



DECISION

Fair Work Act 2009

s.394 - Application for unfair dismissal remedy

Mr Chris Ingall

v

Qube Ports Pty Ltd

(U2024/6871)

COMMISSIONER DURHAM

BRISBANE, 31 DECEMBER 2024

Application for an unfair dismissal remedy – breach of policy – conduct during and after disciplinary process - valid reason – dismissal not unfair – application dismissed.

[1] On 14 April 2024, Mr Chris Ingall, a casual stevedore employed by Qube Ports Pty Ltd (**Qube**) was involved in a collision with an Australian Amalgamated Terminals (**AAT**) taxi (**the Incident**) during a shift at the Port of Brisbane.

[2] Mr Ingall was stood down pending an investigation into the Incident. The following day, Mr Ingall was advised that the investigation into the Incident had been completed, and that Qube had formed the view that his conduct constituted “misconduct inconsistent with our values of integrity, reliability, inclusion and zero harm”.¹ Consequently, Mr Ingall was provided an opportunity to respond to Qube’s preliminary view that his employment should be terminated.

[3] On 9 May 2024, Mr Ingall’s representative, the Maritime Union of Australia (**MUA**), was advised by Qube that it had finalised its investigation into the Incident and that Mr Ingall could return to work. Mr Ingall and the MUA recall that they were advised at this point that no further action would be taken, whereas Qube recall asserting that Mr Ingall could return to work whilst they further considered an appropriate disciplinary penalty.

[4] Upon his return to work, and prior to Qube making a disciplinary outcome decision, Mr Ingall sent a number of emails to Qube employees and management which Qube submit to be “untrue, inappropriate in their tone”² and which they considered demonstrated a failure by Mr Ingall to take responsibility for his part in the Incident.

[5] As a result of this conduct, Mr Ingall was again placed on unpaid suspension. Two further show cause letters were issued and having considered Mr Ingall’s responses, he was dismissed without notice on 10 June 2024.

[6] Mr Ingall seeks reinstatement to his former position, continuity of employment and lost pay. In the alternative, he seeks compensation of six (6) months of his income.

[7] For the reasons outlined below I find that there was a valid reason for Mr Ingall's dismissal and further, that the dismissal was not harsh, unjust, or unreasonable. It was therefore not unfair.

Procedural Background

[8] Following an unsuccessful attempt to resolve the matter during a case management/conciliation conference between the parties on 6 August 2024, the matter proceeded to hearing on 19 and 20 September 2024. At the hearing, Mr Ingall was represented by Mr Samuel O'Sullivan of the MUA and Qube was represented by Mr James McLean of Counsel.

[9] Both parties filed written submissions and witness statements. Mr Ingall gave evidence in support of his application as did Mr Jason Miners, Queensland Branch Secretary of the MUA.

[10] Mr Damien Woolford, the operator of the AAT taxi during the incident, and Mr Daniel Coulton, General Manager Industrial Relations, gave evidence on behalf of Qube.

BACKGROUND AND TIMELINE

Mr Ingall's role and his employment with Qube

[11] At the time of his dismissal, Mr Ingall was employed by Qube as a Supplementary Stevedore (Grade 2) at the Port of Brisbane. He commenced this role on 26 May 2023.

[12] The terms and conditions of Mr Ingall's employment are governed by the Qube Ports Pty Ltd Port of Brisbane Enterprise Agreement 2020 (**the Agreement**). In accordance with the Agreement, Mr Ingall was paid a composite hourly rate which included casual loading.

[13] Mr Ingall's letter of employment provides that as a supplementary employee, his ongoing eligibility for casual engagements will be conditional on work being available, his availability to work and him meeting Qube's performance requirements.³

Mr Ingall's previous employment with Qube

[14] It is not in dispute that Mr Ingall had previously been employed by Qube as a Supplementary Stevedore between December 2020 and February 2023.

[15] During the hearing, Qube tendered a copy of a letter sent to Mr Ingall on 21 February 2023 titled "Termination of Supplementary Employment Arrangements with Qube".

[16] The letter outlines that, as a result of what Qube referred to as "recent behaviour in various email correspondence with the Company and its Officers", Qube had decided to terminate his supplementary employment contract and remove him from the supplementary employment pool.⁴

[17] Mr Ingall's statement provides that on 10 March 2023, he lodged an unfair dismissal application.⁵ On 25 May 2023, the parties reached an agreement, on the basis of no admission

of liability by either party, which resulted in Mr Ingall being returned to the supplementary employment pool from 26 May 2023.⁶

Relevant workplace policies

Qube's Employee Handbook and Code of Conduct and Ethics

[18] Qube's Employee Handbook (**the Handbook**) is a reference document for employees. Its stated purpose is to answer questions for employees and outline the various policies and procedures that underpin the way the business operates. The Handbook specifically notes the Code of Conduct and Ethics (**the Code**) and encourages employees to read the Handbook along with other policies on the intranet, including Safety, Health and Sustainability Management System (**SHSMS**).

[19] The Code outlines the standards and expectations of all Qube employees. Relevantly, it provides that all employees must demonstrate behaviours of honesty, integrity, quality and trust at all times. Further, the Code provides:⁷

4. Treatment of Others

Qube values difference and is committed to achieving a truly diverse workforce that remains inclusive and respectful of each other's differences. We are all expected to treat all people we deal with through our work at Qube with dignity and respect, whether they are colleagues, customers, suppliers or other third parties.

Unlawful discrimination, harassment of any kind, bullying or victimisation or other unacceptable or offensive conduct will not be tolerated.

Qube believes the safety, security and physical and mental health of our people lie at the heart of each person's ability to contribute to our success. Qube respects the right of all individuals to work in a safe working environment that promotes wellbeing.

What you must do:

- Treat all people you deal with through your work at Qube with dignity and respect.
- Make employment decisions based on merit, and not on attributes that are irrelevant to employment or performance.
- Never unlawfully discriminate, harass or bully your colleagues, customers, Qube visitors or anyone else in the workplace. This includes being aware that some behaviour may be acceptable to you but not to others, and acting appropriately.
- Contribute to promoting a safe working environment by taking responsibility for health and safety and reporting any issues as soon as possible.
- Never treat somebody less favourably because they have brought or propose to bring a genuine complaint of unacceptable behaviour.

[20] Mr Ingall states that he is familiar with an employee handbook published in 2014, however, he states that he had never seen the updated handbook published in 2020 before Qube provided it on 21 August 2024.⁸ Mr Ingall notes that he has since reviewed the Handbook, and that "it is not clear to me how any of my actions are in breach of this document".⁹

[21] Similarly, with respect to the Code, Mr Ingall states that he may have briefly been shown a copy of the Code at his initial induction, however, he does not recall being shown a copy of

it before or after the Incident, again noting that he has since read it, and that it is not clear to him how any of his actions, as set out in Show Cause 1, breached the Code.¹⁰

The Incident on 14 April 2024

[22] On the afternoon/early evening of 14 April 2024, Mr Ingall received a phone call from Qube, seeking his availability to cover a driving shift at the Port of Brisbane for an employee who had called in sick.¹¹ Mr Ingall notes that he received this call around one hour before the shift was due to commence. Mr Ingall recalls that due to late notice and traffic, he did not arrive to commence the shift until approximately 45 minutes after the shift had commenced.¹² Consequently, he missed the toolbox meeting.

[23] Mr Ingall had been assigned to perform duties on a Pure Car Carrier (**PCC**). Mr Ingall described a PCC as a vessel specifically designed for the transportation of cars and trucks in large quantities.¹³ I understand Mr Ingall's duties that evening required him to unload passenger vehicles from the PCC and drive them into assigned lanes for further processing.

[24] It is not in dispute that Mr Ingall was driving a Honda Vehicle which, according to the Lay Down Sheet, was to be driven to "B24-B28 PADS1-21 UP TO YELLOW LINE".¹⁴

[25] Mr Ingall states in his oral evidence that as he was close to completing the discharge of the vehicle, it became apparent to him that he had driven the vehicle into the row designated for Mazda's (D22-D23) instead of the row designated for Hondas.¹⁵

[26] Similarly, Qube provide in their submissions, that at approximately 6:45pm, Mr Ingall was driving the Honda vehicle that he was unloading from the vessel, when Mr Ingall realised, he was in the wrong lane for that type of vehicle.¹⁶

What happened after Mr Ingall realised he was in the wrong lane?

[27] Mr Ingall states that prior to pulling out of the lane, he had slowed to a stop approximately 10 metres behind the vehicle in front of him, he then looked for any traffic and/or drivers before pulling out of the lane, at which point he noticed the AAT taxi coming up from the side and behind him very quickly.¹⁷ Mr Ingall subsequently braked and came to a complete stop before the AAT taxi collided with his vehicle.¹⁸ Mr Ingall believes the AAT taxi was travelling well above the permitted speed.¹⁹

[28] Qube however suggest that the CCTV footage, shows Mr Ingall did not come to a stop 10 meters behind the vehicle in front of him and further that it clearly shows him leaving his lane and pulling directly into the path of the AAT taxi. This position, they say, is supported by the witness statements given by other employees present during the Incident, being Mr Rayner Foster, Mr Jason Austin, Mr James Jordon, Mr Kieran Mueller and Mr Woolford following the Incident.²⁰ Qube further contend that the footage clearly demonstrates that Mr Ingall was not 10 meters behind the vehicle in front of him, suggesting he was one meter at the most.

[29] Mr Ingall submits that the responsibility for the Incident is not borne by him. Mr Ingall insists that the AAT Taxi Operator, Mr Woolford, was speeding across lanes and made impact

with the Vehicle after coming from a direction behind, and to the side of Mr Ingall. Mr Ingall provided in his submissions that:²¹

- Mr Woolford was in the adjacent lane of Mr Ingall, at the time of the incident.
- Mr Woolford's AAT Taxi should have given way to Mr Ingall.
- Mr Woolford was not permitted to drive in the adjacent lane due to risk the conduct poses to the safety of the stevedores exiting the recently parked vehicles, and to potential damage it can cause to vehicles.

Events immediately following the collision

[30] It is Mr Woolford's evidence that following the Incident, as he started to get out of his vehicle, the driver of the other vehicle (Mr Ingall) drove in front of his vehicle, turned around and drove back down to the wharf towards the ramp of the vessel without stopping to discuss the Incident with him.²² Although during cross examination Mr Woolford agreed that Mr Ingall did ask if he was ok before driving off.

[31] Mr Ingall asserts that due to the location of his vehicle, there existed a genuine risk to the health and safety of himself and/or his colleagues, so he decided to drive the vehicle directly to the clerk's facility to be reported and documented.²³

[32] Mr Ingall states that this took approximately one (1) minute. Mr Ingall notes that as he did not have a Qube issued radio or phone, he waved over the second AAT Taxi Operator, Mr Nathan Bailey, to request that he contact the Shift Manager, Mr Jeremy Fitzell.²⁴

Initial steps taken by Qube following the Incident

[33] Mr Coulton recalls that he received a call from Mr Ken Jackson, Terminal Manager, advising him that there had been an incident. Mr Coulton advised Mr Jackson that all persons involved in the Incident should be subjected to a drug and alcohol test, and that if it was clear which individual was at fault, they should be stood down pending an investigation.²⁵

[34] In accordance with this direction, Mr Fitzell contacted Mr Ingall and Mr Woolford and directed them to return to the office to undergo a drug and alcohol test, which they both passed. Both men were asked to provide brief written witness statements.

[35] Mr Ingall's statement references observing Mr Fitzell on the phone with Mr Jackson and asserts that as soon as he was advised that he had passed the drug and alcohol test, he was stood down effective immediately.²⁶

[36] Mr Ingall recalls that as he was leaving the site, Mr Fitzell had advised him that Ms Wilson "deals with these matters".²⁷

[37] At 8.09pm that same evening, Mr Ingall received an email from Mr Fitzell which contained photos of the damage to the vehicle.²⁸ Mr Ingall responded to this email seeking that Mr Fitzell advise him who had instructed that he be stood down.²⁹ It does not appear that this email was responded to.

Qube's initial investigations

[38] Mr Coulton's statement indicates that he had arranged for Ms Wilson to make preliminary inquiries into the Incident.³⁰ In the course of those inquiries, Ms Wilson had obtained and reviewed the CCTV footage and photographs and had obtained witness statements from Mr Ingall, Mr Woolford, and the four (4) other employees who had witnessed the Incident.³¹

[39] Mr Coulton states he was provided copies of these documents in the days following the Incident.³² He was also provided a copy of Mr Ingall's initial response to the 15 April 2024 Show Cause Letter. It was at this point that he took carriage of the investigation.³³

[40] Mr Coulton states that the reason for this was that Mr Ingall had previously complained the local management were out to get him, so he had wanted to get ahead of that by overseeing the matter himself.³⁴

The initial show cause process

[41] The day following the Incident, 15 April 2024, Mr Coulton sent Mr Ingall a Show Cause Letter that asked him to provide a response to concerns about his conduct in connection with the Incident. The letter noted that upon reviewing statements and examining the CCTV footage it was clear that Mr Ingall had relocated the vehicle from the site of the incident, and proceeded to drive it back to the ramp of the vessel, a course of action which, they say, deviates from the requirements of preserving the scene of an incident, as identified in the Qube SHSMS incident reporting and management procedure.³⁵

[42] Mr Ingall was advised that now that the investigation had taken place, they had identified the following concerns:³⁶

“

- You have put yourself, other workers and Company and Client assets at imminent risk of serious injury, incident or loss through disregard for safe work practices and Company Policy and Directions;
- You have failed to preserve the scene of an incident as required in line with the Qube SHSMS Incident Reporting Management (SHSMS-QH-13-PR-041).
- You have caused loss of reputation for Qube with our client K-Line;
- You have breached the Qube standards in relation to safe working;
- You have breached the Zero Harm values and spirit of safety excellence; and
- Resulting from the above, you have broken the mutual trust and confidence between you and the Company.”

[43] Furthermore, Qube advised they had determined, on balance, that Mr Ingall had “failed to preserve the scene of the incident, by leaving the vehicle in situ.”³⁷ Consequently, this has resulted in Mr Ingall breaching both Qube's Incident Reporting and Management Procedure, and the Code.³⁸ As a result, Qube had formed the view that Mr Ingall had failed to undertake his duties with care and diligence, which, they asserted, constituted misconduct inconsistent with their values of integrity, reliability inclusion and zero harm.

[44] Mr Ingall was advised that he would be afforded an opportunity to respond to Qube’s preliminary view that his employment should be terminated. Mr Ingall was asked to provide any further response, including any information regarding mitigating factors he felt should be considered by 18 April 2024. Mr Ingall was also offered the option of a face-to-face meeting with his representatives.

Mr Ingall’s response to the 15 April 2024 Show Cause Letter

[45] On 17 April 2024, Mr Ingall provided his first written response. The response opened with Mr Ingall questioning why Mr Coulton was conducting the investigation and not Ms Wilson. Mr Ingall states:³⁹

“I was advised by Shift Manager Jeremy Fitzell, HSE Officer Donna Wilson would be dealing with this matter as she does on all & any other prior incidents of a similar nature, which raises concern of your involvement, interaction & motivation surrounding matter & process. It makes me question if a fair & honest process will be received or just a formality to tick the box's prior to terminating my employment. I question why you have appointed yourself over HSE Officer Donna Wilson who is the health & safety officer or why you have been contacted to interact on this process as it is not your area of employment? I don't believe it is unreasonable to say it is apparent you are looking at terminating my employment whether I'm at fault or not based on a single technicality.”

[46] Mr Ingall then goes on to explain that he has a good record of not taking sick leave, other than to care for a sick relative and that he had never been involved in a similar accident, before making the following statement:⁴⁰

“Before providing an outline of events, I would like to make it very clear, I was not at fault! Though I'm sorry for what has occurred, I am not apologising for an accident which wasn't my fault...”.

[47] Mr Ingall then outlines his understanding that Qube’s policy dictates that both drivers should be stood down, and notes a range of other incidents, that he believes were dealt with differently.

[48] In response to the Incident itself, Mr Ingall notes that he had received the call to pick up the shift just one hour before it was set to commence. He accepts that the lay down sheet advised that Hondas were to go to B-Block, but notes this was not the usual position for them.⁴¹ He also notes that due to the late call in and heavy traffic, he did not attend the toolbox meeting, where lay down issues, row changes etc are often discussed.⁴²

[49] Mr Ingall acknowledged that he did pull into the incorrect row, and upon realising that the vehicles in front of him were Mazdas, he stopped. Mr Ingall says that he stopped at least 10 meters behind the vehicle in front of him. Mr Ingall then stated that he checked for other vehicles coming in behind him, and for oncoming traffic. When he saw none, he exited the lane to drive to B-Block. He then states:⁴³

“Once out of lane on my right I saw the taxi which travelled from an angle across multiple rows, not driving/moving up the row, clearly going to fast exceeding the speed limit of the rows (In my opinion rushing to catch up after falling behind) which applies to not only the vehicles being discharged but the taxis picking up drivers (Taxis consistently disregard this rule & encouraged to go fast-speed & rush by superiors to finish unloading vessel faster, which is no secret breaking Qube's own car vessel policies), I braked immediately coming to a complete stop, as the Taxi-Damian was speeding failed to recognise the danger failing to react, the taxi did not break hitting me & then braking hitting front fender (bumper) to fender moving & pushing around front panel of Honda.

Damian was coming from a position behind me, failed to react & run into me. This determines fault straight away determining Damain is at fault, not only failing to stop, also failing to give way to a vehicle in front of him moving in & out of rows”.

[50] Mr Ingall noted that Mr Fitzell had indicated to him that he probably should not have moved the vehicle to which Mr Ingall had replied that he was not aware of that, and having never been involved in an incident before, his first reaction was to simply make sure the site was safe, and head to the office to report it to the shift manager, which he did.⁴⁴

[51] The rest of Mr Ingall’s response disputes Mr Woolford’s incident report, in which he asserts that “it is law whether in an AAT facility or out on a public road the vehicle behind has to give way to the vehicle in front & make every effort to avoid a collision.”⁴⁵ Mr Ingall concluded his response with a request for a face-to-face meeting to discuss his response.

Email exchanges regarding the meeting

[52] On that same evening, 17 April 2024, Mr Ingall emailed Mr Coulton to advise that he had made contact with the MUA.⁴⁶ The email sought that Mr Coulton provide possible dates and times so that a meeting could be arranged.

[53] Mr Ingall states that on 18 April 2024, he received a response from Mr Coulton in relation to his availability to attend the in-person meeting. During this email chain Mr Ingall also asked Mr Coulton:⁴⁷

“In the mean time can you offer a response to all questions directly relating to incident including your choice to investigate matter & not HSE Officer Donna Wilson, why only I was stood down & whose instruction etc. & provide requested copies?”

[54] Mr Coulton replies, confirming the meeting will occur 19 April 2024. In response to the additional matters raised by Mr Ingall, Mr Coulton advised him that he would not be going into matters not directly related to the Incident, stating, “I do not need to justify my involvement other than it is a part of my job”.⁴⁸

[55] Later in the email chain, Mr Coulton confirms that at the meeting, Mr Ingall will be shown the footage and relevant witness statements.⁴⁹

Meeting held 19 April 2024

[56] On 19 April 2024, Mr Ingall and his support person, Mr Miners, attended a meeting with Mr Coulton and Mr Len Gillespie, Qube Logistics’ management, to discuss the Incident and Mr Ingall’s response.

[57] Mr Coulton recalls that in the meeting, Mr Ingall and Mr Miners were shown the CCTV footage, and that he explained his view that Mr Ingall was at fault for the Incident, and further that he considered Mr Ingall’s conduct, in driving away from the scene was inconsistent with the expectation that employees preserve the scene of any incident.⁵⁰

[58] Mr Miners in his statement confirms that at the meeting he and Mr Ingall were shown the footage, as well as photos of the incident taken by Mr Woolford. Mr Miners notes that he made a request for certain information and documents.⁵¹

[59] Mr Ingall recalls that during the meeting Mr Coulton explained that Mr Woolford had made an amendment to his statement (regarding the side on which he saw the lights) and that Mr Coulton had informed him that the investigation would be concluded prior to Anzac Day (25 April).⁵²

[60] Mr Ingall also recalls that as a result of the meeting, Mr Coulton agreed that he would follow up with Mr Bailey to confirm Mr Ingall's explanation of having waved him down to report the incident to the shift manager and Mr Mueller, whom Mr Ingall believed would be able to speak to a near miss earlier on the night of the Incident allegedly also involving Mr Woolford.⁵³

Events following the 19 April 2024 meeting

[61] Later that same day, 19 April 2024, Mr Ingall emailed Mr Coulton requesting that he see a "hard copy" or Mr Woolford's statement.⁵⁴ I take this to have been a request to see the original version, without the change he had made.

[62] The following day, 20 April 2024, Mr Ingall sent another email to Mr Coulton, providing additional responses regarding the allegation that he had breached the incident reporting requirements of the Handbook.⁵⁵ The email then proceeds to restate his views regarding Mr Woolford. Mr Ingall again queries why Mr Coulton is conducting the investigation and questions his independence, stating:⁵⁶

"This is relevant to the investigation if it is remotely independent as you have stated, and to not want to establish this shows your (sic) not interested in the facts or truth but intent on protecting management at all costs to justify attempts to vilify myself".

[63] On 24 April 2024, Mr Ingall sent another email to Mr Coulton. Noting his understanding the Mr Coulton had indicated the matter would be finalised by 25 April 2024. It is of note that in this email Mr Ingall states "as we have established, I wasn't at fault", and that "he is not sure what else there is to investigate".⁵⁷ He then goes on to accuse Mr Coulton of deliberately punishing him further as every day the issue is not resolved, is another day he is not on shift. Mr Ingall concludes his email with a demand that the matter be resolved no later than 26 April 2024.

[64] On 29 April 2024, Mr Coulton responded to Mr Ingall's email. Mr Coulton commences his response by pointing out that it has not been established that Mr Ingall was not at fault. He further advised that he has sought further information and will respond with outcomes once all matters have been investigated and resolved.⁵⁸

[65] On 30 April 2024, Mr O'Sullivan sent an email to Mr Coulton seeking a date by which they expect to have the investigation completed. Mr O'Sullivan also notes that "Qube appear to be taking an inordinate amount of time to come to what ought to be a simple finding of no fault by Chris".⁵⁹

[66] On 2 May 2024, Mr O'Sullivan again emails Mr Coulton noting he was yet to receive a response and requesting a reply by 3 May 2024.⁶⁰ Mr Miners states that from between 3 and 9 May 2024 he made approximately three attempts to contact Mr Coulton regarding the

investigation however it was not until around 9:40am on 9 May 2024 that he received a call from Mr Coulton.⁶¹

The 9 May 2024 phone call and subsequent communications

[67] The parties disagree as to what transpired during the phone call. Mr Miners recalls the following conversation occurred between him and Mr Coulton:⁶²

“**Myself** - “Mate he’s been off that long, this is death by roster. You are fucking with his livelihood. I see that you need to cover this up for Ken and Donna. However, you need to pull some rank here because what you are doing is wrong.

Mr Coulton - “The investigation has been concluded; he’ll be back on roster as of tomorrow. There won’t be any written response or warnings”.

[68] Mr Coulton’s recollection of the phone call is quite different. He recalls that during the phone call with Mr Miners he advised him that:⁶³

“(a) Qube Ports had completed its investigation into the Incident;
(b) Mr Ingall would be placed back on the active roster the following day;
(c) Qube Ports was in the process of finalising its disciplinary process, however Mr Ingall would likely receive only a final written warning.”

[69] At 9:51am that same day, Mr Miners emailed Mr Ingall informing him that:⁶⁴

“a. the investigation had concluded.
b. he would be on roster from tomorrow onwards; and
c. he would not receive any written response or warnings regarding the Incident or the subsequent investigation.”

[70] At 4.28pm that same day, Mr Ingall sent an email to Mr Coulton in which he advised Mr Coulton that Mr Miners had advised him that the investigation had been concluded and that he would be back on roster the next day.⁶⁵ He also stated that Mr Miners had advised that he would not receive any written response or warnings regarding the Incident or investigation.⁶⁶

[71] Short of confirming the above, the purpose of the remainder of the email is unclear, particularly given Mr Miners and Mr Ingall’s stated view that the investigation had been completed.

[72] Mr Ingall commences the email by referring to it as a “Witch Hunt” and makes the assertion that other employees “were at fault”.⁶⁷

[73] Mr Ingall makes various statements directed at Mr Coulton including:

“I find your actions deliberate”⁶⁸

and

“you decided to go on holidays and impact me further in anyway you see fit, causing me as much loss personally and to my income as possible”⁶⁹

and declares that, as there is no written response or warning, this verifies that he was not at fault.⁷⁰

[74] Mr Ingall further states that he intends to raise investigation time frames with the MUA, and request that timeframes for investigations be put into the new agreement, further stating that he does not believe “there would be any reasonable argument to prevent this clause and any rebuttal could only be perceived as lacking of moral fibre or moral compass.”⁷¹

[75] Mr Ingall again asserts his belief that the fact that there has been no written warning, verifies that he was not at fault and that others were, and that he had been treated harshly.⁷² He then challenges Mr Coulton to supply reasons and evidence if he “believes otherwise”.⁷³

[76] Curiously, given Mr Ingall and Mr Miners stated understanding that the investigation had been completed, Mr Ingall then proceeded to request copies of “every single piece of evidence”, all statements, photos etc relating to the Incident.⁷⁴

[77] Mr Ingall concluded the email with “I am happy that matter (sic) has now been concluded and I have been cleared of any wrongdoing. I look forward to returning to shift ASAP to earn a living.”⁷⁵ Mr Coulton did not respond.

Mr Ingall’s return to work

[78] It is not in dispute that Mr Ingall returned to the roster and commenced his first shift on 11 May 2024. Mr Ingall made much of an issue he experienced with his access card not working upon his return to work. Mr Coulton states that he does not know whether Mr Ingall’s access card was deactivated during his suspension.⁷⁶ He confirmed that he had not given any such instruction, but at the same time, he held the view, that it would not be unreasonable for a person who is suspended from work to be prevented from accessing a maritime security zone.⁷⁷ In any event Mr Ingall’s access card was reactivated at that time to allow him to return to work.⁷⁸

Mr Ingall’s conduct after returning to work

[79] Mr Ingall recalls a conversation with Mr Bailey and Mr Mueller on or around 17 May 2024. During the conversation Mr Ingall says he asked both men if they had been contacted regarding the Incident. He recalls they indicated that they had not.⁷⁹

[80] Mr Ingall then proceeded to send a number of emails to various Qube employees over the coming days. Qube submit that the emails were inappropriate in their tone, made a number of untrue statements about the investigation and the persons involved, and demonstrated Mr Ingall had not taken responsibility for his involvement in the Incident.⁸⁰

[81] On 18 May 2024, Mr Ingall sent an email to Mr Fitzell referencing the Handbook, in which he stated:⁸¹

“Which is what I did! Jeremy, you indicated this was one of the reason's (sic) why I was stood down for moving vehicle, so you were clearly wrong, as a result of investigation I lost 4 weeks (sic) worth of wages as the other party connected to management went onto receive more shifts then (sic) I have ever seen him receive, including being placed back in the Taxi-role, rewarded.” (Referring to the Employment Handbook regarding that if an employee is involved in an incident that their first priority is to ensure the

safety of themselves and others from any further harm, noting the importance of their immediate manager or supervisor is made aware who will advise them of the action to be taken.)

“Both colleagues advising No (sic) one approached or contacted them at all to validate & verify events. Noone! A lie! So as the so called investigation has now concluded, found not at fault, with no written findings supplied, no warning, disciplinary, nothing just the loss of a further 4 weeks wages bringing tally too (sic), I believe 7 ½ months, giving Qube management the opportunity to add to the existing 6 ½ months worth of lost wages. Yes Jeremy, it is cowardly & systematic.”

[82] Also on 18 May 2024, Mr Ingall sent an email to Ms Wilson regarding the investigation stating the following:⁸²

“To HSE Officer Donna Wilson,

It has been brought to my attention your involvement in the recent investigation to incident Sunday 14-4-24 conducted by Dan Coulton & not yourself as advised.

Re: Incident vehicle-collision with your family friend Damian Woolford.

I'm aware of your attempts & motivation surrounding incident & investigation, also on previous matters despite never having a conversation or interacting with you at all in the workplace other than interview & maybe an email which you haven't responded to.

I have been advised in following days toolbox, you mentioned something about after an incident don't move vehicle.

...

And I believe Brad Marychurch mentioned if a discharged vehicle is put in wrong row, leave it there. But there has been not one mention of PCC Taxi's complying with speed limits not to mention on PCC shifts, particularly speeds in & out of rows, Taxi being in the lane next to discharged vehicles etc. This appears to be conflicting, do the rules apply to everyone all the time or just when it suits QUBE...”

...

is it ok for Taxi's (sic) to speed in rows or back to vessel for next run, yes encouraged by certain people running the shift when they are allocated (most recently witnessed on PCC vessel on Thursday 16-5-24), to unload vessel faster or when do speeds apply, when there's an audit & not when bonuses are up for grab, when Donna?”

[83] During the hearing, Mr Ingall was referred to this particular part of the email and asked what he meant by it, to which he said that management was not honest, and their priority was unloading the ship instead of safety.

[84] On 18 May 2024, Mr Ingall sent an email to Mr Coulton regarding the investigation, stating the following:⁸³

“To Dan Coulton,

With regards to your investigation you advised in our face to face meeting on Friday 19-4-24, in which you made a number of false allegations I think primarily to see what would stick, & as advised based primarily on claims of two senior QUBE Brisbane management staff whose attacks have been ongoing, brought to your attention & previously to Michael Sousa, HR etc. Which is now apparent yourself, HR are all in one i.e. clothing issues etc.

Without a single consequence, disciplinary action to date, QUBE allowing the behaviour of these individuals to continue on not a rare occasion but every single occasion my name crosses their tables.

Allowing the manipulation of internal processes, rules/procedures & attacks to continue against me. The failure to address this behaviour & stop it makes all involved as guilty as the perpetrators.

Anyway, the main reason for contacting you is as follows:

You made a false allegation(s) I did not advise anyone of incident which it is as disrespectful as it is stupid.

...

This statement & claim made by you that you (or QUBE) would approach & verify witness's (sic) after allegation, has been proven to be a lie. And it has been a further three weeks you have taken from this point to conclude the investigation. What for? What needed to be done Dan other than prevent me from paying my bills by earning an income?

It is evident this investigation has been deliberately extended & dragged out to impact my earnings as much as possible which has been a tactic used on every occasion by QUBE BNE Manager Ken 'Jacko' Jackson & was no different in this instance.

...

I bring your attention, extraordinarily most recently Saturday 11-5-24 to a tirade of threats & attempts of intimidation by one individual QUBE BNE Manager Ken Jackson, after employees on shift stated they could not extend & the need to extend due primarily to poor rostering or deliberate poor rostering expecting employees not to have any external obligations & extend on majority of shifts as a result.

Threats of anyone not extending being black marked, names listed & the same members not receiving any progression/promotion etc.

This is bullying, no question! but individuals like yourself who are mates with these people & rather than look at the numerous claims against these people particularly QUBE BNE Manager Ken Jackson or as you refer to your mate 'Jacko', & address this behaviour, you ignore & protect, whether that's because the legal aspect or he does the dirty work to get the profits or my opinion all of the above.

including (sic) QUBE have been getting away with it for so long they feel they are entitled to keep doing it, aware the FWC is a joke heavily tipped in favour of big business. Fortunately, this is not the only legal option moving forward."

[85] When Mr Ingall was referred to this specific email, he said he probably would not use the word "stupid" again. When asked whether his conduct in his emails sent to various managers was inappropriate, Mr Ingall stated:

"I don't believe they were inappropriate. Look, once again, in hindsight, now you're highlighting it, I probably could have, you know, worded it a little bit more carefully."

[86] When asked if he would change it to make his emails more respectful, Mr Ingall stated:

"Not necessarily respectful. I've been equally respectful to their actions, but just to soften it."

[87] On 23 May 2024, Mr Miner's sent an email to Mr Jackson, seeking a meeting to discuss several "outstanding disputes" concerning Mr Ingall, including the unpaid suspension, clothing/allowance issues and the reimbursement of a licence fee.⁸⁴

Second Show Cause Letter – 24 May 2024.

[88] On 24 May 2024, Mr Ingall was issued with a Second Show Cause Letter indicating that, as a result of Mr Ingall's conduct relating to the Incident and the investigation since returning to work, Qube had formed the view that the only option reasonably available to them was to proceed to terminate Mr Ingall's employment.⁸⁵ Mr Ingall was consequently required to show cause as to why his employment should not be terminated (**Show Cause 2**) by 5:00pm 28 May 2024.

[89] Under the heading “Subsequent Conduct” of the Second Show Cause Letter, Qube outlined the following concerns:⁸⁶

“Since your return to work, you have sent multiple emails to Donna Wilson, Jeremy Fitzell and me criticising the Investigation. In these emails:

- You make a number of untrue statements about the conduct of the Investigation - a detailed summary of which is set out in Annexure A to this letter; and
- you use language and a tone that is clearly inappropriate and unacceptable.

Qube considers that the above conduct falls well below the standard of behaviour required of Qube employees as set out in Qube's Employee Handbook, including that you:

- failed treat (sic) fellow employees in a cooperative, fair, dignified and respectful manner consistent with workplace behaviour standards;
- did not endeavour to minimise the adverse effects of your actions;
- used email facilities to harass or otherwise offend other individuals; and
- distributed material that was likely to cause offence and inconvenience to your colleagues.

In addition, your email correspondence makes clear that you take no responsibility or accountability for the Incident for which you are at fault, including:

- your failure to follow the lay-down paperwork, which caused the Incident;
- leaving the scene of the Incident before reporting it; and
- failing to accept that the Investigation was a necessary and appropriate course of action.”

[90] Mr Ingall was advised that, to ensure he had adequate time to respond, he would not be required to attend his rostered shifts between 24 and 28 May 2024 and that, “as a gesture of good will, and in this instance only” he would be paid as if he had worked those shifts.⁸⁷

[91] The letter also confirmed Qube’s response to Mr Miners’ inquiry regarding payment for the previous stand-down period. Mr Ingall was advised that as a supplementary (casual) employee, Qube was not required to pay Mr Ingall whilst he was stood down, confirming “Qube will not provide payment for you for that period”.⁸⁸

Mr Ingall’s response to Show Cause 2

[92] On 27 May 2024, Mr Ingall provided his response to Show Cause 2. Mr Ingall’s response is an edited version of Show Cause 2, to which he has added comments in red. The response can be reasonably summarised as further insistence that the majority of issues raised in Show Cause 2 are false. Further Mr Ingall argues that his emails were sent to highlight “inaccuracies, double standards, failures, policies, adverse behaviour & blatant lies”.⁸⁹

[93] In response to Qube’s comments regarding Mr Ingall’s tone and language, he responds that this is false noting his belief that the investigation was “fraudulent, failed and compromised”.⁹⁰

[94] In response to Qubes comments in relation to his conduct since returning to work, Mr Ingall states:⁹¹

“False, I have made no mistakes since returned to shift. Please provide evidence to the

contrary. Wow, I wasn't aware you could sink any lower, all these remarks are false prior or post."

[95] Mr McLean, in closing submissions notes that Mr Ingall's response to Show Cause 2 was to "double down", refusing not only to take any responsibility for his part in the Incident but also refusing to accept that his subsequent conduct was inappropriate.

[96] On 29 May 2024, having regard to Mr Ingall's response, Qube again wrote to Mr Ingall:⁹²

- flagging their concerns that Mr Ingall was seemingly refusing to accept any responsibility for the Incident;
- affording him an opportunity to reflect on and, should he wish, change the nature of the responses he had provided in his 27 May 2024 response;
- foreshadowing that it considered termination of employment was the appropriate outcome; and
- expressly indicating to Mr Ingall that a lesser disciplinary outcome may be considered if he provided a response that demonstrated he had taken responsibility for the Incident such that Qube could have confidence in Mr Ingall performing his duties in a safe manner and taking responsibility for doing so (**Show Cause 3**).

[97] 30 May 2024, Mr O'Sullivan responds to Qube on behalf of Mr Ingall. It is noted that the response does not address the concerns raised by Qube in Show Cause 2 or 3, rather the letter asserts that the MUA is:⁹³

"deeply troubled by your attempt to have Mr Ingall essentially choose between maintaining employment and taking responsibility for an incident in which he was not at fault".

[98] Mr O'Sullivan then goes on to again claim "no-wrongdoing" on Mr Ingall's behalf before accepting, as proposed by Qube, that Mr Ingall would:⁹⁴

"continue to:

- (a) perform all of his duties in a safe and appropriate manner, and take the necessary personal responsibility for doing so;
- (b) work constructively and behave in a professional manner at all times, including in email correspondence with all Qube employees; and
- (c) act in a respectful and constructive manner towards his supervisors and managers, including where he is required to comply with reasonable and lawful directions that he may not personally agree with.

However, he will not be coerced into taking responsibility for an incident that he did not cause." (**emphasis added**)

[99] On 3 June 2024, having not received a response, Mr O'Sullivan emailed Mr Coulton seeking an update.⁹⁵ Mr Coulton responded later that day seeking a meeting to "finalise the matter" at 3:00pm on Friday 7 June at the Port of Brisbane, Mr Coulton notes that he has prior commitments.⁹⁶

[100] Mr O’Sullivan responds to Mr Coulton on 5 June 2024 seeking that the meeting be rescheduled to the morning and seeking, in preparation, that the following is provided:⁹⁷

- a. Car Vehicle Policy;
- b. SHSMS Policy;
- c. Mr Woolford’s original witness statement and any amended versions; and
- d. Any relevant photos.

[101] Mr Coulton responds on 6 June 2024 confirming that the purpose of the meeting is to deliver an outcome with respect to Show Cause Letters 2 and 3 and as such, he did not understand how the requested information was relevant.⁹⁸

[102] Mr O’Sullivan responds later that day explaining his belief that the information is relevant and noting that it had been requested on multiple occasions.⁹⁹ A short time later, the meeting time of 3:00pm Friday 7 June 2024 was confirmed.

[103] On the morning of 7 June 2024, Mr Coulton emailed Mr O’Sullivan requesting the meeting be rescheduled to Monday 10 June 2024,¹⁰⁰ prompting Mr O’Sullivan to respond seeking that the meeting go ahead as planned, or that the outcome be delivered in writing as requested.¹⁰¹

[104] Mr O’Sullivan and Mr Coulton then continue to engage in what could reasonably be described as an unprofessional and unhelpful exchange which results in no meeting date being set nor any agreement being reached regarding the timing of Mr O’Sullivan’s proposed alternative option to provide a written response.

[105] On 10 June 2024, Mr O’Sullivan emailed Mr Coulton asking:¹⁰²

“can we expect a response today?”

[106] A short time later, Qube issued Mr Ingall with a letter advising of his termination with immediate effect (**Termination Letter**).¹⁰³ Mr Ingall was not paid in lieu of notice as Qube submit he was not entitled, as he was a supplementary employee.¹⁰⁴

WAS MR INGALL UNFAIRLY DISMISSED?

[107] The criteria that I must consider when deciding whether Mr Ingall’s dismissal was harsh, unjust, or unreasonable are set out at s.387 of the Act. My consideration of each criteria follows below.

Was there a valid reason for the dismissal related to the Applicant’s capacity or conduct (including its effect on the safety and welfare of other employees)?

[108] It is well established that the factual basis for the reason for dismissal will not of itself demonstrate the existence of a valid reason.¹⁰⁵ It must, as s.387(a) makes clear, be a valid reason for dismissal. To be a valid reason, the reason for the dismissal should be “sound, defensible or well founded”¹⁰⁶ and should not be “capricious, fanciful, spiteful or prejudiced.”¹⁰⁷ As summarised by then Deputy President Asbury in *Smith v Bank of Queensland Ltd*, a “dismissal must be a justifiable response to the relevant conduct or issue of capacity”.¹⁰⁸ The Commission

must consider the entire factual matrix in determining whether an employee's termination was for a valid reason.¹⁰⁹

Submissions of Mr Ingall

[109] Mr Ingall's submissions focus in large part on the Incident, investigation and the actions of others.

[110] Mr Ingall submits there was no valid reason for the dismissal related to his capacity or conduct. Further he does not believe his actions to have been reckless.

[111] Specifically, he does not believe responsibility for the Incident is borne by him. He argues that the operator of the AAT taxi, Mr Woolford, was speeding across lanes and made impact with the Honda after coming from a direction behind and to the side of Mr Ingall. Noting that Qube described in the termination letter that Mr Woolford was travelling down the adjacent lane to that of Mr Ingall. Mr Ingall argues that it is widely known at the premises that the AAT taxi is to give way to discharging vehicles and is not permitted to drive in the lane adjacent to another vehicle due to risk such conduct would pose to the safety of stevedores and the risk of damage to vehicles.¹¹⁰

[112] Additionally, Mr Ingall submits that the most serious charge levelled against him concerns his actions immediately after the Incident. This charge he argues, took on various iterations throughout the show cause process with Qube settling on "left the scene before reporting the Incident".¹¹¹ As it appears in the termination letter, the charge is not grounded in any of Qube's policies. It is, however, assumed that the genesis can be traced to SHSMS -QH-13-PR-041 Incident Reporting and Management which was an internal document that was not put to Mr Ingall throughout the show cause process, despite multiple requests. SHSMS contains language that suggests post-accident reporting to a manager and preservation of the scene. However, such actions are, as the document is plainly and logically read, only to be considered after an employee has:¹¹²

- a. initiated the site emergency response plan as appropriate/required;
- b. acted to make the area safe;
- c. provided the necessary first aid or medical care to injured.

[113] In response to the above, Mr Ingall submits that he moved the vehicle because of the imminent risk it posed to the health and safety of himself and his colleagues as well as further damage to the Honda vehicle and/or others. In removing the vehicle from the hazardous area, Mr Ingall drove directly to the safety of the clerk's facility so that the Incident could be reported.

[114] It is therefore submitted that the correctness of Mr Ingall's actions in accordance with SHSMS is reinforced by the foremost Incident Reporting directions of the Handbook:¹¹³

"If you are involved in an incident, your first priority is to ensure any harm resulting from the incident is prevented or minimised to the extent it is safe for you to do so. It is important that your manager is aware of the circumstances."

[115] As such, Mr Ingall argues that he properly discharged his obligations under both the SHSMS and the Handbook. Conversely, Qube permitted Mr Woolford to return to work on the night of the Incident and did not subject him to an investigation.

[116] Mr Ingall submits that in the event he was at fault for the Incident and/or acted contrary to Qube's procedure by moving the vehicle (not admitted), it is submitted that the magnitude of his conduct is so minor that it cannot reasonably amount to a valid reason.

[117] Mr Ingall submits, the everchanging reasons for dismissal, including those that fell away due to being fabricated, are in substance capricious, spiteful and prejudiced.¹¹⁴ Likewise, are the reasons so when contextualised with other employees involved in comparable incidents, most notably, Mr Woolford.¹¹⁵

[118] Regarding the subsequent conduct, being Mr Ingall's email correspondence following his return to work after the first period of suspension, it is submitted that the correspondence can be characterised as frank, direct and scrupulous – an approach most reasonable given the circumstances Mr Ingall found himself in.¹¹⁶

[119] It is further submitted that Mr Ingall's tone and language cannot genuinely be considered inappropriate and unacceptable to a level necessitating a valid reason as the correspondence was, as everyday life goes, innocuous and particularly so in the context of the robust workplace in which Mr Ingall performed his duties.¹¹⁷ It is submitted that Mr Ingall's language and tone was in no way discernibly different to that used by Mr Coulton in correspondence pertaining to this very matter.¹¹⁸ Any negative connotations arising from the correspondence in question, they say, certainly pale in comparison to the identified inappropriate behaviour of Qube's management.¹¹⁹

[120] Finally, Mr Ingall argues that he was not at work when any of the emails in question were sent.¹²⁰

Submissions of Qube

[121] Qube submit that they operate in a safety critical environment, and as such Mr Ingall's involvement in the Incident was of understandable concern to Qube.¹²¹ And it is plain from the CCTV footage that Mr Ingall acted recklessly in contributing to the collision. Qube contend that an employee behaving recklessly, in a safety critical environment, and in a manner that results in a collision between two vehicles, is a valid reason for dismissal in its own right.¹²²

[122] Moreover, rather than remaining at the scene of the Incident, Mr Ingall almost immediately turned around and drove back toward the vessel.

[123] Had that been the end of the matter, Qube indicated that it would likely have considered a formal warning to suffice.¹²³ However, Mr Ingall, by his emails, then proceeded to conduct himself in a manner that demonstrated a lack of respect for Qube's management, was discourteous, was disingenuous, and was inconsistent with his obligations under the Handbook, and the Code (particularly the obligations at Part 4 of the Code, and the 'Workplace Behaviour' and 'Your Conduct' chapters of the Handbook).¹²⁴ Qube submits that the emails, when

considered in light of Mr Ingall's obligations under these policy documents, would provide a valid reason for dismissal in their own right.

[124] Qube further submits that the emails indicated that Mr Ingall was not prepared to take responsibility for his conduct in the Incident, and that such a refusal would reasonably cause any employer to have reservations as to an employee's ability to work safely and in compliance with policy moving forward – if an employee does not accept that their conduct was wrong, there is no basis for having confidence they would not behave in the same way again.

[125] Qube submit they went above and beyond to provide Mr Ingall with an opportunity to demonstrate some insight into the nature of his involvement in the Incident, however Mr Ingall persisted to refuse to do so.¹²⁵ It is therefore submitted that the refusal to take accountability, and the resulting concerns that caused Qube to doubt Mr Ingall's ability to work safely and in accordance with policy, was again a valid reason for dismissal in its own right.

Consideration

The Incident

[126] To gain a better understanding of the Incident, I have reviewed the CCTV footage, photos and statements of all witnesses.

[127] The CCTV footage clearly shows a number of small white vehicles in front of Mr Ingall. Moving in turn, each vehicle stops at what appears to be around one meter behind the vehicle in front. Mr Ingall's vehicle stands out among these other vehicles as his is dark blue and larger than the others. The footage shows Mr Ingall approaching the vehicle in front of him. He starts to slow and presumably, as he realises he is in the wrong lane, his front wheels can be seen turning to the right. At this point he appears to be approximately 1-2 meters from the vehicle in front of him. It could be argued that he comes to a stop, but that stop only lasts around one second, before he departs the lane and enters into the path of Mr Woolford's vehicle. There is around three seconds between Mr Ingall's wheels first being turned to the right and the impact.

[128] The footage also confirms, and I find, that Mr Ingall is mistaken in his assertion that he stopped his vehicle 10 meters behind the vehicle in front of him. The CCTV footage clearly demonstrates otherwise. Similarly, Mr Ingall steadfastly maintains, that he was stationary when Mr Woolford's vehicle hits his. He argues that as he moved into the adjacent lane he saw Mr Woolford approaching at speed, braked and "came to a complete stop". Whilst the angle of the CCTV footage, and the position of the AAT taxi in front of Mr Ingall's vehicle, does not show whether or not Mr Ingall brakes and stops again before being hit by Mr Woolford, the fact that he is in Mr Woolford's path, and the very short space of time between Mr Ingall departing the lane and the impact, along with the statement of those who witnessed the Incident lead me to conclude, on balance that this was not the case.

[129] I note Mr Ingall's various submissions regarding whether or not Mr Woolford was or should have been in that lane, and the speed at which he may have been travelling, however I have not been convinced that any of these factors displace Mr Ingall's responsibility to check the lane he is about to drive into before doing so. Had he done so before proceeding out of his

current lane, he would have seen Mr Woolford's vehicle, and presumably, would not have proceeded.

[130] Viewed objectively, I find that Mr Ingall:

- Failed to follow the lay-down sheet.
- Drove the vehicle into the wrong lane.
- Upon realising he was in the wrong lane, Mr Ingall stops momentarily before moving out of his lane.
- Mr Ingall fails to check for oncoming traffic, resulting in him driving into the path of the AAT taxi.

[131] Consequently, Mr Ingall's actions contributed to the accident and as such he is not without fault. It follows then that Mr Ingall's involvement in the Incident did warrant investigation and consideration of a disciplinary penalty. Having considered all of the facts and circumstances of this matter, I find that Qube acted appropriately in initiating the initial investigation and, having found him to have been at fault, it was equally appropriate for them to have considered the appropriate disciplinary penalty.

[132] Importantly, I note that had Mr Ingall been willing to accept this, the matter would likely have ended with a written warning. Consequently, I find that Mr Ingall's involvement in the Incident was not a reason for Mr Ingall's dismissal and as such, is not relevant to my consideration of valid reason, other than with respect to his subsequent refusal to accept his part in it which is further considered below.

Mr Ingall's leaving the scene of the accident

[133] Mr Ingall does not dispute that he left the scene of the accident. Having considered the evidence, and submissions, I accept that Mr Ingall may not have been aware of the requirement not to leave the site of the accident and further, that upon leaving, he did make his way to the office for the sole purpose of reporting the Incident.

[134] As above, I do however consider that it was appropriate that Qube investigated this matter, given the actions of Mr Ingall were, on the face of it, in breach of its policy. I again note however, that before Qube had made its decision regarding any likely disciplinary outcome, which, by all accounts would not have been his dismissal, Mr Ingall's actions caused a shift in Qube's focus from the Incident to his subsequent conduct.

[135] Viewed objectively, I again consider it highly likely that, if Mr Ingall had not sent the emails he did, the matter would simply have resolved itself and at worst, Mr Ingall would have been issued a written warning and a reminder of the need to comply with the incident management procedure in the future. As such, I find that Mr Ingall's act of leaving the scene was not in and of itself relied upon by Qube as a reason for his dismissal. It is therefore not relevant to my consideration of valid reason, other than as explored below in relation to his subsequent conduct.

[136] Having found that it was not Mr Ingall's actions on the evening 14 April 2024 that resulted in his termination, I now turn to what I consider to be Qube's reason for dismissing Mr Ingall.

Mr Ingall's Subsequent Conduct

[137] Consistent with my findings above, the termination letter issued on 10 June 2024 outlines Qube's position that Mr Ingall was at fault with respect to the Incident. After outlining the reason relied upon to determine Mr Ingall's fault, the letter goes on to confirm that Mr Ingall had been returned to shift on 11 May 2024, pending a decision on the appropriate disciplinary penalty. However, before Qube had made its decision, (which as I outline above, would most likely have been no more than a written warning), Mr Ingall sent a number of emails to Qube employees and management that they considered inappropriate in their tone, and in which they contend, Mr Ingall made a number of untrue statements about the investigation and the persons involved, and demonstrated his unwillingness to take responsibility for his involvement in the Incident.¹²⁶

[138] There are two elements to the subsequent conduct allegation. That Mr Ingall, through the tone and language of the emails he sent during this process failed to treat his colleagues with respect and dignity and secondly that he failed to take responsibility for his involvement in the Incident.

The Emails

[139] Having reviewed all of the email exchanges, I accept Qube's contention that Mr Ingall's tone and language demonstrated a lack of respect for his colleagues.

[140] Whilst the relevant emails were not sent whilst Mr Ingall was at work, I am satisfied that there is a clear and sufficient connection to Mr Ingall's employment and the contents of his correspondence. As such, I find it inconsequential that Mr Ingall's emails were sent whilst he was not at work.

[141] Whilst I accept there was some confusion as to the outcome of the phone conversation between Mr Miners and Mr Coulton on 9 May 2024, particularly with respect to whether or not it had been agreed that Mr Ingall was not at fault, and whether or not Qube were considering the appropriate disciplinary penalty, I again note that Qube had not sought to further the issue, until Mr Ingall commenced sending his emails.

[142] I do not accept that Mr Ingall's frustration at the process, or confusion regarding the outcome of the 9 May 2024 phone conversation excuse his conduct, particularly as it would have been clear to Mr Ingall at this stage that he was not going to be dismissed and instead, returned to the active roster.

[143] I do not accept the submissions that Mr Ingall's tone and language cannot be genuinely considered inappropriate or unacceptable, nor that Mr Ingall's emails were "as everyday life goes, innocuous and particularly so in the context of the robust workplace in which Mr Ingall performed his duties". These interactions were not simple banter between colleagues on the worksite, they were targeted formal correspondence sent to employees, supervisors and

managers, none of whom could be said to have responded or interacted with Mr Ingall in a similar manner.

[144] Whilst I accept that Mr Ingall may not have liked the fact that the investigation had occurred, or that he had been stood down without pay for an extended period of time, as per my finding above, I have not been convinced that Qube's actions in this regard were unwarranted.

[145] I also consider that Mr Ingall engaging in such conduct, having been terminated by Qube just over 12 months earlier, for similar conduct, demonstrates not only that he should have understood Qube's expectations, but also the potential consequences of such conduct.

[146] I have not been convinced that Mr Ingall was unaware of his responsibilities as prescribed by the Code. Viewed objectively, having so recently been dismissed for similar conduct, it is reasonable to presume that Mr Ingall should have had a heightened understanding of the requirements of the Code, including that it prescribes that "Unlawful discrimination, harassment of any kind, bullying or victimisation or other unacceptable or offensive conduct will not be tolerated".¹²⁷

[147] I note Mr Ingall's assertion that, having reviewed the Code, it was not clear to him how his actions, as set out in Show Cause 1, were in breach of the Code, nor how any of his actions are in breach of the Handbook. That Mr Ingall is unable to concede that his actions were in conflict with the Code and the Handbook speaks to Qube's concerns regarding their loss of trust and confidence that he would be willing or able to comply with Qube policies and procedures in the future.

[148] With respect to the first element of Mr Ingall's subsequent conduct, I find that Mr Ingall's emails were in breach of his obligations under the Handbook and the Code.

Mr Ingall's failure to acknowledge his part in the Incident

[149] The second element of Qube's concerns regarding Mr Ingall's subsequent conduct was his unwillingness to take responsibility for his part in the Incident.

[150] The question of the degree to which Mr Ingall was at fault was raised by Mr O'Sullivan in closing submissions when he states:

"In our respectful submission, Mr Ingall is not guilty of **refusing to accept responsibility for contributing to or his role in the incident, because that propositional characterisation of his conduct was never on the table.** What was on the table was for Mr. Ingall to accept full responsibility for causing the incident and should he not submit to that as set out in show cause he'd be shown the door. This, we say, is an entirely different characterisation of responsibility to the stated reason for dismissal." (Emphasis added)

[151] I have found that Mr Ingall was not without fault for the Incident, yet with the exception of his concession regarding being in the wrong lane, he appears to be unwilling to accept anything more than this and whilst I note Mr O'Sullivan's contention, the fact remains that Mr Ingall's responses do not indicate any such sentiment.

[152] Mr Ingall strongly reasserted this position in his response to Show Cause 2, continuing to insist, in what could reasonably be described as an aggressive and accusatory manner, that relevant allegations were false.

[153] Having received Mr Ingall's response to Show Cause 2, Qube note that there may be some misunderstanding regarding the circumstances under which he was returned to shift. Qube, having taken that into account, provided Mr Ingall a further opportunity to reflect on the matters raised in Show Cause 1 and provide any further responses to the matters raised. Qube also noted that they may consider a lesser disciplinary outcome if Mr Ingall provided a response that justifies them taking a different course of action. They further noted that such a response would involve him, amongst other things, taking responsibility for the Incident, and acknowledging fault.

[154] Mr O'Sullivan's response does not take up the opportunity to provide further responses to the first letter, nor does Mr O'Sullivan attempt to recharacterize the degree or scope of Mr Ingall's responsibility as proposed above. Mr O'Sullivan simply states "he will not be coerced into taking responsibility for something he did not cause".

[155] Notwithstanding the above, Mr O'Sullivan seems to be suggesting that if Qube had put the allegations to Mr Ingall in a different way, he may have been willing to accept some responsibility for his part in the Incident. I do not accept this argument. Throughout this matter, the most Mr Ingall has been willing to accept was that he was in the wrong lane, (albeit because of changes made by Qube) other than that, his focus has been to blame Mr Woolford and others, including Qube management for their parts in both the Incident and the investigation. I have not been persuaded that Mr Ingall was or is now willing to accept, apart from this one admission, that his actions contributed to the Incident in any way. It is also important to note that Mr Ingall had been provided multiple opportunities to reconsider his response.

[156] It is significant that when faced with the very real prospect of his employment being terminated, Mr Ingall was still not willing to offer this or any concessions regarding the Incident. The only concessions Mr Ingall was willing to make were to commit to the matters in the MUA's email of 30 May 2024, listed (a)-(c). Although I note that rather than making these commitments as sought, Mr O'Sullivan, on Mr Ingall's behalf, states that Mr Ingall will "**continue to**" (do these things). This small change in wording has a significant impact, and would reasonably have given Qube the impression that Mr Ingall did not accept that he had failed to meet these expectations in the past. Again, I consider this speaks to Qube's conclusion that they no longer had the necessary trust and confidence in him to continue employment.

[157] I also note that Mr Ingall accepting responsibility for the Incident and acknowledging he was at fault, would not have precluded there being other circumstances involved or others also at fault. It would simply have been an acceptance of fault on his part, which he could have provided safe in the knowledge that such an acceptance would not have resulted in his dismissal.

[158] Taking all of the circumstances of this matter into consideration, I find that it was reasonable for Qube to have concluded, in the context of Mr Ingall's continued inappropriate tone and language, that there was no circumstance in which Mr Ingall would accept responsibility for his part in the Incident. Further, noting the safety critical environment in

which Qube operate, it was reasonable for Qube to conclude that they had lost confidence in Mr Ingall's ability to perform his duties in a safe manner.

[159] Consequently, having considered all of the relevant facts and circumstances, I find that Mr Ingall's "subsequent conduct" was a valid reason for his dismissal.

Was the Applicant notified of the valid reason, and was the Applicant given an opportunity to respond to any valid reason related to their capacity or conduct?

Submissions of Mr Ingall

[160] Mr Ingall submits he was not given notice of the reasons for dismissal in plain and clear terms. Further, that it was incumbent on Qube to ensure that he was made aware of the allegations concerning his conduct.

[161] Qube was therefore required to ensure that Mr Ingall was made aware of "the particular matters that [were] putting his ... job at risk and given an adequate opportunity of defence."¹²⁸ As such, Mr Ingall was entitled to be made aware of the precise nature of Qube's concern about his conduct or performance and have a full opportunity to respond.¹²⁹

[162] Mr Ingall submits despite constant attempts by the MUA and himself, Qube refused to produce the policies, statements, footage, photos, etc., that it relied upon in ultimately dismissing Mr Ingall's employment.

[163] It is further submitted that the allegations themselves were subject to constant change with some falling away all together due to being allegedly fabricated.¹³⁰ The most serious charge in relation to the Incident, being the conduct of Mr Ingall immediately after, took on various forms. This charge seemingly arises from the SHSMS. Despite countless requests, it is submitted that Qube not only failed to direct Mr Ingall to the relevant section, it all out refused to supply him the document.¹³¹

[164] In another instance, Qube alleged a breach of "Direction" that was, unknowingly to Mr Ingall, underpinned by two lengthy documents. Mr Ingall only learnt of the existence of these two documents and their relevance to the "Direction" he supposedly breached when Qube were directed to produce certain items in these proceedings.

[165] Qube made vague references to alleged breaches of the Handbook and the Code without identifying what it was exactly in those lengthy documents that Mr Ingall supposedly acted contrary to. Neither of those documents were put to Mr Ingall throughout the disciplinary process.

[166] There exists yet further allegations of which Mr Ingall was not provided any documentation, context or anything else that could assist him in mounting a defence.

[167] It is therefore submitted that Mr Ingall was deprived procedural fairness within the meaning of s. 387(b) and s. 387(c) of the Act.

Submissions of Qube

[168] Qube submit that Mr Ingall has gone to great lengths to attempt to “muddy the waters” on what they say are two straightforward statutory questions being was he notified of the reasons for his dismissal, and was he afforded an opportunity to respond.¹³²

[169] It is submitted that the correspondence that passed between the parties makes clear that both these questions must plainly be answered in the affirmative. At the least, Show Cause 2 and Show Cause 3 (particularly when read with the benefit of the additional context provided by the Show Cause 1) put Mr Ingall on notice of the concerns that ultimately prompted Qube to terminate his employment, as detailed in the Termination Letter.

[170] Moreover, Mr Ingall was invited to, and took up the opportunity to respond to each of the show cause letters, both at the meeting on 19 April 2024, and in his responses to Show Cause 1 dated 15 and 20 April 2024, his response to Show Cause 2 dated 27 May 2024 and his Response to Show Cause 3 dated 30 May 2024. By attempting to raise other matters or supposed procedural deficiencies in the context of the s. 387(b) and subsection 387(c) criterion, Mr Ingall is inviting the Commission into error.

Consideration

[171] I find that Mr Ingall was afforded multiple opportunities to respond across the three show cause letters, and ultimately, with respect to their valid reason for his dismissal, his subsequent conduct. Qube was extremely clear with Mr Ingall as to their expectations and proposed to Mr Ingall a way forward that would have facilitated the continuation of his employment.

[172] With respect to Mr Ingall’s assertions regarding Qube’s failure to provide certain documents, I note that none of these documents appear to be secret or confidential, in fact, a copy of the Code is available on the intranet. It is also noted that Mr Ingall acknowledged having reviewed both the Code and the Handbook.

[173] With respect to Mr O’Sullivan’s request for documentation, in advance of the 7 June 2024 meeting, I note, and accept, Mr Coulton’s response that the purpose of the meeting was to deliver Qube’s finding, and on that basis, the documents do not seem to have been relevant at this point, particularly as the MUA, on behalf of Mr Ingall had already provided a written response. In any event, I have found that Mr Ingall’s involvement in the Incident in and of itself was not the reason for his dismissal, consequently, the provision of this information would not have impacted the outcome.

[174] I have found that Qube were justified in their initiation of the investigation and consideration of disciplinary action, and that it was not unreasonable, in the circumstances for Qube to require Mr Ingall to accept responsibility for his part in the Incident. It then follows that Mr Ingall’s continued refusal to accept this outcome amounts to his having rejected the opportunity afforded to him to resolve the matter.

[175] I have not been convinced that Qube failed to comply with appropriate procedures or fairness obligations. This consideration does not weigh in favour of a finding that the dismissal was unfair.

Did the Respondent unreasonably refuse to allow the Applicant to have a support person present to assist at discussions relating to the dismissal?

[176] The parties are in agreement that Mr Ingall was at all times allowed a support person in any meeting relating to his dismissal. Consequently, this is not a relevant consideration.

Was the Applicant warned about unsatisfactory performance before the dismissal?

[177] Mr Ingall was not dismissed for unsatisfactory performance. The parties agree in this regard. As such, this is not a relevant consideration.

To what degree would the size of the Respondent's enterprise be likely to impact on the procedures followed in effecting the dismissal?

[178] Mr Ingall submits that Qube Ports is a large company with dedicated human resource staff and, as such, should have ensured compliance with appropriate procedures and procedural fairness obligations.

[179] Qube does not contend that the size of its enterprise or any absence of dedicated human resource expertise had an impact on the procedures followed in effecting the dismissal.

[180] As explored above, I have not been convinced that Qube failed to comply with appropriate procedures or fairness obligations. Consequently, this consideration as framed by Mr Ingall, does not weigh in favour of a finding that his dismissal was unfair. More generally, I do not find this consideration to be relevant.

To what degree would the absence of dedicated human resource management specialists or expertise in the Respondent's enterprise be likely to impact on the procedures followed in effecting the dismissal?

[181] As provided above, I do not consider this a relevant consideration in this matter.

What other matters are relevant?

Dismissal not a proportionate response/Differential treatment

[182] Mr Ingall submits that if the Commission is satisfied that a valid reason exists, it remains that the dismissal was disproportionate to the gravity of any misconduct in respect of which he acted. Mr Ingall's submissions regarding this consideration focus in large part on the Incident. Having found that it was Mr Ingall's subsequent conduct that was the valid reason for his dismissal, I do not accept Mr Ingall's submissions in this regard, however for completeness, I again note that the likely disciplinary penalty with respect to the Incident would have been a written warning, which is wholly comparable with the examples provided.

[183] With respect to Mr Ingall's subsequent conduct, no evidence was led regarding any comparable examples, other than Mr Ingall's own conduct in 2023, which had led to his dismissal.

[184] Mr Ingall does however maintain that his conduct was not of such gravity that it warranted dismissal. I disagree. I have found that Mr Ingall conducted himself in a manner that demonstrated a lack of respect for Qube's management, was discourteous, was disingenuous, and was inconsistent with his obligations under various policies.

[185] Further, I find Mr Ingall's conduct was targeted, deliberate and repeated, such that it could reasonably be considered highly inappropriate and completely unacceptable in any setting, let alone in the workplace and when communicating with supervisors and managers about a serious safety issue.

[186] Taking all of the circumstances of this matter into account, I have not been convinced that Qube's decision to dismiss Mr Ingall, because of his subsequent conduct, was disproportionate. Further, that Mr Ingall was afforded multiple opportunities to resolve the matter in a way that could have avoided this, yet chose to maintain his position, does not weigh in favour of a finding that his dismissal was unfair.

Punitive suspension

[187] Mr Ingall submits that Qube held him on suspension for almost a month while it investigated an entirely straightforward incident. As such, Qube cannot reasonably maintain that it genuinely required such an inordinate amount of time to conduct its simple investigation. It was in every sense "death by roster".

[188] Mr Ingall argues that the "absurdity of the length of the investigation" is further highlighted by Qube, as described in the First Show Cause Letter, conducting an internal investigation and coming to the conclusion that Mr Ingall's employment was no longer tenable in just one day.

[189] Whilst I acknowledge Mr Ingall's frustration with the process, I have found that Qube were justified in commencing the investigation and in considering an appropriate disciplinary penalty. I also consider it likely that it was Mr Ingall's actions, commencing with his 20 April 2024 correspondence, that may well have given Mr Coulton cause to further consider the question of the appropriate disciplinary response, particularly in light of Mr Ingall's communications to date and history of similar conduct.

Reopening of closed investigation

[190] Mr Ingall argues that the evidence showing that Qube had finalised the investigation and then expediently sought to reopen it for the purpose of terminating his employment is overwhelming. Having found that it was Mr Ingall's subsequent conduct that resulted in his being stood down for the second time and the issuing of Show Causes 2 and 3, I do not accept this argument.

Cooperation

[191] Mr Ingall argues that, while not at fault, he expressed from the outset that he was “sorry for what occurred”. Mr Ingall says that he fully engaged with all aspects of the disciplinary process. Qube on the other hand refused to adequately engage in their own process. I agree that Mr Ingall did engage in the process, however as I have found, his engagement was problematic due to his conduct. Further, I have not been persuaded that Qube failed to adequately engage in their own process. As such, this consideration has not been a factor in my decision.

Qubes response to Mr Ingall’s relevant factors

[192] Qube submits that none of the contentions Mr Ingall advances in his case on subsection 387(h) can be made good from an evidentiary standpoint, much less would they support a finding that his dismissal was otherwise harsh.

[193] Qube argue that there are various aspects of Mr Ingall’s conduct that compel a finding that his dismissal was anything but harsh, not least that:

- (a) Mr Ingall’s involvement in the Incident was a safety related matter;
- (b) Mr Ingall’s failure to take accountability was alarmingly persistent;
- (c) Mr Ingall’s misconduct amounted to breaches of various Qube policies; and
- (d) Mr Ingall has now demonstrated a preparedness to make false allegations against other of Qube’s personnel in an attempt to defend his own conduct.

Conclusion on Merits

[194] Taking all of the circumstances of this matter into consideration, I have found that Mr Ingall was at fault with respect to the Incident that occurred 14 April 2024 and that Qube were justified in their decisions to conduct an investigation.

[195] Having found fault on Mr Ingall’s part, Qube were equally justified in considering an appropriate disciplinary penalty, which would likely have been a written warning.

[196] It was however Mr Ingall’s conduct, upon being advised that he was to be returned to shift, which I have found to be a valid reason for his dismissal. Mr Ingall’s conduct demonstrated a lack of respect for Qube’s management, was discourteous, was disingenuous, and was inconsistent with his obligations under the Handbook, and the Code.

[197] Having considered the entire factual matrix, I have found that Mr Ingall’s conduct following his return to active roster was a valid reason for his dismissal. Consequently, Qube’s decision to dismiss Mr Ingall was sound, defensible and well founded.

[198] Having considered each of the matters specified in s.387 of the Act, I am not satisfied that Mr Ingall’s dismissal was harsh, unjust or unreasonable. Accordingly, I find that his dismissal was not unfair. On that basis the application pursuant to s.394 is dismissed.

[199] I Order accordingly.



COMMISSIONER

Appearances:

S. O'Sullivan of Maritime Union of Australia for the applicant.

J. McLean of Counsel for the respondent.

Hearing details:

2024.

Brisbane

20 & 24 September.

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¹ P. 195 of the DCB – Show Cause No.1 Letter.

² P. 647 of the DCB – Respondent Submissions.

³ P. 117 of the DCB – Letter of Appointment.

⁴ Exhibit 6 - Termination of Supplementary Employment Arrangements with Qube.

⁵ P. 75 of the DCB – Witness Statement of Chris Ingall.

⁶ Ibid.

⁷ P. 596 of the DCB – Code of Conduct and Ethics.

⁸ P.112 of the DCB – Witness Statement of Chris Ingall.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid P. 77 of the DCB.

¹² Ibid.

¹³ Ibid.

¹⁴ P. 184 of the DCB – Laydown Sheet.

¹⁵ Ibid.

¹⁶ P. 648 of the DCB – Respondent Submissions.

¹⁷ P. 78 of the DCB – Witness Statement of Chris Ingall.

¹⁸ Ibid.

¹⁹ Ibid..

²⁰ P. 636 & 638 to 641 of the DCB – Written Statements of Damien Woolford, Rayner Foster, Jason Austin, James Jordan, and Kieran Muller.

²¹ P. 61 & 62 of the DCB – Applicant Submissions.

²² 657 the DCB – Witness Statements of Damien Woolford

- ²³ P. 79 of the DCB – Witness Statement of Chris Ingall.
- ²⁴ P. 79 of the DCB – Witness Statement of Chris Ingall.
- ²⁵ P. 661 of the DCB – Witness Statement of Daniel Coulton.
- ²⁶ P. 79 of the DCB – Witness Statement of Chris Ingall.
- ²⁷ Ibid P. 80 of the DCB.
- ²⁸ Ibid.
- ²⁹ P. 194 of the DCB – 14 April 2024 Email Exchange.
- ³⁰ P. 661 of the DCB – Witness Statement of Daniel Coulton.
- ³¹ Ibid P. 661 to 662 of the DCB.
- ³² Ibid P. 662 of the DCB.
- ³³ Ibid.
- ³⁴ Ibid.
- ³⁵ P. 195 of the DCB – Show Cause No.1 Letter.
- ³⁶ Ibid.
- ³⁷ Ibid.
- ³⁸ Ibid.
- ³⁹ P. 81 of the DCB – Witness Statement of Chris Ingall.
- ⁴⁰ Ibid.
- ⁴¹ Ibid P. 82 of the DCB.
- ⁴² Ibid P. 83 of the DCB.
- ⁴³ Ibid.
- ⁴⁴ Ibid P. 84 of the DCB.
- ⁴⁵ Ibid P. 86 of the DCB.
- ⁴⁶ P. 197 of the DCB – Second Email sent on 17 April 2024.
- ⁴⁷ P.201 of the DCB – Email Chain from 18 April 2024.
- ⁴⁸ Ibid P.200 of the DCB.
- ⁴⁹ Ibid P.199 of the DCB.
- ⁵⁰ P.662 of the DCB – Witness Statement of Daniel Coulton.
- ⁵¹ P.70 of the DCB – Witness Statement of Jason Miners.
- ⁵² P. 89 to 90 of the DCB – Witness Statement of Chris Ingall.
- ⁵³ Ibid P.91 of the DCB.
- ⁵⁴ Ibid.
- ⁵⁵ P.204 to 206 of the DCB – Email sent on 20 April 2024.
- ⁵⁶ Ibid P.205 of the DCB.
- ⁵⁷ P.207 of the DCB – Email sent on 24 April 2024.
- ⁵⁸ P.208 of the DCB – Email sent on 29 April 2024.
- ⁵⁹ P.209 of the DCB – Email sent on 30 April 2024.
- ⁶⁰ P.210 of the DCB – Email sent on 2 May 2024.
- ⁶¹ P. 70 of the DCB – Witness Statement of Jason Miners.
- ⁶² Ibid.
- ⁶³ P.663 of the DCB – Witness Statement of Daniel Coulton.
- ⁶⁴ P. 71 of the DCB – Witness Statement of Jason Miners.
- ⁶⁵ P.212 of the DCB – Email sent on 9 May 2024.
- ⁶⁶ Ibid.

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- ⁶⁷ P.212 to 213 of the DCB – Email sent on 9 May 2024.
- ⁶⁸ P.212 of the DCB – Email sent on 9 May 2024.
- ⁶⁹ Ibid.
- ⁷⁰ Ibid P.212 to 213 of the DCB.
- ⁷¹ Ibid P.213 of the DCB.
- ⁷² Ibid.
- ⁷³ Ibid.
- ⁷⁴ Ibid.
- ⁷⁵ Ibid.
- ⁷⁶ P.663 of the DCB – Witness Statement of Daniel Coulton.
- ⁷⁷ Ibid.
- ⁷⁸ Ibid.
- ⁷⁹ P.94 to 95 of the DCB – Witness Statement of Chris Ingall.
- ⁸⁰ P.649 of the DCB – Respondent Submissions.
- ⁸¹ P.747 of the DCB – Emails to Jeremy Fitzell (Attachment 11).
- ⁸² P.752 & 753 of the DCB – Emails to Donna Wilson (Attachment 12).
- ⁸³ P.711 to 713 of the DCB – Emails to Mr Coulton (Attachment 9).
- ⁸⁴ P.214 of the DCB – Email sent on 23 May 2024.
- ⁸⁵ P.215 to 217 of the DCB – Show Cause Letter No.2.
- ⁸⁶ Ibid P.216 of the DCB.
- ⁸⁷ Ibid P.217 of the DCB.
- ⁸⁸ Ibid.
- ⁸⁹ Ibid P.223 of the DCB.
- ⁹⁰ Ibid.
- ⁹¹ Ibid P.224 of the DCB.
- ⁹² P.236 to 237 of the DCB – Show Cause Letter No.3.
- ⁹³ P.238 of the DCB – Letter sent on 30 May 2024.
- ⁹⁴ Ibid P.238 to 239 of the DCB.
- ⁹⁵ P.240 of the DCB – Email sent by MUA on 3 June 2024.
- ⁹⁶ P.242 of the DCB – Email sent by Qube on 3 June 2024.
- ⁹⁷ P.243 of the DCB – Email sent by MUA on 5 June 2024.
- ⁹⁸ P.247 of the DCB – Email chain between the MUA and Qube.
- ⁹⁹ Ibid P.246 of the DCB.
- ¹⁰⁰ P.248 of the DCB – Email sent by Qube on 7 June 2024.
- ¹⁰¹ P.249 of the DCB – Email sent by MUA on 7 June 2024.
- ¹⁰² P.257 of the DCB – Email sent by MUA on 10 June 2024.
- ¹⁰³ P.263 to 264 of the DCB – Termination Letter.
- ¹⁰⁴ P. 650 of the DCB – Respondent Submissions.
- ¹⁰⁵ *Raj Bista v Group Pty Ltd t/a Glad Commercial Cleaning* [\[2016\] FWC 3009](#).
- ¹⁰⁶ *Selvachandran v Peteron Plastics Pty Ltd* (1995) 62 IR 371, 373.
- ¹⁰⁷ Ibid.
- ¹⁰⁸ [\[2021\] FWC 4](#) at 118.
- ¹⁰⁹ *Commonwealth of Australia (Australian Taxation Office) t/a Australian Taxation Office v Shamir* [\[2016\] FWCFB 4185](#), [46] citing *Allied Express Transport Pty Ltd v Anderson* (1998) 81 IR 410, 413.

¹¹⁰ P. 61 to 62 of the DCB – Applicant Submissions.

¹¹¹ P.108 of the DCB – Witness Statement of Chris Ingall.

¹¹² P.527 of the DCB – SHSMS-QH-13-PR-041 Incident Reporting and Management.

¹¹³ P.612 of the DCB – Qube Employee Handbook.

¹¹⁴ P.63 of the DCB – Applicant Submissions.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid P.64 of the DCB.

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ P. 651 of the DCB – Respondent Submissions.

¹²² Ibid.

¹²³ Ibid.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Ibid P. 649 of the DCB.

¹²⁷ P. 396 of the DCB – Code of Conduct and Ethics.

¹²⁸ *Nelson De Sousa v Just Skip Bins Pty Ltd* [\[2023\] FWC 2050](#) at [45] citing *Gibson v Bosmac Pty Ltd* (1995) 60 IR 1.

¹²⁹ Ibid.

¹³⁰ P.65 of the DCB – Applicant Submissions.

¹³¹ Ibid.

¹³² P. 652 of the DCB – Respondent Submissions.