



# DECISION

*Fair Work Act 2009*

s.365 - Application to deal with contraventions involving dismissal (consent arbitration)

**Ms Kerry Cecilia Soorley**

**v**

**The Trustee For The Gunnebah Operating Trust**

(C2024/1509)

DEPUTY PRESIDENT SLEVIN

SYDNEY, 3 OCTOBER 2024

*Application for the FWC to deal with a dismissal dispute – Arbitration by consent*

[1] Ms Kerry Cecilia Soorley was terminated from her employment with the Trustee for the Gunnebah Operating Trust t/a Gunnebah Retreat (**Gunnebah**) on 17 November 2023. Ms Soorley alleges that the termination of her employment was in breach of Part 3-1 of the *Fair Work Act 2009* (Cth) (**Act**) and, in particular, that Gunnebah contravened s 340 of the Act by dismissing her because she exercised workplace rights. Ms Soorley made application under s 365 of the Act for the Fair Work Commission (**Commission**) to deal with the dispute about her dismissal. A conference did not resolve the dispute, and the parties agreed to the Commission determining the dispute by consent arbitration. Mr Soorley seeks orders for compensation, damages, that Gunnebah apologise and cease taking further adverse action, and costs.

[2] Gunnebah accepts that Ms Soorley exercised workplace rights during her employment, it also accepts that it took adverse action for the purpose of s 340 in that it dismissed Ms Soorley, but it contends that the reason for the dismissal was unrelated to the exercise of workplace rights.

[3] Ms Soorley was represented in the proceedings by her husband, Mr Edwards who is a solicitor. Gunnebah was represented by Mr Cooper a paid agent. I was satisfied that the requirements in s596(2)(a) and (b) were met and granted permission to be represented. Two witness statements were filed in the proceedings: one from Ms Soorley and the other from Mr Warwick Parer, Managing Director of Gunnebah. The witnesses were required cross examined. The evidence of both witnesses was replete with opinion, accusation, and speculation. In many respects it was lacking in important detail. The following background is taken from that material.

## **Background**

[4] Gunnebah provides drug and alcohol rehabilitation services, veterans rehabilitation services, and respite services under the National Disability Insurance Scheme. It provides the services from a facility located at Nobbys Creek in north eastern NSW. Most of its clients seek treatment for drug and alcohol addiction. To service those needs Gunnebah conducts residential

drug and alcohol rehabilitation programs. Gunnebah's clients are referred to as guests. Guests are supported by clinical psychologists and therapists.

[5] As the rehabilitation programs are live-in guests are always supervised. Ms Soorley commenced working for Gunnebah in October 2022. Her contract of employment describes the position as Night Supervisor and Weekend Guest Support Worker. She was not engaged as a psychologist or therapist. Mr Parer provided the job description that was attached to the contract which was for the position of Night Staff. According to the job description the role involved working from 5.00 pm – 8.00 am, staying on-site at all times, and contacting supervisors in emergencies. Ms Soorley was required to be involved in conducting a hand over at the start and end of the night shift, checking in with guests at 6pm and 8pm, visually seeing all guests and recording check-ins, and assisting guests with various requests throughout the night, managing incidents as they occurred and filling out incident reports if required. In some cases, the distribution of drugs to guests was required and Ms Soorley was required to follow proper medication distribution instructions and contact Gunnebah's doctor for advice and assistance if needed. A staff phone was provided to enable guests to call Ms Soorley for assistance. Ms Soorley was also required to feed and supervise Gunnebah's three dogs. Gunnebah has various policies and procedures that apply to the performance of these tasks.

[6] Ms Soorley said she started working in three roles. One was Overnight Support Worker, another as a Smart Meeting Facilitator, and a third as Weekend Supervisor. The duties described by Ms Soorley for the first role accorded with the job description for Night Staff. Ms Soorley described the second role as a therapy role and the third role as involving supervising and participating in activities with guests away from Gunnebah's premises on weekends. She described her job as involving a heavy workload.

[7] Ms Soorley also described concerns she had with her terms and conditions of employment. One concern was that her contract of employment was silent on many terms and conditions and that while it referred to the Social, Community Home Care and Disability Services Industry Award 2010 (**SCHADS Award**) it did not specify her classification under the Award. Her remuneration was set in the contract at a day rate which was an hourly rate of \$30 per hour which Ms Soorley described as a "flat rate". The contract specified that the rate was inclusive of all penalties, allowances, overtime, and loadings including leave loading, weekends and public holidays which may otherwise be payable. The employment was said to be full-time employment. The contract also set a night rate of \$150 per night. The contract required Ms Soorley to work nights from 5.00 pm to 8.00 am and Days from 8.00 am to 12 pm as well as Saturdays 9.00 am to 5.00 pm and Sundays 9.00 am to 5.00 pm. Ms Soorley describes being required to be at work 80 hours per week but only being paid for 40 hours. She spent the entire weekend at the work. She described working 15 hours on Christmas day 2022 and being paid only \$30 per hour. The contract provided for public holiday pay to be 200% of the flat rate.

[8] Mr Parer describes concerns that arose in April 2023 about Ms Soorley's work performance. A meeting was held with Ms Soorley on 4 May 2023 about her performance. Mr Parer's notes of the meeting indicate that the items discussed were Ms Soorley's wellbeing, concerns raised by her, reviewing her pay, concerns about the boundaries being applied by Ms Soorley in her dealings with guests, and Ms Soorley's concerns about the state of communications between staff in the facility. The notes state that Ms Soorley felt overwhelmed

at work as she had too much responsibility. She raised concerns about her pay structure including night wake-up payments. She requested adjustments to her shifts and raised queries about start and finish hours. Mr Parer and his managers raised the issues of appropriate guest relationships and boundaries and emphasised the importance of communication and teamwork. It was agreed that Ms Soorley communicate her needs, report night wake-ups, and improve boundaries. Gunnebah agreed to improve communications, adjust Ms Soorley's pay and hours, including reducing weekend shifts, and to review its night staff guidelines.

[9] A follow up meeting occurred on 12 May 2023. Mr Parer's notes from that meeting indicate that night staff hours had been adjusted, along with changes to wake-up payment protocols. Discussions had occurred with other support staff regarding Ms Soorley's weekend shifts. A review of the night staff guidelines was underway.

[10] Ms Soorley continued to work the same hours for the rest of May but requested in early June, and was provided, a change in roster such that she was only required to work every second weekend.

[11] Ms Soorley took two months leave in around August 2023. She returned in early October. In an email dated 10 October 2023, Gunnebah raised concerns about the way Ms Soorley was interacting with guests and other employees, inviting her to a meeting scheduled for 12 October 2023. Ms Soorley messaged on 11 October 2023 that she could not attend the meeting and requested to reschedule. On 13 October 2023, Mr Edwards, who was supporting Ms Soorley, contacted the respondent's employees to prepare for the disciplinary meeting. Gunnebah took exception to this and there followed an exchange of correspondence concerning the process to be followed including the need to provide the specific allegations made against Ms Soorley. In a letter dated 19 October 2023 Mr Parer set out the allegations. They were that Ms Soorley:

- a) Discussed and recommended the use of "magic mushrooms" to clients, which was outside the scope of her role and considered serious misconduct.
- b) Made disparaging comments about the business, its employees, and clients after her shift, which breaches professional conduct standards.
- c) Made an unscheduled check-in with a client at 11.00 pm during inactive hours, which was not an emergency nor requested by the client, breaching the scope of her role.
- d) Contacted another staff member outside of her work hours for non-emergency matters, breaching the company's staff communication policy.

[12] The letter invited Ms Soorley to attend a disciplinary meeting at an agreed time and indicated a support person could be in attendance. It also indicated that if the allegations were proven they may result in a written warning, a final written warning, or termination of employment without notice. The letter also indicated that due to the serious nature of the allegations Ms Soorley would continue to be stood down and suspended from normal duties pending the resolution of the matter. Ms Soorley continued to receive full pay and benefits during the period of suspension.

[13] There were then exchanges of emails between Mr Edwards and Mr Parer. On 27 October 2023 Mr Parer wrote to Mr Edwards about the involvement of others in the process. The email indicated that other staff did not want to be involved in the matter. Mr Parer asked if

Ms Soorley denied the allegations and raised that further details had become known about the “much more serious matter” of Ms Soorley recommending magic mushrooms to at least three guests and asking whether this was denied.

**[14]** On 1 November 2023, Mr Edwards wrote on behalf of Ms Soorley denying all allegations. Mr Edwards raised concerns held by Ms Soorley about the way Gunnebah kept and administered scheduled drugs to clients, other procedures and practices that were unsafe for clients, and her rate of pay. The letter also raised the issue of wages and claimed that Ms Soorley had been underpaid \$24,421.95.

**[15]** The disciplinary meeting occurred on 7 November 2023. Ms Soorley did not attend. Mr Edwards represented Ms Soorley and denied the allegations on her behalf. Mr Parer’s minutes of the meeting were provided and were not contested. According to the minutes the discussion was as follows:

- a) Ms Soorley denied discussing and advocating the use of magic mushrooms with guests. Specifics of the allegations were requested, and Mr Parer provided a printout of a website article written by Ms Soorley promoting psychedelic drugs. Mr Edwards requested access to the guests involved and was informed the guests did not wish to be contacted.
- b) Ms Soorley denied making disparaging remarks about Gunnebah and its staff. Mr Edwards asked for details, including dates and specific remarks. Mr Parer referred to two employees. Mr Edwards insisted on more specifics to respond adequately.
- c) Ms Soorley denied making an unscheduled check on a client at 11.00 pm outside her work hours and against instructions. Mr Edwards made no additional comments on the matter.
- d) Ms Soorley denied breaching the Gunnebah Staff Communication Policy by contacting staff outside work hours for non-urgent issues. Mr Edwards denied any wrongdoing on Ms Soorley’s behalf.

**[16]** Mr Edwards also raised the issue of Ms Soorley's pay. Mr Parer stated that the meeting was specifically for disciplinary matters and invited Ms Soorley to put any concerns about pay in writing. Mr Edwards wrote to Mr Parer on 8 November 2023 about the pay issue. I was not provided with a copy of that letter. Mr Parer referred to it and said that he responded to it in correspondence of 9 November 2023. I was not provided with the response.

**[17]** On 13 November Mr Parer wrote to Mr Edwards with further details of Ms Soorley speaking to a guest about magic mushrooms. The further details arose from an email that had been received from a guest. The details of the email were not provided to Mr Edwards. Mr Edwards replied on 14 November 2023 complaining that the further information was inadequate as it failed to provide particulars of the date, time, or place that the comments were said to have been made. The allegation continued to be denied.

[18] The email from the guest was not provided to Mr Edwards at the time although an extract from it was included in an email to Mr Edwards dated 13 November 2023. The guest's email was tendered into evidence in the proceedings. The extract provided was in the following terms:

During my stay at Gunnebah I found it confronting, inappropriate and triggering that one of your staff members Kerry Soorley was recounting her experience on mushrooms and other illicit drugs and glorifying them.

As you can imagine, while we are there to seek help in all forms of addiction, I found this quite upsetting and it sparked glorifying conversations among a few of the other guests that were unfortunate enough to see and hear this display from Kerry. As I know all staff members at Gunnebah have a zero tolerance and an abstinence philosophy towards drugs and alcohol, I thought I should bring this to your attention.

[19] Mr Parer states that he wrote to Mr Edwards on 15 November 2023 providing a detailed response to the issues raised concerning Ms Soorley's pay.

[20] Mr Parer gave evidence that he considered that dismissal was the appropriate outcome in circumstances where Ms Soorley had simply denied talking to guests about magic mushrooms. He said his reasoning was that had Ms Soorley admitted doing so and assured him that she would stop then the outcome may have been different. He considered the conduct to be serious misconduct and decided to dismiss Ms Soorley. He did so by letter dated 17 November 2023. The letter dealt with the four allegations raised in the 19 October 2023 and recorded Gunnebah's findings in relation to each. Those findings were:

- a) The allegation that Ms Soorley discussed the use of magic mushrooms and promoted psychedelic therapy to residents in her care, which was a matter beyond her scope of responsibility and qualifications was said to be substantiated on the written evidence from multiple residents.
- b) The allegation that Ms Soorley engaged in rude and disrespectful behaviour, by making disparaging comments about the business and its employees and clients was said to be substantiated.
- c) The allegation that Ms Soorley conducted an unscheduled check-in with a guest during inactive hours without it being an emergency or request, behaviour which was outside the scope of her role, was said to be substantiated.
- d) The allegation that Ms Soorley contacted staff outside of business hours on three occasions concerning non-emergency matters, breaching the company's staff communication policy was also said to be substantiated.

[21] The letter went on to say:

In view of the above matters, we are terminating your employment summarily. In the circumstances, and for the reasons as outlined above, we maintain the view that is appropriate that your employment should be terminated with immediate effect and without notice.

[22] The dismissal took effect from 17 November 2023.

[23] In March 2024 Ms Soorley was contacted by the Health Care Complaints Commission (HCCC) that Gunnebah had made a complaint alleging Ms Soorley had advocated the use of

psychedelic drugs to patients of Gunnebah. On 16 April 2024, the HCC concluded that there was insufficient information to support the allegation.

### **The legislative provisions**

[24] Part 3-1 of the Act provides protections from adverse treatment arising from the exercise of employment rights. Section 340 provides on such protection and relevantly states:

- (1) A person must not take adverse action against another person:
  - (a) because the other person:
    - ... (ii) has ... exercised a workplace right; ...

[25] An employer contravenes s 340 if it can be said that the exercise by the employee of a workplace right was a ‘substantial and operative factor’ in the employer’s reasons for taking ‘adverse action’. Adverse action is described in s 342.<sup>1</sup> A table in s 342 sets out when adverse action is taken by an employer against an employee it includes an employer dismissing the employee.

[26] Sections 360 and 361, in Div 7 of Pt 3-1 of the FW Act, make it easier than it otherwise would be for an employee to establish a contravention of s 340. Section 360 provides that, for the purposes of Part 3-1, ‘a person takes action for a particular reason if the reasons for the action include that reason’. Section 361(1) casts a presumption that requires an employer to show that it did not act for a prohibited reason. It relevantly reads:

- (1) If:
  - (a) in an application in relation to a contravention of this Part, it is alleged that a person took ... action for a particular reason ...; and
  - (b) taking that action for that reason ... would constitute a contravention of this Part;

it is presumed, in proceedings arising from the application, that the action was ... taken for that reason or with that intent, unless the person proves otherwise.”

[27] Section 361 does not obviate the need for an applicant to prove the existence of the objective facts which are said to provide the basis of the respondent’s conduct. The presumption does not arise until the applicant establishes the elements of each of the general protections upon which it seeks to rely. It is not enough for the applicant to merely make assertions regarding these elements, they must be determined objectively.<sup>2</sup>

[28] Consequently, as the Full Bench said in *Keep v Performance Automobiles Pty Ltd* [2014] FWCFB 8941:

[14] The task of the FWC in a consent arbitration proceeding such as this is to determine three factual questions:

- (i) Was the employee exercising a workplace right, within the meaning of s.341?
- (ii) Did the employer take ‘adverse action’ against the employee, within the meaning of s.342?
- (iii) Did the employer take the adverse action against the employee because of a prohibited reason, or reasons which included that reason?

[29] The Full Federal Court in *Wong v National Australia Bank Ltd* [2022] FCAFC 155 at [93] approved the following observations made at first instance in *Wong v National Australia Bank Ltd* [2021] FCA 671:

81 Where, by way of rebuttal of the presumption established by s 361 of the FW Act, a respondent leads evidence as to why it engaged in the conduct that an applicant seeks to impugn, the relevant inquiry starts and ends with whether, in fact, those reasons relevantly actuated that conduct. It is not necessary for a respondent to prove that the reasons that actuated its conduct were procedurally or substantively fair: see *Khiani v Australian Bureau of Statistics* [2011] FCAFC 109 at [31].

82 Thus where, as here, a respondent employer cites, as its reasons for taking adverse action against an applicant, opinions that it formed about his or her conduct or capacity, the relevant inquiry is not whether those opinions were fairly or properly formed or vindicated in fact. Rather and more simply, the relevant inquiry is whether the opinions were formed at all and, if they were, whether the respondent was moved to act as it did in consequence of them. A claim under Pt 3-1 of the FW Act ‘... is not a broad inquiry as to whether the applicant has been subjected to a procedurally or substantively unfair outcome’: *Ermel v Duluxgroup (Australia) Pty Ltd (No 2)* [2015] FCA 17, [48] (Bromberg J).

83 In some circumstances, it might be possible to infer from evidence tending to show that a respondent’s opinions were formed wrongly or unfairly—that is to say, inconsistently with fact or in a way otherwise susceptible to some other legitimate criticism—that those opinions either were not, in fact, formed or did not relevantly actuate the respondent’s conduct (or both). Such circumstances might warrant the rejection of the respondent’s evidence as to why it did what it did and a finding that the respondent failed to rebut the presumption established by s 361 of the FW Act. But, regardless, the inquiry remains: did the respondent form the views that it said that it formed; and, if it did, was it actuated to conduct itself in the way that it did on account of them (and not on account of any proscribed reason)?

[30] In *Ermel v Duluxgroup (Australia) Pty Ltd (No 2)* [2015] FCA 17 (*Ermel*), Bromberg J said at [48].

In a general protections claim brought pursuant to s 340 of the FW Act, success depends upon the Court being satisfied that the applicant has been subjected to adverse action for one or more of the specific reasons identified by the FW Act as an impermissible basis upon which action adverse to the applicant may be taken. A general protections proceeding is not a broad inquiry as to whether the applicant has been subjected to a procedurally or substantively unfair outcome. As Gray, Cowdroy and Reeves JJ said in *Khiani v Australian Bureau of Statistics* [2011] FCAFC 109 at [31]:

A general protections application is not intended to provide an opportunity for the appellant to raise whatever issues she wishes to about the validity of the steps taken before her dismissal. The crucial issue in such an application is the causal relationship between adverse action and one or more of the factors mentioned in the various provisions of Pt 3-1. The issue is whether the person who has taken

the adverse action has done so because the person against whom the adverse action has been taken has one or more of the relevant characteristics or has done one or more of the relevant acts.

**[31]** In the context of this case, Ms Soorley must establish that she exercised workplace rights at the relevant time and that adverse action was taken against her. If so established, Gunnebah must rebut the presumption and establish that the reason for the adverse action was other than that Ms Soorley exercised her workplace rights. Here the adverse action was dismissal. The question is not whether Ms Soorley's dismissal was unfair, unjust, or lacked procedural fairness. The question is what were the true reasons for the dismissal.

### **Consideration**

**[32]** In her written submissions Ms Soorley listed the following twelve instances of exercising workplace rights:

1. Requesting flexible work arrangements
2. Raising health and safety concerns
3. Requesting information that would allow me to be able to properly answer "disciplinary" allegations.
4. My right to have my nominated legal representative attend a "disciplinary hearing" on my behalf in a situation where information required by me to be able to properly address allegations made against me by the respondent had not been supplied before the "hearing".
5. My right to have information that would allow me to be able to properly answer "disciplinary" allegations supplied to me and my legal representative before the "disciplinary hearing".
6. My right for the respondent to allow me due process, a fair hearing and natural justice before summarily and unjustifiably terminating my employment without even the statutorily required 4 weeks' notice (also a requirement under the employment contract itself) and/or pay.
7. My right to be paid the correct amount in wages in accordance with the national ("SCHADS") award including sleep over allowances etc.
8. My right not to be required to work what amounted to an illegal number of hours under the award without the mandated rate remuneration.
9. My right to be told before I signed the work contract of how the respondent assessed my pay level in terms of the award. This information was omitted from the Schedule to the work contract.



10. My right not to have me or my legal representative disrespected, insulted, abused and threatened by the respondent when making lawful requests for information to progress these proceedings and other matters involving the Fair Work (Australia) Ombudsman.

11. My right not to be harassed with vexatious complaints to the Health Care Complaints Commission (HCCC) especially considering the respondent's adamant assertions that I was "never employed" by his organisation as a "Registered Nurse".

12. My right to request my Employee Record after my unjustified termination to enable me to calculate the short payment of wages and other entitlements during my time at the workplace.

[33] Gunnebah accepted that the Ms Soorley held and exercised the rights described in items 2, 7 and 8. Mr Edwards on behalf of Ms Soorley was not content with that concession and pressed each of the items in the submission.

[34] The expression *workplace rights* is broadly defined in s 341(1) of the Act to mean:

341 (1) A person has a workplace right if the person:

(a) is entitled to the benefit of, or has a role or responsibility under, a workplace law, workplace instrument or order made by an industrial body; or

(b) is able to initiate, or participate in, a process or proceedings under a workplace law or workplace instrument; or

(c) is able to make a complaint or inquiry:

(i) to a person or body having the capacity under a workplace law to seek compliance with that law or a workplace instrument; or

(ii) if the person is an employee—in relation to his or her employment

[35] There have been competing views as to the meaning of the expression "able to make a complaint" in s 341(1)(c) the Full Court of the Federal Court in *Cigarette & Gift Warehouse Pty Ltd v Whelan* (2019) [2019] FCAFC 16 at [28] resolved the issue by taking a broad view of the expression when it approved the statement of principle explained by Collier J in *Whelan v Cigarette & Gift Warehouse Pty Ltd* (2017) 275 IR 285; [2017] FCA 1534 which was as follows:

[36] Applying this broad approach, I am satisfied that the concession made by Gunnebah that item 2 raising health and safety concerns, item 7 being paid the correct amount in wages in accordance with the relevant modern award, and 8 not being required to work an excessive number of hours were workplace rights that were the subject of complaint by Ms Soorley is well made. I would add that item 1 requesting flexible work arrangements was also a right exercised by Ms Soorley. The term flexible working hours is used in s 65 of the Act in reference to a request change in working arrangements. Ms Soorley exercised this right by asking in May to have her hours reviewed and in June that she be allowed some weekends off. The rights claimed in items 3, 4, 5, 6, and 10 go to due process during disciplinary proceedings. They are rights that Ms Soorley exercised following the approach about her conduct on 10 October 2023. The matters in items 11 and 12 were rights exercised after the dismissal and so there can be no

causal nexus between them and the decision to dismiss. The real contest in this matter is whether the casual nexus between the exercise of any of the rights in the list and the dismissal existed.

[37] The question is whether Gunnebah has rebutted the presumption that the reason for the dismissal was other than that Ms Soorley exercised any of her workplace rights. I am satisfied that it has. The reason given by Mr Parer in the termination letter of 17 November 2023 was Ms Soorley's conduct. The evidence confirms that Mr Parer held the view that the conduct occurred and it justified dismissal.

[38] On 10 October 2023, Gunnebah first raised concerns about Ms Soorley's boundaries with guests and other employees. There was an exchange of correspondence following the initial email and in correspondence dated 19 October details were given of the allegations. There was further correspondence leading up to the disciplinary meeting on 7 November 2023. Mr Parer continued to assert his belief that the misconduct occurred. The meeting on 7 November dealt with the allegations in detail. On 16 November 2023, after considering further complaints from guests going to the most serious allegation about Ms Soorley discussing magic mushrooms and considering the blanket denials made by Ms Soorley, Mr Parer decided to terminate Ms Soorley's employment. He cited trust issues and duty of care concerns. Mr Parer was cross examined on his reasons, and he did not waiver. I accept his evidence.

[39] Ms Soorley submits that the dismissal was not justified, disproportionate, and lacked procedural fairness. I may have some sympathy for this position. Mr Parer's evidence was that he was willing to give Ms Soorley a second chance if she admitted to discussing magic mushrooms with guests and promised not to do so again. This indicates that Mr Parer considered the conduct itself to not necessarily justify dismissal and that taking disciplinary step of dismissal was disproportionate. It is also unclear that Mr Parer let Ms Soorley know that by undertaking not to talk to guests about magic mushrooms she may have saved her job. There were also matters such as the refusal to provide the particulars of the discussions with guests which point to procedural unfairness. The HCC investigation into Gunnebah's subsequent complaint also casts doubt on the evidence Mr Parer relied upon. These matters however are beside the point in the current proceedings. As his Honour Bromberg J said in *Ermel* proceedings under Part 3-1 of the Act are '...not a broad inquiry as to whether the applicant has been subjected to a procedurally or substantively unfair outcome'. The inquiry is what were the true reasons for the dismissal.

[40] I am not convinced that the evidence of Mr Parer does not reflect his real reason for dismissal. He formed the opinion that the alleged misconduct occurred. The relevant inquiry is not whether that opinion was fairly or properly formed. The relevant inquiry is whether the opinion was formed at all and if it was whether Mr Parer was moved to act as he did in dismissing Ms Soorley. I do not consider that it is possible to infer from that Mr Parer's opinions were formed wrongly or unfairly that the opinion either was not, in fact, formed or did not relevantly inform the decision to dismiss. Consequently, Gunnebah has successfully rebutted the presumption in s 361 of the FW Act. I find that Mr Parer formed the views that he said he formed, and it was on that basis he dismissed Ms Soorley. The reason for dismissal may be regarded unfair due to the state of facts, and the procedure followed to effect the dismissal, but I find his reason for dismissal was Ms Soorley's conduct, particularly the advocacy of psychedelics to patients in a rehabilitation facility.

[41] Ms Soorley also submitted that I should consider other matters both before and after the dismissal in considering whether Gunnebah has rebutted the presumption. This was a reference to the way the employment relationship between Ms Soorley and Gunnebah broke down both during the disciplinary process and following the dismissal as is evident in tone and content of correspondence between Mr Parer and Mr Edwards while Mr Edwards was trying to press Ms Soorley's claims of innocence and in post-employment correspondence. The exchanges were provided in the evidence, and I regard those exchanges to have been terse and unprofessional on the part of both correspondents. I do not however regard those matters as supportive of the proposition advanced on Ms Soorley's behalf that Mr Parer's real reason for dismissing Ms Soorley was because she exercised workplace rights.

[42] For these reasons I do not consider that Gunnebah contravened Part 3-1 of the Act by dismissing Ms Soorley for exercising workplace rights.

[43] The application is dismissed.



DEPUTY PRESIDENT

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<sup>1</sup> *General Motors-Holden's Pty Ltd v Bowling* (1976) 51 ALJR 235 at 241 per Mason J

<sup>2</sup> *Celand v Skycity Adelaide Pty Ltd* (per Bromberg J [2017] FCAFC 222 at [154] and *Australian Red Cross Society v Queensland Nurses' Union of Employees* [2019] FCAFC 215 at [66]