[2020] FWC 5051 [Note: An appeal pursuant to s.604 (C2020/7459) was lodged against this decision - refer to Full Bench decision dated 11 November 2020 [[2020] FWCFB 5841] for result of appeal.]

FairWork Commission

DECISION

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

Michael Lyle Jones

v

Karisma Joinery Pty Ltd
(U2020/3316)

COMMISSIONER CAMBRIDGE SYDNEY, 25 SEPTEMBER 2020

Unfair dismissal - summary dismissal - serious misconduct - valid reason for dismissal - significant procedural deficiencies - advice of dismissal sent by email - dismissal harsh and unjust - nominal compensation provided.

[1] This matter involves an application for unfair dismissal remedy made pursuant to section 394 of the *Fair Work Act 2009* (the Act). The application was lodged at Sydney on 19 March 2020. The application was made by *Michael Lyle Jones* (the applicant) and the respondent employer is *Karisma Joinery Pty Ltd ABN: 17 003 804 395* (the employer).

[2] The application indicated that the date that the applicant's dismissal took effect was 27 February 2020. Consequently, the application was made within the 21 day time limit prescribed by subsection 394 (2) (a) of the Act.

[3] The matter was not resolved at conciliation, and it has proceeded to arbitration before the Fair Work Commission (the Commission) in a Hearing conducted at Sydney on 23 July 2020.

[4] In a Decision issued on 17 June 2020, [2020] FWC 3123, the Commission granted permission under s. 596 of the Act, for the Parties to be represented by lawyers or paid agents. At the Hearing the applicant represented himself, and he provided evidence as the only witness called in support of the unfair dismissal claim. The employer was represented by Mr P Jury, solicitor, from the firm of *Donovan Jury Law.* Mr Jury called three witnesses who provided evidence on behalf of the employer.

Background

[5] The applicant had worked for the employer for about 5 years and 4 months. The applicant was employed as a shopfitter, and he is a qualified shopfitter and cabinetry maker. Up until October 2019, the applicant was engaged at various site locations undertaking work

on behalf of the employer. In October 2019, the applicant was moved away from site work, and he was transferred to work in the employer's Seven Hills factory. Subsequently in December 2019, the applicant was moved to work at the employer's Pendle Hill factory.

[6] The employer conducts a joinery and cabinetry business which specialises in the supply and installation of cabinetry products for entertainment, hospitality, institutional, commercial and residential projects. A significant proportion of the work undertaken by the employer is conducted on-site. The employer also operates two production factories, one located at Seven Hills and the other at Pendle Hill. At the time of his dismissal the applicant was engaged to work at the employer's Pendle Hill factory. The employer is not a small business and it has in excess of 30 employees.

[7] The applicant's employment appeared to have involved some history of difficulty associated with his approach to interpersonal engagement with others in the workplace. These difficulties arose from occasions where the applicant's interaction with other workers and his supervisors, involved blunt and curt exchanges. One particular incident occurred in October 2019, when the applicant was working on the Star City Casino site. On this occasion, the applicant and his Foreman/Supervisor Mr McVicar, were involved in a heated argument which included exchanges of aggressive insults and profanities. It is relevant to note that despite the history of apparent difficulties with certain aspects of the conduct and behaviour of the applicant in the workplace, he was not issued with any formal warnings.

[8] As a result of the October 2019 incident at the Star City Casino site, the employer decided to remove the applicant from on-site work and relocate him to work in the employer's factory. The applicant was initially moved to work at the employer's Seven Hills factory, and in December 2019 he was moved to the employer's Pendle Hill factory. The Pendle Hill factory was operated in premises that the employer rented as part of a larger factory complex.

[9] On Thursday, 27 February 2020, the applicant attended for work at the Pendle Hill factory site. The applicant parked his motor vehicle in an area of the factory premises where he and other employees had previously been instructed not to park. The applicant and other employees had been instructed that at the directive of the owner of the factory complex, they were to park their vehicles outside of the factory premises in a car parking area that was adjacent to the street.

[10] On this occasion, 27 February, the applicant had driven his utility vehicle to work and he had a motorbike strapped into the back of the utility. The applicant was concerned that if he parked the utility in the car parking area adjacent to the street there was potential for the motorbike to be stolen. Consequently, the applicant decided to park his utility with the motorbike in the area of the factory premises where he and other employees had been instructed not to park their vehicles.

[11] Shortly after the applicant had parked his utility vehicle, his immediate supervisor and the employer's Site/Factory Foreman, Mr McDade, approached him and told him that he would have to move the utility vehicle to the car parking area adjacent to the street. The applicant protested and explained that he was concerned about the potential for the motorbike to be stolen. Mr McDade rejected the applicant's protests and directed him to remove his vehicle from the factory.

[12] In response to Mr McDade's directive for the applicant to move his utility vehicle, he told Mr McDade that he was going home, and he proceeded to get into the vehicle and drive out of the factory. As the applicant was driving away from the factory he stopped and engaged in conversation with a representative of the owner of the factory complex. In this conversation the applicant apparently obtained tacit approval to park his utility inside the factory complex on this occasion. Consequently, the applicant returned his vehicle to where he had parked it inside the factory. The applicant then remained at work until the early afternoon when he was about to leave the factory slightly earlier than the scheduled finish time.

[13] At around 2 pm, the applicant spoke to Mr McDade again and advised him that he was about to finish for the day and leave the factory. Mr McDade told the applicant that he should telephone the employer's Operations Manager Mr Russell, presumably to obtain approval for the early departure.

[14] The applicant telephoned Mr Russell and advised him that he was about to leave work roughly half an hour earlier than his scheduled finish time. The telephone conversation between the applicant and Mr Russell then involved a discussion about the events of earlier that morning when the applicant parked his vehicle inside the factory and contrary to the direction given by Mr McDade. The telephone conversation between the applicant and Mr Russell degenerated into an unpleasant exchange involving aggressive and abusive language. It appeared that both men raised their voices and engaged in an unpleasant argument.

[15] The duration of the telephone conversation was 1 minute 15 seconds, and it ended with the applicant calling Mr Russell a "fucking smart arse" after which the applicant then hung up on the call. A short time later, Mr Russell called the applicant back and he indicated to the applicant that it seemed that the applicant's phone may have dropped out. The applicant then told Mr Russell that his phone had not dropped out, and that he had deliberately hung up on the call. The argument between the two men then recommenced, and the applicant delivered Mr Russell with an expletive laden tirade, and then he hung up on Mr Russell again. The applicant then left the factory and went home.

[16] After the abrupt end of the second unpleasant phone conversation between Mr Russell and the applicant, Mr Russell discussed the behaviour and conduct of the applicant with the employer's managing Director, Mr Zarantonello. Mr Zarantonello then decided that the nature and extent of the applicant's behaviour in respect of the abusive phone calls as reported to him by Mr Russell, went beyond the standard of behaviour that was acceptable and constituted serious misconduct. In addition, Mr Zarantonello contemplated the applicant's conduct in the context of what he considered to be a history of the applicant being argumentative and abusive. Mr Zarantonello then instructed the employer's Financial Controller, Mr Nasso, to prepare a termination of employment letter and email it to the applicant.

[17] At 4:53 pm on 27 February 2020, Mr Nasso sent an email to the applicant which attached the termination of employment letter. The applicant did not look at his email inbox that afternoon or evening, and he attended for work at the factory on the following morning, 28 February 2020.

[18] Upon attending for work at the factory on 28 February 2020, the applicant was greeted by Mr Russell who verbally advised of his dismissal and indicated that the termination of employment email had been sent the previous evening. The applicant indicated that he had not

looked at his emails. Mr Russell confirmed the advice of dismissal to the applicant and instructed him to pack up his personal belongings and leave the factory. Following some further brief discussion between the applicant and Mr Russell, the applicant gathered certain tools and possessions and left the factory. The applicant was unable to take all of his personal belongings at that time and he subsequently returned to the factory on Monday, 2 March to collect his remaining possessions.

[19] The termination of employment letter that was provided to the applicant indicated the applicant had been dismissed on the basis of serious misconduct that warranted summary dismissal. The applicant was paid accrued entitlements and subsequently he was paid a further week's remuneration following approaches that he had made to Mr Zarantonello.

[20] Shortly after the termination of his employment, the applicant made a worker's compensation claim which has eventually resulted in the applicant receiving weekly benefit payments. The applicant has apparently been unable to undertake other paid employment and therefore he has not attempted to find alternative employment.

The Case for the Applicant

[21] The written submissions that were provided by the applicant were reasonably brief. These submissions asserted inter alia, that the employer needed to explain and prove all of the allegations that have been made against the applicant. Further, the written submissions of the applicant asserted that the employer needed to explain in detail, how the applicant was said to have not behaved in a reasonable manner, and exactly what internal problems he allegedly caused with others in the factory. In addition, the written submissions of the applicant sought explanations for how it was the case that the applicant allegedly undermined the authority of his supervisors, and he also sought a detailed report of the language and demeanour that was allegedly used during his argument against Mr Russell.

[22] In addition to the written submissions, the applicant provided oral submissions during the Hearing. The applicant acknowledged that he had engaged in a level of misconduct. The applicant said that he "probably deserved a kick up the arse." However, he submitted that the employer had not done the right thing either. The applicant submitted that the employer was just as much to blame as he was because he had never been spoken to and properly warned.

[23] The applicant asserted that he felt that the employer also needed to take responsibility because they had handled the whole situation very poorly, and that if someone had spoken to the applicant at an earlier time the matter would have never reached the point of dismissal. The applicant said inter alia, "I'm just as bad as what they are…".

[24] The applicant also submitted that the employer had acted upon 90% lies or hearsay. The applicant said that others had yelled at him first and that caused him to yell back at them. The applicant stressed that he thought that the employer had acted upon hearsay and that if there was compensation, the employer should be required to pay the balance of his workers compensation weekly payments. The applicant concluded his submissions by stating that he had not acted as badly as had been portrayed by the employer, and if he had been that bad, he would not have continued in employment for over 5 years.

The Case for the Employer

[25] The written submissions provided on behalf of the employer summarised the factual circumstances as contended for by the employer, and were further constructed by reference to the various factors contained in s. 387 of the Act.

[26] The employer submitted that the applicant was dismissed on Thursday, 27 February 2020, and there was valid reason for the dismissal of the applicant. The valid reason for the dismissal of the applicant was said to relate to the conduct of the applicant on 27 February whereby, in the context of persistent disobedience and insolence, his refusal to follow instructions and his aggressive and foul tirade directed at Mr Russell, established sound basis for summary dismissal.

[27] The submissions made on behalf of the employer contended that there was sufficient evidence before the Commission to find that the events of 27 February 2020, represented the last occurrence of a pattern of behaviour that characterised the applicant's work history with the employer. The employer submitted that the applicant abandoned his work, refused to follow the reasonable instruction of the employer, and then he made an aggressive outburst against the employer's Operations Manager, Mr Russell. The employer submitted that in these circumstances it was entitled to terminate the applicant's employment summarily.

[28] According to the submissions made on behalf of the employer, in circumstances of disagreements and blow-ups that culminated in the applicant abandoning the workplace, it was not possible to provide prior notice that the employment was terminated. The employer submitted that the termination letter was emailed to the applicant at the earliest possible opportunity. The employer also submitted that the applicant had had numerous opportunities to respond to discussions about his behaviour.

[29] The written submissions of the employer also asserted that there was no suggestion that the employer had refused to allow the applicant to have a support person present in any of the meetings concerning his behaviour. Further, the employer submitted that its enterprise was of a medium size such that it had established procedures for Human Resource management. The employer also submitted that it did not have any dedicated HR management specialists. In addition, the employer submitted that any allegations of differential treatment of the applicant were denied, and the applicant did not have a long or satisfactory work history.

[30] Mr Jury, who appeared for the employer at the Hearing, made oral submissions in amplification of the written material. Mr Jury submitted that the evidence established that the applicant was considered a difficult and pugnacious character who was disruptive and insubordinate. Mr Jury said that the conduct of the applicant on 27 February involved the applicant abandoning his workplace, disobeying a lawful instruction, and abusing his immediate supervisors.

[31] In summary, the submissions made by the employer denied that the applicant was entitled to any remedy as his dismissal was not harsh, unjust or unreasonable. The employer submitted that the misconduct of the applicant on 27 February 2020, when considered in the context of his persistent disobedience and aggressive behaviour, established that continuation of the employment had become intolerable, and the employer was entitled to summarily dismiss the applicant.

Consideration

[32] The unfair dismissal provisions of the Act relevantly include s. 385 which stipulates that the Commission must be satisfied that four cumulative elements are met in order to establish an unfair dismissal. Section 385 is in the following terms:

> ***"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."*

[33] In this case, there was no dispute that the matter was confined to a determination of that element contained in subsection 385 (b) of the Act, specifically whether the dismissal of the applicant was harsh, unjust or unreasonable.

[34] Section 387 of the Act contains criteria that the Commission must take into account in any determination of whether a dismissal is harsh, unjust or unreasonable. These criteria are:

> *"(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."*

S. 387 (a) - Valid reason for the dismissal related to capacity or conduct

[35] In this instance, the applicant was summarily dismissed because the employer considered that his conduct on 27 February 2020, represented serious misconduct. The misconduct arose from the applicant parking his utility vehicle in the factory contrary to the

instruction given by his immediate supervisor. However, it was clear that this disobedience was not misconduct that was likely to bring the employment to an end. As with previous instances involving the applicant's disobedience, the employer appeared to tolerate a level of disagreeable behaviour that appeared to be a general reflection of the applicant's personality.

[36] The misconduct associated with the applicant's disobedience in respect to the parking of his vehicle was overshadowed by the misconduct that occurred during the two telephone conversations with Mr Russell shortly after 2 pm on 27 February 2020. In workplaces such as factories and construction sites there is generally a robust level of verbal communication between individuals that would not ordinarily be tolerated in other more genteel workplace settings. The language used by the applicant, other workers, and his supervisors would regularly involve some aggressive exchanges including the use of profanity and insult. However, there are circumstances where it becomes clear that despite the generally acceptable level of aggression and insult that might be part of regular robust exchanges, a line has been crossed.

[37] The evidence has confirmed that Mr Russell contributed to the unfortunate level of aggression and insult that was exchanged during his telephone conversations with the applicant on the afternoon of 27 February 2020. A level of tit-for-tat verbal aggression and insult between an employee and their supervisor may, in many workplace settings, be tolerated. However, in even the most robust of workplace environments, conduct whereby an employee told their supervisor that they were a fucking smart arse and twice hung up on them, would likely represent misconduct that strained the employment relationship to breaking point.

[38] In this instance, the applicant compounded his misconduct by verifying that he had hung up on the telephone call with Mr Russell, and then he proceeded to maintain the abusive and aggressive argument and hang up on Mr Russell for a second time. On any objective contemplation, the applicant's aggressive and abusive verbal attack upon Mr Russell which he maintained and exacerbated during the second telephone call, could not be justified by any level of initial contribution on the part of Mr Russell, and represented serious misconduct that was plainly contrary to any continuation of the employment relationship. In colloquial terms, this conduct amounted to the applicant sacking himself.

[39] In summary therefore, the conduct of the applicant during the telephone calls that he had with Mr Russell shortly after 2 pm on 27 February 2020, constituted serious misconduct and provided valid reason for the dismissal of the applicant.

S. 387 (b) - Notification of reason for dismissal

[40] The employer provided notification of the reasons for the applicant's dismissal by email communication. Communication of the advice of dismissal by electronic means such as email or text message, should generally be avoided. Unless there is some compelling reason like extensive distance or genuine safety concern, advice of dismissal from employment is a matter of such significance that it should be conveyed in person.

[41] Regrettably, the applicant was unaware of his dismissal on 27 February as he did not check his email inbox regularly. The applicant arrived at work on 28 February when he discovered that he had been dismissed the previous afternoon.

S. 387 (c) - Opportunity to respond to any reason related to capacity or conduct

[42] The applicant was not given an opportunity to respond to the circumstances regarding the telephone conversations that he had with Mr Russell on 27 February, before Mr Zarantonello made the decision to dismiss him. The approach that was adopted by Mr Zarantonello was severely flawed and it denied the applicant natural justice.

[43] Although Mr Zarantonello could understandably accept the veracity of what was reported to him by Mr Russell, the applicant was entitled to an opportunity to provide any explanation including any mitigating factors that Mr Zarantonello may have taken into account before he took the decision to dismiss the applicant. The decision to dismiss the applicant before providing him with an opportunity to be heard represents a fundamental injustice.

S. 387 (d) - Unreasonable refusal to allow a support person to assist

[44] In a technical sense, the employer did not unreasonably refuse to allow the applicant to have a support person present to assist at any discussions relating to dismissal because there were no such discussions. Consequently, the process that the employer adopted avoided any opportunity for the presence of a support person to assist the applicant, and can be construed to represent an unreasonable refusal to allow the assistance of a support person.

S. 387 (e) - Warning about unsatisfactory performance

[45] This factor is not relevant to the circumstances in this instance as the applicant was not dismissed for unsatisfactory performance but instead, serious misconduct.

S. 387 (f) - Size of enterprise likely to impact on procedures

[46] The employer is a medium size business operation and therefore allowance has been made for a degree of informality and some imprecision in respect to employment related matters.

S. 387 (g) - Absence of management specialists or expertise likely to impact on procedures

[47] There was evidence that the employer did not have management specialists or other expertise. Experts should not be required to ensure that fundamental fairness is observed. The employer should have adopted an approach that provided the applicant with natural justice. It is irrelevant that subsequently no mitigating factors have been identified which would have changed Mr Zarantonello's mind. The applicant was entitled to an opportunity to be heard before Mr Zarantonello made the decision to dismiss.

S. 387 (h) - Other relevant matters

[48] There was evidence that the applicant has experienced some mental health difficulties. However, there was no evidence provided which linked these mental health issues with the applicant's misconduct on 27 February 2020. It has also been noted that there appeared to be little complaint made about the applicant's work performance, as opposed to his demeanour, behaviour and interpersonal interactions in the workplace.

Conclusion

[49] The applicant was summarily dismissed for serious misconduct involving his aggressive and abusive exchanges with his supervisor Mr Russell during two telephone calls on 27 February. This misconduct was considered by the employer in the context of a history of confrontational workplace behaviour. Upon careful analysis, the employer's findings of serious misconduct have been confirmed.

[50] The misconduct of the applicant which involved his aggressive and abusive telephone calls including hanging up on Mr Russell twice, was misconduct that was plainly inconsistent with the continuation of employment and it established valid reason for the dismissal of the applicant. However, the valid reason for dismissal has been assessed and evaluated against significant procedural errors which were evident in the manner that the employer determined and implemented the dismissal of the applicant.

[51] The procedural errors in this case were matters of significance such that the applicant was denied natural justice. Even argumentative and difficult people are entitled to natural justice. There was no justification for not hearing from the applicant before the decision to dismiss was made. Further, the communication of advice of dismissal via email was entirely inappropriate and unnecessarily harsh.

[52] Therefore, although the applicant was dismissed for valid reason involving his serious misconduct, the significant procedural defects evident in respect of the determination and implementation of the dismissal of the applicant have rendered the summary dismissal to have been harsh and unjust. The applicant's dismissal has been found to have been unfair and the Commission must logically consider the appropriate remedy that should be provided in this instance.

Remedy

[53] The application document (F2) indicated that a remedy of reinstatement was sought. However, at the Hearing it appeared that the applicant was pursuing compensation as remedy for his unfair dismissal. The applicant suggested that any compensation might involve the difference between his weekly workers compensation payments and his ordinary weekly wages.

[54] In the circumstances, particularly as the employment of the applicant was irreparably damaged by the unfortunate circumstances surrounding the misconduct of the applicant on 27 February 2020, reinstatement would not be an appropriate remedy. Further, in the particular circumstances of this case which involved serious misconduct, the appropriate remedy would logically contemplate potential for reduction of any amount of monetary compensation.

[55] I have decided that compensation would be an appropriate remedy for the applicant's unfair dismissal, and I turn to the factors which involve the quantification of any amount of compensation.

[56] Section 392 of the Act prescribes certain matters that deal with compensation as a remedy for unfair dismissal. I have approached the question of compensation having regard for the guidelines that have been established in the Full Bench Decisions of, inter alia; *Sprigg*

v Paul's Licensed Festival Supermarket[1] (Sprigg); *Smith and Ors v Moore Paragon Australia Ltd* [2] and more recently, the cases of; *McCulloch v Calvary Health Care Adelaide*[3]; *Balaclava Pastoral Co Pty Ltd v Nurcombe*;[4] and *Hanson Construction Materials v Pericich*[5] (Pericich).

[57] Firstly, I confirm that an Order for payment of compensation to the applicant will be made against the respondent employer in lieu of reinstatement of the applicant.

[58] Secondly, in determining the amount of compensation that I Order, I have taken into account all of the circumstances of the matter including the factors set out in paragraphs (a) to (g) of subsection 392 (2) of the Act.

[59] There was no specific evidence provided which established that an Order of compensation would impact on the viability of the employer's enterprise.

[60] The applicant had been employed for a period of about five years and four months. The applicant would have been likely to have received remuneration of approximately $1,515.00 per week if he had not been dismissed.

[61] There was clear evidence upon which to conclude that the employment of the applicant would have finalised in accordance with a proper and just contemplation of his misconduct. Consequently, the employment of the applicant would have concluded within two weeks after his unfair dismissal.

[62] For the purposes of calculation of remuneration that the applicant would have received or would have been likely to receive if he had not been dismissed, I have considered that the employment of the applicant would have continued for a further two weeks. Therefore, the total remuneration that would have been received in the notional period of two weeks following dismissal amounted to a figure of $3,030.00.

[63] The total amount of remuneration received in alternative employment, as identified, and that which may be reasonably likely to be earned between dismissal and the making of the Order for compensation, has been calculated to be $0. There was evidence that the applicant had not sought to obtain alternative employment but had instead been in receipt of weekly workers compensation payments.

[64] Thirdly, in this instance there was established misconduct of the applicant, and consequently I have decided to make a reduction of 50% to the amount of compensation to be provided to the applicant on account of misconduct.

[65] Fourthly, 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 the applicant by the manner of the dismissal.

[66] Fifthly, the amount Ordered does not exceed the compensation cap as prescribed by s. 392 (5) of the Act.

[67] Consequently, for the reasons outlined above, taking into account all of the circumstances of the case, and having cognisance so as not to apply the approach taken in the Decision in Sprigg in a rigid, determinative manner, as was cautioned in the Decision in

Pericich, I have decided that the amount of compensation to be provided to the applicant should be a gross figure of $1,515.00.

[68] Accordingly, separate Orders [PR722942] providing for unfair dismissal remedy in these terms will be issued.

COMMISSIONER

Appearances:

Mr M Jones appeared unrepresented.

Mr P Jury, Solicitor from Donovan Jury Law appeared for the employer.

Hearing details:

2020.
Sydney:
July, 23.

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<PR722941>

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1 Sprigg v Paul's Licensed Festival Supermarket, (Munro J, Duncan DP and Jones C), (1998) 88IR 21.

2 Smith and Ors v Moore Paragon Australia Ltd, (Lawler VP, Kaufman SDP and Mansfield C), (2004) PR942856.

3 John McCulloch v Calvary Health Care Adelaide, (Ross P, Hatcher VP and Gostencnik DP), [2015] FWCFB 873.

4 Balaclava Pastoral Co Pty Ltd t/a Australian Hotel Cowra v Darren Nurcombe, (Hatcher VP, Gostencnik DP and Cribb C) [2017] FWCFB 429.

5 Hanson Construction Materials Pty Ltd v Darren Pericich, (Ross P, Masson DP and Lee C), [2018] FWCFB 5960.