

[2024] FWC 828

The attached document replaces the document previously issued with the above code on 2 April 2024.

1. Changes to paragraph [50], [51], [60] and [61] with correct length of service.

Associate to Deputy President Lake

Dated 3 April 2024





# DECISION

*Fair Work Act 2009*  
s.120—Redundancy pay

## **Bartercard Digital Australia Pty Ltd**

(C2023/7573)

(C2023/7576)

(C2023/7586)

(C2023/7588)

(C2023/7592)

DEPUTY PRESIDENT LAKE

BRISBANE, 2 APRIL 2024

*Variation of redundancy pay – alternative employment offered – whether alternative employment acceptable – alternative employment acceptable – unfairness – redundancies varied.*

[1] On 6 December 2023, Bartercard Digital Australia Pty Ltd (**the Applicant/Bartercard**) applied to the Fair Work Commission (**the Commission**) under s.120(2) of the *Fair Work Act 2009* (**the Act**) to vary the redundancy entitlements of Mr Ashar Ahmad, Mr Michael Dean, Ms Jayne Corby, Ms Diana Pavic and Ms Lynette Gooding (**the Respondents**) to nil or an amount deemed appropriate by the Commission.

[2] The Respondents advised my Chambers that they opposed the variation of redundancy. The matters were listed for hearing on 2 February 2024. The Applicant was represented by Mr Michael Johnston, Director, and Mr Paul Hebbink, Chief Operating Officer. The Respondents each appeared on their own behalf.

### **Background**

[3] The Respondents were engaged as Business Development Managers, working primarily from one of the Applicant's offices located throughout Australia. As part of their roles, the Respondents managed a portfolio of member accounts, and were required to communicate with and educate clients in relation to Bartercard's service, promote networking amongst members and promote the overall growth of its enterprise. The role also required the Respondents to conduct face-to-face visits with clients. The Respondents were provided a \$5,000 annual vehicle allowance to undertake these visits.

[4] In September 2023, Bartercard restructured their business which meant they no longer required the Business Development Managers to work in an office. On 19 October 2023, the Respondents were advised that some positions were likely to be made redundant. The same day, the Respondents each received a written offer of employment in a new role known as a Trading Specialist. A position description of the role was also provided. The Respondents were

informed that if they chose not to accept the new role, their employment would be made redundant.

[5] The Trading Specialist position description outlined that the primary responsibility is to generate revenue, grow the number of clients, educate and support existing clients, and maintain a commitment to high quality in all interactions. Rather than a set client base, a Trading Specialist would deal with a variety of clients and would be responsible for handling telephone client enquiries.

[6] A key difference between the Business Development Manager and Trading Specialist roles was that the Trading Specialist role was to be performed entirely from home due to the closure of the Applicant's physical offices. Bartercard provided the Respondents with a working from home allowance.

[7] Between 23 and 27 October 2023, Bartercard held consultation meetings with the Respondents regarding the reasons why the Business Development Manager role was being made redundant. The Respondents were consulted in relation to the new Trading Specialist role that had been offered.

[8] Between 26 October and 1 November 2023, the Respondents were provided written notice of the termination of their employment (**the first letter**). This letter set out that the Respondents were entitled to a "redundancy payment in line with the National Employment Standards". The first letter stated that the Respondents would be paid accrued entitlements and outstanding pay, and provided an estimated gross total payment figure, which was comprised of accrued annual and long service leave, the contract notice period and the redundancy amount payable per s.119 of the Act.

[9] Within 2 days of the first letter being issued, each of the Respondents advised that they would not be accepting the Trading Specialist role and would instead accept their redundancy pay entitlements. The Respondents continued working for the Applicant for the duration of their notice periods.

[10] On 23 November 2023, the Applicant issued a further letter to the Respondents (**the second letter**). This letter stated that the first letter did not inform the Respondents that if they chose not to accept the Applicant's offer of alternative employment, their redundancy may be varied upon an application to the Commission pursuant to s.120 of the Act. Bartercard provided the Respondents an opportunity to reconsider whether they would accept the Trading Specialist role. The Respondents were requested to advise the Applicant of their decision by 1 December 2023. The second letter stated that if the Applicant did not hear from the Respondents by this date, it would assume that they wished to continue with the redundancy.

[11] Mr Ahmad's notice period expired on 24 November 2023 (one day after the second letter was issued). The other Respondents' notice periods expired on 1 December 2023. All of the Respondents either did not respond to the second letter or reconfirmed that they were rejecting the offer of the Trading Specialist role. Consequently, the employment of the Respondents was terminated, and they were paid their accrued leave entitlements. The Applicant did not make any redundancy payments to the Respondents, pending the outcome of the current proceedings.

## Variation of Redundancy

[12] Section 120 of the Act states as follows:

**“120 Variation of redundancy pay for other employment or incapacity to pay**

- (1) This section applies if:
  - (a) an employee is entitled to be paid an amount of redundancy pay by the employer because of section 119; and
  - (b) the employer:
    - (i) obtains other acceptable employment for the employee; or
    - (ii) cannot pay the amount.
- (2) On application by the employer, the FWC may determine that the amount of redundancy pay is reduced to a specified amount (which may be nil) that the FWC considers appropriate.
- (3) The amount of redundancy pay to which the employee is entitled under section 119 is the reduced amount specified in the determination.”

1. *Has Other Acceptable Employment been provided?*

[13] The first consideration that I have is whether Bartercard have obtained other acceptable employment for the Respondents.

[14] Past Fair Work Commission decisions explain ‘other acceptable employment’ as the following:

1. An objective test. It does not mean that the role must be acceptable to the employee. An employee’s prima facie entitlement to redundancy pay may be at risk if the employee refuses a role or position, which is found to be objectively acceptable.<sup>1</sup>
2. Acceptable employment is not identical employment, as no two jobs could be exactly the same. Alternative employment can be acceptable even there may be some inconvenience or some detrimental alteration to the terms and conditions of employment.<sup>2</sup> It is a matter of degree.
3. An employee must meaningfully cooperate with the employer in exploring or considering options for alternative positions.<sup>3</sup> Employees should not unreasonably refuse offers of alternative employment merely because they wish to access the benefits of redundancy pay.<sup>4</sup>
4. Identifiable comparisons of the redundant role and the alternate role can be considered in determining whether reasonable alternative employment has been offered with considerations including (but not limited to depending on what the Commission deems as appropriate):
  - a) nature of the work;
  - b) pay rates;

- c) working hours;
- d) skills;
- e) duties;
- f) seniority;
- g) fringe benefits
- h) workload and speed;
- i) job security;
- j) travelling time;
- k) capacity to perform job;
- l) location of work (which would now incorporate a requirement to work from home or in the office);<sup>5</sup>
- m) loss of flexibility (such as caring responsibilities).<sup>6</sup>

[15] I am satisfied that the Respondent found other acceptable employment for all the employees in this matter.

[16] A result of the restructuring of Bartercard meant that the Business Development Manager role was no longer required. Instead, a role of Trading Specialist was provided.

[17] Many employees felt that the Trading Specialist was a ‘demotion’ as they would no longer be doing face to face meetings with clients, as the Trading Specialist role would require the employees to be operating more as a ‘call centre operator’. I am sympathetic to the employees who feel that their role has lost importance to Bartercard, as it is understandable that visiting clients in-person would feel more impactful compared to simply calling a client.

[18] However, the practical reality was that the Business Development Managers were less efficient in engaging with clients and would take up a significant time compared to having more time in calling prospective clients. The business’s role is to ensure that it is sustainable for its stakeholders. One factor are employees. However, a business should not be inhibited from innovation and improved efficiencies through the ability to restructure its organisation.

[19] Loss of job satisfaction (although it may be a factor) should not be a sole reason to seek a redundancy when the employer has offered reasonable alternative employment.

[20] The Trading Specialist Role is reasonable alternative employment. Although the approach to the job had changed, the Trading Specialist role for many of the Respondents meant they would receive a slightly higher salary, even with the loss of the motor vehicle allowance. It is acknowledged that the restructure meant that affected employees would lose some of their income from changing to the new incentive scheme.

[21] However, the old role of Business Development Manager did not exist, and the Respondents were therefore left with the option of having job security or taking a redundancy with the risk of it being varied under s.120 of the Act.

[22] The Trading Specialist role is suitable as it required the Respondents to use their interpersonal skills with existing and new clients, and they were required to manage accounts which they were already doing in a face-to-face capability. There has been acknowledgement that there was a system change arising from the restructured role. Changes in systems can be a

part of organisational change which the employee should seek to adapt rather than use as a reason to reject reasonable alternative employment.

[23] The one drawback of the suitability of the role was the requirement to work exclusively from home. I do acknowledge some limitations with employees who are required to work from home fully remotely. But this is to be assessed on a case-by-case basis based on the individual's circumstances.

## 2. Other Matters

[24] The Respondents have expressed their grievances that Bartercard initially issued correspondence that did not outline that the redundancy payments may be subject to an application under s.120 of the Act, before correcting that correspondence in the second letter issued on 23 November 2023.

[25] In *Lodhia (Jayesh) Nominees Pty Ltd v Sahib*,<sup>7</sup> Commissioner Gregory varied a redundancy and reduced it to nil where the employer erred in stating that the employee would receive their redundancy pay, before later correcting the statement and advising that alternative duties could be offered, and that a redundancy payment would not be offered. The correction was made before the termination of the Applicant's employment.

[26] In *Bartercard* [2024] FWC 7, Commissioner Johns considered 'unfair conduct' was a factor in his determination of variation of redundancy. I agree with this consideration as the wording of 'the FWC deems appropriate' provides some discretion in determining the individual circumstances of the employee to determine an appropriate variation to redundancy.

[27] In light of the above factors, I have provided my consideration below for each employee.

### **Should the redundancy payment of the Respondents be varied?**

*Asher Ahmad*

<b>Condition</b>	<b>Previous Role (Business Development Manager)</b>	<b>New Role (Trading Specialist)</b>
Rate of pay	\$65,000	\$70,000  + \$1,000 monthly incentive upon achieving targets
Allowance	\$5,000 motor vehicle allowance	No vehicle allowance  Proposed work from home allowance
Hours of work	38 hours per week	38 hours per week
Work location	Melbourne office	Home
Seniority	Reported to State Manager	Reporting to COO
Skills and experience	Communicating with and educating clients, assisting	Communicating with and educating clients, generating revenue by connecting

	members, supporting growth of Bartercard	members, supporting trading culture and growth of Bartercard
Job security	Terminable on NES notice	Terminable on NES notice
Continuity of service	Recognised	Recognised
Accrual of benefits	As per NES	As per NES
Probationary period	6 months	Nil
Work/life balance flexibility	Office work	Exclusively from home
Travel time	Some	None

[28] Mr Ahmad noted that he lives in a two-bedroom unit where his wife works as a clinical counsellor and is required to use their bedroom as an office space. This is accepted. The other room is occupied by his son who is a university student. I note that Mr Ahmad's son has access to resources such as studying at the university library, or study spaces that could be utilised while Mr Ahmad performed the Trading Specialist role from home.

[29] On 26 October 2023, Mr Ahmad stated that he wanted more time to decide whether he would want to stay in his role or not, and if there was any room for increase in salary. Mr Ahmad asked for his salary to be \$80,000 in order to find/rent a co-working office as he would not be able to work from home. Bartercard did not agree with the proposed salary increase.

[30] Mr Ahmad contends that the role was substantially different in that he would build relationship with clients through face-to-face meetings. However, Bartercard do not need to provide Mr Ahmad an identical role, but a role which Mr Ahmad could perform. I am satisfied that he could have performed the offered role, and the role was suitable alternative employment.

[31] In weighing up the above factors, Bartercard did obtain other acceptable employment for Mr Ahmad based on his skills and experience. The salary is comparable even accounting the removal of the motor vehicle allowance. The request to work fully remotely does raise some detrimental alteration of the employment conditions, but Bartercard not paying to set up a home office does not necessarily mean that the offered employment is not suitable. This is determined on a case-by-case basis. On this basis, I exercise my discretion to vary the redundancy as the redeployed role was suitable alternative employment.

[32] In considering the variation of redundancy, Mr Ahmad had considered the suitable alternative employment through negotiating salary and then decided to opt for the redundancy indicating that he did not unreasonably refuse offers of alternative employment merely because he wished to access the benefits of redundancy pay.

[33] When Bartercard failed to inform Mr Ahmad that his redundancy could be varied, he only had one day of notice that was available to him prior to his employment coming to an end. Although Mr Ahmad was given a sufficient consultation process about the alternative role, Mr Ahmad was under the impression that he would obtain the full redundancy had he not accepted the alternative role.

[34] Mr Ahmad had worked with Bartercard for 3 years which would entitle him to 7 weeks redundancy pay. Given that he was not informed that his redundancy was subject to be varied until one day prior, I have decided to vary the redundancy by reducing 1 week of pay on the



basis that reasonable alternative employment was offered, and Mr Ahmad was notified of the potential variation. Mr Ahmad retains most of his redundancy because of the limited notice provided.

[35] Mr Ahmad's redundancy has been varied to 6 weeks of redundancy pay under s.120 of the Act. Bartercard are to pay Mr Ahmad 6 weeks of redundancy. I Order accordingly.

*Michael Dean*

<b>Condition</b>	<b>Previous Role (Business Development Manager)</b>	<b>New Role (Trading Specialist)</b>
Rate of pay	\$70,000  + incentive structure based on conversion of prospects into new members and revenue generated	\$70,000  + \$1,000 monthly incentive upon achieving targets
Allowance	\$5,000 motor vehicle allowance	No vehicle allowance  Proposed work from home allowance
Hours of work	38 hours per week	38 hours per week
Work location	Cairns office	Home
Seniority	Reported to State Manager	Reporting to COO
Skills and experience	Communicating with and educating clients, assisting members, supporting growth of Bartercard	Communicating with and educating clients, generating revenue by connecting members, supporting trading culture and growth of Bartercard
Job security	Terminable on NES notice	Terminable on NES notice
Continuity of service	Recognised	Recognised
Accrual of benefits	As per NES	As per NES
Probationary period	3 months + 3 months' suitability assessment	Nil
Work/life balance flexibility	Office work	Exclusively from home
Travel time	Some	None

[36] Mr Dean contends that the role was substantially different in that the new Trading Specialist role negated all the accumulated knowledge the Respondents had of client bases and areas as well as their ability to network seeking solutions. The skills and experiences required would translate to the new role.

[37] Mr Dean's old working arrangements had an incentive structure based on conversion of prospective clients into new clients. Mr Dean may have been under the impression that the new role would have meant a decrease to his potential earnings, while he was unaware of the new incentive structure to be introduced. I reject this reason as it was clear that Bartercard had identified the incentive structure in the new role.

[38] I acknowledge that redundancies and restructuring is a stressful process. However, this alone is not sufficient for not accepting an alternative role when provided. Individuals cannot simply choose the option of redundancy if an alternative role is provided, and employees need to demonstrate that they seriously considered the alternative role.

[39] Bartercard did not need to provide Mr Dean an identical role, but a role which Mr Dean could perform following a restructure. I am satisfied that he could have performed the offered role based on his skills and experience, and the role was suitable alternative employment. The salary is comparable noting that the removal of the motor vehicle allowance, and incentive structure would not be as good as his former role. The request to work fully remotely does raise some detrimental alteration of the employment conditions, but Bartercard not paying to set up a home office does not necessarily mean that the offered employment is not suitable. This is determined on a case-by-case basis. On this basis, I exercise my discretion to vary the redundancy as the redeployed role was suitable alternative employment.

[40] In considering the variation of redundancy, Mr Dean had 11 calendar days to consider the redundancy, its potential variation and implications prior to the end of his employment. Bartercard sent a letter on 23 November 2023, noting the ability to vary the redundancy repayment. Mr Dean made it clear that he had considered the role and rejected the offer to move to the Trading Specialist role on 27 November 2023 with this consideration. Mr Dean's employment ended on 4 December 2023.

[41] However, I also consider Mr Dean has significant seniority of 17 years of service with Bartercard, and that there was some unfairness arising from not informing Mr Dean that his redundancy could be varied if he did not accept the alternative role until very late in the piece. Mr Dean was under the impression that he would obtain the full redundancy had he not accepted the alternative role. As a result, I will not reduce Mr Dean's redundancy to nil.

[42] Mr Dean had worked with Bartercard for approximately 17 years which would entitle him to 12 weeks redundancy pay. I have decided to vary the redundancy by reducing 3 weeks of pay on the basis that reasonable alternative employment was offered, and Mr Dean was given sufficient notice of the potential variation. Furthermore, it did not appear that Mr Dean meaningfully engaged in considering alternative options. Mr Dean retains most of his redundancy because of his length of service and some loss of benefits arising from the changes in the incentive structure and that the role has some detrimental alteration given the requirements of setting up an office remotely.

[43] Mr Dean's redundancy has been varied to 9 weeks of redundancy pay under s.120 of the Act. Bartercard are to pay Mr Dean 9 weeks of redundancy. I Order accordingly.

Jayne Corby

<b>Condition</b>	<b>Previous Role (Business Development Manager)</b>	<b>New Role (Trading Specialist)</b>
Rate of pay	\$51,439 (pro rata)  + incentive structure based on conversion of prospects into new members and revenue generated	\$70,000 (pro rata)  + \$1,000 monthly incentive upon achieving targets
Allowance		Proposed work from home allowance
Hours of work	30 hours per week (part time)	30 hours per week (part time)
Work location	Hybrid (WFH 1 day per week)	Home
Seniority	Reported to State Manager	Reporting to COO
Skills and experience	Communicating with and educating clients, assisting members, supporting growth of Bartercard	Communicating with and educating clients, generating revenue by connecting members, supporting trading culture and growth of Bartercard
Job security	Terminable on NES notice	Terminable on NES notice
Continuity of service	Recognised	Recognised
Accrual of benefits	As per NES	As per NES
Probationary period	3 months + 3 months' suitability assessment	Nil
Work/life balance flexibility	Hybrid work	Exclusively from home
Travel time	Some	None

[44] Ms Corby contended that her role was not a substantially similar role as she had her own portfolio of clients and would impact her future earning capacity. She raised issues with the work from home arrangement as:

- her family home was a busy environment with no separate space for her to set up a desk away from distractions without renovation;
- increasing cost of living expenses;
- impact on mental health;
- there would be a deskilling from her current role.

[45] I do not accept that there is a deskilling, considering the salary increase which would be bolstered by the incentive scheme.

[46] Bartercard did not need to provide Ms Corby an identical role, but a role which Ms Corby could perform following a restructure. The request to work fully remotely does raise some detrimental alteration of the employment conditions, but Bartercard not paying to set up a home office does not necessarily mean that the offered employment is not suitable. This is determined on a case-by-case basis. I am satisfied that she could have performed the offered

role based on her skills and experience, and the role was suitable alternative employment. On this basis, I exercise my discretion to vary the redundancy.

[47] In considering the variation of redundancy, Ms Corby had 6 business days to review the redundancy, its potential variation and implications. On 1 November 2023, the first letter was provided to Ms Corby after two consultation meetings regarding the changes. Later that same day, Ms Corby rejected the offer to move to the Trading Specialist role. On 23 November 2023, the Applicant reissued the letter noting the existence and ability of the Applicant to apply under s.120 of the Act to vary her redundancy. On 28 November 2023 Ms Corby confirmed her rejection of the Trading Specialist role.

[48] It appears that Ms Corby had not given enough consideration to the suitable alternative employment and sought the redundancy as there had been prior performance concerns. Ms Corby had been working from home at least once a week prior to the restructuring and did not raise issues with this before the restructure.

[49] I do accept that there is an aspect of unfairness as there was uncertainty of whether Ms Corby would be working fully remotely, or if it would be a hybrid arrangement which has been taken into account.

[50] Ms Corby had worked with Bartercard for 7 years which would entitle her to 13 weeks redundancy pay. I have decided to vary the redundancy by reducing 4 weeks of pay on the basis that reasonable alternative employment was offered, with a higher pro-rata salary base. Furthermore, it did not appear that Ms Corby meaningfully engaged in considering alternative options. Ms Corby retains the remainder of her redundancy because sufficient notice of the potential variation could have been improved.

[51] Ms Corby’s redundancy has been varied to 9 weeks of redundancy pay under s.120 of the Act. Bartercard are to pay Ms Corby 9 weeks of redundancy. I Order accordingly.

*Diana Pavic*

<b>Condition</b>	<b>Previous Role (Business Development Manager)</b>	<b>New Role (Trading Specialist)</b>
Rate of pay	\$63,900  + incentive structure based on conversion of prospects into new members and revenue generated	\$70,000  + \$1,000 monthly incentive upon achieving targets
Allowance	\$5,200 fuel/vehicle allowance	No vehicle allowance  Proposed work from home allowance
Hours of work	38 hours per week	38 hours per week
Work location	Bunbury office	Home
Seniority	Reported to State Manager	Reporting to COO

Skills and experience	Communicating with and educating clients, assisting members, supporting growth of Bartercard	Communicating with and educating clients, generating revenue by connecting members, supporting trading culture and growth of Bartercard
Job security	Terminable on NES notice	Terminable on NES notice
Continuity of service	Recognised	Recognised
Accrual of benefits	As per NES	As per NES
Probationary period	Nil	Nil
Work/life balance flexibility	Office work	Exclusively from home
Travel time	Some	None

[52] Ms Pavic contended that the role was substantially different in that there would be no face-to-face interactions with clients, she would no longer have her own client base, there was no ongoing job security, nor would she have the ability to set goals to meet bonuses. Ms Pavic also submitted that the new position is ‘award free’ and therefore her attendance from Western Australia during meetings outside of her ordinary working hours would not attract overtime payments. For example, Ms Pavic said she had been asked to attend meetings at 7am, 7.30am, and 8am Queensland time, which equates to 5am, 5:30am and 6am WA time.

[53] Bartercard did not need to provide Ms Pavic an identical role, but a role which Ms Pavic could perform following a restructure. I am satisfied that she could have performed the offered role based on her skills and experience, and the role was suitable alternative employment. The request to work fully remotely does raise some detrimental alteration of the employment conditions, but Bartercard not paying to set up a home office does not necessarily mean that the offered employment is not suitable. This is determined on a case-by-case basis. On this basis, I exercise my discretion to vary the redundancy.

[54] Ms Pavic submitted that the pay rise would be offset by the costs she would be required to outlay to equip a home office space. She submitted that the Applicant did not offer her a computer or similar equipment to facilitate the working at home therefore she would be expected to buy her own equipment.

[55] In considering the variation of redundancy, Ms Pavic had not considered the suitable alternative employment with enough consideration and sought to obtain the redundancy.

[56] On 27 October 2023, the first letter was provided to Ms Pavic which Bartercard stated Ms Pavic rejected that same day. Ms Pavic disagreed with this characterisation and submitted that she felt emotionally pressured to make a decision for her future and had not rejected the offer to move to the Trading Specialist role at that time.

[57] On 23 November 2023, the Applicant reissued the letter noting the existence and ability of the Applicant to apply under s.120 of the Act to vary her redundancy payment. On 27 November 2023, the Applicant submitted that Ms Pavic confirmed her rejection of the role by email. Ms Pavic disagreed with this characterisation again, reiterating that she was pressured to make a life decision.

[58] Ms Pavic submitted that she was ‘emotionally traumatised and upset’ which increased her stress and anxiety levels to very high. There was no medical evidence of this provided to the Commission. Ms Pavic commenced sick leave on 30 November 2023 until her employment ended on 4 December 2023. As such, she had 11 calendar days to consider the redundancy, its potential variation and implications prior to the end of her employment.

[59] I acknowledge that redundancies and restructuring is a stressful process. However, this alone is not sufficient for not accepting an alternative role when provided. Individuals cannot simply choose the option of redundancy if an alternative role is provided, and employees need to demonstrate that they seriously considered the alternative role.

[60] Ms Pavic had worked with Bartercard for 9 years, 11 months and 25 days which would entitle her to 16 weeks redundancy pay. I have decided to vary the redundancy by reducing 3 weeks of pay on the basis that reasonable alternative employment was offered, and Ms Pavic was given sufficient notice of the potential variation. Furthermore, it did not appear that Ms Pavic meaningfully engaged in considering alternative options. Ms Pavic retains most of her redundancy because of her length of service, and the role has some detrimental alteration given the time differences and setting up an office remotely.

[61] Ms Pavic’s redundancy has been varied to 13 weeks of redundancy pay under s.120 of the Act. Bartercard are to pay Ms Pavic 13 weeks of redundancy. I Order accordingly.

*Lynette Gooding*

<b>Condition</b>	<b>Previous Role (Business Development Manager)</b>	<b>New Role (Trading Specialist)</b>
Rate of pay	\$62,000 (pro rata)	\$70,000 (pro rata)  + \$1,000 monthly incentive upon achieving targets
Allowance	\$5,000 motor vehicle allowance	No vehicle allowance  Proposed work from home allowance
Hours of work	30.4 hours per week (part time)	30.4 hours per week
Work location	Sydney office	Home
Seniority	Reported to State Manager	Reporting to COO
Skills and experience	Communicating with and educating clients, assisting members, supporting growth of Bartercard	Communicating with and educating clients, generating revenue by connecting members, supporting trading culture and growth of Bartercard
Job security	Terminable on NES notice	Terminable on NES notice
Continuity of service	Recognised	Recognised
Accrual of benefits	As per NES	As per NES

Probationary period	3 months + 3 months' suitability assessment	Nil
Work/life balance flexibility	Office work	Exclusively from home
Travel time	Some	None

[62] Ms Gooding contended that the role was substantially different in that previously she had been actively managing her accounts and engaging with her clients. In the new role, Ms Gooding submitted that “there was very little opportunity to trade or network, just fix problems which the members were having. It’s like working in a call centre and nothing like [her] old role.”

[63] Ms Gooding also raised concerns regarding seniority, as she submitted that she was unsure how a ‘call centre’ role could have a higher level of seniority than her prior business management role. She also argued that the increase in base rate would not be sufficient to offset the inconvenience of working from home full time, as she submitted that her prior salary was at least equal to the new salary offer.

[64] Ms Gooding submitted that she had been very vocal about her inability to work from home, as she lives in a granny flat with extremely limited space for an office set up.

[65] Bartercard did not need to provide Ms Gooding an identical role, but a role which Ms Gooding could perform following a restructure. I am satisfied that she could have performed the offered role based on her skills and experience, and the role was suitable alternative employment. The request to work fully remotely does raise some detrimental alteration of the employment conditions, but Bartercard not paying to set up a home office does not necessarily mean that the offered employment is not suitable. This is determined on a case-by-case basis. On this basis, I exercise my discretion to vary the redundancy.

[66] On 26 October 2023, the first letter was provided to Ms Gooding. On 23 November 2023, the Applicant reissued the letter noting the existence and ability of the Applicant to apply under s.120 of the Act to reduce any redundancy payment. On 28 November 2023, Ms Gooding sent photographs of her work from home set up taking up the majority of her kitchen bench in response to the correspondence from the Applicant. Her employment ended on 1 December 2023. As such, Ms Gooding had 8 days to consider the redundancy, its potential variation and implications prior to the end of her employment.

[67] Ms Gooding submitted that some of her other colleagues who decided not to work out the full notice period like she did, were paid the full amount of their entitlements, including full redundancy. She submitted that this was evidence that she should be paid the full redundancy.

[68] Ms Gooding had worked with Bartercard for over 12 years which would entitle her to 12 weeks redundancy pay. I have decided to vary the redundancy by reducing 2 weeks of pay on the basis that reasonable alternative employment was offered, and Ms Gooding was given sufficient notice of the potential variation. Ms Gooding retains most of her redundancy because it appeared that Ms Gooding had meaningfully engaged in considering alternative options, along with her length of service, and the role has some detrimental alteration in establishing evidence with the Respondent regarding the challenges of her setting up an office remotely.

[69] Ms Gooding’s redundancy has been varied to 10 weeks of redundancy pay under s.120 of the Act. Bartercard are to pay Ms Gooding 10 weeks of redundancy. I Order accordingly.

### Conclusion

[70] The above redundancies have been varied accordingly.



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<PR772928>

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<sup>1</sup> *NUW v Tontine Fibres* [2007] AIRCFB 1016 at [23],

<sup>2</sup> *Feltex Australia Pty Ltd v Textile, Clothing and Footwear Union of Australia* [2006] AIRC 737 at [89] (Watson SDP).

<sup>3</sup> *Application by Spotless Services Australia Limited ('Spotless')* [2013] FWC 4484 at 14.

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

<sup>5</sup> *UXC Connect v Moore* [2012] FWA 4296.

<sup>6</sup> *Heath Family Trust T/A Focus People Pty Ltd* [2021] FWC 2779 at [21] (Lee C) .

<sup>7</sup> [2014] FWC 3703, at [11]– [13].