



DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Vanitaben Panchal

v

Bulla Mushrooms (Aust) Pty Ltd

(U2024/7078)

DEPUTY PRESIDENT COLMAN

MELBOURNE, 7 OCTOBER 2024

Unfair dismissal application – allegations not substantiated – no valid reason – no mitigation of loss – effect on compensation

[1] Vanitaben Panchal has made an application for an unfair dismissal remedy under s 394 of the *Fair Work Act 2009* (Act). Ms Panchal was employed by Bulla Mushrooms (Aust) Pty Ltd (Bulla) as a harvest team leader. She worked as a casual from April 2019 until June 2021, when she became a permanent employee. On 7 June 2024, Ms Panchal was summarily dismissed after Bulla concluded that over the past two years she had bullied and discriminated against numerous employees. Ms Panchal denies the allegations. She submits that her dismissal was unfair because there was no valid reason for it. She seeks compensation.

[2] Ms Panchal's evidence was that on 24 May 2024, she received a letter from Georgia Beattie, Bulla's chief executive officer, stating that serious allegations of bullying had been raised against her and that she would be stood down with pay pending an investigation. Ms Panchal asked to be given details of the allegations. On 31 May 2024, Ms Beattie sent Ms Panchal a letter setting out eight allegations to which she was invited to respond in writing. The allegations are reproduced below:

- **Allegation 1:** *That on 5 January 2024, and at Bulla Mushrooms during work hours, Ms Vanita Panchal bullied an exotic mushroom staff member, Raman, by intentionally reducing her work hours after they raised a question about exotic mushrooms working conditions with a senior manager on 2/1/24.*

A screenshot of the shift rostering software, showing the change from 32 hours the week prior to only 19.75 the following week, see below: [screenshots omitted]

- **Allegation 2:** *That on 5 September 2023 at Bulla Mushrooms during working hours, Ms Vanita Panchal bullied employee, Mark Knape, by inappropriately raising her voice at him in regards to completing his mushroom running job faster.*
- **Allegation 3:** *That on 29 June 2023, at Bulla Mushrooms during work hours, Ms Vanita Panchal bullied a harvest runner, Susana Prado, by:*

- *giving her unreasonable tasks, in front of the Dispatch Manager, Mirna Corado. This included demanding that she perform tasks “really fast”; and*
 - *dismissing her concern that she was being mistreated by another employee. We note that she told Ms Vanita Panchal that another employee called out, “oh Mark comeback , please come back”, knowing she was doing the former employee, Mark’s, job, and Ms Vanita Panchal told her “no, no. It’s not bullying”.*
- ***Allegation 4:*** *That between 30 May 2022 and 13 October 2022, and at Bulla Mushrooms during work hours, Ms Vanita Panchal bullied and religiously discriminated employee, Alina Tariq, by:*
 - *intentionally and inappropriately not running her through the standard onboarding process as part of the Bulla Park policy;*
 - *putting her in a container by herself to pick mushrooms on her own, away from others;*
 - *not informing her when her breaks were;*
 - *sending her to different places to work; and*
 - *not including her in activities or information about work,*

which all made her feel left out, and was carried out because Christine is Muslim and wore a burka.

- ***Allegation 5:*** *That between 14 July 2022 and 19 September 2022, and at Bulla Mushrooms during work hours, Ms Vanita Panchal bullied and racially discriminated employee, Ruwada Farah, by intentionally and inappropriately not including her picked mushroom boxes in the picker performance program which resulted in her not achieving a financial bonus, because she was of African descent.*
- ***Allegation 6:*** *That on 19 August 2022, and at Bulla Mushrooms during work hours, Ms Vanita Panchal bullied and racially discriminated, employee, Steven Haar, by reducing his hours at the last minute and financially penalising him by not including the picker performance program which resulted in him not achieving a financial bonus, because he was of Australian descent.*

A screenshot of the shift rostering software, showing the above, is below: [screenshot omitted]

- ***Allegation 7:*** *That between 9 May 2022 to 19 June 2022, and at Bulla Mushrooms during work hours, Ms Vanita Panchal bullied and racially discriminated, employee, Christine Alvaro, by:*
 - *repeatedly yelling at Christine;*
 - *telling Christine that she was not a good picker; and*
 - *financially penalising Christine by not including the picker performance program which resulted in her not achieving a financial bonus,*

and that the above was because Christine was of Filipino descent.

- **Allegation 8:** *That between 3 May 2022 to 17 May 2022 at Bulla Mushrooms during working hours, Ms Vanita Panchal bullied employee, Bassam Yako by:*
 - *inappropriately forcing her to carry out jobs that she was not comfortable performing. This included cleaning the kitchen and toilets; and*
 - *raising her voice at Bassam and stating “You go and clean toilets or I will tell Zeena”.*

[3] Ms Panchal’s evidence was that all of the allegations were unfounded. She said that most of them were from 2022 and 2023 and had been made by workers who had spent only a few months working at Bulla and had since left the company. She denied bullying or discriminating against anyone.

[4] On 6 June 2024, Ms Panchal sent Ms Beattie a detailed written response to the allegations. To allegation 1, Ms Panchal stated that Raman was not at work on 5 January 2024 because she was unwell, and her reduced working hours were a result of her absence on sick leave. There had also been a decrease in production in that period. Ms Panchal said that she had tried to give Raman regular work, and it was wrong to say that she bullied her by reducing her hours; there was simply less available work.

[5] To allegation 2, Ms Panchal said that she and Mr Knape had been in the harvesting area, which was very noisy, and she had raised her voice so that he could hear her asking whether he needed help. Mr Knape had complained about this to Carlos Corado from MatchWorks, a company that places workers at Bulla, and Mr Corado then spoke to Ms Panchal about the matter. She told him what had happened and understood that the matter was resolved.

[6] As to allegation 3, Ms Panchal stated that she was not Ms Prado’s team leader at the time and did not have much to do with her. She had not given Ms Prado unreasonable tasks or asked her to work ‘really fast’. Ms Panchal denied dismissing another worker’s complaint. She said that she raised it with her own manager, who told her that she had raised it with Ms Beattie.

[7] In relation to allegation 4, Ms Panchal stated that she *did* undertake Ms Tariq’s induction and onboarding. Ms Tariq had said that she was uncomfortable with other people and that she preferred to take breaks on her own, so Ms Panchal accommodated this. She said that it was Ms Tariq who had requested to work in the container, so she showed her the work and made sure that she was alright working by herself. She also advised Mr Corado of this.

[8] To allegation 5, Ms Panchal stated that Ms Farah had only worked at the farm for two months, but that all of her picks were recorded, and bonuses were paid based on correct records. She said that she always recorded workers’ picks and there was no reason for her not to include Ms Farah’s picks. Ms Panchal said that there had been certain problems with Ms Farah, including safety concerns, which were raised with Ms Beattie.

[9] In response to allegation 6, Ms Panchal said that she believed Mr Haar had only worked at the farm for a few days, and that she did not recall having any communication with him at all. She said that she was not in charge of the roster in 2022.

[10] To allegation 7, Ms Panchal denied yelling at Ms Alvaro or telling her that she was not a good picker. She said that she recorded all of Ms Alvaro's picks, just like every other worker, because pick numbers were the basis on which bonuses were paid. She recalled an incident in which Ms Alvaro had thrown a box of mushrooms at another worker.

[11] In relation to allegation 8, Ms Panchal said everyone, including management, was required to clean and maintain the kitchen room and amenities, as there were no designated cleaning staff at the time. Ms Panchal denied forcing Mr Yako to clean, but she did ask him to clean when it was his turn. She said that it was also usual practice to ask employees to clean if there was not enough picking to do, so that workers completed their hours of work.

[12] Ms Panchal said that she sent her written response to the allegations to Ms Beattie at around 11.40am on 6 June 2024, and that at 4.00pm she received a response stating that Bulla had considered the information before it and had concluded on the balance of probabilities that all of the allegations were substantiated. The letter stated that Bulla was proposing to terminate her employment and invited her to respond by 4.00pm the following day. Ms Panchal requested an extension of time to respond, but at 4.30pm on 7 June 2024, she received a letter from Ms Beattie stating that her employment was terminated with immediate effect.

[13] Ms Panchal said that she believed the allegations against her had been made up to provide an excuse for the company to terminate her employment, and that the decision to dismiss her had been made even before she provided her response to the allegations letter. Ms Panchal said that she had provided a full response that addressed the claims against her. She had never bullied anyone, nor had she discriminated against anyone because of their race. Ms Panchal said that she herself was a migrant worker from a multicultural background and had always supported the multicultural workplace. She said that no concerns about her conduct had ever previously been raised with her, and that her dismissal was unfair.

[14] Ms Beattie's evidence was that in March 2024 Bulla appointed a new farm manager, Taraneh Parhizkar, who discovered a 'manipulative streak' in Ms Panchal, and that after an investigation, the company concluded that Ms Panchal had engaged in 'years of systemic racism and abuse of power'. Ms Beattie said that on 26 April 2024, Ms Parhizkar had raised concerns with Bulla that Ms Panchal was not following her instructions and may have been undermining her by interfering with the mushroom yield. Then on 4 May 2024, five casual workers raised concerns about their hours being reduced at a time when, according to Ms Parhizkar, mushrooms had remained unharvested. It was also reported to Bulla that Ms Panchal had asked workers to sign certain blank documents.

[15] Ms Beattie said that from 6 to 10 May 2024 she spoke with 'various employees' in the harvest team and that it was clear to her that staff were not happy with the way Ms Panchal treated them, but that they were reluctant to speak up. Ms Beattie met with Ms Parhizkar, and with Raman Kaur, Sapreet Kaur, Ms Prado and 'Amrit'. Ms Beattie's evidence was that 'several employees shared distressing accounts of bullying', and that they were uncomfortable raising complaints with management for fear of retaliation from Ms Panchal.

[16] Ms Beattie said that on 10 May 2024 she met with Ms Panchal to discuss the matter, but that Ms Panchal said everything was fine. On 13 May 2024, Ms Beattie spoke with Mr Corado

from MatchWorks, who said that over twenty former employees had complained about Ms Panchal's conduct. Ms Beattie said that on 24 May 2024 she met with Ms Panchal and informed her of Bulla's zero tolerance for bullying and told her that she was stood down pending an investigation. Ms Beattie said that as part of the investigation Bulla conducted an anonymous survey in which it asked employees whether they had been bullied at work. She did not say what the results of this survey were.

[17] Mr Corado's evidence was that he had received complaints from 26 workers about their 'sub-human' treatment by Ms Panchal, and that the complaints included yelling, racism and exclusion. Mr Corado said that due to privacy reasons, he would not provide the full names of all of these 'victims of workplace bullying and harassment', but in his statement he indicated 22 first names and a summary of their experiences which they had relayed to him. Many of these summaries included references to alleged bullying and discrimination, including the following:

- Paul L 'felt discriminated for being white Caucasian and not Indian'.
- Alina T 'felt discriminated against because of her Islamic religion as she wears a burka.'
- Treza hated working at Bulla 'because all the Indians got the best treatment and us not from India were treated like crap.'
- Thi felt 'harassed and belittled' by Ms Panchal and Zeena because they could not pronounce her name in Vietnamese and referred to her as number 5.
- Ruwada said that he was of African descent and that Ms Panchal and Zeena were from India and favoured the Indian workers.
- Steven H said that Ms Panchal would cancel his shifts and give them to her 'Indian friends', and that he thought this was because he was Australian and not Indian.

[18] These workers did not give evidence. Mr Corado stated that MatchWorks stopped providing staff to Bulla in 2022 because it considered the workplace to be unsafe due to Ms Panchal's conduct. He said that he did not raise the matter at the time because the staff in question decided that they would not continue to work at Bulla and would instead work elsewhere.

[19] Ms Parhizkar, Bulla's farm manager and head grower, gave evidence that Ms Panchal was trying to frustrate and place mental pressure on her in connection with her work. She referred to several incidents in late April and early May 2024 in which Ms Panchal had raised incorrect concerns about the mushroom quality, left mushrooms unpicked, and various other matters, none of which had anything to do with the alleged mistreatment of other workers.

[20] Ramandeep Kaur, a current employee, gave evidence that she believed that Ms Panchal, who is from Gujarat in India, discriminated against her because of her Sikh religion. Ms Kaur said that in her religion, if a person does a dirty job, they must wash straight away, and that she reminded Ms Panchal of this rule; but despite this, she and another Sikh, Amrit, were regularly required by Ms Panchal to do 'bad jobs', including cleaning dirty water from the ground, instead of asking other Gujarati people to do this. Ms Kaur said that Ms Panchal gave preference to Gujarati people, especially those who worked in her pizza shop. This was not explained. She said that Ms Panchal would often ask her why she was still working at Bulla and would say that she should find a job elsewhere.

[21] Ms Prado gave evidence that on her first day, 29 December 2022, Ms Panchal told her that she had to do her work very quickly, and on her second day she complained to Ms Panchal that another employee had bullied her (she did not say how), and that Ms Panchal had disagreed.

[22] Sarpreet Kaur gave evidence that she often saw Ms Panchal leave the farm during working hours without signing out, which was contrary to policy. She said that on 5 May and 11 May 2024 Ms Panchal asked her to sign a blank document which she did not understand, but it was clear that she was ‘planning something’, although she did not know what. It appeared to be connected to Ms Panchal having fallen over at work.

[23] Bulla submitted that there was compelling evidence that Ms Panchal had engaged in a pattern of bullying and discrimination of employees which made her continuing employment unsustainable. It submitted that it had a duty of care to its workers, and that it had to ensure that it maintained a safe workplace. Bulla said that there was a valid reason for the dismissal, that Ms Panchal had been dismissed after a fair process, and that the dismissal was not harsh, unjust or unreasonable, and therefore not unfair.

Consideration

[24] In considering whether a dismissal was harsh, unjust or unreasonable, the Commission must take into account the matters in s 387 of the Act. One of these is whether there was a ‘valid reason for the dismissal related to the person’s capacity or conduct’ (s 387(a)). A valid reason is one that is both a good reason to dismiss the person, and also a reason that is substantiated. In cases where an employee is accused of misconduct, the Commission is required to determine whether on the balance of probabilities the misconduct actually occurred. I am not satisfied that Ms Panchal bullied or discriminated against anyone. Contrary to the company’s contention, the evidence in this matter is not compelling. It is scanty, conclusory, and largely second hand, that is to say, hearsay. Bulla put eight allegations of misconduct to Ms Panchal and referred in its evidence to many more. It appeared to believe that the sheer number of allegations against Ms Panchal presented a persuasive case of guilt. But not a single one of these allegations has been substantiated. In particular, the allegations that Ms Panchal discriminated against other employees on the grounds of race or religion rely on mere assertions.

[25] Allegation 1 stated that Ms Panchal intentionally reduced the working hours of ‘Raman’ after she raised a question about her working conditions. If this is a reference to Ramandeep Kaur, this is not what Ms Kaur said in her statement. If it is a reference to somebody else, that person has not given evidence to the Commission. Ms Panchal on the other hand gave a clear and convincing account of her interaction with Raman and I accept it. Ms Beattie said that Bulla’s employment records showed Ms Kaur working reduced hours at the time in question, whereas two Gujarati workers had full or excess hours in the same period. But this does not demonstrate that Ms Panchal did anything wrong. There could be any number of reasons for this. Ms Beattie said that mushroom harvesting work is steady and even; but she conceded that Ms Panchal had a discretion in relation to the allocation of work, which suggests that there must be some requirement for this discretion to be used and that it is not the case that all employees work a comparable number of hours all of the time. The implication of the allegations, that Ms Panchal would favour Gujarati workers in the allocation of work, has not been substantiated.

[26] Allegation 2 was that on 5 September 2023 Ms Panchal bullied Mr Knape by inappropriately raising her voice at him. Mr Knape did not give evidence. Mr Corado's account of what Mr Knape ('Mark K') said to him is hearsay. Ms Panchal gave sworn evidence about her interaction with Mr Knape. She explained that she raised her voice on that occasion because it was noisy as a result of the fan motors and people talking. The company made no effort to contradict her evidence. It was clear and convincing, and I accept it.

[27] Allegation 3 was that Ms Panchal bullied Ms Prado by telling her to perform her tasks really fast. But this does not amount to bullying. No detail was provided of any circumstances that might suggest that Ms Panchal's behaviour towards Ms Prado was unreasonable. Nothing in Ms Prado's evidence suggested that Ms Panchal did anything wrong. Ms Prado's account of her bullying complaint against the other employee did not make sense to me.

[28] Allegation 4 asserted that Ms Panchal had religiously discriminated against an employee, Alina Tariq, by treating her less favourably than other workers because she was a Muslim and wore a burka. Mr Corado's evidence about this matter is hearsay and simply recites what Ms Tariq allegedly told him, namely that she 'felt' discriminated against because of her religion. There was no explanation of why she allegedly felt this way. The alleged misconduct is said to have occurred sometime between 30 May 2022 and 13 October 2022. This is hopelessly imprecise. As well as being unsubstantiated by any direct evidence, the allegation itself does not seek to explain why Bulla believed there was any link between the alleged conduct and Ms Tariq's religion.

[29] When persons with a protected attribute allege that they have been treated less favourably than others because of that attribute, the appropriate response is to investigate the matter and reach a reasoned conclusion as to whether, on the balance of probabilities, the allegation is actually true. It is unreasonable and unfair to presume that it is. The fact that there may be multiple allegations does not lower the standard of proof.

[30] Allegations 5, 6, 7 and 8 are also based on hearsay that was refuted by Ms Panchal's direct evidence. Allegation 5 asserts, without direct evidence of fact or any compelling contention of logic, that Ms Panchal racially discriminated against Ms Farah because she was African. Mr Corado recited what Ms Farah told him, which was that she 'felt' that Ms Panchal favoured Indian workers. This vague second-hand statement about events two years ago is simply not an adequate basis to conclude that Ms Panchal did anything wrong. Allegation 6 also relies on Mr Corado's hearsay evidence, this time in respect of Mr Haar telling him that Ms Panchal favoured Indian workers, whereas he was Australian. As for allegation 7, Mr Corado stated that he was told by Ms Alvaro that she was yelled at by Ms Panchal and that Ms Panchal was nice to Indians but not to her, and that 'maybe' all of this was because she was Filipino. Ms Panchal gave sworn evidence that she did not treat anyone less favourably because of their race or descent. I accept her evidence. Ms Panchal said that she herself is from a multicultural background and has always supported a multicultural workplace. I believe her.

[31] Allegation 8 is a bare assertion that certain cleaning instructions given to Mr Yako sometime in May 2022 were 'inappropriate'. The company did not seek to contradict Ms Panchal's response, which was that all employees, including managers, were required by policy to maintain the kitchen and amenities room. I accept this explanation and find that Ms Panchal did not act unreasonably.

[32] I find that the allegations of bullying, discrimination and inappropriate conduct that were levelled against Ms Panchal by Bulla are unsubstantiated. I conclude therefore that there was no valid reason for dismissal (s 387(a)). This weighs heavily in favour of a conclusion that the dismissal was unfair. As to the other considerations in s 387 of the Act, I conclude that Ms Panchal was not notified of a valid reason for dismissal because the reason cited was an invalid one (s 387(b)). Ms Panchal had an opportunity to respond to the allegations (s 387(c)). In my view, her responses were compelling, but Bulla chose to reject them. Ms Panchal was not refused a support person (s 387(d)). Ms Panchal's dismissal related to conduct rather than performance, and accordingly s 387(e) is not strictly relevant, however I note that she received no warning about her conduct. The considerations in s 387(f) and (g) carry some weight; although Bulla is not a small business employer for the purposes of the Act, I accept Ms Beattie's evidence that it has a small turnover and that it feels like a small company. It is clear that the company does not have internal human resources management specialists. These factors likely impacted on the procedures adopted in effecting the dismissal.

[33] Based on my factual findings and my assessment of the mandatory considerations in s 387, I conclude that the dismissal of Ms Panchal was unjust and unreasonable, and therefore unfair.

[34] In her submissions, Ms Panchal stated that the remedies she sought were compensation, a statement of service, payment of entitlements that she says are owed to her by Bulla, and six months compensation. The Commission has no power to order Bulla to give Ms Panchal a statement of service, or to deal with claims relating to outstanding entitlements. I note that reinstatement would not in my view be appropriate in this case, and that in her submissions Ms Panchal did not seek it. The only available remedy is compensation. In assessing compensation, the Commission must take into account all the circumstances of the case, including the matters set out in s 392(2). There is no evidence that an order for compensation would affect Bulla's viability (s 392(2)(a)). Ms Panchal had a number of years of service with Bulla (s 392(2)(b)). If she had not been dismissed, I consider that Ms Panchal would have remained employed for at least another six months and earned another six months' salary (s 392(2)(c)). Ms Panchal's gross pay per week was \$1211.54. Had she not been dismissed she would have earned a gross amount of \$31,500.04 over that 6-month period.

[35] However, Ms Panchal said that she had not applied for any jobs since her dismissal. The Act requires the Commission to consider the efforts of a successful applicant to mitigate the loss they have suffered because of their unfair dismissal (s 392(2)(d)). This entails an inquiry into what efforts the applicant has made to find another job. In this case, Ms Panchal did not make any such efforts whatsoever. Compensation that is ordered under the Act is for loss of income that has been caused by an unfair dismissal. If no effort is made to seek new employment, at some point the absence of income becomes attributable to the failure of the individual to apply for new jobs. The Act also states clearly that compensation must not include any component referable to shock, distress, humiliation or other analogous hurt (s 392(4)). In this case, Ms Panchal said that she was too scared to seek work because her husband had been threatened by the maintenance manager to leave the company alone. But this reason for not seeking work does not make sense. Looking for a new job has nothing to do with Bulla. There was no reason for her to be scared about applying for new jobs. Any such fear was an irrational one. Ms Panchal also said that she did not make attempts to find work because she thought that

Bulla would give her a bad reference. But this is no excuse for making no effort to find work. Employers do not routinely require a reference, and it is well-known that many employers have a general policy of not providing references to former employees.

[36] Ms Panchal's failure to take reasonable steps to mitigate her loss by looking for work requires a very substantial reduction in the compensation that might otherwise be ordered. Indeed, I have considered whether it is appropriate in the circumstances for *any* compensation at all to be ordered. I have concluded that it is. It is probably unlikely that Ms Panchal would have obtained a new job right away. In this early period, the loss of income was caused by the dismissal. But it is likely that at some point, had she made reasonable efforts, Ms Panchal would have found a new job. The absence of income from that point was caused by Ms Panchal's inaction. It is appropriate to endeavour to estimate when that point was, difficult though this may be. I draw on the Commission's industry experience and note that jobs in the agricultural sector are not in short supply, and that unemployment generally is low. I estimate that there is a reasonable likelihood that Ms Panchal could have obtained another job on a similar income within two months (eight weeks) from her dismissal. Bulla said that Ms Panchal received payment in lieu of notice. Based on her permanent employment since 28 June 2021, Ms Panchal had less than 3 years of service (her prior casual service would not count), which would have seen her paid 2 weeks' in lieu of notice. This should be deducted from the eight weeks referred to above. In my view, the compensation to be awarded to Ms Panchal should be confined to the six week period where her loss of income was more clearly causatively connected to the unfair dismissal, rather than to Ms Panchal's failure to seek a new job. Six weeks' gross pay is \$7269.24. To this should be added 11.5% superannuation of \$835.96. Standing back from the detail of the compensation analysis and considering the matter on an overall basis, I consider this to be a fair and reasonable amount of compensation in the circumstances. I do not consider that it would be appropriate to award more. I will order that these amounts be paid to Ms Panchal within 28 days of this decision. An order is issued separately in [PR780001](#).



DEPUTY PRESIDENT

Appearances:

V. Panchal and M. Patel for the applicant

G. Beattie for the respondent

Hearing details:

2024

Melbourne (by Microsoft Teams)

26 September

Printed by authority of the Commonwealth Government Printer

<PR780000>