



# DECISION

*Fair Work Act 2009*

s.394 - Application for unfair dismissal remedy

**Mr Navin Chandra**

v

**Lambert Estate Wines Pty Ltd**

(U2024/10963)

DEPUTY PRESIDENT ANDERSON

ADELAIDE, 14 FEBRUARY 2025

*Application for an unfair dismissal remedy – finance and administration manager – performance – valid reason – warnings – procedural fairness – whether dismissal predetermined – dismissal not unfair – application dismissed*

[1] Mr Navin Chandra (Mr Chandra or the applicant) has applied to the Commission under s 394 of the *Fair Work Act 2009* (the FW Act) for an unfair dismissal remedy in relation to his dismissal by Lambert Estate Wines Pty Ltd (Lambert Wines, the employer or the respondent) that was notified on 30 August 2024 and took effect on 13 September 2024.

[2] Mr Chandra claims that his dismissal was harsh, unjust or unreasonable. He seeks compensation.

[3] Lambert Wines oppose the application.

[4] The matter did not resolve by conciliation. I issued directions on 25 October 2024 and, after two interlocutory hearings, production orders on 8 November and 2 December 2024.

[5] The 8 November 2024 production order required Lambert Wines to produce documents, though not all those sought by Mr Chandra. That production order was accompanied by an order for confidentiality as many of the documents related to financial matters. The 2 December 2024 production order required Mr Chandra to produce documents relating to his qualifications, post dismissal earnings and job searches.

[6] Lambert Wines and Mr Chandra promptly complied with the production orders.

[7] I heard the matter in person on 16 December 2024 and 23 January 2025. The parties were self-represented (Lambert Wines had been legally represented at the 2 December 2024 production order proceedings only).

## Evidence

[8] I heard oral evidence from two persons:

- Navin Chandra (applicant); and
- Kirk Lambert (President).

[9] Both witnesses were conscientious and sought to the best of their recall to provide relevant and accurate information to the Commission. The evidence in this matter spanned a period of eighteen months, with particular focus on recruitment (February 2023) and events between April and August 2024. Given this, I make allowance for challenges both witnesses had in instinctive recollection of detail.

[10] Mr Chandra, during lengthy evidence, was vague on some recollections but otherwise had reasonable recall. Aspects of his evidence were accompanied by lengthy pauses, indirect responses and conveyed some degree of argument, reconstruction and presentation of facts with gloss to suit his case but considered overall was largely plausible. Mr Lambert was calm and measured over similarly lengthy examination. Relevantly, he remained consistent under cross examination. He displayed good recall though frequently required reference to emails or documents to prompt his recollection. He did not convey the impression of adding a favourable gloss to his evidence, which added to its credibility.

[11] A substantial body of evidence, both oral and documentary, is before me. Aspects are technical and detailed. Much of it concerns confidential financial records and conduct relating thereto. In arriving at this decision I have had regard to all the evidence and submissions before me. I have not however needed to canvass confidential material in these reasons except where redactions are made in the published version.

[12] Some of the evidence (oral and written) strayed from factual matters into hearsay, opinion, assumption and commentary. I place reduced levels of weight on such evidence except where it is corroborated by direct evidence, uncontested or inherently believable. I am not bound by the rules of evidence but consider them to be a good and useful general guide.

[13] There are material disputes of fact, though largely those disputes concern conclusions to be drawn from facts rather than the relevant events or conduct being disputed. Relevant factual disputes include:

- whether a position description applied to Mr Chandra or was given to him; and
- whether Mr Chandra was asked to perform ‘cycle counts’ of stock inventory.

[14] I make findings on relevant facts, including these disputed matters, in the body of this decision.

[15] I make one further evidentiary observation. Lambert Wines did not call Pamela Lambert. She was present at the first day of hearing assisting Mr Lambert, but overseas on the second day. Many of my findings (below) concern dealings between Pamela Lambert and both Mr Chandra and Mr Lambert. Whilst it is open to have made these findings given the direct evidence received from Mr Chandra and Mr Lambert, the evidentiary narrative would have been more complete had Pamela Lambert given evidence. For example, whilst I make findings about dealings each of these witnesses had with Pamela Lambert, I have no direct evidence on why Pamela Lambert formed a particular view or sent or responded to a particular communication in the way she did. I do not draw a *Jones v Dunkel*<sup>1</sup> inference against Lambert

Wines for not calling Pamela Lambert as I do not consider it reasonable to do so, but I take this lacuna in evidence into account in making findings and drawing conclusions in this matter.

## **Facts**

### *Lambert Wines*

[16] Lambert Wines owns and operates a winery and related hospitality business at Angaston in the Barossa Valley region of South Australia.

[17] It is not a small business within the meaning of the FW Act, though is a family business and not a large scale operation. It employs approximately 29 persons and other seasonal employees.

[18] The business, via an associated entity (AUSA Pacific LLC), has an import office in the United States.

[19] The business is largely co-owned and operated by Jim and Pamela Lambert. Their son Kirk Lambert (Mr Lambert) is the President, a position which equates to that of chief executive or general manager. Mr Lambert and some other family members hold small shareholdings in the company. Mr Lambert has held the position of President for approximately six years. It is a full time role which requires travel to and from the United States for several weeks at a time over periods of the year.

[20] Pamela Lambert has been and remains the part owner historically managing and overseeing the financial operations of the business. Mr Lambert has no specialist background in financial affairs or accounting though has acquired knowledge of company financial matters as part of his role. Financial staff employed by Lambert Wines take guidance from Pamela Lambert though formally report to Mr Lambert. At the time of relevant events, it was a desire of the owners that Pamela Lambert would eventually transition to retirement once financial staff and Mr Lambert were able to themselves fully manage financial affairs and reporting.

[21] At the time of Mr Chandra's dismissal, this had not occurred. Pamela Lambert remained active in overseeing the finances.

### *Mr Chandra*

[22] Mr Chandra was employed as Finance and Administration Manager on 2 March 2023.

[23] He was dismissed on performance grounds approximately eighteen months later, on 30 August 2024.

[24] Mr Chandra was given two weeks' notice, during which he remained employed. The dismissal took effect on 13 September 2024.

[25] Mr Chandra has tertiary qualifications. He holds a Master of Business Administration (Hotel Management) from the University of Western Sydney (1999) and a Master of Professional Accounting from James Cook University (2016). He is not a Chartered Accountant (CA) or a Certified Practising Accountant (CPA), something known to Mr Lambert at the time he employed Mr Chandra.

[26] Prior to working for Lambert Wines, Mr Chandra had been a financial controller or finance officer in the hospitality industry (for eight businesses between 2006 and 2020, mainly hotels and resorts<sup>2</sup>). He had not previously worked in the wine industry.

[27] Immediately prior to being employed by Lambert Wines, Mr Chandra held an administrative position with the Australian Electoral Commission (for approximately twelve months). Mr Chandra's evidence was that, following the outbreak of COVID-19 in 2020, he was made redundant from his then hospitality industry position, and took up administrative (non-financial) roles in the public sector to maintain employment.

#### *Recruitment*

[28] The position to which Mr Chandra was appointed was newly created. Prior to his recruitment a junior accountant had been employed to assist Pamela Lambert and Mr Lambert. When the junior accountant indicated a desire to leave, Lambert Wines decided to create a more senior finance position, with the prospect that a newly appointed Finance and Administration Manager, together with Mr Lambert, would over time enable Pamela Lambert to be less hands-on in the management of financial affairs, and transition to retirement.

[29] Mr Chandra was recruited through an openly advertised application process and was amongst three or four candidates interviewed by Mr Lambert.

[30] The job advertisement placed by Lambert Wines read:<sup>3</sup>

#### **“Finance & Administration Manager**

Lambert Estate Wines - View all jobs

Angaston, Adelaide Hills & Barossa SA

Financial Managers & Controllers (Accounting)

Full time

Add expected salary to your profile for insights

#### **WE ARE GROWING! OPPORTUNITY FOR A MOTIVATED ACCOUNTING PROFESSIONAL.**

Lambert Estate is a stunning family owned and operated winery located on the outskirts of Angaston, in the beautiful Barossa Valley. This is an exciting opportunity to join one of the highest rated destinations in the Barossa. The winery is known for its warm, inviting, 5 star rated customer service in the tasting room, restaurant and event center. Lambert Estate has a large range of estate grown fine wines, and a restaurant that serves dishes prepared from home grown produce from its gardens and orchards. Lambert Estate is looking for a full-time, experienced accountant who has a passion for excellence in accounting, and experience in managing all aspects of reporting and administration to oversee the operations of the Australian companies and holdings, and the US import company.

## About You

Reporting to the President, you will be responsible for assisting with business planning, budgeting, and forecasting. This is very much a "hands on" position that is involved in all day-to-day admin and accounting functions: invoicing, A/P, A/R, payroll, cashflow, monthly reporting, including P & L, Cashflow and Balance Sheet. You will also work with our external accountants to prepare end of financial year reporting, and any ongoing compliance reporting.

Our ideal candidate will be responsible for a for a variety of tasks and be able to demonstrate:

- Accounting technical compliance and knowledge of applicable accounting standards
- Experience background/qualifications equivalent to a degree in accounting and a minimum 3 years of experience in accounting.
- High level of skill in working with spreadsheets, word processing, all aspects of accounting software and financial statements.
- Knowledge of human resource policies, compliance and payroll.
- Ability to work independently, and as a supporting member of the team.
- Excellent communication, decision making and time management skills.
- A high standard of personal presentation and grooming.
- Excellent customer service skills
- Knowledge of relevant legislation and regulatory requirements specific to the Australian Wine Industry.
- Chartered Accountant (CA) or Certified Practising Accountant (CPA), or working towards, a plus.

## Key Responsibilities

- Overseeing day-to-day financial operations including AP & AR (end to end collection, phone calls and email inquiries).
- Fortnightly end to end payroll processing and any payroll related inquiries. Ensure compliance with ATO requirements.
- Management of human resource compliance and policies, including maintenance of all employee records and on-boarding of staff.
- Monthly IAS lodgement
- Quarterly BAS lodgement and superannuation reconciliation
- Yearly payroll tax, wages, superannuation and return to work reconciliations.
- Month end close with preparation and analysis of financial results and variances.
- Produce reports for management with commentary.
- Fixed asset register maintenance and depreciation schedules
- Insurance declaration
- Inventory control and reconciliation

A competitive remuneration package, wine allowance and other benefits are on offer for the successful candidate.

To apply please forward your resume to [employment@lambertestate.com](mailto:employment@lambertestate.com)

To find our more information about Lambert Estate, please visit us at [www.lambertestate.com](http://www.lambertestate.com)”.

[31] Mr Chandra’s job application was accompanied by a CV setting out his experience and qualifications.<sup>4</sup> In his job application Mr Chandra stated:

“The following transferable core skillset and attributes makes me suitable for this role are:

- Qualifications in MBA major in Hotel Management and Master of Professional Accounting.
- Over fifteen years' experience in preparation of Monthly and Yearend financial reporting experience in Australia and in Fiji Islands.
- Hands on Experience in all aspects of Accounting such as AP / AR / GL & Bank Reconciliations and Asset Register as well as GST / BAS Statements.
- Maintaining financial records and reports for Management Company and Owners.
- Preparation of all Payroll processing and wages analysis. Statutory reporting and payment of all payroll obligations such as FBT, Payroll tax and Superannuation.
- Strong ability to review and manage all Cost Centres and facilitate appropriate action plans.
- Computer skills in various accounting systems (SUN, MYOB, XERO) and PMS (Fidelio / Opera / Micros) and the ability to learn new systems with minimal training.
- Site contact for all IT Issues and Data Safety, liaison with IT Contractors for complex issues.
- Advanced skills in Excel for Budgets / Cash flow / Forecasting / Cost Variance reporting.
- Excellent written communication and interpersonal skills derived from working in the hospitality industry and have experience with reporting on business financial figures to management and stakeholders.
- Ability to work autonomously and lead Finance team as well ensuring deadlines is achieved within timeframes.
- Focused and highly analytical, with a sociable personality.”

[32] An evidentiary dispute exists over whether Mr Chandra was provided, at the time of interview or when commencing employment, a Job Description of the type produced by Lambert Wines in these proceedings.<sup>5</sup> I make findings on that below.

[33] Mr Chandra was offered the job on the terms of a letter dated 25 February 2023.<sup>6</sup> He commenced a week later, on 2 March 2023. It was a full time managerial role.

[34] As Finance and Administration Manager, Mr Chandra reported formally to Mr Lambert (President). However, day to day guidance, direction and oversight also came from Pamela Lambert.

[35] Though a managerial role, no employees reported to Mr Chandra. Once the junior accountant left, no-one other than Mr Chandra and Pamela Lambert (and to a lesser degree Mr Lambert and very occasionally Jim Lambert) dealt with financial matters.

[36] I accept Mr Lambert's evidence that at the time of recruitment, and not infrequently thereafter, he informed Mr Chandra that at some future time Pamela Lambert planned to retire and that he should take guidance and learn from her.

[37] There was a handover period of one week between Mr Chandra starting and the junior accountant leaving. In that week, the junior accountant briefed Mr Chandra on work he had been undertaking and on some of the internal financial and payroll systems in use.

*12 months to March 2024*

[38] During his first twelve months in the role, Mr Chandra progressively undertook duties required by the business, whilst taking direction and seeking and obtaining guidance from Pamela Lambert and Mr Lambert. Mr Chandra did so after an initial period of settling in, which required, amongst other things, familiarity with the internal accounting and administrative systems, understanding the reporting needs and expectations of Mr Lambert and the owners, and learning about winery operations.

[39] Mr Lambert's evidence was that during the first twelve months the business made allowance for Mr Chandra settling in and adapting to these systems whilst still requiring the necessary duties to be performed.

[40] I find this was a reasonable approach. Being a seasonal business, Mr Chandra could not have been fully exposed to Lambert Wines operations without experiencing production cycles across a full year. I find that the business did not impose on Mr Chandra unreasonable burdens in this first twelve month period nor expect him to take full responsibility for preparing the 2023 financial year accounts. As of 30 June 2023, Mr Chandra had only been in the job for four months. Not yet familiar with the industry or the company, Pamela Lambert largely managed reporting of the 2023 financial year results.

*Emergence of performance concerns*

[41] In the second half of 2023 Mr Lambert, based in part on feedback from Pamela Lambert and other managers, but also from his own observations, started to have concerns with Mr Chandra's performance. He began to articulate these to the owners, and particularly Pamela Lambert. Some of this occurred via email exchanges, including with Mr Chandra, and are in evidence.<sup>7</sup>

[42] These concerns notwithstanding, in this period Mr Lambert and Pamela Lambert communicated frequently with Mr Chandra verbally and by email providing guidance, correcting occasional error and explaining tasks or giving direction about day to day issues.

[43] Upon the 2024 calendar year commencing, Mr Lambert was hoping for improvement but started to wonder if Mr Chandra was up to the task. He and Pamela Lambert continued to communicate regularly and informally with Mr Chandra about their expectations. However, none of these frequent exchanges were in the nature of formal counselling or performance warning.

*April and May 2024 payroll concerns*

[44] A central role required to be performed by Mr Chandra was arranging fortnightly payroll to employees.

[45] Mr Chandra's responsibility included checking that time records of individual employees had been signed or approved by relevant managers, and to then consolidate that information into a payroll run (either by checking or imputing data into a data file) from which a total quantum of funds could be approved and released for the payment of fortnightly pays.

[46] In April 2024, Pamela Lambert reported to Mr Lambert that financial reporting and auditing were behind schedule. She considered Mr Chandra responsible. She also considered that April payroll costs contained anomalies.<sup>8</sup> In early May 2024, separate payroll errors were identified by Pamela Lambert that had resulted in overpayments to several employees. Pamela Lambert raised these concerns with Mr Lambert on 7 May, and again considered Mr Chandra responsible.<sup>9</sup>

*Advertisement for Bookkeeper / Accountant*

[47] In conjunction with the deepening of these concerns, in early May 2024, Mr Lambert became aware that the business had a credit with the job recruitment site seek.com which, if not used, would be lost. Given this, and the fact that both he and Pamela Lambert considered that Mr Chandra had made errors with basic tasks such as accurate payroll runs, he decided to advertise for a position of "Bookkeeper / Accountant".

[48] The advertisement placed on seek.com stated:<sup>10</sup>

**"Bookkeeper/Accountant**

Lambert Estate Wines - View all jobs

Angaston, Adelaide Hills & Barossa SA

Bookkeeping & Small Practice Accounting (Accounting)

Full time

**OPPORTUNITY FOR A MOTIVATED ACCOUNTING PROFESSIONAL.**

Lambert Estate is a family owned and operated winery located on the outskirts of Angaston, in the Barossa Valley. This is an exciting opportunity to join one of the highest rated destinations in the Barossa. The winery is known for its warm, inviting, 5 star rated customer service in the tasting room, restaurant and event centre. Lambert Estate has a large range of estate grown wines, and a restaurant with dishes that highlight home grown produce from its gardens and orchards. Lambert Estate is looking for a full-time, experienced bookkeeper/accountant who has knowledge of all aspects of reporting and a focus on detail. The role will have a day-to-day, ongoing impact on company admin and bookkeeping duties across the operations of the Australian companies and holdings, and our US import company.

**About You**



You enjoy being in a "hands on" position that is involved in all day-to-day admin and accounting functions: invoicing, A/P, A/R, and payroll. You will be responsible for recording monthly reporting, including P & L, Cashflow and Balance Sheet. You will be working with our external accountants to help provide end of financial year reporting, and any ongoing compliance reporting.

The following tasks provide a broad overview of the role and include the below but are not limited to:

- Responsible for the running of the finance function including regular bookkeeping and fortnightly payroll.
- Credit card reconciliation.
- Responsible for accounts payable & receivable, data entry for bills and invoices.
- Follow up of accounts receivable collection and vendor reconciliations.
- Payroll tax, work cover and superannuation.
- Preparation of BAS.
- Inventory control and reconciliation.
- Debt collecting
- Agent commission management
- Some P.A to help directors and President with any extra assistance needed.
- Answering phones as needed.
- General administration duties

### **Qualification & Experience**

- Three or more years of experience in all areas of general accounting.
- Chartered Accountant (CA) or Certified Practicing Accountant (CPA), or working towards, a plus.
- Knowledge of relevant legislation and regulatory requirements specific to the Australian Wine Industry a plus.
- Leadership skills, with steadfast resolve and personal integrity
- Exceptional verbal, written and visual communication skills.
- Knowledge of human resource policies, compliance, and payroll.
- Strong knowledge of accounting software programs, experience with Reckon a plus.
- Experience reconciling multiple payment platforms.
- Advanced knowledge of Microsoft Office suite.

### **Benefits**

- Competitive remuneration package
- Wine allowance and generous staff discounts.
- Supportive work environment.
- Beautiful Barossa Valley location.
- Knowledge into the industry.

To apply please forward your resume to [employment@lambertestate.com](mailto:employment@lambertestate.com). Please note only shortlisted candidates will be contacted.

To find our more information about Lambert Estate, please visit us at [www.lambertestate.com](http://www.lambertestate.com)".

[49] Mr Lambert did not inform Mr Chandra of the advertisement prior to it being placed, or its purpose. I make findings as to its purpose below.

[50] On 8 May 2024, upon learning of the advertisement privately from a work colleague, Mr Chandra sent Mr Lambert an email which pointedly asked:<sup>11</sup>

"Have seen the job ad on SEEK, anything I have to be concerned with????? Awaiting your response."

[51] Shortly thereafter, Mr Chandra confronted Mr Lambert in the warehouse about the advertisement. In a tone of anger not previously witnessed by Mr Lambert, Mr Chandra vented his feeling that Mr Lambert had gone behind his back and was secretly planning to get rid of him. Mr Lambert considered the location of the altercation inappropriate, with forklifts operating nearby. He suggested they move to the office, but Mr Chandra did not do so. Mr Lambert then told Mr Chandra that his position was not at risk by the advertisement as another person was needed in finance because Pamela Lambert was wanting to retire in the future, and because help was needed in the area.

[52] The altercation ended on this terse note. Having had this discussion and considering its tone, Mr Lambert decided not to reply in writing so as to avoid further aggravating the situation.

[53] Considering Mr Chandra's hostile reaction and recognising that his (Mr Lambert's) failure to have alerted Mr Chandra to the advertisement caused the altercation, Mr Lambert decided to not proceed with employing a Bookkeeper/Accountant.

#### *Warning 17 May*

[54] After further consideration, Mr Lambert and Pamela Lambert decided that their concerns about Mr Chandra's performance, and particularly the payroll overpayments, were sufficiently serious to warrant formal action. They decided to call Mr Chandra to a meeting and give him a written warning and put him on notice that his employment was at risk if his performance did not improve.

[55] They opted to give Mr Chandra until the end of the 2024 financial year (30 June) to improve before reassessing his performance. Mr Chandra was called to a meeting held on 17 May.

[56] At that meeting Pamela Lambert and Mr Lambert outlined the performance concerns which primarily concerned payroll errors. They also informed Mr Chandra that beyond payroll errors they were concerned by his lack of attention to detail and follow up and responsiveness to questions and issues Mr Lambert and the owners raised with him.<sup>12</sup>

[57] Mr Chandra accepted some responsibility for the payroll errors but also considered that it was for operational managers and not he to know if hours in time records had in fact been worked, and that the overpayments were not large and could be recovered. On the more general concerns, Mr Chandra indicated that he occasionally had poor focus on data entry, had experienced some computer malfunctions and acknowledged some delays in follow-up.

[58] Two days later (19 May), by email, Mr Chandra was provided a “first warning letter”. The covering email stated:<sup>13</sup>

“Hi Navin

As per our meeting on Friday, May 17<sup>th</sup>, please find attached official warning letter regarding your performance at Lambert Estate. I will provide you with a written copy on Monday.

We hope that this will encourage better performance and results going forward.

Regards

Kirk”

[59] The warning letter read:<sup>14</sup>

“Dear Navin,

Warning letter

I am writing to you about your performance during your employment with Lambert Estate Wines Pty Ltd. (the employer).

On Friday, 17 May 2024 you met with Kirk Lambert and Pam Lambert. At this meeting you were advised that your continued performance has been unsatisfactory, and that immediate improvement is required. Specifically, you were made aware of detailed errors that were made in employees' pay which will affect Lambert Estates financially and employee morale. Generally, you were also advised that your lack of attention to detail goes across to your other duties, including A/P, A/R, and financial reporting. Lack of review, lack of follow-up to questions, and lack of response to work requests have created a situation of significant financial and reputational loss on behalf of Lambert Estate Wines Pty Ltd.

In the meeting you were asked if you had anything you wished to say or to respond to the situation and you suggested there could be several reasons for the continued mistakes in your work: poor focus on data entry, not thoroughly checking and following up on your work, computer program malfunction and otherwise unsure of the reason. As Finance and Administration Manager it is expected you that you consistently and regularly review and audit your work and question irregularities to the relevant department.

After considering the situation it is expected that your performance improves and, specifically, that you thoroughly review your work, pay attention to all details, and check your work product for errors before it is submitted or sent for processing, provide timely responses to questions and requests from all staff, and ask questions when unsure. As a senior level employee and manager of the Finance and Administration it is expected you take responsibility for your departments and any mistakes that are attributable to your work.

This is your first official warning letter. Your employment may be terminated if your performance does not improve by 30th June 2024. I propose that we meet again on 5th June 2024 to review your progress. Please let me know if this time is convenient to you. If you wish to respond to this formal warning letter, please do so by contacting me by replying in writing via email to [REDACTED].

Yours sincerely,

Kirk Lambert  
President

PLEASE KEEP A COPY OF THIS LETTER FOR YOUR RECORDS”.

**[60]** On 19 and 20 May, after personally auditing the most recent fortnightly payroll, Pamela Lambert provided details of corrections to the payroll that needed to be made, and informed Mr Chandra that the business had decided that whilst two overpayments would need to be repaid by individual employees, other overpayments would be absorbed so as to not impose an unreasonable burden on those staff. She also advised that an underpayment detected would need to be rectified.<sup>15</sup>

*Preparation by Mr Chandra to mount defence*

**[61]** In light of the 17 May 2024 formal warning, and given his concerns about job security following the May 2024 advertisement for a Bookkeeper/Accountant, from mid-May 2024 Mr Chandra began to plan ahead for a possible future defence of his performance should he be dismissed.

**[62]** Unknown to Lambert Wines, from this time onwards (mid-May 2024) until dismissal Mr Chandra transferred into his private possession financial records and related emails that were the subject of the performance criticisms. Mr Chandra’s evidence to the Commission was that he did this as some insurance should he need to externally defend his performance, fearing that he may not get access to the documents he would need.

**[63]** It was apparent in the production proceedings conducted on 7 November 2024 that Mr Chandra had in his possession copies of some of the documents for which he sought a production order. Mr Chandra openly acknowledged this to be so, but sought an order, in his words, to obtain them officially so as to avoid a potential legal claim against him for taking copies of the documents.

*Performance review 28 June*

**[64]** On 28 June 2024, Mr Lambert held a performance review with Mr Chandra. The performance review was conducted as part of the company’s general end of financial year review of staff and was required under Mr Chandra’s contract. Mr Chandra had been asked by Mr Lambert to prepare a self-evaluation prior to the meeting but did not do so.

**[65]** At the performance review Mr Lambert told Mr Chandra that despite some accomplishments his performance remained unsatisfactory and had not materially improved since the 17 May 2024 meeting and warning.

[66] Consistent with his approach to annual performance reviews with other staff, Mr Lambert produced a list of accomplishments for Mr Chandra over the past year and goals for the following year. It read:<sup>16</sup>

**“Navin Chandra – 2023/24 Accomplishments**

- Reconciled the Sealink account to bring in missing \$\$\$.
- Took over booking, collecting payments, and cleaning for retreat.
- Learned System (Wine Direct) to become one of the point people for reports and information, including for transfer of information to Reckon.
- Learned to submit products for COLA approvals.
- Learned various freight company procedures to ship samples/product to customers, including international.
- Learned how to prepare and file AUSA Reports and Tax Information to comply with requirements for wholesale and direct to consumer imports and sales. Worked with Chateau Tanunda for invoicing and billback/shipping issues.
- Took over handling of all AUSA & CT billbacks, invoicing and bills

**Navin Chandra – 2024/25 Goals**

1. Analyse bookings, reservation systems, and revenue for retreat to increase revenue by at least 10%. Check for upcoming holidays and local events to match length of stay to those days.
2. Complete successful end of year inventory count and reconciliation. Put cycle count program in place to reduce any variations for upcoming year to <-1% or positive variation. Report inventory for LEW and AUSA monthly with any variances identified and cause.
3. Complete all A/P and A/R functions for LEW, Vineyard and AUSA
4. Update Vineyard account to correct and reconcile with bank statement monthly. To be completed within 5 business days from end of month.
5. Update and maintain all reports for LEW, Vineyard and AUSA so formulas and numbers are correct and formulas balance.
6. File all AUSA reports as needed in the USA and keep billbacks, invoices, and bills up to date.
7. Prepare and Submit AUSA commission statement so payment is made by 10<sup>th</sup> of following month.
8. Continue to file federal and state reports as required by law.
9. Check “Pay on Account” transactions each week when doing reports and ensure that tour groups are invoiced if not prepaid.
10. Implement Realtime timeclock usage with 100% uptake across business. Identify, propose solutions and resolve any issues that arise.
11. Eliminate payroll mistakes, actively review hourly data and identify and resolve errors prior to payroll submission.
12. Send A/R statements for LEW and AUSA within 5 business days of end of month. Actively work with customers to reduce past due account balance and bring into terms.
13. Takeover LMGO invoicing and account management.
14. Provide analysis of financials to executive team. Identify personal cost savings and trend increases to find alternatives.”

[67] In discussing these goals, Mr Lambert expressly referred to issues that Lambert Wines considered Mr Chandra required to improve upon and give attention to over the following year.

[68] Lambert Wines did not increase Mr Chandra's remuneration following the June 2024 performance review due to its performance concerns and advised him accordingly.<sup>17</sup> The only variation from his starting salary in March 2023 was that superannuation payable had increased in line with statutory requirements. A formal performance and salary review had not been conducted in 2023 as Mr Chandra had not then been employed for a year.

*End of financial year reporting*

[69] Between late May and July 2024, Mr Lambert and Pamela Lambert assessed and continued to share concerns with Mr Chandra's performance and in particular his readiness for the end of the 2023/24 financial year accounting and reporting tasks, and in its wake.

[70] On 21 May 2024, Mr Lambert advised Mr Chandra that he was "very disappointed" with Mr Chandra's response (that day) to Pamela Lambert concerning a request she had made on 11 April for bottling costs, and which had not been responded to in the six weeks following. This had prompted a stern reminder by Pamela Lambert on 20 May.<sup>18</sup>

[71] Mr Lambert's expression of disappointment on 21 May was couched in direct terms:

"I'm very disappointed in your response. Besides Pam, I have communicated with you about this task and, in particular, when it would be completed. None of these issues were ever raised. A month later and no progress has been made is not acceptable.

We continue to let you know that if you have questions you need to communicate them to us before we have to ask you again why you have not completed a task you were asked to do. You can always reach any of us through several means of communication - in person, email, phone, messaging, etc... It is not a valid excuse to say that someone was not in the office so you did not work on it, or that you did not work on it because of someone else's priorities. We cannot make informed business decisions without this information completed in a timely manner."

[72] On 27 May 2024, with the end of financial year approaching, and with Mr Chandra required to take greater responsibility for end of financial year reporting in 2024 than he had in 2023, Pamela Lambert emailed Mr Chandra reminding him of the end of year reporting tasks, particularly with respect to inventory reporting. This included developing in advance a plan for the work and providing reports according to the plan.<sup>19</sup>

[73] On 5 June 2024, Mr Lambert was concerned that he had not received the May 2024 financial report from Mr Chandra. He emailed Mr Chandra asking that:<sup>20</sup>

"the May financials be completed by the end of this week or earlier. If there is something that is keeping you from completing this let me know. We should have this completed within 5 working days or less of the end of month each month".

[74] Mr Chandra did so though Mr Lambert nonetheless considered the monthly report late and should not have had to be asked for.

[75] On 3 July 2024, Pamela Lambert questioned Mr Chandra by email over invoices and remittances by Sea Link for services provided by Lambert Wines. Mr Chandra informed Pamela Lambert that “maybe I forgot” to enter the Sea Link invoices.<sup>21</sup>

[76] On 14 July 2024, Pamela Lambert, who was working on an end of year inventory reconciliation, drew Mr Chandra’s attention to anomalies in the warehouse stocktake (which in respect of the cellar door Mr Chandra had jointly conducted with the vineyard manager) and sought his input or comment.<sup>22</sup> None was provided. Three days later, on 17 July, Pamela Lambert emailed Mr Chandra (copied to Mr Lambert) with concerns about inventory transfers and related costings. She provided guidance to Mr Chandra through a spreadsheet as to how she considered such transfers should be properly accounted for.<sup>23</sup>

[77] On 25 July 2024, Pamela Lambert emailed Mr Chandra stating that she had “almost finished the inventory reconciliation for FYE 2023-2024 [REDACTED] New/additional procedures are going to have to be put in place so we don’t continue to have these variances. I have attached a memo that I am going to send to Kirk tomorrow morning. I wanted to send it to you in advance in case you had anything you would like to update or add.”<sup>24</sup>

[78] Mr Chandra did not provide input.

[79] In the letter that was sent to Mr Lambert, Pamela Lambert stated, amongst other concerns:<sup>25</sup>

“I am very unhappy with [REDACTED], I had hoped that systems would have been put in place to avoid the same problems in the 2023-2024 fiscal year. A cycle count system was supposed to be initiated and maintained in this fiscal year. I haven’t seen that was ever done...”

[80] After listing various transactions by way of example, the letter went on to conclude:<sup>26</sup>

“It is not possible to continue checking every transaction. These errors were avoidable. Other than our employees, the most valuable asset we have is inventory and it would appear this was not taken to make sure transactions were accurate. Granted these are mundane matters and we all make mistakes, but the company needs to have processes in place to minimise inventory discrepancies.”

[81] Without naming Mr Chandra, Pamela Lambert and Mr Lambert considered the inaccuracies in the end of year inventory accounts to have resulted from a failure by Mr Chandra to have conducted inventory cycle counts, amongst other criticisms made in the letter.

### *Warning 2 August*

[82] Given the concerns held by both Mr Lambert and Pamela Lambert concerning end of year inventory accounting, Mr Lambert decided that a second formal performance discussion and warning was necessary.

[83] With barely ten minutes advance notice, Mr Chandra was called to a meeting on 2 August.

**[84]** At the meeting Mr Lambert and Pamela Lambert outlined concerns with the end of year stocktake and inventory accounts. This included an alleged failure by Mr Chandra to have reconciled the bulk wine inventory and to have informed Mr Lambert of related matters in a timely manner that he had done so. Both Mr Lambert and Pamela Lambert informed Mr Chandra that it was his responsibility to have conducted inventory cycle counts and prepared an inventory control program and that a failure to have prepared such reports on an accurate and timely basis throughout the year and at end of year compromised the capacity of the business and its owners to make necessary business decisions, manage inventory and develop business strategies to improve performance and output.

**[85]** Mr Chandra in response acknowledged some error but not to the full extent indicated by Lambert Wines.

**[86]** Mr Lambert directed Mr Chandra to complete an inventory control plan by 8 August 2024 (in six days).

**[87]** On the following Monday (5 August) Mr Lambert followed up by sending Mr Chandra a second official written warning letter dated 2 August. It read:<sup>27</sup>

“Dear Navin,

2nd Warning letter

I am writing to you about your performance during your employment with Lambert Estate Wines Pty Ltd. (the employer).

On Friday, 2 August 2024 you met with Kirk Lambert and Pam Lambert. At this meeting you were advised that your continued performance has been unsatisfactory, and that immediate improvement is required. Specifically, you were made aware of detailed errors that were made with inventory transactions which will affect Lambert Estates financially. You were given several previous instructions in how to correct and improve your performance in these areas and you continued to operate against those instructions. Generally, you were also advised that your lack of attention to detail goes across to your other duties, including inventory and financial reporting. Lack of review, lack of follow-up to questions, and lack of response to work requests [REDACTED] on behalf of Lambert Estate Wines Pty Ltd.

In the meeting you were asked if you had anything you wished to say or to respond to the situation and you suggested there could be several reasons for the continued mistakes in your work: poor focus on data entry, not thoroughly checking and following up on your work, wilfully changing data in transactions by zeroing out discrepancies that should have been reviewed and corrected, and not following procedures as instructed. As Finance and Administration Manager it is expected you that you consistently and regularly review and audit your work and question irregularities to the relevant department.

After considering the situation it is expected that your performance improves and, specifically, that you thoroughly review your work, pay attention to all details, and check your work product for errors before it is submitted or sent for processing, provide



timely responses to questions and requests from all staff, and ask questions when unsure. As a senior level employee and manager of the Finance and Administration it is expected you take responsibility for your departments and any mistakes that are attributable to your work.

This is your second official warning letter. Your employment may be terminated if your performance does not improve by 30th August 2024. I propose that we meet again on 30th August 2024 to review your progress. Please let me know if this time is convenient to you. If you wish to respond to this formal warning letter, please do so by contacting me by replying in writing via email to kirk@lambertestate.com.

Yours sincerely,

Kirk Lambert  
President

PLEASE KEEP A COPY OF THIS LETTER FOR YOUR RECORDS”.

*Events following second warning*

**[88]** By 13 August 2024, eleven days after the 2 August meeting and five days after the given deadline, no inventory control plan had been given to Mr Lambert. Mr Chandra had provided no explanation for not doing so.

**[89]** Later that day, Mr Lambert emailed Mr Chandra in the following terms:<sup>28</sup>

“Hi Navin,

During our last meeting on the 2 August 2024 you agreed to present your inventory control proposal by the end of the following week, 8 August 2024. I have not received this as of now. Can you please submit your plan as you agreed.

Kirk”

**[90]** Mr Chandra responded by email the following day (14 August) and on 15 August:<sup>29</sup>

“Hi Kirk

Also to fully understand the Production Processes, please send to me a copy of the Production Flow Chart which outlines all the production steps from Raw Materials to Finished Inventory. Thanks”

“Hi Kirk

Thanks for your reminder, as per our meeting on Friday 2 August 2024 and subsequent 2nd Warning Letter, one of your main concerns was the 2023/2024 Financial Year End [REDACTED], and you held me responsible for All Inventory as Finance Manager. In order for me to propose tighter Inventory Control, Please advise in which Shared Folder I will find the current Inventory Controls

Policies/Procedures, so that I can review and then propose corresponding Inventory Control Action Plan by this Friday.

Thanks”.

[91] On 16 August Mr Chandra sent a further email to Mr Lambert:<sup>30</sup>

“Hi Kirk

Inventory Control Plan:

1. Increase Stocktake frequency to Quarterly (next Stocktake in end of September) for Bulk Wine and Bottled Wine.
2. Quarterly Reconciliation and investigate variances with relevant Managers
3. Present Report to Management
4. Follow up with appropriate action to minimise variances

Discuss with relevant Managers on Administrative action plan on keeping Records for Inventory

1. Transfers
2. Tasting Stock
3. Wastage
4. Promotions
5. Donations
6. Internal Consumption

Warehouse Inventory for Bottled Wine should always be in full Cartons especially our current Wine as per Cellar Door Order Form.

Will liaise with CD Staff to transfer any loose Bottled Wine from Warehouse to Cellar Door. This is to ensure that All bottled stock are in full cartons.

If individual bottles are required, they should be taken from Cellar Door so that records can be maintained and relevant costs allocated.

There should be no reason to break open a carton in the Warehouse.

Happy to discuss any recommendations or suggestions.

Please review and advise if Inventory control plans can be implemented.

Thanks”.

[92] On 20 August 2024, Mr Lambert replied to Mr Chandra’s request for a production flow chart.<sup>31</sup>

“Hi Navin,

Here is a production flow chart. I'm not sure this is necessary for the finished goods inventory. Those products are static once built and do not change. The bulk wine is a different discussion.

How Red Wine is Made Step by Step | Wine Folly

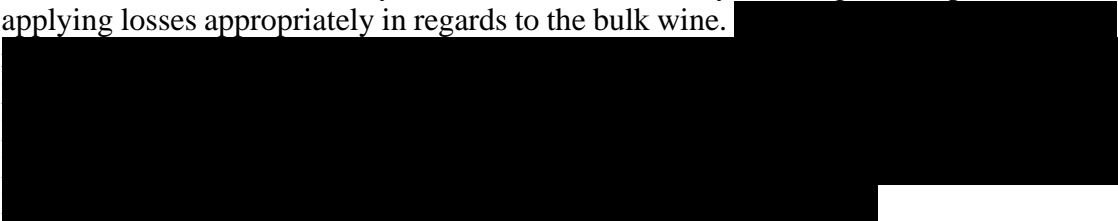
Kirk”

[93] On 21 August 2024, Mr Lambert sent two further emails. The first was a lengthy response to Mr Chandra's email of 14 August, and directly stated that Mr Chandra was failing in his reporting responsibilities concerning inventory. It read:<sup>32</sup>

“Hi Navin

I'm not sure I understand your question. The inventory processes we are talking about is a financial control task and you are the Finance and Administration Manager. It has to do with making sure that the inventory assets are accounted for. Each month the bulk wine inventory is sent to you for review to monitor the inventory and how it translates back into the finances. If there are large changes, losses, new inventory in bulk wine or finished goods that all needs to be looked at and reflected in the inventory for the financial reporting. This is why it is CRITICAL that it is completed in a timely manner. We have discussed and tasked this responsibility to the Accountant to maintain and create processes that enable accurate and timely reports on the control of the inventory.

The bulk wine inventory incurs losses every month due to natural processes like evaporation, there is already an estimate for this in the reports. If you have been looking at the monthly bulk inventory that is sent to you, you would be able to compare and identify discrepancies that may become an issue at the end of the year to eliminate any surprises and be able to make corrections while the information is fresh. Most of the issues related to the inventory are due to lack of timely building out of products and applying losses appropriately in regards to the bulk wine.



The finished goods inventory is again a financial control task. Your job is to identify where inventory is being lost and how much. Is it being lost by bottles in cellar door tastings, is it large quantities like pallets of wine, was stock short shipped out or in? Again the losses are exacerbated by not building out products on time and correctly, not transferring inventory correctly, not counting the inventory correctly, etc ... You are responsible for ensuring that product sales are recorded correctly through all our sales channels and losses for tastings, samples, etc ... are recorded so they can be accounted for. We do full inventory of all our stock at least once per year to give a baseline of the inventory. If the financial record keeping is done correctly, there should be zero or extremely low variance. Having to make large adjustments at the end of the financial year means the finance and accounting department are not doing an acceptable job. It is nearly impossible to remember what might have happened or to investigate 12 months after the fact. If you need to put in control procedures like cycle counting as we have discussed then you are able to do that. If I go to print out an inventory report at any time and it is not accurate the accounting department again is not doing its job. You should have an understanding of what products might have significant change and which ones don't and what products have a history of high variance to help you.

You have been here for over a year and a half and this has been your responsibility since you began your role. We hired you because you have a Masters of Professional Accounting and experience as a financial controller and should be providing us advice

on where the losses and issues are occurring and better ways to control them and minimize them from a financial perspective. You are the one that should be creating the SOP's for the inventory control procedures as they all come back to you.

Kirk”.

[94] The second communication by Mr Lambert on 21 August was a response to Mr Chandra's email of 16 August:<sup>33</sup>

“Hi Navin,

I have added my comments below in *red*. I would like to see an SOP created with your plan.

Hi Kirk

Inventory Control Plan:

1. Increase Stocktake frequency to Quarterly (next Stocktake in end of September) for Bulk Wine and Bottled Wine.

*Bulk Wine is already sent to you monthly, you should have been checking this already. Bottled wine inventory 4 times a year will require shutting down operations for a day to count inventory, this will be extremely costly and difficult for the business. Is there a better way to do this that is less intensive and as effective?*

2. Quarterly Reconciliation and investigate variances with relevant Managers - *Good idea, I would be interested to see an initial report for the last month to see how the numbers are changing since the last inventory.*

3. Present Report to Management - *Yes*

4. Follow up with appropriate action to minimise variances *Yes*

Discuss with relevant Managers on Administrative action plan on keeping Records for Inventory - *Yes. Are you familiar with the current processes? Have you noticed anything that does not work well currently?*

1. Transfers

2. Tasting Stock

3. Wastage

4. Promotions

5. Donations

6. Internal Consumption

Warehouse Inventory for Bottled Wine should always be in full Cartons especially our current Wine as per Cellar Door Order Form. - *Yes, this is the current plan. However how will you deal with any mixed case shipments for example as samples for an export order or large wholesale order? You will need to make sure that bottles are removed from the correct location.*

Will liaise with CD Staff to transfer any loose Bottled Wine from Warehouse to Cellar Door. This is to ensure that All bottled stock are in full cartons. *Yes. Would this also notify you that something may not have been recorded?*

If individual bottles are required, they should be taken from Cellar Door so that records can be maintained and relevant costs allocated. *Yes, this is what is supposed to happen.*

There should be no reason to break open a carton in the Warehouse. *Yes*

Happy to discuss any recommendations or suggestions.  
Please review and advise if Inventory control plans can be implemented.

Thanks”

[95] On 28 August 2024 Mr Chandra provided Mr Lambert with an inventory cycle count for one cellar door product.<sup>34</sup>

[96] Mr Lambert considered the failure by Mr Chandra to have produced an inventory control plan by the stated deadline, and that the plan he produced eight days late was inadequate, to not know after eighteen months if an inventory policy or procedure even existed, and to have produced an inventory reconciliation for one product only almost two months after 30 June 2024, demonstrated his lack of capacity to fulfil the requirements of the job. For Mr Lambert, this was the straw that broke the camel’s back. It confirmed in his mind a loss of trust and confidence in Mr Chandra and his capacity to meet the standard of financial management required by Lambert Wines.

[97] Mr Lambert discussed the matter with his parents (being the primary owners), Pamela Lambert and Jim Lambert. Mr Lambert recommended dismissal. This was agreed.

#### *Dismissal 30 August*

[98] On 29 August 2024, Mr Lambert called Mr Chandra to a meeting the following day.

[99] On 30 August 2024, Mr Chandra met with Mr Lambert.

[100] The meeting lasted for approximately thirty minutes. Mr Lambert referred to Mr Chandra’s failure to have completed the inventory control plan on time as directed, and that what had been belatedly provided did not meet his or the company’s requirements. He also referred to other concerns relating to end of year reporting and lack of proactivity.

[101] Fearing that he would be dismissed, Mr Chandra made it known that he disagreed with many of the criticisms but did not debate the issue at length.

[102] Towards the end of the meeting, Mr Lambert advised Mr Chandra that he was dismissed with the notice required by his contract (two weeks). Mr Chandra remained employed during the notice period and was required to be available if required, but was not otherwise expected to attend the workplace. His last day of employment was 13 September 2024.

[103] Lambert Wines provided Mr Chandra an employment separation certificate dated 11 September 2024.<sup>35</sup>

#### *Events post dismissal*

[104] At the time of dismissal and in its immediate wake, Mr Chandra considered that he had been unfairly dismissed.

[105] He made this application online four days after his final working day, on 17 September 2024.

[106] For its part, Lambert Wines did not fill Mr Chandra's position but has employed a financial officer with some experience in the accounts of winery operations.

[107] Since his dismissal Mr Chandra has applied for numerous financial positions in the hospitality and tourism sectors. After not being successful he then applied for jobs involving non-financial work. As at the date of giving evidence (three months after dismissal), Mr Chandra had not secured alternative employment. Mr Chandra puts this down to the fact that he informs prospective employers that he was dismissed by Lambert Wines on performance grounds which he is challenging through this Unfair Dismissal claim, and does not have a reference from them.

[108] Being a parent and family man, the financial and personal burdens on Mr Chandra resulting from dismissal are significant and continuing.

[109] Following dismissal, Lambert Wines identified several other alleged areas of unsatisfactory performance which it was not aware of but which it says existed at the time of dismissal.<sup>36</sup> In addition, Lambert Wines has, during these proceedings, become aware that Mr Chandra took into his possession and without its authority documents and financial records belonging to the employer.

## **Submissions**

### *Mr Chandra*

[110] Mr Chandra submits the dismissal was unfair as there was no valid reason because:

- he was never given a job description and was required to perform tasks or take responsibility for matters that went beyond the duties reasonably required of him;
- his conduct in confronting Mr Lambert on 8 May 2024 over the advertisement was understandable and not misconduct or a valid reason for dismissal;
- the errors or mistakes relied on by Lambert Wines were not significant, nor his sole responsibility, and dismissal for those errors was not a valid reason given that allowance for occasional error or mistake must be made in any job;
- the payroll errors were only occasional, minor, recoverable and in part arose from managers not properly certifying employee time records or themselves making data entry errors;
- the inventory control plan criticisms were unreasonable as he had not been asked to perform inventory cycle counts during the year, had not undertaken an end of financial year inventory report prior to June 2024, and inventory stocktake was not his sole responsibility;

- the criticisms concerning his lack of responsiveness were unreasonable given the many tasks he was required to perform. To the extent he was unresponsive or slow to respond to Pamela Lambert, he reported to Kirk Lambert, not Pamela Lambert; and
- dismissal was premature because at the June 2024 annual performance review he was given the full financial year 2024/25 to meet the goals set by Mr Lambert. He was dismissed two months into that twelve month period.

[111] In the alternative, Mr Chandra submits that the dismissal was unfair on the ground that he was denied procedural fairness. He submits that dismissal was predetermined from the time Lambert Wines advertised for a Bookkeeper/Accountant in early May 2024. The subsequent first and second warnings were an artificial process designed as cover for this pre-determined dismissal. Nether his subsequent performance nor his explanations at the time of the first and second warning meetings were fairly or objectively considered because the employer had already decided that it wanted him out.

[112] Mr Chandra refutes that it was misconduct to retain some documents produced by him or sent to him. He did so for a legitimate reason, being to defend his interests after Lambert Wines had gone behind his back and sought to replace him. He needed the documents to prepare his defence should he be dismissed. When he sought that the documents be produced through the formal channels of the Commission, he was truthful in indicating that he already had some of them.

[113] Mr Chandra acknowledges that the employment relationship has been damaged such that reinstatement is inappropriate but submits, in lieu, that he should be compensated. Being a specialist in the finance field carrying the stigma of having been dismissed, and having the responsibility of supporting a family, compensation should be at the upper end of the scale as work in his area of professional expertise is not easy to obtain.

#### *Lambert Wines*

[114] Lambert Wines submit that a valid reason for dismissal existed in that by late August 2024 it had reasonably lost trust and confidence in Mr Chandra's capacity to do the job for which he was employed. It submits that:

- Mr Chandra was aware of the duties he was required to perform, held himself out as being able to perform those duties and was not thrown into the deep end but rather progressively required to perform those tasks with assistance and guidance from Mr Lambert and Pamela Lambert;
- Mr Chandra was not disciplined or dismissed for the altercation in the warehouse on 8 May 2024. This was despite Mr Lambert considering that Mr Chandra had put himself and others in an unsafe environment and wrongly refused to continue the discussion in a safer location;
- the errors and mistakes which emerged were acts of both commission and omission, collectively significant, sufficiently regular to impact trust and confidence and were central responsibilities of the work required of Mr Chandra;

- the payroll errors concerned a basic and core responsibility which impacted the business both in its relationship with staff and financially. Mr Chandra was not criticised for managers occasionally failing to certify time records, but rather for imputing details into the payroll run or sending a data file for payroll processing without prior certification of those hours from managers;
- Mr Chandra was frequently told that he had responsibility to prepare accounts for the inventory reconciliation, conduct inventory cycle counts, prepare an inventory control plan for the 2023/24 financial year, and to submit those accounts and results to Pamela Lambert. Mr Chandra failed to do so and did not reasonably explain this failure;
- Mr Chandra was frequently unresponsive or slow to respond to tasks and reminders that came from both Mr Lambert and Pamela Lambert. This included, even in the wake of the second warning, a failure to provide an inventory control plan as directed or to explain without prompting why it was not done in the time frame required; and
- Mr Chandra was not given twelve months from July 2024 before being required to competently perform the duties of his role. The June 2024 performance review occurred in the context of a first warning which expressly indicated that he had previously been given until 30 June 2024 to improve before performance would be re-assessed. Both the first and second warnings indicated that he was at risk of being terminated for poor performance. Nothing was said or done by the employer at the June 2024 performance review to alter or modify that position.

[115] Lambert Wines further submit that it was misconduct for Mr Chandra, during his last three months of employment, to secretly take into his possession financial records and documents belonging to the employer, and that this was also a valid reason for dismissal.

[116] Lambert Wines submit that Mr Chandra was afforded procedural fairness through a transparent warning process that involved discussion of performance concerns and notice that his employment was at risk. The employer did not proceed with its intention to employ a Bookkeeper/Accountant to avoid heightening his sense of insecurity. Dismissal was not decided until after 21 August 2024 when Mr Lambert finally lost trust and confidence following Mr Chandra's failure to produce an acceptable inventory control plan on time and as directed.

[117] In the alternative, Lambert Wines submit that if the dismissal was unfair, no compensation should be paid (or should be nominal) given Mr Chandra was on a second and final warning and materially contributed to the dismissal.

### **Consideration**

[118] No jurisdictional issues arise. Mr Chandra was a person protected from unfair dismissal (s 382). He served the statutorily required minimum employment period (s 382(2)(a)). His annual rate of earnings did not exceed the high income threshold (s 382(2)(b)(iii)). Lambert Wines was a "national system employer" within the meaning of s 14. The application was made within time (s 394(2)).

[119] Nor is it in dispute that Mr Chandra was dismissed (s 386).

[120] This is not a matter where the Small Business Fair Dismissal Code applies.



[121] The issue for determination is whether the dismissal was “harsh, unjust or unreasonable” and, if so (but only if so), whether it is appropriate to order a remedy by way of reinstatement or compensation.

[122] Section 387 of the FW Act provides:

**“387 Criteria for considering harshness etc.**

In considering whether it is satisfied that a dismissal was harsh, unjust or unreasonable, the FWC must take into account:

- (1) whether there was a valid reason for the dismissal related to the person’s capacity or conduct (including its effect on the safety and welfare of other employees); and
- (2) whether the person was notified of that reason; and
- (3) whether the person was given an opportunity to respond to any reason related to the capacity or conduct of the person; and
- (4) any unreasonable refusal by the employer to allow the person to have a support person present to assist at any discussions relating to dismissal; and
- (5) if the dismissal related to unsatisfactory performance by the person - whether the person had been warned about that unsatisfactory performance before the dismissal; and
- (6) the degree to which the size of the employer’s enterprise would be likely to impact on the procedures followed in effecting the dismissal; and
- (7) the degree to which the absence of dedicated human resource management specialists or expertise in the enterprise would be likely to impact on the procedures followed in effecting the dismissal; and
- (8) any other matters that the FWC considers relevant.”

*Valid Reason (s 387(a))*

[123] An employer must have a valid reason for dismissal. It is the Commission’s task to determine if a valid reason exists. The reason(s) should be “sound, defensible and well founded” and not “capricious, fanciful, spiteful or prejudiced.”<sup>37</sup>

[124] In a conduct or performance based dismissal such as this, except where the Small Business Fair Dismissal Code applies, the test is not whether the employer believed on reasonable grounds, after sufficient inquiry, that the employee was guilty of the conduct or poor performance. The Commission must itself make findings as to whether this occurred based on the evidence before it.<sup>38</sup>

[125] An evidentiary onus rests on an employer to establish that, on the balance of probabilities, the conduct or performance deficiencies occurred.<sup>39</sup>

[126] Other than in respect of the documents allegedly taken and retained by Mr Chandra (considered below), this matter concerns Mr Chandra's capacity and performance. The question of whether there was a valid reason must be assessed by reference to facts which existed at the time of the dismissal, even if they did not come to light until after the dismissal.<sup>40</sup>

[127] A reason will be related to capacity where the reason is associated or connected with the ability of the employee to do their job.<sup>41</sup>

[128] It is well established that the standard of conduct or performance reasonably required of an employee, including an experienced professional such as Mr Chandra, is not that they were always working at their personal best but whether their work was satisfactory. Put another way, the standard is one of competence not perfection.<sup>42</sup>

[129] I now deal with whether the evidence supports a finding of valid reason. It is convenient to do so by reference to the subject matters raised by Lambert Wines and Mr Chandra.

#### Duties and training

[130] Lambert Wines claim that Mr Chandra was aware of the duties he was required to perform, held himself out as being able to perform those duties and was not thrown into the deep end but was progressively required to perform those tasks with training, assistance and guidance from Mr Lambert and Pamela Lambert.

[131] Mr Chandra responds that he was never given a job description and was required to perform tasks or take responsibility for matters that went beyond duties reasonably required of him.

[132] The evidence supports a finding that Mr Chandra clearly knew the duties he was required to perform. These were the "key responsibilities" set out in the job advertisement that he responded to in February 2023. I make this finding having regard to Mr Chandra's evidence that he was responding to the advertisement and had read it (as his application of 17 February 2023 indicates) and Mr Lambert's evidence that he informed Mr Chandra that the duties of the job were those set out as key responsibilities in the advertisement. I find that these were "the duties of your position, as defined by your manager" within the terms of clause 4 of Mr Chandra's contract of employment.<sup>43</sup>

[133] I do not however find that Mr Chandra was separately provided the Job Description<sup>44</sup> that Mr Lambert thought he had provided. The evidence to that effect is uncertain. Mr Chandra's evidence was that it was not provided, and Mr Lambert's evidence was that whilst it was in Mr Chandra's personnel file he was vague in recalling whether it was actually given to him. However, that job description almost word for word aligned with the job advertisement which I have found Mr Chandra responded to, had read, and which was referenced in discussions with Mr Lambert. Given this, it matters not whether the written job description on file was provided; Mr Chandra knew from the outset what his employment responsibilities were.

[134] I also find that Mr Chandra in his application and job interview held himself out as capable of meeting the requirements of the position. Whilst Mr Chandra's CV indicated that he had not previously worked in the wine industry and that he was not a CA or CPA, Mr Lambert

acted on (and was entitled to act on) the express representations therein that he had tertiary qualifications in accounting and was “an achievement driven financial controller” and “a finance professional with over fifteen years of experience”, had “demonstrated excellence in achieving operating excellence and improving bottom line profit with forte in developing and implementing financial controls and processes”, that his “skillset and attributes make me suitable for the role”, and that he would “bring to your organisation years of specialist experience, a natural aptitude for analysing numbers and a commitment to developing a positive team environment”.<sup>45</sup>

[135] There is no evidence to support the contention that the tasks progressively allocated to Mr Chandra were beyond the scope of his contracted duties. Payroll, stocktakes, inventory control, accounting, reconciliations, and reports to owners on financial matters were all core responsibilities of the job.

[136] Nor is there evidence to support the contention that the tasks allocated to Mr Chandra were unreasonable. Rather, the evidence is to the contrary and supports a finding that the responsibilities were only progressively allocated and that a full year was allowed to pass before performance concerns were raised and formally documented.

[137] I also reject Mr Chandra’s submission that he was not provided sufficient guidance and training. Whilst Mr Chandra did not have a junior finance officer beneath him, he knew at the time of commencing that the junior accountant was leaving. Relevantly, throughout his employment Pamela Lambert remained in a hands-on role overseeing the more complex elements of financial reporting. She and Mr Lambert provided regular and meaningful guidance and direction to Mr Chandra. In his evidence, Mr Chandra acknowledged this to be the case.<sup>46</sup>

[138] That the duties required to be performed were known and reasonably required, and that guidance and direction was given, weighs in favour of a finding that a valid reason existed to the extent those duties came to be performed unsatisfactorily.

#### Errors, mistakes and responsiveness

[139] Lambert Wines allege that Mr Chandra was frequently unresponsive or slow to respond to tasks and reminders that came from both Mr Lambert and Pamela Lambert. This included, in the wake of the second warning, a failure to provide an inventory control plan as directed and to explain why it was not done in the time frame required. The employer also contends that Mr Chandra made errors and mistakes which were collectively significant and sufficiently regular to impact trust and confidence because they concerned the central responsibilities required of him.

[140] Mr Chandra responds that the errors or mistakes relied on by Lambert Wines were not significant, nor solely his fault, and that dismissal for those errors was not a valid reason given that allowance for occasional error or mistake must be made in any job. He also contends that the criticisms of his responsiveness were unreasonable given the many tasks he was required to perform. To the extent he was unresponsive or slow to respond to Pamela Lambert, he reported to Mr Lambert, not Pamela Lambert.

[141] I prefer the evidence of Mr Lambert that frequent informal but direct discussion was had with Mr Chandra during his first fifteen months of employment about errors and mistakes with

a view to improving his performance and capacity to take on the fuller responsibilities of the position.

[142] The evidence of Mr Lambert, which I largely accept on this issue, supports a finding that Mr Chandra was not uncommonly unresponsive or slow to respond to tasks and reminders that came from both he and Pamela Lambert.

[143] Three examples are particularly stark from the evidence.

[144] On 11 April 2024, Mr Chandra was required to prepare a report on bottling costs. Six weeks later this had not been completed or responded to. It prompted a stern written reminder by Pamela Lambert on 20 May 2024 and a written rebuke of disappointment by Mr Lambert the following day.

[145] Mr Chandra had been asked by Mr Lambert to prepare a self-evaluation prior to the 28 June 2024 annual performance review meeting. He failed to do so.

[146] On 2 August 2024, in the wake of a second formal warning about performance, Mr Chandra was directed by Mr Lambert to produce an inventory control plan by 8 August. This was not done by that date, nor did Mr Chandra provide an explanation or interim feedback. The task, which was critical to end of year financials, simply remained unattended until Mr Lambert expressed his frustration in writing on 13 August, only to receive questions about whether an inventory policy or procedure existed and then a hastily developed sketch of a plan three days later.

[147] The evidence also supports a finding that other mistakes and errors were made by Mr Chandra, although I find that the seriousness of some relied upon by Lambert Wines were overstated. For example, the failure by Mr Chandra to enter an invoice for the Sea Link services, whilst it may have made it difficult for Pamela Lambert to follow the remittance paper trail, appears to have been at worst an administrative error (entry) rather than a substantive failure to raise an invoice to the client.

[148] I also do not accept the employer submission that some errors were fraudulent or false accounting entries. Whilst there is some limited evidence that Mr Chandra made some incorrect entries or occasionally ‘zeroed out’ discrepancies, there is no evidence to suggest an intent to deceive, mislead or cause damage to the business.

[149] Mr Chandra does not dispute that on one occasion early in his employment he failed to bank cash in as timely a manner as required, due to a concern about driving his private car to the bank. Whilst Mr Chandra failed to proactively seek to resolve his concern at the time, resulting in some risk to the business arising from cash being held on site longer than necessary, there is no evidence that cash handling errors were repeated in the months prior to dismissal.

[150] Nor does Mr Chandra dispute that he made an error with respect to the deduction of child support payments concerning an employee, a matter of consequence to that employee in meeting their legal obligations.

[151] Mr Chandra also accepted in his evidence that he made some errors in data entry and transfer of stock which he attributed to “human error” and acknowledged some “lack of

attention to detail”.<sup>47</sup> He also agreed that his duty to complete invoicing was not always timely or had been forgotten and at least once this required prompting by senior management.<sup>48</sup>

[152] That said, other errors were more serious, including (but not limited to) delays in monthly financial reporting and accounting. These were formally noted by Pamela Lambert in April 2024 and discussed at the warning meetings on 17 May and 2 August.

[153] Whilst some of the errors and mistakes relied upon by Lambert Wines were less serious than others, or very occasional and not repeated, and recognising that some in the early months were in part due to inexperience, others came to be pronounced and were due to a lack of proactivity, lack of attention to detail and a lack of focus on the tasks required. I find that a pattern of underperformance emerged.

[154] In making this finding, I distinguish between errors Mr Chandra made in not, for example, executing his responsibilities concerning the 2024 accounts (which I have found were performance deficiencies) and, on the other hand,

[REDACTED]

The failure by Lambert Wines to call Pamela Lambert to be examined on the views she expressed in her July 2024 communication on these issues would make any such finding unsafe and unfair to Mr Chandra.

[155] That said, I do not find that Lambert Wines dismissed Mr Chandra for

[REDACTED]

.49

“ [REDACTED] ”

[156] Further, Mr Chandra was unable to provide, either to Mr Lambert or in evidence to the Commission, any explanation as to why he did not act on Mr Lambert’s direction of 2 August 2024 to submit an inventory control plan by 8 August, and why he did not commence attending to this task until after again being pointedly reminded by Mr Lambert on 13 August.<sup>50</sup> Given that Mr Chandra was, at that time already on a second warning, this unexplained failure was serious and material.

[157] Given the important role Mr Chandra held in the management of the finances of the business, and the reasonable expectation by Mr Lambert and the owners that he competently and diligently perform the financial tasks required of him, the pattern of errors that emerged and the lack of proactivity and responsiveness support a finding of a valid reason for dismissal.

#### Payroll errors

[158] Lambert Wines allege that the payroll errors concerned a basic and core responsibility, which impacted the business both in its relationship with staff and financially. It submits that Mr Chandra was not criticised for the occasional failings by managers to certify time records, but for inputting details into the payroll run or sending a data file for payroll processing without being satisfied that prior certification had occurred.

[159] In response, Mr Chandra contends that the payroll errors he made were only occasional, minor, recoverable and in part arose from managers not properly certifying employee time records or themselves making data entry errors.

[160] The evidence supports a finding that payroll errors by Mr Chandra occurred in April and May 2024 with respect to a handful of employees, and that these were sufficient to impact the employer's trust and confidence in Mr Chandra's administration of payroll such that it required Pamela Lambert to personally audit all the pays for a fortnightly pay period to assess for overpayments, underpayments or other errors.

[161] Mr Chandra does not dispute that he made occasional errors in submitting into pay runs records from time books or data entries that had not been certified by managers as actually worked, or misreading records (such as an "am" for a "pm").<sup>51</sup> I agree that it was an operational manager's responsibility to certify an employee's hours worked, and not Mr Chandra's. However, upon receiving the time books or data entries by managers, it was Mr Chandra's responsibility to check that managerial certification existed and to not input an employee's hours into the pay run data file until he had secured that authorisation and was satisfied that the data file for processing was correct.

[162] I take into account that the overpayments resulting from the April 2024 payroll errors were not individually or collectively great, and some were recoverable. That however does not significantly mitigate the errors. An underpayment, no matter how minor, is a breach of the employer's legal obligations, and an overpayment no matter how small or great, creates a practical and reputational challenge for the employer to manage with the relevant staff member if the business seeks re-payment.

[163] The payroll errors and mistakes that occurred in April and May 2024, though not as frequent as suggested by the employer or of themselves warranting dismissal, in combination with other performance failures support a finding of a valid reason.

#### Inventory and end of financial year accounting

[164] Lambert Wines claim that Mr Chandra was frequently reminded that he had responsibility to prepare accounts for the 2024 financial year, to conduct inventory cycle counts, to prepare an inventory control plan for the 2023/24 financial year, and to submit those accounts and results to Mr Lambert and Pamela Lambert. Mr Chandra failed to do so and did not reasonably explain this failure.

[165] Mr Chandra contends that the inventory control plan criticisms were unreasonable as he had not been expressly asked to perform inventory cycle counts during the year, did not have prior experience at Lambert Wines in preparing end of financial year reports, and the inventory stocktake undertaken had not been his sole responsibility.

[166] The evidence supports a finding that Mr Chandra failed materially in his duty with respect to end of year reporting for the 2023/24 financial year including with respect to inventory control reports, and that these failures were serious and central to his role and the trust the business had in his capacity to meet his responsibilities.

[167] I am well satisfied on the evidence that Mr Chandra was required to conduct regular cycle counts of inventory as an aide to preparing end of financial year inventory accounts, and did not do so.

[168] I am also well satisfied on the evidence that Mr Chandra was required to prepare an end of financial year inventory control plan and report according to the plan and was pre-warned that he needed to be prepared for this prior to 30 June 2024. Mr Chandra did not prepare himself in advance, as required. A cycle count for one product only was prepared almost two months after 30 June 2024. On the management of end of financial year accounts in 2024, Mr Chandra was largely reactive not proactive.

[169] I am also well satisfied on the evidence that Mr Lambert, upon becoming aware in July 2024 that an inventory control plan had not been prepared nor related reports completed, directed Mr Chandra on 2 August 2024 to urgently complete the same within six days. I also find that Mr Chandra failed to do so and had to again be prompted by Mr Lambert eleven days after he had been formally directed.

[170] It ought to have been reasonably apparent to Mr Chandra that his end of financial year responsibilities were significant to Lambert Wines, that Mr Lambert and Pamela Lambert required results to be reported to enable the owners to be fully informed, and that his failure to do so or to be responsive, let alone in a timely manner, compromised or was likely to compromise the effective conduct of the business.

[171] Mr Chandra's failures with respect to the end of financial year results for 2023/24 were serious. Given that he had by this stage been employed for almost eighteen months, had observed what needed to be done at the conclusion of the previous financial year, and was advised in advance of the need to plan ahead, these failures were a valid reason for dismissal.

#### Conclusion on valid reason

[172] Considered overall, I find that whilst the incidence and seriousness of some of the employer's allegations of poor performance were overstated, there was a valid reason for dismissal based on the combined effect of Mr Chandra's failures and his lack of proactivity and responsiveness. Those failures and mistakes were both by commission and omission. The pattern of underperformance led to a reasonably based loss of trust and confidence because the failures concerned matters which were central to Mr Chandra's known and reasonably required duties as Finance and Administration Manager.

[173] I make this finding giving full effect to the principle that the standard required is one of satisfactory performance, not perfection. I make allowance in my assessment for the fact that Mr Chandra, as any employee, may make occasional mistakes which, in isolation, will not be a valid reason for dismissal. However, I have found the mistakes made were not infrequent, ranged from minor to significant, were material to the performance of Mr Chandra's job, and that he held an important financial role in the business on which the employer and its owners reasonably relied and expected initiative, competence, timeliness and accuracy.

[174] I agree with Mr Chandra that dismissal because of his conduct in the warehouse on 8 May 2024, absent objectively verifiable performance concerns, would have been harsh given that his angry reaction, whilst intemperate, was in the heat of the moment and largely understandable. I also agree that this altercation, and the Bookkeeper/Accountant advertisement that precipitated it, had a material effect on the employment relationship. Together with the 17 May warning, it led Mr Chandra to mistrust the employer and begin taking documents to assist in a potential future claim against the business. It also coloured in part Mr Lambert's increasingly negative view of Mr Chandra. However, whilst souring the relationship, the evidence does not support a finding that this altercation was a reason for dismissal. Lambert Wines dismissed Mr Chandra more than three months later for verifiable performance concerns.

[175] I reject Mr Chandra's assertion that the deficiencies in performance were not a valid reason because at the June 2024 annual performance review he was given the full year 2024/25 to meet the goals set by Mr Lambert.

[176] This submission misconceives the nature of an annual performance review and the context in which Mr Chandra's June 2024 review was conducted. Mr Chandra was not given twelve months from 1 July 2024 to improve and to competently perform the tasks required of him. The June 2024 review occurred in the context of a first warning which had expressly indicated that he had until 30 June 2024 to improve before performance would be re-assessed. Both the first and second warnings indicated that he was already at risk of being terminated for poor performance. Nothing in the evidence points to anything said or done by Mr Lambert at the June 2024 performance review which altered or modified that position.

[177] I have found that the performance issues relied upon by Lambert Wines, considered overall, constituted a valid reason for dismissal. Accordingly, I need not determine this matter by reference to whether the conduct of Mr Chandra, during his last three months of employment, in taking into his possession financial records and documents belonging to the employer, was also a valid reason for dismissal. However, that conduct is clearly established on the evidence. It was deliberate and planned. It was done secretly and without authorisation.

[178] Should this issue have required determination, I find that such conduct was misconduct and a valid reason for dismissal. A finding to this effect is consistent with the evidence. It was a breach of Mr Chandra's employment contract and his duty of fidelity. Even though Mr Chandra was acting to protect a future interest, those interests were capable of being protected in the orderly process of litigation via production orders, as was undertaken in this matter. Whilst the documents may have helped Mr Chandra to set out the grounds of an unfair dismissal application or obtain advice prior to filing, that explanation does not come close to mitigating the wrong associated with secretly taking documents, including financial records, from his employer. They were not his and he had no right to do so.

[179] I deal with the issues of procedural fairness below.

[180] That a valid reason exists weighs against a finding of unfair dismissal.

*Whether notified s 387(b)*



[181] Mr Chandra was notified of the reason for dismissal on 30 August 2024. In the dismissal letter he was informed that it was because “your performance continues to be unsatisfactory”. The employer provided relevant particulars.

[182] This is a neutral consideration.

*Opportunity to respond s 387(c)*

[183] I have found that:

- informal but direct guidance, assistance and counselling was provided by Mr Lambert and Pamela Lambert on a regular basis from the time Mr Chandra was first employed until the performance concerns became such that a formal review and disciplinary process commenced in May 2024;
- on 17 May 2024, Mr Chandra was formally warned by Lambert Wines that his performance was unsatisfactory via a performance meeting and by letter;
- on 28 June 2024, Mr Chandra was advised at an annual performance review that his performance remained unsatisfactory despite some accomplishments;
- on 2 August 2024, Mr Chandra was formally warned by Lambert Wines for a second time that his performance remained unsatisfactory via a performance meeting and by letter; and
- on the occasions of both formal performance warnings Mr Chandra was advised that his employment was at risk of termination should his performance not improve to the standard required.

[184] These findings suggest a credible warning process that involved discussion of concerns, an opportunity to respond and notice being given to Mr Chandra that his employment was at risk. On the face of it, they suggest that procedural fairness was afforded to Mr Chandra.

[185] However, Mr Chandra submits that the warning process during this final three months was a sham; that dismissal was predetermined from the time Lambert Wines advertised for a Bookkeeper/Accountant in early May 2024; that the subsequent first and second warnings were an artificial process designed as cover for a pre-determined dismissal, and that neither his subsequent performance nor his explanations at the time of the first and second warnings were fairly or objectively considered because the employer had already decided that it wanted him out.

[186] I have carefully considered the evidence to assess these propositions.

[187] There is evidence to support Mr Chandra’s submission. The most significant is that:

- the job advertisement for a Bookkeeper/Accountant made no mention of reporting to Mr Chandra. It referred solely to “working with the external accountants”;
- the duties set out in the advertisement were not dissimilar to those being performed by Mr Chandra. The advertisement stated that the successful candidate would be

“responsible for the running of the finance function”, “responsible for recording monthly reporting” and possess “leadership skills”; and

- prior to placing the advertisement, Mr Lambert did not inform Mr Chandra of his intention or how the position would interact with his role.

[188] Also relevant is that:

- the formal warning processes only commenced after the 8 May 2024 altercation. Prior errors or concerns about Mr Chandra’s performance, from as early as the second half of 2023, had not been the subject of formal counselling or warning;
- Mr Chandra was provided barely ten minutes notice of being called to the second warning meeting on 2 August; and
- a dismissal letter had been prepared prior to the 30 August 2024 meeting.

[189] Whilst these considerations point towards the finding of procedural unfairness sought by Mr Chandra and are significant, the overall weight of the evidence does not do so. In particular:

- the first and second warnings were not just written documents sent to Mr Chandra. The issues they concerned were the subject of discussion with him on 17 May and 2 August;
- the discussions Mr Lambert and Pamela Lambert had with Mr Chandra on 17 May and 2 August were in the wake of numerous prior informal discussions. The employer did not just go through the motions. Lambert Wines raised serious concerns and Mr Lambert was interested in Mr Chandra’s explanations though, above all, he sought improved performance. His subsequent communications, including emails to Mr Chandra and the continued provision of guidance (though it became more directive as time went on), indicates that both he and Pamela Lambert sought performance improvement. Mr Lambert’s email of 19 May which accompanied the first warning letter specifically ended with the observation “we hope that this will encourage better performance and results going forward”. I do not find that this was insincere or disingenuous;
- the June 2024 performance review between Mr Lambert and Mr Chandra was meaningful and direct, and concerned the future as well as the past. Mr Lambert expressly informed Mr Chandra that his performance continued to be unsatisfactory in key areas, and again sought improvement;
- even though the first warning letter sought improvement by 30 June 2024, the employer provided Mr Chandra almost another two months after that date before deciding to dismiss; and
- the performance issue that precipitated dismissal was Mr Chandra’s conduct concerning the end of the 2024 financial year reporting, and the failures alleged in that regard in the second warning letter and in Mr Lambert’s lengthy email of 21 August. These events had not yet occurred at the time of the 8 May 2024 altercation as the 2024 financial year had not then concluded.

[190] In considering whether procedural fairness was afforded, I do not accept the employer submission that it simply acted in Mr Chandra's interests by not proceeding with its intention to employ a Bookkeeper/Accountant to avoid heightening his sense of insecurity. Mr Lambert failed to inform Mr Chandra that he was taking steps to recruit a person to perform accounting work and this was, on any measure, disrespectful to Mr Chandra and understandably compromised his sense of employment security. This disrespect was not however an excuse for Mr Chandra to not meet the requirements of his job or address the performance concerns raised by Lambert Wines and discussed with him in the three months that followed.

[191] However, the evidence, particularly concerning the placement of the Bookkeeper/Accountant advertisement, does permit an inference to be drawn that in early May 2024 Lambert Wines intended to recruit a replacement for Mr Chandra. In this respect, the placement of the advertisement in early May 2024 was not just the point in time where trust materially eroded and the employment relationship started to fracture, but the time from which Mr Lambert had a predisposition towards dismissal in the sense that he seriously doubted whether Mr Chandra was or would be able to meet the standard of performance required. The advertisement, at the time it was placed, was not just for the purpose of adding an extra resource to the financial area as Mr Lambert claimed. I do not accept Mr Lambert's denial that the possibility of removing Mr Chandra was not a relevant consideration in placing the advertisement.<sup>52</sup>

[192] However, the evidence also leads me to find that Mr Lambert did not go ahead with the recruitment because he realised that he had acted unfairly towards Mr Chandra and had made an error in placing the advertisement. He set aside his plan to recruit a replacement and decided to apply a more considered process of performance assessment, warning and review.

[193] I find that Mr Lambert thereafter maintained a predisposition towards dismissal, though not a predetermination. The process that he put in place was in both substance and form structured and transparent. I have not found it to have been a sham. Both Mr Lambert and Pamela Lambert communicated with Mr Chandra over these final three months orally and in writing, and formally and informally, on how his performance could be improved to meet the standard the business required of him.

[194] Given that end of year accounting responsibilities informed the decision to dismiss, I have not found that dismissal was the inevitable consequence of the process commenced in May 2024. I do not find that Mr Lambert's predisposition towards dismissal, whilst relevant, coloured to such an extent the employer's assessment of Mr Chandra's performance over the final three months to such a degree that Mr Chandra was denied procedural fairness.

[195] There is some force in the submission by Mr Chandra that he was denied procedural fairness because the decision to dismiss was made prior to the 30 August meeting. Factually, Mr Chandra is correct. The evidence indicates that whilst on 30 August Mr Lambert did again provide Mr Chandra a final opportunity to respond before communicating the dismissal, I find that the decision to dismiss was, in practice, made between 21 and 29 August. I agree that nothing said or done by Mr Chandra on 30 August could have materially altered that decision. Further, according to the 2 August warning letter Mr Chandra was given a further deadline of 30 August to improve his performance or face termination, and the 30 August meeting, according to the warning and the meeting notification, was to "review your progress", whereas in fact the employer used the meeting to dismiss, not as a further or final review. This placed

Mr Chandra at a potential disadvantage because he had no real opportunity to use that meeting to discuss the employer's concerns with his belated inventory control plan.

[196] However, Mr Chandra had full opportunity on 17 May, 28 June and 2 August to state his case and respond to the performance concerns, including on inventory reporting. The failures which triggered the dismissal were the major topic of discussion on 2 August. Further, Mr Chandra could have but did not respond to the 2 August warning letter (despite it expressly inviting him to do so) nor (in the nine days that followed) the very direct criticisms made by Mr Lambert in his email of 21 August. Mr Chandra was almost entirely passive in preparing for the 30 August meeting and took no steps to prepare a defence of his performance or conduct following the 2 August second warning.<sup>53</sup>

[197] Having not found that the disciplinary process was a sham, and whilst aspects of the process applied by the employer disadvantaged or had the potential to disadvantage Mr Chandra, considered overall he was afforded procedural fairness. This weighs against a finding that the dismissal was unfair.

*Support person s 387(d)*

[198] Mr Chandra was not denied access to a support person. He did not seek or request one. Mr Lambert indicated in his evidence that a support person had been offered at the commencement of the two warning meetings with the option of adjourning those meetings for one to be obtained.<sup>54</sup> Mr Chandra had not been advised prior of this option and its late notice had the potential to disadvantage him. This practice reflects poorly on Lambert Wines management of this aspect of the disciplinary process, and I have taken this into account as weighing somewhat in Mr Chandra's favour when considering procedural fairness overall. However as access to a support person was not denied, the s 387(d) consideration is a neutral factor.

*Performance s 387(e)*

[199] I have dealt with performance issues when considering valid reason and concluded that they weigh against a finding of unfairness.

*Size of business and human resource capacity (s 387(f) and (g))*

[200] Lambert Wines is not a small business employer but has limited human resource capacity. Some of the procedural shortcomings by Lambert Wines (such as the failure to speak to Mr Chandra before placing the May 2024 advertisement, the failure to provide him a written job description, the failure to take notes of the disciplinary meetings, and the late notice of the right to a support person) are failures that may not have occurred had the business had greater human resource capacity. However, they do not materially explain or mitigate the conduct of the employer relating to Mr Chandra's dismissal.

[201] Sections 387(f) and (g) are neutral considerations.

*Other matters s 387(h)*

[202] There are no other matters for consideration.

*Conclusion on unfairness*

[203] Given the important responsibilities Mr Chandra had in managing the finances of the business, I have found that a valid reason for dismissal existed based on the combined effect of performance deficiencies over a reasonable period, even though some were overstated and individually would not constitute a valid reason. This pattern of underperformance objectively led to a reasonably based loss of trust and confidence.

[204] I have also found the conduct of Mr Chandra in taking documents, including financial records, from his employer during the last three months of employment, even though for the purpose of protecting future litigation interests, was misconduct and also a valid reason for dismissal.

[205] Despite some deficiencies in process which disadvantaged or had the potential to disadvantage Mr Chandra, I have not found that Mr Chandra was denied procedural fairness or that those deficiencies were sufficient to characterise the dismissal as unfair.

[206] Other considerations are neutral.

[207] Section 387 requires a global assessment of all relevant factors. Considered overall, even though some employers may have given Mr Chandra further opportunities to meet the standard of performance required, he was given plenty of opportunity to do so. I do not conclude that the dismissal was harsh, unjust or unreasonable. As the dismissal was not unfair, it is well established that the Commission does not stand in the shoes of an employer and decide what they could or should have otherwise done.<sup>55</sup>

**Conclusion**

[208] There being no unfair dismissal, no issue of remedy arises.

[209] Mr Chandra's application U2024/10963 must be dismissed. An order giving effect to this decision is issued in conjunction with its publication.<sup>56</sup>



DEPUTY PRESIDENT

*Appearances:*

N. Chandra, on his own behalf

K. Lambert, *of and on behalf of* Lambert Estate Wines Pty Ltd assisted by P. Lambert

*Hearing details:*

2024  
16 December;

2025  
23 January;

Adelaide.

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<sup>1</sup> (1959 101 CLR 298

<sup>2</sup> R3 KL3 Curriculum Vitae (CV)

<sup>3</sup> R3 KL1

<sup>4</sup> R3 KL3

<sup>5</sup> R3 KL2

<sup>6</sup> R3 KL4

<sup>7</sup> R3 paragraphs 24 to 26 and KL5 and KL6 emails

<sup>8</sup> R5

<sup>9</sup> R3 KL9

<sup>10</sup> R3 KL7

<sup>11</sup> R3 KL8

<sup>12</sup> R3 paragraph 88

<sup>13</sup> R10 page 1

<sup>14</sup> R3 KL10

<sup>15</sup> R4

<sup>16</sup> A6

<sup>17</sup> Audio recording 16.12.2024 3h 01m

<sup>18</sup> R8

<sup>19</sup> R6 page 2

<sup>20</sup> A8

<sup>21</sup> R11

<sup>22</sup> R9

<sup>23</sup> R6 page 1

<sup>24</sup> R7

<sup>25</sup> R7 attachment

<sup>26</sup> Ibid

<sup>27</sup> R3 KL12

<sup>28</sup> R3 KL13

<sup>29</sup> R3 KL13

<sup>30</sup> R3 KL14

<sup>31</sup> R3 KL13

<sup>32</sup> R1

<sup>33</sup> R3 KL15 For ease of reference, Mr Lambert's "red" inserts are italicised in this published decision

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<sup>34</sup> A7

<sup>35</sup> R2

<sup>36</sup> R11

<sup>37</sup> *Selvachandran v Peterson Plastics Pty Ltd* (1995) 62 IR 371, 373

<sup>38</sup> *King v Freshmore (Vic) Pty Ltd* AIRCFB Print S4213, [24]

<sup>39</sup> *Edwards v Guidice* (1999) 94 FCR 561, [6] - [7]

<sup>40</sup> *Newton v Toll Transport Pty Ltd* [\[2021\] FWCFB 3457](#), [99]

<sup>41</sup> *Crozier v Australian Industrial Relations Commission* [2001] FCA 1031, [14]

<sup>42</sup> *Crozier v Palazzo Corporation Pty Ltd t/as Noble Park Storage and Transport* (2000) 98 IR 137, [62] “not whether the employee was working to their personal best, but whether the work was performed satisfactorily...”

<sup>43</sup> R3 KL4

<sup>44</sup> R3 KL2

<sup>45</sup> R3 KL2 CV and job application

<sup>46</sup> Audio recording 16.12.2024 5h 18m

<sup>47</sup> Audio recording 16.12.2024 4h 28m to 4h 33m

<sup>48</sup> Audio recording 16.12.2024 5h 52m, 7h 29m

<sup>49</sup> R1

<sup>50</sup> Audio recording 16.12.2024 8h 01m

<sup>51</sup> Audio recording 16.12.2024 2h 42m

<sup>52</sup> Audio recording 23.01.25 3h 43m to 3h 47m

<sup>53</sup> Audio recording 16.12.2024 8h 50m to 8h 53m

<sup>54</sup> Audio recording 23.01.2025 7h 22m

<sup>55</sup> *Miller v University of New South Wales* [2003] FCAFC 180, 64; *Walton v Mermaid Dry Cleaners Pty Ltd* (1996) 142 ALR 681, 685

<sup>56</sup> [PR784387](#)