



DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Lakshay Chandan

v

Language Smart Pty Ltd T/A Englishwise
(U2019/10125)

DEPUTY PRESIDENT KOVACIC

CANBERRA, 26 FEBRUARY 2020

Application for relief of unfair dismissal – dismissal found to be unreasonable – reinstatement not appropriate – compensation of \$4,073.42 (less applicable tax) ordered.

[1] Mr Lakshay Chandan (the Applicant) made an application which was received by the Fair Work Commission (the Commission) on 10 September 2019 under s.394 of the *Fair Work Act 2009* (the Act) alleging that the termination of his employment by Language Smart Pty Ltd T/A EnglishWise (the Respondent) on 22 August 2019 was unfair.

[2] The application was heard on 13 February 2020. At the hearing, Mr Chandan represented himself while Mr Kemueli Qoro together with Mr Ajay Singh appeared with permission for the Respondent. Neither party led any evidence in support of their submissions. The Respondent did file a witness statement by Mr Shivam Bhalla, the Respondent's Director. However, as Mr Bhalla was not available for cross-examination the statement was not received into evidence by the Commission.

[3] For the reasons set out below, I find that Mr Chandan's dismissal was unreasonable, that reinstatement is not appropriate, that an order for compensation is appropriate in all the circumstances of this case and that the Respondent should pay Mr Chandan \$4,073.42 (less applicable tax).

Background

[4] Mr Chandan commenced work with the Respondent on 12 July 2018 as a casual Trainer/Instructor at its Canberra Branch.

[5] On 26 July 2019 Mr Chandan advised the Respondent that he needed to return to India due to a family emergency as his father was ill and that he had arranged a flight for the morning of 29 July 2019. Mr Chandan also forwarded the Respondent a copy of his flight reservation.

[6] On 19 August 2019 the Respondent and Mr Chandan exchanged the following messages on WhatsApp (Mr Chandan's responses appear in italics below):

“Still in India Lakshay?

Yes, will update you soon, planning to come back soon.

Lakshay! We will need the date at the earliest. I need to have a chat with you anyway.

Please keep me posted

Once i book flights, i will update you”

[7] In its submissions the Respondent stated that it then (date not specified) contacted the travel agency identified on Mr Chandan’s reservation and was advised that the reservation code belonged to Mr Ayush Paliwal and not Mr Chandan. Mr Paliwal is a former employee of the Respondent. The Respondent contends that Mr Paliwal has established a rival business in Darwin, Success English Hub PTE.

[8] On 22 August 2019 Mr Chandan was summarily dismissed by the Respondent. Mr Chandan was advised of his dismissal via email. The terms of the email were set out in Mr Chandan’s application as follows:

“Lakshay

This is to advise that your employment is now terminated at EnglishWise with immediate effect.

You have breached non-negotiable aspects of the employment contract. We have started our investigation and legal action may be taken against you and associated parties upon collecting all evidences.

You went overseas few weeks ago and until this day we do not have your returning date thus leaving us in complete dilemma and we have suffered huge loss to the business.

Please surrender all the assets immediately you possess under the company and Company itself will make arrangements to collect those assets.

Regards

Shivi Bhalla
CEO
EnglishWise”¹

[9] As previously mentioned, Mr Chandan lodged his unfair dismissal application on 10 September 2019.

The Applicant’s case

[10] Mr Chandan contended that his dismissal was harsh, unjust and unreasonable as the Respondent did not have a valid reason for his dismissal. Mr Chandan submitted that he was dismissed while absent from work due to personal reasons, adding that he communicated with

his manager on a regular basis and that he advised the Respondent that he would return to work once his family situation was under control. At the hearing Mr Chandan:

- posited that the Respondent should have undertaken the investigation alluded to in the dismissal email prior to deciding to terminate his employment; and
- stated that he had received no warnings from the Respondent nor had there been a single meeting convened by the Respondent to discuss its concerns with his actions.

[11] Other key aspects of Mr Chandan's submissions included that:

- the misunderstanding regarding his flights arose as a result of a flight booking which he had not confirmed for personal reasons;
- he was away from work for 3 weeks not 4 weeks as contended by the Respondent;
- the Respondent made no efforts to confirm with him whether his visa status had changed;
- he had not taken any confidential data, adding that he had no use for such data;
- he had not stored pornographic material on the mobile phone provided to him by the Respondent; and
- the Facebook page invitation to like a competitor of the Respondent, i.e. Success English Hub PTE, did not prove anything.

[12] Mr Chandan's submissions regarding the various considerations in s.387 of the Act are set out later in this decision.

[13] As to remedy, Mr Chandan did not seek reinstatement but rather sought compensation of \$25,000 plus a written statement of service.

The Respondent's case

[14] The Respondent contended that Mr Chandan's dismissal was justified and was neither unfair nor harsh, unjust or unreasonable. The Respondent's submissions regarding the various considerations in s.387 of the Act are set out later in this decision.

[15] As to remedy, the Respondent submitted that reinstatement was not appropriate as Mr Chandan had breached its trust and confidence such that it was impossible for the parties to work together again. The Respondent cited several reasons in support of its submission that reinstatement was not appropriate, including that Mr Chandan had not been performing well leading to a loss of business for the Respondent and that he was not honest with it. On the issue of compensation, the Respondent submitted *inter alia* that but for his dismissal Mr Chandan would have worked for it for a further month and that Mr Chandan's misconduct warranted a reduction in any compensation that the Commission may determine. However, at the hearing the Respondent submitted that Mr Chandan was not entitled to reinstatement or compensation as he had totally breached its trust and confidence.

The Statutory framework

[16] The Commission exercises its discretion in relation to an application for an unfair dismissal remedy pursuant to Part 3-2 of the Act. In this case there is no contest that Mr Chandan is a person who was protected from unfair dismissal pursuant to s.382 of the Act. In the context of this matter, the relevant provisions of the Act are ss.385 and 387 which provide as follows:

“385 What is an unfair dismissal

A person has been unfairly dismissed if FWC is satisfied that:

- (a) the person has been dismissed; and
- (b) the dismissal was harsh, unjust or unreasonable; and
- (c) the dismissal was not consistent with the Small Business Fair Dismissal Code; and
- (d) the dismissal was not a case of genuine redundancy.

Note: For the definition of consistent with the Small Business Fair Dismissal Code: see section 388.

387 Criteria for considering harshness etc.

In considering whether it is satisfied that a dismissal was harsh, unjust or unreasonable, 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 FWC considers relevant.”

[17] There is no dispute that Mr Chandan was dismissed, so s.385(a) of the Act is satisfied. Mr Chandan contended that his termination was harsh, unjust or unreasonable, so s.385(b) is relevant. The termination was not a case of redundancy so s.385(d) does not apply.

[18] As to s.385(c) of the Act, in its Form F3 – Employer response to unfair dismissal application the Respondent stated that it had 62 employees². I note that the Form F3 was completed by Mr Bhalla, the Respondent’s Director. However, in its written submissions the Respondent submitted that it employed less than 15 employees. At the hearing, the Respondent stated that it only owned and operated three EnglishWise branches (including the ACT branch where Mr Chandan worked) which together employed between 7-10 employees, with the remaining four branches operated by franchisees. The Respondent further submitted that the franchised branches were not owned and operated by it, employed staff directly and operated under a contractual arrangement which operated similarly to a profit-sharing arrangement. Significantly, the Respondent provided no evidence to substantiate its claims regarding its corporate structure or that it was a small business employer. Mr Chandan disputed the Respondent’s contention. In the absence of any probative evidence regarding the Respondent’s contention, I am not satisfied that it is a small business employer. As such, I do not consider s.385(c) relevant in this case.

[19] Accordingly, in determining whether Mr Chandan was unfairly dismissed, I must consider whether his dismissal was harsh, unjust or unreasonable as per s.385(b) having regard to the considerations set out in s.387 of the Act.

Was the dismissal harsh, unjust or unreasonable?

Valid reason – s.387(a)

[20] The Respondent must have a valid reason for Mr Chandan’s dismissal. The reason should be “sound, defensible and well founded”³ and should not be “capricious, fanciful, spiteful or prejudiced.”⁴

[21] Mr Chandan maintained that there was no valid reason for his dismissal but did not elaborate as to why this was the case. In response to questions from the Commission Mr Chandan stated that he did not leave Australia to visit his father in India. Mr Chandan explained that when he applied for leave his father was ill and that he sought to be with his family but that as he was about to leave Australia his uncle contacted him and advised him that his father’s circumstances had improved and that he should save his money and consider putting it towards helping meet his father’s medical expenses. As to why he did not inform the Respondent of the change in his circumstances, particularly in response to the text messages of 19 August 2019, Ms Chandan responded providing a number of reasons, including that he still wanted be with his father, that he was emotionally embarrassed and not thinking clearly and that he was still thinking that he might be able to go to India for a week. Also at the hearing, Mr Chandan submitted that inviting someone to like a competitor’s Facebook page does not equate to him working for that competitor.

[22] The Respondent submitted that one of the reasons Mr Chandan’s employment was terminated was because he put the Respondent in a dilemma by not providing an exact date for his return from leave, adding that this affected the service it provided to its clients thereby

causing a huge loss to the business (the loss was not specified). The Respondent further submitted that it had reason to believe that Mr Chandan had used a forged flight itinerary, did not leave for India, was in Darwin working for a competing company and used its confidential information. At the hearing the Respondent submitted that Mr Chandan had admitted that he had lied, highlighting the text message exchange between Mr Bhalla and Mr Chandan on 19 August 2019 in which Mr Chandan indicated he was still in India (see paragraph [6] above). The Respondent further submitted that there was also a conflict of interest in Mr Chandan inviting likes on the Facebook page of its competitor, Success English Hub PTE, positing that this was inconsistent with clause 15 of Mr Chandan's employment contract and amounted to serious misconduct. By way of background, attached to the Respondent's Form F3 was a copy of a screenshot of what appears to be an MMS which reads as follows:

“Ayush Paliwal and Lakshay Chandan invited you to like Success English Hub PTE, IELTS and NATTI CCL Ex...”⁵

[23] It is clear from his responses to the Commission's questions at the hearing that Mr Chandan lied about his whereabouts when contacted by the Respondent by text message on 19 August 2019. The reasons given by Mr Chandan at the hearing for doing so were not believable in my view. It beggars belief as to why Mr Chandan was simply not upfront with the Respondent when his plans changed, particularly as his leave was approved at short notice due to what Mr Chandan described as a “Family Emergency”.⁶ Further, Mr Chandan's conduct in jointly with Mr Paliwal inviting likes on a competitor's Facebook page not only showed extremely poor judgement but was inconsistent with his general duty to act in the best interests of his employer.

[24] Taken together, these factors support a finding that there was a valid reason for Mr Chandan's dismissal related to his conduct.

Notification of the valid reason – s.387(b)

[25] Mr Chandan submitted that he received no notification of any reason for his dismissal. This was confirmed by the Respondent in its submissions when it acknowledged that Mr Chandan was not provided a reason for his summary dismissal.

[26] The Respondent's acknowledgement points to Ms Chandan's dismissal being unfair.

Opportunity to respond related to the capacity or conduct of the person – s.387(c)

[27] Mr Chandan submitted that he was given no opportunity to respond to any reason related to his capacity or conduct. Again, this was confirmed by the Respondent in its submissions when it acknowledged that Mr Chandan was not given an opportunity to respond to the reason for his dismissal prior to being summarily dismissed.

[28] The Respondent's acknowledgement points to Ms Chandan's dismissal being unfair.

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

[29] Mr Chandan did not address this consideration in his submissions.

[30] The Respondent submitted that as Mr Chandan was summarily dismissed no meeting occurred.

[31] Given that Mr Chandan was dismissed via email without any discussion, the circumstance where a support person may be involved simply did not arise. As such, I do not consider this consideration relevant in this case.

Warnings regarding unsatisfactory performance – s.387(e)

[32] Mr Chandan submitted that he had not been advised of any unsatisfactory performance.

[33] The Respondent submitted that Mr Chandan’s dismissal was related to unsatisfactory performance but did not elaborate as to what, if any, warnings were given to Mr Chandan.

[34] There is no probative material before the Commission supporting the Respondent’s contention that Mr Chandan’s dismissal was related to unsatisfactory performance. Accordingly, this consideration is not relevant in this case.

Impact of the size of the employer on the procedures followed – s.387(f)

Absence of dedicated human resources management specialist/expertise on the procedures followed – s.387(g)

[35] I deal with these considerations together given their potential overlap.

[36] Mr Chandan submitted that the absence of a human resources management specialist or expertise impacted on the procedures followed in effecting his dismissal “very badly”.

[37] At the hearing, the Respondent submitted that it had no proper human resources expertise to deal with this matter.

[38] Neither party addressed the impact of the size of the Respondent on the procedures followed in this case. As such, there is nothing before the Commission regarding this consideration. I therefore consider this factor to be a neutral consideration in this case.

[39] However, I am satisfied that the absence of dedicated human resources management specialist/expertise did impact on the procedures followed in this case. The unilateral decision to dismiss Mr Chandan in the absence of any process, the decision to notify Mr Chandan of his dismissal via email and the reference in the termination email to the Respondent starting its investigation are all indicative of the absence of any semblance of human resource management input or advice. Accordingly, the absence of dedicated human resources management specialist/expertise is a relevant consideration in this case.

Other relevant matters – s.387(h)

[40] Mr Chandan did not identify any other relevant matters in his submissions.

[41] The Respondent submitted that the dismissal was not harsh for several reasons, including that Mr Chandan had supplied a forged flight itinerary and had lied about his travel to India.

[42] While I note the Respondent's submissions regarding this consideration, in my view those submissions go to the question of whether there was a valid reason for Mr Chandan's dismissal. Accordingly, I do not consider that there are any other relevant matters.

Conclusion

[43] Drawing on the above analysis, I find that there was a valid reason for Mr Chandan's dismissal related to his conduct, that Mr Chandan was not notified of that reason prior to his dismissal nor was he given the opportunity to respond to that reason, that the absence of dedicated human resources management specialist/expertise is a relevant consideration, that there are no other relevant matters and that the remaining criteria in s.387 of the Act are either not relevant or neutral considerations in this case.

[44] The ambit of the conduct which may fall within the phrase 'harsh, unjust or unreasonable' was explained in *Byrne v Australian Airlines Ltd*⁷ 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."

[45] The existence of a valid reason for Mr Chandan's dismissal in this case is far outweighed by the absence of any semblance of procedural fairness in the Respondent deciding to terminate Mr Chandan's employment. The significance of the procedural flaws in this case, while perhaps explained by the absence of dedicated human resources management specialist/expertise are not in any way diminished by that absence. To have summarily dismissed Mr Chandan without advising him of the Respondent's concerns and without providing him the opportunity to respond to those concerns and/or explain his actions makes his dismissal completely unreasonable. Having said that Mr Chandan's lack of honesty with his employer reflects very poorly on him as well.

[46] Against that background and having considered all the criteria in s.387 of the Act, I find that Mr Chandan's dismissal was unreasonable. I turn now to consider the issue of remedy.

Remedy

[47] Division 4 of Part 3-2 of the Act deals with remedies for unfair dismissal. Section 390(3) of the Act makes it clear that reinstatement is the primary remedy in circumstances where the Commission determines that a dismissal is harsh, unjust or unreasonable. Further, s.390(3) of the Act provides the Commission must not order the payment of compensation to the person unless it is satisfied that reinstatement is inappropriate and it considers an order for payment of compensation is appropriate in all the circumstances of the case.

[48] In this case neither Mr Chandan nor the Respondent favoured reinstatement. I accept that reinstatement is not appropriate given that Mr Chandan's lack of truthfulness with the Respondent and his actions in inviting likes to a competitor's Facebook page have fractured the Respondent's trust and confidence in Mr Chandan. In my view, it is extremely unlikely that that trust and confidence would ever be able to be re-established in this case.

[49] Accordingly, I must turn my mind to whether an order for compensation is appropriate in all the circumstances of the case.

Compensation

[50] Having regard to all the circumstances in this case, I consider that an order for compensation is appropriate in this case. In that regard, I note that at the hearing Mr Chandan advised the Commission that he was yet to secure alternative employment following his dismissal.

[51] Section 392 of the Act deals with the issue of compensation and provides as follows.

“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.”

[52] The method for calculating compensation under s.392 of the Act was considered by the Full Bench in *Bowden, G v Ottrey Homes Cobram and District Retirement Villages Inc. T/A Ottrey Lodge*⁸ (*Bowden*). In that decision the Full Bench set out the order in which the criteria and other factors should be applied, taking into account authority under the *Workplace Relations Act 1996* in *Sprigg v Paul's Licensed Festival Supermarket (Sprigg)*⁹ and *Ellawala v Australian Postal Corporation*¹⁰. I have adopted the methodology utilised in *Bowden* in determining the amount of compensation.

Viability – s.392(2)(a)

[53] In its written submissions the Respondent contended that any order for compensation would affect its viability. However, at the hearing Mr Singh on behalf of the Respondent indicated that he had instructions to allow for compensation equating to 2 weeks' pay. When pressed by the Commission, Mr Singh indicated that a modest amount of compensation would not affect the Respondent's viability. Given the amount of compensation canvassed below, I consider the issue of viability to be a neutral consideration.

Length of service – s.392(2)(b)

[54] Mr Chandan was employed by the Respondent for a period of almost 14 months. I do not consider that any adjustment to the amount of compensation proposed is warranted based on Mr Chandan's relatively short period of service.

Remuneration that would have been received – s.392(2)(c)

[55] I note that s.392(2)(c) of the Act refers to "the remuneration that the person would have received, or would have been likely to receive, if the person had not been dismissed". As such, the first issue that needs to be determined is how much longer Mr Chandan would have continued to be employed by the Respondent. As previously noted, the Respondent submitted that but for his dismissal Mr Chandan would have worked for it for a further month and estimated that he would have earned \$2,000 less tax over that period on the basis that he was limited to working 20 hours per week as he was in Australia on a student visa. Mr Chandan did not address this consideration but rather sought an amount of \$25,000 in compensation. At the hearing Mr Chandan advised the Commission that he had been granted permanent residency in November 2019 and prior to that he was a temporary resident.

[56] Given the concerns which led to Mr Chandan's dismissal and the absence of any process leading to his dismissal, I consider that had the Respondent conducted a proper process in this case that Mr Chandan would only have been employed for a further four weeks.

[57] As to the amount Mr Chandan would have received over this period, attached to Mr Chandan's reply submission was copy of his pay slip for the pay period 13 to 26 May 2019. That pay slip indicates that for that fortnight, based on 76 hours work, Mr Chandan received gross salary and wages of \$2,263.01 from which PAYG tax of \$456.00 and superannuation contributions of \$214.99 were deducted. Mr Chandan's net pay (exclusive of superannuation) was \$1807.01. Given my view that Mr Chandan's employment would have continued for another 4 weeks, Mr Chandan would have received \$4,526.02 (less any applicable tax but inclusive of superannuation) over that period. In the absence of any probative evidence regarding Mr Chandan's visa status, I do not accept the Respondent's contention that he was limited to working 20 hours per week.

Mitigation efforts – s.392(2)(d)

[58] Mr Chandan submitted that he was still seeking work and that he was totally devastated following his dismissal, adding that his confidence, mental health and wellbeing were all affected by his dismissal. I note that these are not unusual responses to being dismissed. At the hearing, Mr Chandan advised that he had performed some casual work since

his dismissal. The Respondent contended that a deduction was warranted as the Applicant had failed to mitigate his loss. The Respondent's contention appeared to be premised on its view that Mr Chandan would be gainfully employed by Success English Hub PTE if he applied there.

[59] While Mr Chandan's mitigation efforts appear somewhat limited and/or modest, I am not satisfied that they warrant any deduction from the amount of compensation contemplated in circumstances where I consider that he would only have continued to have been employed by the Respondent for a further four weeks.

Remuneration earned – s.392(2)(e)

[60] At the hearing Mr Chandan advised the Commission that since his dismissal he had earned a gross amount of \$1,400 from casual work. Mr Chandan did not indicate precisely when he earned that income, though given his submissions in respect of his mitigation efforts I consider it unlikely that any of that amount was earned in the first four weeks after his dismissal.

[61] Accordingly, I consider that no deduction to the amount of compensation proposed is warranted on this ground.

Income reasonably likely to be earned – s.392(2)(f)

[62] The Respondent submitted that as this consideration was tied up with Mr Chandan's mitigation efforts, that any order of compensation must be reduced as a result of Mr Chandan's failure to mitigate his loss. Mr Chandan did not address this consideration.

[63] Given my finding that Mr Chandan would only have continued to have been employed by the Respondent for a further four weeks, I am not satisfied that there is any basis to reduce the amount of compensation contemplated on this ground.

Other matters – s.392(2)(g)

[64] The Respondent submitted that the Commission must take into account that Mr Chandan had not informed it of the change in his visa status from a temporary graduate visa to a student visa, adding that under the latter visa category Mr Chandan would only be entitled to work 20 hours per week. As previously mentioned, Mr Chandan at the hearing advised the Commission that he had been granted permanent residency in November 2019 and prior to that was a temporary resident.

[65] In the absence of any probative material substantiating the Respondent's contention, I am not satisfied that it is made out. Accordingly, I do not consider it to be a matter which should be taken into account in determining the amount of compensation in this case.

Misconduct – s.392(3)

[66] The Respondent submitted that Mr Chandan's misconduct warranted a reduction in the amount of compensation. The Respondent did not specify the extent to which the compensation should be reduced. Mr Chandan did not address this consideration in his submission.

[67] I am satisfied that Mr Chandan's lack of truthfulness in responding to Mr Bhalla's text message of 19 August 2019 and his actions in inviting likes on the Facebook page of one of the Respondent's competitors both amount to misconduct which warrant a modest reduction of 10 per cent in the amount of compensation contemplated. This reduces the amount of compensation contemplated by \$452.60.

No component for shock, distress, humiliation or other analogous hurt – s.392(4)

[68] The compensation amount contains no component for any shock, distress, humiliation or other analogous hurt suffered by Mr Chandan.

Compensation cap – s.392(5)

[69] The compensation cap in respect of Mr Chandan is \$29,419.13 (i.e. \$2,263.01 x 13 fortnights) inclusive of superannuation. This is less than half the amount of the high income threshold immediately before Mr Chandan's dismissal (i.e. \$74,350).

Conclusion

[70] For all the above reasons, I find that Mr Chandan's dismissal was unreasonable, that reinstatement is not appropriate, that an order for compensation is appropriate in all the circumstances of this case and that the Respondent should pay Mr Chandan \$4,073.42 (less applicable tax and inclusive of superannuation) in compensation within 28 days of the Order issued in conjunction with this decision.



Appearances:

L. Chandan on his own behalf.
K. Qoro and *A. Singh* for the Respondent.

Hearing Details:

Canberra
2020
February 13

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¹ Form F2 – Unfair Dismissal Application at Item 3.1

² Form F3 – Employer response to unfair dismissal application at Item 1.7

³ *Selvachandran v Peteron Plastics Pty Ltd* (1995) 62 IR 371, 373

⁴ *Ibid*

⁵ Attachment to Form F3 – Employer response to unfair dismissal application

⁶ *Ibid*

⁷ [1995] HCA 24; (1995) 185 CLR 410 at 465

⁸ [2013] FWCFB 431

⁹ (1998) 88 IR 21

¹⁰ Print S5109