

DECISION

Fair Work Act 2009 s.394—Unfair dismissal

Anne Maree Greaves v IAA Group Holdings Pty Ltd (U2024/8643)

COMMISSIONER SLOAN

SYDNEY, 20 DECEMBER 2024

Application for an unfair dismissal remedy

[1] Anne Maree Greaves was dismissed from her employment with IAA Group Holdings Pty Limited on 8 July 2024. She claims that the dismissal came without warning, had no proper basis and was implemented in a manner that lacked any semblance of fair process.

[2] These claims formed the basis of an unfair dismissal application that Ms Greaves filed with the Fair Work Commission on 24 July 2024.¹

[3] IAA raised two objections to the application. First, it argued that it was a small business employer at the time of the dismissal, and that the dismissal was consistent with the Small Business Fair Dismissal Code. Second, it contended that the dismissal was a case of genuine redundancy.

[4] I accept that IAA was a small business employer on the date of the dismissal. However, I reject its other contentions.

[5] I find that Ms Greaves's dismissal was an unfair dismissal. I also find that it is appropriate that I order that IAA make a payment of compensation to Ms Greaves.

[6] I set out below my reasons.

Observations on the evidence

[7] The parties tendered a significant number of documents into evidence. It is not necessary that I detail all of them. It suffices to make several observations.

[8] Ms Greaves's evidence included two statements that she had made.² In addition, she gave some oral evidence in chief. She was not cross-examined.

[9] Ms Greaves also relied on a statement made by her husband, Shane Greaves.³ Mr Greaves was cross-examined.

[10] IAA relied principally on evidence from Anthony Smith, who also appeared as the company's advocate. Mr Smith's written evidence was contained in two documents. The first comprised a combination of evidence and submissions.⁴ The second was a statement largely in response to Mr Greaves's statement.⁵

[11] Ms Greaves submitted that I should disregard entirely any evidence in the first document. In the alternative, she made submissions as to the weight to be attached to that evidence. I will not traverse those submissions. The weight that I have attached to particular evidence will become clear in the discussion below. To the extent that the document comprises submissions, I have read it in that light.

[12] IAA also tendered into evidence a bundle of documents that had been produced in response to an Order to Produce which the Commission issued at Ms Greaves's request. It made little effort to explain the relevance of all of the documents or to demonstrate their provenance. With some justification, Ms Greaves described that aspect of IAA's case as a "loose jumble of documents".

[13] I have considered that bundle of documents in the context of the case advanced by IAA. It is not my role to review the documents with a view to developing submissions or contentions that IAA may have advanced but did not.

[14] In relation to IAA's sole witness, Mr Smith, I make two observations. First, at the hearing Mr Smith deposed under cross-examination that he had not worked for IAA for over 12 months and did not have a role with the company. This seemed at odds with the evidence, which portrayed him as being actively engaged in the business. In particular, as will be seen, he was the author of the email that informed Ms Greaves of her dismissal. I also observe that Mr Smith signed IAA's response to Ms Greaves's unfair dismissal application ("Employer Response") and described himself as "Manager".⁶ Whether or not he is employed by IAA, it is abundantly clear from the evidence that Mr Smith is active in the conduct of its affairs.

[15] Be that as it may, even were I to accept that Mr Smith has no role with IAA, it would call into question the extent to which he can give evidence on behalf of the company as to the reasons for Ms Greaves's dismissal and the process that culminated in it. Ms Greaves submitted that for this reason I should not accept any evidence from Mr Smith. I will not go that far. However, Mr Smith's attempt to disassociate himself from IAA affects the weight that I have attached to his evidence.

[16] Second, and more significantly, Mr Smith was not an impressive witness. I found him to be argumentative, belligerent and evasive. On one occasion, I considered his evidence to be contrived (see [42]-[51] below). This called into question his credibility and reliability as a witness.

[17] For these reasons, where there was a conflict in the testimony of the witnesses, I preferred the evidence of Ms Greaves and Mr Greaves to that of Mr Smith.

My findings regarding IAA's jurisdictional objections

[18] There was no controversy that Ms Greaves was a person protected from unfair dismissal.⁷ To the extent that it is necessary to do so, I find that she was.

[19] For me to find that Ms Greaves was unfairly dismissed, I need to be satisfied of four things: Ms Greaves was dismissed; the dismissal was harsh, unjust or unreasonable; the dismissal was not consistent with the Small Business Fair Dismissal Code; and the dismissal was not a case of genuine redundancy.⁸

[20] I am satisfied that Ms Greaves was dismissed. That was never in question. I will return to the question of whether the dismissal was harsh, unjust or unreasonable. As to the remaining requirements, IAA contended that it was a small business employer and that it had complied with the Small Business Fair Dismissal Code, and that the dismissal was a case of genuine redundancy.

IAA was a small business employer at the time of Ms Greaves's dismissal

[21] Ms Greaves did not concede IAA's contention that it was a small business employer at the time of her dismissal. However, there was no real contest on the evidence in this regard.

[22] For present purposes, IAA would have been a small business employer on 8 July 2024 if, at that time, it employed fewer than 15 employees. That number includes Ms Greaves, regular casual employees and employees of associated entities.⁹

[23] In her statement, Ms Greaves referred to IAA having 19 "staff members" at that time. However, she described 11 of them as "contractors".

[24] Mr Smith stated that IAA had eight employees at the time of the dismissal. There were some discrepancies in the documents relied on by IAA as to employee numbers, but they were not material.

[25] Mr Smith also deposed that IAA engages a large number of individuals as contractors through third party arrangements. IAA's evidence included contracts with some of the entities with whom it has contracts and evidence of invoices IAA had received for services rendered by some of those workers. Ms Greaves did not present any cogent challenge to that evidence.

[26] I find that IAA was a small business employer at the time of Ms Greave's dismissal.

The dismissal was not consistent with the Small Business Fair Dismissal Code

[27] The consequence of this finding is that Ms Greaves's dismissal cannot have been unfair if IAA complied with the Small Business Fair Dismissal Code in relation to the dismissal.¹⁰ But it did not.

[28] Ms Greaves described the events of 8 July 2024 – the day she was dismissed – in her evidence. That evidence was not challenged by cross-examination. Further, it was corroborated in part in Mr Greaves's statement.

[29] Having regard to the evidence, I find that the following are the relevant facts:

- a. Ms Greaves suffered an eye injury on the evening of 7 July 2024. She was unable to attend work on 8 July 2024.
- b. With the assistance of her husband, Ms Greaves attempted to send a medical certificate to IAA. However, she had difficulty accessing IAA's computer system, including her work email account.
- c. Ms Greaves made several unsuccessful attempts to contact her supervisor, Carmelinda Papalia, and Mr Smith by telephone.
- d. Mr Greaves also attempted to call Mr Smith, and left a voicemail message for him. Mr Smith called back a short while later. He expressed concern for Ms Greaves's situation and asked Mr Greaves to keep him updated as to her progress and when she would be back at work.
- e. Ms Greaves eventually succeeded in contacting Ms Papalia, who asked Ms Greaves whether she had spoken to Mr Smith that day. When Ms Greaves stated that she had been unable to reach him, Ms Papalia said words to the effect: "You need to contact Anth [sic Mr Smith], I can't do anything about this, sorry I need to go".
- f. Ms Greaves had a further conversation with Ms Papalia later in the day. In that conversation, Ms Papalia asked Ms Greaves whether she had checked her email that morning. Ms Greaves explained that she had been unable to access her account. Ms Papalia said that she had been copied into an email from Mr Smith to Ms Greaves that morning, terminating her employment effective immediately. Ms Papalia said words to the effect: "I'm sorry but I don't know anything about this, you really need to talk to him [Mr Smith]". At Ms Greaves's request, Ms Papalia read out the email to Ms Greaves, after urging her not to tell Mr Smith that she had done so.
- g. The email to which Ms Papalia referred had been sent by Mr Smith to Ms Greaves at 6.44am that day. It was titled "Termination of Employement *[sic]*". It stated (reproduced verbatim, with the exception of the redaction of Mr Smith's telephone number):

"Dear Anne Marie

It's with the heaviest heart that i am notifying you of our intention to terminate your employment today effective immediately.

Please note that this is not in any way a reflection of your work effort and ethics.

The company has fallen into financial stress and we are required to make changes to reduce liabilities effective immediately.

The forecast for our medical business is also reduced as most companies have reached full quota employment

Please feel free to reach out directly to me on [number].

Sorry for the early morning email message but i am due to fly to Melbourne and wont be available to after 10am.

I you can pack up the equipment (computer / Phone) so i can arrange an Uber to pick up at a convenient stage

• • •

Jo anne will be in touch with an update of final pay requirements

Thanks again for the great work and all the best going forward. Please let me know if I can be of any further assistance

Perhaps we can arrange a call at some stage today

Kind regards

Anthony Smith Managing Manager / Industrial Athlete"

("Termination Email")

- h. Later on 8 July 2024, after her second conversation with Ms Papalia, Ms Greaves received a text message from "Bianca", who is a "full-time physio for IAA". The message stated: "Hey Anne Marie [sic] I hope you are ok, I just heard you have left IA".
- i. Ms Greaves called Bianca to ask what her message meant. Bianca said that Ms Papalia had informed her that Ms Greaves had resigned on 5 July 2024 and that she would be taking a break before moving on to another job.
- j. Ms Greaves called James McCann, the Director of Physiotherapy, who confirmed what Bianca had stated.
- k. It is not clear when Ms Greaves received the Termination Email. The evidence suggests that Mr Smith forwarded it to Ms Greaves's solicitor on 9 July 2024. There is nothing to suggest that Ms Greaves had seen it before then.

[30] The effect of Ms Greaves's submissions is that she was blindsided by her dismissal. IAA disputed that she could have been.

[31] IAA's documents included what were said to be minutes of weekly "one-on-one" meetings between Ms Greaves and Ms Papalia between February and June 2024.¹¹ I understand

that IAA says that Ms Papalia was the author of those documents. They purportedly reflect that at meetings on 22 May 2024 and 5 June 2024, Ms Papalia discussed with Ms Greaves the poor financial performance of IAA and informed her that her job was "at risk".

[32] Ms Greaves stated that she was unaware that minutes of the one-on-one meetings were taken. She stated that she had never seen such minutes. She gave a detailed response to their contents. Most importantly, she denied that she had ever been told that her job was in jeopardy.

[33] IAA did not call Ms Papalia to give evidence. There was no explanation for that, other than for an assertion by Mr Smith at the hearing that Ms Papalia "is on stress leave". There was no evidence to support that assertion.

[34] I have sworn testimony from Ms Greaves to the effect that the minutes are, at the least, inaccurate. Their contents are also inconsistent with Ms Greaves's uncontroverted evidence as to her conversations with Ms Papalia on 8 July 2024. In the absence of evidence from the author of the minutes, I afford them no weight.

[35] IAA also relied on what it said were minutes of meetings of the directors of IAA between March and June 2024.¹² It contended that those minutes reflected the increasingly poor financial position of the company, and that the possibility of redundancy – or alternatives to redundancy – had been raised with Ms Greaves.

[36] IAA has only one director, Elizabeth Watson. She did not give evidence to verify what was said to be reflected in the directors' minutes. Although the documents record Mr Smith as being present, it is unclear what role he had. In any event, he did not expressly vouch for the accuracy of the minutes (even were he able to do so).

[37] In any event, the minutes do not contain the basis for the suggestions in them that Ms Greaves had been consulted as to a possible restructure in the business and the redundancy of her role.

[38] As I have stated, Ms Greaves denies that she was ever informed that her employment was in jeopardy, including on the basis of redundancy. I prefer her sworn testimony over largely uncorroborated documents. To the extent that IAA relies on the directors' minutes to evidence consultation with Ms Greaves regarding the redundancy of her role, I afford them no weight.

[39] For these reasons, I am not satisfied that IAA consulted with Ms Greaves about the possibility of her role becoming redundant. I accept her submissions that her dismissal came as a complete surprise to her.

[40] It is in this context that I have considered IAA's contention that the dismissal was consistent with the Small Business Fair Dismissal Code. IAA's evidence included a "Small Business Fair Dismissal Code Checklist" which was completed by Mr Smith and signed by him on 10 July 2024 ("Checklist").¹³ At question 3, Mr Smith ticked the "Yes" box to the question "Did you comply with any requirements to consult about the redundancy in the modern award, enterprise agreement or other industrial instruments that applied to the employment?". That was wrong.

[41] Ms Greaves was employed under the Health Professionals and Support Services Award 2020 ("Award"). Clause 34 of the Award is titled "Consultation about major workplace change". Ms Greaves submitted that there was no evidence that IAA had complied with that clause. Consistent with my earlier findings, I accept that submission.

[42] There were further false statements in the Checklist. At question 6, Mr Smith ticked the "Yes" box to the question "In any discussion with the employee where dismissal was possible, did the employee request to have a support person present, who was not a lawyer acting in a professional capacity?". There are handwritten annotations on the document stating, "Legal firm Chris Sutton (Law Firm)" and, in a different coloured ink, "engaged 9/7/2024". At question 7, Mr Smith ticked the "Yes" box to the question "If Yes, did you agree to that request?"

[43] I make three preliminary observations. First, for the reasons I have already given, I do not accept that there were any discussions with Ms Greaves "where dismissal was possible". Second and consequently, there was no evidence that Ms Greaves requested the presence of a support person. She never had reason to make such a request. And third, Mr Sutton is Ms Greaves's solicitor. At all times he was "a lawyer acting in a professional capacity".

[44] But there is a more fundamental concern with the answers to questions 6 and 7. There is no dispute that Mr Sutton was engaged by Ms Greaves on 9 July 2024. The handwritten annotation on the Checklist says so. However, by then Ms Greaves had been dismissed. The Checklist paints a false picture of the process culminating in the dismissal.

[45] At the hearing, Mr Smith was asked in cross-examination about his answer to question 6. He stated that the dismissal was not effected on 8 July 2024, but on 10 July 2024. He said that this was consistent with the Termination Email and drew attention to the words "intention to terminate your employment" in that email. He deposed that on 8 July 2024 IAA *intended* to terminate Ms Greaves's employment, but this was not *implemented* until 10 July 2024. He also drew my attention to another email in the evidence which referred to Ms Greaves's final pay as including "15.2 hours (2 days pay)".¹⁴ He stated that this was payment until 10 July 2024.

[46] I reject that evidence. I found it to be self-serving and wholly lacking in credibility.

[47] The evidence overwhelmingly demonstrates that IAA intended to effect Ms Greave's dismissal on 8 July 2024 and did so. Until Mr Smith was cross-examined over the Checklist, IAA had never suggested otherwise.

[48] I note four matters in particular. First, it is correct that the Termination Email contained the phrase "intention to terminate your employment". But it went on immediately to say, "today effective immediately". That statement is unequivocal. That IAA intended to effect the immediate termination of Ms Greaves's employment is consistent with the balance of the email, noting in particular its title and the direction that Ms Greaves "pack up" her equipment for collection. I observe that Ms Papalia clearly understood that the effect of the Termination Email was to effect an immediate dismissal, based on her conversation with Ms Greaves on 8 July 2024.

[49] Second, Mr Sutton wrote to IAA on 9 July 2024. In the first line of his letter, he referred to Ms Greaves as having been "summarily dismissed on 8 July 2024". It sought Ms Greaves's reinstatement. There is no evidence of IAA challenging the premise of Mr Sutton's letter.

[50] Third, in the Employer Response, IAA stated that it notified Ms Greaves of the termination of her employment on 8 July 2024 and that the dismissal took effect that day.

[51] Fourth, in his statement of 12 November 2024 Mr Smith refers to his email to Ms Greaves of 8 July 2024 as the "Termination email".¹⁵

[52] I do not place much weight on the "2 days pay" received by Ms Greaves in her final pay. The email to which Mr Smith referred me stated that Ms Greaves's final pay would comprise two days' pay, accrued annual leave, annual leave loading, a payment of two weeks' salary in lieu of notice, and four weeks redundancy pay. For me to accept Mr Smith's contention as to the significance of the two days' pay – that it was for payment for the extra days to 10 July 2024 - I would need to be satisfied that IAA's pay cycle finished on 8 July 2024 and that Ms Greaves had been paid up to and including that day. Otherwise, I would expect that the final pay would include payment for days worked and not yet paid. I do not have a proper basis to be so satisfied.

[53] I find that the dismissal took effect on 8 July 2024. IAA appears to have ignored, or been unaware of, its obligations under the Award to consult with Ms Greaves before she was informed of her dismissal and it taking effect. IAA made no attempt at such consultation. To the extent that the Checklist is relied on by IAA to suggest otherwise, I reject it. Mr Smith submitted at the hearing that IAA "did our best to comply". I do not consider that the company did anything to comply.

[54] For these reasons, IAA's contention that the dismissal was consistent with the Small Business Fair Dismissal Code cannot be sustained. It follows that its jurisdictional objection to Ms Greaves's unfair dismissal application based on that ground lacks substance. I dismiss it.

The dismissal was not a case of genuine redundancy

[55] A person cannot have been unfairly dismissed if their dismissal was a case of genuine redundancy.¹⁶ To find that there was a genuine redundancy in this case I need to be satisfied of two things.¹⁷ First, that IAA no longer required Ms Greaves's job to be performed by anyone because of changes in the operational requirements of IAA's enterprise. Second, that IAA complied with its obligations in the Award to consult with Ms Greaves about the redundancy.

[56] For the reasons I have set out above, the second requirement is not met. It follows that I cannot find the dismissal to be a case of genuine redundancy. I dismiss IAA's jurisdictional objection.

Why I have found the dismissal to be unfair

[57] I turn now to explain why I have found the dismissal to be unfair.

[58] As I have stated, to find that Ms Greaves was unfairly dismissed I need to be satisfied of four things: she was dismissed; the dismissal was harsh, unjust or unreasonable; the dismissal was not consistent with the Small Business Fair Dismissal Code; and the dismissal was not a case of genuine redundancy.¹⁸

[59] And I am satisfied of those matters. Ms Greaves was dismissed. I have found that the dismissal was not consistent with the Small Business Fair Dismissal Code and was not a case of genuine redundancy. For the reasons that follow, I find that the dismissal was harsh and unreasonable.

[60] In considering whether a dismissal was harsh, unjust or unreasonable, I am required to have regard to certain criteria.¹⁹ The extent to which I am required to consider those criteria depends on the extent to which they are relevant to the case.²⁰

[61] Not all of the criteria are relevant to this case.²¹ I do not need to traverse those that are not. I will address the others in turn.

Whether there was a valid reason for the dismissal related to Ms Greaves's capacity or conduct (including its effect on the safety and welfare of other employees)²²

[62] Ms Greaves was not dismissed due to her capacity or conduct. The question is whether there was otherwise a valid reason for the dismissal.

[63] In order to be a valid reason, the reason for the dismissal should be sound, defensible or well founded. It should not be capricious, fanciful, spiteful or prejudiced.²³ However, the Commission will not stand in the shoes of the employer and determine what the Commission would do if it were the employer.²⁴

[64] Consistent with its jurisdictional objection, IAA argued that Ms Greaves was dismissed on the basis of redundancy. However, Ms Greaves disputed that IAA's financial position was such that it needed to reduce the amount paid as wages. She contended that employee numbers at IAA had increased since her dismissal and that the company was continuing to advertise through Seek for physiotherapists in Sydney and Perth.

[65] IAA led evidence which it said demonstrated the poor financial state of its business, which in turn necessitated the redundancy of Ms Greave's position. That included evidence of three debts which on 2 September 2024 totalled approximately \$133,000. One of those debts was owing to the Australian Tax Office, in respect of which IAA had entered into a payment plan.

[66] IAA also claimed that there had been a significant business downturn. It submitted that referral volumes had decreased by 54% compared to 2023 volumes. IAA offered little evidence to substantiate those claims.

[67] IAA produced its balance sheet and profit and loss statement for the year ending 30 June 2024. Those documents show that the company's liabilities exceed the value of its assets. They also show that the company traded at a loss for the year, although I observe that its performance was significantly improved over the 2023 financial year.

[68] IAA submitted at the hearing that the challenges facing the business required it to reduce its administration costs. It drew a distinction between administrative employees and physiotherapists. While IAA accepted that it had one more employee now than at the time of Ms Greaves's dismissal, it said this was the result of insourcing some of the physiotherapy work that would otherwise have been referred to external suppliers.

[69] It is not my role to stand in the shoes of IAA. It is also not necessary that the redundancy of an employee's position be a last resort. I accept that a focus on raw employee numbers may be misleading. There can be a difference between positions which constitute an administrative cost for a business and those which generate revenue. I have no basis on which to criticise IAA for looking to reduce the first category and concentrate on the second.

[70] That said, I have two reservations. First, there is no evidence of any selection process that resulted in IAA identifying Ms Greaves's position, as opposed to someone else's, as redundant.

[71] Second, Ms Greaves submitted that the real reason for her dismissal was that she was perceived to be unproductive and for personal reasons was required to work from home. I find that submission to be largely speculative. Although there is some evidence that IAA held concerns with Ms Greaves's productivity and working arrangements, it is insufficient for me to conclude that they were the reason for the dismissal. Mr Smith categorically denied the suggestion.

[72] Overall, and very much on balance, I am satisfied that there was a valid reason for the dismissal, that being the redundancy of Ms Greaves's position.

Whether Ms Greaves was notified of the reason for dismissal²⁵

[73] This criterion requires me to consider whether Ms Greaves was notified of the reason for her dismissal before IAA made the decision to terminate.²⁶ Being "notified" requires IAA to have explicitly put the reason to Ms Greaves in plain and clear terms.²⁷

[74] That simply did not happen. I need only refer to my earlier findings.

The degree to which the size of IAA's enterprise, or the absence of dedicated human resource management specialists or expertise at IAA, would be likely to impact on the procedures followed in effecting the dismissal²⁸

[75] I have found that IAA is a small business employer. There is no evidence that it has any internal human resources expertise, and I would be inclined to assume that it does not. It is a matter that I have taken into account.

Any other matters that I consider relevant²⁹

[76] I consider that there are three other matters that are relevant to the question as to whether the dismissal was harsh, unreasonable or unjust.

[77] First, there was a virtual vacuum in the case advanced by IAA as to attempts to avoid Ms Greaves's dismissal despite the redundancy of her position. I have already determined that

redeployment was not discussed with her. But absent some references in the directors' minutes to possible redeployment or alternative employment – to the extent that any weight can be attached to them – there is no documentary evidence of IAA actually having taken any steps in this regard. Mr Smith gave some oral evidence of the steps he said had been taken, but conceded that IAA had not led evidence to corroborate his testimony.

[78] Second, IAA submitted that it was not able to "finalise this process" with Ms Greaves because she had been unable due to illness to attend several meetings which had been arranged.³⁰ I took this to be a reference to the (alleged) minutes of Ms Greaves's one-on-one meetings with Ms Papalia. Those documents state that Ms Greaves "called in sick", and so could not attend meetings, on 19 and 26 June 2024, and 3 July 2024.

[79] In contrast, Ms Greaves gave evidence that she was not sick on the first two dates. She stated that no meeting had been organised for 3 July 2024, as she had pre-approved leave to attend an appointment for major dental work. That evidence was not challenged.

[80] On the evidence, there is no basis for IAA's contention that it was unable to finalise the process.

[81] More particularly, I fail to see why IAA considered it necessary to effect the dismissal despite, on its own admission, not having "finalised the process". When I put this to Mr Smith, he stated that he had been directed by Ms Watson (the director of IAA) to inform Ms Greaves of her dismissal on 8 July 2024 and he had complied. I was offered nothing to explain why there was an imperative to effect the dismissal then, and not later.

[82] Third, Ms Greaves is, as she submitted, "a person of particular disadvantage".³¹ She suffers from a significant psychological injury. As a result of that injury, she is "of anxious disposition, agoraphobic, socially avoidant, suffers panic attacks and can present as awkward and brittle".³² She requires a position in which she can work from home.

[83] Ms Greaves gave evidence that her employment with IAA came through her contact with Mr Smith, whom she had known in high school. She stated that in her discussions with Mr Smith concerning the possibility of employment with IAA, she disclosed that she would require a full-time work from home role as she had extreme agoraphobia, and her mental health had taken a turn for the worse. Mr Smith told Ms Greaves that he had known about her mental health for many years.

[84] Throughout her employment with IAA, Ms Greaves worked from home.

Conclusions

[85] Having regard to the matters to which I have referred, I find that Ms Greaves's dismissal was unreasonable. There was no consultation with her before IAA made the decision to terminate her employment. As a consequence, she had no warning that her employment was in jeopardy. She was denied the opportunity to question why IAA had selected her position and not another for redundancy. She also had no opportunity to explore alternatives to her dismissal. Further, while it was not necessarily IAA's intention, the manner in which it effected the dismissal left Ms Greaves to find out about it through the proverbial grapevine.

[86] I also find that the dismissal was harsh in its consequences, having regard to Ms Greaves's personal circumstances. It involved the loss of a full-time, work from home position, which Ms Greaves's psychological condition requires.

Remedy – why I have decided to award compensation instead of reinstatement

[87] I have found that Ms Greaves's dismissal was unfair. It follows that I have the discretion to order her reinstatement, or to order that IAA pay her compensation.³³

Reinstatement is inappropriate

[88] Ms Greaves seeks reinstatement. She relies on her "particular requirements for employment".³⁴ She stated that she has been unable to secure alternative employment since her dismissal from IAA.

[89] IAA submitted that Ms Greaves ought not to be reinstated due to the financial state of its business. Its arguments are largely premised on the Commission accepting that IAA's financial position necessitated Ms Greaves's dismissal on the basis of redundancy. These submissions have some force in light of my finding that there was a valid reason for the dismissal.

[90] What is of greater significance, though, is that I consider that the restoration of the employment relationship between Ms Greaves and IAA is unworkable or not feasible. The conduct of the main protagonists before me suggests that the relationship between them has broken down to a point that it is likely beyond repair.

[91] Mr Smith demonstrated belligerence bordering on hostility towards Ms Greaves and her representative, Mr Sutton. He did so in his conduct under cross-examination in the hearing, during earlier attendances in the matter and in his correspondence (both to the Commission and to Mr Sutton, into which the Commission was copied).

[92] For her part, Ms Greaves's evidence was highly critical of Mr Smith, beyond his handling of her dismissal. She also claimed that she had been bullied and micromanaged by her supervisor, Ms Papalia. She led evidence of a message sent by Ms Papalia to a third person, which I understood was tendered to suggest Ms Papalia's satisfaction or pleasure in Ms Greaves's dismissal.

[93] Having regard to the conduct of the parties in the proceedings and all of the evidence, I consider that the relationship between the parties is beyond repair.

[94] I am also cognisant of Ms Greaves's personal circumstances. I accept that she is a person of "particular disadvantage". But the evidence on which Ms Greaves relies in that respect has repercussions beyond the working arrangements she needs. It raises questions as to her capacity to safely re-enter that workplace in light of the harm done by both parties to the working relationship.

[95] For these reasons, I am satisfied that it would be inappropriate for me to order that Ms Greaves be reinstated to employment with IAA.

Compensation is appropriate

[96] However, I am satisfied that it is appropriate for me to order that IAA make a payment of compensation to Ms Greaves. This is not the automatic consequence of my decision not to order reinstatement. It is a decision that I have made in the exercise of my discretion as to whether to order a remedy.³⁵

[97] In determining the amount of compensation to be paid to Ms Greaves, I am required to have regard to all the circumstances of the case, including seven identified factors.³⁶ The Commission has developed a methodology for assessing compensation, which provides guidance as to the order in which those and other factors might be applied.³⁷ I have adopted that methodology.

*Remuneration that Ms Greaves would have received, or would have been likely to receive, if she had not been dismissed*³⁸

[98] My consideration of this factor requires me to make an assessment as to how long Ms Greaves would have remained employed by IAA but for the termination of her employment.³⁹

[99] I have found that IAA had a valid reason to dismiss Ms Greaves. However, for the reasons set out above, the dismissal was unreasonable. It follows that Ms Greaves would not have remained employed by IAA for any significant period of time, and certainly not indefinitely.

[100] Based on my findings, Ms Greaves would only have remained in employment for as long as it would have taken for IAA to have properly and meaningfully consulted with her about the possibility of her position becoming redundant, and genuinely explored alternatives to dismissal including redeployment or other acceptable employment. On the evidence, I have no basis to conclude that Ms Greaves's dismissal would likely have been avoided altogether.

[101] Having regard to Ms Greaves's particular circumstances and needs, I consider that the process I have outlined would have required 8 weeks to complete. I have proceeded on the basis that the process would have commenced on 8 July 2024, being the first date on which IAA informed Ms Greaves that it had determined that her role was no longer required.

[102] Ms Greaves would as a result have continued to receive her income of \$69,550 gross⁴⁰ if she had remained in IAA's employ in the period from 8 July 2024 until 2 September 2024.

*Remuneration earned*⁴¹*and income reasonably likely to be earned*⁴²

[103] Ms Greaves gave evidence that she has not been able to secure any employment since her dismissal from IAA.

[104] As I have found the anticipated period of employment would have ended on 2 September 2024, the income that Ms Greaves is likely to earn is not a relevant factor.

[105] In the circumstances, the financial loss suffered by Ms Greaves is 8 weeks at her annual salary of \$69,550. There is no evidence as to Ms Greaves's weekly salary. I have used basic arithmetic ($69,550 \div 52$) to derive a weekly salary of \$1,337.50. Over 8 weeks that equates to \$10,700.00.

*Other matters*⁴³

[106] I consider that account needs to be taken of the two weeks' pay in lieu of notice which Ms Greaves was paid on her dismissal, since this constituted earnings available to her during her period of unemployment. This will be deducted from the compensation amount, resulting in a balance of \$8,025.00.

[107] There is no basis for any deduction for contingencies, since I am dealing with past and therefore known circumstances.⁴⁴

[108] In relation to taxation, I have determined compensation as a gross amount. It will be for Ms Greaves to pay any amount of taxation required by law.

The effect of the order on the viability of IAA's enterprise⁴⁵

[109] IAA did not contend that its financial position is such that an order of compensation might impact its viability. Even allowing for the circumstances that precipitated Ms Greaves's dismissal, I do not consider that the order I propose to make will adversely affect the viability of IAA's business.

Ms Greaves's length of service with IAA⁴⁶

[110] Ms Greaves was employed by IAA for approximately 19 months. In the circumstances of this case, I do not consider that this period justifies any increase or reduction to the amount of compensation otherwise payable.

Ms Greaves's efforts to mitigate her loss⁴⁷

[111] Ms Greaves gave oral evidence at the hearing that since her dismissal she had been unsuccessfully seeking work. Although the evidence of her attempts was limited, it was not challenged. I accept that Ms Greaves has attempted to mitigate her loss. I will make no adjustment to the amount of compensation to be paid on that score.

No component for shock, distress, humiliation or other analogous hurt⁴⁸

[112] The compensation amount that I have assessed contains no component for any shock, distress, humiliation or other analogous hurt suffered by Ms Greaves as a result of the manner of her dismissal.

Compensation cap⁴⁹

[113] The amount of compensation I propose to order is below the compensation cap.

Instalments⁵⁰

[114] IAA made no application to pay any compensation by instalments. In any event, I do not consider that the amount of compensation to be paid justifies the amount being paid in instalments.

Conclusion regarding compensation

[115] I am required to ensure that the level of compensation is appropriate having regard to all the circumstances of the case.⁵¹ For the reasons set out above, I am satisfied that a remedy of compensation in the sum of \$8,025.00 in favour of Ms Greaves, along with a payment of superannuation, is appropriate in all the circumstances of this case.

Disposition

[116] In light of the above, I will make an order that IAA pay Ms Greaves \$8,025, less taxation as required by law, plus make an 11.5% superannuation contribution on that amount into her nominated superannuation account. The order will require payment to be made by 17 January 2025.

[117] The order is published contemporaneously with this decision in <u>PR782686</u>.



COMMISSIONER

Appearances: Christopher Sutton, for the Applicant Anthony Smith, for the Respondent

Hearing details: 2024 Sydney (by video) 14 November

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<PR782574>

- ³ Exhibit 4
- ⁴ Exhibit 6
- ⁵ Exhibit 8
- ⁶ Form F3 Employer response to unfair dismissal application filed 27 August 2024
- ⁷ Section 382
- ⁸ Section 385
- ⁹ Section 23
- ¹⁰ Section 385(c) read with s 388(2)
- ¹¹ Exhibit 7, pp 31-40
- ¹² Exhibit 7, pp 23-30
- ¹³ Exhibit 7, pp 3-7
- ¹⁴ Exhibit 7, p 45
- ¹⁵ Exhibit 8, par 6a.
- ¹⁶ Section 385(d)
- ¹⁷ Section 389(1)
- ¹⁸ Section 385
- ¹⁹ Section 387
- ²⁰ Sayer v Melsteel Pty Ltd [2011] FWAFB 7498 at [14]
- 21 Those referred to in s 387(c), (d) and (e).
- ²² Section 387(a)
- ²³ Selvachandran v Peteron Plastics Pty Ltd (1995) 62 IR 371 at 373
- ²⁴ Walton v Mermaid Dry Cleaners Pty Ltd (1996) 142 ALR 681 at 685
- ²⁵ Section 387(b)
- ²⁶ Sydney Trains v Trevor Cahill [2021] FWCFB 1137 at [60]
- ²⁷ Bartlett v Ingleburn Bus Services Pty Ltd [2020] FWCFB 6429 at [19] and Sydney Trains v Trevor Cahill [2021] FWCFB 1137at [60]
- ²⁸ Section 387(f) and (g)
- 29 Section 387(h)
- ³⁰ Transcript PN807
- ³¹ Transcript PN780
- ³²Submissions: Anne Maree Greaves, 3 October 2024, par 6
- ³³ Section 390(1) and (2)
- ³⁴ Transcript, PN780
- ³⁵ Nguyen v Vietnamese Community in Australia t/a Vietnamese Community Ethnic School South Australia Chapter [2014] FWCFB 7198 at [9]
- ³⁶ Section 392(2)
- ³⁷ Bowden v Ottrey Homes Cobram and District Retirement Villages Inc. T/A Ottrey Lodge (2013) 229 IR 6; [2023] FWCFB <u>431</u>, in which the Full Bench took into account authorities under corresponding provisions of the Workplace Relations Act 1996 in Sprigg v Paul's Licensed Festival Supermarket (1998) 88 IR 21 and Ellawala v Australian Postal Corporation Print S5109 (AIRCFB Ross VP, Williams SDP, Gay C, 17 April 2000)

³⁸ Section 392(2)(c)

³⁹ Ellawala v Australian Postal Corporation Print S5109 (AIRCFB Ross VP, Williams SDP, Gay C, 17 April 2000) at [34]

¹ The application was brought under Part 3-2 of the of the *Fair Work Act 2009* ("Act"). Unless otherwise stated, all references to legislative provisions in this decision are to provisions of the Act

² Exhibits 2 and 3

- ⁴⁰ Exhibit 7, p 45
- ⁴¹ Section 392(2)(e)
- 42 Section 392(2)(f)
- ⁴³ Section 392(2)(g)
- ⁴⁴ Lucinda Vennix v Mayfield Childcare Limited [2020] FWCFB 550 at [32]
- ⁴⁵ Section 392(2)(a)
- ⁴⁶ Section 392(2)(b)
- 47 Section 392(2)(d)
- ⁴⁸ Section 392(4)
- 49 Section 392(5)
- ⁵⁰ Section 393

⁵¹ Double N Equipment Hire Pty Ltd t/a A1 Distributions v Humphries [2016] FWCFB 7206 at [17]