



# DECISION

*Fair Work Act 2009*  
s.394—Unfair dismissal

**Sofia Mistrioti**

**v**

**Glenpickle Pty Ltd**  
(U2024/12162)

DEPUTY PRESIDENT COLMAN

MELBOURNE, 11 FEBRUARY 2025

*Unfair dismissal application – revocation of earlier decision – application redetermined*

[1] Sofia Mistrioti 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). On 16 January 2025, I issued a decision ([\[2025\] FWC 150](#)) in which I concluded that Ms Mistrioti’s dismissal was unfair and awarded compensation. I did so in circumstances where Glenpickle had failed to attend the hearing on 14 January 2025, despite the notice of listing advising 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. I determined the application based on the information before the Commission, which comprised the documents filed by the parties and the sworn oral evidence of Ms Mistrioti.

[2] After the decision was published, Glenpickle asked the Commission to revoke it, on the grounds that Ms Mistrioti had led the company to believe that she had abandoned her application, and that this was why it had not attended the hearing. Glenpickle submitted that on 28 November 2024, it had sent correspondence to chambers noting that Ms Mistrioti had not complied with directions to file and serve materials. Chambers then sent a message to Ms Mistrioti, copied to Glenpickle, referring to materials that Ms Mistrioti had earlier sent to the Commission but not to Glenpickle, and directing her to send these materials to Glenpickle. Ms Mistrioti then replied to chambers and Glenpickle stating that she would do this. She failed to do so. Glenpickle submitted that it assumed from Ms Mistrioti’s failure to send it her materials that she had abandoned her claim, and for this reason it did not attend the hearing that was listed for 14 January 2025.

[3] At a determinative conference on 17 January 2025, I decided to revoke my earlier decision under s 603 of the Act, for the following reasons. First, although Glenpickle should not have assumed that the matter had been abandoned, I concluded that Ms Mistrioti had led the company into error by failing to send it her materials, despite being directed to do so and undertaking to the Commission that she would comply with this direction. I considered that it would be unfair for Ms Mistrioti to benefit from her failure to comply with directions and observe her undertaking. Secondly, Ms Mistrioti’s failure to send Glenpickle her material meant that Glenpickle did not possess all of the material that Ms Mistrioti had put before the

Commission. The further materials were not extensive and did not necessarily add very much to the claim. But the fact that it did not see the entire case that was put against it before a decision was made gave rise to unfairness. Thirdly, Ms Mistrioti did not tell the Commission that she had not provided the materials to Glenpickle, and thereby misled the Commission, even though this was not intentional. If a party undertakes to do something, the Commission is entitled to take the party at its word. When I decided to determine the matter in the absence of Glenpickle pursuant to s 600, I understood that Ms Mistrioti had forwarded her material to Glenpickle, but this was not in fact the case. The power to revoke a decision under s 603 is rarely exercised, but in this case it was appropriate to do so. Having revoked my earlier decision, I relisted the unfair dismissal application for redetermination.

**[4]** At the redetermination conference, Ms Mistrioti gave evidence in line with what she had said at the first proceeding. She said that on 22 September 2024, Glenpickle's owner, Steven Kafrouni, told her that he was happy with her performance and that he would 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 Athas. Ms Mistrioti said that Mr Athas then 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 her dismissal or any warnings. 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.

**[5]** Mr Athas gave evidence that Ms Mistrioti's performance as a restaurant front of house manager had been unsatisfactory and that he personally spoke to her on 5 occasions about her failure to adhere to basic operating procedures that he had developed and in respect of which all employees, including Ms Mistrioti, were formally inducted on the commencement of their employment. Mr Athas said that he warned her about her performance on 29 May, 5 June, 31 July, 15 August and 6 September 2024, and that he remembered this because he keeps a diary. He said that he warned her about the floors being dirty, about poor table settings, dirty glassware, and non-compliance with front of house policies. He said that as the front of house manager Ms Mistrioti was responsible for all of these things. Mr Athas also said that Ms Mistrioti was frequently late and that this had led to staff being unsupervised. He said that he would see this on his weekly inspections of the restaurant. Mr Athas also said that there had been many customer complaints about the front of house manager, which among other things had noted a 'bad aura from [the] manager' and that the 'manager was extremely rude'.

**[6]** Mr Athas said that Ms Mistrioti attended a meeting with him and the front of house training manager, Maria Kafrouni, on 20 September 2024, at which he raised numerous concerns about her performance, including lateness and customer complaints. Mr Athas said that Ms Mistrioti was rude and aggressive, and refused to accept that there was anything wrong with her performance. He said that Ms Mistrioti was disrespectful towards Ms Kafrouni by calling her inexperienced, using abusive language, and interrupting her. Mr Athas said that he went to some lengths to calm things down, such as suggesting that they take a break, but eventually he terminated the meeting because of Ms Mistrioti's behaviour and told her that the meeting would resume the following week. He also told Ms Mistrioti that her behaviour towards Ms Kafrouni was not acceptable.

[7] Mr Kafrouni gave evidence that on 22 September 2024, Ms Mistrioti asked him whether Glenpickle would be sponsoring her visa application, but she did not say anything about her earlier meeting with Mr Athas and Ms Kafrouni on 20 September 2024. Mr Kafrouni said that he had learnt about the meeting on 21 September 2024 from Mr Athas, but only received a full debrief of what occurred on 23 September 2024. Mr Kafrouni said that he and Mr Athas discussed the matter further and decided that Ms Mistrioti's conduct had been unacceptable and that it was appropriate to terminate her employment. On 24 September 2024, they met with Ms Mistrioti. Mr Athas's evidence was that he told Ms Mistrioti that he was disappointed with her behaviour, that she had received numerous previous warnings, that her treatment of Ms Kafrouni during the meeting on 20 September 2024 had been appalling, and that her employment was terminated. Mr Athas and Mr Kafrouni gave evidence that they gave Ms Mistrioti 2 weeks' notice of termination of employment, but that Ms Mistrioti replied that she did not want this and left.

[8] Ms Mistrioti said that Mr Athas had not warned her about her performance. She emphasised that she was never given any written warning. She said that she had been late for work on only 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. 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 during her discussion with Mr Kafrouni on 22 September 2024, she did tell him about the meeting on 20 September 2024. Ms Mistrioti said that she was not given any notice of dismissal or payment in lieu of notice. She denied being offered 2 weeks' notice of termination.

[9] In my previous decision, I accepted Ms Mistrioti's sworn oral evidence. It was contrary to various statements in Glenpickle's F3, but those statements were unsworn and untested. They were simply assertions. Ms Mistrioti had given sworn evidence to the Commission, which I accepted in the absence of any attendance or sworn evidence from Glenpickle. I have now had the benefit of hearing the sworn evidence of Mr Athas and Mr Kafrouni. There is a conflict in the sworn evidence that I must resolve by making factual findings on the balance of probabilities.

[10] The evidence of Mr Athas was clear, detailed, and convincing. I accept his evidence and prefer it to Ms Mistrioti's where their evidence conflicts. I find that Mr Athas warned Ms Mistrioti about her performance on the dates that he indicated. I reject Ms Mistrioti's general denial that any warnings were given. Ms Mistrioti said on a number of occasions that she was not warned in writing. But warnings do not have to be in writing. I find that Mr Athas told her about his concerns about her performance on the five occasions he cited. It may be that he did not use the word 'warning', but the substance of these discussions was to convey a warning to Ms Mistrioti that her performance was not satisfactory in the various respects to which he referred in his evidence.

[11] I accept Mr Athas's evidence about what occurred at the meeting of 20 September 2024. I find that he told Ms Mistrioti about his concerns regarding her performance, that Ms Mistrioti did not accept the criticisms, and that she behaved rudely towards Ms Kafrouni by questioning her experience and stating that she did not know what she was talking about. I also prefer Mr

Athas's account of the termination meeting on 24 September 2024 and find in particular that Mr Athas told Ms Mistrioti that the company would observe the two-week notice period, and that Ms Mistrioti said that she did not want this. This is consistent with Mr Kafrouni's evidence of the termination meeting. Mr Athas's evidence was detailed and precise. It is implausible that Mr Athas would concoct an elaborate story to such a level of particularity. He was a credible witness.

[12] I also accept Mr Kafrouni's evidence that Ms Mistrioti did not tell him on 22 September 2024 about the meeting she had with Mr Athas and Ms Kafrouni on 20 September 2024. After Mr Kafrouni and Mr Athas discussed in detail what had occurred at the meeting on 20 September 2024, and the fact that Ms Mistrioti had not mentioned to Mr Kafrouni what had happened at the meeting on 20 September 2024, they decided to end her employment.

[13] 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 Ms Mistrioti's conduct at the meeting on 20 September 2024 was a valid reason for Glenpickle to dismiss her (s 387(a)). She was rude to Ms Kafrouni and refused to engage in discussion about the company's concerns regarding her performance. Her performance was another valid reason for dismissal. Ms Mistrioti was notified of a valid reason for dismissal by Mr Athas at the termination meeting on 24 September 2024 (s 387(b)). She had an opportunity to respond to the reasons for dismissal at that meeting (s 387(c)). There was no unreasonable refusal of a support person (s 387(d)). I find that Ms Mistrioti was warned about her 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 (s 387(h)). I conclude that the dismissal was not harsh, unjust, or unreasonable, and therefore not unfair.

[14] In the course of determining applications that are brought before it, the Commission makes factual findings and draws conclusions based on the evidence and materials that are put before it. It should come as no surprise that in a proceeding where both parties have adduced sworn evidence in respect of disputed facts, the outcome might be different from an earlier proceeding in which only one party has given sworn evidence and the other has failed to appear. Ms Mistrioti's unfair dismissal application is dismissed.



DEPUTY PRESIDENT

*Appearances:*

S. Mistrioti for herself  
A. Athas for Glenpickle Pty Ltd

*Hearing details:*

2025

Melbourne  
5 February

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