



DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Peter Matsumoto

v

Loghic Connect Pty Ltd

(U2023/2690)

DEPUTY PRESIDENT EASTON

SYDNEY, 25 OCTOBER 2023

Application for an unfair dismissal remedy – employee was a former director and shareholder of the employer – valid reason for termination – alleged malfeasance – salary paid to the applicant’s wife – allegation that the wife was not ever an employee of the respondent – allegation of extortion – Briginshaw standard – alleged assault – no procedural unfairness – dismissal unfair – compensation – employment unlikely to continue beyond a few days – compensation ordered.

[1] On 29 March 2023 Mr Peter Matsumoto made an application to the Fair Work Commission under s.394 of the *Fair Work Act 2009* (Cth) alleging that he had been unfairly dismissed from his employment with Loghic Connect Pty Ltd.

[2] Mr Matsumoto co-founded the Respondent in 2007, was a shareholder and one of two directors, and was employed as the Chief Technology Officer. At first the company was called Redback Conferencing (**Redback**). In 2022 the company’s name was changed to Loghic Connect Pty Ltd (**Loghic Connect**). In November 2022 Mr Brett Morris purchased all the shares of Loghic Connect and Mr Matsumoto continued in his employment.

[3] Mr Matsumoto was terminated from his employment by letter dated 14 March 2023. The letter said:

“Employment with Loghic Connect Pty Ltd (‘LCPL’)

1. Since November 2022 and the completion of the Share Sale and Loan Assignment Deed, I have been conducting a number of investigations into the financial affairs and operations of LCPL.
2. These investigations have discovered that:
 - (a) Since at least 2015,
 - (i) monies have been paid by LCPL to or for your wife, Heather Grant, in her alleged capacity as an employee of the company; and
 - (ii) Ms Grant is not and has never been an employee of the company.
 - (b) These payments to Ms Grant constitute not just malfeasance but are a serious breach of your fiduciary obligations as a director and employee of the company.

- (c) These payments to Ms Grant have exposed LCPL, because they are payments to an 'Associate' who was not an employee.
3. LCPL regards your involvement in these matters as serious misconduct which provides grounds for your immediate dismissal.
 4. Your employment is hereby termination for cause with immediate effect. To the extent your written employment contract dated 16 May 2021 remains operative, it is terminated in accordance with clause 7(a)(ii)."

[4] For the reasons that follow I find that Mr Matsumoto's dismissal was unfair and I will make an order requiring Loghic Connect to pay two weeks' pay to Mr Matsumoto as compensation.

Mr Matsumoto's evidence

[5] Mr Matsumoto maintains that his wife, Ms Grant, was an employee of Loghic Connect and that the allegation that he miscondacted himself is wrong.

[6] He said that the first time that he became aware of Mr Morris' concerns about Ms Grant was when he received the termination letter on 14 March 2023.

[7] Noting that Mr Morris said he began investigating Ms Grant's employment in December 2022, Mr Matsumoto said that Mr Morris did not raise any concerns directly with him and that, if he had, Mr Matsumoto would have had no hesitation in explaining that Ms Grant is his wife.

[8] Mr Morris decided to stop paying Ms Grant in January 2023. Mr Matsumoto said that after the payments stopped the discussions between he and Mr Morris "were specific about how and when the respondent would pay Heather" and that "Mr Morris insisted that he would pay Heather." It is not clearly explained in the evidence how, on Mr Matsumoto's version, Mr Matsumoto and Mr Morris came to be talking about Ms Grant at all.

[9] Mr Matsumoto's evidence regarding his remuneration was unconvincing. On 28 August 2022, three months before the shares in Loghic Connect were sold to Mr Morris, Mr Matsumoto signed the following document:

"I hereby give permission for Redback Connect to reduce my salary by \$40,000/year beginning September 1st, 2022. Should the business be in a more favorable position by September 1st, 2023, my salary will be reviewed with the intention of restoring it to \$260,000/year + super (the same level it was at before this temporary reduction was approved)."

[10] Mr Matsumoto's salary at the time of his dismissal was \$130,000, and he said that prior to August 2022 he was paid \$170,000 per annum. Ms Grant was paid \$90,000 per annum. In cross examination Mr Matsumoto said that the figure of \$260,000 referenced in the August document "was a number in conjunction with my wife", which is mathematically sound but indicative of an engineered outcome.

[11] Ms Grant filed a statement in the matter and appeared by video to give evidence at the hearing. Ms Grant said that she has worked at Redback/Loghic Connect since 2011 as a Data Entry Clerk and Software Tester and reported to Mr Matsumoto. Her duties included working

with the software development team to ensure the webcast platform was tested and ready of customer updates to the platform. Ms Grant says that she was available during the day, the night and over weekends to accommodate the schedule of updates to the platform which normally occurred at night or on weekends.

[12] Mr Jeffrey Downs was a shareholder, Director and CEO of Redback. Mr Downs prepared Ms Grant's employment contract in 2011.

[13] Mr Downs says he was heavily involved in onboarding new customers, and interacted directly with Ms Grant to provide her with specific customer information that she used when provisioning new teleconferencing accounts. He says he was also heavily involved in the scoping, testing and implementation of new services at Redback and interacted regularly with Ms Grant when she performed new development testing procedures.

[14] Mr Downs said whilst Ms Grant had the option of working from the office, she always chose to work from home as her work was all internally focused and did not interact directly with end customers.

[15] Mr Downs made a second statement in response to Loghic Connect's evidence. Mr Downs explained the relationship between Mr Matsumoto, Resolve Collaboration (**Resolve**) and Redback/Loghic Connect. He said that because of Mr Matsumoto's relationship with Resolve, Redback was able to secure the platform at a significantly cheaper price than the closest comparable platform and allowed the platform to be customised to Redback's specifications and schedule.

[16] Mr Downs further said that Redback originally used several alternative platforms before using Resolve as their primary platform and at no time were they entirely dependent upon Resolve or tied to any one supplier as a result of Mr Matsumoto's 15% equity in Resolve. He said that Mr Matsumoto's relationship with Resolve was well known to Redback at the time he was hired and was beneficial to Redback at all times.

[17] Mr Matsumoto relied on statements from Mr Victor Dorsen, Ms Farzana Nisha, and Mr Mathew Smith who each said they worked with Ms Grant at different points in time.

Loghic Connect's Evidence

[18] Mr Brett Morris became the owner of Loghic Connect on 18 November 2022. The previous directors of Loghic Connect were Mr Matsumoto and Mr Downs. At the time of purchase he was eager to lead Loghic Connect into a new phase of growth and prosperity.

[19] On 20 December 2022 Mr Morris attended the company Christmas function, which he saw as an opportunity to meet all the staff. At the Christmas function, he said, he became aware of discrepancies in Loghic Connect's payroll. Specifically Mr Morris became aware that Ms Irene Downs and Ms Heather Grant were being paid but could not be accounted for in terms of their roles or contributions to the company.

[20] Mr Morris said he investigated these matters further over the Christmas break but did not discuss it with Mr Matsumoto.

[21] On 15 January 2023 Mr Morris made the decision to suspend payments to Ms Downs and Ms Grant. Mr Morris said that he knew at this time that Ms Irene Downs was the wife of Jeff Downs but did not know that Ms Grant was Mr Matsumoto's de facto partner. He said he did not try to speak to Ms Grant about the payments because "I did not know who she was."

[22] Mr Morris said that it was over the next few weeks that he discovered that Ms Grant was Mr Matsumoto's partner, and he also learned of Mr Matsumoto's undisclosed relationships with third-party providers. He said that these relationships raised serious concerns about potential conflicts of interest.

[23] Mr Morris said he had multiple meetings with Mr Matsumoto regarding the payments to Ms Grant and Mr Matsumoto described the payments as "his money."

[24] Some of these meetings became heated, and Mr Morris said that on some occasions Mr Matsumoto raised his voice and demanded that he "pay him his money." He described Mr Matsumoto at this time as "clearly irritated" and said that most of the office was aware that Mr Matsumoto was not happy and, he was told, Mr Matsumoto was talking openly on the phone about not being paid and how he could close the company down if he wanted.

[25] On 1 March 2023 Loghic Connect was advised that Resolve was doubling its licence fee from \$4,500 per month to \$9,000 per month. Mr Morris said that he was unable to locate a digital copy of the licensing agreement between Loghic Connect and Resolve, which was itself a cause for concern because it was crucial to understanding the terms of Loghic Connect's relationship with Resolve.

[26] On 7 March 2023 Mr Morris met with Mr Matsumoto and Mr Blake McIntyre. The purpose of the meeting, he said, was to discuss issues related to Mr Matsumoto's pay, payments to his wife, and his failure to disclose significant liabilities as a previous director of the company before selling the company to Mr Morris.

[27] During this meeting Mr Matsumoto admitted for the first time that he was a founder and 15% owner of Resolve. Mr Morris said "I asked [Mr Matsumoto] if he could see how him owning a company that is a major supplier of ours, was a major conflict of interest, especially when the proprietary software he had developed (in house) is completely dependent on Resolve was now considered worthless."

[28] In his statement Mr Morris described what happened next:

"Soon after this Blake was explaining that the money being paid to [Ms Grant] was not his money that [Mr Matsumoto] began demanding to be "paid his money" and stood up and crossed over to Blake and went chest to chest with him – Blake was forced against the wall. Blake advised [Mr Matsumoto] not to add assault to the list when [Mr Matsumoto] grabbed his neck and jaw area."

[29] Mr Morris then engaged lawyers and received advice about seeking an injunction against Mr Matsumoto. Loghic Connect made a plan, presumably on legal advice, to commence proceedings for an injunction by 10 March 2023 and then dismiss Mr Matsumoto on 14 March 2023. No application for an injunction was ever made.

[30] On 14 March 2023 Loghic Connect, again presumably on legal advice, terminated Mr Matsumoto by letter. The letter refers to one reason for dismissal, being the payments made by Loghic Connect to Ms Grant.

[31] The same solicitors appeared for Loghic Connect in the early stages of these proceedings and from the outset made aggressive threats of apparently looming litigation under the *Corporations Act 2001* (Cth). At the first telephone directions hearing in these proceedings the solicitor's request for three months to prepare Loghic Connect's evidence was denied. At the hearing Mr Morris represented the company himself and indicated that Loghic Connect had run out of money to pay its legal bills and had terminated the engagement of its solicitors. In this matter it is difficult to identify any positive benefit gained by Loghic Connect from the engagement of external solicitors.

[32] Mr Morris gave evidence of a number of events that took place after Mr Matsumoto was dismissed. These matters were not relevant to the question of whether there was a valid reason for dismissal, or any other matter relating to the fairness of the dismissal but were arguably relevant to the question of reinstatement. Mr Matsumoto did not seek reinstatement but in any event I am satisfied that the employment well is so poisoned that Mr Matsumoto could not be reinstated. It is not necessary, therefore, to recite the evidence of events that took place after Mr Matsumoto was dismissed.

[33] Mr Blake McIntyre gave evidence for Loghic Connect. Mr McIntyre was employed by Loghic Connect as the Head of Strategy until April 2023 and said that he has been working as an independent contractor since then. Mr McIntyre gave evidence about the meeting on 7 March 2023 with Mr Matsumoto and Mr Morris. Mr McIntyre said that Mr Matsumoto became increasingly agitated and emotional in the meeting and "he began yelling and making demands for payment." Mr McIntyre said:

"Matsumoto claimed that he was in control of Resolve and insinuated that he could switch off the system if his demands were not met. I accused Matsumoto of extortion at this point.

Following my accusation, Matsumoto stood up from his chair, charged at me, and screamed at me at point-blank range. He then physically assaulted me by grabbing my jaw.

Despite the assault, the meeting continued. Matsumoto expressed indifference about the situation, stating he did not care about the potential liabilities he might face as a former director.

...

Matsumoto also admitted that his wife did not work for the respondent but was an extension of himself. This was in contrast to previous claims that his wife was an employee of the company."

[34] Ms Esther Kefaloukos provided a witness statement about her conversation in a bathroom at Loghic Connect’s premises. Ms Kefaloukos said:

“I had a lengthy discussion with Miranda Walker in the female bathroom who told me that she had concerns for upcoming client and whether the business will be able to keep running as Peter mentioned to her that he was not happy that he was not being paid and therefore he would cut off the webcasting platform. This was also the first time I found out that the webcasting platform was not owned by Redback but by Resolve which Peter was a director / owner. This conversation was in early to mid-March.

Miranda said her concerns were valid as she believed Peter was more than capable of doing something like turning off the webcast and not caring about consequences as she had seen Peter in the past damage someone's (ex-Director of Redback Conferencing) reputation who he got angry with.”

[35] I have not considered Ms Kefaloukos’ statement to be evidence of any particular conduct by Mr Matsumoto. Ultimately Ms Kefaloukos’ statement was not relied on by Loghic Connect and not formally read into evidence.

[36] The information from this conversation appears to have made its way to Mr Morris and was one of the reasons why Mr Morris thought Mr Matsumoto was about to extort a benefit from Loghic Connect. The information in the statement is second-hand hearsay and forensically worthless, but it is helpful to explain, in part, Mr Morris’ decision to dismiss Mr Matsumoto.

Consideration

[37] Section 387 of the FW Act requires me to take into account the following matters in determining whether Mr Matsumoto’s dismissal was harsh, unjust or unreasonable:

- (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.

[38] I am required to consider each of these criteria, to the extent they are relevant to the factual circumstances before me. I set out my consideration of each below.

Was there a valid reason for the dismissal related to the Applicant's capacity or conduct (s.387(a))?

[39] To be a valid reason, the reason for the dismissal should be sound, defensible or well founded and should not be capricious, fanciful, spiteful or prejudiced. However, in assessing the validity of the reason (s) for dismissal the Commission will not stand in the shoes of the employer and determine what the Commission would do in the same position.

[40] Loghic Connect relied on the following reasons for dismissal:

- (a) Mr Matsumoto's alleged involvement in the arrangements between Loghic Connect and Ms Grant whereby Ms Grant received an annual salary of \$90,000;
- (b) Mr Matsumoto's alleged conduct in extorting or preparing to extort Loghic Connect by withdrawing his cooperation for the use of certain software licences; and
- (c) Mr Matsumoto's aggressive behaviour in the meeting on 7 March 2023 with Mr Morris and Mr McIntyre.

[41] Loghic Connect submits that these actions by Mr Matsumoto were misconduct.

[42] The test is whether, on the evidence before the Commission, there was a valid reason for dismissal connected with the employee's capacity or conduct.

[43] In *Newton v Toll Transport Pty Ltd* [\[2021\] FWCFB 3457](#) the Full Bench said:

"[65] The Commission is bound to determine whether, on the evidence provided, facts existed at the time of termination that justified the dismissal. Contrary to the Appellant's submission, in determining whether there was a valid reason for the dismissal the Commission is not confined to the reason advanced by the employer (either at the time of dismissal or during the course of the subsequent hearing). A valid reason for dismissal can be any valid reason underpinned by the evidence provided to the Commission."

[Citations omitted].

[44] I am prepared to accept that the arrangements made for the payment of Mr Grant's salary could be a valid reason for dismissal. Loghic Connect alleged that Ms Grant was not in fact an employee of the company, or at least she did not work for the company, and that these salary arrangements exposed the company to tax liability.

[45] It is not possible or appropriate to make any findings about the taxation consequences of these arrangements. However it is necessary to make an assessment of the evidence provided by the parties in relation to whether Ms Grant performed any work for Loghic Connect. In this regard there is sufficient evidence, tested or testable by Loghic Connect, that Ms Grant did in fact perform work for the company from time to time. That said, there was very little evidence of how much work Ms Grant performed for Loghic Connect for her salary of \$90,000 per annum.

[46] There is also evidence that Ms Grant's salary was either included or at least factored into the valuation of Mr Matsumoto's overall remuneration package. Mr Matsumoto's own document signed in August 2022 referred to "restoring [my salary] to \$260,000/year + super (the same level it was at before this temporary reduction was approved)" (see [9] above).

[47] The arrangement to pay Ms Grant a salary had been in place for a long time, and long before Mr Morris purchased the shares of Loghic Connect in November 2022. It seems on the evidence that Mr Morris had access to the Loghic Connect's payroll records prior to the purchase and there is no suggestion that Mr Matsumoto or anyone else concealed the payments made to Ms Grant during this due diligence process. Mr Morris purchased the business in the knowledge that, at the time of purchase, Loghic Connect was paying Mr Matsumoto salary of \$130,000 and paying Ms Grant a salary of \$90,000. If he did not enquire about Ms Grant's contribution to Loghic Connect's business that is a matter for him.

[48] However, the ongoing arrangement with Ms Grant should have been discussed between Mr Matsumoto and Loghic Connect to avoid the very problem that arose after Mr Morris started operating the business. Mr Morris stopped paying Ms Grant on 15 January 2023 and on the evidence there were no constructive conversations between Mr Matsumoto and Mr Morris about the matter. To the extent that Mr Morris expected Mr Matsumoto to cooperate about these arrangements, his expectation was entirely reasonable.

[49] In relation to the second claimed valid reason, it is clear from Mr Morris' and Mr McIntyre's evidence that by at least 7 March 2023 they thought that Mr Matsumoto was set to extort the company. Loghic Connect chose not to refer to this concern when it dismissed Mr Matsumoto.

[50] The evidence presented in the proceedings does not rise so high as to establish such a serious allegation. Ms Kefaloukos' statement regarding a conversation in Loghic Connect's bathroom is not evidence of extortion. Mr McIntyre's evidence that on 7 March 2023 "Mr Matsumoto claimed that he was in control of Resolve and insinuated that he could switch off the system if his demands were not met" (see [33] above) is more compelling than Ms Kefaloukos' statement, however Mr Morris' account of the same meeting makes no reference to this 'insinuation' by Mr Matsumoto. The allegation is a very serious one and must be established by better evidence than "inexact proofs, indefinite testimony, indirect differences or by slender and exiguous proofs or circumstances pointing with a wavering finger to an affirmative conclusion" (*Briginshaw v Briginshaw* [1938] HCA 34).

[51] I am not satisfied on the evidence that Mr Matsumoto's alleged extortion of Loghic Connect, or planned extortion of Loghic Connect, was a valid reason for dismissal because I am not satisfied to the *Briginshaw* standard that the conduct took place.

[52] Lastly, in my view Mr Matsumoto’s aggressive behaviour in the meeting on 7 March 2023 with Mr Morris and Mr McIntyre and the so-called assault is not a valid reason for dismissal. I am satisfied that a heated conversation occurred and that there was considerable disagreement at the meeting. However Mr Matsumoto’s demeanour or attitude in the meeting, as opposed to what Mr Matsumoto said about the matters discussed in the meeting, was not misconduct. Employment relationships generally can accommodate friction and tension from time to time. Loghic Connect has not established that any particular conduct in this meeting by Mr Matsumoto that warranted his dismissal.

[53] The allegation that Mr Matsumoto grabbed Mr McIntyre’s jaw is overblown. Mr Matsumoto denies that he touched Mr McIntyre at all. The conversation on 7 March 2023 was heated, and for a number of reasons tensions were running high. Loghic Connect chose not to refer to this concern either when it dismissed Mr Matsumoto. In the evidence of events after the dismissal there appears to be an ongoing animosity between Mr Matsumoto and Mr McIntyre, but at the same time there is evidence of cooperation between the two. On the evidence Mr McIntyre was unaffected by the assault. If Mr Matsumoto did in fact grab Mr McIntyre’s jaw then his conduct was entirely unacceptable. However, in light of all the other difficulties between the parties, Mr Matsumoto touching Mr McIntyre’s jaw was not a valid reason for dismissal.

Was the Applicant notified of the valid reason (s.387(b))?

[54] Section 387(b) requires me to take into account whether the applicant “was notified of that reason.” Sections 387(b) and (c) direct the FWC’s inquiry to matters of procedural fairness. In general terms a person should not exercise legal power over another, to that person’s disadvantage and for a reason personal to him or her, without first affording the affected person an opportunity to present a case (per *Crozier v Palazzo Corporation Pty Ltd* (2000) 98 IR 137 at 151 [70] citing *FAI Insurances Ltd v Winneke* (1982) 151 CLR 342; *Kioa v West* (1985) 159 CLR 550; *Annetts v McCann and others* (1990) 170 CLR 596).

[55] In context, the inquiry to be made under s.387(b) is whether the employee was “notified” of that reason *before* the employer made the decision to terminate (per *Sydney Trains v Trevor Cahill* [\[2021\] FWCFB 1137](#) at [60]). The reference to “that reason” is a reference to the valid reason(s) found to exist under s.387(a) and the reference to being “notified” is a reference to explicitly putting the reasons to the employee in plain and clear terms (per *Bartlett v Ingleburn Bus Services Pty Ltd* [\[2020\] FWCFB 6429](#) at [19] and *Sydney Trains v Trevor Cahill* [\[2021\] FWCFB 1137](#) at [60]).

[56] The only reason given to Mr Matsumoto at the time he was dismissed was his alleged malfeasance in relation to Ms Grant’s salary. Mr Matsumoto was not notified of this reason before Loghic Connect made the decision to terminate his employment. Nor was Mr Matsumoto notified of Loghic Connect’s other reasons for dismissal.

Was the Applicant given an opportunity to respond to any valid reason related to their capacity or conduct (s.387(c))?

[57] Mr Matsumoto was not given a proper opportunity to respond to the allegations against him. The dismissal of Mr Matsumoto, presumably done on legal advice, was procedurally deficient. This deficiency significantly contributes to my overall conclusion that the dismissal was unfair.

[58] Mr Morris' explanation for the procedural deficiencies is understandable. He was concerned at the time that Mr Matsumoto might cause significant damage to his newly acquired business, and he decided to act swiftly to remove him.

Did the Respondent unreasonably refuse to allow the Applicant to have a support person present to assist at discussions relating to the dismissal (s.387(d))?

[59] This factor is not a relevant consideration in this matter.

Was the Applicant warned about unsatisfactory performance before the dismissal (s.387(e))?

[60] As the dismissal did not relate to unsatisfactory performance, strictly speaking this factor is not relevant to the present circumstances.

Other factors – s.387(f)-(h)

[61] There are no other relevant matters (s.387(h)) that impact upon the fairness of the dismissal of Mr Matsumoto.

Is the Commission satisfied that the dismissal of the Applicant was harsh, unjust or unreasonable?

[62] 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 and therefore an unfair dismissal.

[63] Whilst there was potentially a valid reason for dismissal connected to Mr Matsumoto's involvement in Ms Grant's salary arrangements, the process by which Mr Matsumoto was dismissed was so deficient that his dismissal was unfair.

[64] The active reasons for dismissal were not put to Mr Matsumoto at all prior to his dismissal. Mr Matsumoto did not learn of some allegations against him until Loghic Connect's evidence was filed in these proceedings. Loghic Connect's swift and heavy-handed actions to quickly exit Mr Matsumoto from the business meant that he was unfairly dismissed for the purposes of the FW Act.

[65] Mr Matsumoto was a founding director of Redback and held a senior position in Loghic Connect's business. Mr Matsumoto also owned part of another business that was a significant supplier to Loghic Connect. If the amount paid to Ms Grant was taken into account, Mr Matsumoto's salary was the equivalent of \$220,000 per annum, which would take him outside of the unfair dismissal regime.

[66] However, although Mr Matsumoto's dismissal could be seen as one move within more complex corporate swordplay, Mr Matsumoto is nonetheless "a person [who] is protected from unfair dismissal" for the purposes of s.382 and his dismissal is measured against the standards set by the FW Act.

[67] Having considered each of the matters specified in section 387 of the FW Act, I am satisfied that the dismissal of Mr Matsumoto was unfair.

Remedy - Compensation

[68] Being satisfied that Mr Matsumoto made an application for an order granting a remedy under s.394, was a person protected from unfair dismissal and was unfairly dismissed within the meaning of s.385 of the FW Act, I may order Mr Matsumoto's reinstatement, or the payment of compensation to him/her, subject to the FW Act.

[69] Mr Matsumoto did not seek re-instatement and in any event re-instatement is not appropriate.

Is an order for payment of compensation appropriate in all the circumstances of the case?

[70] Having found that reinstatement is inappropriate, it does not automatically follow that a payment for compensation is appropriate. The question whether to order a remedy remains a discretionary one (per *Nguyen v Vietnamese Community in Australia t/a Vietnamese Community Ethnic School South Australia Chapter* [2014] FWCFB 7198 at [9]).

[71] In all the circumstances, I consider that an order for payment of compensation is appropriate to compensate Mr Matsumoto for financial losses he has suffered arising from being unfairly dismissed.

Compensation – what must be taken into account in determining an amount?

[72] Section 392(2) of the FW Act requires all of the circumstances of the case to be taken into account when determining an amount to be paid as compensation to Mr Matsumoto in lieu of reinstatement including:

- (a) the effect of the order on the viability of the Respondent's enterprise;
- (b) the length of the Applicant's service;
- (c) the remuneration that the Applicant would have received, or would have been likely to receive, if the Applicant had not been dismissed;
- (d) the efforts of the Applicant (if any) to mitigate the loss suffered by the Applicant because of the dismissal;
- (e) the amount of any remuneration earned by the Applicant from employment or other work during the period between the dismissal and the making of the order for compensation;
- (f) the amount of any income reasonably likely to be so earned by the Applicant during the period between the making of the order for compensation and the actual compensation; and
- (g) any other matter that the Commission considers relevant.

[73] I will consider these factors in sequence:

- a) there is no dispute and I am satisfied that an order for compensation would not have an effect on the viability of the employer's enterprise;
- b) Mr Matsumoto had worked for Redback and Loghic Connect for a long period of time in a senior position, which favours a greater amount of compensation;
- c) if Mr Matsumoto had not been dismissed on 14 March 2023 his employment was unlikely to have continued for any more than a few days, perhaps two weeks at the outside. By the time of the dismissal the employment relationship was highly strained, as evidenced by the meeting on 7 March 2023 and the weighty matters discussed at that meeting. Mr Matsumoto no longer had Mr Morris's trust. Mr Morris was coming to the view that the business he purchased from Mr Downs and Mr Matsumoto had significant problems, and that Mr Matsumoto was responsible for at least some of those problems.
- d) For two weeks, which is my best estimate of how long the employment would have lasted, Mr Matsumoto might have earned \$5,000 (based on his annual salary of \$130,000);
- e) Mr Matsumoto said he did not earn any income in the first two weeks after he was dismissed;
- f) the amount of income reasonably likely to be earned by Mr Matsumoto between the making of the order for compensation and the payment of compensation is not directly relevant; and
- g) There are no other directly relevant matters. I do not regard the "intangible benefits" referred to by The Respondent are relevant.

Compensation – how is the amount to be calculated?

[74] The well-established approach to the assessment of compensation under s.392 of the FW Act is to apply the "Sprigg formula" derived from the Australian Industrial Relations Commission Full Bench decision in *Sprigg v Paul's Licensed Festival Supermarket* (1998) 88 IR 21 (***Sprigg***) (see also *Bowden v Ottrey Homes Cobram and District Retirement Villages* (2013) 229 IR 6; [\[2013\] FWCFB 431](#) and *Double N Equipment Hire Pty Ltd t/a A1 Distributions v Humphries* [\[2016\] FWCFB 7206](#) at [16]).

[75] I have estimated the remuneration Mr Matsumoto would have received, or would have been likely to have received, if Loghic Connect had not terminated the employment to be \$5,000 on the basis of my finding that Mr Matsumoto would likely have remained in employment for a further period of up to two weeks. I have found that Mr Matsumoto did not earn any remuneration in the first two weeks after the date of dismissal. I do not think it is appropriate to deduct any amount for contingencies. I have considered the impact of taxation but have elected to settle a gross amount of \$5,000 and leave taxation for determination.

[76] I am satisfied that the amount of compensation that I have determined above takes into account all the circumstances of the case as required by s.392(2) of the FW Act. In this matter the amount of the order for compensation is not to be reduced on account of misconduct (per s.392(3)).

[77] The cap on compensation in s.392(5) of the FW Act has no impact upon the present matter.

[78] In light of the above, I will make an order that Loghic Connect pay \$5,000 less taxation as required by law to Mr Matsumoto in lieu of reinstatement within 21 days of the date of this decision, plus an additional component for superannuation ([PR767631](#)).



DEPUTY PRESIDENT

Appearances:

*A Barwick and A Ranchhod for the Applicant
B Morris for the Respondent*

Hearing details:

2023.
Sydney
August 2.

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