



DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Benjamin Hayden Lewis

v

Essential Energy
(U2025/9445)

DEPUTY PRESIDENT WRIGHT

SYDNEY, 30 JANUARY 2026

Application for an unfair dismissal remedy – valid reason for dismissal – dismissal was harsh and unreasonable – order for reinstatement made

Introduction and outcome

[1] On 2 June 2025, Mr Benjamin Lewis made an application to the Fair Work Commission (Commission) under s.394 of the *Fair Work Act 2009* (Cth) (FW Act) for a remedy, alleging that he had been unfairly dismissed from his employment with Essential Energy.

[2] Essential Energy is a New South Wales Government owned corporation responsible for operating and maintaining Australia’s largest electricity network covering 95% of New South Wales and parts of Southern Queensland.

[3] Mr Lewis was employed as a Powerline Worker based at Leeton Depot by Essential Energy. Leeton is located in the Riverina region of New South Wales. On 14 May 2025, Mr Lewis was dismissed after behaving in an aggressive and threatening manner towards a colleague during a toolbox meeting on 20 February 2025.

[4] Mr Lewis believed that he was suffering from an anxiety attack at the time of the incident and explained that he was experiencing difficult personal circumstances, including his aunt being in palliative care and his father suffering from cancer.

[5] In summary, I have found that there was a valid reason for dismissal based upon Mr Lewis’ conduct on 20 February 2025. However, due to other factors, including Mr Lewis’ lengthy period of service, his difficult personal circumstances, the aggressive and threatening behaviour being a ‘one-off’ incident, and there being no prior disciplinary history, I have determined that Mr Lewis’ dismissal was harsh and unreasonable and made orders for reinstatement, backpay and continuity of employment.

The hearing

[6] The application was listed for hearing on 3 and 4 September 2025. At the hearing, Mr Lewis was represented by Ms Emily Strachan, Senior Legal Officer, Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, Electrical Trades Union NSW and ACT Branch (ETU). Essential Energy was represented by Mr Stephen Crilly, Lawyer, who I granted permission to appear pursuant to s.596(2) of the FW Act as I was satisfied that it would enable the matter to be dealt with more efficiently, taking into account the complexity of the matter.

Witnesses called by Mr Lewis

[7] Mr Lewis gave evidence at the hearing and was cross-examined by Mr Crilly. In addition, the following witnesses gave evidence on behalf of Mr Lewis and were cross-examined by Mr Crilly apart from Mr Southgate:

1. Mr Michael Meline
2. Mr James Iannelli
3. Mr Corey Ryan
4. Mr Mark Morphett
5. Mr Sean Sloan
6. Mr Hayden Southgate
7. Mr Steve Magann

Michael Meline

[8] Mr Meline is a Leading Hand Powerline Worker employed at Essential Energy. He has worked at Essential Energy for approximately 18 years and has always been based in the Leeton Depot. His role involves supervising powerline workers at all levels.¹ Mr Meline has worked with Mr Lewis for at least eight years. Mr Meline attended the toolbox meeting on 20 February 2025 and was the recipient of Mr Lewis' aggressive behaviour at that meeting.

James Iannelli

[9] Mr Iannelli is a Powerline Worker at Essential Energy. He has worked at the Leeton Depot for almost seven years and has worked with Mr Lewis throughout that period. Mr Iannelli attended the toolbox meeting on 20 February 2025.²

Corey Ryan

[10] Mr Ryan is an Electrical Technician at Essential Energy. He has been based at the Leeton Depot for 14 years. Mr Ryan has worked with Mr Lewis for 14 years and has known him outside of work as a family friend since he was 17 years old. Mr Ryan attended the toolbox meeting on 20 February 2025.³

Mark Morphett

[11] Mr Morphett is a Powerline Worker and Trainee Underground Cable Jinter at Essential Energy. He has been working at the Leeton Depot for eight years. Mr Morphett said that he worked directly with Mr Lewis for about five years. Mr Morphett attended the toolbox meeting on 20 February 2025.⁴

Sean Sloan

[12] Mr Sloan is an Electrical Technician/Leading Hand at Essential Energy. He has been based at the Leeton Depot for 19 years. Mr Sloan said that he has worked with Mr Lewis since Mr Lewis started at the Leeton Depot. Mr Sloan attended the toolbox meeting on 20 February 2025.⁵

Hayden Southgate

[13] Mr Southgate is employed by Essential Energy and is the Leeton Depot's ETU delegate. Mr Southgate supported Mr Lewis during the disciplinary process.⁶

Stephen Magann

[14] Mr Magann is an Organiser for the ETU. He has been working at the ETU since June 2018. Mr Magann worked for Essential Energy for 33 years until 2015. He was a union delegate or senior delegate from the late 1990s until his departure in 2015. Mr Magann is the Essential Energy Co-ordinator in his role as an Organiser. This involves amongst other things, representing members in disputes, consultations and disciplinary matters.⁷ Mr Magann supported Mr Lewis during the disciplinary process.

Witnesses called by Essential Energy

[15] The following witnesses gave evidence on behalf of Essential Energy and were cross-examined by Ms Strachan:

1. Brendon Neyland
2. Andrew Sidebottom
3. Ian Donaldson

Brendon Neyland

[16] Mr Neyland is the General Manager of Essential Energy's Operations division. Mr Neyland has been employed by Essential Energy for over 31 years. His responsibilities include being involved in disciplinary decisions relating to operational employees at Essential Energy. Mr Andrew Hinchcliffe, Operations Manager, reports directly to Mr Neyland. In turn, Mr Sidebottom, Senior Operations Supervisor and Operational Lead at the Leeton Depot reports to Mr Hinchcliffe. Mr Neyland said that he was involved in numerous conversations prior to the termination of Mr Lewis' employment, however he was not the final decision-maker.⁸

Andrew Sidebottom

[17] Mr Sidebottom is the Senior Operations Supervisor at the Leeton Depot. Mr Sidebottom has been employed by Essential Energy for almost 24 years. His responsibilities include ensuring all required work is completed and workplace health and safety. Mr Sidebottom does not make decisions on disciplinary action or termination of employment for employees at the Leeton Depot; however, he is involved in implementing these decisions. Mr Sidebottom attended the toolbox meeting on 20 February 2025.⁹

Ian Donaldson

[18] Mr Donaldson is the Operational Services Manager of Essential Energy. Mr Donaldson has been employed by Essential Energy for approximately 17 years. Mr Donaldson's role is office-based, and he is responsible for ensuring that work is prioritised, scheduled and resourced to support the day-to-day Leeton Depot work delivery.¹⁰ Mr Donaldson attended the toolbox meeting on 20 February 2025.¹¹

Submissions

[19] Mr Lewis filed submissions in the Commission on 4 August 2025 and Essential Energy filed submissions in the Commission on 22 August 2025. I have considered the submissions made by the parties and all of the evidence before me in my determination of this matter and the conclusions I have reached.

Factual background

[20] Mr Lewis is 46 years old. Mr Lewis commenced employment with Essential Energy as an apprentice line worker on or about 9 September 2009. Mr Lewis completed his apprenticeship and has worked for Essential Energy since that date.¹²

[21] Mr Lewis has always worked at the Leeton Depot. Mr Lewis grew up in Leeton and is involved in local community sport. Mr Lewis said that everyone who works at the Leeton Depot is very close and that they are like a family.¹³

Relationship between Mr Lewis and Mr Meline

[22] Mr Lewis said that he has worked with Mr Meline since he started at Essential Energy.¹⁴ Between 2014 and 2021, Mr Meline was Mr Lewis' Leading Hand. Mr Lewis said that he enjoyed working with Mr Meline, although Mr Meline could be moody and there were occasions that Mr Meline would 'blow up' at Mr Lewis.¹⁵

[23] Mr Lewis said that a couple of years ago, Mr Meline 'had a blow up' at him over Mr Lewis taking a truck to Wagga Wagga. Mr Lewis indicated that the incident was resolved by the manager at the time.¹⁶ Mr Meline explained that Mr Lewis had taken a few days off work and when he returned, he was asked to pick up a truck from Wagga Wagga. Mr Meline said that the depot had been busy, and he was annoyed as he felt as though Mr Lewis was having another day off. Upon Mr Lewis' return, Mr Meline said that he told him that an apprentice should have picked up the truck. Mr Meline said that he 'got a bit of a wrap around the knuckles' from management for this comment.¹⁷

[24] Notes taken by Mr Sidebottom about this incident record that it occurred on 27 October 2020 and that Mr Meline said to Mr Lewis in the presence of another employee Daniel Cregan, 'I'm not in [the] mood for you'; 'you're a joke'; 'Ben does fuck all while we [remainder of Mr Meline's crew] do all the work'. The notes also state that, 'Ben doesn't want to be portrayed as a dobber for this'.¹⁸

[25] During cross-examination, Mr Sidebottom agreed that verbal abuse constitutes a breach of Essential Energy's Code of Conduct, that he did not report the incident which occurred on 27 October 2020 and that the incident was not investigated by Essential Energy.¹⁹

[26] Mr Sidebottom said that he has worked with and managed both Mr Lewis and Mr Meline. Mr Sidebottom described Mr Lewis and Mr Meline as having an interesting relationship. Mr Sidebottom said that both of them have been in his office to complain about the other, and both said they cannot work together anymore and asked to be separated. Mr Sidebottom said that he separated Mr Lewis and Mr Meline into different work crews. However, Mr Sidebottom said that neither Mr Lewis nor Mr Meline have wanted any of their concerns documented formally.²⁰

[27] Mr Lewis said that he does not recall going into Mr Sidebottom's office to complain about Mr Meline. Mr Lewis said that he recalls Mr Sidebottom approaching him a few times as he had heard that he and Mr Meline were having a disagreement in the field. Mr Lewis denies ever telling Mr Sidebottom that he could not work with Mr Meline.²¹

[28] Mr Meline said that the decision to separate Mr Lewis and him into different work crews was made by Mr Sidebottom, and he denied saying that he could not work with Mr Lewis anymore. Mr Meline does not recall ever attending Mr Sidebottom's office to complain about Mr Lewis. Mr Meline said that he may have made a passing comment from time to time to Mr Sidebottom to express a frustration about Mr Lewis, however he has never made a formal complaint.²²

[29] Mr Lewis said that he and Mr Meline always got along well and had a laugh. Mr Lewis said that he has been to Mr Meline's house on several occasions as part of Leeton Depot social club functions and attended stock car races with him. Mr Lewis described their relationship as having ups and downs, but for most part it was 'happy days'.²³ Mr Meline also described his relationship with Mr Lewis as having its ups and downs but generally being very good.²⁴

Events leading up to the incident on 20 February 2025

[30] Mr Lewis said that he went to work as usual in the week of 17 February 2025. Mr Lewis said that he was not feeling like his regular self, however his train of thought at the time was to suppress what he was feeling and get on with things.²⁵

[31] Mr Lewis said that he experienced unbearable personal stress at that time, including:

- a. His youngest daughter experienced bullying at school over the past year.
- b. His father had been in very poor health, with his condition deteriorating since May 2023. His father was in and out of hospital numerous times. On Father's Day in 2024, his father nearly died in front of his mother and himself. His father was

subsequently diagnosed with lymphoma. On or about 18 February 2025, his father received results from a PET scan which showed that his cancer had spread to his shoulder joint, hip joint and lower spine. Mr Lewis is an only child and was assisting his mother (who has severe epilepsy and cannot drive) with caring responsibilities for his father without other support; and

- c. His aunt was put into palliative care on 19 February 2025. Mr Lewis said that he was close to his aunt and this prompted thoughts that his father may soon be in palliative care as well.²⁶

[32] On 19 February 2025, Mr Lewis said that Mr Meline picked up a truck from Wagga Wagga. Mr Lewis said that he felt confused about this as Mr Meline had previously ‘given [him] a serve’ for doing the same thing a few years prior. Mr Lewis said that on the Leeton Depot’s group chat, there was a discussion regarding Mr Meline picking up the truck. Mr Lewis described this discussion as ‘banter’. Mr Lewis said that he responded to the comment in the group chat saying, ‘Thought only the apprentices were meant to do that’, also as ‘banter’.²⁷

[33] Mr Sidebottom said that Mr Lewis came into his office at about 3:30pm or 3:45pm on 19 February 2025. Mr Sidebottom said that Mr Lewis seemed very agitated and said something to the effect that ‘Mick went off on me for going to pick up a truck and now he gets to do it’. Mr Sidebottom estimated that Mr Lewis was only in his office for about 15 seconds.²⁸ Mr Lewis said that this was just a light-hearted comment following on from the messages in the group chat and that he was not at all agitated.²⁹

Incident on 20 February 2025

[34] On 20 February 2025, Mr Lewis attended the morning toolbox meeting. Mr Ryan said that he brought up the conversation in the group chat by saying something to the effect of, ‘do I need to bring some popcorn’. Mr Ryan said that he said this in jest, and it was friendly banter in line with how they usually spoke with each other. Mr Ryan said Mr Lewis responded with a joke, saying something to the effect of, ‘you’ll be hiding under the table’. Mr Lewis said that he did not mean that comment seriously and was engaging in a bit of ‘stupid banter’.³⁰

[35] During the toolbox meeting, Mr Lewis said that Mr Meline said words to the effect of, ‘there have been a few comments made about me going to pick up the truck’.³¹ Mr Meline then said, ‘I was selected by our resource supervisor to pick up the truck. He approached me to do it. If anyone in the room has issues with it, take it up with Andrew [Sidebottom]’.³²

[36] Mr Lewis said that he felt angry hearing this and wanted to respond with something like ‘it was different when it was me going to pick up the truck’. Mr Lewis said that when he started responding, he lost all control. Mr Lewis said that he said words to the effect of, ‘You treated me horrible when you were my leading hand. You’re a big man hiding behind the orange shirt. If we were outside, you wouldn’t be so tough, you fucking dog...he needs a punch in the head’. Mr Lewis said that he did not intend to say this, however his emotions overwhelmed him and he lost control.³³

[37] Mr Lewis provided evidence that when he said, ‘if you were outside, you wouldn’t be so tough’, he did not mean that Mr Meline and himself should take it outside and have a fight. Mr Lewis said that he meant that Mr Meline would not treat him the same way if they were

outside of work. Mr Lewis denied saying ‘come outside’ and ‘I should punch your head in’ and said that he never intended to be physically violent towards Mr Meline.³⁴

[38] Mr Lewis said that the moment he was abusive towards Mr Meline, he realised that it was wrong, and he removed himself from the room while crying. As he was leaving, Mr Lewis said that he said to Mr Sidebottom, ‘no he can get fucked Andrew’, with ‘he’ referring to Mr Meline, not Mr Sidebottom. Mr Lewis said he then left the depot and went home.³⁵

[39] Mr Meline provided a handwritten statement on or about 26 February 2025 which relevantly provided:

Ben Lewis launched a tirade of abuse at me, including calling me a fucking dog several times, and saying that I was a big man hiding behind my orange high visibility shirt, and to remove it and step outside, presumably to engage in a fight. There were many witnesses in the room that may be able to give a more detailed account of what happened, as my recollection of the event may be a little blurred, because of how surprised I was to be on the end of a verbal and potential physical attack.³⁶

[40] In the witness statement which Mr Meline provided for the purpose of the hearing, Mr Meline said that he initially thought Mr Lewis was joking, however he realised Mr Lewis was serious after Mr Lewis called him a ‘fucking dog’. Mr Meline described Mr Lewis’ behaviour as a meltdown. Mr Meline said that he interrupted Mr Lewis by saying, ‘what are you going on about Ben? Grow up’. Mr Meline said that Mr Lewis then asked Mr Meline to take his orange shirt off. Mr Meline said that he understood this to be Mr Lewis indicating that he wanted to ‘take it outside’. Mr Meline gave evidence that he did not feel unsafe during this incident, however he felt shocked and surprised.³⁷

[41] Mr Donaldson, Mr Sidebottom, Mr Iannelli, Mr Ryan, Mr Morphett and Mr Sloan all gave evidence about the incident.

[42] Mr Donaldson said that Mr Lewis pointed at Mr Meline and said, ‘you need a punch in the mouth’, ‘you’re a fucking dog’ and ‘come out the front’. Mr Donaldson said he understood Mr Lewis’ remark of ‘come out the front’ to be a suggestion that Mr Meline should come outside and fight him.³⁸ Mr Donaldson said that as Mr Lewis left the room, he walked past Mr Sidebottom and said, ‘you can get fucked too, Andrew’.³⁹

[43] Mr Sidebottom said that Mr Lewis said (or shouted) words to the effect of:

- You’re brave hiding behind your orange shirt
- Would you like to go outside? (which Mr Sidebottom understood as an invitation to Mr Meline to fight)
- I should punch you in the head
- Fuck off⁴⁰

[44] Mr Sidebottom said that as Mr Lewis was leaving, Mr Lewis said words to the effect of ‘fuck you too Andrew’ or ‘you can get fucked too, Andrew’. Mr Sidebottom said that during a conversation with Mr Lewis on 6 March 2025, Mr Lewis said that he did not tell Mr Sidebottom

to fuck off but was rather saying Mr Meline could fuck off. Mr Sidebottom said that this is not how he remembered or understood Mr Lewis' comment.⁴¹

[45] During cross-examination, Mr Sidebottom agreed that it was possible that Mr Lewis said:

- something about Mr Meline not being so tough outside of work, rather than, 'Would you like to go outside?'; and
- 'You need a punch in the head' rather than 'I will punch you in the head'.⁴²

[46] Mr Ryan said that Mr Lewis called Mr Meline some immature names, like a 'dog' or something similar, and said that he was 'sick of [Mr Meline] treating him like shit' when they worked together. Mr Ryan said that as Mr Lewis was leaving the room, he walked past Mr Sidebottom and said something like 'I'm off' or 'I'm getting out of here'. Mr Ryan said that he does not remember everything that was said.⁴³

[47] Mr Morphett said that Mr Lewis said something about Mr Meline not being so tough 'outside'. Mr Morphett said that he believed this was a reference to Mr Meline sometimes putting on a tough front at work. Mr Morphett said that Mr Meline can be stubborn, and he swapped crews a few years ago as he found it difficult to work under Mr Meline.⁴⁴

[48] Mr Sloan said that Mr Lewis said something like, 'you're lucky you're in your oranges, you wouldn't say that to me out of them' or 'you're a big man when you're wearing your oranges'. Mr Sloan said that Mr Lewis was referring to how Mr Meline acted like a big tough guy at work when he is different outside of work.⁴⁵

[49] Mr Iannelli did not give evidence about what Mr Lewis said during the incident and gave evidence during cross-examination that he could not recall these details.⁴⁶

After the incident

[50] Immediately after the incident, Mr Meline said he had a chat with Mr Sidebottom. Mr Meline said that he told Mr Sidebottom that this incident showed that there is a lot going on for Mr Lewis behind the scenes. Mr Meline said that Mr Lewis' father's health condition and issues were common knowledge within the depot. Mr Meline said that he asked Mr Sidebottom whether he knew what was going on and informed Mr Sidebottom that he thought Mr Lewis needed a psychiatrist.⁴⁷ In cross examination, Mr Sidebottom agreed that he had this conversation with Mr Meline⁴⁸ and said in his witness statement that Mr Meline also said:

- The outburst did not surprise him at all;
- These types of threats had happened before, in the field years ago. One day, Mr Meline was waiting on site for Mr Lewis who was an hour late, which led to a heated argument when Mr Lewis arrived, where threats were made; and
- He never wanted to work with Mr Lewis again.⁴⁹

[51] Mr Meline said that he had this conversation with Mr Sidebottom mainly out of concern, and not to complain about Mr Lewis. He said his emotions were high as the conversation was immediately after the incident.⁵⁰

[52] Mr Meline provided the following evidence in relation to his comments to Mr Sidebottom:

- Regarding the comment that the outburst did not surprise him, he meant this in the context of the circumstances Mr Lewis was dealing with behind the scenes;
- Regarding the comments about the previous incident, he provided further detail including that it was 7 or 8 years ago. Mr Meline said that he mentioned it partly out of frustration, and partly out of concern over Mr Lewis' mental state and how earlier signs of his state had been ignored in the field; and
- Mr Meline denied saying that he never wanted to work with Mr Lewis again. He said that if he did make such a comment, it was only because he was still shocked by the incident and emotions were running high.⁵¹

[53] Mr Meline said that he took two days of personal leave for his mental health following the incident due to the stress put on him by Essential Energy in his role as the leading hand, specifically the lack of qualified people in his crew. Mr Meline said that he made it clear to Mr Sidebottom and the other resource supervisor that he was not taking the leave due to the toolbox incident alone, but because of a build-up of work pressures.⁵²

[54] Mr Sidebottom said he raised an incident report about what happened at the toolbox talk. The incident report referred to Mr Lewis, '[getting] very emotional' and 'starting off in a tone not normal to them.'⁵³ Mr Sidebottom also spoke briefly to his manager, Mr Hinchcliffe, who advised Mr Sidebottom to call Mr Lewis and check on him.⁵⁴

[55] At 8:33am, Mr Sidebottom called Mr Lewis. He said that the conversation involved the following:

- Mr Sidebottom asked if Mr Lewis was in a safe place and how he was;
- Mr Lewis said that he was sick of Mr Meline being a bully. Mr Lewis referred to Mr Meline 'going off' at him over a similar fleet pickup and nothing was done about it;
- Mr Lewis said words to the effect of Mr Meline 'needs a punch in the head' and 'I don't give a fuck about my job because Mick deserves it and he will never change';
- Mr Sidebottom asked Mr Lewis where he was, and he said he was at home;
- Mr Sidebottom asked Mr Lewis to call him any time if he felt that he needed to talk, and said that Mr Hinchcliffe was also available. Mr Sidebottom said he also mentioned the Employee Assistance Program (EAP);
- Mr Lewis said that he would be at home for the day, that he had not spoken to his wife, and that he would not be at work the next day either.⁵⁵

[56] Mr Lewis said that he does not recall much of his conversation with Mr Sidebottom as he was still very upset and extremely emotional. He said that when Mr Sidebottom called, he had not stopped crying since leaving the depot and was crying throughout the conversation.⁵⁶

[57] Mr Lewis said that he apologised to Mr Sidebottom and said words to the effect of, ‘I wanted to say one thing but said something else. I don’t know where it came from. I didn’t want to say that’. Mr Lewis said that Mr Sidebottom responded with words to the effect of, ‘It was a good idea to remove yourself from the situation. Ideally you should have removed yourself sooner. Maybe take a few days off to get yourself right again and come back to work when you are ready’. Mr Lewis said that Mr Sidebottom was supportive and offered to come over to his house to have a chat and advised him he could call the EAP or himself at any time. Mr Lewis said that Mr Sidebottom indicated that he would have to report the incident and Mr Lewis responded that he understood.⁵⁷

[58] Throughout 20 February 2025, Mr Sidebottom added his notes of the toolbox talk and subsequent discussions to a document, which he then provided to Mr Hinchcliffe for the purpose of Essential Energy’s investigation.⁵⁸

[59] On 21 February 2025, Mr Lewis took the day off.⁵⁹

[60] On 22 February 2025, Mr Lewis’ aunt passed away. Mr Lewis said he felt extremely gutted, sad and numb as he comes from a close, tight knit family. Mr Lewis took the following week off work.⁶⁰

[61] On or around 26 February 2025, Mr Lewis contacted the EAP and made an appointment with a counsellor for 4 March 2025.⁶¹

Return to work and disciplinary investigation

[62] On 3 March 2025, Mr Lewis returned to work. Mr Lewis attended the morning toolbox meeting, where he said he apologised to everyone and Mr Meline. Mr Lewis said that he said that he was sorry, he had embarrassed himself, he was ashamed of his behaviour, and it should not have happened. Mr Lewis said that the depot accepted his apology, and he worked as normal for a further six weeks.⁶²

[63] On the same day, Mr Lewis received a letter from Mr Hinchcliffe which outlined allegations of serious misconduct arising from the incident on 20 February 2025 and required a response from Mr Lewis by 10 March 2025.⁶³ The allegations were:

Allegation 1 – On or around 20 February 2025, just prior to a toolbox talk commencing at the Leeton Depot, another employee asked something to the effect of: ‘do I need to bring popcorn?’. You responded to the employee with words to the effect of: ‘you will be hiding under the desk by the time I’m finished’.

Allegation 2 - On or around 20 February 2025, during a toolbox talk at the Leeton Depot, you called another employee, Michael Meline, words to the effect of: ‘a fucking dog’.

Allegation 3 - On or around 20 February 2025, during a toolbox talk at the Leeton Depot, you told Mr Meline words to the effect of: ‘you’re a big man hiding behind the orange shirt’. You then asked Mr Meline to remove his shirt and said words to the effect of: ‘come outside’ and ‘I should punch you in the head’.

Allegation 4 – On or around 20 February 2025, during a toolbox talk at the Leeton Depot, another employee, Andrew Sidebottom, attempted to de-escalate the situation between you and Mr Meline. You told Mr Sidebottom words to the effect of: ‘you can get fucked too, Andrew’.⁶⁴

[64] The letter stated that the alleged conduct, if substantiated, may be in breach of Essential Energy’s *Building a Respectful Workplace – Eliminating and Managing Vilification, Discrimination, Bullying and Harassment Procedure*, which requires that everyone in the workplace be treated with dignity and respect, and in breach of Essential Energy’s *Code of Conduct* which requires employees to:

- treat other employees with respect and be sensitive to their rights; and
- avoid and prevent any form of bullying, intimidation or harassment towards a fellow employee or any other Essential Energy stakeholder.⁶⁵

[65] Mr Meline agreed that Mr Lewis apologised to him and everyone else at the morning toolbox meeting and acknowledged how serious the incident was. Mr Meline said that as far as he was concerned, this was good enough and he was happy to move on from the incident.⁶⁶

[66] Mr Meline said that he worked with Mr Lewis at least half a dozen times following the incident as Mr Lewis’ leading hand. Mr Meline said that he was happy to work with Mr Lewis. Mr Meline said that he was not interviewed as part of the investigation into the incident. Mr Meline submitted a letter of support for Mr Lewis when it appeared that Mr Lewis may be dismissed over the incident.⁶⁷

[67] On 4 March 2025, Mr Lewis attended his first EAP counselling session. Mr Lewis said that the counsellor informed him that the incident was likely the result of a major anxiety attack. Between 5 and 11 March 2025, Mr Lewis worked on call. Mr Lewis said that he worked with Mr Meline on several occasions during this period. Mr Lewis said that it felt like normal and that they had moved on from the incident.⁶⁸

[68] On 11 March 2025, Mr Lewis submitted his written response to the allegations.⁶⁹ In the response, Mr Lewis referred to the death of his aunt as well as his father’s cancer. He also stated,

For the past ten years, I have worked alongside Mick Meline and have been subjected to his persistent aggressive and abusive behaviour. This ongoing pattern of behaviour, while never formally reported, has created a hostile work environment and significantly impacted my well-being.⁷⁰

[69] Mr Lewis did not deny Allegations 1, 2 or 3. In relation to Allegation 4, Mr Lewis said that he believed his words to Mr Sidebottom had been misrepresented. Mr Lewis said that while he used inappropriate language it was directed at the situation not at Mr Sidebottom personally.⁷¹ Mr Lewis concluded his response by stating that he took full responsibility for his inappropriate language and behaviour during the toolbox talk, that he was committed to learning from the experience and improving his conflict resolution skills to ensure there is not a repeat of his behaviour and that he was truly sorry for the negative impact his actions have had on his colleagues and the workplace environment.⁷²

[70] On 18 March 2025, Mr Lewis attended his second EAP counselling session.⁷³

[71] On 20 March 2025, Mr Lewis attended his GP at Leeton Family Clinic. Mr Lewis said that his GP diagnosed his outburst as anxiety from his overwhelming personal issues.⁷⁴

[72] On 3 April 2025, Mr Lewis received a letter from Mr Hinchcliffe (the Show Cause Letter) which:

- stated that the allegations were substantiated;
- acknowledged that Mr Lewis had expressed deep regret and remorse and provided context for his actions, including relationships issues with Mr Meline and personal issues outside of work that were causing him significant stress;
- expressed concern that Mr Lewis presented to work to undertake high-risk work as a Powerline Worker, aware that he was experiencing significant stress that could have had serious implications to himself, his colleagues and the public and that none of this was mentioned to his supervisor on presenting to work that day and on this occasion resulted in a workplace incident causing a potential psychological and physical injury to Mr Meline and a hostile work environment for his colleagues; and
- advised that Mr Hinchcliffe had formed a preliminary view that the appropriate disciplinary outcome is termination of Mr Lewis' employment and invited Mr Lewis to show cause why his employment should not be terminated.⁷⁵

[73] On 9 April 2025, Mr Lewis said he attended his third EAP counselling session, but the counsellor did not show up.⁷⁶

[74] On 10 April 2025, Mr Lewis said that he had a conversation with Mr Sidebottom. Mr Lewis said he felt that it was in his best interest to go on leave as he did not feel that he was in the right mental health capacity to remain at work while he was concerned about losing his job, grieving the loss of his aunt, and worried about his father's second cancer diagnosis.⁷⁷

[75] Mr Lewis said that he prepared a show cause response and Ms Strachan, Senior Legal Officer from the ETU submitted the response on his behalf on 24 April 2025.⁷⁸ The response included the following statements:

The truth is, I've been carrying a heavy personal burden. My father has been battling cancer for the past 12 months, and as an only child, the responsibility and helplessness have been overwhelming. I've watched him deteriorate before my eyes. Trying to comfort my mum through it all has been heartbreaking. On top of that, I recently lost a close Aunty who had also been fighting cancer. My cousins – who have each other – couldn't understand how I was managing it all alone. I guess I wasn't.

I bottled it all up and kept pushing forward until I snapped. That moment, though brief, was the result of months of suppressed pain, fear, and stress. I had no right to take my personal pain out on anyone else – I know that. But it was entirely uncharacteristic of me.

Since the incident, I've taken real steps to get help. I contacted the Employee Assistance Program and my GP immediately. Both have confirmed I experienced an anxiety attack and that I am dealing with ongoing anxiety. My GP and EAP have now implemented strategies to help support my mental health and are actively monitoring me for depression. I had no idea I was struggling with my mental health – I thought I was handling it. But now I've learned how important it is to get help and not carry the load alone. I'm now actively receiving counselling and support.

I am confident a similar outburst won't happen again in the future now that I am on top of my mental health. If for some reason I do feel like I am about to have another outburst, I will remove myself from the situation and raise this with my supervisor before I commence or continue work. This is what I should have done when I started to feel anger in the toolbox meeting.

Essential Energy has always promoted mental health awareness and support. If we don't support employees when they reach out for help, especially after suffering a mental health episode, then that message loses its meaning. I want to be an example of how an employee can acknowledge a mistake, seek help, and return stronger – with the right support from their employer.

I am not a bully. I've actually been bullied much of my life – primary school, high school and in various jobs, and I know how damaging it can be. For 13 years I've volunteered as a junior rugby league coach, and I wouldn't be trusted in that role if I was the kind of person I appeared to be in that one moment.⁷⁹

[76] On 30 April 2025, Mr Lewis said he attended his fourth EAP counselling session, but the counsellor did not show up.⁸⁰

The dismissal

[77] On 12 May 2025, Ms Holly Munro, HR Business Partner, Essential Energy, prepared a Recommendation that Mr Lewis be dismissed (the Dismissal Recommendation). The Dismissal Recommendation included the following observations:

- On Mr Lewis' first day back at work on Monday 3 March 2025, he asked to speak to the team at the end of the Toolbox Talk. He apologised and expressed remorse for his actions. This was received well by the team who appreciated the acknowledgement of his poor behaviour.
- The allegations letter was prepared on the basis of the statements provided by five of the 20 employees at Leeton Depot who attended the Toolbox Talk on Thursday 20 February 2025.
- Mr Lewis expressed deep regret and remorse in his response letter for his behaviour during the toolbox talk at the Leeton depot on February 20, 2025. He provided context for his actions, explaining that he had relationship issues with Mr Meline for the last 10 years, which had created a hostile work environment.
- Essential Energy has a record on file for a verbal warning issued to Mr Meline due to an interaction between him and Mr Lewis in 2019. Other than this, there are no records on file regarding reports of behaviour that had caused a hostile work environment for Mr Lewis, and no investigations have ever been conducted into this alleged behaviour.
- Additional mitigating factors have been provided regarding significant personal stress Mr Lewis was experiencing at the time due to his father's cancer returning and his aunt's critical illness.
- Concerningly, Mr Lewis presented to work to undertake high-risk work as a Powerline Worker, aware that he was experiencing significant stress that could have had serious implications to himself, his colleagues and the public. None of this was mentioned to his manager on presenting to work that day and on this occasion has resulted in a workplace

incident causing a potential psychological and physical injury to Mr Meline and a hostile work environment for his colleagues.

- Mr Lewis has elaborated further on the mitigating factors he provided in his allegations response but still does not address the concerning point that he had not addressed this with any of his colleagues or his manager prior to his outburst. Mr Lewis is experiencing personal circumstances that were causing him significant stress outside of work. There are many supports the organisation has in place to address these types of issues, including IMSAFE, EAP, 1:1 conversations with his manager, HRBP and HIMS support, however none of these have been utilised until after the incident occurred.
- Mr Lewis also addresses the relationship he has with Mr Meline both inside and outside of work. He refers again to previous incidents where he claims Mr Meline had displayed ‘aggressive, abusive, and bullying’ behaviour towards him. However, as noted in the review of the allegations response above, these incidents have never been reported by Mr Lewis or any other employees at the depot. In contrast, the toolbox talk incident on 20 February 2025 was reported by four separate employees who believed that Mr Lewis' behaviour was entirely unacceptable.
- All allegations have been substantiated, and the findings are in breach of Essential Energy’s Code of Conduct and Building a Respectful Workplace – Eliminating and Managing Vilification, Discrimination, Bullying and Harassment.⁸¹

[78] The Dismissal Recommendation concluded:

Based on the show cause response from Mr Lewis, the allegations remain substantiated - that he has breached the Essential Energy Code of Conduct and Respectful Workplace Procedure resulting in what could reasonably be considered as serious misconduct.

Given the seriousness of the misconduct, the recommended option is to continue with termination of employment for Mr Lewis.

If an outcome of dismissal is determined for Mr Lewis, it is also recommended that in order to support him during and post the proposed exit, suggest approval for the provision of:

- Ongoing EAP support post exit up to 6 months, should it be required.⁸²

[79] On 14 May 2025, Mr Lewis said that Mr Magann advised him that Mr Neyland had indicated that Mr Lewis’ employment was going to be terminated. Mr Lewis said that he subsequently spoke to Mr Neyland by telephone, where he apologised for the incident again and suggested that he be disciplined by way of a first and final warning instead. Mr Lewis said that he said words to the effect of, ‘I am begging you for a second chance’. Mr Lewis said that Mr Neyland responded with words to the effect of, ‘no I’m not going to change my mind. You’ve horrified your work colleagues and you’ve risked their safety’. Mr Lewis said he said he was disappointed by the support he had received from Essential Energy, and that he had two cancelled EAP sessions. Mr Lewis said that Mr Neyland responded by saying words to the effect of, ‘we have enough mental health support in place’.⁸³

[80] Later that day, Mr Lewis attended a meeting with Mr Hinchcliffe regarding his termination. Mr Lewis received a termination letter during this meeting. The letter acknowledged receipt of Mr Lewis’ response to the Show Cause Letter and advised that the

response, including the mitigating circumstances provided, had been thoroughly reviewed and considered prior to reaching the final decision.⁸⁴

[81] Mr Meline said that he has seen many outbursts in workplaces before, including at Essential Energy, but has never seen it leading to a dismissal. Mr Meline said that he would be happy to work with Mr Lewis again. Mr Meline said that he has spoken with Mr Lewis since the dismissal and there is no animosity between them.⁸⁵

Impact of the dismissal

[82] Mr Lewis gave evidence that the dismissal impacted him significantly. Mr Lewis said that the dismissal led him to feel extremely low and put a strain on his marriage, both financially and emotionally. Mr Lewis said that his dismissal occurred in the context of his wife experiencing a period of instability in her employment.⁸⁶

[83] On or around 30 May 2025, Mr Lewis' father underwent a medical therapy trial. Mr Lewis was able to secure a new job as a forklift driver commencing on 6 June 2025. Mr Lewis said that the new role pays significantly less than his role at Essential Energy, with a fortnightly difference in wages of \$718.68 and that it has fewer opportunities for overtime or on-call shifts which has also reduced his income. Mr Lewis said that the reduced income has made it challenging for him to meet his ongoing financial commitments.⁸⁷

[84] Mr Lewis provided evidence that in June and July 2025, he sought further psychological assistance and support from a psychiatrist and GP. As a result, Mr Lewis said he is sleeping better and his mood has improved. Mr Lewis said that he feels confident that he now has the tools to ensure a similar outburst will not occur again.⁸⁸

[85] Mr Lewis said that in late July 2025, he received news that his father's health has improved.⁸⁹

[86] Mr Lewis said that he loved working at Essential Energy and misses working there alongside his colleagues and his supervisor, Mr Sidebottom. Mr Lewis says that he still has about 20-25 years of his working life and there is no place he would rather spend those years than in the Leeton Depot working for Essential Energy.⁹⁰

When can the Commission order a remedy for unfair dismissal?

[87] Section 390 of the FW Act provides that the Commission may order a remedy if:

- (a) the Commission is satisfied that the person was protected from unfair dismissal at the time of being dismissed; and
- (b) the person has been unfairly dismissed.

[88] Both limbs must be satisfied. I am therefore required to consider whether Mr Lewis was protected from unfair dismissal at the time of being dismissed and, if I am satisfied that Mr Lewis was so protected, whether Mr Lewis has been unfairly dismissed.

When has a person been unfairly dismissed?

[89] Section 385 of the FW Act provides that a person has been unfairly dismissed if the Commission 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.

Initial matters

[90] There was no dispute, and I find that Mr Lewis has been dismissed within the meaning of s.385 of the FW Act.

[91] Under s.396 of the FW Act, the Commission is obliged to decide the following matters before considering the merits of the application:

- (a) whether the application was made within the period required in subsection 394(2);
- (b) whether the person was protected from unfair dismissal;
- (c) whether the dismissal was consistent with the Small Business Fair Dismissal Code;
- (d) whether the dismissal was a case of genuine redundancy.

[92] Section 382 of the FW Act provides that a person is protected from unfair dismissal if, at the time of being dismissed:

- (a) the person is an employee who has completed a period of employment with his or his employer of at least the minimum employment period; and
- (b) one or more of the following apply:
 - (i) a modern award covers the person;
 - (ii) an enterprise agreement applies to the person in relation to the employment;
 - (iii) the sum of the person's annual rate of earnings, and such other amounts (if any) worked out in relation to the person in accordance with the regulations, is less than the high income threshold.

[93] There is no dispute about these matters and I am satisfied that:

- the application was made within the period required in s.394(2);
- at the time of dismissal, Mr Lewis was a person protected from unfair dismissal because:
 - Mr Lewis was an employee who completed a period of employment with Essential Energy of at least the minimum employment period;

- an enterprise agreement applied to Mr Lewis in relation to the employment;
- the Small Business Fair Dismissal Code does not apply; and
- Mr Lewis' dismissal was not a case of genuine redundancy.

[94] Having considered each of the initial matters, I am required to consider the merits of the application.

Was the dismissal harsh, unjust or unreasonable?

[95] Section 387 of the FW Act provides that, in considering whether it is satisfied that a dismissal was harsh, unjust or unreasonable, the Commission 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.

[96] I am required to consider each of these criteria, to the extent they are relevant to the factual circumstances before me.⁹¹

[97] I set out my consideration of each of these criteria below.

Was there a valid reason for the dismissal related to Mr Lewis' capacity or conduct?

[98] In order for there to be a valid reason, the reason for the dismissal should be 'sound, defensible or well founded'⁹² and should not be 'capricious, fanciful, spiteful or prejudiced.'⁹³ 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.⁹⁴

[99] Where a dismissal relates to an employee's conduct, the Commission must be satisfied that the conduct occurred and justified termination.⁹⁵ The question of whether the alleged conduct took place and what it involved is to be determined by the Commission on the basis of

the evidence in the proceedings before it. The test is not whether the employer believed, on reasonable grounds after sufficient enquiry, that the employee was guilty of the conduct which resulted in termination.⁹⁶

[100] There is no dispute that at the toolbox meeting on 20 February 2025, Mr Lewis called Mr Meline a ‘fucking dog’. However, there is a dispute between the parties as to whether:

- Mr Lewis invited Mr Meline to go outside for the purpose of having a fight;
- Mr Lewis said, ‘I should punch you in the head’ or, ‘he needs a punch in the head’; and
- Mr Lewis said ‘you can get fucked too, Andrew’ or ‘no he [referring to Mr Meline] can get fucked Andrew’.

[101] In my view, the conduct which Mr Lewis admitted to, namely calling Mr Meline a ‘fucking dog’ and saying ‘he needs a punch in the head’, was a breach of the Code of Conduct and a valid reason for the dismissal. It is therefore probably unnecessary for me to make findings in relation to the matters in contention, but I do so for completeness.

[102] At the outset, I note that Mr Lewis did not dispute that he invited Mr Meline to go outside and that he said ‘I should punch you in the head’ in his initial response to the allegations dated 11 March 2025. However, he disputed these matters in his response dated 24 April 2025 to the Show Cause Letter. On this basis, Essential Energy urged me to find that Mr Lewis was not a credible witness. I do not make this finding. There was no dispute that Mr Lewis was emotional during the incident on 20 February 2025 and I observe that Mr Sidebottom records this in his notes of the meeting. For this reason, I believe that it is unlikely that Mr Lewis has a clear and consistent recollection of what he said at the meeting and that this explains why his response to the allegations differs between his response dated 11 March 2025 and his response dated 24 April 2025. In my view, Mr Lewis’ emotional state, rather than any dishonesty, resulted in Mr Lewis’ version of events being unreliable.

[103] In contrast, Mr Sidebottom made notes of the incident on the day it happened. In relation to the allegation that Mr Lewis invited Mr Meline to go outside, all of the witnesses had different versions of the words actually said by Mr Lewis. However, both Mr Sidebottom and Mr Meline made written records of the incident soon after it occurred which recorded that they believed that the reference to going outside was an invitation to fight. Mr Meline also repeated this allegation in his witness statement for the proceedings before me. Although neither Mr Sidebottom nor Mr Meline allege that Mr Lewis actually said that he wanted Mr Meline to go outside so they could fight, I find, based on the evidence of Mr Sidebottom and Mr Meline, that a reasonable person in the position of Mr Meline would have regarded Mr Lewis’ reference to ‘go outside’ to an invitation to fight outside.

[104] In relation to whether Mr Lewis said, ‘I should punch you in the head’ or, ‘he needs a punch in the head’, I find that both of these statements are of equal seriousness as they both involve a desire on the part of Mr Lewis that Mr Meline be physically assaulted. Although I believe that Mr Lewis’ recollection of the incident is less reliable than Mr Sidebottom’s, I note that Mr Lewis’ claim that he said, ‘he needs a punch in the head’, is partially corroborated by:

- Mr Sidebottom’s recollection that after the incident, he had a telephone conversation with Mr Lewis, during which Mr Lewis said, ‘he needs a punch in the head’; and

- Mr Donaldson's recollection that Mr Lewis pointed at Mr Meline and said, 'you need a punch in the mouth'.

[105] I also note that during cross-examination, Mr Sidebottom accepted that it was possible that Mr Lewis said, 'You need a punch in the head' rather than 'I will punch you in the head'.

[106] Taking all of the evidence into account, I find that it is more likely than not that Mr Lewis said in relation to Mr Meline, 'he needs a punch in the head' rather than 'I will punch you in the head'.

[107] In relation to the allegation that Mr Lewis said, 'you can get fucked too, Andrew', on one view, this seems unlikely given the high regard that Mr Lewis said he has for Mr Sidebottom and because Mr Sidebottom had no involvement in the issues which caused Mr Lewis to become aggressive towards Mr Meline. However, Mr Lewis was in a highly irrational and emotional state, so what is likely to have happened may not be readily explained by his usual attitude towards the people involved. As Mr Sidebottom was emphatic in his view that the 'get fucked' comment was directed towards him, and as I believe that Mr Sidebottom's account of the incident is more reliable than Mr Lewis', I find that it is more likely than not that Mr Lewis said, 'you can get fucked too, Andrew'.

[108] In conclusion, I find that there was a valid reason for dismissal because Mr Lewis breached the Code of Conduct on 20 February 2025 by:

- calling Mr Meline a 'fucking dog';
- giving Mr Meline the impression that he wanted to fight him by inviting Mr Meline to go outside;
- saying in relation to Mr Meline, 'he needs a punch in the head'; and
- saying to Mr Sidebottom, 'you can get fucked too, Andrew'.

[109] I do not accept Mr Lewis' submission that because he did not deliberately breach the Code of Conduct there was no valid reason for the dismissal. There was no medical evidence provided which supports a finding that Mr Lewis' behaviour was involuntary. I accept that there were mitigating factors which may explain Mr Lewis' behaviour, but these matters are relevant to my consideration under s.387(h) and do not negate my findings that there was a valid reason for the dismissal.

[110] Finally, there was concern expressed by Mr Lewis that he was dismissed because Essential Energy found that his actions were premeditated on the basis of his exchange with Mr Ryan at the commencement of the toolbox meeting. Mr Lewis said that he was not given an opportunity to respond to this allegation, however Essential Energy said that the allegation was clear on the face of Allegation 1.

[111] Based on Mr Lewis' exchange with Mr Ryan and his conversation with Mr Sidebottom the previous afternoon, I believe that Mr Lewis was planning to express concern about double standards during the toolbox meeting. However, there is no basis for me to find that Mr Lewis was planning to do so in an aggressive and abusive manner. This is because there is no evidence that Mr Lewis has ever, during his 16 years of service with Essential Energy, referred to someone as a 'fucking dog' or told anyone to 'get fucked'.

[112] Essential Energy submitted that Mr Lewis previously behaved in a threatening manner when he said to Mr Sidebottom in 2021, 'lucky [you're] at work' based on notes kept by Mr Sidebottom. However, this evidence is of limited probative value and highly prejudicial to Mr Lewis as the notes do not appear to have been shared with Mr Lewis prior to the unfair dismissal proceedings and he was not subject to any disciplinary proceedings arising from the alleged incident. Further, in his evidence in reply, Mr Lewis denied that he threatened Mr Sidebottom. In the circumstances, I find that there is insufficient evidence to establish that the 2021 incident as described by Mr Sidebottom occurred. I also note that there is reference in Mr Sidebottom's and Mr Meline's evidence of an incident involving Mr Lewis seven or eight years ago where 'threats were made', however, there was no evidence as to what was allegedly said by Mr Lewis at the time so I make no findings in relation to this matter.

[113] In my view, it is highly unlikely that a person with a good employment record who has no history of aggression in the workplace would plan to conduct themselves in the way that Mr Lewis did on 20 February 2025.

[114] Having regard to all of the evidence before me, I find that Mr Lewis' conduct on 20 February 2025 was out of character and not premeditated.

Was Mr Lewis notified of the valid reason?

[115] Proper consideration of s.387(b) requires a finding to be made as to whether Mr Mitchell 'was notified of that reason'. Contextually, the reference to 'that reason' is the valid reason found to exist under s.387(a).⁹⁷

[116] Based on the evidence before me, I find that Mr Lewis was notified of the valid reason in the letter of termination dated 14 May 2025.

Was Mr Lewis given an opportunity to respond to any reason related to his capacity or conduct?

[117] Based on the evidence before me, I find that Mr Lewis was given an opportunity to respond to the reasons related to his conduct and did so when he submitted written responses to Essential Energy on 11 March 2025 and 24 April 2025.

Did Essential Energy unreasonably refuse to allow Mr Lewis to have a support person present to assist at discussions relating to the dismissal?

[118] Mr Lewis did not contend that he was refused a support person. Accordingly, I find that Essential Energy did not unreasonably refuse to allow Mr Lewis to have a support person present to assist at discussions relating to the dismissal.

Was Mr Lewis warned about unsatisfactory performance before the dismissal?

[119] As the dismissal did not relate to unsatisfactory performance, this factor is not relevant to the present circumstances.

To what degree would the size of Essential Energy's enterprise and the absence of dedicated human resource management specialists or expertise in Essential Energy's enterprise be likely to impact on the procedures followed in effecting the dismissal?

[120] Mr Lewis submitted that the size of Essential Energy (s.387(f)) and its human resources team (s.387(g)) should have resulted in a fair and supportive process being followed but that it was not.

[121] In relation to s.387(g), this relates to whether there was an *absence* of dedicated human resource management specialists or expertise in Essential Energy's enterprise. As Essential Energy is a large organisation with a dedicated human resources team, s.387(g) has no relevance to the application before me.

[122] In relation to s.387(f), the evidence is that Essential Energy made the decision to dismiss Mr Lewis after considering the Dismissal Recommendation and having a number of internal discussions. The Dismissal Recommendation shows that Essential Energy had difficulty in accepting the validity of the matters which Mr Lewis raised in mitigation, that is, his past difficulties with Mr Meline and the health issues experienced by his father and aunt.

[123] In relation to Mr Lewis' relationship with Mr Meline, the Dismissal Recommendation recorded that other than a verbal warning issued to Mr Meline due to an interaction between him and Mr Lewis in 2019, 'there are no records on file regarding reports of behaviour that had caused a hostile work environment for Mr Lewis, and no investigations have ever been conducted into this alleged behaviour.' The report contrasted the lack of complaints made by Mr Lewis against Mr Meline with four complaints allegedly received by Essential Energy in relation to Mr Lewis' behaviour on 20 February 2025. These complaints were not in evidence before the Commission.

[124] In relation to the health issues experienced by Mr Lewis' father and aunt, the Dismissal Recommendation reiterated earlier concerns that Mr Lewis 'still does not address the concerning point that he had not addressed this with any of his colleagues or his manager prior to his outburst' and... 'There are many supports the organisation has in place to address these types of issues, including IMSAFE, EAP, 1:1 conversations with his manager, HRBP and HIMS support, however none of these have been utilised until after the incident occurred.' This statement was made despite Mr Lewis saying in his show cause response that he 'had no idea [he] was struggling with [his] mental health – [he] thought [he] was handling it' and that his GP and EAP had implemented strategies to help support his mental health and were actively monitoring him for symptoms of depression.

[125] The termination letter of 14 May 2025 advised that Mr Lewis' response to the Show Cause Letter, including the mitigating circumstances provided, had been thoroughly reviewed and considered prior to reaching the final decision to dismiss Mr Lewis. However, I believe that this is unlikely, based on the statements made only two days earlier in the Dismissal Recommendation, which show that Essential Energy either disregarded or placed very little weight on the matters which Mr Lewis raised in mitigation. In doing so, Essential Energy also failed to give Mr Lewis the opportunity to address its concerns about these matters.

[126] Essential Energy referred me to the decision of *Jason Pintley and Ors v DP World Sydney Limited and Anor*⁹⁸ in which Vice President Asbury observed that ss.387(f) and (g) are directed to smaller businesses and do not provide a basis for the Commission to decide that a large employer should be penalised because it would be expected to have proper procedures and access to human resources management expertise to carry out a dismissal fairly.⁹⁹ I therefore deal with the above matters in more detail as part of my consideration of s.387(h).

What other matters are relevant?

[127] Section 387(h) requires the Commission to take into account any other matters that the Commission considers relevant.

[128] It has long been established that the effects of dismissal on the personal or economic situation of the dismissed employee may be taken into consideration under s.387(h) of the FW Act.¹⁰⁰

[129] An employee's long and satisfactory work performance or history may be taken into consideration under s.387(h) of the FW Act and, depending on all the circumstances, may weigh in favour of a conclusion that the dismissal of the employee was harsh, unjust or unreasonable.¹⁰¹

Health issues of Mr Lewis' father and aunt

[130] I make the following factual findings based upon Mr Lewis' unchallenged evidence about these matters:

- a. On or about 18 February 2025, Mr Lewis' father received results from a PET scan which showed that his cancer had spread to his shoulder joint, hip joint and lower spine.
- b. Mr Lewis' aunt was put into palliative care on 19 February 2025 and died on 22 February 2025.

[131] Mr Lewis' conduct towards Mr Meline arose from an incident where Mr Meline was abusive towards Mr Lewis four years earlier. Since that time, Mr Meline and Mr Lewis have worked in different crews. According to Mr Sidebottom, Mr Meline and Mr Lewis get along if they do not work together, and until 20 February 2025, there were no issues after they were separated. Against this background, Mr Lewis' reaction to Mr Meline picking up the truck appears completely irrational and inexplicable. Mr Sidebottom recorded in his notes that Mr Lewis was 'very emotional' and talked 'in a tone not normal to [him]'. Mr Sidebottom's notes also recorded that Mr Lewis' leading hand advised Mr Sidebottom that Mr Lewis' emotions 'have been low over past 2 days'. During cross-examination, Mr Sidebottom agreed that before the incident, he was aware that Mr Lewis' father was in Sydney receiving treatment, that 'things weren't great for him' and that Mr Lewis' aunt had been put into palliative care.¹⁰² Mr Sidebottom also agreed that the incident was uncharacteristic of Mr Lewis and that Mr Lewis went from zero to 100 very quickly.¹⁰³

[132] Based on this evidence, I find that Mr Lewis' behaviour on 20 February 2025 was out of character. I accept Mr Lewis' evidence that he was distressed about his aunt's and father's

serious health conditions and find that this distress was likely to have contributed to Mr Lewis' outburst. I note that Mr Hinchcliffe said as much in the Show Cause Letter when he stated that Mr Lewis 'presented to work to undertake high-risk work as a Powerline Worker, aware that [he] was experiencing significant stress that...on this occasion *resulted* in a workplace incident causing a potential psychological and physical injury to Mr Meline and a hostile work environment for his colleagues.' [emphasis added]

[133] In my view, a reasonable employer faced with a long serving employee engaging in poor behaviour which was uncharacteristic of that employee would ordinarily question whether there were any underlying issues or surrounding circumstances which explained the behaviour. In the case of an employee who has close family members suffering from serious health issues, I would expect a reasonable employer to apply a common-sense approach and be able to draw a connection between the employee's difficult personal circumstances and their uncharacteristic poor behaviour and treat this as a significant mitigating factor, even if medical evidence explaining the poor behaviour was not available. Essential Energy's failure to do so is a matter which weighs in favour of a finding that the dismissal was unfair.

[134] In Mr Lewis' case, Essential Energy became fixated with Mr Lewis' actions in attending work in a distressed state and appeared to be incapable of moving past this and accepting that Mr Lewis' behaviour was likely to be a 'one-off' reaction to very challenging personal circumstances. In this regard, Essential Energy was critical of Mr Lewis for attending work and claimed that Mr Lewis was aware that he was experiencing significant stress that could have had serious implications to himself, his colleagues and the public. However, there was simply no evidence that Mr Lewis was aware of these matters and in fact Mr Lewis said in his letter to Essential Energy of 24 April 2025 that he had no idea he was struggling with his mental health, which appears to have been disregarded by Essential Energy. Further, Essential Energy's expectation that Mr Lewis would be aware that he was experiencing significant stress suggests that it believed that Mr Lewis should have acted in a highly rational and sensible way on the morning of 20 February 2025 in circumstances where his subsequent conduct towards Mr Meline showed that he was neither rational nor sensible. In doing so, Essential Energy applied a 'one size fits all' approach to Mr Lewis' conduct which ignored the range of ways in which people respond to stressful situations. Essential Energy should have informed Mr Lewis that it continued to be concerned that Mr Lewis attended work while experiencing significant stress after receiving his letter of 24 April 2025 so that Mr Lewis could have addressed these concerns, which may have included giving Essential Energy permission to speak to his EAP counsellor and GP. Essential Energy's failure to do so weighs in favour of a finding that the dismissal was unfair.

Mr Lewis' relationship with Mr Meline

[135] There is no indication in the Dismissal Recommendation that Essential Energy sought further information from Mr Sidebottom about the relationship between Mr Lewis and Mr Meline. Essential Energy's failure to do so weighs in favour of a finding that the dismissal was unfair. If Essential Energy had done this, Essential Energy would have ascertained that Mr Lewis and Mr Meline have had a somewhat difficult relationship over the years, that they had made complaints about each other that they did not wish to take further, that Mr Meline had acted in an abusive way towards Mr Lewis in 2020, and that Mr Lewis was concerned about 'dobbing' on Mr Meline in relation to the 2020 incident.

[136] In the aftermath of the incident, Mr Lewis and Mr Meline continued to make complaints about each other which they downplayed during the hearing. For example, Mr Sidebottom said that immediately after the incident, Mr Meline told him these types of threats had happened before in the field years ago and that he never wanted to work with Mr Lewis again. Further, on 11 March 2025, which was almost three weeks after the incident, Mr Lewis submitted his written response to the allegations in which he referred to Mr Meline's persistent aggressive and abusive behaviour as 'contextual background'. Essential Energy submitted that I should make adverse credit findings about the evidence of Mr Lewis and Mr Meline because of the apparent inconsistency between these complaints and their respective evidence during the hearing that they have a good relationship.

[137] When considered with all of the other evidence, Mr Lewis' complaints about Mr Meline appear to be in relation to conduct at least four years earlier and not about any recent conduct. While on one hand, these complaints suggest that Mr Lewis has had difficulty 'moving on' from his previous issues with Mr Meline, I believe that it was important that Mr Lewis informed Essential Energy of this history for the purpose of responding to the allegations, as it is difficult to make any sense of Mr Lewis' behaviour on 20 February 2025 without this information. Similarly, I believe that Mr Meline's complaints about Mr Lewis immediately after the incident need to be understood in the context of Mr Meline being on the receiving end of unexpected abuse and threats by Mr Lewis.

[138] Ultimately, I find that Mr Lewis' and Mr Meline's positive attitude toward each other during the hearing was genuine and can be explained partly by the passage of time and partly by the fact that Mr Lewis is now receiving treatment for mental health issues which may have previously inhibited his ability to resolve conflict. I note that Mr Sidebottom gave evidence that Mr Meline and Mr Lewis get along if they do not work together, and that both Mr Lewis and Mr Meline gave evidence that they have worked together after the incident without any issues.

Workplace culture at Leeton Depot

[139] Mr Sidebottom annexed Essential Energy's 'Fair and Just' Policy to his statement. The Fair and Just Policy is referenced in the Dismissal Recommendation.

[140] The 'Policy Statement' in relation to the Fair and Just Policy provides:

The company is committed to a Fair and Just culture in all divisions and at all levels. The intent of a Fair and Just Culture is to provide a working environment where everyone knows what is expected of them, where the right workplace behaviours are being recognised and reinforced, and where the right responses are being applied to the wrong behaviours.¹⁰⁴

[141] The Fair and Just Policy also provides:

A Fair and Just culture...requires that behaviours inconsistent with our values are always addressed and *that responses subsequently determined are based on a clear understanding of all factors contributing to the behaviours*. [emphasis added] This recognises that:

- sometimes the behaviour is the product of simple human error;

- sometimes the behaviour is the product of cultural norms or poor systems. People may simply not understand the implications or potential consequences of their (at risk) behaviour; and
- sometimes the behaviour is reckless or culpable. Some people wilfully and intentionally compromise their duties and put themselves, others, and the business at risk.¹⁰⁵

[142] The Fair and Just Policy refers to five categories of employee conduct, which are exceptional, expected, simple error, at-risk and reckless. The exceptional and expected categories are used to describe employee behaviour which is positive, while the simple error, at-risk and reckless categories are used to describe employee behaviour which has negative consequences.

[143] The Fair and Just Policy has a ‘Decision Support Tool’ which refers to the five categories of employee conduct and relevantly provides:

This tool is a guide to follow when considering the appropriate response to an observed behaviour or incident. It must be used in conjunction with an appropriate assessment or incident investigation process to identify all contributing factors. This tool has been designed to be read from left to right. The questions in the ‘behaviour’ rows are designed to define and classify the types of behaviour displayed. These questions are not exhaustive and should be used as a guide when considering appropriate responses to behaviours. Likewise, the ‘responses’ for the employee and the manager are examples of the types of outcomes or responses that can be expected for different types of behaviour. All responses will be implemented based on organisational policies, procedures, and programs as appropriate.¹⁰⁶

[144] In relation to behaviour of managers, the following questions are posed in the section dealing with the ‘reckless’ category:

- Did the manager previously ignore variances/behaviours that are not consistent with the organisation’s expectations? Or
- Did the manager condone the actions of the employee eg not speaking up, not addressing the issue, or also breaching the appropriate rules and procedure?¹⁰⁷

[145] The notes that Mr Sidebottom annexed to his witness statement suggest that the answer to the above questions was ‘yes’ on at least two occasions and that the ‘right responses’ were not always ‘being applied to the wrong behaviours’. I have already referred to Mr Sidebottom not reporting the incident which occurred on 27 October 2020 between Mr Meline and Mr Lewis, although Mr Meline verbally abused Mr Lewis during this incident and Mr Sidebottom agreed that verbal abuse constitutes a breach of the Code of Conduct.

[146] The notes also refer to an incident on 10 May 2023 where Mr Lewis went home after Mr Dan Cregan told Mr Lewis to ‘go fuck himself’ during a toolbox talk in response to a request by Mr Lewis that ‘those who dirtied [the] truck could they please clean it’. I understand from Mr Lewis’ evidence that Mr Cregan became his leading hand after Mr Meline. Mr Sidebottom recorded that, ‘Our depot being open for Banter I thought this was what it was and [didn’t] think [too] much more’. I understand from this statement that Mr Sidebottom regarded Mr Cregan’s conduct as ‘banter’ rather than a breach of the Code of Conduct.

[147] Mr Sidebottom's notes of the incidents on 27 October 2020 and 10 May 2023 which record that Mr Lewis was abused apparently without significant consequence to the two perpetrators are indicative of a workplace culture which tolerated such behaviour.

[148] The evidence before me is that the Leeton Depot comprised of workers who had worked there for many years who lived in the local area, which is a close knit community, and that many of the Leeton Depot employees knew each other before commencing work there and socialised outside of work.

[149] This appears to have created an environment where professional boundaries were blurred by personal relationships, and familiarity resulted in non-professional behaviour creeping into the workplace and being tolerated by management. There was also reluctance to compromise personal relationships and friendships by making complaints about poor behaviour. In my view, these are factors which are likely to have contributed to Mr Lewis' conduct on 20 February 2025 but there is no indication that they were taken into account in formulating Essential Energy's response to that conduct as required by the Fair and Just Policy. This is a matter which weighs in favour of a finding that the dismissal was unfair.

Other matters

[150] Based upon the evidence before me, I make the following additional findings which are relevant to my consideration under s.387(h):

- a. Mr Lewis' aggressive and threatening behaviour on 20 February 2025 was a 'one-off' incident;
- b. Mr Lewis has not previously been subject to any disciplinary action;
- c. The dismissal has had financial consequences for Mr Lewis as he is now working in a lower paying job;
- d. Mr Lewis apologised to his colleagues at the Leeton Depot on 3 March 2025;
- e. Mr Lewis has sought treatment in relation to mental health issues; and
- f. The Fair and Just Policy contemplates that Essential Energy can consider alternatives to dismissal such as demotion but there is no evidence that it did so.

[151] Essential Energy submitted that I should exercise caution when considering Mr Lewis' expressions of remorse in light of his inconsistent evidence and his claims that his actions on 20 February 2025 were involuntary. I accept that Mr Lewis' remorse is genuine, and I do not believe that there is anything inconsistent about Mr Lewis claiming that his behaviour was involuntary while accepting that the behaviour caused distress to Mr Meline and others and taking responsibility for that distress. I have earlier stated that I believe that Mr Lewis' inconsistent evidence resulted from him not having a clear memory of the events rather than any dishonesty on his part. I also believe that it is a normal human reaction for a person to reflect on behaviour which is uncharacteristic and which they regret and to try to come to terms with the possible reasons for that behaviour. I believe that the additional detail which Mr Lewis provided in the letter to Essential Energy on 24 April 2025 is likely to be the product of such an exercise.

Is the Commission satisfied that the dismissal of Mr Lewis was harsh, unjust or unreasonable?

[152] I have made findings in relation to each matter specified in s.387 as relevant.

[153] I must consider and give due weight to each of these matters as a fundamental element in determining whether the termination was harsh, unjust or unreasonable.¹⁰⁸

[154] Mr Lewis' breach of the Code of Conduct establishes that there was a valid reason for the dismissal related to Mr Lewis' conduct. This weighs in favour of a finding that the dismissal was not unfair. My findings with respect to ss.387(b)-(d) also weigh in favour of a finding that the dismissal was not unfair. The matters in ss.387(e)-(g) are not relevant.

[155] The way in which Essential Energy considered the various mitigating factors raised by Mr Lewis and applied the Fair and Just Policy are relevant to my consideration under s.387(h). These matters included that Essential Energy:

- failed to properly consider whether Mr Lewis' difficult personal circumstances contributed to his conduct;
- appeared to disregard Mr Lewis' representations about his difficult relationship with Mr Meline because no formal complaints had been made;
- found that Mr Lewis attended work when he was aware that he was experiencing significant stress that could have had serious implications to himself, his colleagues and the public, despite there being no evidence to support such a finding;
- did not ensure that its response to Mr Lewis' conduct was based on a clear understanding of all factors contributing to Mr Lewis' behaviours, as required by the Fair and Just Policy.

[156] In addition, Essential Energy did not put Mr Lewis sufficiently on notice of the above concerns to allow him to respond, and where he did respond, Essential Energy did not have sufficient regard to those responses.

[157] Having considered each of the matters specified in s.387 of the FW Act, I am satisfied that the dismissal of Mr Lewis was harsh and unreasonable because the seriousness of Mr Lewis' conduct in breaching the Code of Conduct is outweighed by:

- the procedural deficiencies outlined in this decision with respect to Essential Energy's consideration of the mitigating factors raised by Mr Lewis;
- Mr Lewis' lengthy period of satisfactory service;
- Mr Lewis' difficult personal circumstances;
- The adverse financial consequences of the dismissal;
- Mr Lewis' genuine expressions of remorse; and
- the unlikelihood of the conduct recurring given that it was uncharacteristic and that Mr Lewis is seeking treatment for his mental health issues.

Remedy

[158] Being satisfied that Mr Lewis:

- made an application for an order granting a remedy under s.394;

- was a person protected from unfair dismissal; and
- was unfairly dismissed within the meaning of s.385 of the FW Act,

[159] I may, subject to the FW Act, order Mr Lewis's reinstatement, or the payment of compensation to Mr Lewis.

Is reinstatement of Mr Lewis inappropriate?

[160] Mr Lewis is seeking reinstatement and submitted that reinstatement is appropriate.

[161] Essential Energy submitted that reinstatement is inappropriate because:

- Mr Lewis did not take responsibility for his actions by claiming they were involuntary and denied the most serious of the allegations;
- The need to provide a safe workplace and avoid psychological risk;
- The importance of disciplinary processes and the decisions of this Commission in deterring the kinds of conduct that Mr Lewis engaged in; and
- The severity of the behaviour involved and the need to denounce and avoid recurrence of such.

[162] I have already rejected Essential Energy's submissions about Mr Lewis' expressions of remorse. The other submissions which Essential Energy made opposing reinstatement were not convincing. Essential Energy did not adduce any evidence which indicated that it had lost trust and confidence in Mr Lewis or that which established that Mr Lewis posed an ongoing risk to health and safety. During cross-examination, Mr Sidebottom said that he did not support Mr Lewis being reinstated due to the safety of his work colleagues.¹⁰⁹ However, any suggestion that Mr Lewis posed an ongoing risk to health and safety is undermined by the fact that Mr Lewis continued to attend work for a lengthy period following the incident, apart from periods that Mr Lewis chose to take leave. Essential Energy did not suspend Mr Lewis and did not dispute evidence that Mr Sidebottom and Mr Hinchcliffe supported Mr Lewis' continuing attendance at work during the disciplinary process.

[163] In relation to the seriousness of Mr Lewis' conduct, I accept that it was serious and that it caused distress to Mr Meline and potentially to other employees. However, based on Mr Lewis' previous history and that evidence that he is now receiving treatment for the issues which he says contributed to the behaviour, I believe that such conduct is unlikely to reoccur. In my view, the seriousness of Mr Lewis' conduct does not lead to a finding that reinstatement is inappropriate when all of the other circumstances are considered.

[164] Having regard to all of the evidence before me, I am satisfied that reinstatement of Mr Lewis is appropriate.

Reinstatement – to what position should Mr Lewis be appointed?

[165] Section 391(1) of the FW Act provides that an order for a person's reinstatement must be an order that the person's employer at the time of the dismissal reinstate the person by:

- (a) reappointing the person to the position in which the person was employed immediately before the dismissal; or
- (b) appointing the person to another position on terms and conditions no less favourable than those on which the person was employed immediately before the dismissal.

[166] In the absence of any evidence to the contrary, I am satisfied that it is open to me to make an order reappointing Mr Lewis within 21 days of the date of this decision to the position in which Mr Lewis was employed immediately before the dismissal.

Is it appropriate to make an order to maintain continuity and/or lost pay?

[167] Section 391(2) of the FW Act provides that, if the Commission makes an order for reinstatement and considers it appropriate to do so, the Commission may also make any order that the Commission considers appropriate to maintain the following:

- (a) the continuity of the person's employment;
- (b) the period of the person's continuous service with the employer or, if applicable, the associated entity.

[168] Section 391(3) of the FW Act provides that, if the Commission makes an order for reinstatement and considers it appropriate to do so, the Commission may also make any order that the Commission considers appropriate to cause the employer to pay to the person an amount for the remuneration lost, or likely to have been lost, by the person because of the dismissal.

[169] Section 391(4) of the FW Act provides that, in determining an amount for the purposes of such an order, the Commission must take into account:

- (a) the amount of any remuneration earned by the person from employment or other work during the period between the dismissal and the making of the order for reinstatement; and
- (b) the amount of any remuneration reasonably likely to be so earned by the person during the period between the making of the order for reinstatement and the actual reinstatement.

[170] An order to restore lost pay does not necessarily follow an order for reinstatement. The Commission may only make an order if it considers it appropriate to do so and only make an order that the Commission considers appropriate.¹¹⁰ Where an employee has engaged in misconduct, the Commission may refuse to make any order to restore lost pay.¹¹¹

[171] Taking into account all of the circumstances of the case, including Mr Lewis' length of service and that he has experienced reduced earnings as a result of the dismissal, I consider it appropriate to make orders to maintain Mr Lewis' continuity of employment and period of continuous service with Essential Energy and in respect of lost remuneration.

[172] In my view, it is appropriate that there is some consequence for Mr Lewis in relation to his conduct on 20 February 2025. In *Craig Hancock v Sydney International Container Terminals Pty Limited*,¹¹² I referred to the decision of Deputy President Easton in *Reece Goodsell v Sydney Trains*¹¹³ which helpfully lists the following examples of where the Commission has reduced back pay because of the employee's conduct:

- (a) *Hilder v Sydney Trains* - a 50% reduction in lost earnings where the dismissal was because of a breach of the drug and alcohol policy;¹¹⁴
- (b) *Dyson v Centennial Myuna Pty Ltd* - six months backpay was reduced by three months because it was considered appropriate that the employee bear a substantial degree of responsibility for the financial consequences of his dismissal;¹¹⁵
- (c) *Johnson v Chelgrave Contracting Australia Pty Ltd* - backpay was reduced by 15% because the employee had not done everything he could have done in order to avoid a safety breach;¹¹⁶
- (d) *Morcos v Serco Australia Pty Ltd* - no backpay was ordered because the employee 'had made a mistake by attending work after having consumed alcohol';¹¹⁷ and
- (e) *Wakefield v Sunraysia Institute of TAFE* - backpay was reduced by 25% to take into account the employee's misconduct in sending the email to his former employer, and to 'reinforce to the Applicant the importance of not repeating this behaviour in the future'.¹¹⁸

[173] In *Reece Goodsell v Sydney Trains* which involved a breach of the drug and alcohol policy, Deputy President Easton applied a 20% reduction to the amount the employer was required to pay in compensation.¹¹⁹ In *Craig Hancock v Sydney International Container Terminals Pty Limited*, which also involved a breach of the drug and alcohol policy, I applied a 50% reduction to the amount the employer was required to pay in compensation.¹²⁰

[174] I have taken all of the circumstances of the case into account and have decided to reduce the amount Essential Energy is required to pay as compensation by 20 per cent in recognition that Mr Lewis breached the Code of Conduct. I therefore consider it appropriate to make an order causing Essential Energy to pay to Mr Lewis 80 per cent of the amount that Mr Lewis would have earned for the period from his dismissal to the date of his reinstatement, less the notice paid on termination and any income earned during this period. If the parties are unable to reach an agreement on this amount, I will list the matter for determination of the amount to be paid.

Conclusion

[175] I have found that there was a valid reason for the dismissal because Mr Lewis breached the Code of Conduct when he acted in an aggressive and threatening manner towards Mr Meline, during a toolbox meeting on 20 February 2025.

[176] I have also found that at the time of the incident, Mr Lewis was experiencing difficult personal circumstances which Essential Energy gave insufficient weight to when considering the appropriate response to Mr Lewis' conduct.

[177] Based upon these findings, the unlikelihood of the misconduct recurring, and Mr Lewis' remorse and long and satisfactory period of service, I have concluded that the dismissal was harsh and unreasonable. I have made orders reappointing Mr Lewis to the position in which Mr Lewis was employed immediately before the dismissal, maintaining the continuity of Mr Lewis' employment and with respect to lost remuneration within 21 days of the date of this decision.

[178] An order giving effect to this decision has been separately issued in [PR796184](#).



DEPUTY PRESIDENT

Appearances:

Ms E. *Strachan*, Senior Legal Officer from the ETU for the Applicant
Mr S. *Crilly*, Solicitor for the Respondent

Hearing details:

2025
3 and 4 September
In person, Sydney and online

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<PR796183>

¹ Statement of Michael Meline dated 31 July 2025 (Meline Statement) [1]-[2], Digital Hearing Book (DHB) 49

² Statement of James Iannelli dated 1 August 2025 (Iannelli Statement) [1]-[5], DHB 53

³ Statement of Corey Ryan dated 1 August 2025 (Ryan Statement) [1]-[5], DHB 55-56

⁴ Statement of Mark Morphett dated 1 August 2025 (Morphett Statement) [1]-[5], DHB 59

⁵ Statement of Sean Sloan dated 4 August 2025 (Sloan Statement) [1]-[5], DHB 100

⁶ Statement of Hayden Southgate dated 29 August 2025 (Southgate Statement) [4], DHB 219

⁷ Witness Statement of Stephen John Magann dated 4 August 2025 (Magann Statement) [1]-[5], DHB 104

⁸ Witness Statement of Brendon Neyland dated 21 August 2025 (Neyland Statement) [1]-[6], DHB 146-147

⁹ Witness Statement of Andrew Sidebottom dated 22 August 2025 (Sidebottom Statement) [1]-[5]; [25], DHB 168, 170

¹⁰ Statement of Ian Donaldson dated 21 August 2025 (Donaldson Statement) [1]-[2], DHB 157

¹¹ Ibid [7], DHB 158

¹² Statement of Ben Lewis dated 4 August 2025 (Lewis Statement) [1], DHB 72

¹³ Ibid [2]-[3], DHB 72

¹⁴ Ibid [5], DHB 72

¹⁵ Ibid [6], DHB 73

¹⁶ Ibid

¹⁷ Meline Statement [7], DHB 50

¹⁸ DHB 200

- ¹⁹ Transcript PN 1142-PN 1144
- ²⁰ Sidebottom Statement [10]-[13], DHB 169
- ²¹ Reply Statement of Ben Lewis dated 29 August 2025 (Lewis Reply) [4], DHB 209
- ²² Reply Statement of Michael Meline dated 29 August 2025 (Meline Reply) [4]-[5], DHB 221
- ²³ Lewis Statement [5]-[6], DHB 72-73
- ²⁴ Meline Statement [3], DHB 49
- ²⁵ Lewis Statement [13], DHB 74
- ²⁶ Lewis Statement [7]-[12], DHB 73
- ²⁷ Lewis Statement [14]-[15], DHB 74
- ²⁸ Sidebottom Statement [22], DHB 170
- ²⁹ Lewis Reply [7], DHB 210
- ³⁰ Lewis Statement [16], DHB 74
- ³¹ Lewis Statement [17], DHB 74
- ³² Meline Statement [9], DHB 50
- ³³ Lewis Statement [17], DHB 74
- ³⁴ Ibid [18], DHB 74-75
- ³⁵ Ibid [19]-[20], DHB 74-75
- ³⁶ DHB 206
- ³⁷ Meline Statement [10]-[11], DHB 50
- ³⁸ Donaldson Statement [13]-[14], DHB 158
- ³⁹ Ibid [13]-[14], DHB 158
- ⁴⁰ Sidebottom Statement [29], DHB 171
- ⁴¹ Ibid [30]-[31], DHB 171
- ⁴² Transcript PN 1047-PN 1048
- ⁴³ Ryan Statement [10], DHB 56
- ⁴⁴ Morphet Statement [9], DHB 60
- ⁴⁵ Sloan Statement [8], DHB 101
- ⁴⁶ Transcript PN404-PN405
- ⁴⁷ Meline Statement [12], DHB 50-51
- ⁴⁸ Transcript PN 1054 - PN 1057
- ⁴⁹ Sidebottom Statement [34], DHB 171-172
- ⁵⁰ Meline Reply [6], DHB 222
- ⁵¹ Ibid [7], DHB 222
- ⁵² Ibid [8], DHB 222-223
- ⁵³ Sidebottom Statement [35], DHB 172
- ⁵⁴ Ibid [36], DHB 172
- ⁵⁵ Ibid [37], DHB 172
- ⁵⁶ Lewis Reply [8], DHB 210
- ⁵⁷ Lewis Statement [21], DHB 75
- ⁵⁸ Sidebottom Statement [39], DHB 173
- ⁵⁹ Lewis Statement [22], DHB 75
- ⁶⁰ Ibid [23], DHB 75
- ⁶¹ Ibid [24], DHB 75
- ⁶² Ibid [25], DHB 75-76

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- ⁶³ Ibid [24], DHB 75
- ⁶⁴ DHB 80
- ⁶⁵ DHB 80-81
- ⁶⁶ Meline Statement [13], DHB 51
- ⁶⁷ Ibid [14]-[16], DHB 51
- ⁶⁸ Lewis Statement [28], DHB 76
- ⁶⁹ Lewis Statement [29], DHB 76
- ⁷⁰ DHB 82
- ⁷¹ DHB 83
- ⁷² DHB 83-84
- ⁷³ Lewis Statement [30], DHB 76
- ⁷⁴ Ibid [31], DHB 76
- ⁷⁵ Ibid [32], DHB 76
- ⁷⁶ Ibid [33], DHB 76
- ⁷⁷ Ibid [34], DHB 76
- ⁷⁸ Ibid [35], DHB 77
- ⁷⁹ DHB 90
- ⁸⁰ Lewis Statement [36], DHB 77
- ⁸¹ DHB 149-155
- ⁸² DHB 154
- ⁸³ Lewis Statement [37], DHB 77
- ⁸⁴ Lewis Statement [38], DHB 77
- ⁸⁵ Meline Statement [17]-[19], DHB 51
- ⁸⁶ Lewis Statement [40], DHB 77
- ⁸⁷ Ibid [41]-[42], DHB 78
- ⁸⁸ Ibid [44]-[48], DHB 78
- ⁸⁹ Ibid [49], DHB 79
- ⁹⁰ Ibid [50], DHB 79
- ⁹¹ *Sayer v Melsteel Pty Ltd* [\[2011\] FWAFB 7498](#), [14]; *Smith v Moore Paragon Australia Ltd* [PR915674](#) (AIRCFCB, Ross VP, Lacy SDP, Simmonds C, 21 March 2002), [69]
- ⁹² *Selvachandran v Peteron Plastics Pty Ltd* (1995) 62 IR 371, 373
- ⁹³ Ibid
- ⁹⁴ *Walton v Mermaid Dry Cleaners Pty Ltd* (1996) 142 ALR 681, 685
- ⁹⁵ *Edwards v Justice Giudice* [1999] FCA 1836, [7]
- ⁹⁶ *King v Freshmore (Vic) Pty Ltd* Print S4213 (AIRCFCB, Ross VP, Williams SDP, Hingley C, 17 March 2000), [23]-[24]
- ⁹⁷ *Bartlett v Ingleburn Bus Services Pty Ltd* [\[2020\] FWCFCB 6429](#), [19]; *Reseigh v Stegbar Pty Ltd* [\[2020\] FWCFCB 533](#), [55]
- ⁹⁸ [\[2024\] FWC 128](#)
- ⁹⁹ Ibid, [403]-[404]
- ¹⁰⁰ *Ricegrowers Co-operative v Schliebs* [PR908351](#) (AIRCFCB, Duncan SDP, Cartwright SDP, Larkin C, 31 August 2001), [26]
- ¹⁰¹ *Telstra Corporation v Streeter* [2008] AIRCFCB 15, [27]
- ¹⁰² Transcript PN 933 – PN 937
- ¹⁰³ Transcript PN 1081 – PN 1083
- ¹⁰⁴ DHB 187
- ¹⁰⁵ Ibid

¹⁰⁶ DHB 195

¹⁰⁷ Ibid

¹⁰⁸ *ALH Group Pty Ltd t/a The Royal Exchange Hotel v Mulhall* (2002) 117 IR 357, [51]. See also *Smith v Moore Paragon Australia Ltd* [PR915674](#) (AIRCFCB, Ross VP, Lacy SDP, Simmonds C, 21 March 2002), [92]; *Edwards v Justice Giudice* [1999] FCA 1836, [6]–[7]

¹⁰⁹ Transcript PN 927

¹¹⁰ *Aurora Energy Pty Ltd v Davison* [PR902108](#) (AIRCFCB, Watson SDP, Williams SDP, Holmes C, 8 March 2001), [25]

¹¹¹ See, eg, *Regional Express Holdings Ltd v Richards* [\[2010\] FWAFB 8753](#), [29]

¹¹² [\[2025\] FWC 516](#), 279

¹¹³ [\[2023\] FWC 3209](#), [183]

¹¹⁴ [\[2019\] FWC 8412](#), [142]

¹¹⁵ [\[2020\] FWC 5486](#)

¹¹⁶ [\[2020\] FWC 5784](#)

¹¹⁷ [\[2019\] FWC 7675](#)

¹¹⁸ [\[2019\] FWC 4979](#), [123]

¹¹⁹ [\[2023\] FWC 3209](#), [184]

¹²⁰ [\[2025\] FWC 516](#), 280