-200.

<sup>9</sup> Witness Statement of Dean Hampshire, DHB p.55 at [16].

<sup>10</sup> Transcript PN117.

<sup>11</sup> Witness Statement of Dean Hampshire, DHB p.54.

<sup>12</sup> Witness Statement of Bill Winter, DHB p.171 (in oral evidence Mr Winter corrected his witness statement that referred to five written complaints).

<sup>13</sup> Transcript PN686.

<sup>14</sup> Witness Statement of Bill Winter, DHB p.196.

<sup>15</sup> Witness Statement of Dean Hampshire, DHB p.85.

<sup>16</sup> Witness Statement of Dean Hampshire, DHB p.57.

<sup>17</sup> DHB p.167.

<sup>18</sup> Witness Statement of Ms Howell, DHB p.164.

<sup>19</sup> Reply Witness Statement of Dean Hampshire, DHB p.120.

<sup>20</sup> Form F2, DHB p.23

<sup>21</sup> Transcript PN139-147.

<sup>22</sup> *Perkins v Grace Worldwide (Aust) Pty Ltd* (1997) 72 IR 186 ('Perkins'), cited in *Nguyen v IGA Distribution (Vic) Pty Ltd* [\[2011\] FWA 3354](#) at [40].

<sup>23</sup> *Perkins*.

<sup>24</sup> [\[2014\] FWCFB 7198](#) at [10] ("Nguyen").

<sup>25</sup> *Nguyen*.

<sup>26</sup> *Smith v Moore Paragon Australia Ltd*, [PR942856](#) at [15].

<sup>27</sup> (1998) 88 IR 21.

<sup>28</sup> If the business was bought by another entity, there may not be a transfer or continuation of the Applicant's employment to the new owners.

<sup>29</sup> *Sprigg v Paul's Licensed Festival Supermarket* (1998) 88 IR 21.