[2023] FWC 730 [Note: An appeal pursuant to s.604 (C2023/2254) was lodged against this decision.]

DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Julian Strangio
v
Sydney Trains
(U2022/11462)

COMMISSIONER MCKENNA SYDNEY, 5 APRIL 2023

Application for an unfair dismissal remedy

[1] Julian Stangio ("the applicant") has made an application, pursuant to s.394 of the *Fair Work Act 2009* ("Act"), in which he seeks an unfair dismissal remedy in relation to his termination of employment by Sydney Trains ("the respondent").

Preliminary matters

[2] As to the initial matters to be considered, as set out in s.396 of the Act, there was no issue, and I otherwise find, that: the application was made within time; the applicant is a person who was protected from unfair dismissal; the respondent is not a small business, with the result that consideration of the *Small Business Fair Dismissal Code* does not arise; and the termination of employment was not a genuine redundancy.

Background

[3] The applicant commenced employment with a predecessor to Sydney Trains in October 1985, when he was aged 16 years. Over the years, the applicant made his way through the employment ranks from junior station assistant to, at the time of dismissal, Station Duty Manager, Level 4 (under the terms of the *Sydney Trains Enterprise Agreement 2018*). The applicant had been employed for a period of 37 years prior to receiving confirmation of advice about his dismissal on 1 December 2022.

[4] The applicant was a well-regarded employee in terms of performance. The respondent's decision to dismiss the applicant arose against a discrete conduct-related matter involving a breach of the code of conduct that applies to employees of the respondent (and a number of other NSW transport agencies), namely *Our Code of Conduct* ("Code of Conduct"). The breach was a failure by the applicant to report that he had been charged with certain criminal offences, contrary to the reporting obligations in clause 14 of the Code of Conduct. Shortly stated, clause 14 of the Code of Conduct imposes an obligation on employees to immediately make a report

if they have been the subject of relevant criminal charges. Specifically in this case, the applicant did not immediately notify his manager that on 10 May 2021 he had been charged by the NSW Police with 13 criminal offences ("the May 2021 Charges"). Matters came to the attention of the respondent approximately one year after the charges had been laid, as a result of an anonymous tip-off. The tip-off incorrectly advised the respondent that the applicant had by then been convicted of charges (around the time of the tip-off, charges were still pending and had not been determined by a court). Consequent upon the anonymous tip-off, the respondent commenced an investigation.

[5] The investigation led to allegations and, in due course, a show cause process, and other associated transport-specific review/appeal processes. The dismissal letter was dated 24 October 2022. Following the applicant's exercise of certain appeal mechanisms, the original dismissal decision was confirmed in a subsequent letter dated 25 November 2022 (which was given to the applicant on 1 December 2022). The initial letter advising of the dismissal relevantly read (bold in original):

> "Having considered those responses and the totality of the available information, Sydney Trains remains satisfied that you engaged in the conduct as alleged, namely:
>
> Allegation 1: That you failed to notify Sydney Trains that you had been charged by NSW Police with thirteen (13) serious criminal offences on 10 May 2021.
>
> Allegation 2: That on 11 May 2022 at Parramatta Local Court, you pleaded guilty to twelve (12) serious criminal offences and were formally convicted thereof.
>
> Sydney Trains considers that your conduct was in breach of:
>
> 1) ***TfNSW Our Code of Conduct***, specifically:
> i) Section 3 – Staff responsibilities;
> ii) Section 4 – Manager responsibilities; and
> iii) Section 14 – Criminal conduct.
>
> Honesty, integrity and lawfulness are paramount for any employee of Sydney Trains, and in particular for a Station Duty Manager. Sydney Trains considers the substantiated conduct, when viewed objectively, to be serious and unacceptable conduct which has undermined the trust and confidence that Sydney Trains must have in you to carry out your duties as a Station Duty Manager.
>
> Your role requires that you operate in a supervisory and leadership capacity. You have additional safety responsibilities given you are SafeWork qualified as well as being a rail safety worker. The gravity of your serious criminal conduct is significant and incongruent with your employment at Sydney Trains, particularly in circumstances where you were found guilty of supply cannabis – indictable and commercial quantity (2.08kg). This was not your first criminal conviction during your employment (see below).

I am also concerned that you did not immediately notify your manager that you had been charged with 13 serious criminal offences.

Further, your misconduct is inconsistent with the expectations and public position of Sydney Trains and is capable of negatively impacting Sydney Trains' reputation.

In coming to the outcome, Sydney Trains has had regard to your previous criminal convictions, including:

a. That in 1990, you were suspended from employment with Sydney Trains in relation to two criminal convictions, namely for possession of a prohibited drug and possession of drug implements.

b. That your criminal record includes a criminal conviction entered against you in approximately 2001, for an unknown offence, which was not disclosed to Sydney Trains.

We note that the 1990 conviction was on your personal file.

The 2001 conviction became apparent to us when we reviewed the transcript of recent proceedings, and upon reviewing your employment records it had not been disclosed. When we requested further particulars in respect of that offence, you refused to provide them.

Taking these matters into account, Sydney Trains has decided to proceed with the final disciplinary outcome

Dismissal".

[6] The May 2021 Charges were set out/summarised in the respondent's submissions as follows:

"(i) Supply Cannabis – Indictable quantity Section 25(1) *Drug Misuse and Trafficking Act* 1985;

(ii) Possess or Use Prohibited Weapon without a Permit - Sect 7(1) *Weapons Prohibition Act* 1998;

(iii) Ten (10) x Holder of Category A or B Licence not have approved storage – Sect 40(1) *Firearms Act 1996*; and

(iv) Actual Offence – Deal with Property Proceeds of Crime – *Proceeds of Crime Act* 2002."

[7] While it was the failure by the applicant to immediately report that he had been the subject of the May 2021 Charges that comprised the breach of the reporting obligation under the Code of Conduct, it may be noted, for completeness, that, after some negotiations around the charges, the outcome was a plea of guilty to amended charges. Those charges were described in the respondent's submissions as follows:

"4. Further, on 11 May 2022, the Applicant pleaded guilty to 12 criminal offences, namely:

(i) Supply Cannabis – Indictable quantity Section 25(1) *Drug Misuse and Trafficking Act* 1985;

(ii) Possess or Use Prohibited Weapon without a Permit - Sect 7(1) *Weapons Prohibition Act* 1998; and

(iii) Ten (10) x Holder of Category A or B Licence not have approved storage – Sect 40(1) *Firearms Act* 1996.

And was formally convicted of the charge of Supply Cannabis – Indictable quantity Section 25(1) *Drug Misuse and Trafficking Act* 1985 …".

[8] The applicant was convicted on certain charges (some of which differed from the May 2021 Charges, because the initial charges were amended following communications between the applicant's solicitor and the relevant authorities). Moreover, no conviction was recorded concerning some of the charges. As can be seen from the dismissal letter, both the non-reporting of criminal charges and the disposition of the charges were relied upon in the decision to dismiss (among other considerations).

[9] The applicant's reply submissions put matters this way as to the outcome of the charges:

"7. Sydney Trains in its letters of allegations and disciplinary proceedings prior to dismissal, asserted that Mr Strangio had been convicted of 12 serious criminal offences. We submit that was an incorrect conclusion. It is without foundation. We further submit that Sydney Trains, having relied on misconceived understanding of the outcome of sentencing, have allowed an error to germinate in the decision-making processes which ultimately informed the bases on which the decision-makers determined Mr Strangio's employment fate.

8. From the Court record and decision of Magistrate Follent, it is clear that the ten firearms offences were dealt with by way of s.9 of the Crimes (Sentencing Procedure) Act 1999 (NSW) with no conviction recorded.

9. Of the charge concerning the possess or use a prohibited weapon without a permit, that was dealt with by way of a fine.

10. The remaining charge concerned with Supply cannabis and was dealt with by way of an Intensive Corrections Order (ICO) of 100 hours community service. Mr Strangio had completed this (ICO) service on or by 8 August 2022. Accordingly, there is no ongoing obstacle to him performing the substantive and inherent requirements of the role of Station Duty Manager or any other position with the respondent should the Commission order reinstatement.

11. From the Court record …, the Court accepted that Mr Strangio was to some extent a victim of his own making by volunteering to hold the cannabis for a friend."

[10] Separately from the criminal charges which were the subject of the reporting obligation under the Code of Conduct, civil proceedings were commenced, on a date that is unclear, by the NSW Crime Commission ("Crime Commission") concerning a substantial amount of money in the possession of the applicant. It is common ground that the applicant was not obliged to report this matter under the Code of Conduct, because the Crime Commission-initiated proceedings were civil rather than criminal. It appears that an agreement was reached between the Crime Commission and the applicant by which the Crime Commission retained certain cash that the police had located at the applicant's residence in May 2021 and the applicant also made a subsequent additional agreed payment to the Crime Commission.

[11] The applicant's submissions concerning the failure to report the May 2021 Charges were as follows:

> 4. On seeking legal advice from his solicitor the Applicant was advised to delay informing Sydney Trains of the charges until his solicitor had the opportunity to settle the charges and agreed facts with the Police Prosecutor.
>
> 5. This process, for reasons that remain unclear, save for speculation arising from the impact of COVID-19 in the period May 2021-May 2022, resulted in this task not being finalized until just immediately prior to the court hearing before Magistrate Follent Parramatta Local Court on 21 May 2022.
>
> 6. The Applicant advances by way of mitigation, that acting on legal advice, he fully intended to inform his employer of the pending charges, but was denied this opportunity when an unknown informant sent an anonymous email to Transport NSW in April 2022, incorrectly asserting that Mr Strangio had been convicted of a series of criminal offences."

[12] Among other matters, the applicant submitted that the non-reporting conduct constituted, at worst, a serious error of judgment – but that it was a one-off incident, it was not reckless, and it was guided by legal advice; and did not justify dismissal. The applicant's case relied on a number of matters in support of the contention that the dismissal was harsh, including:

- that dismissal was a disproportionate sanction to the conduct engaged in;
- that the respondent's policies do not require dismissal of an employee for such conduct;
- that the respondent's policy in respect of potential alternative sanctions could have been invoked;
- that the applicant was remorseful for his conduct and demonstrated insight into his conduct; and
- the applicant's age, length of service and the adverse impact of dismissal on both him and his family.

[13] The respondent submitted that the effect of the applicant's case was that the respondent did not have a valid reason for dismissal and, in essence, the applicant had contended he "*did not engage in serious misconduct and that there is no evidence that the nature and number of offences the Applicant was charged with were of such seriousness and magnitude that they had the effect of irrevocably damaging the employment relationship*". The respondent also referred to, and advanced its submissions challenging, the matters relied on by the applicant as to the dismissal being unfair, including: proportionality of response; matters concerning the applicant's age, length of service and his family/financial circumstances; and the applicant's submission that the respondent had closed its mind to factors raised in mitigation. As to such matters, the respondent's submissions included noting that the applicant relied on the advice from his criminal lawyer in not immediately reporting that he had been charged. In such respects, the respondent submitted as follows: "*The Applicant's own evidence discloses that he chose not to advise Sydney Trains of these charges and this advice until some 13 months later, after the fact of his charges had been the subject of an anonymous report to Sydney Trains. It is available to draw the obvious conclusion that in the absence of that anonymous report, the Applicant may never have disclosed the 10 May 2021 Charges or subsequent Supply Cannabis conviction unless required (such as in the event of a custodial sentence).*"

Consideration

[14] By operation of s.387 of the Act, the Commission must take into account certain cumulative matters in considering whether a dismissal was harsh, unjust or unreasonable. I turn to those matters.

(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)

[15] The Code of Conduct imposes certain obligations on employees of the respondent. Relevantly, clause 3 (Staff responsibilities) identifies to employees that:

> "You are responsible for familiarising yourself with agency policies and procedures, and complying with them. You are also responsible for making enquiries if you are unsure about what actions to take.
>
> You need to be aware that the reputation of the transport agencies can be affected by your actions at work and, in certain circumstances, by your conduct outside the workplace.
>
> You must: …[various obligations]".

[16] Apart from the overarching matters set out in clause 3 of the Code of Conduct, clause 14 also addresses specific obligations. Clause 14 reads as follows:

> "14. Criminal Conduct
>
> If you are charged or convicted with any offence which may impact on your ability to undertake part or all of the inherent requirements of your role, you must immediately notify your manager.

> If you are charged or convicted with a serious criminal offence, whether or not it is related to work, you must immediately notify your manager. You may be suspended from duty pending the outcome of disciplinary or legal proceedings. A serious criminal offence means an offence committed in New South Wales that is punishable by imprisonment for six months or more or an offence committed elsewhere that, if it had been committed in New South Wales, would be an offence so punishable.
>
> If there is sound evidence that you have committed a criminal offence at work or related to work, Transport may take disciplinary action against you as well as notifying the police or other relevant external authority.

[17] At least some of the May 2021 Charges can be described as involving, within the meaning of clause 14 of the Code of Conduct, a "*serious criminal offence*" (or offences), given the potential imprisonment term of six months or more attaching to a conviction. The applicant's failure to immediately notify his manager (or, after the charges had been laid, in a timeframe immediately proximate to when the charges had been laid) involved a breach of the obligation in clause 14 of the Code of Conduct.

[18] I am satisfied that there was a valid reason for the dismissal related to the applicant's conduct in failing to make the report required to be made by the Code of Conduct. As the Code of Conduct notes: "*You may be suspended from duty pending the outcome of … legal proceedings.*" The failure by the applicant to comply with the reporting obligation not only amounted to a breach of the Code of Conduct, but the applicant's failure to report also deprived the respondent of information that would have informed its own decision-making concerning any steps it may have wished to take in relation to the applicant's employment, pending the determination or outcome of the charges. As to that, the May 2021 Charges involved, in short, charges with components concerning drugs, guns and alleged proceeds of crime. I accept the respondent's submission that the applicant's reporting breach was not a minor breach, but constituted a breach which went to the heart of the trust that the respondent is entitled to have in its employment relationships.

[19] The dismissal letter referred also to the fact of the 2022 convictions. As expressed in the dismissal letter, the fact of the convictions gave cause for concern to the respondent separately from, and/or in addition to, the failure to report the May 2021 Charges. Specifically, Magistrate Follent said the following in relation to one of the charges:

> "For the offence of supply cannabis, more than the indictable but less than the commercial quantity, you are convicted and sentenced to imprisonment for 12 months to date from 29 June 2022 and to expire on 28 June 2023, to be served by way of an intensive corrections order under s 7 of the *Crimes (Sentencing Procedure) Act*. …".

[20] In and of themselves, criminal convictions do not necessarily provide a valid basis for the dismissal of an employee (and the historical conviction to which reference was made in this case certainly would not provide a valid basis for dismissal). The fact of the convictions in 2022 does not, however, appear to have been the principal reason for the dismissal – at least as the case was advanced before me. It was the reporting breach which appeared to have a greater emphasis in the respondent's case albeit the fact of the subsequent convictions significantly fed-into the decision-making concerning the disciplinary outcome of dismissal. I have noted

and accepted the applicant's submission that the respondent appears, from the dismissal letter, to proceeded on the mistaken basis that the applicant had been convicted on a dozen charges, whereas no conviction was recorded concerning some of the charges that were eventually pressed. However, I have also considered the evidence of one of the respondent's witnesses, which read:

> "24. Sydney Trains is an organisation that operates under the Rail Safety National Law which deals with all matters to do with rail safety. Importantly, it requires that a rail safety workers must not carry out or attempt to carry out rail safety work while there is any presence of alcohol or a 'prescribed drug' in their system. A prescribed drug includes cannabis.
>
> 25. I am regularly involved with new staff members coming into Sydney Trains and the process whereby we explain to them the fact that even taking small amounts of drugs in their spare time might result in them losing their jobs if they test positive at work. A Station Duty Manager is someone who also has to explain this to staff and assist with the facilitation of drug testing.
>
> 26. I do not suggest that Mr Strangio had illicit drugs in his system or took illicit drugs at any point. And when I was considering this matter and speaking with [the decision maker], I did not proceed on the basis that Mr Strangio did consume cannabis. What I have had regard to is the fact that Mr Strangio admitted to being in possession of approximately 2 kilograms of cannabis, which is deemed as supply. In my view, that makes it difficult to see how Sydney Trains could have confidence in his ability to deliver this message and be seen as genuine. I consider that if staff were aware of this fact, it would send a very poor message about the values of Sydney Trains.
>
> 27. My view is that the nature of the offence itself is incompatible with working at Sydney Trains. …"

(b) Whether the person was notified of that reason

[21] I am satisfied that the applicant was notified of the reasons for his dismissal, in the prior-dismissal sense considered in *Crozier v Palazzo Corporation Pty Ltd* (2000) 98 IR 137, as affirmed in cases including *Mark Bartlett v Ingleburn Bus Services Pty Ltd t/a Interline Bus Services* [2020] FWCFB 6429.

(c) Whether the person was given an opportunity to respond to any reason related to the capacity or conduct of the person

[22] I am satisfied that the applicant was given an opportunity to respond to the conduct-related reason as contemplated in the criterion in s.387(c) of the Act, and did in fact respond.

(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

[23] There is no evidence that there was any unreasonable failure by the respondent to allow the applicant to have a support person present to assist at any discussions relating to dismissal.

(e) If the dismissal related to unsatisfactory performance by the person—whether the person had been warned about that unsatisfactory performance before the dismissal

[24] The dismissal in this case did not relate to unsatisfactory performance, so the question of prior warning is not apposite. As I have noted, the applicant was a well-regarded employee in terms of performance.

(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*

[25] The respondent is a sizeable employer, with approximately 11,000 employees. The procedures that the respondent adopted were conformable with procedures that might be expected from an employer of its size and which has in-house human resources management personnel. The procedures that the respondent adopted were also conformable with its own, multi-stage processes.

(h) Any other matters that the Commission considers relevant

[26] A central feature of the applicant's case was that his failure to report the May 2021 Charges arose against the background of legal advice that was given to him. As the applicant put matters: "*At all times I was acting on the legal advice of my solicitor who recommended that I 'hold off' informing my employer of the charges until the police facts were settled.*" The applicant advanced, by way of mitigation, that, acting on legal advice, he fully intended to inform the respondent of the pending charges, but was denied this opportunity due to the intervening anonymous tip-off.

[27] The statement of evidence by the applicant's solicitor in the criminal matters, Rodney Van Houten of Van Houten Law, was similarly to the effect that he had advised the applicant not to report matters to the respondent until the final form of the charges was settled. Mr Van Houten's evidence read, in part:

> "5. Due to the nature of the charges, I was working with the Police Informant and later Police Prosecutor to reach an agreed fact sheet and Withdrawal of the charge of Deal with proceeds of Crime.
>
> 6. In what was quite a remarkable departure from usual practice and for inexplicable reasons, these negotiations were protracted and not settled for a further 12 months. I believe that the impact of COVID-19 and the availability of various personnel, significantly contributed to much of this delay.
>
> 7. It was on my advice to Mr Strangio that he delay informing his employer of the charges as they were first comprised in May 2021, given the work that was being done by me and the Police.
>
> 8. I advised Mr Strangio that it would be likely at least one of the of the charges would be withdrawn and the Police facts amended.

9. Based on the Police brief and evidence, I formed the opinion that whilst Mr Strangio was charged with a number of offences, that it would be unlikely that he would receive a custodial sentence and that those charges would likely be dealt with at the lower end of the Sentencing options. It was on this basis that I advised Mr Strangio to delay informing his employer of the charges until they were settled.

10. Regrettably, and before the hearing, I am advised that Mr Strangio's employer received an anonymous report incorrectly advising that Mr Strangio had been convicted of a number of offences. At the date of the anonymous report, Mr Strangio's matter had not been heard before the Parramatta Local Court."

[28] As to that part of the applicant's case around the advice given by Mr Van Houten, the respondent's submissions included the following:

"26. … To the extent that it is based on a submission that the Applicant relied upon the advice of his criminal lawyer to not report the 10 May 2021 Charges, Sydney Trains says:

(a) this was a choice made by the Applicant and one freely exercised when alternatives existed;

(b) there is no evidence that he received advice about alternatives such as disclosing that he had been charged but was in receipt of advice not to presently disclose to Sydney Trains;

(c) it demonstrates that he placed his own interests above those of Sydney Trains;

(d) the Respondent should not have to factor poor or incorrect advice into its decision-making process with reference to its employees;

(e) there is no evidence about when he would have disclosed the 10 May 2021 Charges to Sydney Trains despite the 13 month period between the 10 May 2021 Charges and making Sydney Trains aware of the advice he had received; and

(f) it is available to draw the conclusion that absent the anonymous report, the Applicant would not have ever disclosed the 10 May 2021 Charges.

27. All of these matters should assist the Commission in drawing the conclusion that Sydney Trains reached, that is, the advice received does not undermine the valid reason for dismissal in any way or otherwise render the dismissal decision harsh, unjust or unreasonable.

28. Further, the Applicant's conduct was objectively very serious. He was charged with 13 criminal offences and was convicted of having 2kgs of cannabis in his possession. This is not a minor criminal matter. His role with Sydney Trains was one where the safety of his colleagues and customers depended on the exercise of trustworthy decision making.

> 29. The Code makes it clear that breach of the Code might result in the termination of employment. The Applicant must have appreciated the risk of that occurring when he knowingly chose not to report the 10 May 2021 Charges. The conclusion is readily available that he made this choice because he knew how serious those charges were and the seriousness with which they would be viewed by Sydney Trains."

[29] I have noted and considered the evidence of the applicant and Mr Van Houten about the advice given by Mr Van Houten that the applicant acted on, in not informing the respondent about the May 2021 Charges. Regardless of the advice given by Mr Van Houten to the applicant, the employment obligation on the applicant, arising from the Code of Conduct, was unambiguously applicable, namely, that "*If you are charged … with a serious criminal offence, whether or not it is related to work, you must immediately notify your manager.*" The (only) appropriate course would have been for the applicant to adhere to his reporting obligation under the Code of Conduct once that obligation was engaged around 10 May 2021.

[30] If and when the initial criminal charges changed, it would have been the open and appropriate course to update the relevant manager/the respondent accordingly after the initial report concerning the May 2021 Charges had been made by the applicant (albeit the Code of Conduct does not appear to impose any updating requirement, unless, for example, an additional charge or charges were laid which came within the Code of Conduct-specified meaning of "*a serious criminal offence*"). Having regard to the mandatory language of the Code of Conduct, it was not an open or appropriate course for the applicant to withhold information from the respondent about the May 2021 Charges. This is so notwithstanding the matters addressed in the evidence of Mr Van Houten as to the reasons for his advice to the applicant, including: that Mr Van Houten "*was working with the Police Informant and later Police Prosecutor to reach an agreed fact sheet and Withdrawal of the charge of Deal with proceeds of Crime*"; that "*these negotiations were protracted and not settled for a further 12 months*"; and/or that Mr Van Houten considered it would be unlikely the applicant would "*receive a custodial sentence and that those charges would likely be dealt with at the lower end of the Sentencing options. It was on this basis that I advised Mr Strangio to delay informing his employer of the charges until they were settled.*"

[31] As things transpired, the fact of the applicant's non-disclosure of the May 2021 Charges came to be the subject of an investigation as a result of an anonymous tip-off on 9 April 2022 - which was approximately 11 months after the laying of the initial charges. The tip-off information was incorrect to the extent that it suggested the applicant already had been convicted, but it was a particularly regrettable turn of events in the employment relationship that information about criminal matters came to the attention of the respondent other than by a direct report from the applicant as required by the Code of Conduct – and, thereby, an investigation was commenced by the respondent.

[32] As to various other matters in the case, including in connection with the submissions about whether the dismissal was harsh in all the circumstances, I have considered all matters relied upon by the parties even if not canvassed in this decision. I have given particular consideration to the applicant's atypically lengthy period of employment, i.e., the applicant's employment commenced when he was aged 16 years and he had an ensuing 37 years of "*largely untarnished*" and satisfactory performance with the respondent and its predecessor/s. I have also given particular consideration to the fact that the sentencing on the convictions concerning

the amended charges comprised, in terms of practical outcomes, 100 hours of community service on the drug charge and a fine concerning the prohibited weapon charge. I have also given consideration to what was said by Magistrate Follent on 29 June 2022 in the sentencing remarks, including reference to the applicant's "*stability in employment for a very significant period*" in terms of his rehabilitation prospects.

[33] Both parties' cases advanced matters around the question of proportionality of the disciplinary outcome of dismissal. Even accepting the matters relied on in the applicant's case at their highest in such respects (including, for example, the financial impact and the availability of alternatives short of dismissal), I am not satisfied that the dismissal was disproportionate to the applicant's conduct in him failing to adhere to the reporting obligation imposed by the Code of Conduct.

Conclusion

[34] Considering all matters, including the authorities to which reference was made, the applicant has not established a case that the dismissal was harsh, unjust or unreasonable. As such, the applicant's application for an unfair dismissal remedy is dismissed.

COMMISSIONER

Appearances:

J Hart of the Australian Rail, Tram and Bus Industry Union for the applicant.
J Darams of counsel for the respondent.

Hearing details:

2023.
Sydney:
March 16.

Printed by authority of the Commonwealth Government Printer

<PR760624>