DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Ramlan Abdul Samad

v

Phosphate Resources Ltd T/A Christmas Island Phosphates
(U2024/7715)

DEPUTY PRESIDENT O'KEEFFE PERTH, 1 NOVEMBER 2024

Remedy for unfair dismissal – reinstatement inappropriate – compensation ordered.

[1] In my decision [2024] FWC 2868 (PR780293) I found that Mr Ramlan Abdul Samad (the Applicant) had been unfairly dismissed from his employment with Phosphate Resources Limited (the Respondent). Following the publication of that decision, I conducted two conferences between the parties to determine if they could agree on a remedy. The parties could not reach agreement and so I invited them to make additional written submissions on the subject of remedy. These submissions were received on 30 October 2024 and the submissions on reinstatement are summarised as follows.

Reinstatement - submissions

[2] With respect to reinstatement, the Applicant submitted that s.390(3) of the Act prioritises reinstatement and that there were no grounds for finding that reinstatement was not appropriate. He submitted that while the Respondent opposed reinstatement, the FWC could not base a decision not to reinstate solely on the opposition of the Respondent. The Applicant further submitted that in any case, the Respondent did not have any valid reason to oppose reinstatement.

[3] It was the Applicant's view that there was no merit in the Respondent's position that reinstatement would undermine its system of complaint and punishment and act as a barrier to future complaints by employees. Instead, the Applicant proposed in essence that if dismissal was the likely outcome of a complaint, employees might be less likely to complain about a fellow employee.

[4] Finally, the Applicant noted that the reasons why his dismissal was found to be unfair were relevant reasons as to why reinstatement was appropriate. Those reasons were the lack of employment opportunities on Christmas Island, the Applicant's age – being 62 – and his long service without any recorded prior incidents of behaviour similar to that which led to his termination.

[5] The Respondent submitted that reinstatement was not appropriate. Primarily, it submitted that there was a breakdown of trust and confidence between the parties meaning that the working relationship had been irreparably damaged. The evidence of this breakdown was submitted to be demonstrated by a number of factors. In the first instance, the Respondent highlighted the fact that I had found that there was a valid reason for termination and the actions that gave rise to that valid reason undermined trust and confidence in the Applicant.

[6] This loss of trust was submitted to be exacerbated by my finding[1] that the Applicant had been an evasive witness and that where there had been a discrepancy between his evidence and the evidence of the Respondent's witnesses I had preferred the Respondent's evidence. The Respondent further submitted that there was a lack of remorse shown by the Applicant and that he had engaged in "victim-blaming." In support of this submission it noted comments in my decision where I found this to be the case.[2]

[7] The Respondent also submitted that the Applicant's actions in engaging in bullying and harassing a fellow employee were actions that could cause serious and imminent risk to health and safety. The severity of the bullying was such that of itself it had caused damage to the relationship of trust and confidence.

[8] Finally, the Respondent submitted that Mr Rahman - the employee who had made the complaint about the Applicant that eventually led to his dismissal - had expressed concerns at the time of making his complaint about the Applicant's potential behaviour. It was submitted that the Applicant had:

> *"…continued to bully, harass and abuse Mr Rahman in circumstances where the Applicant has made a claim for unfair dismissal and is asking for reinstatement."*[3]

In support of this contention the Respondent relied on the unchallenged evidence from Mr Rahman' witness statement about the Applicant making a rude gesture towards him as he drove by in his car.

Consideration – is reinstatement inappropriate?

[9] I should start by noting that I agree with the proposition of the Applicant that the mere fact of an employer's opposition to reinstatement does not create a barrier to reinstatement. Were it to be otherwise then the most egregious of injustices to employees could not be properly remedied where the employer simply said "no" to reinstatement. For reinstatement to be found to be inappropriate requires a far more rigorous examination of the situation. In this instance, the Respondent relies heavily on the notion of loss of trust and confidence. This notion has been explored at some length in decisions of the FWC and various courts.

[10] A helpful summary of relevant propositions can be found in the Full Bench decision in *Nguyen v Vietnamese Community in Australia (Nguyen)* where the Full Bench noted as follows (citations removed):

> *"The following propositions concerning the impact of a loss of trust and confidence on the question of whether reinstatement is appropriate may be distilled from the decided cases:*

- *Whether there has been a loss of trust and confidence is a relevant consideration in determining whether reinstatement is appropriate but while it will often be an important consideration it is not the sole criterion or even a necessary one in determining whether or not to order reinstatement.*
- *Each case must be decided on its own facts, including the nature of the employment concerned. There may be a limited number of circumstances in which any ripple on the surface of the employment relationship will destroy its viability but in most cases the employment relationship is capable of withstanding some friction and doubts.*
- *An allegation that there has been a loss of trust and confidence must be soundly and rationally based and it is important to carefully scrutinise a claim that reinstatement is inappropriate because of a loss of confidence in the employee. The onus of establishing a loss of trust and confidence rests on the party making the assertion.*
- *The reluctance of an employer to shift from a view, despite a tribunal's assessment that the employee was not guilty of serious wrongdoing or misconduct, does not provide a sound basis to conclude that the relationship of trust and confidence is irreparably damaged or destroyed.*
- *The fact that it may be difficult or embarrassing for an employer to be required to re-employ an employee whom the employer believed to have been guilty of serious wrongdoing or misconduct are not necessarily indicative of a loss of trust and confidence so as to make restoring the employment relationship inappropriate".*[4]

[11] The case law also highlights another relevant consideration for the FWC. In *Australasian Meat Industry Employees' Union v G & K O'Connor Pty Ltd (O'Connor)* Justice Gray observed as follows:

> *"The law relating to the need for trust and confidence in an employment relationship was developed at a time when employment invariably involved a close personal relationship between employer and employee. The advent of corporate employers has diminished the importance of this element of the employment relationship. A corporation has no sensitivity. The crucial question must be what effect, if any, loss of trust by a manager in an employee is likely to have on the operation of the workplace concerned. It might be more significant, for instance, to know the name of Mr Voss's immediate supervisor and to know the attitude of that person towards him. If the immediate supervisor had no trust in Mr Voss, it might also be relevant to know whether it would be possible to place Mr Voss in another part of the workplace, under another supervisor, who did have such trust. It would also be relevant to know what effect any lack of trust by any manager or supervisor in a particular employee might have on the conduct of operations in the workplace. There is no evidence as to any of these matters."*[5]

[12] The comments of Justice Gray in *O'Connor* were considered by Deputy President Gostencnik in *Colson v Barwon Health (Colson)* where the Deputy President observed as follows:

> *"I do not take his Honour's comments to mean that trust and confidence as an element of the employment relationship is no longer important. It is merely recognition that in many cases it will be important to have regard to the totality of the employment, and that in the case of a corporate employer, the loss of trust and confidence in the employee will be by a manager or managers of the corporate employer…*

> *In my view, His Honour is merely saying that it is not enough to simply assert that trust and confidence in an employee has been lost. Where this is relied upon then there must be evidence from the relevant managers holding that view and an assessment must be made as to the effect of the loss of trust and confidence on the operations of the workplace. In short, all of the circumstances must be taken into account. This seems evident and is hardly controversial."*[6]

[13] From the above cases I draw the following conclusions regarding the submission of loss of trust and confidence made by the Respondent. Firstly, and drawing upon the first dot point in *Nguyen* as set out above, while I accept that trust and confidence has some bearing on this case, I do not regard it as being the sole criterion for my analysis. I am also of the view, drawing this time on dot point two in *Nguyen*, that the employment relationship can withstand some friction and doubts. I do not accept that this particular incident, standing as it does on its own in terms of the Applicant's history of behaviour, should be regarded as meaning the practical relationship is irretrievable in the absence of evidence that this was the case.

[14] While it is true that I observed in my decision on the merits of the matter that the Applicant was an evasive witness, a careful reading will note that this was a qualified statement:

> *"The Applicant tended – at times - to be a somewhat evasive witness when faced with direct questions where an admission would have been unhelpful to his case."*[7]

I am also mindful that while he may have prevaricated somewhat and even sought to question the exact nature of his wrongdoing, in his interactions with the Respondent during its investigations there is no evidence the Applicant sought to engage in outright denial with respect to making the comments alleged by Mr Rahman. While the Respondent seems to make much of the loss of trust and confidence, it does not appear to suggest that the Applicant has demonstrated that he was seriously untruthful to the Respondent itself.

[15] This then leads me to consider the notion of the corporate entity and in doing so I intend to expand upon my concept of the practical relationship as mentioned in paragraph 13 above. Drawing from the comments of Justice Gray in *O'Connor* and the observations of those comments from Deputy President Gostencnik in *Colson* I find that I should look to the practical realities of the employment relationship between the Applicant and the Respondent.

[16] While Justice Gray dealt with the issue of the true nature of the corporation by observing that it has no sensitivity, I think a more poetic assessment was provided by Justice Keane of the High Court in his Harold Ford Memorial Lecture in 2022 where his Honour said as follows:

> *"For all their vital practical significance, corporations are, of course, legal fictions; they are works of the human imagination that exist only because the law says that they do."*[8]

[17] As such, it cannot be said that Phosphate Resources Limited has lost trust and confidence in the Applicant. Only human beings can lose trust and confidence in other human beings. And so I turn to the question of who has lost trust and confidence in the Applicant. I think it is reasonable to assume that – based on her evidence – Ms Lucinda Locke may have

lost some level of trust and confidence. But Ms Locke by her own admission is based in mainland Australia and rarely visits Christmas Island. Mr Kennedy, who conducted the case as in-house counsel for the Respondent gave the impression that he too had concerns about the Applicant. But again, Mr Kennedy is based in Perth and not on Christmas Island and – save for this case – may never had encountered the Applicant.

[18] Again referring to *Colson*, I find that mere assertion of loss of trust and confidence is not enough. There needs to be evidence from relevant managers that they have lost trust and confidence in the Applicant. No such evidence was put before the Commission. I have examined the witness statement of Mr Peng Tong Ma who was the other member of management to appear before the FWC in this matter. While he makes some comments about his history with the Applicant, there is no indication that he has lost trust and confidence in him.

[19] Dot point three of *Nguyen* as set out above puts the onus squarely on the Respondent in this case to provide sound and rational argument and make out the case that trust and confidence has been lost. I am of the view that what the Respondent has done is to put before the Commission a number of factors that it asserts are grounds for losing trust and confidence. It is asking the Commission to assume that those factors have had that actual impact upon the relevant managers with whom the Applicant had interacted - and would potentially in future interact - at the Christmas Island site.

[20] I am also persuaded by the notion from *Nguyen* that while some employment relationships might be very delicate entities capable of being ruptured by any "ripple on the surface" I do not accept that this is the case with the Applicant's practical relationship at the Christmas Island site. I am of the view that the relationship is reasonably robust and capable of withstanding some rocky periods. Given this, I do not accept that the loss of trust and confidence argument holds sufficient merit to prevent reinstatement.

[21] I should now consider other factors that may be relevant to the consideration of whether reinstatement is inappropriate and in doing so I turn to the nature of the misconduct in which the Applicant behaved. In my merits decision, I considered the notion of serious misconduct including behaviour that created a serious and imminent risk to health and safety. I rejected the claim that the Applicant's behaviour met both limbs of the test, being serious and imminent. While I reiterate that assessment, I also reiterate that the behaviour was nasty and foolish and clearly created – for no justifiable reason - an uncomfortable work environment for Mr Rahman. I think it is appropriate that I consider the impact on Mr Rahman - who is best characterised in my view as an innocent party - if the Applicant is reinstated.

[22] Given the size of the workforce on the island and the work performed, the facts of which appear to be uncontroversial between the parties, I think it is unlikely that the Applicant and Mr Rahman can be separated such that they have no further contact. I am also mindful of Mr Rahman's unchallenged evidence – which I accept - of the Applicant's churlish behaviour towards him when he passed Mr Rahman in his car some time after his dismissal. While I do not accept that there is any evidence of continued bullying, harassment and abuse as alleged by the Respondent in paragraph eight above, I am satisfied that the Applicant demonstrated a level of residual anger against Mr Rahman by his finger gesture.

[23] I am concerned by this. In my decision on the merits, I found that there was a valid reason for dismissal, based essentially on three factors. Firstly, on the Applicant's original taunting of Mr Rahman, secondly, on his decision to change the nature of his attack on Mr Rahman rather than apologise, and thirdly on his level of remorse. Had his misconduct been limited to the original taunts, I would not have found there was a valid reason for dismissal. His actions would simply have been foolish and unacceptable but warranting – in my view – nothing higher than a first and final warning. It was the second and third behaviours that when combined with the first, satisfied me that there was a valid reason.

[24] In my view I must revisit those behaviours as I consider the appropriateness of reinstatement. In doing so I have concluded that once again, they are decisive in reaching my conclusion. The Applicant has behaved in a manner that is totally unacceptable. When Mr Rahman asked him to stop his original comments, the Applicant could have apologised. He did not do so. Instead, he engaged in a different form of taunting of Mr Rahman and eventually publicly lost his temper at Mr Rahman when Mr Rahman asked him to stop the new form of bullying. The Applicant was somewhat remorseful when investigated but interspersed his statements of remorse with elements of victim blaming and questioning of what he had actually done that was unacceptable. As I understand things, he has still not apologised to Mr Rahman despite multiple opportunities to do so.

[25] Given all of this, I need to consider what impact the return of the Applicant to the workplace might have on Mr Rahman in circumstances where Mr Rahman has given evidence – which again I accept - of his concerns about the Applicant's reactions to his complaint. I cannot accept that there will be no impact on Mr Rahman, nor do I think it reasonable to expect Mr Rahman to simply shrug his shoulders and carry on as though nothing had happened. He has endured the stress of being repeatedly taunted and bullied over a number of weeks and of having his reasonable request that the taunting and bullying stop result in more – albeit different – taunting and bullying. He has endured a public display of anger directed at him for no valid reason. He has experienced the understandably difficult process of making a formal complaint about a colleague. He has then been required to give evidence before the FWC and be cross-examined. He has had no apology. There being no residual doubt that the Applicant did the things of which he is accused, I must consider if it is it reasonable in the circumstances to return the Applicant to work in circumstances where he will cross paths with Mr Rahman. I have concluded that it is not.

[26] I should note that the Respondent submitted that there were concerns amongst sections of the workforce regarding a potential reinstatement of the Applicant. Countering this, the Applicant submitted that a number of people were glad that he had been found to have been unfairly dismissed and thought he should be reinstated. In both cases, the evidence rose no higher than submissions from the bar table and I have resolved to ignore both sets of claims on that basis.

[27] I am also not persuaded, in the context of considering whether reinstatement is inappropriate, that the Applicant's submissions about his age, service and employment prospects are such that they ought change my finding. Those factors are best described as arguments as to why reinstatement is appropriate rather than rebuttals of arguments as to why it is inappropriate. Nevertheless, even if they were factored into my consideration, they would not outweigh my concerns about the impact of reinstatement on Mr Rahman.

[28] Having found that reinstatement is not appropriate as per s.390(3)(a) of the Act, I now give consideration to whether compensation should be ordered. Consistent with s.390(3)(b) of the Act I must not make an order for compensation unless I consider that such an order is appropriate in all of the circumstances of the case.

[29] In my decision on the merits of the case, I found that the unfairness of the dismissal came from the harshness of the impact on the Applicant given his age, service and employment prospects and also the unjustness of the Respondent relying on policies which, in the main, I was not satisfied had been rolled out to the workforce. Given those findings, I am satisfied that compensation is appropriate in all of the circumstances.

[30] The Parties each made submissions as to a compensation remedy. I do not propose to repeat all of the arguments made or the assumptions that they adopted in deriving their ultimate positions but will make comment on them where appropriate. In summary, the Respondent proposed that compensation, if paid at all, should be limited to an amount no higher than $2,087.19. The Applicant proposed that if compensation were to be awarded rather than reinstatement then the amount should be $60,303.00 after tax.

[31] The first step for me is to determine as per s.392(6) the amount of remuneration received by the Applicant in the 26 weeks prior to his dismissal. The Applicant proposed that the appropriate weekly figure for that remuneration was $3,215.35 per week. This is an amount that was comprised of what I take to be an estimate of gross pay including overtime and allowances, an accrual of long service leave, an estimate of a profit bonus and 50% of the airfares allowance payable once per year.

[32] The Respondent proposed that the weekly figure was $2,615.84, which was based on an assessment of actual payroll records submitted to the FWC showing the 28 weeks prior to termination. The 28 weeks was split into a 26 week period plus the fortnight immediately prior to dismissal. This figure was derived from all of the earnings of the Applicant but did not include the airfare allowance, even though a payment for that allowance had been made in the period under consideration.

[33] I have resolved to treat the weekly rate as being $2,832.74. I have derived this figure from the payroll records submitted by the Respondent albeit that I have arrived at a different figure. The difference stems from two items. Firstly, the Respondent used 28 weeks to arrive at its figure. I have used 26 weeks albeit that I have assumed that the final fortnight of employment was broadly representative of the fortnights in the 26 week period and so I have simply used the 26 week period figures. Secondly, I have regarded the travel allowance as part of remuneration given that it is an enterprise agreement entitlement.

[34] Twenty six weeks' pay at $2832.74 is a total of $73,651.24. This amount is lower than half of the high-income threshold at the time of dismissal and therefore the compensation cap for the Applicant is $73,651.24.

[35] In assessing compensation, the Commission is required, by s 392(2) of the Act, to take into account all of the circumstances of the case, including the specific matters identified in paragraphs (a)-(g) as follows:

> (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.

I will address each of those matters in the process of deriving an amount of compensation using the formula from *Sprigg v Paul's Licensed Festival Supermarket* (1998) 88 IR 21 *(Sprigg).*

Remuneration earned if the dismissal had not occurred – s.392(2)(c)

[36] In accordance with the *Sprigg* formula and s.392(2)(c), I am first required to make an assessment of the remuneration the Applicant would have received, or have been likely to have received, if the employee had not been dismissed. In respect of this assessment, the usual practice is to decide how long the employee would have remained in their employment. The Applicant submitted that he would have remained in employment until age 67 suggesting five years of lost earnings. The Respondent submitted that the Applicant's evidence was that he would have worked for an additional two years and based its calculations on that figure.

[37] I think that an estimate of twelve months of employment is appropriate. The Applicant has admitted to various health issues that may have brought forward his retirement plans. I think it is also likely that the Respondent will be taking steps to ensure that its workforce is clearly aware of the expectations of behaviour in a modern workplace, particularly in light of an emphasis on eliminating psychosocial hazards. It may be the case that such an environment may also have impacted the Applicant's views on remaining in employment. Given this, I find that the anticipated period of employment is twelve months and the Applicant would have earned $147,300.92 in that time.

Remuneration earned – s.392(2)(e) and income reasonably likely to be earned – s.392(2)(f) and (g)

[38] The second step in calculating compensation is to deduct monies earned since termination. The Applicant submitted that he had not found any paid work since his dismissal and this is not contested by the Respondent. It is unlikely that the Applicant will find any paid employment in the period between making an order and the compensation payment. There is therefore no deduction to be made with respect to these periods. In terms of monies likely to be earned during the remainder of the anticipated period of employment, the Applicant did not make any direct submission on this matter but it can be inferred that his view is that such monies are likely to be minimal given what he perceives are his job prospects.

[39] The Respondent took a more optimistic view of the Applicant's chances of securing employment. It suggested that a more appropriate measure of job vacancies on Christmas Island is to be found in the reports of the Indian Ocean Group Training Association. It included a copy of this report with its submissions. The Respondent submitted that this report – which showed 47 job vacancies advertised in the three months ended 30 September 2024 indicated good prospects for the Applicant. I do not agree. Of the jobs advertised, only one was in transport / logistics, which is the Applicant's skill set. While the Applicant claimed to possess "handy mechanical skills" I do not think this qualifies him for the 13 trades jobs advertised, nor do I think he is likely to be able to secure a job in health care / human services (7 jobs), education / training (8 jobs) or hospitality / tourism (4 jobs).

[40] I am also unpersuaded by the Respondent's assertion that there are numerous jobs available and that these can be accessed by door knocking and word of mouth. The Applicant has been dismissed from his job of twenty years and it seems likely that this fact is widely known on Christmas Island. It is clear that when asked why he left his last job – of twenty years – the Applicant can at best say that he was dismissed but the dismissal was deemed to be unfair by the Fair Work Commission. I am not sure that such an admission is likely to increase his attractiveness to a potential employer.

[41] That is not to say that I expect the Applicant to be incapable of earning any monies in the remaining period. However, I am not persuaded to put my estimate any higher than 20 hours a week at the national minimum wage of $24.10 per hour, being a total of $482.00 per week for 34 weeks for a total of $16,388.00. As such, the total deduction to be made at this step is $16,388.00.

[42] The third step is to discount the amount for contingencies. The Respondent did not address contingencies in its updated submissions. The Applicant submitted that no deduction should be made for contingencies. As observed above, the Applicant has disclosed some health issues that may have been relevant in the period between the issuing of this decision and the end of the anticipated employment period. That period is a total of 34 weeks and therefore worth $96,313.16. I propose to make a fifteen percent deduction for contingencies from this amount, being $14,446.98.

Length of service – s.392(2)(b) and any other matters – s.392(2)(g)

[43] The Applicant has twenty years of service with the Respondent. This is a considerable period in the current era. Given this, I propose to provide an additional ten percent to the figure calculated at paragraph 37 above, being an amount of $14,730.09. The Respondent submitted that I should take into account the 45 weeks of pay that the Applicant received on termination when determining an amount. I do not agree. That payment – while unusual - is an enterprise agreement entitlement. The Applicant would have received that amount at the end of his employment no matter how his employment ended. Given this, I do not propose to take the amount into account. I do not propose to make any other adjustments at this stage.

[44] The fourth step is to calculate the impact of taxation. Consistent with past practice of the FWC I have resolved to leave the amount payable as a gross figure and leave calculation of taxation to the Respondent.

Mitigation efforts – s.392(2)(d)

[45] I should now turn to the remaining items in s.392(2). In the first instance I will examine the Applicant's efforts to mitigate his loss as per s.392(2)(d). The Applicant submits that he has been trying to find work and has recorded his availability with numerous employers. However, he submits that he has had no offers. The Respondent claimed that the Applicant's evidence was that he had not looked for any work. Having reviewed the recording of the hearing it is correct that at the time of the hearing the Applicant conceded that his "head was not in the right place" and it can be inferred that he had not looked for other jobs.

[46] While distress and depressive feelings are the usual experience of employees who are dismissed, there still remains an obligation to attempt to mitigate loss. While I am prepared to accept that the Applicant may have now done so, his failure to do so in the period between dismissal and the hearing held on 30 September 2024 means that a deduction is appropriate. I have resolved that the deduction should be set at 50% of the monies payable in the period between termination on 26 June 2024 and 30 September 2024. That period is approximately 15 weeks and so the deduction will be 75% of $42,491.10 being an amount of $31,868.32. This leaves the compensation amount at $99,327.71.

Viability of the Respondent – s.392(2)(a)

[47] In terms of s.392(2)(a) and the effect of an order on the viability of the Respondent, the Respondent conceded that an order will not impact its viability. Given this, I propose to make no deduction with respect to this matter.

Misconduct – s.392(3)

[48] Section 392(3) provides that if an applicant's misconduct contributed to their dismissal, the FWC must reduce the amount it would otherwise order by an appropriate amount. In this case, the Applicant's misconduct contributed to his dismissal and as per my findings provided a valid reason for that dismissal. Given this, I find that it is necessary to make a significant deduction for the misconduct of the Applicant and I have concluded that the amount should be reduced by two thirds. As such, the compensation figure is $33,076.13.

Compensation Cap – s.392(5) and (6)

[49] The FWC cannot award an amount that exceeds the compensation cap, which was calculated at paragraph 34 above and found to be $73,651.24. Given that the calculated compensation amount of $33,076.13 is below the compensation cap, the amount does not need to be adjusted.

[50] Finally, I note that this amount does not include an amount for shock, distress, humiliation or hurt. As the Respondent has not sought to have any payments due made in instalments, an order will issue for the Respondent to pay the Applicant $33,076.13 within fourteen days of the date of the order.

DEPUTY PRESIDENT

Appearances:

G Thompson of the Union of Christmas Island Workers for the applicant.
A Kennedy of PRL Group for the respondent.

Hearing details:

2024.
Perth (by video):
September 30.

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[1] *Ramlan Abdul Samad v Phosphate Resources Ltd* [2024] FWC 2868 at [36]

[2] Ibid at [50] and [52]

[3] Respondent's submissions on remedy page 3 paragraph 2

[4] *Nguyen v Vietnamese Community in Australia* [2014] FWCFB 7198 at [27]

[5] *Australasian Meat Industry Employees' Union v G & K O'Connor Pty Ltd* [2000] FCA 627 at [42]

[6] *Dr Mark Colson v Barwon Health* [2013] FWC 8734 at [21] and [22]

[7] *Ramlan Abdul Samad v Phosphate Resources Ltd* [2024] FWC 2868 at [36]

[8] Justice P Keane Harold Ford Memorial Lecture 17 May 2022 page 2 paragraph 4