

[2025] FWC 2686 [Note: An appeal pursuant to s.604 (C2025/9645) was lodged against this decision- refer to Full Bench decision dated 30 October 2025 [[\[2025\] FWC FB 246](#)] for result of appeal.]



DECISION

Fair Work Act 2009

s.394 - Application for unfair dismissal remedy

Anthony Mutton

v

Artisan Pools Pty T/A Northern Rivers Pools

(U2025/3120)

COMMISSIONER SLOAN

SYDNEY, 11 SEPTEMBER 2025

Application for an unfair dismissal remedy – employee summarily dismissed for serious misconduct – whether dismissal consistent with Small Business Fair Dismissal Code – no reasonable basis for belief employee guilty of serious misconduct – whether dismissal harsh, unjust or unreasonable – no valid reason for dismissal – reinstatement not appropriate – compensation ordered

[1] Anthony Mutton was employed by Artisan Pools Pty Ltd trading as Northern Rivers Pools as a Construction Manager. He was summarily dismissed on 24 February 2025 on the basis of alleged serious misconduct.

[2] On 15 March 2025 Mr Mutton filed an unfair dismissal application under section 394 of the *Fair Work Act 2009*.¹

[3] Artisan Pools denies that the dismissal was unfair. Further, it has raised a jurisdictional objection. It contends that it is a small business employer and that in effecting the dismissal it complied with the Small Business Fair Dismissal Code.

Determination

[4] I dismiss the jurisdictional objection. While Artisan Pools was a small business employer at the time of the dismissal,² I find that the dismissal was not consistent with the Small Business Fair Dismissal Code.

[5] I find that Mr Mutton's dismissal was unfair. I have determined to make an order that Artisan Pools make a payment of compensation to him of \$15,384.64, plus superannuation.

[6] The reasons for my findings follow.

The relevant factual context

[7] The parties produced a large amount of material and went into significant depth over the circumstances surrounding and leading to Mr Mutton's dismissal. They responded in minute detail to the evidence and submissions that each other filed in the proceedings. There were a great many factual differences as to what was said or done at particular times. As will become clear, it is not necessary to traverse or resolve all of the factual controversies between the parties. I have considered all of the parties' evidence and submissions, but I will refer to it only to the extent necessary to explain my findings.

[8] The following is an outline of what I consider to be the relevant factual context.

[9] Mr Mutton first began working with Artisan Pools in February 2022 as a casual labourer. From 3 July 2023 he was employed on a permanent full-time basis as a Construction Manager.

[10] Mr Mutton reported to Mr Vidler. Mr Vidler is in a personal relationship with Toni Fields, the company's Administration Manager. Ms Fields' son, Taylor Murphy, also works in the business. At the relevant time, he was a minor. He was supervised by Mr Mutton.

[11] In early February 2025, Mr Murphy raised concerns with Ms Fields about working with Mr Mutton. Ms Fields discussed the situation with Mr Vidler on 6 February 2025. He asked her to speak to Mr Mutton, who was on site that day, and instruct him to complete the formwork for the job he was doing, but not to commence pouring concrete. Instead, Mr Mutton was to return to have a conversation with Mr Vidler.

[12] Later that morning, Ms Fields approached Mr Mutton on site and sought to discuss Mr Murphy's concerns. The conversation became acrimonious. Ms Fields gave evidence that on three occasions she conveyed Mr Vidler's instruction to "form up and come back to the shed for a chat with Grant".³

[13] Ms Fields also stated that during the conversation, Mr Mutton said words to the effect that he knew of three pools "that are going to fail".⁴ He refused to provide details of those pools. Ms Fields stated that she found this was "extremely intimidating statement"⁵. She conveyed it to Mr Vidler.

[14] Later during the morning of 6 February 2025, Mr Vidler and Mr Mutton exchanged a number of text messages. In those messages, Mr Vidler repeated his request that Mr Mutton attend a meeting with him that afternoon. Mr Mutton requested that an independent third person be present. Mr Vidler responded that as the meeting was not disciplinary in nature, he was not required to arrange for a third person to attend.

[15] Mr Mutton did not return to the shed to meet with Mr Vidler. He remained on site and completed the concrete pour.

[16] On 8 February 2025, Mr Mutton received an email from Mr Vidler. The email stated in part:

"Please find attached two letters of warning regarding your conduct within the business. Also attached is a formal request for information.

We have come to the unfortunate point in our working relationship where we have to take serious measures to try and restore the stability within the workplace.

The warnings outline the unacceptable and insubordinate behaviour that you have been displaying, and how we will work toward resolving them.”

[17] The first attachment to the email was a letter from Mr Vidler to Mr Mutton dated 6 February 2025 titled “Formal Warning” (I will adopt that term to refer to the letter). That letter stated in part:

“This letter is to serve notice to you as a formal warning for you conduct towards the business owners this week.

On Thursday you were asked to only form up the concrete beam you were working on. I requested twice that you inform me of when you will be back this afternoon for a meeting to clear the air. You refused & demanded a third party to be present. I denied this request, as is my right, as it was not to be a disciplinary nor a dismissal meeting of which you were informed. You have ignored my requests & have not told me when you would be available to have this meeting.

This is the second time a meeting has been requested to discuss an incident and you have refused. The first time was on the 20/09/2024, which was requested by Toni after your inappropriate outburst. This is not acceptable behaviour. It is a blatant disregard of a direct request from your employer.

You have been asked previously (20/09/2024) to put any grievances you have in writing. You were asked again yesterday & refused. Your claims need to be expressed & backed by examples of what you are claiming is happening. This has not occurred. This is also not acceptable. These are request from your employer that you are ignoring.

You are hereby requested to put into writing your issues and concerns that seem to be creating the tension and destabilisation within the team. You are then required to attend a meeting to discuss and resolve said issues, should you wish to have a support person present in this meeting, you may organise this. If you choose to bring a support person, you are required to inform us of who will be present 24 hours prior to the scheduled meeting.

If the points I have addressed in this formal warning are not improved upon or actioned within the coming week, then we will have no other option other than terminate your employment with our company.

We look forward to working towards an amicable solution to resolve these issues & continue your working relationship with Northern Rivers Pools.” (Reproduced verbatim)

[18] For context, the reference in the Formal Warning to events of September 2024 relate to an incident in which Mr Mutton had a verbal altercation with Ms Fields regarding an alleged

payroll discrepancy. There is some controversy as to what was said at the time and in relation to the surrounding circumstances. It is sufficient to observe that on about 23 September 2024, Mr Vidler issued Mr Mutton with a verbal warning regarding his behaviour.

[19] The second attachment to the email was another letter from Mr Vidler to Mr Mutton dated 6 February 2025, titled “Informal Warning”. It related to Mr Mutton’s alleged “conduct towards the business owners”, and referenced his “bad mood” during the preceding week and his “mood swings”.

[20] I observe parenthetically that in response to questions from me during his oral evidence, Mr Vidler stated that the Informal Warning and the matters to which it referred were not relevant to his decision to dismiss Mr Mutton. He said it could be disregarded. I have accordingly given the Informal Warning no weight.

[21] The third attachment to the email was a letter from Mr Vidler to Mr Mutton dated 7 February 2025. It was titled “Official Request for Disclosure of Information for Tony Mutton” (“Request for Information”). The letter stated in part:

“This letter is to officially request that you disclose information surrounding a statement that you made to Toni on Thursday morning 06/02/2025.

During the course of your conversation with Toni that morning on site. You asked her if we had ever had any pools fail, then stated that you know of THREE pools which will soon fail.

This is a serious allegation and as the business owner I do not take such an allegation lightly.

I hereby request that you disclose which pools, and the reasons behind your allegations within 2 business days of this letter. Should you fail to do this, it will be considered gross misconduct and is sufficient grounds for your instant dismissal.

I expect to have an answer from you regarding this allegation by 5pm Tuesday 07/02/2025.

If by chance this was a false allegation that you have made as you were frustrated and angry, please respond in writing within 24 hours stating so.” (Reproduced verbatim)

[22] On 10 February 2025, Mr Mutton sent a WhatsApp message to Mr Vidler responding to the Formal Warning, the Informal Warning and the Request for Information. He raised a number of concerns regarding the workplace, and in particular in relation to Mr Murphy. In respect of the Request for Information he stated:

“The three pools i am concerned about our Bilambil Heights, the fire water connection at Goolmangar job, and the Casino job grant was talking about for a few years ago with the floor deviation.” (Reproduced verbatim)

[23] Mr Vidler sent Mr Mutton an email later that day, responding at length to Mr Mutton's WhatsApp message. It is not necessary to traverse the detail. Mr Vidler concluded his email in these terms:

“We are still going to have a meeting. Tomorrow afternoon at 5pm is the time I am making it for. if you wish for a third party to be present then you can bring one. As requested you are to let us know in advance as to who that is. We will go through all the points written on your formal & informal warning letter. Your position within our business has never been in jeopardy. It is now.

Things are going to be addressed & changes need to be made. If you are not willing to accept these changes then we will accept your resignation if that is what you decide to do.” (Reproduced verbatim)

[24] On the morning of 11 February 2025, Mr Mutton sent a WhatsApp message to Mr Vidler attaching what he described as a “stress leave certificate”. The certificate is not in evidence. However, from other evidence in the proceedings I can infer that it stated that Mr Mutton was unfit to work from 10 to 24 February 2025 inclusive. In his message, Mr Mutton stated:

“I am at a loss for the sheer volume of false and misleading things you have wrote in emails towards me. You have knowingly engaged in behaviour that is not suitable.

I will need two weeks for my health and well being.” (Reproduced verbatim)

[25] The message went on to request documents “which explain the recent manipulation of my payslips in regards to leave taken and sick days taken”.

[26] In a response sent minutes later, Mr Vidler asked Mr Mutton to advise if he was “attending this afternoon's meeting as requested”. Mr Mutton responded by asking that the meeting be postponed until he could arrange for a third person to attend with him.

[27] Later on 11 February 2025, there was an exchange of emails between Mr Mutton and Mr Vidler. Again, it is not necessary to go into the detail. It is sufficient to note that the emails contain criticisms and recriminations on both sides.

[28] On 14 February 2024, Ms Fields sent an email to Mr Mutton. The email described at length the leave that he had taken during his employment, and why Artisan Pools denied that there was any discrepancy in its payroll records. In relation to Mr Mutton's response to the Request for Information, Ms Fields stated:

“On Saturday the 08/02/2025 you were issued with a demand for disclosure of information letter. The reason for being issued with this letter is due to your refusal to answer my question of which 3 pools you know will fail.

WE do not accept your response for two of the three alleged issues.

1. The Horizon, We will accept even though we were fully aware of this issue and have been actively working with Leisure Pools to find a resolution to one of the issues. Therefore there was no need to bring this into the conversation that we were having around your behaviour.

2. The fire/water connection at the Goolmangar pool. We do not accept this. This is a plumbing issue and has nothing to do with the integrity of a pool. You as construction manager should know this.

3. The Casino pool. We do not accept this. You cannot make such a serious allegation based on a pool that you have played no part in the construction of nor diagnosis of issues, especially when you have never attended site to see the pool.

I believe that you made such an allegation in an effort to intimidate me when I was questioning you on your inappropriate and insubordinate behaviour. This is a serious matter and we will be seeking legal advice with regards to the next steps.” (Reproduced verbatim)

[29] On 20 February 2025, a customer of Artisan Pools raised a concern regarding a pool on which Mr Mutton had worked. Mr Vidler attended the customer’s home and inspected the pool. He stated:⁶

“I got into the pool & started stomping with my heel on all of the pool steps. I found the bottom step of the main step area near the house to be completely hollow. There is no backfill at all under it. My mind instantly went back to Mr Muttons claim of three failing pools & the fact that he made that statement to Toni while standing next to the pool that I had now discovered had a major installation fault. Given Mr Muttons state of mind during that work week, week ending 07/02/2025, I did not believe that this was a coincidence.”

[30] Mr Vidler gave evidence that he decided to summarily dismiss Mr Mutton. He described the process by which he reached and implemented that decision in these terms:⁷

6. Mr Muttons Summary Dismissal

a) Over the weekend of 22-23/02/2025 I thought long & hard about Mr Muttons employment. It was a difficult decision to make. Mr Mutton was a hard worker & it would place a lot more strain onto myself not having him there. To dismiss him would be a waste of almost three years of training him. However, he had disobeyed direct instructions from me on multiple occasions. At no stage had Mr Mutton ever put any of his concerns into a letter, email, message or verbally. The only times he has expressed his issues was through aggressive accusations in the form of an emotional outburst, both times to a female. He had refused to have & had not reached out to have a meeting to discuss things. He made a threatening & intimidating statement to Toni Fields regarding three pools that he claimed he knew were going to fail. He refused to answer her when she asked which pools. Only after being requested did he come up with three pools that I 100% know are false claims. I believed that there are two more pools out there that Mr Mutton has carried out defective work on that will fail at some point.

b) Mr Mutton had already said that the issue had been referred to a third party & said that he would consider unfair dismissal if he was dismissed while on stress leave. I knew that he was going to claim unfair dismissal no matter when he was dismissed. It was at this point I made the decision that it was too great a risk to have Mr Mutton attend a job site ever again. He had displayed gross insubordination by not following directives given by me on multiple occasions & I had now discovered an installation failure that I believed was caused through purposeful neglect that would cost me thousands of dollars to repair. I made the decision to summary dismiss Mr Mutton.

c) By 24/02/2025 We had not received any correspondence from Mr Mutton. I was of the understanding that his stress leave finished at close of business on that day. Not having dismissed an employee before it was all very new to me. Around 6.30pm that evening I instructed Toni Fields to send Mr Mutton an email advising of his termination of employment with letter attached. In hindsight it may have been better to send it the following morning. I did not believe at the time that I was dismissing Mr Mutton while he was on stress leave...as his stress leave had finished at 4.30pm that day.” (Reproduced verbatim)

[31] As Mr Vidler stated, on 24 February 2025 Artisan Pools sent an email to Mr Mutton which stated in part:

“Please find attached your letter of termination of employment.

This was not a decision that we have taken lightly. It is unfortunate that we could not work together to find ways for you to express your issues within the company due to your refusal to attend informal meetings or communicate your grievances either in verbal or written form.”

[32] The email attached a letter addressed to Mr Mutton which was signed by Mr Vidler and dated that day. It was titled “Termination of your employment” (“Termination Letter”). The letter stated in part:

“I am writing to you regarding the termination of your employment with Northern Rivers Pools.

I refer to the official letter of demand for disclosure of information dated 07/02/2025, which you received.

This official demand letter was issued to you due to the very serious statement that you made to Toni on Thursday 06/02/2025 during an onsite discussion around your inappropriate behaviour that morning.

Your reply to this letter of demand on Tuesday 11/02/2025 was not accepted for reasons that have been outlined in our previous correspondence.

The reasons for classing this behaviour as serious misconduct are as follows.

You made the very serious allegation that you knew of three pools that will soon fail, when asked which pools you believed were going to fail, you refused to answer.

During this onsite conversation, you were instructed on more than one occasion to only form up and return to the shed. Your mention of failing pools was an intimidating statement to make. It was also taken as though you were intimating that there was a possibility you had sabotaged the quality of our work on three pools in your role as construction manager.

On Thursday 20/02/2025 we received a phone call from the client whose job we were working during said conversation. She had serious concerns that the main bottom step on the house side of the pool was 'hollow'. The team inspected the pool that day. It was obvious that this step is hollow & had not been packed at all. The installation of that pool now requires costly remediation.

During the backfilling process on that pool you were asked by Grant 'did you pack that bottom step?' to which you replied 'yes'.

Your concerning statement regarding failing pools, your refusal to answer when asked to disclose which pools would fail, while working on a pool that has clearly not been installed to standard, while also disregarding a direct instruction to only form up and come back to the depot is serious misconduct and insubordination.

Your refusal to follow instruction to only form up the bond beam falls under the NSW Fair Work Ombudsmans' category of misconduct - refusing to carry out a lawful and reasonable instruction that is part of the job and has the ability to cause a serious and imminent risk to the reputation, viability or profitability of Northern Rivers Pools.

We consider your actions constitute serious misconduct warranting summary dismissal. Your employment with Northern Rivers Pools is terminated as at close of business on Monday the 24/02/2025."

Observations on the reasons for dismissal

[33] In effect, the Termination Letter contains three reasons for the dismissal.

[34] First, Artisan Pools relied on Mr Mutton's statement to Ms Fields that he knew of three pools that would "fail" and his refusal to provide Ms Fields with details of those pools when asked. Mr Vidler described Mr Mutton's statement as "threatening and intimidating".

[35] I am mindful that Mr Mutton stated that Ms Fields had "misrepresented" the conversation.⁸ However, even on Artisan Pools' case, there is a problem. It chose to deal with Mr Mutton's conduct by issuing him with the Request for Information. He responded on 11 February 2025, albeit in few words. Notably, in her email to Mr Mutton of 14 February 2025, Ms Fields did not challenge the adequacy of the information provided, but its accuracy.

[36] Second, Artisan Pools relied on Mr Mutton's repeated refusal to attend a meeting with Mr Vidler on 6 February 2025. Mr Mutton suggested in his evidence that he had already started

pouring concrete and that it was too late to stop. However, he also stated that he wanted to get on and do the work as he thought this would be better for the company's reputation than simply forming up and leaving. More tellingly, though, he further stated that at least one of the reasons that he did not return to the shed was that he felt that he was going to be "ambushed" and dismissed. On balance, I am inclined to the view that Mr Mutton did in fact disobey the direction to meet with Mr Vidler as he was concerned that complying with it might have resulted in his dismissal.

[37] But again, Artisan Pools dealt with that disobedience by issuing Mr Mutton with the Formal Warning. Not only had the matter been dealt with; the company clearly did not consider at the time that the conduct warranted more than a warning.

[38] Third, and most seriously, Mr Vidler stated that he concluded that Mr Mutton had deliberately sabotaged pools on which he had been working. This was referred to obliquely in the Termination Letter, as Mr Mutton having "intimated" that there was a "possibility" he had sabotaged work. But in reality, Mr Vidler's evidence revealed that he contended this to be a fact rather than a possibility. This was reflected in his oral testimony and his reference to "purposeful neglect" at paragraph 6(b) of his submission (reproduced above).

[39] The high point of Artisan Pools' case in this regard was Mr Vidler discovering that the steps on a particular pool had not been packed correctly. There was a factual controversy in this regard. Mr Mutton gave the following evidence:⁹

"During this project, Grant Vidler operated the machinery, Taylor Murphy and I wheelbarrowed the mix to the steps location. Taylor and I shovelled the mix into the void until it had filled to the surface. I started the high-pressure water unit and began to blast the mix into the void. This procedure can take significant time as the mix fills the lowest points first and then progresses up the step heights. During the procedure, I called over additional amounts of mix as we progressed through the step back fill. After a period of time, the void produced a mix return. I let it settle for a period and then once again commenced packing so as not to overflow the water/mix ratio. Based on the amounts of mix used and the amounts of mix brought, I believed the steps to be packed properly and did not see anything to suggest otherwise. Grant was happy with the amounts of mix used, and Taylor, who was shoulder distance from me, would have pointed out concerns if he had seen them. The workspace for Grant Vidler, Taylor Murphy, and myself would be approximately 15 metres, identifying the ability for all workers to see and manage the site activities."

[40] Mr Mutton was not challenged on that evidence. However, the evidence suggests that Artisan Pools has been required to undertake rectification work on the pool. Even so, the evidence falls short of proving that any faults with the work can be attributed to Mr Mutton alone. More particularly, on Mr Mutton's uncontroverted evidence I cannot see how Mr Vidler can properly contend that Mr Mutton *deliberately* failed to pack the steps. He was not the only person present.

[41] But even in the absence of Mr Mutton's evidence, I would require cogent evidence to support the very serious allegation that he had *deliberately* done a poor job on the pool. I would

similarly require evidence to accept that Mr Mutton had intentionally sabotaged other jobs on which he had been working. Artisan Pools adduced no such evidence.

[42] I have some doubts as to whether Mr Vidler genuinely believed that Mr Mutton had sought to sabotage any projects, or whether the suggestion was a concoction to justify a decision to dismiss which had already been made. In any event, Mr Vidler was unable to satisfactorily explain at the hearing what had led him to purportedly conclude that Mr Mutton was guilty of sabotage. The connection that Mr Vidler says he drew between his observations of the customer's pool on 20 February 2025, and what Mr Mutton was alleged to have said to Ms Fields on 6 February 2025, was tenuous at best.

[43] Moving to other matters, the evidence suggests that in deciding to dismiss Mr Mutton, Artisan Pools had regard to matters beyond those set out in the Termination Letter. The email from the company to Mr Mutton attaching the Termination Letter referred to his alleged "refusal to attend informal meetings or communicate your grievances either in verbal or written form". In his written evidence, Mr Vidler referred to Mr Mutton having "refused a reasonable & lawful directive to attend or organise a meeting, as he stated he would, with a third party to discuss his warnings & possible dismissal".¹⁰

[44] The evidence does not support those contentions. In his correspondence to Mr Vidler on 10 and 11 February 2025, Mr Mutton certainly communicated grievances. Admittedly they were sometimes meandering and expressed at the level of generalities, but they reflected issues that Mr Mutton was having in the workplace. Mr Vidler did not seek clarification or further information; his responses generally challenged and dismissed the concerns that Mr Mutton had raised.

[45] There was also no refusal of Mr Mutton to attend a meeting, apart from that on 6 February 2025 which I have dealt with. A subsequent meeting was arranged for 11 February 2025. Mr Mutton was on sick leave by then. Artisan Pools could not reasonably expect him to attend. Even then, Mr Mutton did not refuse to attend; he requested that the meeting be postponed while he arranged a support person to attend.

[46] In the context of these observations, I will turn to consider the unfair dismissal application.

Threshold questions

[47] Before considering the merits of Mr Mutton's application, I am required to decide four matters:¹¹

- (1) whether Mr Mutton's unfair dismissal application was made within the statutory time period;¹²
- (2) whether Mr Mutton was a person protected from unfair dismissal;¹³
- (3) whether the dismissal was consistent with the Small Business Fair Dismissal Code; and
- (4) whether the dismissal was a case of genuine redundancy.¹⁴

[48] There was no controversy about three of these matters. I find that: Mr Mutton filed his unfair dismissal within the statutory time period;¹⁵ Mr Mutton was a person protected from unfair dismissal; and, the dismissal was not a case of genuine redundancy.

[49] It is not in dispute that at the time of the dismissal, Artisan Pools was a small business employer. At that time, it had five employees including Mr Mutton.

[50] The Small Business Fair Dismissal Code relevantly provides as follows:

Summary Dismissal

It is fair for an employer to dismiss an employee without notice or warning when the employer believes on reasonable grounds that the employee's conduct is sufficiently serious to justify immediate dismissal. Serious misconduct includes theft, fraud, violence and serious breaches of occupational health and safety procedures. For a dismissal to be deemed fair it is sufficient, though not essential, that an allegation of theft, fraud or violence be reported to the police. Of course, the employer must have reasonable grounds for making the report.

[51] For the reasons set out above, I am not satisfied that there were reasonable grounds for Artisan Pools to believe that Mr Mutton had engaged in conduct that was sufficiently serious to justify his immediate dismissal. Accordingly, I find that the dismissal was not consistent with the Small Business Fair Dismissal Code.

[52] That finding disposes of the jurisdictional objection.

Why I have found the dismissal to be unfair

[53] Turning to the merits of the unfair dismissal application, a person will have been unfairly dismissed if the Commission is satisfied of four things:¹⁶

- (1) the person has been dismissed;
- (2) the dismissal was harsh, unjust or unreasonable;
- (3) the dismissal was not consistent with the Small Business Fair Dismissal Code; and
- (4) the dismissal was not a case of genuine redundancy.

[54] Given my earlier findings, the only matter left to be determined is whether Mr Mutton's dismissal was harsh, unjust or unreasonable.

[55] In determining that question, I am required to have regard to certain criteria, namely:¹⁷

- (1) whether there was a valid reason for the dismissal related to Mr Mutton's capacity or conduct (including its effect on the safety and welfare of other employees);
- (2) whether Mr Mutton was notified of that reason. The reference to "that reason" is to the "valid reason" to which the first criterion refers;¹⁸

- (3) whether Mr Mutton was given an opportunity to respond to any reason related to his capacity or conduct;
- (4) any unreasonable refusal by Artisan Pools to allow Mr Mutton to have a support person present to assist at any discussions relating to dismissal;
- (5) if the dismissal related to Mr Mutton's unsatisfactory performance – whether he had been warned about that unsatisfactory performance before the dismissal;
- (6) the degree to which the size of Artisan Pools' enterprise would be likely to impact on the procedures followed in effecting the dismissal;
- (7) the degree to which the absence of dedicated human resource management specialists or expertise in Artisan Pools' enterprise would be likely to impact on the procedures followed in effecting the dismissal; and
- (8) any other matters that the Commission considers relevant

[56] I am required to consider those criteria to the extent to which they are relevant to the case before me.¹⁹ I will address them in turn.

Whether there was a valid reason for the dismissal

[57] In order to be a valid reason, the reason for the dismissal should be sound, defensible or well founded. It should not be capricious, fanciful, spiteful or prejudiced.²⁰ However, the Commission will not stand in the shoes of the employer and determine what the Commission would do if it were the employer.²¹

[58] For the reasons set out above, I am not satisfied that there was a valid reason for the dismissal.

Notification of reason and opportunity to respond

[59] As I am not satisfied that there was a valid reason for the dismissal, these criteria have no application to the present circumstances.²²

Any unreasonable refusal by Artisan Pools to allow Mr Mutton to have a support person

[60] There was no unreasonable refusal by Artisan Pools to allow Mr Mutton to have a support person to assist at any discussions *relating to dismissal*. Although Mr Vidler disagreed with a third person being present at the proposed meeting on 6 February 2025, I do not think that at that time dismissal was on the cards. Mr Vidler agreed that Mr Mutton could bring a person to the meeting proposed for 11 February 2025, even though it did not eventuate. There were no other discussions relating to Mr Mutton's dismissal.

The size of Artisan Pools' enterprise, and access to dedicated human resource management specialists or expertise

[61] Artisan Pools is a small enterprise. It is clear from the evidence that it does not have internal human resources expertise. This likely contributed to the procedures Artisan Pools followed in effecting the dismissal.

[62] That said, from paragraph 6(b) of Mr Vidler’s written evidence, reproduced at [30] above, I can infer that he was aware of the risks of dismissing Mr Mutton in the manner he did. He decided to effect the dismissal, as he considered that Mr Mutton would bring an unfair dismissal claim no matter what he did. It follows that any deficiencies in the procedures Artisan Pools took to dismiss Mr Mutton cannot wholly be ascribed to ignorance or lack of expertise.

Other relevant matters

[63] There was a singular lack of procedural fairness in the process leading to the dismissal. In particular, Mr Mutton was not made aware of the customer’s complaint regarding the packing of the steps under her pool. He was not given an opportunity to defend himself against the allegation that he had not packed the steps properly, much less that he had deliberately failed to do so. He also did not have a chance to defend himself against the suggestion that he had sabotaged other pools.

[64] It was unreasonable and inappropriate for Mr Vidler to suggest that Mr Mutton meet with him on 11 February 2025, after Mr Mutton had provided him with a medical certificate. This was compounded by Artisan Pools’ reliance on Mr Mutton having failed to attend that meeting as a “refusal” which supported the dismissal.

Conclusion

[65] For the reasons set out above, and in particular the lack of a valid reason for the dismissal, I am satisfied that Mr Mutton’s dismissal was harsh, unjust and unreasonable. It follows from my other findings that Mr Mutton was unfairly dismissed.

Remedy

[66] Having found that Mr Mutton was a person protected from unfair dismissal and that he was unfairly dismissed, I have the discretion to order his reinstatement, or to order that Artisan Pools pay him compensation.²³ Importantly, a finding of unfairness in the dismissal does not oblige me to order one or the other. The question of whether to order any remedy is a matter within my discretion.²⁴

[67] Reinstatement is not appropriate in this case. The correspondence between the parties after 6 February 2025 revealed an increasingly deteriorating relationship. That was exacerbated by their evidence in these proceedings. Mr Mutton accused Mr Vidler and Ms Fields of being dishonest and engaging in improper business activities. Mr Vidler accused Mr Mutton of sabotage. There was clear animosity in the exchanges between Mr Mutton and Mr Vidler at the hearing. It is virtually impossible that an effective working relationship between them could ever be restored.

[68] I am satisfied, however, that an order for payment of compensation is appropriate in all the circumstances of this case.²⁵

[69] In assessing compensation, I am required to take into account all the circumstances of the case.²⁶ In doing so, I will adopt the well-established methodology for assessing compensation in unfair dismissal cases set out in *Sprigg v Paul's Licensed Festival Supermarket* ("*Sprigg*")²⁷, as follows:

Step 1: Estimate the remuneration Mr Mutton would have received, or have been likely to have received, if Artisan Pools had not terminated his employment (remuneration lost).

Step 2: Deduct monies earned by Mr Mutton since termination.

Step 3: Discount the remaining amount for contingencies.

Step 4: Calculate the impact of taxation to ensure that Mr Mutton receives the actual amount he would have received if he had continued in his employment.

[70] Step 1 requires an assessment of the remuneration that Mr Mutton would have received, or would have been likely to receive, had he not been dismissed.²⁸ This requires an estimation of his anticipated period of employment;²⁹ that is, how long he would have remained in employment but for the dismissal, and the remuneration he would have received, or been likely to receive, during that period.³⁰ There is an element of speculation in this counterfactual task, as it involves an assessment of what would have been likely to happen in the future had Mr Mutton not been dismissed. In making that assessment, I am required to consider the actual state of facts. In each case, it is necessary for the Commission to address itself to the question whether, if the dismissal had not occurred, the employment would have been likely to continue, or would have been terminated at some time by another means.³¹

[71] As I have observed, the relationship between Mr Mutton and Artisan Pools deteriorated markedly after 6 February 2025. The correspondence between them, and in particular between Mr Mutton and Mr Vidler, became increasingly acrimonious. And Mr Mutton was not blameless in that regard. He levelled serious allegations of wrongdoing at Artisan Pools and called into question the honesty and integrity of both Mr Vidler and Ms Fields. Even as early as 6 February 2025, he was suggesting that he could not meet with Mr Vidler unless an independent third person was present. In the circumstances, the relationship would not have survived for long. I estimate that Mr Mutton's anticipated period of employment was eight weeks after the date of dismissal.

[72] Mr Mutton was paid a gross weekly wage of \$1,923.08.³² Having regard to the anticipated period of employment, the remuneration Mr Mutton would have received, or would likely have received, had he not been dismissed is \$15,384.64 gross (\$1,923.08 per week for 8 weeks) ("Provisional Compensation Amount").

[73] Step 2 in *Sprigg* reflects the statutory requirement that the Commission take into account any amounts earned by Mr Mutton from employment or other work since the dismissal.³³ He did not receive a payment in lieu of notice. There was no evidence that Mr Mutton had earned any income following the dismissal; he stated at the hearing that he had yet to commence new

employment. No adjustment to the Provisional Compensation Amount is warranted on this basis.

[74] I have considered whether any discount should be made for contingencies,³⁴ consistent with step 3 in *Sprigg*. A discount for contingencies is a means of taking into account the various probabilities that might otherwise affect earning capacity.³⁵ In this case, the anticipated period of employment had expired by the time the hearing had concluded. In the circumstances of this case,³⁶ there is no warrant for making a deduction to the Provisional Compensation Amount for contingencies.

[75] With respect to step 4 in *Sprigg*, I have considered the impact of taxation. I will determine compensation as a gross amount, and it will be for Artisan Pools to deduct any taxation as required by law.

[76] As to other statutory considerations:

- (1) There is no evidence to suggest that any adjustment to the Provisional Compensation Amount ought to be made having regard to the viability of Artisan Pools' business.³⁷
- (2) Including his period of casual service, Mr Mutton was employed by Artisan Pools for a little under three years.³⁸ That period calls for neither an increase to or a reduction in the Provisional Compensation Amount.
- (3) Mr Mutton provided limited evidence that he had taken reasonable steps to minimise the impact of the dismissal.³⁹ It was for him to do so.⁴⁰ At the hearing he stated that soon after his dismissal, his wife had health issues which distracted him from immediately applying for other employment. When he began to apply, his attempts were thwarted by Cyclone George and its aftermath. On 20 May 2025 he successfully applied for a job, which he was due to commence on 14 July 2025 (three days after the hearing). In the circumstances, I have determined that the Provisional Compensation Amount ought not be discounted on this ground.
- (4) There being no findings of misconduct by Mr Mutton, I am not required to reduce the Provisional Compensation Amount on that basis.⁴¹

[77] These considerations confirm the Provisional Compensation amount of \$15,384.64. That sum does not include a component for shock, humiliation or distress.⁴² It is less than the compensation cap.⁴³ I am satisfied that an award of compensation in that amount is appropriate in all the circumstances of the case.⁴⁴

Disposition

[78] In light of the above, I will make an order that Artisan Pools pay Mr Mutton \$15,384.64, less taxation as required by law, plus 12% superannuation.⁴⁵ The order will require payment to be made by 9 October 2025.

[79] My order is issued separately to this decision in [PR791612](#).



COMMISSIONER

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<PR791611>

¹ In this decision, all references to legislation are to provisions of the *Fair Work Act*

² Within the meaning of section 23. This was not in dispute.

³ Statement of Toni Fields, 16 June 2025 (Exhibit R5), par 16. See also pars 19 and 26

⁴ Statement of Toni Fields, 16 June 2025 (Exhibit R5), par 24

⁵ Statement of Toni Fields, 16 June 2025 (Exhibit R5), par 25

⁶ Submission of Grant Vidler, 13 June 2025, par 5(h)

⁷ Statement of Grant Vidler, 13 June 2025

⁸ Submission of Anthony Mutton in Reply, par 72

⁹ Submissions of Anthony Mutton, 27 May 2025, par 56

¹⁰ Submission of Grant Vidler, 13 June 2025, par 15(c)

¹¹ Section 396

¹² As prescribed by section 394(2)

¹³ Within the meaning of section 382

¹⁴ Within the meaning of section 389

¹⁵ Mr Mutton was dismissed on 24 February 2025 and filed his unfair dismissal application on 15 March 2025

¹⁶ Section 385

¹⁷ Section 387

¹⁸ *Chubb Security Australia Pty Ltd v Thomas*, Print S2679 (AIRCFCB, McIntyre VP, Marsh SDP, Larkin C, 2 February 2000) at [41]; *Read v Cordon Square Child Care Centre* [2013] FWCFB 762 at [48]-[49]

¹⁹ *Sayer v Melsteel Pty Ltd* [2011] FWAFB 7498 at [14]

²⁰ *Selvachandran v Peteron Plastics Pty Ltd* (1995) 62 IR 371 at 373

²¹ *Walton v Mermaid Dry Cleaners Pty Ltd* (1996) 142 ALR 681 at 685

²² *Chubb Security Australia Pty Ltd v Thomas*, Print S2679 (AIRCFCB, McIntyre VP, Marsh SDP, Larkin C, 2 February 2000) at [41]; *Read v Cordon Square Child Care Centre* [2013] FWCFB 762 at [48]-[49]

²³ Section 390(1)

²⁴ *Nguyen v Vietnamese Community in Australia t/a Vietnamese Community Ethnic School South Australia Chapter* [2014] FWCFB 7198 at [9]

²⁵ Section 390(3)(b)

²⁶ Section 392(2)

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- ²⁷ (1998) 88 IR 21, adopted for the purposes of the *Fair Work Act* in *Bowden v Ottrey Homes Cobram and District Retirement Villages* [\[2013\] FWCFB 431](#)
- ²⁸ Section 392(2)(c)
- ²⁹ See *Ellawala v Australian Postal Corporation*, Print S5109 (AIRCFB, Ross VP, Williams SDP, Gay C, 17 April 2000) at [34]
- ³⁰ *He v Lewin* (2004) 137 FCR 266; [2004] FCAFC 161 at [58]
- ³¹ *He v Lewin* (2004) 137 FCR 266; [2004] FCAFC 161 at [58]-[59]
- ³² This is evidenced by payslips that Mr Mutton produced, which reflect the terms on which he was offered permanent employment as construction manager. It is also consistent with the information that Artisan Pools provided in its response to the unfair dismissal application.
- ³³ Section 392(2)(e) and (f)
- ³⁴ Section 392(2)(g)
- ³⁵ *Ellawala v Australian Postal Corporation*, Print S5109 (AIRCFB, Ross VP, Williams SDP, Gay C, 17 April 2000) at [43]
- ³⁶ *Bowden v Ottrey Homes Cobram and District Retirement Villages Inc T/A Ottrey Lodge* (2013) 229 IR 6; [\[2013\] FWCFB 431](#) at [53]
- ³⁷ Section 392(2)(a)
- ³⁸ Section 392(2)(b)
- ³⁹ Section 392(2)(d)
- ⁴⁰ *Biviano v Suji Kim Collection* [PR915963](#) (AIRCFB, Ross VP, O’Callaghan SDP, Foggo C, 28 March 2002) at [34], citing *Lockwood Security Products Pty Limited v Sulocki and Ors* [PR908053](#) (AIRCFB, Giudice J, Lacy SDP, Blair C, 23 August 2001) at [45]
- ⁴¹ Section 392(3)
- ⁴² Section 392(4)
- ⁴³ Sections 392(5) and (6). In this case that is the remuneration that Mr Mutton received or was entitled to receive in the 26 weeks preceding his dismissal
- ⁴⁴ *Double N Equipment Hire Pty Ltd t/a A1 Distributions v Humphries* [\[2016\] FWCFB 7206](#) at [17]
- ⁴⁵ Under the terms of his employment contract, Mr Mutton was entitled to superannuation at the rate of 12%.