



# DECISION

*Fair Work Act 2009*  
s.394—Unfair dismissal

**Julie Budgen**

v

**Verifact Traffic Pty Ltd**

(U2022/611)

DEPUTY PRESIDENT LAKE

BRISBANE, 7 SEPTEMBER 2023

*Application for an unfair dismissal remedy – shift discrepancies with time worked – serious misconduct – whether valid investigation took place – procedural fairness provided – application dismissed.*

[1] Ms Julie Budgen (the **Applicant**) brought an application to the Fair Work Commission (the **Commission**) seeking a remedy under s.394 of the *Fair Work Act 2009* (the **Act**) stating she was unfairly dismissed from Verifact Traffic Pty Ltd (the **Respondent**).

[2] The Applicant was working for the Respondent as a Traffic Controller. The Respondent terminated the Applicant's employment following an investigation which identified discrepancies in the recording of her shift data. She was terminated following a show cause process for serious misconduct and being in breach of section 6.3 of the *Verifact Traffic Control Group Enterprise Agreement 2014* (the **Agreement**). She contends that the penalty was harsh, there were flaws in the investigation and she was not afforded procedural fairness.

[3] The Applicant commenced her employment with the Respondent in December 2018. It is undisputed that the Applicant was dismissed on 22 December 2021, and she lodged her application with the Commission on 10 January 2022, within 21-days, as required by the Act.<sup>1</sup> The Applicant is protected from unfair dismissal and the dismissal did not involve a genuine redundancy.<sup>2</sup>

[4] Directions were issued and a hearing was scheduled to be listed on 16 May 2022. On 13 May 2022, the matter was held in abeyance when the Respondent had notified the Commission that there were pending criminal investigations of the Applicant with the Queensland Police. This information was confirmed, and the matter had been stayed until the criminal investigation was completed. This matter resumed on 28 November 2022. However, it was notified to Chambers that the criminal matter was now with the Magistrates Court. The matter was further delayed pending on the outcome of the criminal matter. The matter resumed on 11 May 2023 and was relisted for Directions after several delays in determining this matter.

[5] The Applicant was provided an opportunity to lodge further material when the matter resumed, however the Applicant wished to rely on the materials that she had lodged with the

Commission on 21 April 2022. The Respondent lodged their material on 31 May 2023. The matter was heard on 15 June 2023.

[6] The Applicant was represented by her friend Mr Mark Yabsley, and Mr Bruce Highfield appeared on behalf of Verifact Traffic Pty Ltd as part of the AVEDA Group of Companies for the Respondent.

## **Background**

[7] The Applicant was a full-time employee of the Respondent who had been engaged to work as a Traffic Controller since 3 December 2018.

[8] Within a 18-month period before the Applicant's dismissal, the Respondent issued two notices regarding the importance of employees accurately recording their docket.<sup>3</sup> This resulted from a prior incident where a previous employee who was engaged with the Respondent was not completing the docket with the correct times which led to that employee's dismissal.<sup>4</sup>

[9] The Respondent made an effort to communicate with all the employees regarding this incident and did so through two notifications. The first notification states:

*"Dear All,*

*In line with everyone's training, it is critical that your docket is completed accurately and most importantly **at the completion of the job.** We are having increasing incidents of docket not being completed for many hours, if not days after a shift, with incorrect times.*

*The correctly submitted docket confirms to the office and most importantly to the client, that the job has been completed. If you are on the site without a Driver, you can sign off the docket.*

*As trained, if the client is not onsite to sign off the docket, you must outline this in your comments area.*

*The Admin Team will struggle to process any docket to your Operation Team for review and investigation as to why this process has not been followed.*

*No Express Payments will be made for late docket.*

*It is your responsibility to submit the docket at the end of your job and ensure it is with the correct times."<sup>5</sup>*

[10] The second notification states:

*"Hello Everyone,*

*In line with everyone's training around our paperless electronic digital Traffio platform, it is critical that your digital docket are completed accurately at the completion of the job.*

*We are having increasing incidents of digital docket not being completed for many hours if not days after a shift with incorrect times.*

*The correctly submitted docket confirm to the office and most importantly to the client that the job has been completed.*

*Without a full name and signature from the client representative it is proving difficult to verify the finish times on the job. If a client representative is not on site at the completion of the job, then this must also be noted on the docket...The person signing as the 'Client Rep' is approving the hours worked on site and if the client is not onsite to sign off the docket you must outline this in your comments area...*

*It is your responsibility to submit the docket at the end of your job and ensure it is with the correct information and times, fatigue and meal breaks.*

*The Supervisor's Operations Team and Admin Team have been instructed that any digital docket submitted within 2 hours of finishing a job or with incorrect times will be investigated by your Operations Manager before authorised payment"*

[11] The Applicant was alleged to have engaged in time fraud by incorrectly recording docket on the system. The Respondent uses the Traffio system where a work docket is prepared and electronically generated, the start and finish times are recorded and signed off by the Supervisor, and then the client signs the approval for the job to be invoiced at the end of the job. It requires at least three signatures for the docket to be completed.<sup>6</sup>

[12] On 4 November 2021, the Applicant was identified leaving a site two and a half hours earlier than what was recorded on the docket as the finish time.<sup>7</sup> The Applicant stated that she was working with Mr Barry de Bree who was another employee at a jobsite in Ashgrove, and was instructed by Mr Kaine Kiely who was the Brisbane City Council site Team Leader to travel to Tingalpa to assist with the trucks at that site around 2:00pm. She states that the other Traffic Controller was instructed to remain at Ashgrove.<sup>8</sup> No record was made on the Traffio system.<sup>9</sup>

[13] On 5 November 2021, the Applicant was contacted by the Operations Manager, Mr Luke Ramanah regarding an issue with her docket. The Applicant stated she explained to Mr Ramanah that she was required to assist with the trucks at Tingalpa and that she was having issues with generating multiple docket at a time.<sup>10</sup>

[14] After the events of on 4 November 2021, the Respondent commenced an investigation of the Applicant by monitoring their tracking vehicle movements, recorded finish times and the time the docket were generated.<sup>11</sup>

[15] The Respondent had identified the following time discrepancies. The dates that have been bolded are dockets that were generated by the Applicant:<sup>12</sup>

<b>Date</b>	<b>Finish Time on Docket</b>	<b>Time Docket Generated</b>	<b>Time Docket Signed by the Client</b>	<b>Fraudulent Time claimed</b>
<b>4 November 2021</b>	4:00am	1:30am	1:30am	2 hours and 30 minutes
8 November 2021	5:00am	4:11am	4:11am	50 minutes
9 November 2021	5:00am	3:07am	3:07am	2 hours
10 November 2021	2:00am	1:26am	1:26am	30 minutes
15 November 2021	4:00am	2:46am	2:46am	1 hour and 15 minutes
16 November 2021	4:00am	3:00am	3:00am	1 hour
17 November 2021	4:00am	2:08am	2:09am	1 hour 50 minutes
18 November 2021	4:00am	2:05am	2:05am	1 hour 55 minutes
22 November 2021	4:00am	2:31am	2:31am	1 hour 30 minutes
25 November 2021	4:00am	11:57pm	11:57pm	5 hours
1 December 2021	4:00am	1:21am	1:22am	2 hours and 40 minutes
2 December 2021	4:00am	2:14am	2:15am	1 hour and 45 minutes
7 December 2021	4:00am	2:57am	2:57am	1 hour
8 December 2021	4:00am	2:57am	2:57am	1 hour
<b>13 December 2021</b>	4:00am	3:29am	3:30am	30 minutes
15 December 2021	4:00am	3:25am	3:26am	30 minutes
<b>Additional Time claimed:</b>				25 hours and 45 minutes

[16] After the investigation took place, the Applicant received a letter on 16 December 2021 from the Respondent stating, '*a review of shift data had highlighted discrepancies*' and that the Respondent would like to arrange a meeting to discuss concerns in relation to the Applicant's conduct and provide the Applicant with an opportunity to respond or otherwise show cause as to why the Applicant's employment should not be terminated.<sup>13</sup>

[17] The Show Cause meeting was scheduled to be held on 17 December 2021 which provided the opportunity for the Applicant to bring a support person.

[18] The show cause meeting was delayed per the request of the Applicant. The Applicant requested specific details of the inappropriate conduct allegations to prepare for the show cause meeting and that she had no reason to believe that she acted inappropriately. The show cause meeting was delayed to 21 December 2021 per the Applicant's request.<sup>14</sup>

[19] The Respondent stated that there was a discrepancy with when the shift ends and what the Applicant recorded on the docket. The Applicant had asked for further dates when this occurred. The Respondent noted three dates: 4 November 2021, 25 November 2021 and 8 December 2021.<sup>15</sup>

[20] On 21 December 2021, the Applicant attended the show cause meeting with Mr Mark Yabsley who was her support person, and her representative at the hearing. In the show cause meeting, Ms Vicki Allen and Mr Brendan Cannon were in attendance. The Applicant was notified of an audit that had been conducted, and there were discrepancies in some electronic e-dockets generated by the traffic docket system for invoicing clients by the Respondent.<sup>16</sup>

[21] After the conclusion of the show cause meeting, the Respondent had considered Ms Budgen's response which the Respondent found to be unsatisfactory. The Applicant was dismissed on 22 December 2021.

#### *Applicant's Submissions*

[22] The Applicant submitted that there was no valid reason for dismissal. The Applicant stated that there were several incidences where the time when she left the job was different to the docket time submitted. The Applicant confirmed that she was not allowed to leave site until the client directed her to.<sup>17</sup> The Applicant stated that sometimes during shifts there was not time to undertake a 30-minute break which is required on the docket, and in some instances, the job started earlier than the assigned time on job allocation where the Brisbane City Council representative who completed the docket would reflect these factors in the discrepancy of the docket.<sup>18</sup>

[23] In other instances, the team leader for the Brisbane City Council may leave site to attend other sites and would not return to sign the docket and would leave site with a predetermined finish time indicated on the docket.<sup>19</sup>

[24] Furthermore, the Applicant submits that she was not offered procedural fairness submitting:

*"1. The penalty was excessive and harsh considering her length of service, unblemished work performance and lack of evidence of the applicant. There is differential treatment compared to the other staff under same circumstances.*

*2. Procedural fairness and natural justice was not afforded to the applicant in the investigative decision-making process*

*3. Decision maker was part of the investigative process, and the decision was capricious, fanciful, spiteful and prejudice.*

*4. The investigator/decision makers failed to conduct a fair and full investigation by not conducting follow up inquired provided by the applicant based on reasonable and valid reasoning.*

*5. The Applicant was given differing dates to those nominated by the investigator prior to the meeting and this conduct is considered an ambush by the investigator. The investigation was conducted in a deceptive and predetermined manner including covert investigative methods.”<sup>20</sup>*

[25] The Applicant provided witness statements of Mr Kaine Kiely employed by the Brisbane City Council and Mr John Duke who was previously employed by the Respondent. Mr Duke and Mr Kiely did not appear at the hearing.

[26] The Applicant is seeking 8 weeks of compensation of the amount of \$9,377.28.

#### *Respondent’s Submissions*

[27] The Respondent submits that they had undertaken an extensive investigation process once it was noted that the Applicant was leaving 2.5 hours earlier than her recorded finish time on 4 November 2021.<sup>21</sup>

[28] The Respondent states that they had reviewed the recorded and actual finish times as it affected the overbilling of clients and was a serious management issue that was being addressed. The two staff members involved in the alleged misconduct (the Applicant and Mr Duke) were being monitored by the tracking of vehicle movements, checking their recorded finish times and the time the dockets were generated.

[29] The Respondent had noted the Applicant left the site early on 17 occasions within a 6-week period. A show cause meeting was held regarding the misconduct.

[30] The Respondent submits that they had a valid reason for dismissal and had undertaken an extensive investigation process confirming the misconduct. They submit that the Applicant had been given an opportunity to respond and made accommodations to her request. They seek for this application to be dismissed.

[31] Ms Vicki Allen was the CEO of the Respondent and provided a witness statement in support of the Respondent’s submissions. Ms Allen had provided evidence during the hearing.

#### **Consideration**

[32] Section 387 of the Act provides the criteria and considerations the Commission must take into account when deciding if the dismissal was harsh, unjust, or unreasonable. As required by the Act, I note the following:

- (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.

***(a) Valid reason for the dismissal***

[33] It is well established that the factual basis for the reason for dismissal will not of itself demonstrate the existence of a valid reason.<sup>22</sup> It must, as s.387(a) makes clear, be a valid reason for dismissal. A valid reason for dismissal should be “sound, defensible or well founded”<sup>23</sup> and should not be “capricious, fanciful, spiteful or prejudiced.”<sup>24</sup> As summarised by the then Deputy President Asbury in *Smith v Bank of Queensland Ltd*, a “dismissal must be a justifiable response to the relevant conduct or issue of capacity”.<sup>25</sup>

[34] The Respondent states that they had a valid reason for dismissal on the basis that the Applicant engaged in time fraud. The Applicant states that she was unable to alter the timesheet as all the dockets were signed and approved by a Brisbane City Council representative and a Verifact supervisor.<sup>26</sup> This was Mr John Duke as the Supervisor and Mr Kaine Kiely as the Brisbane City Council representative.

[35] The Commission has found on multiple occasions that misrepresenting timesheets is a valid reason for dismissal.<sup>27</sup> When there are multiple people involved potentially engaging in misconduct, it is important to consider the gravity or knowledge of the individual who had engaged in the misconduct.

[36] The Respondent was clear on its position regarding the accurate recording of the dockets prior to the investigation of Ms Budgen.<sup>28</sup> They had made two communications to its employees regarding the importance of completing dockets accurately. Ms Allen had supported this evidence in her witness statement and her oral evidence.<sup>29</sup>

[37] Furthermore, it was clear that Ms Budgen was aware that an inconsistent docket would be flagged. When Ms Budgen did not correctly enter a docket on 4 November 2021, she was contacted by Mr Ramanah who was the Operations Manager regarding the issue with the electronic docket the following day.<sup>30</sup>

[38] Even though the Traffio system did require three signatures and could only be approved by a supervisor, it does not exonerate or excuse the Applicant's involvement in the misconduct. Mr Duke had generated a majority of the dockets barring two which was done by Ms Budgen. Ms Budgen had to sign off on the dockets.<sup>31</sup> Ms Budgen did not indicate any duress when she had to sign, nor did she indicate that her signature had been forged. This indicates that Ms Budgen was complicit with the misconduct, and benefited from the misconduct by being remunerated for work that she did not undertake.

[39] The Applicant had managed to make a note on the docket on 10 November 2021. This indicated that she was capable of entering information into the Traffio system, thus she could insert any changes or indicating reasons for an early finish or change of location, or address instances where she was required to work longer hours.

[40] The Respondent had taken sound steps to establish that there were issues with the Applicant's dockets for a period of 6 weeks with 17 instances of leaving site earlier than what was recorded on the docket.

[41] Therefore, the Applicant's submission that the investigator/decision makers failed to conduct a fair and full investigation by not providing the Applicant a valid reason is not accepted on the basis that the Respondent had already obtained enough evidence to adduce the Applicant did engage in the alleged misconduct.

[42] The Respondent had a valid reason for dismissal.

***(b) Notification of reason and (c) Opportunity to respond:***

[43] Although the employer is not required to take any 'particular steps' in carrying out the dismissal, it is commonly accepted practice that notice in explicit, plain and clear terms must be given regarding termination of an employee.<sup>32</sup> It is a statutory protection derived from the principles of procedural fairness that require employees to be treated fairly before a decision is made.<sup>33</sup>

[44] I find that the Applicant was sufficiently notified of the reasons why she was called to a meeting to discuss inappropriate conduct on 16 December 2021. This was evident through the email correspondence between the Applicant and Respondent once a show cause letter was issued.

[45] The Applicant was informed in the letter dated 16 December 2021 stating the reason for the meeting was about 'a review of shift data [highlighting] discrepancies'<sup>34</sup>.

[46] The Applicant responded to the letter via email on 16 December 2021 at 10:28pm stating:

*'to respond and for the purpose of natural justice and fairness, please supply specific details of the inappropriate conduct allegations so I can prepare prior to the scheduled meeting taking place. I am perplexed to know what this matter refers to as I have no reason to believe that I have acted inappropriately.'*



*I respectively ask for an extension of time to receive the details as requested of the allegations allowing adequate time to prepare a submission prior to the meeting.*

*I have previous family commitments on Friday afternoon being school holidays and cannot attend at the allocated time'.<sup>35</sup>*

[47] The Respondent replied to this email providing further clarity on 17 December 2021:

*'Good morning Julie,*

*As outlined in the letter, this is in regards to shift data discrepancies. Verifact are seeking further information from you regarding discrepancies of shift end and docket sign off...<sup>36</sup>*

[48] The Applicant then asked for specific dates, which were provided:

*'Hi Julie,*

*Example of dates:*

- *4 November 2021*
- *25 November 2021*
- *8 December 2021...<sup>37</sup>*

[49] The Applicant was provided information about her misconduct on three different occasions regarding the shift discrepancies and the docket sign off. I find that this was clearly and explicitly stated on 17 December 2021 by the Respondent.

[50] Furthermore, the Applicant was provided an opportunity to respond. The Applicant had asked for an extension to prepare for her show cause meeting and the Respondent had accommodated the request. The question of procedural fairness of the show cause meeting itself will be dealt with in other factors.

[51] This factor does not weigh in favour of finding that the dismissal was unfair.

***(d) Unreasonable refusal by the employer to allow the Applicant a support person:***

[52] There is no positive obligation on an employer to offer an employee the opportunity to have a support person and is only relevant when an employee asks to have a support person present in a discussion relating to dismissal and the employer unreasonably refuses.<sup>38</sup>

[53] The Applicant had Mr Yabsley attend the show cause meeting as her support person. The Applicant was not refused a support person during the dismissal process.

[54] This factor does not weigh in favour of finding that the dismissal was unfair.

*(e) Warning of unsatisfactory performance before the dismissal:*

[55] Unsatisfactory performance was not raised as the reason for dismissal.

*(f) Size of employer's enterprise, and (g) impact on procedures caused by absence of dedicated human resources:*

[56] The Respondent is an employer with a human resources department. The Respondent followed its own procedures with respect to the information gathering process. An investigation and disciplinary process was followed. The decision to terminate her employment was then made by the appropriate individual. Whether they properly exercised their discretion is a matter considered in respect of other factors.

*(h) any other matters that the FWC considers relevant:*

*Serious Misconduct*

[57] Regulation 1.07 of the Fair Work Regulations provide the definition of serious misconduct:

*(2) For subregulation (1), conduct that is serious misconduct includes both of the following:*

*(a) wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment;*

*(b) conduct that causes serious and imminent risk to:*

*(i) the health or safety of a person; or*

*(ii) the reputation, viability or profitability of the employer's business.*

*(3) For subregulation (1), conduct that is serious misconduct includes each of the following:*

*(a) the employee, in the course of the employee's employment, engaging in:*

*(i) theft; or*

*(ii) fraud; or*

[58] It has been noted that several repeated misrepresentations on timesheets are form of theft from the employer. If the time theft or time fraud is consistently repeated, it will likely be found to be misconduct.<sup>39</sup> The Respondent had obtained 17 instances where the Applicant had engaged in time discrepancies. I consider this factor in determining whether the dismissal was harsh, unjust or unreasonable.

*Procedural Fairness*

[59] The Applicant has raised issues of procedural fairness in regard to its investigation process and the show cause meeting.<sup>40</sup>

(a) Investigation process

[60] The Applicant submits that the people she had identified should have been followed up.<sup>41</sup> Although Mr Kiely and Mr Duke would not be of assistance to the Respondent, there were 4 other people who had shifts with the Applicant and Mr Duke who could have aided the investigation.

[61] To reiterate the Applicant's submission, the Applicant stated that she was given permission by the client to leave site early, each shift is unique and that sometimes breaks could not be taken and clients would take that into consideration when leaving the site early. The Applicant confirmed that she was not allowed to leave site until the client directed her to.<sup>42</sup>

[62] The question is whether this would have an impact on the outcome of the investigation. If questioning the 4 other people would have made an impact on the outcome of the investigation, the Applicant would have been denied procedural fairness.

[63] I find that further investigations would not have impacted the outcome of the investigation. Even if the Applicant's argument was accepted that Mr Kiely had given the Applicant approval to finish her job early every time, it would not alter the fact that she was incorrectly marking the docket.

[64] Furthermore, I do not find that there was a denial of procedural fairness through Ms Allen being a part of the show cause meeting and the investigation process.

[65] In practice, human resources practitioners are commonly involved in investigating misconduct as well as being a part of the show cause meeting. It would be antithetical for the person investigating the misconduct not to be a part of the show cause meeting or advise the person facilitating the show cause meeting what the outcomes of the investigation were. This is a step which assists in establishing a valid reason for dismissal and that it was a sound, defensible or well-founded reason.

(b) Show cause meeting

[66] The Applicant states that she was not offered a proper opportunity to explain or respond to allegations raised within the show cause meeting which prevented procedural fairness.<sup>43</sup>

[67] There were two aspects of the show cause meeting that the Applicant claimed were flawed on the basis that she did not have an opportunity to address the allegations.

[68] The Applicant raised an issue that photographs taken of her leaving the site early were briefly shown but not provided.<sup>44</sup> Secondly, the remaining instances of misconduct that were not identified in the email on 17 December 2021 were not provided to Applicant until the show cause meeting.<sup>45</sup>

[69] There were large discrepancies with one instance of the Applicant leaving site 5 hours earlier than listed on the docket. The Applicant explained that it was a rainy night and that she was instructed by Mr Kiely to head home.<sup>46</sup> The other reason the Applicant provided was that

she was instructed on 4 November 2021 by Mr Kiely to attend a site in Tingalpa to assist with the Brisbane City Council.<sup>47</sup>

[70] The Applicant also stated that she was unable to take a 30-minute break, which was required on the docket, and in some instances the job started earlier than the assigned time on job allocation. As a result, the Brisbane City Council representative completed the docket at a later estimated time to reflect these factors.<sup>48</sup>

[71] Even if her explanations are accepted, there were still large inconsistencies with the docket time and Ms Budgen's actual finishing time. 12 out of 17 instances were at least 1 hour earlier than her finish time and 6 out of 17 instances were at least 1 hour and 45 minutes earlier than the docket finish time.

[72] Furthermore, the Applicant states that management did not take reasonable action regarding notifying her of the misconduct from 4 November 2021 and had worked 22 shifts until 20 December 2021.<sup>49</sup> The Respondent raised this with the Applicant in the show cause meeting and was not dismissed immediately upon uncovering the discrepancies. Ms Budgen was put on notice to provide an explanation of the allegations.

[73] During the show cause meeting, the Applicant did not deny the conduct nor was she remorseful or showed any contrition or acknowledge that she would record the dockets accurately in the future. The Applicant did not offer any apology or display any remorse for her conduct. If she had expressed in some form that she did not know that she was incorrectly lodging the dockets, it could have been accepted that the Applicant would correct the behaviour if she was given notice and an argument of harshness could have been considered.

[74] I find that the Respondent should have provided the photographs for Ms Budgen's consideration. However, the Applicant was provided an opportunity to address the inconsistencies of the docket time and sufficient reasons were not given in excusing the misconduct.

## **Conclusion**

[75] Upon a balanced, objective and realistic evaluation of all the evidence relating to the dismissal, I find that the Respondent's action in terminating the Applicant for fraudulently claiming time worked when she was not working was the correct decision.

[76] In making the decision to terminate the Applicant's employment, the Respondent acted proportionately to the gravity of the Applicant's breach and procedural fairness was provided. The dismissal does not reach the threshold of being harsh, unjust and unreasonable.

[77] I find that the Applicant was not unfairly dismissed under s.394 of the Act. I Order that the Application be dismissed.



DEPUTY PRESIDENT

*Appearances.*

Mr M. Yabsley appearing on behalf of the Applicant.  
Mr B. Highfield appearing for the Respondent.

*Hearing details:*

15 June 2023  
Brisbane

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<sup>1</sup> *Fair Work Act 2009* (Cth) s.394.

<sup>2</sup> *Ibid* s.396.

<sup>3</sup> Transcript of Hearing PN389 – 398.

<sup>4</sup> *Ibid*.

<sup>5</sup> Verifact Traffic – Communication: Docket Submission.

<sup>6</sup> Witness Statement of Julie Budgen 6.

<sup>7</sup> Respondent’s Form F3.

<sup>8</sup> Witness Statement of Ms Julie Budgen 8.

<sup>9</sup> Witness Statement of Ms Vicki Allen 4.

<sup>10</sup> Witness Statement of Ms Julie Budgen 8.

<sup>11</sup> Respondent’s Form F3 [3]-[4].

<sup>12</sup> *Ibid* Attachment 1.

<sup>13</sup> Witness Statement of Julie Budgen 4; Inappropriate Conduct Allegations letter dated 16 December 2021.

<sup>14</sup> *Ibid* Annexure C.

<sup>15</sup> *Ibid* Annexure D.

<sup>16</sup> *Ibid* 5.

<sup>17</sup> Transcript of Hearing PN82-88.

<sup>18</sup> Transcript of Hearing PN78 – PN88,

<sup>19</sup> *Ibid*.

<sup>20</sup> Applicant’s Outline of Submissions 22.

<sup>21</sup> Respondent’s Form F3.

<sup>22</sup> *Raj Bista v Group Pty Ltd t/a Glad Commercial Cleaning* [2016] FWC 3009.

<sup>23</sup> *Selvachandran v Peteron Plastics Pty Ltd* (1995) 62 IR 371, 373.

<sup>24</sup> *Ibid*.

<sup>25</sup> [2021] FWC 4 at 118.

<sup>26</sup> Witness Statement of Julie Budgen 13.

<sup>27</sup> *Mr Karl Mckeown v The Smith's Snackfood Company Pty Ltd* [2023] FWC 91 [213], *Jonathan Thein v Melbourne Health* [2020] FWC 3628 (Wilson C), *Paul Goodwin v Wyndham City Council* [2023] FWC 893 at 134 (Bisset C).

<sup>28</sup> Verifact Traffic Communication: Docket Submission

<sup>29</sup> Verifact Traffic Communication: Digital Docket Completion and Submission

<sup>30</sup> Witness Statement of Ms Budgen 8.

<sup>31</sup> Transcript of Hearing PN38-44.9

<sup>32</sup> *Chubb Security Australia Pty Ltd v Thomas* (2000) AIRCFB at [41] Print S2679 (McIntyre VP, Marsh SDP and Larkin C); *Crozier v Palazzo Corporation Pty Ltd* [2000] 98 IR 137 at 73 (Ross VP, Acton SDP and Cribb C); *Previsic v Australian Quarantine Inspection Services*, Print Q3730 (AIRC, Holmes C, 6 October 1998). The principles still apply to the provisions of s.389(b) and (c) of the *Fair Work Act 2009* (Cth), see *William Eskander v Visy Board Pty Ltd* [2021] FWC 3122 (Harper-Greenwell C) upheld in [2021] FWC 6036.

<sup>33</sup> *Crozier v Palazzo Corporation Pty Ltd* [2000] 98 IR 137 at 73 (Ross VP, Acton SDP and Cribb C)

<sup>34</sup> Witness Statement of Julie Budgen, Annexure A

<sup>35</sup> *Ibid*, Annexure C.

<sup>36</sup> *Ibid*.

<sup>37</sup> *Ibid*, Annexure D.

<sup>38</sup> *Explanatory Memorandum to Fair Work Bill 2008* at para. 1542

<sup>39</sup> *Mr Karl Mckeown v The Smith's Snackfood Company Pty Ltd* [2023] FWC 91 [213], *Jonathan Thein v Melbourne Health* [2020] FWC 3628 (Wilson C), *Paul Goodwin v Wyndham City Council* [2023] FWC 893 at 134 (Bisset C).

<sup>40</sup> Applicant's Outline of Submissions 22.

<sup>41</sup> *Ibid*.

<sup>42</sup> Transcript of Hearing PN82-88.

<sup>43</sup> Witness Statement of Julie Budgen 19.

<sup>44</sup> *Ibid* 17.

<sup>45</sup> *Ibid* 18.

<sup>46</sup> *Ibid* 11.

<sup>47</sup> *Ibid* 8-9.

<sup>48</sup> Transcript of Hearing PN78 – PN88.

<sup>49</sup> Witness Statement of Julie Budgen 15, 20.