



DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Samantha Bennett

v

Sentinel Portfolio Management Pty Ltd T/A Sentinel Portfolio Management
(U2019/1078)

COMMISSIONER SIMPSON

BRISBANE, 21 MAY 2020

Termination of employment – whether dismissal was a genuine redundancy – Respondent concedes failure to consult – Job no longer required because of operational requirements – No other position available for redeployment – Failure to consult unreasonable in the circumstances – Termination unfair – Compensation equivalent to appropriate period for consultation.

[1] On 4 February 2019 Ms Samantha Bennett filed an application under s.394 for an unfair dismissal remedy against Sentinel Portfolio Management Pty Ltd T/A Sentinel Portfolio Management (Sentinel).

[2] On 25 February 2019, Sentinel filed a Form F3, and a Form F4 - Objection to unfair dismissal application objecting to the application on the basis that the dismissal was a case of genuine redundancy under s.389 of the Act and therefore Ms Bennett was not able to pursue an unfair dismissal application.

[3] The matter did not proceed to conciliation. The matter was allocated to me and I held a Directions hearing on 26 March 2019 and issued directions for filing of material and listed the matter for hearing in May 2019. Mr Murray Proctor of ClarkeKann Lawyers at that time, appeared for Sentinel and Mr John Bradley of Bradley Solicitors appeared for Ms Bennett.

[4] Both parties were granted leave to be represented in the matter. Ms Bennett filed material in the form of a written submission in relation to the merits of her application dated 9 April 2019 and a Statutory Declaration also dated 9 April 2019¹. Sentinel filed material in relation to its jurisdictional objection in the form of written submissions and witness statements from Mr Bradley Freitas, National Portfolio Manager for Sentinel at the time,² and Timothy MacKinley, a former National Portfolio Manager³.

[5] Sentinel filed a further submission and a supplementary witness statement⁴ of Mr MacKinley. in response to Ms Bennett's material on merits. Ms Bennett did not file material in reply to Sentinel's material on jurisdiction as directed, and on 26 April 2019 Ms Bennett's representative requested an adjournment of the hearing date and directions as Ms Bennett was in an advanced stage of pregnancy, and not ready physically and mentally to proceed with the hearing.

[6] On 3 May 2019, I sent correspondence to the parties advising I was satisfied that it was appropriate to stand the matter down until Ms Bennett advised she was able to proceed with the hearing considering her medical condition and pregnancy.

[7] On 16 January 2020, my Associate contacted Ms Bennett's representative who advised he had sought instructions but had not yet heard back from Ms Bennett and that it was understood there were issues with the health of Ms Bennett and her baby. Ms Bennett's representative requested a period of three weeks to seek instructions which I granted.

[8] My Associate sent correspondence on 4 March 2020 advising that Ms Bennett must advise the Commission whether she intended to pursue the application by close of business 11 March 2020 or the Commission may give consideration to dismissing the application. Correspondence was subsequently received from Mr Bradley on behalf of Ms Bennett advising that Ms Bennett wished to proceed with the matter.

[9] Mr Bradley ceased to act for Ms Bennett, and Ms Bennett engaged a new representative Mr Ricky Han, a solicitor of WBH Legal. The matter was set down for directions and a program was settled for Ms Bennett to file reply submissions on jurisdiction and the matter was to be heard on 14 April 2020.

[10] Submissions were filed on behalf of Ms Bennett on jurisdiction on 7 April 2020. The matter was subsequently adjourned to 19 May 2020 on the basis of an application made for Ms Bennett by her new representative that it understood the hearing would be confined to the jurisdictional issue only, and on becoming aware that the Commission intended to hear both the jurisdictional and merits issues sought adjournment. Sentinel's representative consented to the adjournment request and the hearing date was changed to 19 May 2020. On 13 May 2020 Mr Ricky Han filed a notice ceasing to act for Ms Bennett.

[11] At the commencement of the hearing Ms Bennett confirmed she would be representing herself. Mr Proctor, now of FAC Lawyers, continued his appearance for Sentinel. Ms Bennett advised at the hearing on 19 May 2020 that her child had been required to undergo surgery on a number of occasions. Ms Bennett also raised that she had a number of emails from persons concerning the Darwin office of Sentinel since her termination however advised that the persons who had given her these emails were not prepared to give evidence. In the circumstances I declined to admit the emails given they had only been raised for the first time at the commencement of the hearing and no one was prepared to swear to the contents of the emails.

[12] Mr Proctor advised that Sentinel now conceded that it had not consulted with Ms Bennett prior to termination as required by section 389(1)(b), however pressed its case on the basis that the dismissal was not unfair in all of the circumstances. Mr Proctor confirmed by way of clarification that Sentinel conceded that the Real Estate Industry Award 2010 applied to Ms Bennett at the time of termination. For completeness on review of the evidence I am satisfied Ms Bennett was covered by the Real Estate Industry Award 2010.

BACKGROUND

[13] Ms Bennett was employed as a Facilities Manager in the Northern Territory for Sentinel. Ms Bennett commenced employment with Sentinel on 15 November 2017.

[14] Sentinel submitted that between September 2018 and January 2019, it underwent a resourcing review (the Review) of its business to identify opportunities to improve resourcing efficiency thereby reducing enterprise expenditure. After events that are described in detail below, Ms Bennett was made redundant by Sentinel on 28 January 2019. Ms Bennett was paid in lieu of notice.

[15] On 14 January 2019, Ms Bennett received a letter advising her employment was being terminated as her position was being made redundant. The letter read:

“Dear Samantha

ENDING OF YOUR EMPLOYMENT BY REASON OF REDUNDANCY

We refer to the conversation via telephone earlier today with Tim MacKinley and Ramona Zahner. As advised, due to the operational requirements of Sentinel Portfolio Management Pty Ltd (the Company), the Company has decided to make the position of Facilities Manager redundant, therefore your employment will cease effective Monday 28 January 2019.

We confirm that the Company has considered all potential redeployment opportunities within both the Company, and the Company’s enterprise, and have formed the view that there are no suitable redeployment opportunities.

Based on your length of service with the Company, your notice period is 2 weeks, which will be paid in lieu of notice. You are also entitled to receive 4 weeks’ salary that will be paid to you in your final pay.

The Company would like to remind you of your confidentiality obligations under clause 14 of your contract, which you are bound to maintain even after your employment with the Company ends. You are obliged to keep secret and not use or disclose the Company’s confidential information in any manner and must return any confidential information in your possession to the Company at the end of your employment.

In accordance with clause 16 of your contract, upon ceasing your employment with Sentinel, you are required to immediately return all Company property. In addition to this, you are required to delete any information relating to the Company that is stored on any personal computer or storage device.

The Company thanks you for your service and wishes you all the very best in your future endeavours.

Yours faithfully

Sentinel Portfolio Management”

[16] That day at 4:04pm, Mr Bob Cooper, Property Manager, sent an email to all suppliers advising that Ms Bennett had been made redundant. The email read:

“Hi All,

It is with sadness that we have to advise all that as of today, Samantha will no longer be working at Sentinel. Samantha’s position has become redundant due to restructuring of Sentinel’s operation in the NT and as such, Samantha’s role as stated, became redundant with her responsibilities being taken over by myself. The company found it very difficult to come to this decision given the high level of expertise and hard work furnished by Samantha while employed with Sentinel but this decision was a financial commercial decision due to restructuring and unfortunate that we lose the service of Sumanth’s.

We understand that many of you have built strong relationships with Samantha and will be somewhat disappointed however, it’s business as normal and we look to maintaining and growing our relationship with you as our preferred suppliers of the Sentinel Portfolio in the Northern Territory.

Please feel free to contact me direct if you wish to discuss.”

CONSIDERATION

[17] Section 385 provides:

“385 What is an unfair dismissal

A person has been unfairly dismissed if the 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.”

[18] Section 396 says as follows:

“396 Initial matters to be considered before merits

The FWC must decide the following matters relating to an application for an order under Division 4 before considering the merits of the application:

- (a) whether the application was made within the period required in subsection 394(2);
- (b) whether the person was protected from unfair dismissal;
- (c) whether the dismissal was consistent with the Small Business Fair Dismissal Code;
- (d) whether the dismissal was a case of genuine redundancy.”

[19] As is made clear from the above provisions of the Act I must determine whether the termination of the Applicant was a genuine redundancy before considering the merits.

[20] Section 389 provides:

“389 Meaning of genuine redundancy

- (1) A person’s dismissal was a case of genuine redundancy if:
 - (a) the person’s employer no longer required the person’s job to be performed by anyone because of changes in the operational requirements of the employer’s enterprise; and
 - (b) the employer has complied with any obligation in a modern award or enterprise agreement that applied to the employment to consult about the redundancy.
- (2) A person’s dismissal was not a case of genuine redundancy if it would have been reasonable in all the circumstances for the person to be redeployed within:
 - (a) the employer’s enterprise; or
 - (b) the enterprise of an associated entity of the employer.”

Consequences of concession regarding failure to consult

[21] Given that the requirements of section 389(1)(a), 289(1)(b) and 389(2) all must be met in order for a redundancy to be a genuine redundancy within the meaning of section 389, and as Sentinel concedes that it had not complied with its obligation to consult as contained in the Real Estate Award Industry 2010, the termination cannot be a case of genuine redundancy as defined by section 389. However, it remains relevant to consider the facts as they otherwise apply to sections 389(1)(a), and 389(2) because they are relevant for the purposes of considerations under s.387.

[22] The evidence of Mr Freitas and Mr MacKinley was generally not contested by Ms Bennett. The only matter that Ms Bennett sought to raise at all by way of cross examination was with Mr MacKinley and was in regard to the employment arrangements in Darwin in May 2019, approximately four months after her termination. The evidence in regard to this issue was of no particular assistance in determining the matter. Sentinel’s submissions provided a useful summary of the unchallenged evidence of Mr Freitas and Mr MacKinley concerning the events that led to the termination.

Did the Applicant's employer no longer require the Applicant's job to be performed by anyone because of operational requirements of the employer's enterprise?

[23] Sentinel submitted that it manages 46 properties in various locations throughout Australia. Of the 46 properties, 29 are located in Queensland, nine in New South Wales, three in the Northern Territory, three in Western Australia, and one each in Victoria and the Australian Capital Territory.

[24] Sentinel submitted it employed 'property managers' to oversee the management of various properties. Sentinel said the role of a property manager is to oversee the management of various properties as directed by Sentinel, ensuring that key performance indicators contained within the Management Agreement for a particular property or properties are met.

[25] Specific duties of a property manager include:

- (a) regularly reporting to the national portfolio manager on rental arrears and budget forecasts;
- (b) advising the owner of the Asset on commercial solutions regarding property-related issues such as tenancy or vacancies;
- (c) managing and maintaining relationships with tenants and other key stakeholders;
- (d) managing ad-hoc property-related queries/issues;
- (e) review and approval of final payment of all building related invoices; and
- (f) maintaining and monitoring a tenancy schedule and register of bank guarantees.

[26] Sentinel submitted it also employs 'facilities managers' to assist with the management of the Assets. The role of a facilities manager is to provide facilities maintenance and contract management support to their assigned Assets. Specific duties of a facilities manager include:

- (a) enforcing and administering compliance with all service contracts and arrangements in relation to the Assets;
- (b) managing the day to day facilities requirements through conducting regular inspections of the Assets both physically and remotely;
- (c) managing the risk management, health, safety and security of all visitors to and occupants of the Assets;
- (d) ensure compliance with relevant legislative requirements such as those relating to OHS&E procedures, fire safety and compliance and plant registration;
- (e) monitoring tenant compliance with lease obligations and providing a monthly report on portfolio Assets;
- (f) monitoring maintenance contract expiry and renewal options; and
- (g) building and managing key relationships through regularly liaising with tenants and customers in relation to the Assets.

[27] Sentinel submitted that Ms Bennett was located in Darwin and assisted with the management of the three Assets which are located in the Northern Territory, being Arnhemica House, CasCom Centre and Jacana House, all of which are commercial/office buildings. It submitted broadly Ms Bennett's role required her to assist with the management of the NT Assets by providing facility maintenance and contract management support to each of the Assets including through regular communication with tenants, customers and stakeholders.

[28] Sentinel submitted as a result of the Review, Sentinel caused its operational structure to be reconfigured, meaning the number of property managers decreased from eight to five, and the number of facilities managers decreased from ten to nine.

[29] Sentinel said during the Review, it employed three new property managers, including Mr Bob Cooper in October 2018. Mr Cooper was allocated the NT Assets as the three Assets under his management. On 28 November 2018, Mr MacKinley (then Operations Manager of the Respondent) sent an email to Ms Bennett notifying her that the Review had resulted in a rearrangement of the management structure in relation to the NT Assets, namely that the Facilities Manager was to report to the Property Manager regarding the day to day management of the NT Assets.

[30] Sentinel submitted that from 28 November 2018, Ms Bennett reported to Mr Cooper for all day to day activities and tasks relating to the NT Assets. On 17 December 2018, Ms Bennett took annual leave, scheduled to return on 7 January 2019. Sentinel said during that time, Mr Cooper assumed most aspects of the Facilities Manager role in the Applicant's absence.

[31] Sentinel submitted that at this time it became apparent to it that Mr Cooper was comfortably covering the tasks and duties usually performed by Ms Bennett. Sentinel said through continuous dialogue with Mr Cooper, it formed the view that the Facilities Manager role for the NT Assets was no longer required.

[32] Sentinel submitted that after 21 December 2018, it became apparent that the role of Facilities Manager in relation to the NT Assets was no longer required. Sentinel said it was not able to discuss this decision with Ms Bennett as she was on annual leave, scheduled to return on 7 January 2019. Sentinel said Ms Bennett then took further sick leave until 14 January 2019.

[33] Sentinel submitted that on 14 January 2019 Mr MacKinley discussed with Ms Bennett its decision to discontinue the Facilities Manager role in relation to the NT Assets, and Sentinel had already conducted a review of possible redeployment options and concluded there were no redeployment options, and this was discussed with Ms Bennett.

[34] Sentinel submitted there is no evidence Ms Bennett made any suggestions for Sentinel to consider. The evidence of Sentinel's witnesses is that the Review, and the structural reorganisation that followed, meant the duties and responsibilities of the Facilities Manager for the NT Assets could be absorbed by the Property Manager role in Darwin, and others in Brisbane. The fact that duties of Ms Bennett were being performed by another employee does not equate to her redundancy not being genuine.

[35] The submissions filed for Ms Bennett in April 2019 as they went to section 389(1)(a) state that Sentinel had not been definitive in that they do not say that some or all of the duties have been absorbed by the property manager. It was submitted that one person could not do all of the work required, and Sentinel needed someone else in Darwin to assist with the jobs as Ms Bennett was performing too many hours.

[36] It was submitted that it was not possible for Mr Cooper to have taken on all of the tasks performed by Ms Bennett and the company could not have restructured as alleged. It

was also proposed that Mr Cooper could have been employed to replace Ms Bennett, particularly as Ms Bennett had advised Sentinel she was pregnant.

[37] Ms Bennett's statutory declaration confirmed that Ms Bennett was not a licensed property manager and therefore could not perform the tasks of a property manager that required such a licence.

[38] Ms Bennett said that Sentinel acknowledged in 2018 that with her current workload she could not complete the roles and responsibilities. Ms Bennett said that in October 2018 when Mr Cooper was employed the tasks that were previously performed in the Brisbane office (in connection with property management) were transferred to Mr Cooper bringing them to the Darwin office. Ms Bennett said that on 17 December she went on holidays and was scheduled to return on 7 January 2019, however contracted the flu and pursuant to doctor's orders she took a week off due to her illness.

[39] Ms Bennett said that she returned to work on 14 January 2019 to be met with a termination letter on the same date with 2 weeks' pay in lieu of notice. Ms Bennett said that she was informed that there was a company restructure and that her position had become redundant. Ms Bennett said she was not informed of any of the specific detail of how this alleged restructure actually took place.

[40] Ms Bennett said there was too much work for Mr Cooper to have assumed all of her tasks and all of the tasks of her job still exist.

[41] It was foreshadowed at the time that Ms Bennett's submissions were filed in April 2019 that a more definitive response would be made when Sentinel filed further submissions on this issue, however no further submissions were made for Ms Bennett of any substance going to section 389(1)(a) after the time Sentinel filed its submissions and the evidence of Mr Freitas and Mr MacKinley.

[42] I am satisfied on the state of the evidence that the facts in this case plainly fall within the meaning of section 389(1)(a), in that Sentinel had reviewed its structure and had determined it no longer required Ms Bennett's role of Facilities Manager in Darwin to be performed for the reasons provided, including that Mr Cooper was able to absorb some of those duties within his existing substantive position of property manager, and any residual overflow of facilities management work could be redirected to Brisbane. It is clear Ms Bennett's former role was no longer required to be performed by anyone because of the organisational changes implemented.

Was it reasonable in all the circumstances for the person to be redeployed within, (a) the employer's enterprise; or (b) the enterprise of an associated entity of the employer?

[43] Sentinel submitted that it explored redeployment options available within the organisation and there were none suitable for Ms Bennett, so Sentinel made the decision to end the Employment on redundancy grounds.

[44] Sentinel said it telephoned Ms Bennett at the first available opportunity after it had taken the decision to discontinue the Facilities Manager role for the NT Assets. It submitted that at that time Mr MacKinley advised Ms Bennett that redeployment had been considered, but that no positions were available.

[45] There is no evidence contrary to the evidence put for Sentinel that there were no other positions that it would have been reasonable in all of the circumstances for Ms Bennett to be redeployed into, and on that basis I am satisfied there were no such positions and Sentinel has met the requirement in section 389(2).

HARSH, UNJUST OR UNREASONABLE

[46] Section 387 provides as follows:

“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.”

[47] But for the failure of Sentinel to comply with its obligation under the Real Estate Industry Award 2010 to consult about the redundancy, Ms Bennett’s dismissal would have been a case of genuine redundancy within the meaning of the FW Act. The evidence does not establish that there was any other reason for Ms Bennett’s dismissal.

[48] As the reasons for the dismissal of Ms Bennett were not related to her capacity or conduct section 387(a) is a neutral consideration.

[49] Given the reasons for her dismissal the matters in s.387(b) and (c) are also neutral considerations as they pertain to procedural fairness in respect of a reason related to Ms Bennett's capacity or conduct which were not the reasons for termination in this case.

[50] Sentinel conceded in submissions that Ms Bennett was not afforded an opportunity to have a support person present however there was no evidence that it refused to allow Ms Bennett to have a support person present. Therefore section 387(d) is also a neutral matter.

[51] Ms Bennett's dismissal did not relate to her unsatisfactory performance, so section 387(e) is also a neutral consideration.

[52] Sentinel submitted that it is a medium sized business with a dedicated human resources department. On the evidence the size of the employer did not have a detrimental impact on the procedures Sentinel followed in terminating Ms Bennett and therefore sections 387(f) and (g) are also neutral matters.

[53] Ms Bennett's job was no longer required, and Sentinel had no role to redeploy Ms Bennett into. The evidence establishes that Sentinel's reason for termination was sound, defensible and well founded and this supports a conclusion that the dismissal was not harsh, unjust or unreasonable.

[48] However Sentinel conceded it failed to consult with Ms Bennett as required by the consultation clause in the Real Estate Industry Award. Sentinel however relied on the first instance decisions of Watson VP in *Maswan v Escada Textilvertrieb T/A ESCADA*⁵ (*Maswan*), and Binet DP in *Arnold v Real Estate Mt. Hawthorn Pty Ltd T/A Oxford Property Group*⁶ to support its submission that despite the failure to consult the dismissal could still be found not to be unfair.

[54] In *Maswan* Watson VP held that as consultation was unlikely to have negated operational reasons for the decision, or any other substantive change, it is likely that the employee would have been dismissed even if consultation had occurred. Watson VP noted that the applicant in that matter received 6 weeks' pay in lieu of notice, and he also referred to section 387(f) on the basis that the employer was a small business and the restructure in that matter was managed from Hong Kong. I also note from the decision in *Maswan* that the applicant had expressed concerns regarding the security of his employment sometime before he was advised of his termination although he was reassured by his employer at that time his job was not in danger.

[55] In a Full Bench decision in the matter of *UES (Int'l) Pty Ltd v Leevan Harvey*⁷, the majority decision of the Full Bench found that in circumstances similar to this case where section 389(1)(a) and 389(2) were satisfied, the failure to consult was unreasonable, and such a failure was also a matter relevant to consideration as to whether the dismissal was harsh, unjust or unreasonable. The Full Bench majority found the failure to consult supported a conclusion that the dismissal was harsh, unjust or unreasonable.

[56] This case has some similarity to the facts in *UES* in that the applicant was on a period of leave at the relevant time and was unaware of their employer's intention to terminate their employment. The facts in this case are that Sentinel arrived at the view that Ms Bennett's role was no longer required on 21 December 2018, some 25 days before the date Ms Bennett was informed of the decision to terminate her employment being 14 January 2019. Whilst Sentinel

submitted that it telephoned Ms Bennett at the first available opportunity after the decision had been made this does not appear to be correct. In the circumstances despite Ms Bennett being on a period of leave there was nothing to stop Sentinel writing to Ms Bennett whilst she was on leave and foreshadowing an intention to discuss the matter on her return.

[57] The evidence was Ms Bennett was on annual leave up until 7 January 2019 when she was due to return to work, however Ms Bennett was on personal leave for another week on account of having the flu. The submissions filed for Ms Bennett on 9 April 2019 included that the Respondent had been advised that Ms Bennett was pregnant. Ms Bennett included in her statutory declaration that she had advised Sentinel's Human Resources Department in October 2018 that she was pregnant and followed this up with an email on 2 November 2018. Ms Bennett was not challenged on this evidence. On the evidence Sentinel was aware from late October 2018 that Ms Bennett was pregnant.

[58] Sentinel should have been cognisant that by January 2019 Ms Bennett would be making preparations for the pending arrival of her child. Whilst it would appear from the evidence as submitted for Sentinel that Ms Bennett did not make any other suggestions as to alternatives to redundancy on 14 January when confronted with the decision already taken by that stage to terminate her, Ms Bennett was denied any real opportunity to attempt to mitigate the effects of the decision on her and did not have any time to consider how she might respond. Such a response could have included for example seeking some additional notice and the impact of termination on entitlement to Parental Leave Pay.

[59] On the facts of this case I prefer to follow the decision in *UES*. Although I accept it is unlikely the termination could have been avoided entirely, consultation may have resulted in some benefit to Ms Bennett that may have assisted in mitigating the effects of the decision on Ms Bennett, however unfortunately Ms Bennett was denied that opportunity. I have concluded that failure to consult is a matter relevant to section 387(h) that weighs in favour of a conclusion that the dismissal was harsh, unjust or unreasonable.

[60] The Full Bench in *UES* concluded that while a failure to consult does not necessarily mean a dismissal is harsh, unjust or unreasonable, in that case the failure to consult was unreasonable and was sufficient to lead to the conclusion that the dismissal was harsh, unjust or unreasonable. On the facts of this case I have reached the same conclusion.

REMEDY

[61] Ms Bennett did not seek reinstatement, and it is clear from the evidence no role currently exists that Ms Bennett could fill. I am satisfied that the reinstatement of Ms Bennett would be inappropriate. An order for the payment of compensation is appropriate in all the circumstances of the case.

[62] I am satisfied that the remuneration Ms Bennett would have received, or would have been likely to receive, if she had not been dismissed would have been at least an additional one week's remuneration, as this is an amount of time in which Sentinel could have complied with its obligations in the Real Estate Industry Award 2010 to consult with Ms Bennett about the redundancy that led to her dismissal.

[63] Evidence was not led at the hearing on precise earnings at the time of termination however based on Sentinel's Form F3 response to the application Ms Bennett's annual

earnings were \$99,750 plus superannuation. Adopting that figure and dividing it by 52 weeks arrives at a figure of \$1,918.26 as the equivalent of one week's remuneration for Ms Bennett plus 9.5% superannuation on that amount.

[64] In regard to deduction of remuneration earned as required by s.392(2)(e), Ms Bennett advised she had not received any other earnings from employment until well after the birth of her child. As such earnings were well after the period of time estimated that Ms Bennett would have remained employed there is no need to make a deduction in connection with those earnings. No deduction is necessary in connection with s.392(2)(f) for the same reason.

[65] There was no evidence that the payment of an additional week's pay to Ms Bennett would affect the viability of Sentinel. Ms Bennett was employed from November 2017 to January 2019. There is no basis for reducing the amount on the basis of length of service.

[66] Given the amount of compensation is one week and Ms Bennett was well into her pregnancy at the time of termination, I do not intend to reduce the amount on the basis of a failure on Ms Bennett's part to mitigate her loss.

[67] Misconduct did not contribute to Sentinel's decision to terminate Ms Bennett, and the amount of one week's remuneration does not exceed the compensation cap.

[68] I have decided to order the payment of compensation of \$1,918.26 gross plus 9.5% superannuation, less taxation as required by law, by Sentinel Portfolio Management Pty Ltd T/A Sentinel Portfolio Management to Ms Samantha Bennett. An order to this effect will be issued concurrently with this decision.



COMMISSIONER

Appearances:

Ms Samantha Bennett appearing on her own behalf

Mr Murray Procter of FAC Lawyers appearing for the Respondent

Hearing details:

2020,
Brisbane:
May 19

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¹ Exhibit 1.

² Exhibit 2.

³ Exhibit 3.

⁴ Exhibit 4.

⁵ *Maswan v Escada Textilvertrieb T/A ESCADA* [2011] FWA 4239.

⁶ *Arnold v Real Estate Mt. Hawthorn Pty Ltd T/A Oxford Property Group* [2019] FWC.

⁷ *UES (Int'l) Pty Ltd v Leevan Harvey* [2012] FWAFB 5241.