



DECISION

Fair Work Act 2009

s.394 - Application for unfair dismissal remedy

Mr Gary Dickman

v

Ventia Australia Pty Ltd

(U2024/5278)

DEPUTY PRESIDENT ANDERSON

ADELAIDE, 11 OCTOBER 2024

Application for an unfair dismissal remedy – services manager (2IC) at Woomera defence facility – alleged disclosure of confidential information – standard of proof – possibility or reasonable suspicion insufficient basis to make finding – misconduct not established to requisite standard – lack of candour to investigators – no valid reason – procedural fairness – dismissal unfair – compensation ordered

[1] Gary Dickman (Mr Dickman or the applicant) has applied to the Commission under s 394 of the *Fair Work Act 2009* (the FW Act) for an unfair dismissal remedy in relation to his dismissal by Ventia Australia Pty Ltd (Ventia, the employer or the respondent) on 2 May 2024.

[2] Mr Dickman claims that his dismissal was harsh, unjust or unreasonable. He seeks reinstatement or compensation.

[3] Ventia oppose the application.

[4] The matter did not resolve by conciliation. I issued directions on 26 June 2024, and production orders on 16 September 2024, against both the applicant and respondent, and a third party (Telstra) with respect to mobile phone data. The unredacted text of an attachment to one witness statement is subject to a confidentiality order.¹

[5] Permission was granted to both Mr Dickman and Ventia to be represented.

[6] I heard the matter in person on 30 September and 1 October 2024 (with the applicant and the applicant's representative appearing by video from interstate).

Evidence

[7] I heard oral evidence from three persons:

- Gary Dickman (applicant);
- Megan Demaine (People & Culture Advisor); and

- Jessica Maetze (Regional Operations Manager South Australia).

[8] Some of the evidence (oral and written) strayed from factual matters into hearsay, opinion, assumption and commentary. I place reduced levels of weight on such evidence except where it is corroborated by direct evidence, uncontested or inherently believable. I am not bound by the rules of evidence but consider them to be a good and useful general guide.

[9] Ventia asked me to draw an adverse inference against Mr Dickman for not calling a Mr Wayne Parker, the person with whom he had a lunch on 16 March 2024, when it is said (by Ventia) that he (Mr Dickman) disclosed confidential or commercially sensitive information. I deal with this issue below.

[10] A primary item of evidence relied upon by Ventia is an email said to have been authored by Mr Parker on 18 March 2024. The applicant submits that I should place no weight on that email, in part because it is hearsay. I make findings concerning that email and its treatment below.

[11] Substantial disputes of fact arise. They are material to the determination of this matter. Central amongst them is whether information concerning Ventia's operations was communicated by Mr Dickman to Mr Parker on 16 March, and whether that information was confidential or commercially sensitive. I deal with those issues in considering valid reason.

[12] Issues of credit are relevant. I make general observations on the evidence.

[13] Though he gave evidence in a forthright manner, I exercise a considerable level of caution over aspects of Mr Dickman's evidence although it was not wholly an unreliable basis for fact-finding. It was replete with hypotheticals and counterfactuals along the lines that Mr Dickman could not recall what he said or did over lunch, or that he might possibly have said or done something, but that if had said or done something then it would have been this or that. On critical issues, Mr Dickman's evidence ranged from one word non-committal answers (such as "possibly") to lengthy statements avoiding direct questions but discussing the questioner's topic. His denial of misconduct was direct but, when pressed on specifics about the lunch with Mr Parker, his evidence was often vague and general. Considered overall, this conveyed an impression of evasiveness and selectiveness.

[14] Ms Demaine was an impressive witness. She answered questions directly and openly with attention to accuracy and precision. She made concessions even where it did not particularly suit Ventia's case. She generally had good recall though occasionally sought to refresh her memory from the documentary record. She was a witness of credit.

[15] Ms Maetze was a conscientious witness though measured and less instinctive in answers than Ms Demaine. She too made concessions in cross examination and did not appear to embellish the narrative. Her evidence can largely be relied upon.

[16] To the extent necessary, where there are disputed facts, I prefer the evidence of Ms Demaine and Ms Maetze to the evidence of Mr Dickman.

Facts

Employment

[17] Mr Dickman is a resident of Perth, Western Australia. He has experience in delivering and managing services, and in particular catering and hospitality services, at mining and defence sites in remote and regional Australia.

[18] Having previously worked in the mining industry, on 6 July 2022 Mr Dickman commenced with Ventia as Living Services Manager at the Woomera defence base.² Woomera is located in northern South Australia. Mr Dickman was a fly-in fly-out (FIFO) worker between Perth and Woomera.

[19] Mr Dickman was informed about the job at Ventia by Wayne Parker who, at that time, was working for Ventia. Mr Dickman had previously worked alongside Mr Parker in the mining industry.

[20] A year later, on 8 June 2023, Mr Dickman was appointed by Ventia to the newly created position of second in charge (2IC) Estate Management and Operational Services Manager at Woomera (2IC EMOS).³

[21] In that role (and in his former role) he reported to the Estate Management and Operational Services Manager (EMOS).

[22] In the 2IC EMOS position Mr Dickman's primary responsibilities remained the delivery of hospitality and catering services at Woomera consistent with Ventia's contractual obligations to the Department of Defence. However, when the EMOS manager was not on site Mr Dickman "stepped into all roles" including "managing accommodation, domestic services, maintenance and everything else".⁴

[23] These periods temporarily extended Mr Dickman's duties beyond catering and accommodation to facilities management and site upkeep.

[24] In the new role, Mr Dickman was exposed to a wider array of information concerning both the operations of the Woomera site and Ventia's responsibilities under its defence contract.

Ventia

[25] Ventia provides services to major infrastructure operators, including in the mining and defence industries. It is a large business. Those services include (but are not limited to) facilities and asset management, transport, catering, cleaning and accommodation. Ventia contracts with owners and operators of major infrastructure facilities for the provision of such services. Securing contracts commonly involves competitive tender processes.

[26] One such contract is to provide services to the Department of Defence in three regions of South Australia: Edinburgh, Woomera and metropolitan Adelaide.

[27] The Woomera site is unique in that it covers a defence base as well as public areas in the small remote township of Woomera. Those public areas contain a supermarket, café and hotel to which Ventia, under the contract, are required to provide catering and hospitality services on a commercial basis.

[28] Ventia's services contract with defence is substantial, and material to Ventia's business operations and commercial well-being.

[29] The defence services contract expired in 2023 but was extended by one year (2024). The contract is due for renewal via a competitive tender. Defence has issued a scope of works for prospective tenderers.

[30] Accordingly, events concerning the dismissal of Mr Dickman occurred in the early stages of a competitive tendering process for the services provided at Woomera and other South Australian defence sites currently managed by Ventia.

Wayne Parker

[31] Mr Parker has industry experience in the delivery of hospitality services to major infrastructure projects and sites. He owns and operates a business (Hive Smart) through which those services are provided.

[32] Between January and December 2022, Mr Parker was engaged by Ventia. Initially Ventia engaged Mr Parker's business (Hive Smart) to review its catering operations at multiple sites (principally Edinburgh). In April 2022, Mr Parker became Ventia's National Hospitality and Catering Manager. He ceased that role in December 2022 and left Ventia.

[33] Having worked together previously, and with Mr Parker having assisted Mr Dickman to apply for the role at Ventia, both were again working together in the second half of 2022 delivering Ventia's catering and hospitality services (Mr Parker nationally, Mr Dickman at Woomera).

[34] They developed a professional and personal relationship.

[35] Upon Mr Parker leaving Ventia, he and Mr Dickman kept in touch to maintain a personal relationship as friends and former colleagues. Mr Dickman in his evidence described Mr Parker as an "acquaintance" but not a "friend".⁵ For current purposes this is a distinction without a difference. Relevant to this matter is that a personal relationship existed whereby these former work colleagues would catch up from time to time to discuss personal and work matters.

Lunch 16 March 2024

[36] Mr Dickman had become aware of a personal tragedy in Mr Parker's family. Not having caught up with him or heard from him for some months, a private arrangement was made to have a Saturday lunch at a hotel in Perth.

[37] The lunch occurred on 16 March 2024 and was attended only by Mr Dickman and Mr Parker. It was friendly, social and, as far as Mr Dickman was concerned, unremarkable.

[38] According to Mr Dickman's evidence, it was not unusual that they would discuss personal and work matters to see how each was going, and that is what happened.

[39] Whether during the lunch Mr Dickman wittingly or unwittingly conveyed commercial or commercially sensitive information about operations at Woomera is the subject of this decision.

[40] At the time of the lunch Mr Dickman knew that Mr Parker owned Hive Smart and that Mr Parker's business provided services to other businesses on hospitality and catering services.

[41] At the time of the lunch Mr Dickman also knew that a competitive tender process for the defence contract (including the Woomera services) had commenced or was about to commence; though he was not actively involved in assessing the scope of works or in Ventia's response to the procurement process.

Email 18 March 2024

[42] On 18 March 2024, the Monday following the lunch, an email under the name of Mr Parker of Hive Smart was sent from Mr Parker's email address to five persons and copied to three others (the Parker email).

[43] The five recipient addressees included persons with email domains of three companies which provide hospitality services and which, according to Ventia, are actual or potential competitors.

[44] The three persons cc'd into the email all had a Hive Smart domain.

[45] None of the email recipients was a current employee or officer of Ventia. Mr Dickman was not a recipient.

[46] Accordingly, subject to its authenticity, the email was sent to three actual or potential competitors of Ventia. I deal with the challenge to its authenticity below.

[47] A copy of the Parker email is in evidence. It (and its chain of custody once it came into Ventia's possession) is subject to a confidentiality order. In the published version of this decision I consider it appropriate to maintain that order and redact major portions of its content. The email reads:⁶

From: Wayne Parker <wayneparker@hivesmart.net>

Sent: Monday, 18 March 2024 10:51 AM

To: [REDACTED]

Cc: [REDACTED]

Subject: Woomera Insights

Hi Team,

I met up with the Woomera H&C Manager/Relief EMOS on Saturday and got a bit of a download on how things are progressing in the town.

Leadership - Due to the remoteness of the town and the lack of amenities [REDACTED]

H&C Manager – Oversees [REDACTED]

Chefs- Same roster as [REDACTED]

Food Service - Currently [REDACTED]

Staffing - Due to [REDACTED]

Staff Meals - The incumbent has implemented [REDACTED]

Supermarket and Café - Both remain [REDACTED]

Regards,

Wayne Parker

Director Senior Consultant - Hospitality & Support Services

(emphasis in original)

[48] Mr Dickman did not author the email nor did he know that Mr Parker intended to send an email in those or any terms to its recipients.

[49] On 19 March 2024, the Parker email came into the possession of an officer of Ventia. That officer communicated it to senior operational managers responsible for the defence contract and the tender. Concerned that confidential information compromising Ventia’s interests may have been leaked from an internal source, the email was put into the hands of Ventia’s People and Capability division to assess and investigate whether information had been disclosed without authorisation.

[50] It is not necessary, for the purposes of this decision, to identify the officers through which the Parker email appears to have passed or to make findings on how it may have come

into Ventia's possession. This is not a general inquiry into Ventia's internal handling of the email. It is an assessment of Mr Dickman's alleged conduct and the way Ventia dealt with Mr Dickman and the Parker email in that respect.

[51] On 20 March 2024, a People and Capability Manager (Ms Carson) referred the matter to a manager overseeing performance and investigations (Ms Ballard). Ms Ballard asked a People and Culture Advisor (Ms Megan Demaine) to conduct an initial assessment of the issue to determine whether a more formal investigation was warranted.

[52] At around the same time (20 March 2024) Ventia's Regional Operations Manager South Australia, Ms Jessica Maetze, who has responsibility for all South Australian operations (not exclusively defence sites), was alerted to the email. Ms Maetze read the email. She knew of Mr Parker and Hive Smart, having dealt with Mr Parker when he was working for Ventia in 2022. Ms Maetze formed the view that the reference in the first paragraph of the email to "the Woomera H&C Manager/Relief EMOS" was likely a reference to Mr Dickman.

Assessment

[53] Ms Demaine commenced an "initial assessment" of whether the email warranted an employee investigation. She had no knowledge of Mr Parker nor of the Woomera operations. Ms Demaine spoke to Ms Maetze and others, and searched internal data systems, and identified Mr Parker's past connection to Ventia.

[54] Ms Demaine's initial assessment was that the matter warranted investigation. She reported this to Ms Ballard who authorised Ms Demaine to proceed with a formal investigation.

[55] Ms Demaine commenced an investigation. She did not seek and was not provided details of how the email came into Ventia's possession. Her investigation concerned whether an unauthorised disclosure had occurred and if so, by whom. During the investigation she too formed the view that the reference to "the Woomera H&C Manager/Relief EMOS" was likely a reference to Mr Dickman. She also considered that much of the information in the Parker email was confidential or commercially sensitive, particularly the way it was presented.

[56] Ms Demaine reported to her manager (Ms Ballard) that Mr Dickman should be advised of the matter, the allegations should be put to him, his response sought and that he should be suspended pending the investigation being finalised. Ms Ballard agreed.

Suspension and allegations

[57] On 27 March 2024, eleven days after the lunch and eight days after Ventia came into possession of the Parker email, Mr Dickman became aware, in general terms only, of the issue of concern when he attended a (video) meeting called by Ms Maetze and Ms Demaine.

[58] Mr Dickman was told that a complaint had been made alleging that he had disclosed confidential information, and that the matter was under investigation. He was told that he would receive an allegations letter and be given an opportunity to respond. He was told that pending the investigation he was suspended with pay.

[59] At that early stage, Mr Dickman was not told by who or in what form the ‘complaint’ had been made. Nor was he told of the Parker email or what information it was alleged he had disclosed.

[60] Later that day (27 March) Mr Dickman received a letter of suspension.⁷ It did not mention Hive Smart, Mr Parker or the email.

[61] On 4 April 2024, Mr Dickman received an allegations letter.⁸ It too did not mention the email. Relevantly it read:

“Background

On 16 March 2024 it is alleged that you met with a representative from a third-party company, HiveSmart. In the meeting, it is alleged that you:

1. Disclosed confidential information regarding Ventia’s operation of the Woomera Defence base, including details of:
 - a) Employee roster arrangements
 - b) Employee salary packages and benefits
 - c) Headcount and organisational structure
 - d) Retention strategies
 - e) The operation of the Supermarket and Café
2. Caused potential reputational and commercial damage to Ventia as the confidential information was provided to HiveSmart, a company that partners with direct competitors of Ventia, at a time when the contract with our client is up for renewal.

Our Concerns

The alleged conduct falls short of the standard expected of Ventia employees. If substantiated, the allegations could amount to a potential breach of the following Company policies and documents underpinning your employment:

1. Your Employment Contract dated 6 July 2022, clause 22 Confidential Information, section 22.1 which states “you must not, either during or after your employment, use or disclose to any person any Confidential Information”. Confidential Information as defined in section 28.1 is:
 - (a) *your terms of employment (including any variations that may occur during your employment);*
 - (b) *all information regardless of the manner in which it is recorded or stored, including but not limited to information in an electronic form, relating to the business interests, methodology, customers, suppliers or affairs of the Company or a member of the Group, or any person or entity which the Company or a member of the Group deals or is concerned with;*
 - (c) *any other information which, in the circumstances at the time, you ought reasonably to assume the Company or any member of the Group would wish to be kept confidential, except for information which is publicly available (unless the reason why it is publicly available is because of you or another person disclosing the information).*

2. Code of Conduct – specifically Conduct Principle 6 Avoiding Conflicts of Interest: *“When your decisions or actions are perceived as favouring your own personal or financial interests ahead of your obligation to act in Ventia’s best interests. Examples of this behaviour include...using our confidential information for your own personal gain”*.
3. Code of Conduct – specifically Conduct Principle 14 Respecting and protecting privacy and confidential information: *“You must protect confidential information”*.

Next steps

We consider this matter to be serious. We therefore require you to provide a written response to the above allegations to me by email at Jessica.Maetze@ventia.com by 5pm Monday 8 April 2024. You will also be required to attend a meeting on Wednesday 10 April at 12pm WA time via Teams. Also present with me will be Megan Demaine, P&C Advisor. You are entitled to have a support person attend the meeting with you. At this time, you will have an opportunity to fully respond to each of the relevant allegations against you. You need to be aware that one potential consequence of this process may be disciplinary action against you.

During the interview, Ventia expects that you will provide responses which are true and correct to the best of your knowledge. If you deliberately provide any untruthful or misleading information, it may result in disciplinary action, up to and including the termination of your employment.

As part of the investigation, any other person that Ventia considers relevant to the investigation may be interviewed. Other information relevant to the investigation, such as documents, emails, etc may also be collected. It may be necessary to conduct a further interview with you after this information has been collected.

We assure you we have not made a predetermined decision. We will consider any response you may have and all information and evidence before we make a decision about what disciplinary action, if any, may be an appropriate outcome in the circumstances.

Confidentiality

The investigation is strictly confidential. In order to protect all parties, participants are required to maintain confidentiality about the fact that an investigation is being conducted, what the investigation is about and what is said in the interviews. These confidentiality obligations apply equally to all participants, including you. This means you cannot tell anyone there is an investigation or disclose any information about the content of the investigation or the matters discussed. You can, however, discuss the matter with your advisor or partner/spouse in order to obtain advice and/or support, in which case confidentiality is similarly required of your advisor or partner/spouse.

Breach of confidentiality may lead to allegations of defamation and could result in disciplinary action including termination of employment. If you become aware of any breach of confidentiality regarding the investigation, please contact me immediately.”

(emphasis in original)

[62] Mr Dickman remained absent from Woomera, as he was suspended.

Communication Mr Dickman to Mr Parker

[63] On 8 April Mr Dickman decided, notwithstanding the confidentiality direction in the 4 April letter, to contact Mr Parker.

[64] According to text messages that I directed be produced at the hearing and mobile records produced by Telstra under a production order⁹, at 9.44am on 8 April Mr Dickman texted Mr Parker and asked if he “could call me for a quick chat”.¹⁰

[65] Mr Parker returned the call. Mr Dickman spoke to Mr Parker for six and a half minutes. He told him that he has been suspended and that he was alleged to have passed on confidential information to Hive Smart. He told him that he was required to attend an investigation meeting on 10 April. According to Mr Dickman’s evidence (which on this point I accept), he asked Mr Parker if he (Mr Parker) had communicated with Ventia following the lunch.

Investigation

[66] Mr Dickman sent an email response to Ms Maetze on the afternoon of 8 April, as required. It read:¹¹

“Hi Jess

The allegation are untrue and rather sinister - I did not have a meeting with a Hive Smart representative? I had a Saturday afternoon lunch with an ex-colleague and friend from my previous work at Koolan Island and also Ventia, the same person that recommended me to the Woomera position.

By now, you should have been able to check my email account for any potential breach or even if I have potentially used a USB in my laptop to save any files - nothing would have been found sent to Hive Smart or any other 3rd party.

Naturally, I take offence of any accusations that I have potentially given another business anything for personal gain!

On contrary, I have previously always worked to support the Woomera business, to attend meetings / support the team on my days off with zero expectation for compensation.

My integrity is important to me.

regards
G”

[67] The investigation meeting scheduled for 10 April proceeded.

[68] Prior to the meeting, Mr Parker texted Mr Dickman:¹²

“Hi Gary give me a call after you have your meeting today. I think it’s important you tell them you didn’t meet with Hivesmart you met with Wayne for lunch and that I was the one that seconded you to Woomera.”

[69] Mr Dickman replied:¹³

“Will do mate, and I have...”

[70] Mr Dickman attended the investigation meeting by video. Ms Maetze and Ms Demaine were present. Ventia put questions to Mr Dickman. Mr Dickman responded. Notes of the meeting as prepared by Ms Demaine are in evidence.¹⁴ Relevantly, at the meeting, and for the first time, Ventia informed Mr Dickman that the source of the complaint was an email written by Mr Parker on 18 March 2024. The Parker email was shown to Mr Dickman during the meeting (but with the name of the recipients redacted). Mr Dickman stated that the Parker email was factually inaccurate in many respects, and therefore the information could not have been sourced from him.

[71] Ms Demaine left the meeting unimpressed by Mr Dickman’s responses which she considered vague and indirect about what he had said at the lunch concerning the Woomera operations. She felt that, in contrast, Mr Dickman had precise recall about other issues discussed over lunch such as the prospective job offer. She “had serious concerns about Mr Dickman’s honesty”.¹⁵

[72] Following the meeting (and as agreed at the investigation meeting), Ms Demaine compiled Mr Dickman’s responses and explanations into a written document. This was sent to Mr Dickman on 11 April. It was confirmed as accurate by Mr Dickman on 12 April. This statement by Mr Dickman to the investigators is in evidence.¹⁶

[73] Following the 10 April investigation meeting, Mr Dickman that evening received another text from Mr Parker asking “how did it go today?”. Mr Dickman did not reply. He received a missed call from Mr Parker the next day. The following text exchange subsequently occurred:¹⁷

“Mr Dickman: Hey was at the beach in busso! Staying here a few days with a mate, talk next week - off to the brewery

Mr Parker: So what happened with your meeting?

Mr Dickman: Talk in the week”

[74] Mr Dickman made no further contact with Mr Parker until eight weeks after dismissal (he contacted Mr Parker on 26 June).

[75] According to Mr Dickman’s evidence he ceased contact with Mr Parker for two reasons. Firstly, he was reminded by Ventia at the 10 April meeting that the investigation was confidential. Secondly, once he saw the Parker email on 10 April, he started to doubt whether he could trust Mr Parker. According to Mr Dickman’s evidence, he didn’t know “which side of the fence he was sitting on”.¹⁸ I accept this evidence.

[76] After the 10 April meeting, Ms Demaine continued to investigate the matter in conjunction with Ms Maetze. They examined Mr Dickman's responses against the content of the Parker email. In communication between Ms Demaine and Ms Maetze it was identified that at least one factual assertion in the Parker email about rosters worked by chefs at Woomera was incorrect, as Mr Dickman had pointed out. However, Ms Demaine (and Ms Maetze) considered that other factual matters were either correct or near to correct (such as what they considered to be rounding-up or down of salary figures for the EMOS Manager and the 2IC).

[77] Ms Demaine concluded:¹⁹

“the information in the 18 March Email was sufficiently accurate to substantiate the allegation that the information was disclosed by Mr Dickman during their meeting without authority to do so”; and

“on the balance of probabilities, Mr Dickman did disclose confidential or commercially sensitive information belonging to Ventia. His responses in the interview did not, in my view, adequately address the seriousness of his actions.”

[78] Ms Maetze agreed with Ms Demaine's conclusions.

Show cause

[79] Having found the allegations substantiated, Ventia commenced a show cause process. It invited Mr Dickman to show cause why his employment should not be terminated considering the investigation findings.

[80] On 26 April 2024, Ventia wrote to Mr Dickman advising that the allegations had been substantiated and inviting him to respond in writing or request a show cause meeting.²⁰ Ventia attached to this letter a copy of the Parker email, with recipients redacted. In the letter Ms Maetze stated:

“As a result of the above matters, I am considering terminating your employment as the appropriate course of action to deal with these conduct concerns.

This is in part because I have lost confidence that you can act in a manner consistent with our behavioural expectations and values. Furthermore, given the impact this disclosure of confidential information has had on Ventia's reputation and commercial standing, this has diminished the trust inherently required in any employment relationship.

However, before forming a final view on the appropriate sanction to impose in response to these matters, I would like to give you an opportunity to explain why we should not terminate your employment. You should also provide any feedback you wish to in relation to the other matters identified in this letter.

Once this opportunity has been provided, I will make a final decision as to whether your employment should be terminated, or an alternative response should be implemented.”

[81] On 29 April 2024, Mr Dickman responded by email:²¹

“Jessica

I find your decision to substantiate these allegations against me on the balance of probability callous, erroneous and bias. This goes against Ventia's own Just Culture Principles and is unreasonable in natural justice.

To also have the constant threat of maintaining confidentiality subject to further disciplinary action notwithstanding the termination of my employment since the start of this investigation, for which I am now being asked to show cause as to why I should not be terminated, has put me in a no-win situation, that I am unable to seek clarity from Wayne Parker as to his intentions of writing that email, that naturally has been intercepted by a Ventia employee or contractor legally or illegally. I maintain that Wayne Parker, being ex - Ventia Group H & C Manager would have all the information already from his time working with Ventia.

I maintain that I refute these allegations, and that I have not received any sort of compensation or the promise of compensation from Wayne Parker or his business, Hive Smart. I am merely a pawn Wayne Parker has used in his email communication to lend credence to whoever he wrote too.

I find it shocking and extremely callous that during our meeting on Friday 26th April 2024, when I once again challenged that my salary [REDACTED] - as I have not received written notice of the pay increment I received in March 24) was so far out to what was written by Wayne Parker as [REDACTED], your response was "that was the figure + Super and was close enough and how it was insinuated that that Wayne Parker may not fully remember our conversation in his email a few days later " shook me to the core, as it was then I knew we were not dealing with fact but with bias made up opinions.

I do not believe actual fact checking on the allegations was completed.

Once again, I put to you the details that Wayne had written in his email and how un-factual it was :-

- Leadership : My salary is indicated as [REDACTED], and EMOS as [REDACTED]. I reiterate once again, I do not have any knowledge or have ever had access to knowing EMOS salary and if I was looking at personal gain, why would I provide someone/anyone a salary that is lower that what I currently earn? What is the benefit in that ? On the balance of probability , one tends to inflate their salaries if one was looking for new opportunities. why would he not also then include [REDACTED] to/from WA, which is my actual package?
- H & C Manager : First, I advise you that I have never been the H & C Manager, but my initial title upon employment was Living Services Manager, and I am now 2IC EMOS. Wayne Parker indicates that as H & C Manager, I also looked after Accommodation & Town Cleaning. On the balance of probabilities, Wayne Parker is more likely gleaming from his time with the business and did not know the local dynamics in Woomera and still does not, as I was always known as the

Living Services Manager, and that Accommodation & Town Cleaning was never ever in my portfolio. Those portfolios were managed by Sanel Hitchins and April Taylor respectively. Why would I call myself the H & C Manager, and it makes no sense that I would tell Wayne that the H & C Manager runs all these service lines, when I manage the managers that run these service lines as the 2IC EMOS.

- Chef : Non-factual statement. [REDACTED]
- Food Service : Once again wildly inaccurate numbers, it is just not factual that [REDACTED]
Our menu is posted on our Facebook portal, this is easily checked online. [REDACTED]
There is nothing factual in this communication.
- Staffing : Non-Factual Statement: Once again, Wayne Parker has indicated that the incumbent is proposing a [REDACTED] that has not been eventuated. Not only does he contradict himself with [REDACTED] about the chefs above but if he is referring to the ensure Woomera team, we have already implemented [REDACTED]
Wayne Parker also indicates that we work with [REDACTED], this again is highly inaccurate as we work with several of our vendors but this information would have been available to him when he worked with us, but the local Woomera business has evolved since his time but his seems to still be plugging this old information, and for Wayne to indicate that our daily operations runs with [REDACTED] is very rich of him, and easily fact checked with our roster.
- Staff Meals : Non-Factual Statement: Wayne Parker has indicated I have implemented [REDACTED] If we go by what he has written under Staffing [REDACTED], then Wayne Parker is indicating that I have set up free staff meals for all Woomera staff, which [REDACTED]
[REDACTED] but again something that was in discussion when Wayne Parker was employed with Ventia, and he is once again peddling old information. We [REDACTED]

- Supermarket & Cafe : I don't have much to say in this context as this is such a generalization of any sort of cafe or supermarket. We [REDACTED] and once again this information would have been available to Wayne Parker during his employment with Ventia.

I am utterly disappointed and frustrated that you have substantiated these allegations on the balance of probabilities based of so many non- factual inaccuracies, and ask that you rescind these allegations against me without prejudice.

I have participated in this investigation process in good faith, fully engaged with the full belief that the facts irrefutably show that these allegations whilst needing to be investigated, will show my integrity was never compromised, but alas now, I am being asked to show cause as to why my employment should not be terminated.

I have been employed by Ventia for close to 20 months, and in that Ume, I have never been reprimanded but in fact have been praised on many occasions on how far we have taken Woomera in that past 18 months or so. My behavior and personal actions has always been exemplary, wanting to exceed our Code of Conduct whilst constantly working over and above my roster to maintain support to the local team and communication with Ventia Leadership.

I look forward to your response.

Yours Faithfully
Gary Dickman”

[82] Mr Dickman’s response did not alter Ms Maetze or Ms Demaine’s view. Each considered that dismissal was the appropriate sanction. Dismissal was an option presented to other managers (including Ms Maetze’s manager, a Ms Reynolds, who was the decision-maker).

[83] Senior management approved the decision.

Dismissal

[84] On 2 May 2024, a letter of termination was sent by Ms Maetze to Mr Dickman. It advised that his employment had been terminated for “misconduct”. He was paid four weeks in lieu of notice. The letter read:²²

“Dear Gary

Termination of employment

Further to our meeting today, Thursday 2 May 2024, this letter is to confirm the termination of your employment with Ventia (Australia) Pty Ltd (the Company).

You were provided with an investigation outcome and show cause letter dated Friday, 26 April 2024 detailing Ventia’s concerns relating to your conduct. This confirmed that the following was substantiated:

1. Disclosure of confidential information regarding Ventia's operation of the Woomera defence base.
2. Potential reputational and commercial damage to Ventia as the confidential information was provided to HiveSmart, a Company that partners with direct competitors of Ventia, at a time when the contract with our client is up for renewal.

Outcome

You were advised that you were required to show cause as to why the Company should not consider the termination of your employment as a disciplinary outcome. You were directed to provide your response in writing no later than 10am Tuesday 30 April 2024. You provided a written response to me at 2.33pm on Monday 29 April 2024.

Ventia has considered your response but does not consider that the information you raised sufficiently excuses your conduct.

We have determined that the allegations are substantiated, and that you have displayed behaviour that significantly falls below Ventia's expectations of you as an employee. As a consequence of your conduct the Company believes your ongoing employment is unreasonable, and therefore, your employment is terminated in respect of the misconduct outlined above, with immediate effect. In coming to this decision, all relevant information has been considered, including any mitigating circumstances.

You will be paid 4 weeks' pay in lieu of notice. In addition to this termination payment, you will be paid any outstanding payments you are entitled to up to the termination date. These amounts will be subject to taxation and will be paid into your bank account. Your final superannuation payments will also be paid into your superannuation fund.

We remind you of your post-employment obligations to return any company property, including intellectual property, and to maintain confidentiality.

Security & Confidentiality Requirements – Post Employment

You are reminded Ventia has an obligation to report any incidents or contacts which may be of a security concern to our client, the Australian Department of Defence. These incidents may include inappropriate conduct including disclosing any confidential, classified or sensitive information obtained during the course of your employment. It is a condition of your employment that you maintain security and confidentiality requirements, including upon termination from Ventia. Should you disclose any information considered confidential, classified or sensitive or engage in conduct which is of a security concern post your termination, Ventia may take any action necessary, up to and including reporting these matters to the Australian Department of Defence - Australian Government Security Vetting Agency (AGSVA).

You may continue to access the Employee Assistance Program (EAP) for a period of one month beyond today. This free and confidential counselling service can be contacted on [REDACTED]

Yours sincerely,

Ventia Australia Pty Ltd

Jessica Maetze
Regional Operations Manager SA”

Post-dismissal

[85] Mr Dickman filed this application on 9 May 2024 with the assistance of a paid agent.

[86] Mr Dickman secured alternate employment commencing 30 July 2024. According to Mr Dickman’s evidence it is a role utilising his skills but paying \$40-50,000 per year less than his total remuneration package at Ventia.

Submissions

Mr Dickman

[87] Mr Dickman submits that the dismissal was unfair on substantive and procedural grounds.

[88] He submits it was unfair because there was no valid reason. He submits that he did not breach his contractual or Code of Conduct obligations because he did not disclose confidential or commercially sensitive information to Mr Parker, as alleged or at all.

[89] He submits that reliance on the Parker email as evidence of disclosure is inappropriate because:

- the authenticity of the Parker email has not been established. It may be a fake;
- it is hearsay. Mr Parker was not called to give evidence as to its creation or the truth of its contents;
- Mr Dickman neither authored, knew of or instructed Mr Parker to draft the email or send the email to anyone let alone Ventia’s competitors; and
- the Parker email contains factual inaccuracies such that it could not reasonably be based on information conveyed by Mr Dickman.

[90] He submits that, even if the Parker email was to be relied upon to establish what he is alleged to have disclosed, it does not contain confidential or commercially sensitive information. Much of the contents are either inaccurate, available on the public record or permitted by law to be disclosed.

[91] In the alternative, Mr Dickman submits that dismissal was a disproportionate response given that any unauthorised disclosure was inadvertent.

[92] Mr Dickman submits that he was denied procedural fairness because:

- he was not shown the Parker email until the 10 April 2024 investigation meeting, and even then, not shown who it had been sent to;

- he was not informed how Ventia came to be in possession of the Parker email;
- his explanations were not seriously considered or considered with an open mind; and
- he was denied the chance to speak to the actual decision-maker(s) and put his case.

[93] Mr Dickman submits that trust and confidence between the parties has been eroded such that a compensation order is the only appropriate remedy and he should be compensated for his economic loss.

Ventia

[94] Ventia submit that the dismissal was not unfair because there were two valid reasons, and Mr Dickman was afforded procedural fairness that included fair investigation and disciplinary processes.

[95] The first valid reason is that Mr Dickman disclosed confidential or commercially sensitive information to Mr Parker during the lunch on 16 March 2024.

[96] Ventia submit that the evidence establishes a reasonable basis on which to make this finding. Ventia submit that it matters not whether the disclosure was intended to damage its interests. It is the fact of unauthorised disclosure which constitutes a breach of Mr Dickman's contractual and Code of Conduct obligations.

[97] Ventia submit the fact that some contents of the Parker email are incorrect or inexact does not mean that Mr Dickman did not disclose confidential or commercially sensitive information used by Mr Parker to author the email.

[98] Ventia submit that Mr Dickman's denials that he disclosed confidential or commercially sensitive information cannot be believed because he :

- was an unreliable witness. Whilst giving evidence, he adopted a similar vague and evasive posture to that which he displayed to the investigators;
- Mr Dickman communicated with Mr Parker once he was confronted with the allegations and sought to align their story until he realised that he might not be able to trust Mr Parker; and
- Mr Dickman could have but chose not to call Mr Parker to corroborate his denials. He did not do so because he could not trust Mr Parker under oath to not tell the truth that the Parker email was in fact based on information conveyed by Mr Dickman at the lunch.

[99] Ventia submit that unauthorised disclosure by an employee of confidential or commercially sensitive information at any time and to any person is a serious matter. The seriousness in this case is heightened by the fact that, at the time of the lunch, Mr Dickman:

- knew or ought to have known that Mr Parker was operating a consultancy business which included or may have included clients that were in competition to Ventia;

- knew or ought to have known that Ventia was at that time re-tendering for the defence contract including at Woomera;
- knew or ought to have known that the defence contract was substantial and material to Ventia's commercial interests; and
- knew or ought to have known that unauthorised disclosure of information about the operations at Woomera would, particularly at the time of a commercial tender, be likely to compromise Ventia's interests

[100] The second valid reason is that Mr Dickman breached his duty to be honest and not mislead the investigators. This duty was conveyed to Mr Dickman in writing in the allegations letter of 4 April 2024. Ventia made it known that breaching that duty could result in termination of employment. Despite this, Ventia submit that Mr Dickman was evasive and selective when addressing and responding to the investigators. In its own right, this lack of honesty was a serious breach of duty.

[101] Ventia submit that the investigation was thorough and fair. There was no predetermination, evidenced by the fact that an initial assessment was made before an investigation commenced.

[102] Allegations were put in writing, Mr Dickman was given time and a chance to respond in writing and then at meetings.

[103] A decision to find the allegations substantiated had a reasonable basis. It was reasonable for Ventia to consider the matter serious and commence a disciplinary process requiring Mr Dickman to show cause why his employment should not be terminated. Mr Dickman was given notice of this in writing. He elected to respond in writing rather than request another meeting.

[104] The decision to dismiss was made by properly authorised officers. It was neither impulsive nor without considered thought.

[105] To ease the impact on Mr Dickman, Ventia elected to pay him four weeks in lieu of notice.

Consideration

[106] No jurisdictional issues arise. Mr Dickman was a person protected from unfair dismissal (s 382). He served the statutorily required minimum employment period (s 382(2)(a)). His annual rate of earnings did not exceed the high income threshold (s 382(2)(b)(iii)). Ventia was a "national system employer" within the meaning of s 14. The application was made within time (s 394(2)).

[107] Nor is it in dispute that Mr Dickman was dismissed (s 386).

[108] This is not a matter where the Small Business Fair Dismissal Code applies.

[109] The issue for determination is whether the dismissal was “harsh, unjust or unreasonable” and, if so (but only if so) whether it is appropriate to order a remedy by way of reinstatement or compensation.

[110] Section 387 of the FW Act provides:

“387 Criteria for considering harshness etc.

In considering whether it is satisfied that a dismissal was harsh, unjust or unreasonable, the FWC must take into account:

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

Valid Reason (s 387(a))

[111] An employer must have a valid reason for dismissal. It is the Commission’s task to determine if a valid reason exists. The reason(s) should be “sound, defensible and well founded” and not “capricious, fanciful, spiteful or prejudiced.”²³

[112] In a conduct-based dismissal such as this, except where the Small Business Fair Dismissal Code applies, the test is not whether the employer believed on reasonable grounds, after sufficient inquiry, that the employee was guilty of the conduct. The Commission must itself make findings as to whether the conduct occurred based on the evidence before it.²⁴

[113] This principle is relevant in this matter because Ventia conducted a workplace investigation and formed its own view that misconduct had occurred. Whilst (for reasons that follow) I have concluded that Ventia’s investigators generally had reasonable grounds to do so, that does not dispose of the matter. It is the evidence before me, and inferences reasonably

drawn from that evidence, and that alone, which determines whether a finding of misconduct is made.

[114] Where an employee is dismissed for misconduct, an evidentiary onus rests on an employer to establish that, on the balance of probabilities, the misconduct occurred.²⁵

[115] The standard of proof is the civil standard; proof on the balance of probabilities. Where misconduct is alleged, the standard requires “a proper level of satisfaction”²⁶ that the conduct did in fact occur. This is commonly referred to as the *Briginshaw* standard.²⁷ A proper level of satisfaction bears a relationship to the seriousness of the alleged misconduct. In the case of serious allegations, the civil standard requires more than mere satisfaction that it is more likely than not that the conduct occurred. Rather, it requires a proper level of satisfaction that the conduct did in fact occur.

[116] Put another way, a reasonable suspicion or possibility is insufficient; a finding on the balance of probabilities that the conduct did in fact occur is required.

[117] This approach has been adopted by the Federal Court of Australia²⁸ and by full benches of the Commission²⁹ in dealing with unfair dismissal matters.

[118] Although Ventia did not summarily dismiss Mr Dickman for serious misconduct (it paid notice in lieu), the breach of confidentiality allegations are serious, even if not at the furthest end of the scale of seriousness (such as cases of dishonesty or fraud). The *Briginshaw* standard applies to this matter.

[119] Where, as in this matter, it is alleged that confidential or commercially sensitive information was disclosed by an employee, fairness requires a finding that particular information of that character was in fact disclosed, not simply that general topics or subject matters were discussed that may or may not have included confidential information (unless of course a topic itself is, by its very nature, confidential).

[120] I now deal with the first of the two reasons advanced by Ventia; that Mr Dickman disclosed confidential or commercially sensitive information to Mr Parker during the lunch on 16 March 2024.

[121] In dealing with this question two issues arise. Was information disclosed by Mr Dickman concerning the Woomera operations and, separately and if so, was that information confidential or commercially sensitive.

[122] It is appropriate at this juncture to deal with the Parker email.

[123] Mr Parker was not called by either party to give evidence about the email. That said, there is no evidence before me (only speculation by Mr Dickman) that the Parker email is inauthentic. I consider the Parker email relevant to the extent that it allows, as a finding of fact, that an email in those terms was sent by Mr Parker at 10.51am on Monday 18 March 2024 to the five named recipients and the three persons copied.

[124] However, the email is hearsay. The fact it was sent is not evidence of the truth of its contents. I do not rely on the email as evidence of the accuracy of what it asserts. Further, the email itself does not directly establish that, as a fact, Mr Dickman told Mr Parker at the lunch

what was written in the email. To make such a finding requires consideration of the email in the context of all relevant facts including surrounding circumstances.

[125] I decline to draw an adverse inference (*Jones v Dunkel*³⁰) against Mr Dickman for not calling Mr Parker.

[126] An inference of this type, were it made, does not enable facts not otherwise open to be found, to be so found. It simply has the effect of creating an inference that evidence of a certain witness would not have been helpful to the party that did not call the witness.³¹

[127] Mr Dickman's reason for not calling Mr Parker is understandable even if somewhat self-serving. According to his evidence, he could no longer trust Mr Parker once he discovered (on 10 April) the existence of the email³² and thereafter felt "used" by Mr Parker.³³ Yet if called, Mr Parker may have corroborated Mr Dickman's denial that he had disclosed confidential information.

[128] For its part, Ventia did not call Mr Parker because it didn't consider that it needed to speak to Mr Parker during the investigation and likewise did not consider it necessary to do so in these proceedings. This view was reasonably formed because Ventia had proper grounds to believe that Mr Parker was consulting to its competitors, once Ventia saw the email domains of the recipients to the Parker email.

[129] Whilst not calling Mr Parker has been unhelpful to the Commission and created a lacuna in the evidence, it is not necessary to draw the inference because it is Mr Dickman's conduct which is the subject of the misconduct allegation, not Mr Parker's conduct in drafting and sending the email. On the misconduct allegation, I have Mr Dickman's direct evidence, and evidence of surrounding circumstances from which reasonable inferences can be drawn.

[130] The evidence before me concerning the lunch is as follows:

- the lunch occurred. It was a social catch-up by Mr Dickman with a former work colleague with whom he had a well-established association, who had helped him get the job at Ventia, had since their last catch-up experienced a family tragedy, and with whom he had kept in touch;
- Mr Dickman expected to speak to Mr Parker over lunch about both personal and work matters;
- this is what happened. During the lunch Mr Dickman spoke to Mr Parker about his work at Woomera at least "in a general sense";³⁴ and
- Mr Dickman was asked by Mr Parker if he wanted a job elsewhere. Mr Dickman did not express interest in the job offered.

[131] The evidence before me concerning Mr Dickman's state of knowledge at the time of the lunch is as follows:

- Mr Dickman knew that Mr Parker was operating a consultancy business, Hive Smart. He knew that the consultancy provided support and advice on hospitality and catering services;³⁵

- Mr Dickman knew or ought to reasonably have known that Mr Parker, being no longer engaged by Ventia but still working in the industry, may have had clients or contacts that were competitors to the respondent;
- Mr Dickman knew that a process of competitive tender for the defence contract at Woomera (and other locations in South Australia) had commenced or was likely to shortly commence;³⁶
- Mr Dickman knew or ought to have known that the defence contract was substantial and material to Ventia’s commercial interests;
- Mr Dickman knew or ought to have known that unauthorised disclosure of information about the operations at Woomera would, particularly at the time of a commercial tender, be likely to compromise Ventia’s interests; and
- Mr Dickman knew of his contractual obligations concerning confidentiality³⁷. These were specified in his July 2022 employment contract and repeated in the June 2023 contract variation (save that, by then, Mr Dickman had a statutory right to disclose his salary, acknowledged by Ventia in June 2023).

[132] The evidence before me concerning events after the lunch are as follows:

- Mr Dickman thought the lunch friendly and unremarkable;
- two days after, unknown to Mr Dickman, Mr Parker sent an email via his Hive Smart consultancy to competitors or potential competitors of Ventia;
- the email only concerned matters involving catering and related services at Woomera. It did not concern other services or other locations;
- the email refers to a meeting “on Saturday”. The lunch between Mr Dickman and Mr Parker occurred the Saturday immediately prior;
- the email refers to a meeting with “the Woomera H&C Manager/Relief EMOS”. Mr Dickman was the 2IC EMOS at Woomera. There was no other Ventia 2IC at the Woomera site; and
- the email purports to be a “download on how things are progressing in the town”. The town of Woomera is where Mr Dickman worked for Ventia.

[133] Even allowing for the natural dulling of memory over time, I have also found that Mr Dickman’s evidence about the lunch was somewhat evasive and selective. It included material contradictions. For example, whilst stating that on 16 March 2024 Mr Dickman understood Mr Parker to be operating his own business, later in his evidence Mr Dickman stated that when he received the allegations letter on 4 April 2024, he “thought Mr Parker was still an employee of Ventia”.³⁸

[134] Reasonable inferences can be drawn from these facts and findings.

[135] I find that Mr Dickman spoke to Mr Parker over lunch on 16 March 2024 about what was happening at Woomera. A general finding of that type is not in dispute but falls well short of a finding of misconduct.

[136] More specifically, Ventia submit that, during the lunch, Mr Dickman:

“Disclosed confidential information regarding Ventia’s operation of the Woomera Defence base, including details of:

- Employee roster arrangements
- Employee salary packages and benefits
- Headcount and organisational structure
- Retention strategies
- The operation of the Supermarket and Café; and

Caused potential reputational and commercial damage to Ventia as the confidential information was provided to HiveSmart, a company that partners with direct competitors of Ventia, at a time when the contract with our client is up for renewal.”

[137] These are the allegations contained in Ventia’s letter of 4 April 2024 repeated in the show cause letter (26 April) and referenced in the termination letter (2 May) save that, at the hearing, Ventia did not press that unauthorised information concerning the supermarket and café had been disclosed.

[138] It is readily apparent from the above that the alleged misconduct concerns unauthorised disclosure of information in four subject matter categories. Although Ventia’s correspondence to Mr Dickman did not make it expressly clear, it is apparent from the investigation meeting and Ventia’s position at the hearing that the specific disclosures relied upon by Ventia are those disclosures in the Parker email which Ventia submit fall within those categories and which Ventia claim are confidential or commercially sensitive.

[139] Given:

- that the Parker email was sent only two days after the lunch;
- that its contents concerned only the town of Woomera and only food and catering issues therein, all of which were in Mr Dickman’s knowledge and direct responsibility; and
- that I have found Mr Dickman’s evidence about the lunch somewhat evasive and selective;

reasonable suspicion can be cast over whether Mr Dickman, advertently or inadvertently, disclosed to Mr Parker over lunch information of the type contained in the Parker email and in particular information about rosters worked by, or which may be worked by, catering staff, the general number of catering staff at Woomera and the provision of meals to staff.

[140] The inferences reasonably drawn from the evidence leads me to conclude that a possibility exists that Mr Dickman did so disclose. However, as noted, the allegations against

Mr Dickman are serious. The evidence needs to be such that a proper level of satisfaction is reached that the misconduct did in fact, on the balance of probabilities, occur.

[141] It is also the case that Ventia carries the onus to establish the fact of misconduct to the requisite standard of proof.

[142] Given that:

- Mr Dickman’s evidence leaves me with doubt over his denial and raises a possibility of a breach in relation to specific information, but no more than a possibility;
- the only other person at the lunch, Mr Parker, was not called to give evidence;
- none of the information that Ventia alleges to have been disclosed is alleged to have been communicated by Mr Dickman to Mr Parker in writing; the alleged disclosure is wholly based upon on what was or was not said over the lunch; and
- whilst Mr Parker subsequently put into an email information about Ventia’s catering activities at Woomera and attributed the source to a description that aligns to Mr Dickman, the contents of that email are hearsay and cannot be relied upon as establishing either the truth of what is stated in the email about the Woomera operations or the fact that the contents are what Mr Dickman actually disclosed;

I am unable to reach the required level of satisfaction that the specific confidential or commercially sensitive information alleged to have been disclosed was in fact disclosed by Mr Dickman, notwithstanding my conclusion that a possibility exists that this occurred.

[143] For example, Ventia submit that one of the specific disclosures made by Mr Dickman was that he disclosed the salary of his manager (the EMOS) to be [REDACTED] [REDACTED]”. Ventia advance this proposition because that is what the Parker email states as being attributable (amongst other matters) to the lunch meeting. Beyond the Parker email, Ventia advance no evidence on which that finding of fact should be made. It does so in the face of Mr Dickman’s denial that he did so and Mr Parker not being called. It relies wholly on an inference that because that proposition is stated in the Parker email and attributable in the email to the lunch, then it was disclosed.

[144] There is no proper basis on the evidence before me on which that finding can safely be made to the requisite standard of proof. Mr Dickman’s sworn testimony was that he did not know of his manager’s salary. Ventia led no evidence that Mr Dickman knew or would have likely known. Whilst I have expressed misgivings about significant portions of Mr Dickman’s evidence about the lunch, his evidence that he did not know his manager’s salary at the time of the lunch is not implausible. If Mr Dickman did not know then obviously a finding that he communicated such information over lunch is not open.

[145] Further, the wording of the email on salaries creates additional doubt. In relation to Mr Dickman’s salary, the Parker email states that the 2IC “is on” the specified sum. In contrast, in relation to the manager’s salary the email states that the manager “would be on” the specified sum. I agree with Mr Dickman that the use of the phrase “would be on” raises the possibility that the salary specified in the email is the product of conjecture by Mr Parker and not disclosure by Mr Dickman. Conversely, it could have been Mr Dickman’s speculation communicated to

Mr Parker and which he recorded. In the absence of Mr Parker giving evidence about whether the change of phraseology in his email is of any significance, that further doubt also weighs against making the finding sought by Ventia.

[146] I agree with Mr Dickman that some of the information in the Parker email is incorrect or inexact. However, that does not make it implausible that unauthorised information was disclosed. That Mr Parker may have, two days later, made errors with information he had gleaned, or rounded up or down certain information (such as salaries), is possible. However, for the aforementioned reasons, a finding that unauthorised disclosure did in fact occur has not been made.

[147] I also observe that it cannot be reasonably discounted that at least some of the information in the Parker email was based on a combination of Mr Parker's knowledge of Ventia's operations at Woomera (from his former consulting to and employment by Ventia) and publicly available information.

[148] Had I made a finding that confidential or commercially sensitive information was disclosed, I would have also found that Mr Dickman did so without thought to his confidentiality obligations and without believing that anything he said was particularly noteworthy, likely to compromise Ventia or be used to do so. In other words, I would have found any unauthorised disclosure to have been the product of thoughtlessness, not ill intent.

[149] Not having made the finding, I do not need to extensively deal with Mr Dickman's related submission that the term "confidential" has a different meaning from "commercially sensitive".

[150] However, considering the extensive submissions put at the hearing, it is appropriate to make some brief observations on that question.

[151] Firstly, whether any unauthorised information disclosed was confidential, commercially sensitive or both, Mr Dickman had a duty not to disclose information of either type.

[152] Secondly, some of the information in the Parker email was publicly known, for example menus and prices in the commercial venues at Woomera. That is clearly neither confidential nor commercially sensitive information. At the hearing, Ventia acknowledged that to be so.

[153] Thirdly, information about rosters worked was, in part, capable of being publicly known because when Ventia advertises for positions in remote locations, the evidence is that it usually indicates what the roster type is. However, information about whether a particular roster pattern that could be used more generally by Ventia was planned to be used to roster catering staff in the future is not necessarily publicly known. Further, and without being exhaustive, information about the approximate number of meals served at each dinner sitting is also not likely to be publicly known, or whether certain employees are provided free meals.

[154] Fourthly, any information Mr Dickman may have conveyed about his salary is not confidential information. Mr Dickman had a recently enacted statutory right³⁹ to disclose such information, and Ventia acknowledged that right at the time of the June 2023 contract variation. However, information about another person's salary (such as the EMOS manager) is confidential.

[155] I need not deal further with Mr Dickman’s related submission that information which is incorrect cannot be characterised as confidential or commercially sensitive. I simply observe that circumstances can be envisaged where information communicated without authorisation may be incorrect or inaccurate in a certain particular but nonetheless the fact of communication a breach of an employee’s duty to their employer.

[156] Despite my misgivings about Mr Dickman’s evidence, and whilst the evidence enables inferences to be drawn that establish a possibility that unauthorised information was thoughtlessly disclosed, I do not make a finding of misconduct on that account to the requisite standard of proof.

[157] Whilst not doing so, it is readily apparent from an overall consideration of the evidence that Mr Dickman made an error of judgement in that he gave insufficient thought to the risk he presented to Ventia in catching-up socially and discussing work matters with a former work colleague who was still consulting in the industry, and doing so at a time of a competitive tender. That error was not a valid reason for dismissal, but was nonetheless error because Mr Dickman did not give advance thought to what he should or should not say about Woomera operations. He simply left that to identifying, according to his evidence, “red flag questions” (if any) during the lunch.⁴⁰

[158] For example, Mr Dickman’s evidence was that, had he been asked by Mr Parker about his roster or whether recruiting staff was difficult, he would likely have told him.⁴¹ He had also told the investigators that had he been asked he would have told Mr Parker that the bar in Womera was doing much better⁴², that the supermarket was “going great”⁴³ and would have stated what quiet and busy days in relation to meal service look like⁴⁴. Mr Dickman’s general statement to the investigators that “if he (Mr Parker) asked me a correct question and this is something I know, I would have told him”⁴⁵ quite reasonably troubled the investigators. That casualness underscores the lack of thought with which Mr Dickman approached a social lunch that was likely to and did discuss work matters. Ms Demaine’s assessment⁴⁶ of error on these accounts was objectively reasonable albeit not, in the absence of an objective finding of a relevant unauthorised disclosure, of itself a valid reason for dismissal.

[159] I now deal with the second reason advanced by Ventia; that Mr Dickman breached his duty to be honest and not mislead the investigators.

[160] An employee’s duty of honesty and fidelity includes a duty to be truthful to workplace investigators about their conduct or workplace events. This duty was made known to Mr Dickman in express terms via the allegations letter of 4 April 2024. Ventia informed Mr Dickman that breaching the duty could result in termination of employment.

[161] Having regard to the evidence of Ms Demaine, Mr Maetze and Mr Dickman, together with Ms Demaine’s notes of the investigation meeting and Mr Dickman’s email of 8 April to Ms Maetze and his confirmed statement, I am well satisfied that Mr Dickman was selective and somewhat evasive to the investigators. For example, Mr Dickman’s assertion that he met with “an ex-colleague and friend” (Mr Parker) but not “a Hive Smart representative”⁴⁷ was not only deflection but also misleading because Mr Dickman knew at the time that Mr Parker was operating the Hive Smart consultancy.

[162] However, whilst the investigators were entitled to have (and reasonably had) doubts over Mr Dickman’s candour, it was not reasonably open for Ventia to make a finding of

dishonesty because they did not have a sufficiently reliable counterfactual (such as Mr Parker's version of what was said at the lunch) against which to assess if Mr Dickman had in fact made a false denial. Ventia elected not to speak to Mr Parker and relied solely on its analysis of his email and Mr Dickman's response to it.

[163] Whilst Ventia's subjective belief that confidential information had been disclosed was reasonably open to it, it is apparent from the evidence of Ms Demaine and Ms Maetze that both placed weight on what Ms Demaine described in her evidence as the "presentation" of the information in the Parker email.⁴⁸ That presentation was an accumulation of information by subject matter and attributed to a "recent" meeting with "the Woomera H&C Manager/Relief EMOS" and sent to identifiable competitors. Whilst that presentation properly accentuated Ventia's concern, I have found that Mr Dickman had no role in the way information was presented in the email, irrespective of what information was disclosed over lunch. In contrast to the investigators, I place no relevant weight on the email's presentation of particular information other than my finding that the description of who Mr Parker said he had met aligned to Mr Dickman.

[164] I also take into account that the investigation meeting occurred nearly one month after the lunch. It is not implausible that a person may not precisely recall what they had said over a lunch one month earlier.

[165] Further, as Ms Demaine acknowledged during the investigation, Mr Dickman had correctly pointed to some factual errors in the Parker email.

[166] Even though Mr Dickman's selectiveness to the investigators smacked of deflection and created a reasonable basis to erode trust and confidence, it was not a ground for dismissal in its own right because the fact of a false denial had not, in objective terms, been established.

[167] No valid reason for dismissal existed within the meaning of s 387(a). This is despite there being a possibility that Mr Dickman had thoughtlessly disclosed unauthorised information and had given his employer cause to form a reasonable belief that he had done so including because of his selectiveness and lack of candour to the investigators.

[168] That no valid reason has been established weighs in favour of a finding that the dismissal was unfair.

Notification of the reason for dismissal (s 387(b))

[169] Mr Dickman was notified in the termination letter of the reason for dismissal. The reason was misconduct (disclosure of confidential or commercially sensitive information). The earlier show cause letter stated that the employer had "lost confidence that you can act in a manner consistent with our behavioural expectations and values". It also referred to alleged reputational damage.

[170] Mr Dickman was not notified, either in the show cause letter or the termination letter, of the second reason now advanced by Ventia (breach of duty to be honest and not mislead investigators).

[171] Considered overall, s 387(b) is a neutral factor.

Opportunity to respond (s 387(c))

[172] The evidence clearly establishes that Mr Dickman had an opportunity to respond at both the investigation and disciplinary stages.

[173] Those opportunities were available in writing and orally. Mr Dickman did not avail himself of an opportunity to meet in response to the show cause letter. Rather he elected to respond in writing only.

[174] Considered overall, I do not find that Mr Dickman was denied an opportunity to respond or otherwise denied procedural fairness. I find that both the investigation and subsequent disciplinary processes were orderly, had reasonable time frames and were considered.

[175] I reject Mr Dickman's submission that the decision was pre-determined or that his responses were only given cursory consideration. The documentary material in evidence, and the oral evidence of both Ms Demaine and Ms Maetze, belie this submission. Ms Demaine went to considerable lengths to ensure that Mr Dickman's explanations were received and considered. She herself assembled Mr Dickman's responses to the investigators into a statement and sent it to him for confirmation.

[176] I have taken into account that Mr Dickman was only shown, but not given, a copy of the Parker email on 10 April and not provided a copy until 26 April (with recipients redacted). This was not however a denial of procedural fairness because reasonable access was provided. It was understandable that Ventia sought to restrict the email's circulation or potential circulation given its concern that the email's content may compromise their interests. Nor was it unreasonable for Ventia to not provide Mr Dickman details of how the email came into its possession or its internal chain of custody. This is because Mr Dickman was not alleged to have authored or distributed the email. The investigation was not into the email's chain of custody.

[177] However, it would have been contextually relevant for Mr Dickman to be aware of the email's recipients (these were redacted in the copy he was shown and given). Those recipients were Ventia's competitors or potential competitors. Knowing this would have provided context to Mr Dickman in understanding why Ventia considered the alleged disclosure to potentially compromise its interests. However, redacting that information was not of itself a denial of procedural fairness because Mr Dickman was not alleged to have disclosed information to any person other than Mr Parker. Mr Dickman was shown Mr Parker's details as sender and author of the email.

[178] Nor do I find that Mr Dickman was denied procedural fairness because he was not informed of who in senior management made the decision to dismiss or given an opportunity to speak to that person or those persons. Firstly, Mr Dickman was given an opportunity to respond to Ms Maetze and Ms Demaine who each agreed that he should be dismissed. Secondly, in a large organisation senior management signing off (if appropriate) a recommendation to dismiss a 2IC manager provides a check and balance against impulsive decisions. It is not for the Commission to regulate whether and how an employer provides internal checks and balances (if any) when making decisions to dismiss. What is relevant is whether procedural fairness was provided in an overall sense to the relevant employee. In this matter, it was.

[179] In considering procedural fairness I also take into account that Mr Dickman had been expressly informed of confidentiality obligations as a term of his employment (letters of 6 July

2022 and 8 June 2023) and was made aware at the time of engagement that the Ventia Code of Conduct applied to his employment.

[180] That Mr Dickman was provided an opportunity to respond weighs against a finding that the dismissal was unfair.

Opportunity for support person (s 387(d))

[181] Mr Dickman was not refused a support person. Both the letters requiring him to attend the investigation meeting (4 April) and the show cause meeting (26 April) expressly gave him the opportunity to so request.

[182] Section 387(d) is a neutral factor.

Warnings concerning performance (s 387(e))

[183] Mr Dickman had an unblemished record. Ventia did not rely on past performance or conduct failures in dismissing Mr Dickman. There is no evidence of such before me. Nor is there evidence of performance warnings.

[184] Being a conduct, and not performance based, dismissal, s 387(e) is a neutral factor.

Size of employer's enterprise (s 387(f)) and human resource capability (s 387(g))

[185] Ventia is a large business. It is an employer equipped to undertake and commission disciplinary processes and workplace investigations. It has extensive human resources capability.

[186] Sections 387(f) and (g) are neutral factors.

Other matters (s 387(h))

[187] There are no other matters raised by Mr Dickman or Ventia requiring consideration.

Conclusion on unfairness

[188] Even though Ventia generally formed a reasonable belief that Mr Dickman had disclosed unauthorised information about catering operations at Woomera, and despite Mr Dickman having been selective and somewhat evasive during the investigation and having also been afforded procedural fairness, the absence of a valid reason based on an objective finding of misconduct to the requisite standard of proof leads me to conclude that the dismissal was, considered overall, unfair.

Remedy

[189] I now consider remedy.

[190] Remedies available to the Commission under s 390 of the FW Act are reinstatement (in the same or other position) or (but only if reinstatement is inappropriate) compensation (within statutory limits).

[191] Whether to order a remedy is discretionary.

[192] Reinstatement, given all that has occurred, is inappropriate. Ventia has lost trust and confidence in Mr Dickman, and he in its management and systems. In light of my findings, that loss of trust and confidence is objectively reasonable on both sides.

[193] I turn to compensation.

[194] Section 392 provides:

“392 Remedy—compensation

Compensation

- (1) An order for the payment of compensation to a person must be an order that the person’s employer at the time of the dismissal pay compensation to the person in lieu of reinstatement.

Criteria for deciding amounts

- (2) In determining an amount for the purposes of an order under subsection (1), the FWC must take into account all the circumstances of the case including:
 - (a) the effect of the order on the viability of the employer’s enterprise; and
 - (b) the length of the person’s service with the employer; and
 - (c) the remuneration that the person would have received, or would have been likely to receive, if the person had not been dismissed; and
 - (d) the efforts of the person (if any) to mitigate the loss suffered by the person because of the dismissal; and
 - (e) the amount of any remuneration earned by the person from employment or other work during the period between the dismissal and the making of the order for compensation; and
 - (f) the amount of any income reasonably likely to be so earned by the person during the period between the making of the order for compensation and the actual compensation; and
 - (g) any other matter that the FWC considers relevant.

Misconduct reduces amount

- (3) If the FWC is satisfied that misconduct of a person contributed to the employer’s decision to dismiss the person, the FWC must reduce the amount it would otherwise order under subsection (1) by an appropriate amount on account of the misconduct.

Shock, distress etc. disregarded

- (4) The amount ordered by the FWC to be paid to a person under subsection (1) must not include a component by way of compensation for shock, distress or humiliation, or other analogous hurt, caused to the person by the manner of the person's dismissal.

Compensation cap

- (5) The amount ordered by the FWC to be paid to a person under subsection (1) must not exceed the lesser of:
- (a) the amount worked out under subsection (6); and
 - (b) half the amount of the high income threshold immediately before the dismissal.
- (6) The amount is the total of the following amounts:
- (a) the total amount of remuneration:
 - (i) received by the person; or
 - (ii) to which the person was entitled;(whichever is higher) for any period of employment with the employer during the 26 weeks immediately before the dismissal; and
 - (b) if the employee was on leave without pay or without full pay while so employed during any part of that period—the amount of remuneration taken to have been received by the employee for the period of leave in accordance with the regulations.”

[195] I now consider each of the criteria in s 392.

Viability: s 392(2)(a)

[196] Ventia is a large business with commensurate resources. There is no evidence before me that the compensation sum I will order will relevantly impact its viability.

Length of service: s 392(2)(b)

[197] Mr Dickman worked for Ventia for approximately twenty-two months.

Remuneration that would have been received: s 392(2)(c)

[198] Mr Dickman had intended to continue his career with Ventia for the foreseeable future, despite being a FIFO worker between Perth and Woomera with the attendant pressures of working such an arrangement. However, Ms Maetze's evidence⁴⁹ was that Mr Dickman had in

the past raised the possibility that continuing to work at Woomera may lead him to resign. Mr Dickman disputed that such a discussion with Ms Maetze had occurred. I prefer Ms Maetze's evidence. In any event, Mr Dickman's evidence was that he had in fact resigned in mid-2023 before staying on after being offered the EMOS 2IC role on a FIFO basis.⁵⁰

[199] I have found that Mr Dickman had experience and skills such that he was likely capable of securing work elsewhere in the industry, but had (at the 13 March lunch) rebuffed a suggestion to move on from Ventia.

[200] I have found that the Parker email, the investigation and the show cause process were all reasonable steps taken by Ventia. Similarly, its belief of misconduct, whilst subjectively formed, was reasonably open to it given Mr Dickman's lack of candour to the investigators. I have also found that Mr Dickman made an error of judgement in not giving advance thought to the guard-rails around which he would discuss work matters over a social lunch with Mr Parker.

[201] Objectively considered, if Ventia had not dismissed Mr Dickman at the conclusion of the show cause process, the events of the month prior had nonetheless materially eroded trust and confidence on both sides. That erosion may have led to Mr Dickman leaving his job at Woomera earlier than he might otherwise have planned. A future possibility also exists, though more remote, that Mr Dickman may have been subsequently dismissed on conduct grounds, given that his errors of judgement warranted warning and his conduct would have likely been more closely scrutinised, had further error been made on his part.

[202] Overall, I consider that Mr Dickman would have likely been in employment for five months (twenty weeks). From this, four weeks will be deducted for contingencies (three weeks for the potential of a future resignation and one week for the potential of a future dismissal).

[203] The future remuneration that would have been received will be assessed on the basis of a sixteen week period (20 weeks less four weeks contingencies).

Mitigating efforts: s 392(2)(d)

[204] Mr Dickman took steps in the wake of being dismissed to mitigate his loss by seeking fresh employment.⁵¹ He secured fresh employment from 30 July 2024, albeit at a lesser annual remuneration than his position at Ventia.

[205] I will make no deduction given that reasonable mitigation efforts were made.

Remuneration earned or likely to be earned: ss 392(2)(e) and (f)

[206] Four week's pay in lieu of notice was provided. This is the period from 3 to 30 May 2024. This will be deducted from the compensation sum.

[207] Mr Dickman earned income from 30 July 2024, albeit \$40-50,000 per year below his annual remuneration at Ventia. This is approximately 25% less in annual remuneration.⁵² Mr Dickman's evidence was that in the new role his salary component is \$114,000 per year plus a \$20 allowance per working day. He is also paid superannuation at the statutory rate. This represents an approximate sum of \$119,000 per annum plus superannuation.⁵³

[208] A portion (approximately three weeks) of the compensation period (12 weeks, see below) is attributable to the period after 30 July. I will deduct earnings in that three week period from the compensation sum by only including the remuneration differential.

Other matters: s 392(2)(g)

[209] I have taken several contingencies into account. There are no other contingencies that need be provided for.

[210] I have not (below) taken into account misconduct as the misconduct alleged has not been found.

[211] However, I have found errors on Mr Dickman's part which materially contributed to Ventia reasonably forming a belief of misconduct which gave rise to dismissal and a reasonably held erosion of trust and confidence. Those errors include:

- my finding that Mr Dickman made an error of judgement in that he gave insufficient thought to the risk he presented to Ventia in catching-up socially and discussing work matters with a former work colleague who was still consulting in the industry, and doing so at a time of a competitive tender; and
- my finding that Mr Dickman was selective and somewhat evasive to the investigators including misleading them by stating that he had lunch with Mr Parker but not a representative of Hive Smart despite knowing that Mr Parker was, at the time of the lunch, the operator of Hive Smart.

[212] Given this material contribution by Mr Dickman to the loss he now seeks to be compensated for, I consider it appropriate, in the overall exercise of discretionary considerations to discount the compensation order in two respects. Firstly, the compensation sum that would otherwise be ordered will be discounted by 10%. Secondly, I will not apply the usual principle⁵⁴ that superannuation be paid on the compensation sum. No order for the payment of superannuation will be made.

[213] There are no other matters to be taken into account.

Misconduct: s 392(3)

[214] I have not found, to the relevant standard of proof, that misconduct as alleged occurred. Accordingly, I make no deduction on that account.

Shock, Distress: s 392(4)

[215] Mr Dickman defended his ground prior to dismissal and was naturally upset at being dismissed. He had strongly protested Ventia's finding that the allegations had been substantiated.

[216] However, the unfair dismissal jurisdiction is unable to compensate for shock and distress, and I do not do so.

Compensation cap: s 392(5)

[217] The amount of compensation I will order does not exceed the six month compensation cap.

Conclusion on compensation

[218] A decision to order a remedy is discretionary. The quantum of compensation must take into account the circumstances set out in s 392(2) and apply those considerations as a whole and consistent with the ‘fair go all round’ principle.

[219] Whilst an orderly process of quantification is to be conducted in accordance with well-established Commission authority,⁵⁵ the quantum (if any) ultimately needs to be a sum that reflects the overall exercise of discretionary considerations.

[220] Based upon the above considerations, the compensation payable would be:

Compensation period of 20 weeks
Less
Contingencies (4 week deduction); and
Payment in lieu of notice (4 week deduction).

[221] This represents a compensation sum of twelve weeks.

[222] The annual salary the compensation sum will be calculated on is that which was advised in June 2023 being \$153,846.15 (\$2,958.58 per week).⁵⁶ I will not include a possible increase in salary that Mr Dickman believes he recently received but for which I have no documented evidence other than Mr Dickman’s assertion.

[223] Noting that the four weeks paid in lieu was for the period 2 May to 30 May, the twelve week compensation period extends from 31 May to 22 August 2024.

[224] For nine of these weeks Mr Dickman earned no income. Over those nine weeks the compensation amount is \$26,627.22.⁵⁷

[225] The remaining three weeks (when Mr Dickman was in alternate employment albeit with a 25% lower rate of earnings) I will calculate as the differential between \$2,958.58 per week (salary component had Mr Dickman been working at Ventia) and \$2,288.46 per week (salary component plus daily allowance in alternate employment⁵⁸). That differential is \$670.12 per week. In the three week period this amounts to \$2,010.36⁵⁹, which I will add to the compensation sum.

[226] This amounts, over the twelve weeks, to \$28,637.58.⁶⁰

[227] Discounting this sum by 10% on account of Mr Dickman’s conduct that contributed to the dismissal, the compensation sum is \$25,773.82.⁶¹

[228] This is an amount I consider appropriate in the overall exercise of discretionary considerations.

Conclusion

[229] The dismissal of Mr Dickman was harsh, unjust or unreasonable.

[230] Reinstatement is inappropriate.

[231] Compensation will be ordered in the sum of \$25,773.82 to be taxed according to law. No order for the payment of superannuation is made.

[232] This sum is payable within twenty-eight days of the date of this decision.

[233] I issue an order to this effect.⁶²

[234] For the sake of completeness, I dismiss Ventia's application of 26 September 2024 for confidentiality orders relating to certain parts of the evidence of Ms Demaine and Ms Maetze, and the transcript of proceedings as it relates to those matters. It is unnecessary to do so for three reasons. Firstly, a confidentiality order concerning the use and distribution of exhibit MD3 accompanied my production order of 16 September 2024, and that remains in place. Secondly, this published decision redacts relevant portions of MD3 and the allegations. Thirdly, Commission record-keeping policy does not make case files (including transcripts of proceedings) in unfair dismissal matters available to third parties.⁶³



DEPUTY PRESIDENT

Appearances:

A. Dircks, *of Just Relations*, on behalf of G. Dickman

J. P. Xiao, with L. S. Sim assisting, *both of Kingston Reid*, on behalf of Ventia Australia Pty Ltd, with A. Mergerdichian of Ventia Australia Pty Ltd also attending.

Hearing details:

2024.

Adelaide (Hybrid);

30 September and 1 October.

Printed by authority of the Commonwealth Government Printer

<PR780428>

¹ MD3 to witness statement of Megan Demaine

² R2 MD1

³ A1 GD1; R2 MD2

⁴ Audio recording 30.09.2024 at 2:57:50

⁵ Audio recording 30.09.2024 at 2:39:00

⁶ R1 MD3

⁷ J2 MD4

⁸ R2 MD5

⁹ FWC1

¹⁰ A3

¹¹ R1 MD6

¹² A3

¹³ Ibid

¹⁴ R2 MD7

¹⁵ R2 paragraph 31

¹⁶ R2 MD8

¹⁷ A3

¹⁸ Audio recording 30.09.2024 at 4:41:00

¹⁹ R2 paragraphs 45 and 47

²⁰ R1 JM3

²¹ R1 JM4

²² A1 Attachment 7

²³ *Selvachandran v Peterson Plastics Pty Ltd* (1995) 62 IR 371, 373

²⁴ *King v Freshmore (Vic) Pty Ltd* AIRCFB Print S4213, [24]

²⁵ *Edwards v Guidice* (1999) 94 FCR 561, [6] - [7]

²⁶ *Budd v Dampier Salt Ltd* (2007) 166 IR 407, [14] – [16]

²⁷ *Briginshaw v Briginshaw* (1938) 60 CLR 336

²⁸ *Edwards v Guidice* (1999) 169 ALR 89, 92 per Moore J

²⁹ *Parker v Garry Crick's (Nambour) Pty Ltd t/as Crick's Volkswagen* [\[2018\] FWCFCB 279](#), [124] – [125]; *Hill v Peabody Energy Australia PCI Pty Ltd* [\[2017\] FWCFCB 4944](#), [15]; *Heinz Company Australia Ltd v Green* [\[2014\] FWCFCB 6031](#), [14] – [15]; *Budd v Dampier Salt Ltd* (2007) 166 IR 407, 14 - 16

³⁰ (1959) 101 CLR 298

³¹ *Tamayo v AlSCO Linen Service Pty Ltd* (1997) Print P1859 as cited in *Hyde v Serco Australia Pty Limited* [\[2018\] FWCFCB 3989](#), [102]

³² Audio recording 30.09.2024 at 4:51:05; 4:52:20

³³ Audio recording 30.09.2024 at 6:23:30

³⁴ A1 paragraph 14

³⁵ Audio recording 30.09.2024 at 2:49:10; 4:00:50; 5:58:53

³⁶ Audio recording 30.09.2024 at 3:02:05

³⁷ Audio recording 30.09.2024 at 3:04:25

³⁸ Audio recording 30.09.2024 at 3:49:15

³⁹ *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*

⁴⁰ Audio recording 30.09.2024 at 6:31:10

⁴¹ Audio recording 30.09.2024 at 6:30:30; 6:34:10

⁴² R1 MD7 page 3

⁴³ R1 MD7 pages 2 and 3

⁴⁴ R1 MD7 page 3

⁴⁵ Ibid

⁴⁶ Audio recording 01.10.2024 at 2:04:10

⁴⁷ A1 GD5 paragraph 2

⁴⁸ Audio recording 01.10.2024 at 1:05:50; 1:06:40; 2:00:00 – 2:03:20; Ms Maetze 01.10.2024 at 3:32:10 – 3:33:30

⁴⁹ R2 paragraph 34

⁵⁰ A2 paragraph 8

⁵¹ GD16

⁵² Total fixed remuneration of \$170,000 p/a at Ventia less, say, \$45,000 p/a is a reduction of 26.47% (rounded to 25%)

⁵³ \$114,000 plus \$5,000 (assuming 250 days per year at \$20 per day)

⁵⁴ *Wingate v Causeway Holdings Pty Ltd* [2017] FWC 6247, [67] – [76] citing *Shorten and Oths v Australian Meat Holdings* [1996] 70 IR 360, [6]

⁵⁵ *Ellawala v Australian Postal Corporation* [2000] AIRC 1151, Print S5109; *Sprigg v Paul's Licensed Festival Supermarket* [1998] AIRC 989, Print R0235

⁵⁶ A1 GD1

⁵⁷ \$2,958.58 x 9 weeks = \$26,627.22

⁵⁸ \$119,000 per year amounts to \$2,288.46 per week)

⁵⁹ \$670.12 x 3

⁶⁰ \$26,627.22 plus \$2,010.36

⁶¹ \$28,637.58 less 10%

⁶² [PR780429](#)

⁶³ *Mather v Police Association of South Australia* [2024] FWC 553, [16]