DECISION

Fair Work Act 2009
s.394 - Application for unfair dismissal remedy

Cheryl Sazdanoff
v
Doc Pty Limited
(U2025/16118)

COMMISSIONER SLOAN SYDNEY, 2 APRIL 2026

Application for an unfair dismissal remedy –whether dismissal harsh, unjust or unreasonable – no valid reason for dismissal – lack of procedural fairness – reinstatement not appropriate – compensation ordered

[1] On 11 February 2011, Cheryl Sazdanoff commenced employment as a Pharmacy Assistant at the Docs John Hunter Hospital Pharmacy. Her employer was Doc Pty Limited (**DPL**).

[2] On 22 September 2025, Mrs Sazdanoff was at work.[1] At about 4.30pm, Aleksandar Gavriloski, the owner of DPL, unexpectedly called Mrs Sazdanoff to an area of the pharmacy out of customer view. He said: “We’ve caught you stealing.” Mrs Sazdanoff denied stealing anything. Mr Gavriloski claimed that Mrs Sazdanoff had stolen confectionary from the pharmacy on four occasions, once on each of 14 August 2025 and 2 September 2025, and twice on 4 September 2025. Mr Gavriloski made a brief attempt to show Mrs Sazdanoff CCTV footage which he claimed revealed the theft, “rushing through partial clips that initially failed to load and intermittently froze”.[2] Mr Gavriloski handed Mrs Sazdanoff a letter “inviting” her to a meeting the following day “to discuss [her] conduct in relation to recent incident/s involving theft and consumption of stock without payment”. The letter informed Mrs Sazdanoff that she could bring a support person to the meeting.

[3] Immediately after her conversation with Mr Gavriloski, Mrs Sazdanoff went to the service counter and paid for the items that she had allegedly stolen.

[4] On 23 September 2025, Mrs Sazdanoff attended a meeting with Mr Gavriloski and John Slow, the pharmacy manager. Mr Gavriloski asked her whether she had receipts for the items he claimed she had stolen. Ms Sazdanoff stated that she felt overwhelmed, distressed and intimidated, and was unable to explain her position properly. Mr Gavriloski handed her a letter dated 23 September 2025, titled “Termination of your employment”. That letter informed Mrs Sazdanoff that her actions “constitute serious misconduct warranting summary dismissal”.

[5] Mrs Sazdanoff’s employment came to an end that day.

[6] Mrs Sazdanoff denies that she engaged in theft or that her conduct otherwise warranted her summary dismissal. On 7 October 2025, she filed an unfair dismissal application under section 394 of the *Fair Work Act 2009*.[3]

Determination

[7] I am satisfied that the dismissal was harsh, unjust and unreasonable. I have decided that an order for payment of compensation is appropriate. These are my reasons.

Threshold questions

[8] Before considering the merits of Mrs Sazdanoff's application, I am required to decide four matters.[4] None of them were in dispute and I find as follows:

(1) Mrs Sazdanoff was dismissed on 23 September 2025 and filed her unfair dismissal application on 7 October 2025. This was within the statutory time period;[5]

(2) Mrs Sazdanoff was a person protected from unfair dismissal;[6]

(3) DPL is not a small business employer.[7] At the time of Mrs Sazdanoff's dismissal it had 17 employees. It follows that the Small Business Fair Dismissal Code is not applicable; and

(4) the dismissal was not a case of genuine redundancy.[8]

Why I have found the dismissal to be unfair

[9] Turning to the merits of the application, a person will have been unfairly dismissed if the Commission is satisfied of four things:[9]

(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.

[10] Consistent with my findings above, I am satisfied that Mrs Sazdanoff was dismissed; that the Small Business Fair Dismissal Code was not applicable; and that the dismissal was not a case of genuine redundancy. The only matter left to be determined is whether Mrs Sazdanoff's dismissal was harsh, unjust or unreasonable.

[11] In determining that question, I am required to have regard to certain criteria, namely:[10]

(1) whether there was a valid reason for the dismissal related to Mrs Sazdanoff's capacity or conduct (including its effect on the safety and welfare of other employees);

(2) whether Mrs Sazdanoff was notified of that reason. The reference to "that reason" is to the "valid reason" to which the first criterion refers;[11]

(3) whether Mrs Sazdanoff was given an opportunity to respond to any reason related to her capacity or conduct;

(4) any unreasonable refusal by DPL to allow Mrs Sazdanoff to have a support person present to assist at any discussions relating to dismissal;

(5) if the dismissal related to unsatisfactory performance by Mrs Sazdanoff – whether she had been warned about that unsatisfactory performance before the dismissal;

(6) the degree to which the size of DPL's 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 the enterprise would be likely to impact on the procedures followed in effecting the dismissal; and

(8) any other matters that the Commission considers relevant

[12] I am required to consider those criteria to the extent to which they are relevant to the case before me.[12] As the dismissal did not relate to Mrs Sazdanoff's unsatisfactory performance, the fifth criterion is not relevant. I will address the others in turn.

Whether there was a valid reason for the dismissal

[13] 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.[13] However, the Commission will not stand in the shoes of the employer and determine what the Commission would do if it were the employer.[14]

[14] The Commission has established the following principles to apply in cases relating to alleged conduct:[15]

(1) the employer bears the evidentiary onus of proving that the conduct on which it relies took place;

(2) the Commission must make a finding on the evidence as to whether, on the balance of probabilities, the conduct occurred; and

(3) in cases where allegations of serious misconduct are made, the principles set out in *Briginshaw v Briginshaw*[16] apply, so that findings that a worker engaged in the misconduct alleged are not made lightly.

[15] DPL dismissed Mrs Sazdanoff for serious misconduct, namely theft. That is a serious allegation to make. It also had serious consequences: Mrs Sazdanoff was summarily dismissed after more than 14 years' service.

[16] DPL's evidence in support of these allegations was largely confined to CCTV footage, which was said to demonstrate the thefts. The single statement on which DPL relied, by Mr Gavriloski, was confined to explaining how the CCTV footage was created, accessed, retrieved, stored and viewed. DPL invited me to draw my own conclusions from the footage.

[17] Mrs Sazdanoff responded in writing to the CCTV footage and described the circumstances of 14 August 2025, 2 September 2025 and 4 September 2025. That evidence was largely unrefuted. I acknowledge that Mrs Sazdanoff led a lot of her evidence in reply, but she was self-represented. DPL did not object to me accepting that evidence or seek leave to lead further evidence in response to material that Mrs Sazdanoff might properly have led in chief.

[18] Ms Sazdanoff did not deny taking and consuming confectionary during her shifts. She stated that it was common practice for staff in the pharmacy to consume food items during their shift and to pay for them at the end of the shift, if not before. She understood that this was a practice that was "known and tolerated".[17]

[19] In his oral evidence, Mr Gavriloski stated that "our policies and procedures are that you pay for items on your break and consume them on your break".[18] Those policies and procedures are not in evidence. In any event, Mrs Sazdanoff was not dismissed for non-compliance with DPL's policies and procedures, but for theft. Mr Gavriloski conceded that there is a difference between an employee who takes and consumes an item with no intention ever of paying for it and one who does so with the intention of paying for it later, such as during their break when they can access their money.

[20] Having reviewed the CCTV footage in light of Mrs Sazdanoff's largely uncontroverted evidence, I have drawn the following conclusions regarding the facts of the matter:

(1) At 9.22am on 14 August 2025, Mrs Sazdanoff took a "Byron Bay cookie" from a shelf in the pharmacy and ate it behind the check-out counter. There is nothing in the CCTV footage to suggest that she was in any way attempting to disguise or conceal her conduct. She paid for the cookie at 1.40pm that day.

(2) At 11.45am on 2 September 2025, Mrs Sazdanoff removed two foil-covered chocolate hearts from a box at the front of the pharmacy counter. She passed one to a co-worker. There is nothing in the CCTV footage to suggest that Mrs Sazdanoff was in any way attempting to disguise or conceal her conduct. After passing the chocolate to her co-worker, Mrs Sazdanoff walked out of view of the CCTV camera. The footage does not show her eating the chocolate that she had taken. (Mrs Sazdanoff could not recall whether she ate it or not.) There is no evidence that Mrs Sazdanoff paid for a chocolate heart that day.

(3) At 10.00am on 4 September 2025, while standing behind the counter, Mrs Sazdanoff opened a packet containing a "Rainbow Nerd Rope". It was a new product which she and other staff members wanted to try. Mrs Sazdanoff cut a small piece off the end of the item and ate it. There is nothing in the CCTV footage to suggest that Mrs Sazdanoff was in any way attempting to disguise or conceal her conduct. She gave the item to her co-workers to share, as she did not like it. She assumed in the circumstances that her co-workers, having "finished it off", would pay for it.

(4) At 11.42am on 4 September 2025, one of Mrs Sazdanoff's co-workers handed her a packet of "Curly Wurly Squirlies", suggesting that they share it. Mrs Sazdanoff cut the packet open with a pair of scissors, and placed the open packet on the counter.

Both Mrs Sazdanoff and her co-worker ate an item from the packet. The packet was left on the counter to share. There is nothing in the CCTV footage to suggest that Mrs Sazdanoff was in any way attempting to disguise or conceal her conduct. She did not pay for the item; she believed that her co-worker would do so as it had been her suggestion to share it.

[21] There was no basis for DPL to allege that Mrs Sazdanoff stole the "Byron Bay cookie" on 14 August 2025. It had been paid for that day, in a manner consistent with what Mrs Sazdanoff described as the common practice in the pharmacy.

[22] As to the remaining items, DPL's evidence was equivocal. Footage that Mrs Sazdanoff consumed the items (even were I to accept that she ate the chocolate heart) falls short of demonstrating that she did so with the intention that they would not be paid for. The fact that Mrs Sazdanoff paid for the cookie on 14 August 2025 is evidence that she knew that she had to pay for items she took from the pharmacy. She provided a credible explanation for not having paid for the items on 4 September 2025. The absence of receipts or other proof of payment for the items is not sufficient to establish an intention to steal.

[23] DPL submitted that "removal of stock without payment is recognised as conduct that fundamentally damages the trust and confidence essential to the employment relationship, and has consistently been upheld as valid grounds for summary dismissal".[19] But to my mind, the submission does not fully reflect DPL's reason for dismissal. It accused Mrs Sazdanoff of theft. It was not enough for it to contend that Mrs Sazdanoff removed stock without payment (putting to one side whether it proved that she had done so); it had to demonstrate that she had done so *intentionally*.

[24] DPL submitted that the fact that Mrs Sazdanoff paid for the items on 22 September 2025 suggested that she was aware that she had not previously done so. However, she stated that she was upset at having been accused of theft and so, for an abundance of caution and as a sign of goodwill, she made payment for the items. I accept her explanation. It is supported by the fact that she paid once more for the "Byron Bay cookie" for which she had already paid.

[25] In conclusion, having regard to the principles set out in *Briginshaw*, I am not satisfied on the evidence that DPL has established that Ms Sazdanoff engaged in the theft which was the basis for her summary dismissal. It follows that I find that there was no valid reason for the dismissal related to Mrs Sazdanoff's capacity or conduct.

Notification of reason and opportunity to respond

[26] As I am not satisfied that there was a valid reason for the dismissal, these criteria have no application to the present circumstances.[20]

Any unreasonable refusal by DPL to allow Mrs Sazdanoff to have a support person

[27] DPL did not unreasonably refuse to allow Mrs Sazdanoff to have a support person present in the meeting on 23 September 2025. In its letter to her the previous day, it invited her to bring a support person to that meeting. Mrs Sazdanoff contended that she was not given

sufficient time to arrange for someone to attend with her. However, I do not consider that this was a *refusal* of a support person.

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

[28] DPL led no evidence of these matters. There is no basis on which I could find that any unfairness in the dismissal can be attributed to, or ameliorated by, the lack of available resources or expertise.

Other relevant matters

[29] Mrs Sazdanoff had more than 14 years service with DPL at the time of her dismissal. There is no evidence of DPL having raised any issues regarding her performance and conduct prior to the events giving rise to these proceedings.

[30] Given DPL's reliance on the CCTV footage, it is concerning that it made only perfunctory efforts to allow Mrs Sazdanoff to properly consider and respond to it. Mrs Sazdanoff stated that Mr Gavriloski "rushed through" partial clips, and sought to describe what the footage showed rather than giving her an opportunity to view it properly. DPL did not challenge that evidence. I accept Mrs Sazdanoff's evidence that she had difficulty concentrating on such footage as Mr Gavriloski showed her, having just been called a thief.

[31] It is clear from the evidence that Mrs Sazdanoff was not the only person who consumed items of stock at work. Mr Gavriloski gave oral evidence that one other employee was dismissed at about the same time as Mrs Sazdanoff had been. He stated that "almost every other staff member was given a first and final warning" with the outcome being "dependent upon the number of times people had stolen".[21] Given my findings above, DPL treated Mrs Sazdanoff more harshly than her co-workers, without apparent justification.

Conclusion

[32] I am satisfied that Ms Sazdanoff's dismissal was harsh, unjust and unreasonable, having regard to the fact that there was no valid reason for her dismissal, her long and unblemished service with DPL and the disproportionate outcome for her compared to her co-workers.

Remedy

[33] Having found that Mrs Sazdanoff was a person protected from unfair dismissal and that she was unfairly dismissed, I have the discretion to order her reinstatement, or to order that DPL pay her compensation.[22] I am not required to order one or the other; the question of whether to order any remedy is a matter within my discretion.[23]

[34] Reinstatement is not appropriate in this case. Mrs Sazdanoff did not seek it. In any event, having observed the interaction between her and Mr Gavriloski during the hearing, I conclude that it would be difficult to re-establish an effective working relationship between them.

[35] I am, however, satisfied that an order for payment of compensation is appropriate in all the circumstances of this case.[24]

[36] In assessing compensation, I am required to take into account all the circumstances of the case.[25] 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*[26] ("*Sprigg*"), as follows:

> Step 1: Estimate the remuneration Mrs Sazdanoff would have received, or have been likely to have received, if DPL had not terminated her employment (remuneration lost).
>
> Step 2: Deduct monies earned since termination.
>
> Step 3: Discount the remaining amount for contingencies.
>
> Step 4: Calculate the impact of taxation to ensure that Mrs Sazdanoff receives the actual amount she would have received if she had continued in employment with DPL.

[37] Step 1 requires an assessment of the remuneration that Mrs Sazdanoff would have received, or would have been likely to receive, had she not been dismissed.[27] This requires an estimation of her anticipated period of employment;[28] that is, how long she would have remained in employment but for the dismissal, and the remuneration she would have received, or been likely to receive, during that period.[29] 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 Mrs Sazdanoff 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.[30]

[38] There is nothing to suggest that Mrs Sazdanoff had any intention of leaving her employment with DPL. There is equally no evidence that, but for it finding that Mrs Sazdanoff had engaged in theft, DPL would have sought to bring the employment to an end in the foreseeable future.

[39] On the evidence, I consider that the remuneration Mrs Sazdanoff would have received, or would likely have received, had she not been dismissed is an amount equal to one year's remuneration. In my view, had she not been dismissed, she would have continued to work for at least that period.

[40] Step 2 in *Sprigg* reflects the statutory requirement that the Commission take into account any amounts earned by Mrs Sazdanoff from employment or other work since the dismissal.[31] Mrs Sazdanoff stated at the hearing that she had not found other paid employment since her dismissal. I accept that evidence. Accordingly, for the purposes of step 2 in *Sprigg*, there are no earnings since the dismissal that would require an adjustment to the amount of compensation to be ordered.

[41] I have considered whether any discount should be made for contingencies,[32] 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.[33] There was nothing presented by the parties to suggest that in the circumstances of this case,[34] a deduction should be made for contingencies.

[42] 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 the respondent to deduct any amount of taxation as required by law.

[43] As to the remaining statutory considerations, I observe:

(1) There is nothing to suggest that any adjustment to any proposed order for compensation is warranted having regard to the viability of DPL's business.[35]

(2) Mrs Sazdanoff was employed by DPL for more than 14 years.[36] This is a lengthy period that supports a significant compensation order being made.

(3) Mrs Sazdanoff provided limited evidence that she had taken reasonable steps to minimise the impact of the dismissal.[37] It was for her to do so.[38] She stated at the hearing that she had unsuccessfully applied for three jobs. She said that she suffers from anxiety and that being knocked back for jobs had impacted on her confidence. I am mindful that DPL made no submission that any order of compensation should be reduced due to any failure by Mrs Sazdanoff to mitigate her loss. Even so, given the limited evidence of attempts at mitigation, I consider that it is appropriate to make some deduction from the compensation that I might otherwise order.

(4) There being no findings of misconduct by Mrs Sazdanoff, I am not required to reduce the amount of compensation I would otherwise order.[39]

(5) In considering compensation, I have not included a component for shock, humiliation or distress.[40]

(6) In its Form F3 Employer response to unfair dismissal application, DPL stated that Mrs Sazdanoff's weekly wage was $1,089.13. As Mrs Sazdanoff did not challenge that amount, I have adopted it for the purposes of quantifying the compensation order. In the absence of evidence to the contrary, I have assumed for the purposes applying the compensation cap[41] that Mrs Sazdanoff received that amount each week in the 26 weeks preceding her dismissal.

[44] Had Mrs Sazdanoff led more evidence as to her attempts to mitigate her loss, I would have been inclined to award her an amount equal to the compensation cap. As it is, I have determined that it is appropriate in all the circumstances of this case, particularly given that there was no valid reason for Mrs Sazdanoff's dismissal, that she receive compensation of $23,960.86, being 22 weeks pay, plus superannuation.

Disposition

[45] I will make an order that DPL pay Mrs Sazdanoff $23,960.86, less taxation as required by law, plus 12% superannuation.[42] The order will require payment to be made by 30 April 2026.

[46] My order is issued separately to this decision in PR798259.

COMMISSIONER

Appearances:

Cheryl Sazdanoff, appeared for herself
Francis McAleese, on behalf of the Respondent

Hearing:

10 February 2026

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<PR798257>

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[1] My description of the events of 22 and 23 September 2025 are largely drawn from Mrs Sazdanoff's evidence. The Pharmacy did not lead evidence about those events and did not meaningfully challenge Mrs Sazdanoff's testimony in cross-examination.

[2] Statement of Cheryl Sazdanoff, 2 February 2026, par 14

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

[4] Section 396

[5] As prescribed by section 394(2)

[6] Within the meaning of section 382

[7] As defined in section 23

[8] Within the meaning of section 389

[9] Section 385

[10] Section 387

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

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

[13] *Selvachandran v Peteron Plastics Pty Ltd* (1995) 62 IR 371 at 373

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

[15] *King v Freshmore (Vic) Pty Ltd* (unreported, AIRCFB, Ross VP, Williams SDP, Hingley C, 17 March 2000) Print S4213 at [24]

[16] (1936) 60 CLR 336. In that case, Dixon J (as his Honour then was) observed at 361-362:

> "The truth is that, when the law requires the proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality. No doubt an opinion that a state of facts exists may be held according to indefinite gradations of certainty; and this has led to attempts to define exactly the certainty required by the law for various purposes. Fortunately, however, at common law no third standard of persuasion was definitely developed. Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, *or the gravity of the consequences flowing from a particular finding* are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. *In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences*." (My emphasis)

[17] Statement of Cheryl Sazdanoff, 2 February 2026, par 9

[18] Transcript, PN206

[19] DPL's Outline of Submissions, 27 January 2026, par 10d.

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

[21] Transcript, PN184

[22] Section 390(1)

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

[24] Section 390(3)(b); *Double N Equipment Hire Pty Ltd t/a A1 Distributions v Humphries* [2016] FWCFB 7206 at [17]

[25] Section 392(2)

[26] (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

[27] Section 392(2)(c)

[28] See *Ellawala v Australian Postal Corporation*, Print S5109 (AIRCFB, Ross VP, Williams SDP, Gay C, 17 April 2000) at [34]

[29] *He v Lewin* (2004) 137 FCR 266; [2004] FCAFC 161 at [58]

[30] *He v Lewin* (2004) 137 FCR 266; [2004] FCAFC 161 at [58]-[59]

[31] Section 392(2)(e) and (f)

[32] Section 392(2)(g)

[33] *Ellawala v Australian Postal Corporation*, Print S5109 (AIRCFB, Ross VP, Williams SDP, Gay C, 17 April 2000) at [43]

[34] *Bowden v Ottrey Homes Cobram and District Retirement Villages Inc T/A Ottrey Lodge* (2013) 229 IR 6; [2013] FWCFB 431 at [53]

[35] Section 392(2)(a)

[36] Section 392(2)(b)

[37] Section 392(2)(d)

[38] *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]

[39] Section 392(3)

[40] Section 392(4)

[41] Sections 392(5) and (6)

[42] The superannuation guarantee percentage at the time of the dismissal