



DECISION

Fair Work Act 2009

s.394 - Application for unfair dismissal remedy

Mr Tamba Keifa

v

Lifestyle Bakery Pty Ltd

(U2024/6445)

COMMISSIONER THORNTON

ADELAIDE, 10 DECEMBER 2024

Application for an unfair dismissal remedy – dismissal not harsh, unjust or unreasonable – application dismissed.

[1] Mr Tamba Keifa (**the Applicant**) was employed in the factory of Lifestyle Bakery Pty Ltd (**the Respondent**) from November 2020. On 31 May 2024, he was summarily dismissed from his employment.

[2] The Respondent dismissed the Applicant because he used his mobile phone in the factory on 28 May 2024 and had his mobile phone with him in the factory on 30 May 2024. The use of mobile phones by employees in the factory area is strictly prohibited by the Respondent's policies to protect the integrity of their products, to meet food safety standards and to maintain the reputation of their brand.

[3] The Applicant admits to having or using his mobile phone at work on the occasions alleged by the Respondent. However, the Applicant asserts that the Respondent did not take into account mitigating factors that required Mr Keifa to have his phone with him at work, which made their decision to dismiss him harsh, unjust and unreasonable. Mr Keifa asserts that his responsibilities to his family and young children require him to be available by telephone for emergencies whilst he is at work and this should exempt him from the application of the Respondent's 'no mobile phone policy.'

[4] There are no jurisdictional issues to be addressed in this matter. The parties agree that the Applicant was dismissed, he is a person protected from unfair dismissal, the Respondent is not a small business, there was no redundancy, and the application was made within the statutory time period. Therefore, the only issue to be determined by the Commission in this matter is whether the dismissal is harsh, unjust or unreasonable having regard to the relevant factors and circumstances.

[5] There was little in the way of factual disputes between the parties. The Applicant accepted that he had done what the Respondent had alleged, but did not accept that the conduct was as serious as the Respondent asserted. The case advanced by the Applicant was, in essence, that his need to be available for his wife and children, as well as be in contact with his children's

school and a social worker working with his family, was a priority greater than the Respondent's interests in upholding food safety standards in their factory. The Applicant was strongly of the view that his personal circumstances mitigated his conduct, thereby making the decision to dismiss him from his employment unfair.

[6] Mr Keifa was self-represented in the matter. The Respondent was represented, with permission, by Bradbrook Lawyers. Evidence was given at the hearing by the Applicant on his own behalf, and Mr Horrocks, Owner and Managing Director, Mr Williamson, Manufacturing Manager, and Ms Dela Paz, Human Resources Manager, gave evidence for the Respondent.

[7] After considering the matters to which I have to have regard under the *Fair Work Act 2009* (Cth) (**the Act**), the written material filed by the parties and the evidence given by the respective witnesses, I find that the dismissal was not harsh, unjust or unreasonable. I provide my reasons below.

Background

[8] Lifestyle Bakery is “a market leader in gluten free bread and baked goods.”¹ It supplies these products to two large supermarket chains and other businesses pursuant to contracts that require particular levels of food safety standards to be implemented in their factory.² The evidence before me was that the large supermarkets with whom the Respondent has contracts are entitled to attend at the workplace at any time for unannounced audits.³

[9] The supermarkets with whom the Respondent has contracts “strictly forbid the use of mobile phones in the factory when working on a production line. This is because mobile phones are inherently unsanitary.”⁴

[10] Annexed to the statement of Ms Dela Paz was a record of Mr Keifa's induction, demonstrating that he had been inducted on 24 November 2020 in the Respondent's Personal Hygiene requirements. Ms Dela Paz confirms in evidence that this includes the prohibition on the use of mobile phones in the factory. Records submitted by the Respondent show that on the same day as his induction, the Applicant was advised of the Respondent's requirement that no mobile phones be permitted in the factory. A note of the induction admitted into evidence relevantly sets out: “Can use office ph number as emergency contact while at work.”⁵

[11] Also submitted by the Respondent were photos of posters in “various locations in the workplace”⁶ that show a woman wearing a coat and gloves and holding a mobile phone that has the caption: “What's wrong with this picture?” in English and translated to what appears to be Spanish.

[12] On 25 October 2022, an employee of the Respondent sent a message to all staff titled “No Mobile Phones Allowed”, which also contained a picture that said “Notice No Mobile Phones Allowed” and had a picture with a mobile phone in a circle with a line diagonally across the circle. That message said: “I want to remind everyone that strictly NO MOBILE PHONES ALLOWED Inside the production area. Only TLs [Team Leaders], Maintenance Team and managers are allowed to. This is part of the food safety requirements ... and to make sure our employees are free from distractions.”

[13] Ms Dela Paz said in her evidence that she also sent a reminder to all staff on the same day which was titled “*Mobile Phones are NOT permitted in the factory*” and said: “*It is a Quality Assurance requirement that process workers are not to use mobile phone inside the factory. ... it compromises the safety of the product – a dropped phone may smash and cause a total recall of the days production. ... Anyone not authorised to use their phone inside the factory will be disciplined and may lead to termination of employment.*”

[14] The prohibition on mobile phones in the production area of the factory is also reinforced in the Respondent’s Personal Hygiene Policy in their Quality Manual.⁷

[15] In other evidence of relevant context, the Respondent submitted evidence that one of the large supermarket chains had conducted a random audit of the factory in July 2023 and when a worker was found to be in possession of a mobile phone, that worker was terminated from employment with the Respondent.

[16] In early 2024 Mr Keifa had made a request for a flexible work arrangement. The Respondent held a meeting with the Applicant to be better informed about his family circumstances and the Applicant’s need for a flexible working arrangement.

[17] Ms Dela Paz said in her evidence that during the meeting she reminded Mr Keifa that if he needed to have urgent contact with his family, or their social workers, that he could ask them to get an urgent message to him through any of the mobile phone numbers belonging to Ms Dela Paz or any of his team leaders or managers. Ms Dela Paz was clear that: “*I told him he could not take his phone in the factory.*”⁸ She says that Mr Keifa “*agreed and said he would comply with all our rules and that he was committed to working for us.*”⁹

[18] Mr Keifa’s flexible work arrangement of 3 hours a day 5 days per week was then granted by the Respondent.

The conduct giving rise to dismissal

[19] On 14 September 2022, when the Respondent was looking into an incident on the production line, Mr Keifa was observed on CCTV footage using his mobile phone in the production area. Ms Dela Paz spoke to Mr Keifa about the incident, he “*apologised and said he would not do it again.*”¹⁰ Ms Dela Paz made a note about the incident in the Respondent’s Human Resources database and determined on that occasion not to give the Applicant a formal warning.

[20] Mr Keifa set out in his written statement that his family had been “*facing significant challenges that have adversely impacted my ability to attend work consistently. Since April 2023, CaFHS [Child and Family Health Service] has been working with my family due to the additional stressors related to the health and development of my daughter, ... and the mental health concerns of my wife.*”¹¹

[21] The Respondent accepts that they were aware of Mr Keifa’s family situation and did not dispute that Mr Keifa was managing his wife’s poor health and care of three children.

[22] On 28 May 2024, Mr Williamson observed Mr Keifa, during working hours and in the packing area of the production line, leaning against a pillar. When he approached Mr Keifa, Mr Williamson saw that he was on a telephone call. He said that music was coming from the Applicant's phone, as if he were on hold, and then a female voice came through the phone.¹²

[23] Mr Williamson said that he told the Applicant it was against company policy for him to have his phone in the factory while he was working and later directed him to put the phone in his locker. Mr Williamson recalled Mr Keifa explaining that he was speaking to his social worker and that whilst he apologised, he also said: "*I don't care, this is about my kids.*"¹³

[24] Mr Williamson then met with the Applicant in the Respondent's Boardroom on 30 May 2024 to discuss the incident of 28 May 2024. Mr Keifa attended the meeting coming directly from the production line to the meeting and not via the changing rooms or his locker. Mr Williamson explained that he called Mr Keifa to the meeting with his team leader to "*make it very clear to the Applicant that this kind of behaviour would not be tolerated.*"¹⁴ He understood that Mr Keifa would then be required to attend a follow up meeting with Ms Dela Paz.

[25] Mr Williamson said that he asked Mr Keifa if he had his mobile phone with him at the meeting and Mr Keifa said: "*Yes, but I have a duty of care to my children and my family.*"¹⁵

[26] Mr Williamson said that he told the Applicant that this was a "*clear breach of company policy and this was now the second time in a week that he had been caught having his phone in the factory when he was working on the production line. I said to him that he had clearly ignored the instruction and direction I had given him on 28 May 2024 about the use of his phone.*"¹⁶

[27] Mr Horrocks says in his evidence that Mr Williamson reported the Applicant's conduct to him on 30 May 2024. Mr Horrocks said that he made the decision to terminate Mr Keifa's employment because he had been caught with his mobile phone in the production area three times, was "*blatantly disregarding the importance of our company policy on mobile phone use*" and that his responses in the meeting of 30 May 2024 demonstrated that Mr Keifa considered that "*his family circumstances were more important than our policy on mobile phone use in the factory.*"¹⁷

[28] Mr Horrocks' evidence was that he decided that Mr Keifa had had a sufficient opportunity to explain himself and would not be afforded a further opportunity.¹⁸

[29] Mr Horrocks met with the Applicant on 31 May 2024 and advised him that his employment was terminated for the serious misconduct of having his mobile phone in the production area, against company policy.¹⁹

[30] Mr Horrocks noted that Mr Keifa responded by "*saying his family was important, and the phone was necessary to contact them.*" Mr Horrocks then set out for the Applicant the reasons that a mobile phone was not allowed on the production line.²⁰

[31] It was not until the hearing of this matter that Mr Keifa disclosed the family emergency he asserted he was addressing on 28 May 2024. He advised the Commission that he had an appointment later that day to see his two sons who remain in Government care, whom he had

not seen in five years. He received a telephone call from the social worker working with his family cancelling the appointment.²¹

[32] A letter signed by Ms Dela Paz was sent to the Applicant confirming the termination of his employment on 31 May 2024. The letter confirmed that:

- (a) The Applicant's employment was terminated immediately and without notice for serious misconduct;
- (b) The dismissal should not be a surprise as Mr Keifa admitted the conduct alleged;
- (c) The Applicant had been caught using his mobile phone on 28 and 30 May 2024;
- (d) The Applicant was aware the conduct was against company policy and could result in dismissal;
- (e) The Applicant's obligations to his family do not override company policy or the serious safety concerns;
- (f) The Applicant would be paid for the shift undertaken that day and any accrued annual leave; and
- (g) A statement of service would be provided if requested by the Applicant.

Consideration

[33] The Act sets out the matters I must take into account when considering if the dismissal of an applicant is harsh, unjust or unreasonable. Section 387 says:

“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.”

Whether there was a valid reason for the dismissal

[34] Ms Dela Paz gave evidence that mobile phones are not permitted in the factory to prevent contamination from parts of mobile phones that may break if dropped. Ms Dela Paz emphasised in her evidence that avoidance of contamination is a significant reason behind the mobile phone policy because *“any contamination in our product has the potential to cause serious health consequences for people who are gluten intolerant”*.²² Consequently, maintaining standards applicable to preserving strict dietary requirements and avoiding contamination from phones which may have come into contact with gluten is essential for the business.²³

[35] Ms Dela Paz also told the Commission that if a mobile phone were dropped in the factory and *“land[ed] in or near our production line, then all of our production on that line must cease, be decontaminated and the entire baking process must start again. This has the potential to cause us to lose several hundred thousands of dollars in produce and sales.”*²⁴

[36] Ms Dela Paz also gave a notable amount of evidence about the commercial arrangements with the Respondent’s largest customers, that could be compromised by mobile phone use in the production line, increasing the chances of contamination. In the letter of termination given to Mr Keifa, the Respondent said: *“if the business is spot audited by [supermarket chain] its biggest customer, [the customer] has a right to terminate the contract with Lifestyle Bakery. If this were to happen the business could lose \$10 million of revenue.”*

[37] The nature of Ms Dela Paz’s evidence about food safety standards and the impacts of a contamination were supported by the written and oral evidence of Mr Horrocks.²⁵

[38] Mr Keifa strenuously submitted that his family circumstances require him to be available by mobile phone when he is working and his circumstances should be taken into account by the Respondent in a manner that allows him to have his phone with him and receive contact about urgent matters relating to his wife or children.

[39] The Applicant submits that: *“Given the critical nature of my family’s situation, it is imperative that I remain accessible via phone for emergencies. On 28 May 2024 and 30 May 2024, I was found using my mobile phone in the factory due to emergency situations related to my family. Denying me the ability to handle such emergencies disregards basic human responsibilities and the immediate needs of my family.”*²⁶

[40] The Applicant has not ever denied the allegations. He clearly accepted in his oral evidence that he had his mobile phone with him in the production area on 28 and 30 May 2024 and used his phone in the production area on 28 May 2024.²⁷

[41] In his submissions, the Applicant has made the following statements about the admitted conduct that led to his termination:

- (a) The policy preventing the use of mobile phones does not accommodate family emergencies;²⁸
- (b) The *“rigidity”* of the policy is discriminatory;²⁹
- (c) *“Inflexible enforcement”* of the policy is unreasonable;³⁰

- (d) The policy could be “*adapted to account for emergencies without compromising safety*”;³¹
- (e) The use of his mobile phone in the factory was “*driven by urgent family needs, and denying this flexibility disregards both my responsibilities as a caregiver and the human element in workplace policies*”;³²
- (f) The termination of employment “*was triggered by an unavoidable family emergency.*” Mr Keifa says that “*I received a phone call from my social worker concerning a critical family matter, which required my immediate attention.*”;³³
- (g) The dismissal was “*unjust and discriminatory*” and “*unfairly penalized*” the Applicant for attending to an urgent family situation;³⁴
- (h) His “*school-age children required immediate attention, and the use of my phone was imperative to address their needs*”;³⁵
- (i) The action to terminate his employment “*fails to consider the human aspect of employment and the necessity of maintaining communication for emergency purposes*”;³⁶
- (j) The Respondent has not consistently applied the mobile phone policy in the workplace because team leaders and managers are allowed to use their mobile phones in the factory; and
- (k) The enforcement of the policy is likely to contravene the *Equal Opportunity Act 1984* (SA).

[42] Mr Keifa claimed he had provided to the Respondent letters of support from social workers explaining his situation and the Respondent had “*refused to acknowledge the legitimacy of my family emergency and support me accordingly.*”³⁷ The first of the letters provided by Mr Keifa was dated 2 August 2023 and focused on the impact of Mr Keifa’s care of his young daughter and his wife with serious health concerns and the impact of his caring on his work.

[43] Mr Keifa also provided a letter from a different social worker dated 6 February 2024 which noted that two of Mr Keifa's children, aged 12 and 13, had recently been returned to his care. The correspondence noted that Mr Keifa had care of a 10 month old child and was engaged in supporting another two children who remained under the protection of the Department for Child Protection. The request in the correspondence from this social worker appeared to be in support of Mr Keifa seeking a transition to night shift.

[44] Mr Keifa said they were provided to the Respondent to give the Respondent information about the pressing nature of his family responsibilities but that he could not recall when he gave the letters to Respondent.³⁸ In any event, they pre-dated the circumstances leading to termination.

[45] It is evident that Mr Keifa has significant caring responsibilities for his family. The letters provided to the Commission from the social workers pre-dated the incidents but provide relevant background information about Mr Keifa’s family life. The social workers did not give evidence but I accept that the letters set out realities of Mr Keifa’s family life. The Respondent also made plainly clear that they accept Mr Keifa’s reporting and evidence with respect to his family life and the existence of difficulties in his life are not a matter in dispute.

[46] The essence of the Applicant's argument was evident in correspondence sent to the Commission wherein Mr Keifa submitted: "*My wife's deteriorating mental health and the care needs of my daughter required my immediate attention, which I believe should be considered a valid exception to the policy.*"³⁹

[47] It is understandable that emergencies, or at least matters of pressing urgency, are likely to occur with Mr Keifa's family and that he may be called upon by social workers or his children's school during his work hours. I have sympathy for his personal circumstances and the impact that his caring responsibilities have on his work.

[48] It is difficult to see how the circumstances that arose on 28 May 2024, involving the cancellation of an appointment later the same day was a family emergency as asserted by Mr Keifa. I also note that Mr Keifa's evidence included a statement that he should be able to have access to his phone "*just in case anything can happen*".⁴⁰ I do not accept that Mr Keifa was attending to a family emergency on 28 May 2024 or that he considered access to his mobile phone ought to be limited to emergencies.

[49] I accept that the Applicant was aware of the direction issued to him not to bring his mobile phone into the production area as he was informed at his induction and reminded in staff-wide written communication, as well as on the occasion that he had failed to follow the direction in 2023. However, I do not consider that the posters referred to in the Respondent's evidence effectively communicate the requirement of the policy in the absence of express words.

[50] The Respondent acknowledged Mr Keifa's circumstances and made clear to the Applicant that his managers, team leaders, human resources personnel and the Respondent's office could be a contact point for Mr Keifa when at work for emergency telephone calls. I do not accept Mr Keifa's claim that no "*reasonable accommodation or alternative solution*"⁴¹ was provided by the Respondent. These alternative arrangements offered do not reflect a failure to take into account that Mr Keifa needed to be available for family emergencies.

[51] In this matter, the Respondent had approved a flexible working arrangement for the Applicant and had offered alternative arrangements for the Applicant to be contacted in an emergency. The Applicant accepted in cross examination that he had not availed himself of any alternative arrangements offered by the Respondent.⁴²

[52] The Respondent had very compelling reasons as to why mobile phones cannot be brought into the production area that relate to the safety of a broad group of consumers of their products, their contractual obligations to their largest customers and consequently the viability of their enterprise.

[53] The Respondent is entitled to set expectations for the conduct of their employees. They are entitled to create policies and procedures and convey their requirement that such policies are followed by their employees. They are also entitled to issue reasonable and lawful directions to employees that they do or refrain from certain conduct at work. This is what the Respondent has done in this case.

[54] Mr Keifa did not follow the reasonable and lawful direction of the Respondent not to bring his mobile phone into the production area. He did so because of his belief that his personal circumstances should exempt him from the application of the Respondent's policy. Mr Keifa says that the application and enforcement of the policy as it relates to him fails to take into account his family responsibilities and is therefore discriminatory.

[55] The Applicant said in his closing submission that he did not ignore the direction from the Respondent but rather that it weighed heavily in his mind.⁴³ The Applicant appears to have weighed the competing concerns of his view that he needed to be available by phone during work hours for his family against the direction of the Respondent to leave his mobile phone out of the factory. In weighing those different matters, he determined to disregard the direction of the Respondent in favour of what he subjectively determined was the more important consideration of availability to his family. In doing so, the Applicant was aware that his employment may be terminated.

[56] I accept Mr Keifa's submission that his failure to abide by the policy was not "*rooted in negligence or defiance*"⁴⁴ and was motivated by what he has explained as the mitigating circumstances, however, the conduct, in my view, was done with a disregard for the direction issued by the Respondent and a level of reckless indifference to the possibility of contamination of the Respondent's product and the resulting impacts.

[57] Mr Keifa's personal circumstances cannot, when balanced against the reasons for the Respondent refusing to allow mobile phones in their production area, exempt Mr Keifa from, or override the application, of the policy to him.

[58] Mr Keifa had been given a reasonable and lawful direction by the Respondent on a number of occasions, had weighed competing priorities and then determined not to follow the direction issued by the Respondent. Mr Keifa's repeated refusal to abide by the policy and his reiteration of the factors that he asserts ought to exempt him from the application of the policy, provides the Respondent with a valid reason for the termination of Mr Keifa's employment.

Whether the person was notified of that reason

[59] The Respondent's concerns about the Applicant's conduct were conveyed to him in June 2023 and again on 28 May 2024. Despite these cautions, Mr Keifa again failed to comply with the Respondent's direction on 30 May 2024, when he was told by Mr Williamson that on account of his further possession of a mobile phone in the production area, disciplinary action would be considered by the Respondent.

[60] On 31 May 2024, Mr Keifa was told by Mr Horrocks that his employment was terminated because he had his mobile phone in the production area. The reason was also set out in writing in the termination letter of 31 May 2024.

[61] The reason for termination was made clear to Mr Keifa.

Whether the person was given an opportunity to respond

[62] The Respondent asserts that Mr Keifa was given opportunities to explain his conduct when he was caught by Mr Williamson speaking on his mobile phone during his shift on 28 May 2024 and again in the meeting convened by Mr Williamson on 30 May 2024.

[63] This is not a matter where a number of allegations were put to the Applicant, or the nature of the allegations were broad. The allegations put to the Applicant in this case were specific and occurred two days prior to the meeting and at the meeting itself. The conduct alleged was clear and Mr Keifa was asked to respond at the meeting of 30 May 2024.

[64] Mr Keifa accepted in cross-examination that Mr Williamson had given him a chance to talk and provide an explanation just after the incident occurred on 28 May 2024.⁴⁵ Mr Keifa did not accept that Mr Williamson had listened to him, but it was evident from the recounting of the conversation by Mr Williamson in his evidence that he was listening to the Applicant. In my view, Mr Keifa took Mr Williamson's rejection of his explanation as not listening to his explanation.

[65] Mr Keifa did not agree with the proposition put to him in cross-examination that Mr Williamson had given him an opportunity to explain his conduct at the meeting of 30 May 2024.⁴⁶

[66] Mr Keifa has always argued, from the commencement of this matter, that there are mitigating factors in this case that explain his conduct and ought to lead the Respondent to conclude that he should be exempted from the operation of the policy.

[67] Given the specific nature of the allegations, Mr Keifa accepting he had a chance to explain his conduct on 28 May 2024 and his admission of the conduct in the meeting of 30 May 2024, I find that Mr Keifa was given an opportunity to respond to the allegations put to him about his conduct in the factory on 28 May 2024 and at the meeting on 30 May 2024.

Any unreasonable refusal by the employer to allow the person to have a support person

[68] Mr Keifa has not complained that he was not allowed to have a support person in the meeting in which he was asked to respond to the allegations.

[69] Mr Williamson's evidence was that he asked Mr Keifa if he wanted a support person to attend and Mr Keifa responded "no".⁴⁷ This evidence was not challenged by Mr Keifa in the hearing.

Any impact on procedures arising from the size of the Respondent's enterprise and absence of human resource expertise

[70] This consideration has no bearing on my decision. Ms Dela Paz is the Respondent's in-house Human Resources specialist.

Whether the dismissal was harsh, unjust and unreasonable

[71] Mr Keifa repeatedly raised in his case that one aspect of the unfairness of his dismissal was the rigid application of the mobile phone policy to Mr Keifa when Team Leaders and

Managers at the Respondent were allowed phones in the factory. The Respondent addressed this matter with the evidence of Mr Williamson that Team Leaders and Managers have their own mobile phones with them to contact more senior management if needed and to call in maintenance if work is required.⁴⁸ I accept the evidence of Mr Williamson that Team Leaders and Managers do not work on the production line, do not use their phones over the production line and only use their mobile phones away from the production line.⁴⁹ I do not find any unfairness in the application of the policy to Mr Keifa as a worker on the production line at the Respondent's factory.

[72] Mr Keifa made submissions that his termination was harsh because it failed to consider *“the disproportionate impact on my economic and personal situation”*⁵⁰ and the *“catastrophic impact on my family and financial stability.”*⁵¹

[73] When Mr Keifa asked Ms Dela Paz in cross-examination whether the Respondent had considered the impact of the dismissal on him, Ms Dela Paz confirmed the Respondent had considered the impacts and noted that she was aware Mr Keifa received financial assistance from the Government and was engaged 15 hours per week and not full-time, reducing the impact of dismissal.⁵²

[74] Whilst no evidence in this regard was put before the Commission, I consider it very likely that the dismissal did have significant impacts on Mr Keifa. This is likely the case when any employee loses their employment. In the absence of specific evidence, I cannot make findings about whether the dismissal had a disproportionate effect on Mr Keifa such that I should find the dismissal was harsh.

[75] Mr Keifa argued that his termination due to the *“necessity of handling family emergencies is an extreme response”*.⁵³ I reject this submission. It goes to the heart of this matter: Mr Keifa had reached his own view that a need to be in contact via mobile phone with his family during work hours was a necessity that outweighed the Respondent's pressing need to ensure the integrity of their product, reputation, viability and the safety of their consumers.

[76] The Respondent had a valid reason for the termination of Mr Keifa's employment. They gave a reasonable and lawful direction for compelling business and safety reasons. The Applicant was aware of the direction. The Applicant refused to follow the direction on a number of occasions. Mr Keifa was given the reason for his termination and an opportunity to respond to the reason.

[77] The Applicant's personal family circumstances, while worrying for him and a significant responsibility to bear, did not justify the risk he took in the Respondent's business by taking his mobile phone into the production area. The Applicant, in weighing his family responsibilities over the priorities of the Respondent, consistently failed to appreciate the level of risk for the Respondent and the consumers of the Respondent's products arising from his refusal to follow the direction given to him by the Respondent.

[78] Considering the factors I must take into account, I accept that there was a valid reason for the termination of the Applicant's employment and the other factors persuade me that the dismissal was not harsh, unjust or unreasonable.

[79] Mr Keifa's application will consequently be dismissed by an order published concurrently with this decision.⁵⁴



COMMISSIONER

Appearances:

T Keifa, the Applicant on his own behalf.

J Bradbrook of Bradbrook Lawyers with permission, with *M Horrocks* on behalf of the Respondent.

Hearing details:

Adelaide
2024
17 September.

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¹ Statement of Ms Dela Paz at paragraph 5.

² Ibid at paragraph 6.

³ Ibid.

⁴ Ibid.

⁵ Annexure KDP-1 to statement of Ms Dela Paz.

⁶ Statement of Ms Dela Paz at paragraph 24.

⁷ Annexure KDP-2 to statement of Ms Dela Paz.

⁸ Statement of Ms Dela Paz at paragraph 35.

⁹ Ibid.

¹⁰ Ibid at paragraph 25.

¹¹ Statement of Mr Keifa dated 3 August 2024.

¹² Statement of Mr Williamson at paragraphs 14 – 16.

¹³ Ibid at paragraphs 14 – 22.

¹⁴ Ibid at paragraphs 23 and 25.

¹⁵ Ibid at 26.

¹⁶ Ibid at 27.

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- ¹⁷ Statement of Mr Horrocks at paragraphs 6 – 7.
- ¹⁸ Ibid at paragraph 7.
- ¹⁹ Ibid at paragraphs 8 – 9.
- ²⁰ Ibid at paragraphs 8 – 11.
- ²¹ Audio recording of the hearing, Part 1 – 33:00 – 38:00.
- ²² Statement of Ms Dela Paz at paragraph 7.
- ²³ Ibid at paragraph 6.
- ²⁴ Ibid at paragraph 10.
- ²⁵ Statement of Mr Horrocks at paragraph 11 and audio recording of hearing, part 2 – 1:42:47-1:46:01.
- ²⁶ Statement of Applicant dated 3 August 2024 at page 1.
- ²⁷ Audio recording of hearing, Part 1 – 1:05:45, 1:20:28, 1:22:32, 1:55:16, 1:58:45, 2:01:13. 2:22:43.
- ²⁸ Statement of the Applicant dated 3 August 2024 at page 2.
- ²⁹ Ibid.
- ³⁰ Ibid.
- ³¹ Ibid.
- ³² Email correspondence from Applicant to FWC 15 August 2024.
- ³³ Email correspondence from Applicant to FWC 30 July 2024.
- ³⁴ Ibid.
- ³⁵ Email correspondence from Applicant to FWC dated 3 August 2024.
- ³⁶ Ibid.
- ³⁷ Email correspondence from Applicant to FWC dated 30 July 2024 at paragraph 3.
- ³⁸ Audio recording of hearing, Part 1 – 43:07.
- ³⁹ Email correspondence from the Applicant to FWC dated 15 August 2024.
- ⁴⁰ Audio recording of hearing, Part 1 – 39:23.
- ⁴¹ Email correspondence from Applicant to FWC dated 4 September 2024.
- ⁴² Audio recording of hearing, Part 1 – 1:34:02 – 1:38:45.
- ⁴³ Ibid, Part 3 – 4:31.
- ⁴⁴ Email correspondence of Applicant to FWC dated 4 September 2024.
- ⁴⁵ Audio recording of hearing, Part 1- 1:05:45.
- ⁴⁶ Ibid, Part 1 – 2:04:50.
- ⁴⁷ Statement of Mr Williamson at paragraph 24.
- ⁴⁸ Audio recording of hearing, Part 2 – 19:30.
- ⁴⁹ Ibid, Part 2 – 33:00.
- ⁵⁰ Email correspondence of Applicant to FWC dated 3 August 2024.
- ⁵¹ Email correspondence of Applicant to FWC dated 4 September 2024.
- ⁵² Audio recording of hearing, Part 2 – 1:33:32.
- ⁵³ Email correspondence of Applicant to FWC dated 3 August 2024.
- ⁵⁴ [PR782280](#).