

[2023] FWC 2622 [Note: An appeal pursuant to s.604 (C2023/6608) was lodged against this decision - refer to Full Bench decision dated 1 February 2024 [[\[2024\] FWCFB 1](#)] for result of appeal.]



DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Kaushang Shah

v

Team Global Express Pty Ltd
(U2023/4524)

DEPUTY PRESIDENT O'NEILL

MELBOURNE, 13 OCTOBER 2023

Application for an unfair dismissal remedy

Introduction

[1] This decision deals with whether Mr Kaushang Shah was unfairly dismissed by Team Global Express Pty Ltd (**TGE/the Respondent**) from his job as a despatch supervisor. Mr Shah's role involved him allocating work to drivers who were subcontractors. He was dismissed for serious misconduct after an investigation found that he accepted a gift of two bottles of scotch whisky from a subcontractor driver and was involved in receiving a bribe in the form of construction of a deck at his home, both in return for favourable job allocations. Mr Shah denies accepting any scotch, says that he paid for the decking and it was not a bribe, and says that he did nothing wrong and that he was 'set up' by a subcontractor.

[2] After taking into account the views of the parties, I conducted a hearing as the most effective and efficient way to resolve the matter. The Applicant represented himself and the Respondent was granted permission to be legally represented.

[3] A person has been unfairly dismissed if the Commission is satisfied that the person has been dismissed, the dismissal was harsh, unjust or unreasonable, the dismissal was not consistent with the Small Business Fair Dismissal Code and the dismissal was not a case of genuine redundancy.¹ There is no dispute between the parties and I am satisfied that Mr Shah was a person protected from unfair dismissal, that the Small Business Fair Dismissal Code did not apply, that this was not a case involving genuine redundancy and that the application was made within the period required.

Witnesses

[4] In addition to his own evidence, the Applicant called evidence from another witness, Mr Aman Monga in support of his application. At the Applicant's request, three other persons were directed to attend and give evidence in the matter: Mr Abhishek Aggarwal, Mr Ajay Minhas and Mr Harneesh Singh. The Respondent led evidence from Mr Paul Madden, Mr Tim Rae, Mr Harpartap Singh, Mr Khuram Shahzad, and Mr Saurav Bhasin. The roles of the witnesses are:

- Mr Harpartap Singh (**Mr Singh**) was a subcontractor for TGE. Mr Singh's complaints against Mr Shah led to the investigation that resulted in the termination of Mr Singh's engagement and Mr Shah's dismissal.
- Mr Aman Monga was a subcontractor driver until his engagement with TGE was terminated in relation to the same incidents that Mr Shah was dismissed in relation to.
- Mr Abhishek Aggarwal is the person who undertook work at the Applicant's home constructing a deck. He also works for Mr Monga.
- Mr Harneesh Singh (**Mr H Singh**) is a subcontractor driver for TGE.
- Mr Ajay Minhas is a despatcher at TGE.
- Mr Paul Madden is the State Manager for couriers.
- Mr Tim Rae is General Manager of Operations (Couriers) at TGE.
- Mr Khuram Shahzad is a Senior Security Manager at TGE and conducted the investigation into Mr Singh's allegations about despatchers.
- Mr Saurav Bhasin is the owner of the restaurant at which Mr Shah was alleged to have accepted the two bottles of scotch and is a friend of Mr Harpartap Singh.

Was the dismissal harsh, unjust or unreasonable?

[5] In considering whether Mr Shah's dismissal was harsh, unjust and/or unreasonable, I am required to take into account the matters specified in section 387(a) to (h) of the *Fair Work Act 2009* (Cth) (**the FW Act**).

Valid reason (s.387(a))

[6] The employer must have had a valid reason for the dismissal of the employee, although it need not be the reason given to the employee at the time of the dismissal.² In order to be "valid", the reason for the dismissal should be "*sound, defensible or well founded*" and should not be "*capricious, fanciful, spiteful or prejudiced*."³

[7] The Commission will not stand in the shoes of the employer and determine what the Commission would do if it was in the employer's position. The question the Commission must address is whether there was a valid reason for the dismissal related to the employee's capacity or conduct (including its effect on the safety and welfare of other employees).

[8] In cases relating to alleged conduct, the Commission must make a finding, on the evidence provided, whether, on the balance of probabilities, the conduct occurred. It is not enough for an employer to establish that it had a reasonable belief that the termination was for a valid reason. The employer bears the evidentiary onus of proving that the conduct on which it relies, took place.

Was there a valid reason for Mr Shah's dismissal?

[9] On 24 January 2023, Mr Singh emailed TGE's Chief People Officer alleging that:

- (a) He and Mr Monga each paid Mr Aggarwal \$600 for his work on 29 October 2022 constructing a deck at Mr Shah’s home (**the deck allegation**);
- (b) On 14 May 2022 Mr Shah collected two bottles of scotch at the Buono Restaurant in Point Cook on 14 May 2022 (**the scotch allegation**);
- (c) In December 2021 Mr Shah who was assisted by Mr H Singh, unloaded freight stolen from Toll Fast depot at his home; and
- (d) Mr H Singh and Mr Monga have given gift cards and liquor to TGE despatchers.

[10] An investigation was undertaken which found that the scotch allegation and the deck allegation were substantiated, but not the allegation concerning stolen goods. The Applicant was then dismissed for serious misconduct in receiving bribes from Mr Singh in return for favourable job allocations. The conduct was also found to be in breach of the Respondent’s Serious Misconduct Policy and its Gifts, Entertainment and Hospitality Policy.

[11] The Serious Misconduct Policy (**SM Policy**)⁴ relevantly provides:

“Serious misconduct may occur on-site or off-site in the course of or related to an employee or contractor’s employment or engagement. Serious misconduct includes but is not limited to:

...

engaging in conduct to obtain a personal benefit (financial or otherwise).”

[12] The Gifts, Entertainment and Hospitality Policy (**GEH Policy**)⁵ includes:

“.... Toll prohibits the giving or receiving of gifts, entertainment or hospitality that could affect either party’s impartiality, influence a business decision, or lead to the improper performance of an official duty.

....

Employees are expected to ensure that the giving or receiving of gifts, entertainment or hospitality:

- *is for legitimate business purposes and is not given or received, or could not be perceived to be given or received, as a bribe or kickback;*

....

- *is transparent and declared (where required)”*

....

Prohibited

Under no circumstances, should the following be given or received:

- *gifts of alcohol or tobacco*

....

*Employees who do not strictly comply with the policy will face disciplinary action which may include counselling, formal warnings or termination.*⁶

[13] Mr Shah does not dispute that the Policies applied to him, nor that he was aware of his obligations to abide by them.

The ‘Scotch Allegation’

[14] Mr Singh’s evidence was that he was asked by Mr Minhas to buy him some scotch whisky so that the despatchers would ‘look after him’ and said to him words to the effect that “Kaushang knows everything”. Mr Singh subsequently set up a meeting with Mr Shah at a restaurant in Point Cook on 14 May 2022, and after having dinner, handed him a bag containing two bottles of scotch, which Mr Shah accepted and left with. One bottle was for Mr Minhas and one for Mr Shah.⁷ Mr Singh’s evidence was corroborated by the restaurant owner, Mr Bhasin. Mr Bhasin recalled that sometime last year, Mr Singh came into the restaurant and had dinner with a colleague whom he was briefly introduced to as a despatcher where Mr Singh worked. His evidence was that he remembered this event because it was unusual as Mr Singh usually only came to the restaurant with his family. He said that Mr Singh arrived first and asked that two bottles of alcohol he had brought in a bag, be put behind the counter. Mr Bhasin recalls Mr Singh retrieving the bag from behind the counter and handing it over to his colleague after paying for the dinner, and then witnessed the colleague walking out of the restaurant with the bag containing the bottles.⁸ At the hearing, Mr Bhasin positively identified Mr Shah as the colleague in question. In cross-examination, Mr Bhasin said that he was able to recognise Mr Shah as the colleague because he had sat down at the table with them, had a brief chat with them and came a few times to check on them. Mr Bhasin recalled the table the two men were sitting at, some of the dishes prepared for them, and was “100 per cent sure” it was Mr Shah.⁹ Mr Bhasin’s evidence was that he knew that the bag contained two bottles of alcohol because he recognised the packaging in the open bag.¹⁰

[15] Mr Shah denies receiving the bottles of scotch or anything else from Mr Singh. Whilst being interviewed during the investigation, Mr Shah was asked whether he met with a subcontractor on 14 May 2022 at a restaurant in Point Cook. He responded “no, I won’t remember, but no restaurant”. When shown a message sent to his phone about the meeting place and time, he said that he did meet Mr Singh outside the restaurant but denied going into the restaurant and having dinner. He said Mr Singh asked him to meet as he had some family issues and was not getting enough work, and so Mr Shah agreed because Mr Singh was in serious trouble and really needed to talk to someone about it.¹¹ He claimed to have met Mr Singh outside near the restaurant and that they had a discussion for about 45 minutes on the footpath, with no one else present. However, in cross-examination Mr Shah acknowledged that he had not answered truthfully in the interview. He accepted that he did go into the restaurant and have dinner with Mr Singh but denies accepting the two bottles of scotch. Mr Shah explained his inability to “give the right answer” in the interview, was because he was dumbfounded and shocked by the question, and that he felt ambushed as he did not know what he was going to be questioned about at the interview.¹²

[16] Mr Shah claims that Mr Singh was upset with him about the jobs he was being given and has falsely framed him. Mr Shah claims that TGE did not have ‘concrete evidence’ in relation to the allegation and should have obtained video footage from inside the restaurant, and

that as Mr Bhasin is a friend of Mr Singh, his evidence should not be believed over Mr Shah's.¹³ Mr Shah further contends that Mr Bhasin's evidence should not be believed because of minor discrepancies in his evidence. For example, in his witness statement Mr Bhasin described the male colleague as being around 5'6" – 5'7" tall, whereas Mr Shah says he is 5'10", and the description of the bag containing the two bottles differed between being described as a gift bag and a normal shopping bag.

[17] At Mr Shah's request, Mr Minhas was ordered to attend and give evidence. The only question directed to Mr Minhas was whether the contents of Mr Singh's witness statement were true, to which Mr Minhas said it was not.¹⁴

[18] Mr Singh does not dispute that he was upset about the jobs he was allocated, and he stated during his interview throughout the investigation, that his run was being constantly changed by Mr Shah '*to make my life hard*'.¹⁵ He said that he believed this was punishment for making an earlier complaint to senior management about the behaviour of despatchers.¹⁶

[19] Mr H Singh, who is another subcontractor driver, also gave evidence that Mr Singh was upset with the jobs he was allocated, and that he was initially involved and supportive of the earlier complaint made by Mr Singh to senior management. Mr H Singh says that he changed his mind and did not continue to support Mr Singh's complaints and had only done so because he was upset at the time with another despatcher, named Gill.¹⁷ In an email to Mr Shah and Mr Monga, Mr H Singh states that Mr Singh was targeting him and Mr Monga because they did not support him in his 'false allegations'. He also said in the email that Mr Singh planned to 'trap' Mr Shah and made use of the decking opportunity to do so and frame him for bribery.¹⁸ In cross-examination, Mr H Singh stated that he did not know the allegations were false, but that he had no evidence they were true.¹⁹

[20] For several reasons, I prefer Mr Singh's and Mr Bhasin's evidence over Mr Shah's and Mr H Singh's. Firstly, Mr Shah acknowledged lying during the interview by denying he went to the restaurant. That in itself is significant and reflects poorly on his credibility. Further, on his version of events, there was nothing improper about going and meeting Mr Singh, and no reason to lie to the investigator. More broadly, I did not find Mr Shah to be an impressive witness. He was evasive and reluctant to make even simple concessions, such as acknowledging that despatchers have any power over subcontractors through their role in allocating work.²⁰ Mr Shah's explanation for agreeing to meet a subcontractor to whom he allocates work out of hours and at a restaurant, is also inherently incredible. Mr Shah's evidence was that he and Mr Singh were not friends, they were not on close personal terms, and he had never met another subcontractor or employee at a restaurant.²¹ I also did not find Mr H Singh's evidence persuasive. Much of his email to Mr Shah and Mr Monga was hearsay and without foundation, and he was himself, the subject to allegations of misconduct from Mr Singh, and I consider that this coloured his evidence. Conversely, I found both Mr Singh and Mr Basin to be forthcoming, detailed and credible in their evidence. Mr Singh had, in making the complaint, disclosed his own role in Mr Shah's conduct and initiated his own downfall. He bought the scotch for the purpose of obtaining favourable treatment and lost his engagement with TGE as a result. Whilst I find that Mr Singh was upset with Mr Shah (and others), there is no basis to conclude that Mr Singh was 'framing' Mr Shah. Rather, it is consistent with his actions in seeking to give Mr Shah scotch and paying for decking work at his home (discussed below) to obtain some more favourable treatment in return. Whilst Mr Bhasin's longstanding friendship with Mr Singh is

relevant in assessing his evidence, I also found his evidence to be credible and detailed. He was immutable in identifying Mr Shah as the colleague who attended the restaurant. Both men's evidence has remained consistent throughout the investigation leading to Mr Shah's dismissal and the hearing of the matter. No meaningful challenge was made to either person's evidence in cross-examination. I am satisfied that their evidence accurately depicts what occurred.

[21] I find that on 14 May 2022, Mr Shah met Mr Singh at Mr Bhasin's restaurant and had dinner, paid for by Mr Singh. After dinner, Mr Shah accepted a bag containing two bottles of scotch. I find that Mr Singh's motivation in giving Mr Shah the scotch was to obtain favourable treatment by Mr Shah in the allocation of work.

[22] I find that in accepting the scotch, Mr Shah breached the SM Policy by engaging in conduct to obtain a personal benefit, namely the scotch. I also find that Mr Shah breached the GEH Policy, by accepting a gift of scotch by a subcontractor to whom his role involved allocating work to, as this could affect Mr Shah's impartiality, and lead to the improper performance of his duty in allocating work to drivers. The GEH Policy expressly prohibits the receipt of a gift of alcohol. Further, the obligations under the GEH Policy do not require the acceptance of the gift and/or hospitality to actually have had the effect of Mr Shah allocating more favourable work to Mr Singh. Similar obligations arise under the Conflicts of Interest Policy,²² which I also find Mr Shah to have breached.

[23] Mr Shah's conduct may also constitute a breach of TGE's Anti-Bribery and Corruption Policy (**ABC Policy**).²³ However, I consider it unnecessary to make a formal finding in relation to this issue in circumstances where the application of the ABC Policy to the factual findings I have made is not entirely clear. The ABC Policy makes clear that receiving a gift *may* amount to bribery as defined, in certain circumstances, and that gifts must never be received with the intention of influencing a business decision or securing an unfair business advantage, however there is no clear evidence of Mr Shah's intentions in accepting the scotch.

[24] I make these factual findings about what occurred on the balance of probabilities, applying the considerations in *Briginshaw*.²⁴

[25] I am satisfied that Mr Shah's actions in accepting a gift of scotch from Mr Singh constitutes serious misconduct and is a valid reason for his dismissal from his employment with TGE. I also find that Mr Shah's conduct in lying during the investigation is a further valid reason for his dismissal. Mr Shah had a highly responsible role with TGE and his dishonesty means that TGE could not be confident he would be honest with it in the future, breaking the relationship of trust and confidence.²⁵

The 'Deck Allegation'

[26] There is no dispute that Mr Aggarwal was engaged to assist in the construction of a deck at Mr Shah's home.

[27] Mr Shah's contention is that when he asked around at work to see if anyone could help him complete the last part of the deck he was building at his home, Mr Singh took this as an opportunity to falsely frame him.²⁶ Mr Singh said that he knew someone who could help and subsequently Mr Aggarwal came to Mr Shah's home to have a look at the job. Mr Shah says

that he asked Mr Aggarwal for a price but that he said that he would not charge him as he was a very close friend of Mr Singh. Mr Shah thought this was ‘too good to be true’ but went ahead anyway as he was confident he would find out the cost in due course and then pay the required amount. Mr Shah says that on 29 October 2022 when Mr Aggarwal came back and did the work, he again asked him the price, and Mr Aggarwal again said there would be no charge.²⁷ Mr Shah says that he had no perception that there were any monies involved until sometime later when Mr Monga told him, at which point Mr Shah immediately paid Mr Monga \$1200 on 21 December 2022.

[28] Mr Singh’s statement during the interview was that in mid-October 2022, Mr Monga suggested to him that they needed to do something for the despatchers and suggested they pay a tradesperson to get decking done at Mr Shah’s home.²⁸ His evidence is that he, Mr Monga and Mr Shah had a telephone conference call where Mr Monga told Mr Shah that they would pay to get his decking done, to which Mr Shah agreed. During the call Mr Monga suggested that Mr Aggarwal could complete the decking work.²⁹ Mr Singh says that he and Mr Monga each paid \$600 to Mr Aggarwal for his work and produced receipts for the two payments made on 29 and 30 October 2023.³⁰ Mr Shah’s evidence was that he did not recall any such conference call.³¹

[29] Mr Monga had his contract with TGE terminated for bribing Mr Shah. His evidence is that he has never bribed Mr Shah nor anyone else and claims that he is also being framed by Mr Singh.³² His statement during the investigation interview was that it was Mr Singh and not himself who suggested they do “something” for despatchers to get good jobs, and that Mr Singh told Mr Monga to pay Mr Aggarwal \$600 and he would pay the remaining \$600.³³ Further, he says that Mr Singh specifically told him not to tell Mr Shah that he was paying Mr Aggarwal. On 21 December 2022, Mr Monga did tell Mr Shah that Mr Singh had paid half the money for the decking. He says that Mr Shah was not happy with learning of that arrangement and paid Mr Monga \$1200 that day. Mr Monga also stated that Mr Singh had been contacting drivers to encourage them to make complaints against despatchers at TGE since December 2021.³⁴ At the hearing, Mr Monga agreed that he had paid Mr Aggarwal \$600 and that Mr Singh paid the other \$600. However, Mr Monga claims that Mr Singh was to pay the entire \$1200, and that he paid the \$600 because Mr Singh said he did not have the money at hand but would pay him back. Mr Monga says that he told Mr Shah about the arrangement when Mr Singh did not pay back the \$600 he had paid on his behalf.³⁵ This is inconsistent with Mr Shah’s statement during the investigation interview. In the interview, Mr Shah said that Mr Monga told him that money was involved and that Mr Singh had not paid the person (Mr Aggarwal) he was supposed to pay.³⁶

[30] At Mr Shah’s request, Mr Aggarwal was directed to attend and give evidence. His evidence was consistent with his statements during the investigation leading up to the Applicant’s dismissal. Mr Aggarwal’s evidence is that he was asked by Mr Monga to visit Mr Shah’s house and provide a quote. He did so, and spoke to Mr Shah, and after leaving advised Mr Monga he would charge \$1,200. Mr Singh was then invited into the call to discuss the quote and Mr Singh agreed to pay the \$1,200. Mr Aggarwal completed the work at Mr Shah’s home on the weekend of 29 October 2022. In another call with Mr Singh and Mr Monga, Mr Singh said he would pay \$600 and asked Mr Monga to pay the remaining \$600 which he would repay him in a few days. Both payments were made directly into Mr Aggarwal’s account, and receipts provided. Mr Aggarwal’s evidence was that he had no communication with Mr Shah about the

payment arrangements.³⁷ He said that Mr Shah had not asked him how much he needed to pay Mr Aggarwal. With one exception, his evidence corroborates Mr Singh's version of events. However, Mr Aggarwal's evidence that Mr Singh was to pay the full \$1,200 is not consistent with Mr Singh's evidence that the arrangement was that he and Mr Monga were to pay half each. However, Mr Aggarwal's evidence about Mr Shah's involvement was clear: at no point did Mr Shah ask Mr Aggarwal about the cost or payment arrangements. In his final submissions, Mr Shah contended that Mr Aggarwal had either forgotten this aspect or that he was lying in relation to this part of his evidence. I do not accept this submission and accept Mr Aggarwal's evidence. As he explained, he did not care who was paying him, he just wanted to ensure he would be paid for his work. On balance, I prefer Mr Singh's evidence that he and Mr Monga had agreed to each pay half of the cost of Mr Aggarwal's work. This is consistent with the fact that each man paid \$600 to Mr Aggarwal and is more plausible given Mr Aggarwal was known to Mr Monga, works for him, and was not a "very close friend" of Mr Singh.

[31] I prefer Mr Singh's and Mr Aggarwal's evidence (other than the details of the arrangement between Mr Monga and Mr Singh) over Mr Shah's and Mr Monga's evidence. Mr Aggarwal was clear and forthright in his evidence. As described above in relation to the scotch allegation, Mr Singh was a credible witness unlike Mr Shah. Mr Monga did not make a credible witness and seemed focussed on telling his story and the perceived unfairness of his treatment in which he lost his job at TGE, rather than giving evidence as to what occurred. Mr Shah's claim that he did not know that there was any payment involved in the completion of his deck is implausible, and Mr Aggarwal's evidence that Mr Shah never asked him about the cost or payment directly contradicts Mr Shah's evidence. It is implausible that no flag was raised in Mr Shah's mind, that a payment was not required for work performed at his house by Mr Aggarwal, at the time the work was completed.

[32] Mr Shah says that given he paid the \$1,200 on 21 December 2022 which was before Mr Singh made the complaint to TGE on 24 January 2023, it could not be considered an "attempt to cover up the misconduct".³⁸

[33] I find that Mr Monga suggested to Mr Singh in mid-October 2022 that they pay Mr Aggarwal to complete decking work at Mr Shah's home to obtain favourable jobs, and that Mr Shah knew about and acquiesced to this arrangement. I find that Mr Aggarwal attended Mr Shah's home to inspect the work to be done and then to undertake the work, and that Mr Shah accepted this work, without any intention to pay for it. There is no clear evidence as to why Mr Shah ultimately paid Mr Monga for the work almost two months after the work was completed. It may have been because of a concern that it would be disclosed or he may have had a change of heart. There is no clear evidence to support a finding as to his motive. However, that does not alter the seriousness of his conduct, as I am satisfied that he agreed to the arrangement and had no intention of paying for the work at the time it was undertaken.

[34] Mr Shah's action in accepting the work on his decking at home, with no intention of paying for it, was serious misconduct and constitutes a further valid reason for his dismissal. For similar reasons, I also find that Mr Shah breached the Conflicts of Interest Policy,³⁹ by actively accepting the decking work without any intention to pay for it and knowing that both Mr Monga and Mr Singh were involved in the arrangements for that work. I find that this could affect Mr Shah's objectivity or independence of his decision in performing his role at TGE.

Notification of reason (s.387(b)) - Opportunity to respond (s.387(c))

[35] Mr Shah contends that he was not afforded procedural fairness because the investigation was flawed and biased. This is said to be because not all avenues of enquiry were pursued. For example, Mr Shah contends that TGE should have obtained video footage of the restaurant which he says would have shown that he did not walk out with a bag containing the bottles of scotch. He contends that his claims about being framed by Mr Singh were not accepted, and that insufficient enquiries were made about Mr Singh's income and the jobs allocated to him, which would have supported Mr Shah's version of events.

[36] Mr Shah's complaints about the thoroughness of the investigation are essentially directed at whether there was sufficient evidence to substantiate the allegations found against him. There is no basis to support a conclusion that the investigation was biased. Mr Shazhad interviewed all relevant witnesses and accurately recorded their responses and made findings where there was sufficient evidence, and made no findings where not so satisfied. I am satisfied, for the reasons set out above, that the conduct occurred. I am satisfied that prior to his dismissal the Applicant was notified of the reason for his dismissal and given an opportunity to respond. This weighs against a finding of unfairness.

Unreasonable refusal to allow a support person (s.387(d))

[37] Mr Shah was advised of his ability to have a support person present during his interview as part of the investigation and took up this opportunity. At the show cause meeting on 9 May 2023, the Applicant did not make a request for a support person to be present. Whilst the Applicant contends that he was given less than 24 hours' notice of the interview, and that if he had been given adequate notice and details of the context of the interview, he would have been able to arrange for another support person, he made no request to allow an alternative support person to be present. I find there was no unreasonable refusal to allow a support person and this weighs against a finding of the dismissal being unfair.

Warnings of unsatisfactory performance (s.387(e))

[38] As the Applicant was not dismissed for unsatisfactory performance, this consideration is not relevant in this case.

Size of enterprise and absence of human resource specialists or expertise (ss.387(f) and (g))

[39] TGE is a substantial organisation with human resources expertise that it made use of. There is nothing to suggest any negative impact on the procedure it adopted to effect Mr Shah's dismissal. These are neutral considerations.

Other relevant matters

[40] Section 387(h) of the FW Act provides the Commission with a broad scope to consider any other matters it considers relevant. Mr Shah did not put forward any specific submissions as to the matters that should be taken into consideration, however in this Decision, I have

considered his considerable length of service, the personal and financial impact of losing his position, and that he has been unable to secure another permanent position since his dismissal. I have also taken into consideration that whilst the Applicant was dismissed for serious misconduct, and therefore not entitled to a payment in lieu of notice, the Respondent did make a discretionary payment to him of 4 weeks' notice. I also consider relevant the serious nature of the Applicant's conduct with the potential to harm TGE's reputation and relationships with its contractors.

Conclusion

[41] I have made findings in relation to each matter specified in section 387 as relevant. I must consider and give due weight to each as a fundamental element in determining whether the termination was harsh, unjust or unreasonable. Having considered each of the matters, I am satisfied there was a valid reason for the dismissal, and my overall assessment is that Mr Shah's dismissal was not harsh, nor was it unjust or unreasonable. It was therefore not unfair.

[42] The application is dismissed. An Order to that effect will be separately issued.



DEPUTY PRESIDENT

Appearances:

The Applicant appearing on his own behalf.

C. Gianatti of KHQ Lawyers, with permission on behalf of Team Global Express Pty Ltd, the Respondent.

Hearing details:

2023

August 17-18

Final written submissions:

7 September 2023

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¹ *Fair Work Act 2009* (Cth), s.385.

² *Selvachandran v Peteron Plastics Pty Ltd* (1995) 62 IR 371, pg 373.

³ *Ibid.*

⁴ Hearing Book (**HB**) p.68.

⁵ HB, p.59.

⁶ HB p.60.

⁷ Witness Statement of Mr Singh, HB p.141.

⁸ Witness Statement Mr Saurav Bhasin, Exhibit R7; HB p.171-173.

⁹ Transcript dated 18 August 2023 (**Transcript 2**), PN1232-1253.

¹⁰ Transcript 2, PN1255-1266.

¹¹ Exhibit R3, Transcript of interview with Mr Kaushang Shah (**Exhibit R3**), pages 3-4.

¹² Transcript dated 17 August 2023 (**Transcript 1**), PN375-387, Applicant's Final Submissions at paragraph 22.

¹³ HB p.29,88; Applicant's Final Submissions at paragraphs 11-16.

¹⁴ Transcript 1, PN133.

¹⁵ Statement of Mr Harpartap Singh, HB p.189.

¹⁶ HB p.189.

¹⁷ Transcript 1, PN157-168.

¹⁸ HB p.43.

¹⁹ Transcript 1, PN263-267.

²⁰ See for example Transcript 1, PN361-363.

²¹ Transcript 1, PN399-400; Exhibit R3, paragraphs 145-152.

²² HB p.85.

²³ HB p.61.

²⁴ *Briginshaw v Briginshaw* (1938) 60 CLR 336.

²⁵ *Re Telstra Corporation Ltd* (2008) 170 IR 1 at [23].

²⁶ HB p.30

²⁷ *Ibid.*

²⁸ HB p.151.

²⁹ HB p.142, 151.

³⁰ HB p. 146-147.

³¹ Transcript 1, PN409-418.

³² Witness Statement of Mr Amon Monga, HB p.39.

³³ Witness Statement of Mr Khuram Shahzad, Exhibit KS-5 - Interview notes of Aman Monga, HB p.191.

³⁴ Witness Statement of Mr Amon Monga, HB p.39.

³⁵ Transcript 1, PN584, 674-681.

³⁶ Exhibit R3, paragraph 124.

³⁷ Transcript 1, PN101.

³⁸ Applicant's Final Submissions, paragraph 31.

³⁹ HB p.85.