DECISION

Fair Work Act 2009
s.394 - Application for unfair dismissal remedy

Ms Catherine Purcell

v

Rock N Road Bitumen Pty Ltd T/A Rock N Road Bitumen
(U2016/10690)

COMMISSIONER HUNT BRISBANE, 30 JANUARY 2017

Application for relief from unfair dismissal.

[1] This decision, now edited, was given *ex tempore* at the conclusion of proceedings on 18 January 2017.

[2] Ms Catherine Purcell has applied under s.394 of the *Fair Work Act 2009* (the Act) for an unfair dismissal remedy with respect to her dismissal by Rock N Road Bitumen Pty Ltd trading as Rock N Road Bitumen (Rock N Road).

[3] Ms Purcell commenced employment with the respondent on 19 October 2015 in the role of HSE, HR and Training Officer. She was dismissed from employment on 19 August 2016, having served 10 months in the role.

[4] There is some contention from Ms Purcell that she was dismissed by Rock N Road through its words and actions effective 16 August 2016, however I will come to that later.

[5] There were no jurisdictional issues for determination. Ms Purcell is a person protected from unfair dismissal having met the minimum period of service. Ms Purcell's earnings at the time of dismissal were $60,000 per annum.

[6] A preliminary telephone conference was held with the parties earlier this week. Leave was granted for Ms Purcell to be represented by Mr Peter Clarke, Solicitor, and for the respondent to be represented by Mr Craig Joy, a paid agent. On transcript during today's hearing I formally granted leave for the representatives to appear.

[7] Ms Purcell gave evidence on her own behalf. Mr Rex Wallman, Business Manager of Rock N Road gave evidence on behalf of Rock N Road. The parties agreed that the matter should be heard as a determinative conference.

Evidence given at hearing

[8] It is Ms Purcell's evidence that she considered that she was satisfactorily performing the role. A performance review was conducted a few months into the employment, and she considered it a favourable review.

[9] In or around April 2016, Ms Purcell was granted a $5000 pay rise. She had been earning $55,000 on commencement and had wanted to commence on $60,000. Mr Wallman had said that he would consider increasing her salary after a period of 6 months, and this did occur. Ms Purcell took this pay rise to mean to her that she was doing a good job.

[10] On 16 August 2016, Mr Wallman requested Ms Purcell meet with him in his office. He did not afford her the ability to bring a support person to the meeting. Mr Wallman read from a prepared document. The document commences:

> 'Catherine, I have come to the belief that I have done what I can to get you up to speed, but that I am now at the point where it appears futile. We don't see the point in prolonging the situation and believe that it will probably mean parting company. There are no other available positions in the business that you could be moved into, so it is just a question of whether we part amicably or whether we have to go through the formal process.'

[11] The document concludes with:

> 'I can't afford to be patient any longer, and don't believe that more time is going to fix it. It's time to call a halt.'

[12] Ms Purcell and Mr Wallman discussed her performance for the next 10 minutes, and Mr Wallman stated that a meeting would occur the next day at 8am, where Ms Purcell would need to state her case as to why her employment should continue. Mr Wallman later text Ms Purcell to advise the meeting would be held off-site, at a park. Ms Purcell replied by text that she would attend and would bring with her a support person.

[13] The parties met on 17 August 2016 in the park, each with a support person present. Ms Purcell had prepared a written document in response to the document that had been issued to her the day earlier. She responded to each of the points that had been put to her.

[14] Mr Wallman stated that he wanted to consider Ms Purcell's written response, and informed her that she should go home on full pay.

[15] On 19 August 2016, Mr Wallman telephoned Ms Purcell to inform her that her employment was terminated, and there was no requirement for a meeting. Ms Purcell would be paid one week's wages in lieu of notice, and a termination letter would follow by email.

[16] Mr Wallman's evidence is that prior to Ms Purcell working in the role, the duties had been very satisfactorily performed by another employee. A four week handover between the employees gave Ms Purcell opportunity to adequately learn the role.

[17] Mr Wallman met with Ms Purcell during her 10 month period of employment on several occasions. Some of these meetings were recorded in Mr Wallman's diary. Mr Wallman addressed with Ms Purcell a number of concerns including her failure to keep on top

of audit compliance and registers not being completed. A diary note of 1 February 2016 states:

> 'Spoke to Catherine about not taking minutes at this morning's office meeting. Catherine seems very disinterested in work and argumentative when questioned.'

[18] A diary note of 8 March 2016 records Mr Wallman having communicated to Ms Purcell that she needs to show more compassion to fellow employees. She needs not be so quick to say no, and she can snap when under pressure. Mr Wallman indicated that Ms Purcell needs to improve on time management and be flexible.

[19] The notes reflect that there had not been any site visits made by Ms Purcell. Mr Wallman explained the importance of site visits so that she better understands the work performed and the equipment used.

[20] In days following the above meeting, Mr Wallman met with Ms Purcell to address other issues such as non-conformance reports.

[21] In April 2016, Mr Wallman again met with Ms Purcell to inform her that while she had had a rough start to her employment there had been some improvement. However, there were still issues with some staff; the relationship between Ms Purcell and the staff. Mr Wallman reiterated that it had been 6 months and still Ms Purcell did not have a full understanding of what occurs on site. She was reminded that she needed to conduct site visits as soon as possible.

[22] A number of recommendations were made by Mr Wallman to Ms Purcell on this day. Included in this is an obligation to talk to people more regularly, not just email. It is Mr Wallman's preference to talk to people first, and then if necessary, email to follow up. Mr Wallman informed Ms Purcell of this preference.

[23] In June 2016, Mr Wallman and Ms Purcell met, where Mr Wallman addressed a number of performance issues, including how abrupt she was coming across to others, and resistance being shown to helping others in the business. Further conversations were held in July 2016.

[24] The respondent was preparing for an audit in October 2016, and the importance of passing the audit cannot be understated. Contracts are reliant on being audit-compliant, and this is not disputed between the parties.

[25] In preparation for the audit, the respondent engaged with a company to do a pre-audit, and the results were not satisfactory. There was a considerable amount of remedial work that needed to be undertaken in order to pass. For Mr Wallman, this was the 'straw that broke the camel's back'.

[26] Mr Wallman provided the document of 16 August 2016 to Ms Purcell and it is his evidence that he had hoped that her response would demonstrate her accountability, and demonstration of how she would improve in order to stay in the business. He had hoped to learn of some regret about areas of poor performance.

[27] It is Mr Wallman's evidence that upon reading Ms Purcell's response, particularly with regard to her views that she would find herself too busy to do site visits as requested, there was no way she could continue in the employment.

[28] He was not satisfied with her response, and telephoned her on 19 August 2016 to inform her of the decision to end the employment.

[29] Mr Wallman personally spent 80 hours working on the respondent's audit compliance, and required other employees and a temporary employee to assist to ensure readiness. Mr Wallman attributes this additional work to Ms Purcell's failure to perform the role adequately.

[30] It is Ms Purcell's evidence that she secured some casual employment in the period between her dismissal and December 2016, and she commenced a permanent role in January 2017. She does not seek reinstatement.

[31] Ms Purcell states that she has applied for scores of roles.

Harsh, unjust or unreasonable

[32] I must consider whether I am satisfied the dismissal was harsh, unjust or unreasonable. The criteria I must take into account when assessing whether the dismissal was harsh, unjust or unreasonable are set out at s.387 of the Act:

> **'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:
>
> (a) 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
>
> (b) whether the person was notified of that reason; and
>
> (c) whether the person was given an opportunity to respond to any reason related to the capacity or conduct of the person; and
>
> (d) 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
>
> (e) if the dismissal related to unsatisfactory performance by the person—whether the person had been warned about that unsatisfactory performance before the dismissal; and
>
> (f) 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
>
> (g) 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
>
> (h) any other matters that the FWC considers relevant.'

[33] The ambit of the conduct which may fall within the phrase 'harsh, unjust or unreasonable' was explained in *Byrne v Australian Airlines Ltd* [1995] HCA 24; (1995) 185 CLR 410 at 465 by McHugh and Gummow JJ as follows:

> '.... It may be that the termination is harsh but not unjust or unreasonable, unjust but not harsh or unreasonable, or unreasonable but not harsh or unjust. In many cases the concepts will overlap. Thus, the one termination of employment may be unjust because the employee was not guilty of the misconduct on which the employer acted, may be unreasonable because it was decided upon inferences which could not reasonably have been drawn from the material before the employer, and may be harsh in its consequences for the personal and economic situation of the employee or because it is disproportionate to the gravity of the misconduct in respect of which the employer acted.'

[34] I am under a duty to consider each of these criteria in reaching my conclusion.[1]

[35] I will now consider each of the criteria at s.387 of the Act separately.

Valid reason - s.387(a)

[36] Rock N Road Bitumen must have a valid reason for the dismissal of Ms Purcell, although it need not be the reason given to the applicant at the time of the dismissal.[2] The reasons should be "sound, defensible and well founded"[3] and should not be "capricious, fanciful, spiteful or prejudiced."[4]

[37] Having considered all of the evidence and submissions of the parties, I conclude that Ms Purcell was not suited for the particular employment and did not apply herself adequately to the many tasks of the role. Capacity is the employee's ability to do the job as required by the employer. The appropriate test for capacity is not whether the employee was working to their personal best, but whether the work was performed satisfactorily when looked at objectively.

[38] Mr Wallman met with Ms Purcell on a number of occasions to address with her the various shortcomings that he considered she had. Unfortunately Ms Purcell did not adequately improve her performance. She should have taken what Mr Wallman had to say on board and done the following:

(a) Ms Purcell should have made time for site visits to learn about the respondent's business, its people and the specific jobs done when pouring bitumen. Here she may have formed relationships with workers who would be more likely to come to her for safety issues. This includes incidents such as bitumen burn, not experienced by motorists driving past road works, but potentially experienced by workers at the operational level;
(b) Ms Purcell should have ensured the audit requirements and registers were up to date. It was agreed by Mr Wallman that not every audit requirement or register would be completely up to date, but there was a large gap that Mr Purcell had contributed to;
(c) Ms Purcell should have improved her approachability. Mr Wallman coached Ms Purcell repeatedly about how others were finding her difficult to approach. Mr Wallman found that it did not improve;

(d) Ms Purcell should have met with individuals to communicate issues and then email them as a follow-up. It may not have been Ms Purcell's preferred method of communication, but Mr Wallman made it abundantly clear that it was his, and his direction was not unreasonable.

[39] That being said, at the time of the dismissal, which I find to be 19 August 2016, did Rock N Road have a valid reason to dismiss Ms Purcell?

[40] The meeting of 16 August 2016 and the correspondence issued at that time was the first time Ms Purcell was formally advised that her employment was in jeopardy. I have no doubt that in weeks or months following a formal communication, the reasons put by the respondent in the correspondence of 16 August 2016 would sound a valid reason for the dismissal *at that time.* I stress 'at that time' because I do not find that on 19 August 2016 there was a valid reason for the dismissal.

[41] If Ms Purcell had been formally counselled around 16 August 2016, and informed that she had a reasonable period of time to demonstrate improved performance, and then failed to demonstrate improved performance, I would not hesitate to find a valid reason for dismissal. The matters raised by the respondent to Ms Purcell in the 16 August 2016 correspondence are important, serious matters that demonstrate Ms Purcell was not adequately performing her role. None of them are trivial or petty.

[42] To dismiss Ms Purcell for these reasons on 19 August 2016 is, however, a premature move on the respondent's behalf. I appreciate the submissions put by the respondent that it was an extremely busy time for the respondent, and it had lost confidence in Ms Purcell. It was faced with a poor internal audit report, and had a very substantial amount of work to rectify in the following weeks.

[43] If Ms Purcell had have been issued with Mr Wallman's findings after receipt of the response letter of 18 August 2016, in the form of a warning, I do not consider that Ms Purcell could then later complain if, following a further review, her performance was not found to be adequate. If she had been given a further opportunity and then failed, there would most certainly be a valid reason for the dismissal.

[44] I reject the submissions of the respondent that it was necessary to dismiss on 19 August because of what was then in store, that being the rectification work and the audit proper. Ms Purcell would not have been entirely useless. In fact it would have been her opportunity to demonstrate the good work she could do. I do not consider that the respondent would have had to have spent valuable time at a critical period to coach or hold Ms Purcell's hand. Her performance could have been reviewed following the audit, and she would either survive or not based on the work done by her having been issued with a warning letter.

[45] For the reasons already stated, I consider that the reasons for the dismissal would have constituted a valid reason if they had been reasonably formed at a date in weeks or months following the dismissal. They did not, however, constitute a valid reason at that time.

[46] Accordingly, I do not find that there was a valid reason for the dismissal

Notification of the reason - s.387(b)

[47] Notification of a valid reason for termination must be given to an employee protected from unfair dismissal before the decision is made,[5] in explicit terms[6] and in plain and clear terms.[7] In *Crozier v Palazzo Corporation Pty Ltd*[8] a Full Bench of the Australian Industrial Relations Commission dealing with similar provision of the *Workplace Relations Act 1996* stated the following:

> "[73] As a matter of logic procedural fairness would require that an employee be notified of a valid reason for their termination before any decision is taken to terminate their employment in order to provide them with an opportunity to respond to the reason identified. Section 170(3)(b) and (c) would have very little (if any) practical effect if it was sufficient to notify employees and give them an opportunity to respond after a decision had been taken to terminate their employment. Much like shutting the stable door after the horse has bolted."[9]

[48] The letter of 16 August 2016 set out precisely the matters that Ms Purcell was required to provide an answer to. Whilst it was put as submissions and not as evidence, it was suggested that Mr Wallman was not initially going to provide to Ms Purcell the document of 16 August 2016. It is far better for all parties that the letter was issued so that Ms Purcell could adequately put her position for consideration.

[49] Without the document of 16 August 2016, Ms Purcell would be left with only a recollection of the meeting of 16 August 2016, and there would be a considerable lack of clarity of the response she was required to put.

[50] I find that Ms Purcell was informed of the matters being considered by Mr Wallman to determine if her employment would continue or not.

Opportunity to respond - s.387(c)

[51] An employee protected from unfair dismissal must be provided with an opportunity to respond to any reason for dismissal relating to the conduct or capacity of the person. This criterion is to be applied in a common sense way to ensure the employee is treated fairly and should not be burdened with formality.[10]

[52] The document given to Ms Purcell on 16 August 2016 was very poorly written. To a reasonable observer, it gives an explicit understanding that nothing could save Ms Purcell from dismissal, and it was a foregone conclusion. Reference is made to the following statements in the document:

> 'allowing further time to get up to speed being futile
> …
> or prolonging the situation
> …
> probably parting company
> …
> a question of whether we part amicably or have to go through the formal process.
> …
> cannot afford to be patient and time isn't going to fix it, and it's time to call a halt'

[53] These all point to Ms Purcell's termination ending, regardless of what she says in response.

[54] I understand that Mr Wallman considered that he had fleshed these issues out in the various meetings over the earlier months, and I accept this position. He had indeed discussed a number of the issues within the document. However, the first and last paragraphs of the letter give a very clear impression that Mr Wallman had come to a conclusion. It is not clear what Mr Wallman meant by either parting amicably or having to go through the formal process, because no formal process was then offered.

[55] Mr Wallman's evidence during the hearing was that he had hoped Ms Purcell would have provided a suitable response, and that would have resulted in a further opportunity to demonstrate improvement. While it is at odds with what is within the document, I do accept Mr Wallman's evidence. I do consider that if there had been some *mea culpa* demonstrated by Ms Purcell, with a determined, positive attitude to improving her performance knowing that it was her last opportunity, I do consider that Mr Wallman would have continued her employment.

[56] Ms Purcell was given an opportunity to respond, and her response was sadly, unpalatable. While there were some concessions from her, there was a large amount of finger pointing, even at Mr Wallman. There was an insufficient lack of understanding from Ms Purcell that this was her last chance to demonstrate that she was a competent, flexible employee who could work under instruction, take initiative and do whatever it was she was required to do. In her response she failed.

[57] I find that Ms Purcell was afforded an opportunity to respond to any reason for termination related to the capacity or conduct in the workplace.

Unreasonable refusal by the employer to allow a support person - s.387(d)

[58] Where an employee protected from unfair dismissal has requested a support person be present to assist in discussions relating to the dismissal, the employer should not unreasonably refuse that person being present.

[59] At the meeting of 16 August 2016, Ms Purcell did not request a support person. While it is widely viewed as an appropriate practice that a person be offered a support person, there is no strict obligation to do so. It is certainly preferable.

[60] I find that the meeting of 16 August 2016 was most certainly a meeting held to discuss potential dismissal. The respondent did not unreasonably refuse Ms Purcell a support person.

[61] At the meeting of 18 August 2016 in the park, Ms Purcell had with her legal representative, Mr Clark.

Warnings regarding unsatisfactory performance - s.387(e)

[62] Where an employee protected from unfair dismissal is dismissed for the reason of unsatisfactory performance, the employer should warn the employer about the unsatisfactory

performance before the dismissal. Unsatisfactory performance is more likely to relate to an employee's capacity than their conduct.[11]

[63] On the evidence before me, I am satisfied that Ms Purcell was warned about her unsatisfactory performance in informal meetings with Mr Wallman. These discussions carry some weight, and should have been given more weight by Ms Purcell than she attributed to them.

[64] I conclude, however, that Ms Purcell was not given an adequate warning leading up to the dismissal relevant to ensure she understood that if her performance did not improve, it could result in termination of employment. The first Ms Purcell understood of this potential was on 16 August 2016, and she was never allowed the opportunity to improve her performance as she was shortly thereafter dismissed.

Impact of the size of the Respondent on procedures followed - s.387(f) and Absence of dedicated human resources management specialist/expertise on procedures followed – s.387(g)

[65] The respondent is a medium size business. In submissions it was put that Mr Wallman would have relied on internal HR advice to properly enact a dismissal, and Ms Purcell was the HR professional.

[66] I find that the size of the respondent's enterprise did impact on the procedures followed in effecting the dismissal.

[67] I find that there was an absence of dedicated human resources management expertise given Ms Purcell was the person being dismissed and Mr Wallman was unable to consult with any HR professional within the respondent's business.

[68] I consider that this lack of expertise did impact on the procedures followed in effecting the dismissal.

Other relevant matters - s.387(h)

[69] Section 387(h) provides the Commission with a broad scope to consider any other matters it considers relevant. I consider the following matters to be relevant to the determination of whether the dismissal of the Ms Purcell was harsh, unjust or unreasonable:

Ms Purcell's age

[70] In Sexton v Pacific National (ACT) Pty Ltd[12], Vice President Lawler noted:

> 'Relevantly advanced age and long service can render harsh a termination that would not be harsh in the case of identical conduct by a younger person with relatively short service. Nevertheless, age and length of service simply remain a factor to be taken to account in considering whether the termination was harsh, unjust or unreasonable and in applying the principle of a "fair go all round.'

[71] Ms Purcell is a young woman with a relatively short amount of service of 10 months.

Conclusion

[72] With regard to my considerations above, and notwithstanding the size of the business and the absence of dedicated human resources management specialists, I find that Ms Purcell's dismissal was harsh, unjust and unreasonable.

Remedy

[73] Ms Purcell does not seek reinstatement.

[74] The alternative remedy is compensation and s.392 of the Act relevantly provides:

> '**392 Remedy—compensation**
>
> *Compensation*
>
> (1) An order for the payment of compensation to a person must be an order that the person's employer at the time of the dismissal pay compensation to the person in lieu of reinstatement.
>
> *Criteria for deciding amounts*
>
> (2) In determining an amount for the purposes of an order under subsection (1), the FWC must take into account all the circumstances of the case including:
>
> (a) the effect of the order on the viability of the employer's enterprise; and
>
> (b) the length of the person's service with the employer; and
>
> (c) the remuneration that the person would have received, or would have been likely to receive, if the person had not been dismissed; and
>
> (d) the efforts of the person (if any) to mitigate the loss suffered by the person because of the dismissal; and
>
> (e) the amount of any remuneration earned by the person from employment or other work during the period between the dismissal and the making of the order for compensation; and
>
> (f) the amount of any income reasonably likely to be so earned by the person during the period between the making of the order for compensation and the actual compensation; and
>
> (g) any other matter that the FWC considers relevant.
>
> *Misconduct reduces amount*
>
> (3) If the FWC is satisfied that misconduct of a person contributed to the employer's decision to dismiss the person, the FWC must reduce the amount it would otherwise order under subsection (1) by an appropriate amount on account of the misconduct.
>
> *Shock, distress etc. disregarded*

(4) The amount ordered by the FWC to be paid to a person under subsection (1) must not include a component by way of compensation for shock, distress or humiliation, or other analogous hurt, caused to the person by the manner of the person's dismissal.

Compensation cap

(5) The amount ordered by the FWC to be paid to a person under subsection (1) must not exceed the lesser of:

(a) the amount worked out under subsection (6); and

(b) half the amount of the high income threshold immediately before the dismissal.

(6) The amount is the total of the following amounts:

(a) the total amount of remuneration:

(i) received by the person; or

(ii) to which the person was entitled;

(whichever is higher) for any period of employment with the employer during the 26 weeks immediately before the dismissal; and

(b) if the employee was on leave without pay or without full pay while so employed during any part of that period—the amount of remuneration taken to have been received by the employee for the period of leave in accordance with the regulations.'

Authorities

[75] The approach to the calculation of compensation is set out in a decision of a Full Bench of the Australian Industrial Relations Commission in *Sprigg v Paul's Licensed Festival Supermarket*[13]. That approach, with some refinement, has subsequently been endorsed and adopted by Full Benches of the Commission in *Bowden v Ottrey Homes Cobram and District Retirement Villages inc T/A Ottrey*[14]; *Jetstar Airways Pty Ltd v Neeteson-Lemkes*[15] and *McCulloch v Calvary Health Care*[16] (*McCulloch*).

[76] I have had regard to the above authorities.

The effect of the order on the viability of Rock N Roll Bitumen

[77] In questioning from the Commission, Mr Wallman stated that an order of compensation would have a considerable bearing on the respondent, but would not in the short-term affect the viability of the respondent.

The length of Ms Purcell's service

[78] Ms Purcell had been employed for a relatively short period of time, only 10 months.

The remuneration that Ms Purcell would have received, or would have been likely to receive, if she had not been dismissed

[79] I am of the view that Ms Purcell's employment would not have continued for an extended period of time. Ms Purcell had not improved her performance in light of discussions with Mr Wallman, and while I do consider she might have made a better attempt at improving her performance in light of a written warning, I do not consider that she would ultimately have overcome her deficiencies.

[80] I am not satisfied that Ms Purcell would have improved her performance to a satisfactory standard to have continued for a moderate or lengthy period of time in the employment.

[81] I conclude that Ms Purcell would have would have been terminated within eight weeks of the actual dismissal.

The efforts of Ms Purcell (if any) to mitigate the loss suffered because of the dismissal

[82] Ms Purcell made a very good effort to mitigate the loss of her employment. By 30 September 2016 Ms Purcell had completed three weeks of casual employment in a barrister's chambers.

[83] A further three weeks of work was performed in December 2016, and Ms Purcell has now secured permanent employment.

The amount of any remuneration earned by the person from employment or other work during the period between the dismissal and the making of the order for compensation

[84] If I determine that Ms Purcell would have worked until 14 November 2016 but for the dismissal, it is necessary to have regard to the one week's notice that was paid to her, together with the amount of $2,884.62 in earnings having worked at the barrister's chambers throughout September 2016.

The amount of any income reasonably likely to be so earned by Ms Purcell during the period between the making of the order for compensation and the actual compensation

[85] This factor is not relevant in the circumstances of this matter.

Misconduct reduces amount

[86] Section 392(3) requires that if the Commission is satisfied that misconduct of a person contributed to the employer's decision to dismiss the person then the Commission must reduce the amount it would otherwise order by an appropriate amount on account of the misconduct. It is not contended that Ms Purcell engaged in misconduct and it is unnecessary to discount the amount of compensation awarded.

Shock, distress etc. disregarded

[87] I confirm that any amount ordered does not include a component by way of compensation for shock, distress or humiliation, or other analogous hurt caused to Ms Purcell by the manner of the dismissal.

Compensation Cap

[88] The amount to be ordered does not exceed the compensation cap within the Act.

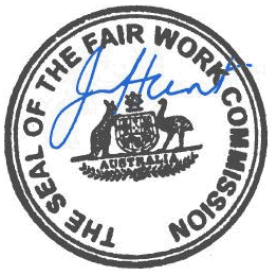
Payment by instalments

[89] No submission was made that it would be necessary for Rock N Road to pay the amount of compensation by way of instalments. Consequently, Rock N Road is to pay the amount of compensation within 14 days from 18 January 2017.

Order of compensation

[90] I have determined that Rock N Road Bitumen pay to Ms Purcell the amount of $5,192.33 being eight week's wages at the rate of $1,153.85, less an amount of one week's notice of $1,153.85 and a further reduction of $2,884.62 less tax as required by law. In addition, superannuation on the amount of $5,192.33 shall be paid.

[91] I have issued an Order to that effect.



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[1] *Sayer v Melsteel* [2011] FWAFB 7498 at [20]

[2] *Shepherd v Felt & Textiles of Australia Ltd* (1931) 45 CLR 359 at 373, 377-378.

[3] *Selvachandran v Peterson Plastics Pty Ltd* (1995) 62 IR 371, 373

[4] Ibid

[5] *Chubb Security Australia Pty Ltd v Thomas* Print S2679 at [41].

[6] *Crozier v Palazzo Corporation Pty Ltd* (2000) 98 IR 137, 151.

[7] *Previsic v Australian Quarantine Inspection Services* Print Q3730.

[8] (2000) 98 IR 137.

[9] Ibid at 151.

[10] *RMIT v Asher* (2010) 194 IR 1, 14-15

[11] *Annetta v Ansett Australia Ltd* (2000) 98 IR 233, 237

[12] (2003) unreported, PR931440 at [30].

[13] (1998) 88 IR 21.

[14] [2013] FWCFB 431.

[15] [2014] FWCFB 8683.

[16] [2015] FWCFB 2267.