DECISION

Fair Work Act 2009
s.394—Unfair dismissal

AB

v

Thryv Australia Pty Ltd
(U2025/5368)

COMMISSIONER HUNT BRISBANE, 2 SEPTEMBER 2025

Application for an unfair dismissal remedy – incapacity for 15 months – no prospect of applicant returning to work in the short-to-medium term – dismissal not unfair – application dismissed.

[1] On 2 May 2025, Ms AB made an application under s.394 of the *Fair Work Act 2009* (the Act) alleging that she had been dismissed from her employment with Thryv Australia Pty Ltd (the Respondent) and that the dismissal was harsh, unjust or unreasonable.

[2] On 26 May 2025, the Respondent filed a *Form F3 Employer Response* to the application. It did not raise a jurisdictional objection.

[3] Directions were issued for the filing of evidence and submissions, and the matter was listed for hearing on 18 August 2025 by Microsoft Teams. I decided to conduct the matter as a determinative conference.

[4] The following people gave evidence at the determinative conference:

- Ms AB;
- Mr Travis Abreu, Country Manager, Employee Experience;
- Ms Joanne Grzesiak, WHS and Injury Management Advisor; and
- Ms Lauren Barber, Senior Employee Experience Partner.

[5] On 15 August 2025, I made a Confidentiality Order[1] on the Commission's own initiative. I did this on account of the sustained domestic violence suffered by the applicant in these proceedings, witnessed by her children. I considered it appropriate to protect the identity of the applicant and her children.

Relevant legislation

[6] Section 394 of the Act provides:

"**394 Application for unfair dismissal remedy**

(1) A person who has been dismissed may apply to the FWC for an order under Division 4 granting a remedy.

Note 1: Division 4 sets out when the FWC may order a remedy for unfair dismissal.

Note 2: For application fees, see section 395.

Note 3: Part 6 1 may prevent an application being made under this Part in relation to a dismissal if an application or complaint has been made in relation to the dismissal other than under this Part.

(2) The application must be made:

(a) within 21 days after the dismissal took effect; or

(b) within such further period as the FWC allows under subsection (3).

(3) The FWC may allow a further period for the application to be made by a person under subsection (1) if the FWC is satisfied that there are exceptional circumstances, taking into account:

(a) the reason for the delay; and

(b) whether the person first became aware of the dismissal after it had taken effect; and

(c) any action taken by the person to dispute the dismissal; and

(d) prejudice to the employer (including prejudice caused by the delay); and

(e) the merits of the application; and

(f) fairness as between the person and other persons in a similar position."

[7] Further, ss.385 and 387 provide as follows:

"**385 What is an unfair dismissal**

A person has been ***unfairly dismissed*** if the FWC is satisfied that:

(a) the person has been dismissed; and

(b) the dismissal was harsh, unjust or unreasonable; and

(c) the dismissal was not consistent with the Small Business Fair Dismissal Code; and

(d) the dismissal was not a case of genuine redundancy.

Note: For the definition of ***consistent with the Small Business Fair Dismissal Code***: see section 388."

"**387 Criteria for considering harshness etc**.

In considering whether it is satisfied that a dismissal was harsh, unjust or unreasonable, the FWC must take into account:

(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."

[8] There are no jurisdictional issues preventing the Commission determining if the dismissal was unfair. The application was made in time. Ms AB has been dismissed and has met the minimum employment requirements. The Respondent is not a small business, and the dismissal was not a case of genuine redundancy. Accordingly, it is necessary to determine if the dismissal was unfair having regard to the considerations in s.387 of the Act.

Evidence of Ms AB

[9] Ms AB commenced employment with the Respondent in October 2022 as a Business Advisor, essentially performing sales work over the phone. She performed her work from her home.

[10] Since meeting her husband in 2008, Ms AB has endured shocking domestic violence, including attempts on her life. The Respondent filed a copy of Ms AB's police statement of June 2024; it is graphic and shocking. While Ms AB is upset that the Respondent has asserted that Ms AB was subject to *continual* domestic violence since 2008, which she denies, my reading of the police statement made by Ms AB demonstrates that she has reported having been repeatedly assaulted. Many of the assaults are recorded on video by Ms AB as the home has many internal cameras.

[11] In August 2023, Ms AB transitioned to part-time work on account of her daughter's hospitalisation and ongoing treatment for an eating disorder. Ms AB acknowledges that between June 2023 and December 2023 she had 32 days off work. She stated that more than 20 of those days were taken to care for her daughter.

[12] During a domestic violence period, the Respondent offered to provide a safe workplace away from the Respondent's husband. Ms AB declined this as it would leave her children with her husband which was not safe.

[13] In January 2024, after a period of approved leave to move house, Ms AB returned to work and considered that she was being bullied by her manager, Brendon. Her mental health rapidly declined, including thoughts of self-harm. She took stress leave. Colleagues within her team were interviewed, but she was not. She understands that Brendon was subsequently demoted and there was no follow-up provided to her. In evidence given during the determinative conference, the Commission learned that Brendon was made redundant in October 2024.

[14] Ms AB commenced her period of leave on 19 January 2024 and did not return to work prior to being dismissed on 11 April 2025, a period of approximately 15 months.

[15] On 17 September 2024, Ms AB's treating Clinical Psychologist wrote to the Respondent as follows:

> "To whom it may concern
>
> **RE: [Ms AB – DOB]**
>
> [Ms AB] has been working with me since 30th July and has completed 6 sessions.
>
> [Ms AB] presented with extreme levels of anxiety and stress (as indicated by the DASS21), perpetuated by complex trauma including prolonged domestic violence.
>
> [Ms AB's] symptomology is consistent with a diagnosis of Complex Posttraumatic Stress Disorder (309.81) and Generalized Anxiety Disorder (300.02). Her therapy goals are being treated through a cognitive behavioural therapy approach (CBT) in conjunction with a trial of anti-anxiety medication.
>
> Currently the severity of [Ms AB's] symptoms is significantly impacting her functioning, notably her ability to work. In my professional opinion, [Ms AB's] mental health and parental responsibilities require prioritisation at this point in time. Her ability

to work, both now and in the near future, is significantly limited by her current levels of anxiety. More time is required to stabilise her mood before addressing employment options."

[16] On 30 October 2024, the treating Clinical Psychologist reported that Ms AB had now attended 12 psychological sessions and encouraged a further 12 sessions at which time her progress would be evaluated.

[17] On 11 December 2024, the Respondent wrote to the Clinical Psychologist, providing a list of duties performed by Ms AB at work and sought advice as to Ms AB's likely ability to return to work. The Clinical Psychologist reported the following:

- Ms AB experiences severe anxiety and panic symptoms, with PTSD and brain functioning;
- Not presently fit for work;
- Ms AB has a motivation and will to return to work over time under the guidance of the Respondent's WHS department and treating practitioners but this could not be considered until around mid-2025.

[18] On 27 March 2025, the Respondent sent the following letter to Ms AB:

"Dear [name],

Fair Opportunity Letter Your Employment with Thryv

You have been absent from work since 19 January 2024. Thryv have received back-to-back medical certificates during this time that deem you unfit to work in your role as a Business Advisor.

You have been absent for approximately 14 months, and unfortunately Thryv does not have the ability to accommodate this ongoing absence.

On 17th September 2024, your psychologist [name] noted your "ability to work, both now and in the near future, is significantly limited by your current levels of anxiety and that more time is required to stabilize your mood before addressing employment options."

On 10th January 2025, your psychologist [name] responded to our second questionnaire, stating you are currently experiencing "severe anxiety and panic symptoms related to the trauma of a recent relationship" and your "capacity to undertake tasks, maintain focus, meet deadlines and targets is significantly undermined by the impact of PTSD symptoms and brain functioning."

[name] noted it was her professional opinion that you are currently not fit to return to work and recommended reviewing your ability to return to work mid-2025.

Having reviewed the above information regarding your current and unknown future capacity to return to work with Thryv, we are now considering termination of your employment on the basis of medical capacity.

Before Thryv makes a decision regarding termination of employment, I am providing you with the opportunity to respond via email, by Thursday 10th April 2025, as to why your employment with Thryv should not end on the basis of medical capacity. Please provide any additional medical information from your treating practitioner that Thryv should consider, outlining your current and future capacity to perform the inherent requirements of your role.

Should no response be received, Thryv will proceed with making a decision regarding your employment based on the information on hand.

During this time you are welcome to use the Employee Assistance Program, which is a free and confidential support service for employees. They can be contacted on [number].

Sincerely,
Nilanjan Ghoshal
Group Manager, Sales & Service"

[19] Ms AB sent the following response on 10 April 2025:

"Dear Nilanjan,

Thank you for your letter dated 27 March 2025. I don't believe we've had the pleasure of being introduced before now, so I do thank you for that memorable introduction. I appreciate the opportunity to respond, though I must express my disappointment and concern at the direction this matter has taken.

Up until recently, I felt genuinely supported by Thryv. I was encouraged to "take the time to heal" and believed the company recognised the seriousness of my situation-particularly given that some of the trauma I've experienced occurred not only during my employment but while I was actively working, and was known to management. I assumed this support reflected an understanding of the internal dynamics and the distress I endured-especially under my former manager, Brendon.

I am aware that Brendon is no longer with Thryv. I would imagine that a full handover took place prior to his demotion, and perhaps you were even informed that Brendon was aware of my circumstances. Several of my team members certainly were.

The clinical psychologist's report you referenced was submitted in response to a questionnaire provided by Thryv. It clearly outlines that I am not presently fit for work due to psychological injuries, including PTSD and cognitive impairment, stemming in part from my experience within the workplace.

Despite this, at no point during the past 14 months did anyone from HR contact me to discuss available support options or to explore whether a WorkCover claim might be

appropriate. This is especially troubling, considering the nature of the injuries and the company's awareness of them.

As of today, I can confirm that I have contacted WorkCover Queensland and am in the process of exploring my entitlements. Given that my leave is medically certified, currently unpaid, and directly connected to injuries sustained while employed, I do not believe it is lawful or appropriate for Thryv to proceed with termination at this time. Any such action would appear premature and potentially in breach of protections afforded under the Fair Work Act and Queensland workers' compensation legislation.

I remain committed to cooperating in good faith and will provide any additional documentation as required. However, I respectfully request that no decisions be made regarding my employment until the WorkCover process has been finalised and I have been given a fair opportunity to be heard in full.

Kind regards,
[Ms AB]"

[20] On 11 April 2025, the following termination letter was sent by the Respondent to Ms AB:

"Dear [Ms AB],

Fair Opportunity Letter - Your Employment with Thryv

We refer to the fair opportunity letter sent to you dated **27 March 2025**, in which you were given the opportunity to provide a response and further medical evidence to support why your Thryv employment should not be terminated on the grounds of medical incapacity.

We acknowledge and thank you for your text response to Joanne Grzesiak dated 7 April 2025 and your further written response received 10 April 2025. Unfortunately, your response did not provide any further medical evidence as to why the proposal shouldn't go ahead.

Accordingly, this letter is to confirm that Thryv has now made a decision to terminate your employment for the sole reason of medical incapacity to fulfill the inherit requirements of the Business Advisor role. This termination is effective **11 April 2025**.

Thryv's physical assets will need to be returned to us; your laptop, and charger, mobile (if applicable). IT will work to get these assets couriered back from you.

In accordance with the terms of your employment contract, you are entitled to 2 weeks payment in lieu of notice. Thryv has elected to end your employment effective **11 April 2025** and, accordingly, in lieu of receiving that notice, you will be paid the sum amount along with accrued entitlements and any outstanding pay.

> Payroll will arrange your final payment that you will receive in the next available pay run. If you have any questions regarding your final payments, please contact a member of the Thryv Payroll Team via email: [email]
>
> I remind you that, under your employment contract, you must not disclose or use Thryv's confidential information even though your employment has ended. I also remind you that your employment contract contains other restrictions with respect to your post-employment conduct and trust you will familiarise yourself with those and comply with them.
>
> Please also be aware that EAP is also available free of charge. You can call EAP on [number].
>
> If you have any questions please don't hesitate to contact us.
>
> Sincerely,
> Nilanjan Ghoshal
> Group Manager, Sales & Service"

[21] Following the dismissal, Ms AB produced further medical evidence from her Clinical Psychologist. A summary of the medical evidence is as follows:

- Complex PTSD from years of domestic violence;
- 27 sessions attended;
- Domestic violence occasioned in the home where Ms AB works.

[22] On 4 July 2025, approximately three months following the dismissal, the Clinical Psychologist reported that not only was the domestic violence the cause of Ms AB's mental injury, so too was workplace bullying, together with inadequate organisational support during her period of vulnerability. It was reported that her return-to-work capacity remains significantly impaired.

[23] During the determinative conference, Ms AB confirmed that she did not have the ability to return to work. She was unable to say how long she considered it reasonable for the Respondent to keep her job open for her.

[24] Ms AB considers that she was forgotten by the Respondent and excluded from any reintegration or care planning. On the evidence produced by Ms AB, she was reasonably and regularly contacted while she was on leave by relevant managers to inquire as to her welfare.

[25] Ms AB seeks a remedy of compensation for lost earnings despite not having any capacity to work.

Evidence of Mr Abreu

[26] Mr Abreu stated that Ms AB commenced in the role of Telesales Majors Consultant on 6 October 2022. Upon Ms AB disclosing a long history of domestic violence in May 2023, the Respondent promptly and compassionately offered emotional and practical support, including

access to the Respondent's Family Violence Support policy and 10 days of paid family violence leave. Further, a safe workplace out of the home was offered. Ms AB did not accept the Respondent's offers.

[27] On 7 August 2023, Ms AB transitioned to a part-time flexible working arrangement at her request.

[28] Ms AB commenced personal leave in January 2024, and the Respondent received 10 medical documents during 2024, evidencing that Ms AB remained unwell to return to work. The Respondent maintained regular, supportive communication with Ms AB.

[29] The medical certificates became longer in duration; one month, followed by six weeks, two months, three months, four months and then six months. The medical evidence outlined that Ms AB's condition was not improving, and the period of time that she was declared unfit for work continued to increase. All medical information was aligned; from three treating practitioners, they all declared Ms AB's condition originated from domestic violence experiences in the past.

[30] Following a letter being issued to Ms AB and her response considered, the Respondent dismissed Ms AB on 11 April 2025 on the basis of medical incapacity following an extended period of absence from work. Ms AB could not perform the inherent requirements of the role.

Evidence of Ms Barber and Ms Grzesiak

[31] The evidence of Ms Barber and Ms Grzesiak largely mirrors that of Mr Abreu.

Consideration

[32] A dismissal may be unfair, when examining if it is 'harsh, unjust or unreasonable' by having regard to the following reasoning of McHugh and Gummow JJ in *Byrne v Australian Airlines Ltd*:[2]

> "It may be that the termination is harsh but not unjust or unreasonable, unjust but not harsh or unreasonable, or unreasonable but not harsh or unjust. In many cases the concepts will overlap. Thus, the one termination of employment may be unjust because the employee was not guilty of the misconduct on which the employer act, may be unreasonable because it was decided upon inferences which could not reasonably have been drawn from the material before the employer, and may be harsh in its consequences for the personal and economic situation of the employee or because it is disproportionate to the gravity of the misconduct in respect of which the employer acted."

[33] I am duty-bound to consider each of the criteria set out in s.387 of the Act in determining this matter.[3]

s.387(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)

[34] When considering whether there is a valid reason for termination, the decision of North J in *Selvachandran v Peterson Plastics Pty Ltd* (1995) 62 IR 371 at 373 provides guidance as to what the Commission must consider:

> "In its context in s.170DE(1), the adjective 'valid' should be given the meaning of sound, defensible or well founded. A reason which is capricious, fanciful, spiteful or prejudiced could never be a valid reason for the purposes of s.170DE(1) At the same time the reasons must be valid in the context of the employee's capacity or conduct or based on upon the operational requirements of the employer's business. Further, in consideration whether a reason is valid, it must be remembered that the requirement applies in the practical sphere of the relationship between an employer and an employee where each has rights and privileges and duties and obligations conferred and imposed on them. The provisions must 'be applied in a practical, common-sense way to ensure that the employer and employee are treated fairly'."

[35] However, the Commission will not stand in the shoes of the employer and determine what the Commission would do if it was in the position of the employer.[4]

[36] Ms AB was dismissed by the Respondent following a period of approximately 15 months off work. Her injury is a personal injury unless otherwise declared by WorkCover to be a workplace injury. In any event, the period of 15 months is a very long time.

[37] Employees whose employment is governed by the Act are protected from being dismissed within three months of unpaid leave due to a temporary absence because of illness or injury. This provision is contained within s.352 of the Act, with reference to r.3.01 of the *Fair Work Regulations 2009*. This of course does not mean that dismissal of an employee beyond a period of three months of unpaid leave will automatically be fair. Consideration of the provisions of s.387 of the Act is required to determine if a dismissal after three months of unpaid leave is unfair or not.

[38] Having regard to the very long period of time in which Ms AB was unfit for work and based on extensive medical evidence determining that she was likely to be unfit for work for a further extensive period of time, I am satisfied that Ms AB was unable to perform the inherent requirements of the role.

[39] For the reasons above, I am satisfied that there was a valid reason for the dismissal related to Ms AB's capacity.

s.387(b) – Whether the person was notified of that reason

[40] Ms AB was properly notified of the reason for the dismissal.

s.387(c) – Whether there was an opportunity to respond to any reason related to the capacity or conduct of the person

[41] On 27 March 2025, Ms AB was sent the Fair Opportunity Letter informing her of the Respondent's view that it was considering dismissing her on the basis of her medical incapacity. Ms AB was provided with a reasonable period of time in which to respond, which she did. I am satisfied that Ms AB was afforded procedural fairness.

[42] In Ms AB's response, she indicated that she was considering making a WorkCover claim on the basis of some of the assaults on her by her husband occurring at home, in her workplace during work time.

s.387(d) – Any unreasonable refusal by the employer to allow the person to have a support person present to assist at any discussions relating to the dismissal

[43] Where an employee protected from unfair dismissal has requested a support person be present to assist in discussions relating to the dismissal, an employer should not unreasonably refuse that person being present.

[44] There is no positive obligation on an employer to offer an employee the opportunity to have a support person. The Explanatory Memorandum, *Fair Work Bill 2008* (Cth) at [1542] states the following:

> "This factor will only be a relevant consideration when an employee asks to have a support person present in a discussion relating to dismissal and the employer unreasonably refuses. It does not impose a positive obligation on employers to offer an employee the opportunity to have a support person present when they are considering dismissing them."

[45] There was no planned meeting to discuss matters relating to the dismissal. There was no unreasonable refusal to allow Ms AB a support person because there was not a meeting as such.

s.387(e) – If the dismissal related to unsatisfactory performance by the person – whether the person had been warned about that unsatisfactory performance before the dismissal.

[46] The dismissal was not related to unsatisfactory performance; it was for incapacity.

s.387(f) – Whether the respondent's size impacted on the procedures followed and s.387(g) – Whether the absence of a dedicated human resource management specialist impacted on the procedures followed

[47] The Respondent is not a small business and it had available to it a dedicated human resource management specialist.

s.387(h) – Other matters

[48] Section 387(h) of the Act provides the Commission with a broad scope to consider any other matters it considers relevant.

[49] Ms AB wishes for her incapacity to be considered a workplace injury. It is not appropriate for the Commission to determine this issue; this is a matter for WorkCover to determine. Even if the injury was determined to be a workplace injury prior to the dismissal (which it has not been), it is still available to the Respondent to dismiss Ms AB on account of Ms AB not being able to perform the inherent requirements of the role for a lengthy period of time. I do not consider that Ms AB's assertions in her response to the Fair Opportunity Letter that she was assaulted at work and therefore would have a compensable injury formed any part of the Respondent's consideration to dismiss Ms AB.

[50] Ms AB advances a proposition that the Respondent ought to have kept her role open to her for an indefinite period. This is unreasonable. Regrettably, there appears to be no likelihood of Ms AB returning to any paid employment in 2025. When the decision was made to dismiss her in April 2025, she had been unable to work for a period of 15 months. The Respondent is entitled to organise its business. It is not obliged to keep a position open to Ms AB for any further period of time.

[51] I consider that the Respondent has been compassionate and considerate of Ms AB's unfortunate predicament.

Conclusion

[52] I have determined that there was a valid reason for the dismissal.

[53] I have determined that Ms AB was informed of the reason for the dismissal.

[54] I am satisfied that Ms AB was given an opportunity to respond to any reason related to her capacity.

[55] There was no unreasonable refusal by the Respondent to allow Ms AB a support person.

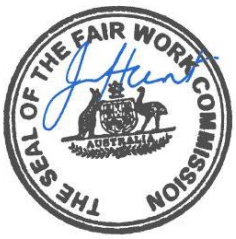
[56] The reason for the dismissal was incapacity, not performance.

[57] The Respondent is not small and there is no absence of a dedicated human resource management specialist which impacted on the procedures followed.

[58] I am not satisfied that Ms AB's assertion to the Respondent that in April 2025 she wished to pursue a workers' compensation claim had any bearing on the Respondent's decision to dismiss her for incapacity.

[59] Taking all of the circumstances of this matter into account, I find that the dismissal was not harsh, unjust or unreasonable.

[60] The application is dismissed. An order [PR791334] will be issued with this decision.



COMMISSIONER

Appearances:

AB, the Applicant.
T Abreu and *L Barber*, for the Respondent.

Hearing details:

2025.
Video using Microsoft Teams.
18 August.

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<PR791333>

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[1] Confidentiality Order PR790732.

[2] (1995) 185 CLR 410, [465].

[3] *Sayer v Melsteel* [2011] FWAFB 7498, [20].

[4] *Walton v Mermaid Dry Cleaners Pty Ltd* (1996) 142 ALR 681, 685.