



Summary of Decision

15 July 2013

Barwon Health v Colson

C2013/3409

Colson v Barwon Health

C2013/3427

1. Dr Mark Colson was dismissed from his employment as an anaesthetist with Barwon Health on 30 May 2012, for serious misconduct. Dr Colson made an unfair dismissal application to the Fair Work Commission. Dr Colson's application for relief was heard by Commissioner Roe on 14, 15, 22 and 30 January 2013 and his reasons for decision were published on 11 February 2013. The Commissioner found that Dr Colson had engaged in misconduct and that there was a valid reason for the termination of his employment, but having regard to a number of other relevant factors the Commissioner concluded that the termination of Dr Colson's employment was unfair. The Commissioner ordered that Dr Colson be reappointed to his position but declined to make an order for lost remuneration.

2. This decision deals with two appeals from Commissioner Roe's decision of 11 February 2013. Barwon Health sought permission to appeal the Commissioner's decision; that the appeal be allowed; the decision set aside and Dr Colson's application for relief be dismissed. Dr Colson also sought permission to appeal, but on a narrower basis. Dr Colson's appeal relates to the Commissioner's decision not to make an order to restore lost pay. The Full Bench decided that it is in the public interest to grant Barwon Health's application for permission to appeal and to uphold the appeal.

3. The main issue on appeal was whether or not Dr Colson had been 'unfairly dismissed.' This issue required a finding to be made as to whether or not the dismissal was harsh, unjust or unreasonable. The central issue in dispute was whether there was a 'valid reason' for Dr Colson's dismissal, within the meaning of s.387(a) of the *Fair Work Act 2009*.

4. The Full Bench found that the Commissioner made significant errors of fact in his consideration of whether there was a valid reason for the termination of Dr Colson's employment. However, like the Commissioner, the Full Bench concluded that Dr Colson was unfairly dismissed. The Full Bench remitted the issue of remedy to Deputy President Gostencnik for determination. As the question of remedy is to be reheard there was no need for the Full Bench to consider the cross appeal made by Dr Colson.

[\[2013\] FWCFCB 4515](#)

- *This statement is not a substitute for the reasons of the Fair Work Commission nor is it to be used in any later consideration of the Commission's reasons.*

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