



DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Rebecca Whiffen

v

Sense Rugby Pty Ltd
(U2023/6363)

COMMISSIONER MCKINNON

SYDNEY, 4 OCTOBER 2023

Application for an unfair dismissal remedy – whether dismissal was consistent with the Small Business Fair Dismissal Code – whether dismissal was harsh, unjust or unreasonable – unfair dismissal – reinstatement not appropriate

[1] Mrs Rebecca Whiffen was employed by Sense Rugby Pty Ltd (Sense Rugby), a small business employer based in Fairy Meadow, New South Wales. She was employed in the role of Senior Administration and Reception from 30 March 2021 until 29 June 2023, when she was dismissed for misconduct.

[2] On 13 July 2023, Mrs Whiffen applied in time for an unfair dismissal remedy under section 394 of the *Fair Work Act 2009* (the Act). Mrs Whiffen is protected from unfair dismissal because she completed the minimum employment period of at least 12 months with Sense Rugby; was covered by a modern award; and her annual rate of earnings was below the high income threshold.

[3] The dismissal was not a case of genuine redundancy.

[4] The question is whether I am satisfied that the dismissal was consistent with the Small Business Fair Dismissal Code, and if not, whether I am satisfied that the dismissal was harsh, unjust or unreasonable.

[5] I am satisfied that the dismissal was not consistent with the Small Business Fair Dismissal Code. I am also satisfied that the dismissal was unreasonable. Mrs Whiffen has been unfairly dismissed. These are my reasons.

The facts

[6] Mr Jesse Parahi and Mrs Carlien Parahi established Sense Rugby as a rugby-based occupational therapy business for children with disabilities. In January 2019, they became friends with Mrs Whiffen and her husband Mr Ryan Whiffen after meeting through family day care. The families caught up regularly, went camping, and in March 2021, Sense Rugby offered Mrs Whiffen a job.

[7] For the majority of her employment, Mrs Whiffen worked 4 days per week, including occasional additional hours and part of the week working from home. She took her job seriously and wanted to do the best for the business. Her range of duties included accounts, general clinic administration and reception duties, waitlist and appointment scheduling, and working on Client Service Agreements (CSAs).

[8] In January 2022, the scope of Mrs Whiffen's role was narrowed when another employee took on 'out of area' and franchisee enquiries. A further narrowing of the role occurred in June 2022, when Ms Carla Mikic was employed to work 2 days per week to job share with Mrs Whiffen, assisting with clinic administration including by taking over appointment scheduling. Accounts became the focus of Mrs Whiffen's role, although she continued to deal with local enquiries and Holiday Group bookings and enquiries, as well as reception when she was in the clinic. She also assisted with the training of Ms Mikic, including in relation to scheduling duties.

[9] After a few months, Mrs Parahi asked Mrs Whiffen to withdraw from providing assistance to Ms Mikic in relation to scheduling. Mrs Whiffen found the instruction difficult to action, including because she noticed inconsistencies in Ms Mikic's work. It seems likely this prompted a later oral reminder from Mrs Parahi to Mrs Whiffen to the effect that she should "stay within her lane" and was not required to oversee or provide any further assistance with appointment scheduling to Ms Mikic.

[10] Mrs Whiffen's performance appraisal on 18 January 2023 saw no concerns raised. Mrs Whiffen asked Mrs Parahi for a review and reassessment of job roles due to her heavy workload. On 26 January 2023, Mrs Parahi began preparing a document headed "Our expectations from our administration team". The document set out the respective roles of the Parahis, Ms Mikic and Mrs Whiffen.

[11] On 7 or 21 February 2023 (the precise date is not established), the administration team met to discuss their respective roles and responsibilities. Mrs Parahi led the meeting, reading from her prepared document but without giving a copy to each person. Mrs Whiffen found the meeting confronting, particularly when the issue of her entering a clinical appointment and the potential consequences of this action was raised in front of Ms Mikic. She became quite upset.

[12] On 16 March 2023, Ms Mikic and Mrs Whiffen were both busy. Ms Mikic was having difficulty with an invoicing issue and emailed Mrs Whiffen, asking if she could take on the invoicing until the new OT's provider number was received. Mrs Whiffen resisted. She could not understand how Ms Mikic was confused, as they had been through the issue previously. She copied instructions that had previously been given to Ms Mikic in a 'Slack' conversation and responded by asking Ms Mikic to invoice as normal, suggesting a slight adjustment if it was required. Ms Mikic reiterated her confusion and said she didn't really have time to keep questioning accounts things that week. She again asked Mrs Whiffen to take on the invoices for now. Mrs Whiffen did not agree to the request. After explaining her concerns and giving a further instruction, she wrote: "I understand you're busy, believe me I am too. But could you please continue to them [*sic*] invoice as normal?"

[13] Mrs Parahi was copied into the email exchange above. She intervened and asked Mrs Whiffen to take on the invoicing as requested. She wrote that the back and forth was not within what they had discussed at length regarding “our values”. She then asked:

“In the meantime I would like to be CC’d in to all communications between yourselves and between clinicians. I am doing this because as has been communicated we are a values based business that values culture and I’m concerned with the direction that these conversations are taking. Discuss it with me directly if you’re not keeping up with workload.”

[14] Mrs Whiffen acknowledged the request and apologised that the communication had gotten out of hand. Ms Mikic also apologised for how she had worded her request to Mrs Whiffen.

[15] On 5 May 2023, Ms Mikic sent an email to Mrs Whiffen as part of their usual handover. She told Mrs Whiffen that she had been thinking about the approach to CSAs, something they worked on together that was mostly within Mrs Whiffen’s responsibility. She also wrote, in relation to sports invoicing:

“I really appreciate your help in the busy times, but when not mass scheduling I have time. If it’s really hectic and I can’t get around to them, I’ll let you know before you clock off. Is that okay with you?”

[16] Mrs Whiffen replied on 9 May 2023 with a note to say that they could discuss or confirm the process at their next “Admin meeting” scheduled for 23 May 2023.

[17] On 2 June 2023, Ms Mikic sent an email to Mrs Whiffen with a draft Admin meeting agenda and attachments for 6 June 2023, including an attachment about the approach to CSAs. During and immediately prior to the Admin meeting that followed on 6 June 2023, agreement was reached between them that Ms Mikic would take over Holiday Groups to ease Mrs Whiffen’s workload. Mrs Whiffen sent Ms Mikic a spreadsheet for use with Holiday Group bookings and confirmations. She explained that it was incomplete and asked if Ms Mikic wanted her to update it. Ms Mikic said, in words to the effect: “No, just give me what you’ve got and I can take it from here”. They went into the Admin meeting and explained their agreement to Mrs Parahi. Mrs Parahi was supportive and confirmed the separation of duties.

[18] On 13 June 2023, Mrs Whiffen was working from home. She messaged Ms Mikic and said to let her know if she needed any help. She later messaged asking if they could “take a moment together to double check our Holiday confirmations are up to date”. She said she was happy to follow up or action any required, and just needed to confirm what was outstanding. Ms Mikic responded to say that the “holiday biso” was all up to date and that Mrs Whiffen could “cross it off” her list as she was “on top of it for now”.

[19] On 15 June 2023, Ms Mikic circulated a handover for the previous day and a draft agenda for the next Admin meeting. The handover included a note to the effect that she had “100% cross-checked” the Holiday Groups and that Mrs Whiffen had nothing to worry about, that Ms Mikic was across it and would let her know if she needed help. Mrs Whiffen responded:

“Sorry I want to leave this with you however in booking someone in I noticed Ethan was missing from Cliniko & then a few others. Could we please confirm where everyone is at via the spreadsheet?”

I’ve not followed up OT confirmations or client confirmations for a while, so I just need to check if you have... I just don’t want to miss anyone by assuming the other person has attended to it.

Cliniko numbers now match the Snapform list (below and copy printed) we just need to establish if all the below have been confirmed by OTs and clients have received confirmation of their booking. Perhaps give the OTs the printout??”

[20] Ms Mikic responded, including to say:

“It’s obvious you have a better grasp on this, would you prefer to take the process back rather than have me doing this?”

[21] In reply, Mrs Whiffen suggested a reversal of the agreement of 6 June 2023. She wrote to Ms Mikic that they could “split tasks as follows for the remainder of term”, where Ms Mikic would take on Sense Rugby enquiries and Mrs Whiffen would do Holiday Group enquiries. She then wrote:

“I’d love to say I will do it all, but I’m honestly feeling burnt out these days, especially with Ryan travelling so much. I hope the above will work for you, please feel welcome to give me a buzz if you want to have a quick chat x”

[22] Ms Mikic replied:

“The reason we split things & I offered & you agreed, for me to take Holidays on & you continue with SR was due to the above. & you are more familiar with SR. I’m happy & capable of continuing to do so & would actually prefer to stick with our agreement if I’m honest. But if it’s really grating on you, I’m fine to do what you’ve asked instead.”

[23] Mrs Whiffen replied:

“Ok, I’ll leave Holidays with you as requested. Sorry I needed to bring up the missing clients in Cliniko as I didn’t want families to miss out or groups to become overbooked. I can’t help my Hawk Eyes!”

[24] Ms Mikic replied:

“How about giving Hawk Eyes a rest, particularly while you’ve go *[sic]* so much on home & here. If mistakes happen & I don’t pick them up so be it, won’t be the endo f *[sic]* the World.”

[25] This exchange was upsetting to Ms Mikic. The next Admin meeting was scheduled for 20 June 2023 but Ms Mikic did not want to meet with Mrs Whiffen. On the morning of 20 June 2023, she wrote to Mrs Parahi complaining about the “continued interference & hypocrisy *[sic]*

with” the Holiday Group bookings from Mrs Whiffen. She separately sent Mrs Parahi and Mrs Whiffen a message to ask if the meeting could be postponed to either Thursday or the following Tuesday.

[26] Unaware that Ms Mikic was upset, Mrs Whiffen replied to say:

“Hey Carla,

Carlien is in NZ next week, then it’s Holiday Groups, so I think it’s important we catch up today. I’ll keep you posted how I’m travelling.

Bec”

[27] Ms Mikic responded:

“Thanks Bec, but as we agreed two weeks ago, you handed over the Holiday Groups reigns to me completely, therefore I’d prefer to discuss Holiday Groups directly with Carlien.

I’ll pass on any information to you that is relevant.”

[28] Mrs Whiffen did not see this last response, as she had an appointment for her child and was then on her way to the office. When she arrived, she saw Ms Mikic leaving. Ms Mikic told her that she was stepping out until Mrs Parahi was ready. Mrs Whiffen proceeded to set up for the Admin meeting in the afternoon at approximately 1.00pm or 1.30pm and waited for the others. Mrs Parahi arrived and told her that the meeting would be going ahead without Ms Mikic.

[29] Mrs Parahi proceeded to tell Mrs Whiffen that she was being issued with a warning for not following processes. She acknowledged the absence of malicious intent but said that Mrs Whiffen’s actions were considered bullying, for following up and not trusting her co-worker. Mrs Parahi also said she would look into arranging mediation for Mrs Whiffen and Ms Mikic. In the context of recent discussion about Mr Whiffen’s new business and its potential effect on Mrs Whiffen’s availability for work, she asked Mrs Whiffen: “Do you really want to be here anymore?”

[30] Mrs Whiffen responded by saying that she loved her job and had no intention of leaving. She was open about her future intentions, including potentially dropping a day in 2024. She became anxious and had difficulty breathing, and Mrs Parahi got her a glass of water. Once calm, Mrs Whiffen apologised for any alleged non-compliance and said that her only intentions had been to confirm that her unfinished bookings had not accidentally been overlooked.

[31] Mrs Parahi asked Mrs Whiffen, in words to the effect:

“Don’t you trust us? Don’t you think Jesse and I know how to run a business?”

[32] Mrs Whiffen again said that she only had best intentions at heart and that because of their friendship, she felt a strong passion to look out for them and the company. She asked Mrs

Parahi to retract the warning with her assurance that she would “stay in her lane”. Mrs Parahi did not agree to the request.

[33] After the meeting, Mrs Whiffen came across Ms Mikic in the clinic and apologised. She said that her checking of bookings was never meant to come across in a mean or untrusting way. Ms Mikic replied, in words to the effect: “You need to pull your head in” and “Don’t you think I care about the clients too?”

[34] On 21 June 2023, Mrs Whiffen was working at the front desk when she received multiple enquiries about a client email to the effect that Holiday Group bookings were “filling up fast”. There was an issue with the link in the email, so Mrs Whiffen tried to fix it. She then told Mrs Parahi what she had done and asked if she should respond to the various client enquiries or leave them for Ms Mikic the next day. Mrs Parahi responded by copying her in on a message to Ms Mikic allocating the task.

[35] At 5.34pm on 21 June 2023, Mrs Whiffen sent a handover email to Ms Mikic:

“HOLIDAY GROUPS – Carlien sent reminder text, calls/texts received as issues selecting boxes on intake (now fixed). As per Carlien, I’ve left dashboard texts for your response.

The below clients phoned to confirm their group selections:

- [content omitted] ...”

[36] At 5.41pm on 21 June 2023, the promised warning letter was sent by Mrs Parahi to Mrs Whiffen through its third-party software program, Happy HR. The warning went to her “non-focused emails” and she did not see or read the letter until the following morning. The letter summarised the meeting of 20 June 2023 about her not completing set processes as required, despite many conversations about how the role was split (giving the example of the Slack conversation on 15 June 2023 about Holiday Groups). The warning letter stated:

“This was discussed as inappropriate and has been discussed in 2 meetings previously. Carlien discussed that there is no need to complete tasks or roles or follow up with anyone when this has *[sic]* not in Rebecca’s job roles. To confirm, Rebecca’s roles are to:

- Manage accounts
- Manage Sense Rugby/AFL sign ups and enquiries.”

[37] On the morning of 22 June 2023, Mrs Parahi, Ms Mikic and Mrs Whiffen emailed each other about the email link error of the previous day. Ms Mikic asked about whether it had happened before and Mrs Parahi replied that it was fixed as she had redone the question. Ms Mikic asked for more information and Mrs Parahi replied to say that she was not sure what happened but that she just redid it altogether. Mrs Whiffen chimed in:

“I went into it yesterday to try to damage control (sorry if I overstepped, I felt it was warranted given the flood of calls I was receiving) there was an extra question box (re Art) within the multiple selection choices. I deleted the extra question box.”

[38] On 26 June 2023, Mrs Whiffen was again on reception. She was asked by two clients to make a Holiday Group booking before they missed out. She asked the OTs on duty if this was okay and then made the bookings for them with a note “intake pending”. She also resent the intake link so they could confirm their booking asap. In her morning handover email to Ms Mikic the next day, she detailed what she had done in relation to Holiday Groups.

[39] At 11.03am on 27 June 2023, Ms Mikic wrote to Mrs Parahi complaining about Mrs Whiffen’s interference in relation to Holiday Groups.

[40] At 11.39am on 27 June 2023, Mrs Parahi sent an email to Mrs Whiffen in relation to the handover email of 26 June 2023:

“Hi Bec,

Unsure why these holiday bookings were completed by yourself after our conversations last week and formal process around holiday groups? Really thought it was clear.”

[41] Mrs Whiffen replied, explaining what she had done and why. She apologised if it was too much and said that she thought it was okay as she was there with the clients in person while she did it at their request. She said she felt sick to the stomach and was shaking thinking that she had disappointed Mrs Parahi again. She wrote: “If overstepping I really do apologise, I will advise clients they will need to wait for Carla in future, they just didn’t want to forget or lose the spots.”

[42] Mrs Parahi replied:

“We discussed clearly:

- Any holiday group enquiries are passed on to Carla without confirmation, changes on Cliniko or the spreadsheets.

Groups will not fill up if Carla manages it because the enquiries is handled by 1 person and can be confirmed one at a time without any confusion so losing spots is not a threat.

It is not about disappointing me or clients. It is about not engaging with the processes clearly set up after many discussions about this and a formal warning.

Can we have a meeting regarding this on Thursday at 10.30?”

[43] Mrs Whiffen replied:

“Apologies, I genuinely thought it was ok to add to group as I was following OTs instructions, and I thought I was doing right by the client’s direct request.

I mustn’t have taken away the full understanding of below from our meeting last week, I honestly don’t recall being advised of point number one, although I was rather upset

at the time so perhaps it was discussed but my head was obviously a little clouded at the time.

In reading the below in writing, it does make it clear the reasonings to have enquiries handled by one person.

All future enquiries (regardless of in person) will be referred directly to Carla and I will take no further action as per below instructions.

If you want to discuss further, I can meet with you on Thursday.”

[44] Mrs Parahi responded to say that she would still like to meet on Thursday.

[45] On 29 June 2023, Mr and Mrs Parahi met with Mrs Whiffen. Mrs Whiffen was told that her employment was terminated. She asked them to reconsider, questioning their reasoning and apologising again.

[46] On 30 June 2023, Mrs Parahi issued a letter of termination to Mrs Whiffen through the “Happy HR” platform. The reason for termination was “due to continuous lack of engagement with set processes and procedures, concerns regarding conduct towards other staff members in the team and completion of roles specifically requested not to.”

[47] Approximately one month later, Mrs Whiffen was paid outstanding wages and entitlements, including 2 weeks wages in lieu of notice.

Was the dismissal consistent with the Small Business Fair Dismissal Code?

[48] At the time of dismissal, Mrs Whiffen was one of 9 employees employed by Sense Rugby. While Sense Rugby also has franchise relationships with other entities, there is no evidence that these are associated entities. Accordingly, Sense Rugby was a small business employer for the purposes of the Act at the relevant time.

[49] The Small Business Fair Dismissal Code (the Code) applies to small business employers. Because Mrs Whiffen was not dismissed for serious misconduct, the Code applies as it relates to “other dismissal”:

“Other Dismissal

In other cases, the small business employer must give the employee a reason why he or she is at risk of being dismissed. The reason must be a valid reason based on the employee’s conduct or capacity to do the job.

The employee must be warned verbally or preferably in writing, that he or she risks being dismissed if there is no improvement.

The small business employer must provide the employee with an opportunity to respond to the warning and give the employee a reasonable chance to rectify the problem, having regard to the employee’s response. Rectifying the problem might involve the employer

providing additional training and ensuring the employee knows the employer's job expectations.

Procedural Matters

In discussions with an employee in circumstances where dismissal is possible, the employee can have another person present to assist. However, the other person cannot be a lawyer acting in a professional capacity.

A small business employer will be required to provide evidence of compliance with the Code if the employee makes a claim for unfair dismissal to Fair Work Australia, including evidence that a warning has been given (except in cases of summary dismissal). Evidence may include a completed checklist, copies of written warning(s), a statement of termination or signed witness statements.”

[50] The difficulty for Sense Rugby is that while it gave Mrs Whiffen a warning about her conduct in relation to “not completing set processes as required, despite many conversations about how the role was split”, it never told her that she was at risk of being dismissed if there was no improvement in her conduct. The closest the business came was telling Mrs Whiffen that her failure to follow instructions would lead to “performance management”, was “serious” and could have “serious consequences”. This was not sufficient for the purposes of consistency with the Code because it did not raise the prospect of dismissal directly.

[51] I am satisfied that the dismissal was not consistent with the Code.

Was the dismissal harsh, unjust or unreasonable?

[52] Whether a dismissal was harsh, unjust or unreasonable depends on an assessment of all the relevant facts and circumstances, including those set out in section 387 of the Act. Those are considered in turn.

Was there a valid reason for the dismissal related to capacity or conduct, and was it notified to Mrs Whiffen?

[53] Ms Whiffen's conduct in repeatedly failing to do as she had been asked and overstepping the boundaries that had been set for her was a valid reason for the dismissal. This included entering a clinical session after having been told directly that this was not acceptable, and continually checking Ms Mikic's work in relation to the Holiday Groups after it was made clear that this was not appropriate and not her responsibility.

[54] I accept that in doing so, Mrs Whiffen had no malicious intent. She genuinely thought she was acting in the best interests of the business. But it was not Mrs Whiffen's role or responsibility to decide for herself what was best for the business in terms of the work that she performed, particularly where her decisions conflicted with instructions she had been given. Mrs Parahi had both this role and responsibility, and she communicated clearly with Mrs Whiffen about what she did not want Mrs Whiffen to do. Mrs Whiffen acknowledged these requests from Mrs Parahi, but she did not take the necessary steps to change her behaviour.

[55] I do not agree that Mrs Whiffen’s failure to act on these requests were trivial, or minor issues. The submission illustrates a lack of insight on the part of Mrs Whiffen in relation to her conduct and its effect on others. I also do not accept that Mrs Whiffen was only trying to complete her own “incomplete” handover in relation to the Holiday Groups. This was an offer made to Ms Mikic by Mrs Whiffen that had been politely refused. Mrs Whiffen’s subsequent interventions in relation to Holiday Groups after 6 June 2023 were of substance, including on 13 June 2023, when she proposed double checking Holiday confirmations and offered to follow up or action “any required” or “outstanding” and on 15 June 2023, when she entered a booking, looked through “Cliniko” to check the other entries were up to date, and suggested further actions that Ms Mikic should take in this regard. On 26 June 2023, she entered two more bookings into the system rather than leaving them for Ms Mikic. These interventions caused significant distress to Ms Mikic by undermining her work and sense of self. They also caused an unnecessary diversion of the small business’ limited resources.

[56] The valid reason for dismissal was notified to Mrs Whiffen in the meeting on 20 June 2023 when she was told she would be given a warning, in the warning letter of 21 June 2023, during the subsequent meeting on 29 June 2023 and in the termination letter of 30 June 2023.

Was there an opportunity to respond to any capacity or conduct related reason?

[57] It was the fact of dismissal, rather than the reason for it, that surprised Mrs Whiffen when she was told she was to be “let go” on 29 June 2023. Before then, on and from 6 June 2023, Mrs Whiffen was on notice of the concern about her overstepping of boundaries and had a meaningful opportunity to respond to the concern by leaving the Holiday Group work for Ms Mikic. There was ongoing dialogue about the need for Mrs Whiffen to “stay within her lane”: in late 2022 when she was asked not to assist Ms Mikic any more with scheduling duties; and again in February 2023, in the meeting about respective roles and responsibilities. Mrs Whiffen knew when she was overstepping and made comments to Ms Mikic to the effect that she would probably “get into trouble”, but she did not correct her behaviour. She apologised, but only when confronted with her behaviour by Mrs Parahi.

Was there any unreasonable refusal to allow a support person to be present to assist at any discussions relating to dismissal?

[58] There was no unreasonable refusal to allow Mrs Whiffen to have a support person to assist in discussions about the dismissal. There was no request for a support person, partly because Mrs Whiffen was not told ahead of the meetings on 20 or 29 June 2023 that they were disciplinary in nature.

Was Mrs Whiffen warned about relevant unsatisfactory performance?

[59] The matters of concern in relation to Mrs Whiffen were conduct, rather than performance, related. Even so, Mrs Whiffen was warned about the conduct that ultimately led to her dismissal.

Degree to which the size of the employer’s business and any absence of dedicated human resources management specialists or expertise in the business would be likely to impact on procedures followed in effecting the dismissal

[60] The size of the business, and the absence of dedicated human resources expertise, caused deficiencies in the process leading to dismissal. Sense Rugby relies on a subscription-based human resources software program known as “Happy HR”. The subscription taken up by Sense Rugby includes technical support but not tailored human resources advice or support. This means that its effectiveness as a human resources tool is constrained by the knowledge of the user. It seems that Happy HR was also the source of template policies and procedures that could be adapted for use by the subscriber, and that Sense Rugby drew on the software to produce its “Performance and or behavioural improvement plan policy”, although its contents are expressed as “an outline of best practice” rather than a formal policy of the business.

[61] Mrs Parahi was responsible for managing the disciplinary process in relation to Mrs Whiffen. She used Happy HR for some aspects of the process, including the issue of a warning letter and preparation of the termination letter. But there is no reason why Mrs Whiffen could not have been put on notice that the meetings on 20 and 29 June 2023 were disciplinary in nature. There were also things Mrs Parahi said would happen that did not happen: arranging mediation between Ms Mikic and Mrs Whiffen, and getting human resources involved after the warning on 20 June 2023.

[62] These latter failures are explained by the further conduct of Mrs Whiffen on 26 June 2023, which caused Sense Rugby to change its approach. However, company policies exist for a reason. The steps Sense Rugby took after this time were not in accordance with its own Code of Conduct policy, which says, in relation to Code of Conduct breaches, that they “will be dealt with in accordance with the company performance management process”. Assuming that to be what is set out in the Performance and/or behavioural improvement plan policy as “best practice”, the process was not followed. If it had been, it is likely I would have found the dismissal to be consistent with the Small Business Fair Dismissal Code.

Other relevant matters

[63] Mrs Whiffen was employed for approximately 2 years and 3 months. She was paid 2 weeks wages in lieu of notice of termination, but her final pay was not made until approximately 1 month after dismissal. Not only was this in breach of the National Employment Standards (Act, s.117), it had adverse financial consequences for Mrs Whiffen as it meant she could not rely on the income she had counted on during the period of delay.

Mrs Whiffen has been unfairly dismissed

[64] While there was a valid reason for dismissal and adequate opportunity for Mrs Whiffen to respond to Sense Rugby’s concerns, the process followed in relation to the dismissal was deficient and there was a failure to comply with the Act in relation to payment of entitlements on termination. On balance, I am satisfied that the dismissal was unreasonable.

[65] Mrs Whiffen has been unfairly dismissed.

Remedy

[66] I am satisfied that reinstatement is inappropriate in this case. The small business environment and a rupturing of relationships both personal and professional makes it most unlikely that a productive employment relationship can be restored. Directions will instead issue in relation to whether compensation is appropriate in all the circumstances of the case, and if so, the amount of compensation that should be awarded.



COMMISSIONER

Appearances:

R Whiffen on her own behalf.
C Parahi for the respondent.

Hearing details:

2023.
Sydney:
September 25.

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