



DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Sofia Mistrioti

v

Glenpickle Pty Ltd
(U2024/12162)

DEPUTY PRESIDENT COLMAN

MELBOURNE, 16 JANUARY 2025

Unfair dismissal application – compensation ordered

[1] Sofia Mistrioti has made an application for an unfair dismissal remedy under s 394 of the *Fair Work Act 2009* (Act) against her former employer, Glenpickle Pty Ltd (Glenpickle). The application was listed for hearing on 14 January 2025. The notice of listing advised the parties that they were required to attend the hearing and that s 600 of the Act allows the Commission to determine a matter in the absence of a person who has been required to attend before it. Ms Mistrioti attended the proceeding, but Glenpickle did not. I will proceed to determine the matter based on the information before the Commission, which comprises the documents filed by the parties and the oral evidence of Ms Mistrioti.

[2] In her F2 application Ms Mistrioti stated that on 22 September 2024, Glenpickle’s owner, Steven Kafrouni, told her that he was happy with her performance and that he wanted to sponsor her for a visa that would enable her to keep working for Glenpickle. On 24 September 2024, she asked her lawyer to send Mr Kafrouni information about visa sponsorship. Later, Mr Kafrouni asked her to attend a meeting with him and Glenpickle’s general manager, Arthur Atlas. Ms Mistrioti stated that Mr Atlas spoke to her in an intimidating tone, made false accusations about her, and said that she had ‘crossed’ him by having a discussion with Mr Kafrouni rather than with him. She was then dismissed. Ms Mistrioti said that her dismissal was unfair because she was not given a reason for the termination of her employment and she was dismissed without any warning. She also said that her dismissal was unfair because she was a single mother, her visa was soon to expire, and the sudden termination of her employment left her with no chance to find another job that could enable her to stay in Australia.

[3] Glenpickle’s F3 response to the application stated that Ms Mistrioti’s performance as a restaurant front of house manager had been unsatisfactory and that she was given warnings on five different occasions from May to September 2024. The problems included a failure to maintain clean floors and glassware, failure to set tables, repeated late attendance and bad customer reviews. Glenpickle stated that Ms Mistrioti had attended a meeting with Mr Atlas and another manager on 20 September 2024 at which she refused to accept the criticisms of her performance and was rude and aggressive. The company’s response stated that on 22 September 2024, Ms Mistrioti asked Mr Kafrouni whether Glenpickle would sponsor her visa application,

but she did not tell Mr Kafrouni about her earlier meeting with Mr Atlas. Mr Kafrouni told her that her performance would need to improve. Later, Mr Atlas told Mr Kafrouni about his earlier meeting with Ms Mistrioti. On 24 September 2024, Mr Kafrouni and Mr Atlas met with Ms Mistrioti to discuss her performance. They told Ms Mistrioti that she was dismissed and that Glenpickle would pay her two weeks in lieu of notice.

[4] In her oral evidence Ms Mistrioti denied that she was warned about her performance. She acknowledged that she had been late for work on one occasion but said that she had called ahead to let Glenpickle know that she was running late. She denied being constantly late. She denied being rude or aggressive on 20 September 2024. She denied being dismissive of criticism of her performance and said that no concerns were actually raised about her performance at this meeting. She acknowledged that there had been some customer complaints but said that this was not uncommon in a restaurant; there had also been praise from customers. Ms Mistrioti said that she was not given any notice of dismissal or payment in lieu of notice.

[5] I accept Ms Mistrioti's oral evidence. It was detailed, credible and convincing. In deciding whether the dismissal was unfair I am required to take into account the matters in s 387 of the Act. I find that there was no valid reason for the dismissal (s 387(a)) because the alleged poor performance and conduct did not occur. Ms Mistrioti was not notified of a valid reason for dismissal (s 387(b)). She had a limited opportunity to respond to the reasons for dismissal (s 387(c)). There was no unreasonable refusal of a support person (s 387(d)). I find that she was not warned about poor performance (s 387(e)). The considerations in ss 387(f) and (g) carry little weight in this matter. I have taken into account the other personal circumstances to which Ms Mistrioti referred, which I regard as relevant factors (s 387(h)). I conclude that the dismissal was unreasonable and therefore unfair.

[6] As to remedy, I find that reinstatement is inappropriate, because Ms Mistrioti currently holds only a tourist visa. I consider that compensation is appropriate. In assessing compensation I am required to consider the matters in s 392 of the Act, including the remuneration that the applicant would have received if the dismissal had not occurred (s 392(2)(c)). In the present case, this would have been the remuneration in respect of the period between the date when Ms Mistrioti's employment ended and the date when her visa expired, which was 2 November 2024. Although there had been discussions between Ms Mistrioti and Mr Kafrouni about Glenpickle sponsoring a new visa, no sponsorship arrangement had been finalised. The compensable period is from 24 September 2024 to 2 November 2024, a period of 5 and a half weeks. Ms Mistrioti was employed pursuant to a contract of employment that provided for an annual salary of \$60,000 a year, which is \$1,153.85 per week. This gives a gross amount in respect of the compensable period of \$6346.15.

[7] The Commission is required by s 392(2)(e) to take into account any amounts earned by the applicant from employment or other work since the dismissal. Ms Mistrioti said that after her dismissal she quickly found work and that in the period from 24 September 2024 to 2 November 2024 she earned \$400 a week, which is \$2,200. This amount should be deducted from the figure above. This results in a total of \$4146.15. This is the appropriate gross amount of compensation that Ms Mistrioti should be paid in respect of her unfair dismissal, from which applicable taxation must be withheld. To this should be added a component in respect of superannuation at 11.5%, which is \$476.81. I will order these amounts to be paid to Ms Mistrioti within 28 days.

[8] An order is issued separately in [PR783348](#).



DEPUTY PRESIDENT

Hearing details:

2025

Melbourne

14 January

Appearances:

S. Mistrioti for herself

No appearance for the respondent

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<PR783347>