



# DECISION

*Fair Work Act 2009*  
s.394—Unfair dismissal

**Robert Oram**

v

**BHP Coal Pty Ltd**  
(U2025/4304)

COMMISSIONER HUNT

BRISBANE, 8 JANUARY 2026

*Application for an unfair dismissal remedy – physical confrontation at work – where Applicant placed a colleague in a dangerous position – whether Applicant provoked – whether Applicant acted in self-defence – whether Applicant’s mood was affected by prescription medication – Applicant’s conduct unjustified – valid reason for dismissal – where decision-makers did not have regard to all relevant information when deciding to dismiss – dismissal not disproportionate – dismissal not unfair – application dismissed*

[1] On 7 April 2025, Mr Robert Oram made an application to the Fair Work Commission (the Commission) under s.394 of the *Fair Work Act 2009* (the Act) alleging that he had been dismissed from his employment with BHP Coal Pty Ltd (the Respondent) and that the dismissal was harsh, unjust or unreasonable.

[2] On 7 May 2025, the Respondent filed a *Form F3 Employer Response* to the application. It did not raise a jurisdictional objection.

[3] Directions were issued for the filing of evidence and submissions, and the matter was listed for hearing on 28 and 29 July 2025 in Mackay. Mr Oram was granted leave to be represented by Mr Chris Newman of the Mining and Energy Union (MEU). The Respondent was granted leave to be represented by Ms Holly Blattman KC of Counsel, instructed by King & Wood Mallesons.

[4] The following witnesses gave evidence on behalf of Mr Oram and were cross-examined:

- Mr Oram;
- Mr Andrew Boulton, employee of WorkPac Pty Ltd;
- Mr Robert Chelepy, colleague of Mr Oram; and
- Mr Haki Beets, employee of Total Water Management (TWM).

[5] Mr David Gollschewsky and Mr David McKerihan, colleagues of Mr Oram, filed written statements in the proceedings but were not required for cross-examination.

[6] For the Respondent, the following witnesses gave evidence and were cross-examined:

- Mr Joel McCallum, colleague of Mr Oram;
- Mr Glen Perren, Superintendent – Mine Services of the Respondent;
- Mr Dominic Mobbs, Production Manager of the Respondent; and
- Mr Vaughn Abrams, General Manager and Site Senior Executive of the Respondent.

## RELEVANT LEGISLATION

[7] Section 394 of the Act provides:

### “394 Application for unfair dismissal remedy

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

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

Note 2: For application fees, see section 395.

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

(2) The application must be made:

- (a) within 21 days after the dismissal took effect; or
- (b) within such further period as the FWC allows under subsection (3).

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

- (a) the reason for the delay; and
- (b) whether the person first became aware of the dismissal after it had taken effect; and
- (c) any action taken by the person to dispute the dismissal; and
- (d) prejudice to the employer (including prejudice caused by the delay); and
- (e) the merits of the application; and
- (f) fairness as between the person and other persons in a similar position.”

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

**“385 What is an unfair dismissal**

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

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

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

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

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

- (a) whether there was a valid reason for the dismissal related to the person’s capacity or conduct (including its effect on the safety and welfare of other employees); and
- (b) whether the person was notified of that reason; and
- (c) whether the person was given an opportunity to respond to any reason related to the capacity or conduct of the person; and
- (d) any unreasonable refusal by the employer to allow the person to have a support person present to assist at any discussions relating to dismissal; and
- (e) if the dismissal related to unsatisfactory performance by the person—whether the person had been warned about that unsatisfactory performance before the dismissal; and
- (f) the degree to which the size of the employer’s enterprise would be likely to impact on the procedures followed in effecting the dismissal; and
- (g) the degree to which the absence of dedicated human resource management specialists or expertise in the enterprise would be likely to impact on the procedures followed in effecting the dismissal; and
- (h) any other matters that the FWC considers relevant.”

[9] There are no jurisdictional issues preventing the Commission determining if the dismissal was unfair. The application was made in time. Mr Oram has been dismissed and has

met the minimum employment requirements. The Respondent is not a small business, and the dismissal was not a case of genuine redundancy. Accordingly, it is necessary to determine if the dismissal was unfair having regard to the considerations in s.387 of the Act.

## **EVIDENCE OF THE APPLICANT**

### **Mr Oram's evidence**

[10] Mr Oram commenced employment with the Respondent in January 2013 as a Pump Crew Operator at the Goonyella Riverside mine site (the Mine). He worked in the Pump and Earthworks crew, which was later renamed the Mine Services. Mr Oram was an MEU delegate for his crew. Prior to his dismissal, he had not been disciplined for any contravention of the Respondent's policies and procedures and had received approximately seven "big thanks" awards for his work at the Mine, the most recent on 10 January 2025.

[11] Mr Oram was dismissed by the Respondent on 18 March 2025 following an altercation with Mr McCallum on 26 January 2025.

#### *Events prior to 26 January 2025*

[12] Mr McCallum commenced employment with the Respondent just prior to Mr Oram. Mr Oram's evidence is that he and the "rest of his crew" found him to be a "disruptive individual who did not pull his weight". Mr Oram stated that Mr McCallum referred to others using derogatory nicknames, including frequently referring to Mr Oram as "the Arab", "Muslim", "wog cunt", "boofhead" and "boofhead wog". Mr McCallum would tell Mr Oram that he needed to shave several times a day.

[13] Mr Oram said that he would ask Mr McCallum not to call him these names because he found them offensive, but Mr McCallum continued to use these names. Mr McCallum would usually respond that he was joking. Mr Oram stated that while Mr McCallum might have believed that he was not being aggressive or mean, the fact that Mr McCallum continued to use these names after being told to stop suggested that he was doing it deliberately to be mean.

[14] Mr Oram did not report the alleged slurs made by Mr McCallum. In evidence given during the hearing, Mr Oram agreed that he could have reported the alleged slurs to HR, EthicsPoint, the safety representatives or to managers. Mr Oram stated that his mother is of Maltese heritage and his father of Scottish heritage.

[15] According to Mr Oram, Mr McCallum was consistently late for work, absent without explanation, or missing from shift. The crew would search for him, finding him either asleep in a car or in the crib room watching sport. Mr Oram was not aware of any arrangement Mr McCallum had with the Respondent which allowed him to leave work early or start late. Mr Oram occasionally acted as Mr McCallum's supervisor and expected that he would have been informed of any such arrangement.

[16] Mr Oram stated that Mr McCallum refused to participate in training. Just prior to Christmas 2024, Mr McCallum did not attend an organised training session to obtain

certification for “high risk dogging”. When asked about this, Mr McCallum said that there was no need for him to go as there were enough members of the crew who had the certification.

[17] Mr Oram stated that when Mr McCallum was at home late at night, he would often be inebriated and call crew members and harass them.

[18] Mr Oram stated that the crew would often bring Mr McCallum’s behaviour to the attention of Mr Gary Rawlins, who had previously been their supervisor. Mr Oram’s evidence is that Mr Rawlins would respond with the words to the effect that Mr McCallum’s behaviour was not the crew’s problem and that Mr McCallum is an alcoholic. Mr Oram considered that Mr Rawlins was covering for Mr McCallum.

[19] In early-2023, Mr Oram had a meeting with Ms Gina Nel, the then-Superintendent about Mr McCallum’s behaviour. Mr Oram was acting in a higher position at the time and was documenting Mr McCallum's attendance. Mr Oram told Ms Nel that Mr Rawlins had never reported Mr McCallum’s attendance issues and was covering for him. Ms Nel then asked him to implement a performance improvement plan for Mr McCallum. Mr Oram said that he would not do that, as he considered that to be the responsibility of Mr McCallum’s substantive supervisor, and Mr Oram was in the step-up position temporarily. Ms Nel then said that she would raise the issue with Mr Rawlins, however Mr Oram did not hear anything further about this issue, as Ms Nel left the Superintendent role soon after.

[20] Mr Perren was the subsequent Superintendent and approached Mr Oram in December 2024 to discuss Mr McCallum’s attendance and behaviour. Mr Perren agreed that Mr McCallum should be placed on an attendance management plan. Mr Oram said that he agreed, as the issue had been ongoing. Mr Perren said that he would speak to Mr Rawlins about this. Shortly afterwards, Mr Rawlins spoke to the crew and told them that he had stern words with Mr McCallum about his attendance.

[21] Mr Oram described an incident later in December 2024 where four members of the crew, including Mr Oram and Mr McCallum, were installing a pump on an extremely hot day. Mr McCallum was not working and was instead asleep in a vehicle with the air conditioning running. Mr Oram asked Mr McCallum several times to exit the vehicle to assist because he was part of the crew, but Mr McCallum stated that he was tired due to a lack of sleep and could not work.

[22] Mr Oram recalled going on a camping trip in early-2024 with his crew. He stated that Mr McCallum was a nuisance on this trip, and the other crew members did not want to include Mr McCallum in future trips. Mr Oram stated that Mr McCallum was also a nuisance on an overseas trip involving other crew members.

[23] Mr Oram stated that he has been prescribed medication for GERD, a form of acid reflux. His medication dosage has increased over time. Mr Oram stated that he was initially unaware but now believes that his medication had been making him irritable and unable to let matters go.

[24] At the start of 2025, Mr Oram was having arguments with management about working conditions. For example, in a few months prior to January 2025, the crew was told they could

no longer use their original pump crib room, but an alternative was not provided. After the crew complained, they were provided with another crib room, but it was in poor condition, as it was a towable mobile hut, covered in mould and rat faeces and had no working toilet.

[25] Mr Oram confronted Mr Rawlins about this. Mr Perren saw this and asked what the conversation was about. Mr Oram then confronted Mr Perren about the condition of the crib room, asking him if he had seen it. Mr Perren said that he had seen it and that it met BMA standards because it had been professionally cleaned. Mr Oram said that if that was BMA standard, then something was wrong. He stated that Mr Perren then got upset with him and left the room hastily.

[26] Later that shift, Mr Oram sent Mr Perren and Mr Rawlins photos of the crib room. I have reviewed the photos; they show the condition of the proposed crib room to be disgusting and entirely unacceptable for use.

[27] Mr Perren approached Mr Oram and apologised for his outburst and said that he would develop a new plan for a crib room. In evidence given during the hearing, Mr Oram stated that approximately one week after the photos were taken, he and his crew learned that they would not be required to use the dirty crib room. This would therefore be around 16 January 2025.

[28] Around this time, Mr Oram stated that he had to confront Mr Perren and Mr Rawlins about a direction given by Mr Rawlins to use a crane that was overdue for an inspection. Mr Oram stated that the crane was due for inspection in December 2024, and the crew was being directed to use it in January 2025. Mr Oram stated that he was repeatedly pressured by Mr Perren and Mr Rawlins to use the crane. Mr Oram and the crew, following his lead, refused to do so. Mr Oram eventually spoke to the Site Safety and Health Representative about the issue. He stated that at the time of being stood down, the crane had still not been inspected. In cross-examination, Mr Oram agreed that the crane only required inspection at 52-week intervals and the Respondent surpasses that requirement by doing inspections each 24 weeks with visual inspections each 12 weeks.

#### *26 January 2025 incident*

[29] On the morning of 26 January 2025, Mr Oram was at the staff canteen waiting for a coffee. He had a conversation with the relief supervisor about the operation of the Mine. After his dismissal, Mr Oram stated that the relief supervisor told him that he did not look well during their conversation on 26 January. Mr Oram also came across his wife that day, who had just completed her night shift. She told him he should go home as he was not well. Mr Oram recalled that he did not feel unwell that day, though the issues of the previous days were stressing him, and he was finding it difficult to concentrate. However, he felt that if he were to go home, he would be letting down the crew, as they were missing four members at that time.

[30] During the crew's pre-start briefing, Mr Rawlins told the crew that they should challenge the integrity of their superintendent, Mr Perren, for informing them that they would not be transitioning to a 7/7 roster when he had a letter stating that they were. Mr Oram stated that the potential of a 7/7 roster was an issue within the Respondent at the time. He recalled a conversation he had with Mr McCallum either on 26 January 2025 or the day before, in which Mr McCallum stated that he did not wish to switch to a 7/7 roster because his wife had changed

crews. Mr Oram stated that he did not hold any animosity towards Mr McCallum's views on the proposed roster. He stated that the Respondent was holding a vote at all of its mines to gauge interest in such a roster. As most of the crew lived locally in Moranbah, Mr Oram said that they did not want to work 7 shifts in a row and instead wanted to remain on their current roster. He stated that Mr Perren had given assurances that the crew would not be moved to the new roster.

[31] Mr Oram recalled that he started to shake his head. Mr Rawlins asked Mr Oram if he was OK. Mr Oram said that he was not, and when Mr Rawlins asked why, Mr Oram stated, "This place is fucked." Mr Oram's evidence is that he would not normally have an outburst like this, but that due to his medication and recent stresses, he was "sick and tired of the 7/7 roster issue". He stated that he was also upset that Mr Rawlins was trying to use the 7/7 roster issue to encourage the crew to make a complaint against Mr Perren. Mr Oram stated that the context for this was that Mr Rawlins had been given feedback that his performance was not satisfactory and Mr Perren was managing Mr Rawlins in this regard. Mr Oram considered that Mr Rawlins was attempting to use the crew to retaliate against Mr Perren.

[32] Mr Oram and the crew then moved to the crib room to plan the day ahead. It was about 200 metres away. Mr Oram put his lunch away and had a coffee.

[33] Mr McCallum was outside on the smoking deck with Mr Beets.

[34] Mr Oram asked Mr Chelepy if he wanted to do the pontoon pumps, which required three people. Mr Chelepy said that he could not, as he did not have CPR competency. Mr Oram asked Mr Boulton, who agreed.

[35] Mr McCallum then entered the room and moved towards to the door to walk out down the stairs. Mr Boulton asked Mr McCallum to stop several times. Mr McCallum was not listening to Mr Boulton. When Mr McCallum reached the doorway, he turned around aggressively said, "What?". Mr Boulton told Mr McCallum, "We'll be doing the pontoons on the boat today." Mr McCallum responded, "No we won't, someone else can do that." Mr Boulton replied that nobody else could, because Mr Chelepy did not have CPR certification.

[36] Mr McCallum looked at Mr Oram and said, "What about that boofhead cunt?". Mr Oram described Mr McCallum's tone as "not humorous but direct", and he considered that Mr McCallum did not want to do the job and wanted Mr Oram to do it instead. Mr Oram stated that he was upset by both Mr McCallum's tone and language. He responded, "What did you call me?". Mr McCallum then replied, "What?! You heard, boofhead."

[37] Mr Oram stated that he became quite upset and, "for some reason", threw his coffee cup at the wall in front of him and next to Mr McCallum. Mr Oram was seated when he did so. He then said, "Just go downstairs, Joel." Mr Oram's evidence is that he did not throw the cup hard and it hit the wall to the right of the doorway, approximately one metre above the ground. The impact of the cup made a hole in the wall. Mr Oram then stood up, walked around the table and collected his cup. He stated that Mr McCallum was "mouthing off and shouting" at him.

[38] When bending down to pick up the cup with his right hand, Mr Oram stated that Mr McCallum, who was still in the doorway and about half a metre away, moved out of the doorway towards him. Mr Oram stated that he noticed this in his peripheral vision and believed

that Mr McCallum was going to attack him. Mr Oram stood up and grabbed Mr McCallum with his left hand around Mr McCallum's shirt collar and pushed and pulled him. He denied grabbing Mr McCallum by the neck or placing him in a headlock during any stage of their interaction. He then used his right hand to grab the door and started to push him out the door. While doing so, Mr Oram said, "Downstairs" to Mr McCallum, as he wanted Mr McCallum to leave the crib room.

[39] Mr Oram recalled that Mr McCallum grabbed him with one hand and the stair handrail with the other and was trying to hold him. He remembers Mr McCallum telling him to let go and stating that he was choking him. Mr Oram stated that he pushed Mr McCallum outside the doorway and onto the first step of the landing. He then let him go and walked back inside. Mr McCallum then followed Mr Oram inside. Mr Oram then said to Mr McCallum words to the effect that he was sick of Mr McCallum not wanting to work and name calling. Mr Chelepy then intervened. At this point, Mr Oram stated that he decided it was best to walk away. He then sat down. He recalled thinking that he had enough and could no longer deal with Mr McCallum. While he was sitting, Mr Oram stated that Mr McCallum "continued to mouth off" while pacing back and forth at the doorway, but he cannot recall what Mr McCallum was saying, though acknowledged that Mr McCallum may have said words to the effect of, "All I said was 'boofhead'. You need to calm down or just go home." However, Mr Oram stated that Mr McCallum was "quite animated and was shouting" while doing so. Mr McCallum then left approximately 10-15 seconds later.

[40] Mr Oram estimated that the entire interaction lasted less than one minute.

[41] After Mr McCallum left, Mr Oram stated that he and the rest of the crew decided to leave to start work. Just prior to commencing work, Mr Oram was approached by Mr Rawlins who was in his vehicle and said that they needed to have a chat. Mr Oram entered Mr Rawlins' vehicle and asked what the conversation was about. Mr Rawlins said that Mr Oram could not put people in a chokehold. Mr Oram told Mr Rawlins that he did not put anyone in a chokehold and that he grabbed Mr McCallum by the shirt only following an argument. Mr Rawlins said that Mr Oram would need to complete a statement.

[42] Mr Oram and Mr Rawlins returned to the office. Mr Oram asked for a union representative. Mr Oram asked Mr Rawlins whether this was official, or if Mr Rawlins was just having stern words. Mr Rawlins told Mr Oram to leave it with him, and he would get back to Mr Oram. Mr Rawlins then spoke with Mr McCallum.

[43] Approximately 45 minutes later, Mr Rawlins returned and told Mr Oram that it was official, and Mr Oram needed to write a statement. Mr Oram wrote a statement, and when finished, Mr Rawlins handed him a stand down letter. Mr Oram's statement is reproduced below:

"Whilst sitting in the crib hut I was planning the day's set tasks allocated to us in pre start. I said to Rob Chelepy are you good to do the pontoon checks today? He said he was unable to as his CPR has expired. I then asked Andrew Boults and he said no worries, Joel then walked out of the smoker area and Andrew called out to him a couple times. Joel stopped in the doorway and said 'what'. Boults told Joel they would be doing the pontoons, Joel looked at me and said words to the effect 'what about that boofhead

cunt'. I was offended and threw my coffee cup at Joel it missed him and hit the wall. I then got up and yelled at Joel to go down the stairs, he didn't move I grabbed his shirt in the shoulder area and push/pulled him to go down the stairs, Joel tried to go under my arm back into the crib hut. I told Joel I was sick of all the smart arse names he keeps calling me. I also said I was sick of him not wanting to do any work ever. I know my workplace is not a footy field and I am disappointed in my actions, I have been frustrated with Joel for months and today I lost my cool. I know this was wrong and I am sorry for what I have done.

At present I am highly strung, my son has started a new job away from home, my other son has had relationship issues, my wife is working night shift and I have been looking after my daughter is going through the start of puberty, family down south have had medical issues, my sister performed CPR on her husband last week I've had a lot of issues to deal with.

Losing my cool is out of character for me and I'm disgusted with myself for it."

[44] Mr Oram stated that later that day, he received several calls from the crew wanting to know why he had been stood down and not Mr McCallum. Mr Oram said he could not answer those questions. He also received a phone call from Mr Gollschewsky, who told him that Mr McCallum and a friend, Wil, visited that evening. Mr Oram stated that Mr Gollschewsky told him that both were extremely inebriated, and Mr Gollschewsky asked them to leave. Mr Gollschewsky warned Mr Oram that they might try to come to Mr Oram's place next.

#### *Events following 26 January 2025*

[45] On 27 January 2025, Mr Oram sent a text message to Mr Rawlins and asked him about rumours that he had been in a fight with Mr McCallum. Mr Oram stated that Mr Rawlins told him that it was a coal mine, and that was going to happen. Mr Oram made an appointment to see his doctor, as his wife was again saying that he was not himself and something was wrong. Mr Oram stated that he could not understand why he had behaved in the manner he did towards Mr McCallum.

[46] Mr Oram's doctor changed his medication from pantoprazole to esomeprazole. Mr Oram provided letters from his doctor outlining the side effects of pantoprazole. One of the letters relevantly stated:

"1. Mr Oram was prescribed esomeprazole 20mg. He was previously prescribed pantoprazole 40mg. 2. Potential side effects of pantoprazole are extensive, with the following information directly from the manufacturer leaflet: "**4 CLINICAL PARTICULARS 4.8 ADVERSE EFFECTS (UNDESIRABLE EFFECTS) Psychiatric disorders Uncommon: sleep disorders Rare: depression, hallucination, disorientation, and confusion, especially in pre-disposed patients, as well as the aggravation of these symptoms in case of pre-existence Very rare: anxiety**" 3. Mr Oram stated in January 2025 that during that time on the pantoprazole he had mood changes which was starting to affect his family. This culminated in an incident at work which is the current reason for this letter. 4. Mr Oram was changed to esomeprazole as listed above with no recurrence of any mood changes or disturbances."

[47] In the days following the change to his medication, Mr Oram stated that his mind felt clearer, he was less irritable and he was not dwelling on matters that bothered him in the same way as he had before. Mr Oram considers that his former medication explains why he reacted in the way he did towards Mr McCallum.

[48] Mr Oram stated that he heard nothing from the Respondent for a further two weeks. He then received a call from Mr Perren, who told him that the process may take a couple of months to finish. Mr Oram asked Mr Perren if he could amend his statement, as he was not thinking clearly when he wrote it and forgot to mention that Mr McCallum had started to move towards him after he grabbed him. Mr Perren said this was not necessary, as the Respondent would shortly commence an investigation and Mr Oram would be given the opportunity to provide his version of events. Mr Oram stated that he asked Mr Perren to do something about the rumours, as his wife had been told by a supervisor that both he and Mr McCallum had been dismissed. Mr Perren said that he would do something about it, and that he had only heard what had happened from someone on another mine site. Mr Perren then reminded Mr Oram that the matter was confidential.

[49] Shortly afterwards, Mr Oram received a call from Mr Rawlins who wanted to know what Mr Perren had said. Mr Rawlins said that he had told the Respondent that Mr Oram was a key part of the crew and that he needed Mr Oram back. Mr Rawlins then jokingly remarked that Mr Oram could clean his boat in the meantime.

[50] On 17 February 2025, Mr Oram met with Mr Jonathan Regan, the then Production Manager by video. Mr Oram had a union representative with him. He provided the notes he had made about the incident. The notes stated as follows:

“Interview Notes

- Amendment to statement.  
After throwing the coffee cup, Joel stood at the doorway and didn't move, I got up to go around the table to pick my cup up, as I was about to pick the cup up Joel advanced towards me with his shoulder, Prior to me grabbing his shirt
- This has been an ongoing issue with Joel for quite sometime, you would get a true understanding talking to the crew members.
- Matthew went and seen Gary to make official complaint about Joels behaviour and I believe followed with a text, Cam was with him. Since then he has started to keep diary notes of issues relating to Joel.
- Joel has walked through under my house into the backyard late in the evening, very Drunk scaring my Daughter with his loud drunken behaviour. I escorted Joel to the front yard and organised my son to take him home. I discussed the issue with Joel when he was not so drunk but he brushed it off.
- Issues with Joel at work have been, Sleeping in the trucks, coming in late often, taking days off. The attendance issues have been discussed with Gina Nel and Glen Perron, both occasions the recommendation was to put Joel on an Attendance management plan, I did not feel comfortable doing that as a step up and I feel it was the supervisors responsibility/Duty

- Joel also has a habit of calling people names, I've been referred to as Boofhead Wog (which I told Joel I didn't like it and found it offensive) I've been called the Arab, I've been referenced as 2IC Housecat (jokes about drinking all the milk) Joel has made mockery of me doing step up work since I first started doing it almost 8 years ago.
- The day prior the event Andrew Boulten said to me working with Joel is torture and you're guilty by association. He said it was difficult to get Joel to try and work with the crew or even have crib with the crew.
- The day prior our Truck (silva and I) had a mechanical failure and were told to take the truck to the workshop and wait for it, whilst waiting Joel and Andrew arrived and told the Fitters the CRI light was on. Talking to Andrew he informed us that the light was on earlier but had cleared and Joel made the comment, they're working on the other truck we can sit in the AC until they check. This was discussed with Gary
- Joel has made many Drunk calls usually in the evening I have been told by Adam Schloss (manager at Peak Downs was our superintendent), Murray Bruhns, Gary Rawlins, Bruce Beasley and other crew members that they recently have all received drunken calls from Joel.
- Joel didn't go to the high risk lifting course because he believed enough people had the skill. He sent Gary a late night text. After taking the first day off for the course. Joel made drunk calls that evening and he was advised to let Gary know he wasn't attending. I told him that Kimba said he wasn't going to do the course and he was told he would be off the dayshift role.
- No D&A tests were done on the day of the event, unsure if required? It was suggested to me that Joel may not have passed. Referencing times Joel has turned up to work presumed drunk and allowed to stay in crib hut until later in the day.
- Watercart Will (Joels best mate outside of work) was talking about the event in the crib hut saying he was a key witness, I received a call from Mick Fordyce saying Will is in the crib hut every time he tells the story it changes, he said that I got Joel in a Headlock which I did not. If Will made a statement which I presume he did, he should not be talking about the event and furthermore where Will was positioned sitting in the northern end of the crib hut table he would not have been able to see what happened. The only people I believe that would of got full view of the event were Rob Chelepy and Andrew Boulton
- Apparently Joel has been sending his statement to crew members, I received a call from Rob Chelepy saying Joel sent his statement to him but he refused to read it. I told him to tell Gary about it as that information should be confidential
- On The day of the event Joel and Will went to Gollys house late in the evening both of which were heavily intoxicated, apparently Will wanted to apologise for a incident that happened several years ago, Golly told them to leave and not return. I believe they went around there to persuade Golly to side with Joel.
- After leaving Gollys house they went to Rossi's house and walked straight through his house, Rossi was in his bedroom in underwear and his wife was in the backyard feeding the dogs. Rossi was not impressed with them walking through his house without knocking or being invited in.
- The event was spoken about in prestarts and in particular, the morning after the day of the event, my wife Natalie was at the gate to leave when a CPH water cart operator asked her if her husband was one of the pumpies involved in the 'punch up' he said it was discussed in their pre start and both the blokes have been terminated. I sent a concerned text message to Gary about this, Gary called me and said mate its a coal

mine you can't stop the rumours. I said Gary it shouldn't be spoken about in pre starts and I asked him how did Cori find out about it?

- Recently I was doing a 1 on 1 with Gary for Career development, Gary asked what skill I would like, I told him id like the Drone skill as my offsider Craig has it and it would make sense the both of us have it in case either were away, Gary cut me off short and said no I've already promised that to Joel. I then asked if I could get the excavator skill again I was told Joel was in front of me. I told Gary this is ridiculous, Joel takes heaps of time off work and is barely interested in doing anything when he is there. I was told you know Joel has issues and he's a alcoholic. I told Gary this is meant to be about my career development and you've basically said Joel gets priority.
- When I have spoken to Gary about issues with Joel when I an step up he says just make notes and ill deal with it. To date Gary has not once taken any notes I have left for him about anything.”

**[51]** The Respondent’s notes of the interview of 17 February 2025 record the following pertinent statements. Not all of the record of interview is included below due to the length of the document:

- “Boltsy said that they will be going to Pontoon Checks and Joel said to me what about you, Boofead Cunt. I responded with “what did you call me?” Joel replied a Boofhead and I reacted and threw my cup, and I know that was wrong and I am embarrassed about it and this is where I think the story is mixed up a little it. And it was kind of a blur from that period on and was unsure of what happened next and I called you Glen as I wanted to amend my statement because I gathered my thoughts and knew exactly what happened from that point. It went around my head a million times and I don’t stop thinking about it. I got up and I walked around to get my cup, and Joel was still standing in the doorway and didn’t move and as I got towards my cup he came towards me, a couple of steps and as to whether I grabbed him first or he grabbed me first I don’t really know. But I grabbed him by the shirt around the collar and said lets go down the stairs and he pushed back on me and it was like a push pull scenario to get him out the door and he grabbed onto the rail the hand rail on the outside. If you go and sit in the crib hut you will see what I mean by positioning because if you are standing on the platform you cannot see, unless you are sitting on the end of the table.”
- “While we were standing there I was telling him I have had enough of you mate, and Chelepy jumped up and came around and kept saying to me Rob, calm down calm down he is not worth it. He is not worth it. Calm down Calm down and then I let go and he kind of. Sorry I missed a bit there, Joel was trying to get underneath my arm, I had him by the shirt and he kind of went under my arm to come back into the crib hut and I let him go and then when we came back inside we were standing near each other and I said to him “Joel I am sick of it I can’t handle this I can’t handle this anymore. Your smartarse mouth I can’t handle the insults you throw at me I can’t handle you refusing to do work, I hate the fact that no one on this crew can talk to you because all you want to do avoid everything that we do. You are not even part of the crew mate. Joel didn’t even respond to me he didn’t say anything. Joel then walked out the doorway and

went downstairs and I sat down to calm down a bit. I was angry, I was very angry and the boys were all saying to me calm down man it is jut not worth it and I said I know.”

- “... I went downstairs and I was walking towards the car right next to Joel and he said stay away from me and I said Joel calm down and he said no stay away from me...”
- “...everyone was hounding me about the 7/7 talk the crib hut and what are we doing about it like it is all my problem. Joel really upset me the day before because he has been saying that he wants 7/7 since he came from maternity leave but now apparently his partner has changed roster and stated that we cannot let them put up on 7/7 this is bullshit you know. I said to Joel you were the only person that I know wanted 7/7. Not now things have changed my wife job has changed...”

[52] On 5 March 2025, Mr Oram had a meeting with Mr Perren and Mr Mobbs. Mr Mobbs had taken over from Mr Regan. Mr Oram again had a union representative present. During the meeting, Mr Oram was given a show cause letter. The letter is reproduced below:

“Dear Rob,

I refer to our meeting on 17th of February 2025 regarding the Company's investigation into the allegations about your conduct which occurred on Sunday the 26th of January 2025. Glen Perren (Mine Services Superintendent), Jonathan Regan (Manager Production Coal), attended this meeting. Simon West also attended this meeting as your Representative.

### **Findings**

The investigation is now complete. The investigation has found that:

On the 26th of January 2025 you behaved in an inappropriate and disrespectful manner towards Joel McCallum while in crib hut in the Pump Shed. Specifically, it is alleged that you:

- a) Threw a coffee mug at Joel McCallum with enough force that the mug damaged the crib hut wall when it missed Mr McCallum;
- b) Followed after Mr McCallum as he was exiting the crib hut and grabbed him by the collar around the neck;
- c) Tried to pull Mr McCallum downstairs and spoke aggressively in a loud voice, asking him to go downstairs with you and saying words to the effect of "*let's go downstairs and finish this discussion*" whilst Mr McCallum was asking you to let go of him and holding onto the rail to stop you from pulling him down the stairs and sating to the effect of "*you are choking me*".

### **Breaches**

Based on the findings of the investigation, I have concluded your actions constitute misconduct and are in breach of Company policies and procedures, including:

- BHP Code of Conduct, specifically:
  - A healthy and safe workplace: "You prioritise physical and psychological safety and wellbeing";
  - Respect for all: "You respect one another, are confident about what's not acceptable, challenge behaviour that doesn't align to Our Values, and speak up with any concerns".

We understand that throughout the investigation you have accepted responsibility for your actions and have shown remorse. However, your conduct and behaviour are not in line with our Company policies and procedures and its expectations of employees in the future.

The Code of Conduct clearly states that harassment and bullying have no place at BHP, and this includes unwelcome behaviour that offends, humiliates or intimidates a person. The Code of Conduct also states that Bullying directed towards a worker or group of workers that a reasonable person, having considered the circumstances, may see as unreasonable, including victimising, mocking, humiliating, intimidating or threatening behaviour, displaying or sharing offensive material.

### **Outcome Show Cause**

I have taken all relevant matters into account, including the findings of the investigation, relevant information obtained during the investigations and your employment history in determining the appropriate outcome.

Robert, this is an extremely serious event. In the circumstances, the Company is considering disciplinary action against you, which might include the termination of your employment. Before deciding the appropriate outcome, I would like to provide you with an opportunity to consider the findings of the investigation and to provide any further information you want me to consider.

You are invited to provide a written response to show cause as to why your employment should not be terminated. Please provide your written response to me via email [email] by **4:00pm on Thursday the 13th of March**. If you do not provide any written response by this time, I will have no alternative but to make a decision in relation to your employment based on the information presently available.

### **Employee Assistance Program**

I understand that this may be a difficult time for you. I wish to again extend to you the offer of any assistance you may require regarding this matter and remind you that the Company's Employee Assistance Program (EAP) is available to you. They can be contacted on [number].

### **Confidentiality**

Please also remember that the investigation and the outcomes are confidential. You must not discuss it with any other employee (except someone who is acting as a support person for you).

Please note, you remain on stood aside on full pay until further notice.

If you have any questions or wish to discuss this matter, please contact me on [phone number]

Yours sincerely

**Glen Perren  
Superintendent Mine Services”**

[53] Mr Oram provided the following response to the show cause request:

“Dear Glen,

Thank you for the opportunity to respond to the show cause letter that was given to me on 10th of March 2025 alleging that I breached the BHP Code of Conduct. Firstly, I would like to apologize for my reaction and any hurt or offense that I have caused. I am embarrassed and remorseful from my reaction on the 26th of January. It was uncharacteristic and it has caused me to reflect and to ensure that it will never happen again. With this opportunity it is my intention to take up the offer of providing additional information that I wish you to consider prior to making your decision in respect to what form of disciplinary action you may deliver upon myself.

On the morning of the incident my supervisor asked me if I was ok, I replied ‘No, I wasn’t’. I suffer from reflux, and I have been taking pantoprazole, I wasn’t aware until after the incident that this medication causes mood swings. My doctor has since changed my medication to esomeprazole 20mg (Nexium). I can provide evidence from my doctor supporting this if required.

I admit that I did throw my coffee cup in the direction of Joel McCallum. I take full responsibility for my actions; this mistake and lapse of decision making is out of character. I did this out of frustration towards him and his mannerisms on that morning after he called me a “boofhead cunt”, when a fellow colleague explained to him that he had to do a certain job with myself and another work college.

I did not put him in a headlock or try and drag him downstairs and I did not say “Let’s go downstairs and finish this conversation”. These allegations are false. I just said “let’s go downstairs” but I did not say this as a threat. After I threw my coffee cup, I went to collect it and Joel came at me, leading with his shoulder and I reflexively grabbed his shirt and push/pulled him to defend myself. He then grabbed my shir.

I would like to give some context about the trouble and stress that Joel has caused to me, my family, my crew and my workspace at Goonyella Riverside mine. In short Joel has been a pest to me, my family and my work colleagues, Joel has called me and other

work mates when he was drunk on many occasions including supervisors and superintendents sometimes being verbally abusive. Joel has walked around under my house drunk and uninvited, scaring my young daughter and family. My son had to drive him home. At work Joel is a lazy crew member and has on many occasions slept in utes and trucks not doing the work he should and leaving the rest of us to pick up his slack. Other members of the crew have in the past, put complaints in about Joel, only to be told without documentation there was nothing they could do. I know of one colleague in particular who has diary notes with documentation about Joel and his antics at work. Joel has continually called me names, with some name calling very racist and I have told him to stop as I didn't like it. Joel has continually made mockery of me for performing the step-up role.

I understand that none of this excuses my behaviour and I acknowledge that it is never appropriate to throw a mug in the direction of another person at work. I am adding this context to explain the build up of events that led to my frustration that morning. I know that I should have just told Joel that his comment was offensive and inappropriate. I have learnt from this incident and will ensure that I respond appropriately if I ever find myself in this position again in the future.

During my 10 plus years employment at Goonyella Riverside BMA, I feel I have given so much to the company. I have done countless overtime, not only for my own department at the time but other departments I don't usually work for (most recently working back to 9pm to help the wash plant try to clear water that was blocking the Rom). I really have given blood, sweat & tears to this company and for my fellow workers/departments. I have worked hard over the years to get where I am, over that time I have been recognized for my hard working and safe attitude to get the jobs done.

I don't talk about it a lot but my attitude towards safety and productivity is second to none. My attendance during my time employed by BMA at Goonyella Riverside Mine is also of a very high standard.

Also, during my 10 plus years I have helped and trained countless operators and mentored the upcoming younger generation. During this time in the earlier years, I've taken on a supervisor's rolls, making connections with other departments to boost the productivity and help the department I'm dealing with at the time. Over the years my attitude to help others achieve their goals has spread through most of site, from workshop to the pit. I take so much pride in my work; I seek to better myself / learn more from my fellow workers mates.

I would dearly like to continue my employment with BMA at Goonyella Riverside Mine and termination would have a crippling effect on myself and my family that rely on me to make a living to support them, my family and I reside in Moranbah, and we rely on the interest subsidy to pay for our home, termination would cause me to also relocate away from Moranbah.

I would like to thank you for considering my response to the show cause request. I look forward to discussing the matter further and finding a resolution that will allow me to continue contributing to the company.

Sincerely

Rob Oram”

[54] Mr Oram was dismissed on 18 March 2025. The following termination letter was issued to him:

“Dear Robert,

### **TERMINATION OF EMPLOYMENT**

I refer to the meeting held with you on 10th of March 2025 attended by you, Dominic Hobbs [sic] (Manager Production), and Glen Perren (Mine Services Superintendent). You were provided the opportunity to bring a support person to this meeting, and Simon West acted in this capacity for you. During the meeting, we discussed the findings of an investigation into the following serious allegations:

*On the 26th of January 2025 you behaved in an inappropriate and disrespectful manner towards Joel McCallum while in crib hut in the Pump Shed. Specifically, it is alleged that you:*

- a) Threw a coffee mug at Joel McCallum with enough force that the mug damaged the crib hut wall when it missed Mr McCallum;*
- b) Followed after Mr McCallum as he was exiting the crib hut and grabbed him by the collar around the neck;*
- c) Tried to pull Mr McCallum downstairs and spoke aggressively in a loud voice, asking him to go downstairs with you and saying words to the effect of "let's go downstairs and finish this discussion" whilst Mr McCallum was asking you to let go of him and holding onto the rail to stop you from pulling him down the stairs and saying to the effect of "you are choking me".*

During the meeting, we confirmed the process undertaken to investigate these allegations and discussed the findings with you. The investigation included a previous meeting on 17 February 2025, the purpose of which was to raise the above concerns with you and hear your response.

Following completion of the investigative process, it has been determined that the allegations outlined above are established. Whilst your remorse for the circumstances is noted, and your responses have been duly considered, unfortunately they do not justify your actions.

The BHP Code of Conduct (**Our Code**) iterates the expectation that all employees are responsible for "*acting in accordance to Our Code at all times, understanding our Requirements and local standards and procedures that apply to how we work.*" As an employee, you are accountable for ensuring that you conduct yourself in accordance with Our Code at all times in the workplace. During the investigation, we note that you confirmed your understanding of Our Code.

Your actions on the 26th of January 2025 were totally unacceptable and constituted serious breaches of the Code Conduct.

During the meeting held on 10<sup>th</sup> March 2025, we advised that we proposed to terminate your employment due to the above established conduct and breaches of Our Code. You were provided with an opportunity to show to the above established conduct and breaches of Our Code. You were provided with an opportunity to show cause as to why this course of action would not be appropriate and were provided time to put forward any further information you believed we should take into consideration in making a decision about your ongoing employment. We have reviewed the information gathered during the investigation and your responses. You have not provided us sufficient reason to justify your continuing employment with the Company. Your employment with BHP will be terminated effective today the 18<sup>th</sup> of March 2025, with five weeks' pay in lieu of notice. In making our decision, we have considered your length of service, past performance and disciplinary history.

In effecting your termination, you will also be provided payment for any accrued and unused leave you may be entitled to. Details of your termination payments will be provided to you separately.

After your employment ends, you must not disclose to anyone any confidential information about the Company. You also remain bound by all other obligations in your contract of employment and associated documentation, which are expressed to continue after the termination of your employment.

Robert, we advise that we have extended your access to the Employee Assistance Program, for three months post your termination of employment until 18<sup>th</sup> June 2025. The EAP can provide confidential professional counselling to you and your immediate family. Our EAP provider is BSS Corporate Psychology Services. They can be contacted on [number].

Yours sincerely

**Dominic Mobbs**  
**Manager Production**

*Evidence given during the hearing*

[55] Despite Mr Oram's written evidence stating that on the morning of the event on 26 January 2025, he said, "This place is fucked",<sup>1</sup> in evidence given during the hearing he now denies having said that.

[56] It was put in cross-examination that at the prestart meeting, upon learning that the 7/7 roster was going ahead, he asked Mr Beets if he knew of any jobs going, as Mr Beets works for a contracting employer, not the Respondent. Mr Oram agrees that he said that to Mr Beets, and said that he was serious, but now says it was said in jest.

[57] In cross-examination, Mr Oram conceded that his reply statement to the Commission in these proceedings references at paragraph 6 that Mr McCallum called him a “boofhead” on 26 January 2025. He stated that he inadvertently omitted the reference to “boofhead cunt”.

[58] In cross-examination, and consistent with his earlier evidence, Mr Oram stated that he threw his metal coffee cup at the wall after he said to Mr McCallum, “What did you call me?”. In evidence, he stated that he had lost his cool and it is a blur; it is hard to remember what happened. He stated that he does not recall throwing the cup, but he knows that he did.

[59] Mr Oram described when he was on the top landing on the stairs outside, Mr McCallum was one step down with one hand on the handrail.

#### *Events following termination*

[60] Mr Oram requested the opportunity to offer Mr McCallum an apology but was told by Mr Rawlins that he was not permitted to speak to Mr McCallum. He stated that had he been offered the chance, he would have personally apologised to Mr McCallum.

[61] Mr Oram was in contact with Mr Beets following his dismissal. Mr Beets then offered Mr Oram a job as a pump supervisor with TWM, the contracting company he works for. Mr Oram accepted this offer.

[62] In his new job, Mr Oram works an 8/6 day shift roster. He earns a gross annual salary of \$162,240.00. When he was employed with the Respondent, his gross annual salary was \$170,773.20. Therefore, as a result of his dismissal, Mr Oram stated he has lost the following:

- a) yearly earnings of \$8,533.20 while working an additional 12-hour shift per fortnight;
- b) a housing allowance of \$16,000 per annum;
- c) a coal bonus of \$15,000 per annum; and
- d) a higher responsibility allowance for being a Trainer/Assessor of \$5,200 per annum.

[63] Mr Oram wishes to be reinstated to his former role with the Respondent. He stated that while he accepts that he did the wrong thing and should not have lost his temper, it was a one-off incident that was not reflective of his character and his normal behaviour at work. He stated that since changing his medication, he no longer feels like the issues he had been experiencing, including Mr McCallum’s provocation, would cause him to react in the same way again.

#### **Mr Gollschewsky’s evidence**

[64] Mr Gollschewsky has been employed by the Respondent since 2000. He works as a Plant Operator. He occasionally works with the Pump Crew and has worked with Mr Oram.

[65] Mr Gollschewsky recalled that on 26 January 2025, his crew was moody and upset about the proposed 7/7 roster. Around this time, Mr Perren was on leave. Mr Gollschewsky stated that Mr Perren had said that they were to have their own vote on the roster but that they would be voting alongside a larger group of employees, including some who supported the roster change. The crew was also upset about the new crib room.

[66] At the end of the pre-start meeting on 26 January 2025, Mr Rawlins asked Mr Oram how he was. Mr Oram looked upset and said words to the effect of, “I’m fucked and I don’t want to be here.” Mr Oram then walked out of the meeting. Mr Gollschewsky recalled that Mr Oram was “quite moody” and appeared that he genuinely did not want to be there.

[67] The crew then went to the crib room. Mr Oram, Mr Chelepy, Mr Boulton and another person whom Mr Gollschewsky does not recall were sitting together at a table. Mr Gollschewsky was sitting at the other end of the table with Mr McKerihan, with his back to the entrance to the crib room.

[68] Mr Oram and the others were talking about their upcoming shift, but Mr Gollschewsky was not paying close attention to their conversation as he was using his phone. He recalled that Mr Chelepy was speaking about how he did not have the required CPR competency to complete the pontoon task. Mr McCallum was somewhere behind him at that time. He then heard somebody ask about the pontoon task.

[69] The next thing he heard was a bang that sounded like a door slamming, and something hitting the floor behind him. He turned around and then saw a coffee cup on the floor. He then observed Mr Oram standing up and saying, “What did you call me?”. He saw Mr Oram looking at the doorway towards Mr McCallum, who was standing in the doorway.

[70] Mr Oram then walked around the table and repeated himself. Mr Gollschewsky stated that Mr Oram “was not quite shouting” but “sounded quite angry” with Mr McCallum. Mr Gollschewsky did not see Mr McCallum, who was behind him.

[71] Mr Gollschewsky stated that he did not pay much attention to the events that followed and returned to his phone. He said he heard Mr Oram say something to the effect of, “Let’s go downstairs.” Mr Gollschewsky did not turn around to check, but it sounded to him that Mr Oram and Mr McCallum were out of the room and had gone downstairs. Mr Chelepy and Mr Boulton then left the table to break up the altercation.

[72] Mr Gollschewsky estimated that Mr Oram and Mr McCallum were arguing for a few seconds before they came back inside. Mr Oram returned to his seat and Mr McCallum went behind Mr Gollschewsky and to his bag, before leaving a few seconds later.

[73] A few minutes later, the rest of the crib room left to commence work. Mr Gollschewsky did not think much more about the incident as he did not consider it important. Approximately one hour later, Mr Rawlins called Mr Boulton and Mr Gollschewsky to give a statement about their observations of the incident. When giving his statement, Mr Gollschewsky became aware that Mr Oram had been stood down. He asked Mr Rawlins whether Mr McCallum was also being stood down. Mr Rawlins replied that Mr McCallum did not do anything wrong. Mr Gollschewsky stated that he asked Mr Rawlins how he knew that Mr McCallum had not done anything wrong without having undertaken an investigation. Mr Gollschewsky understands that Mr McCallum was stood down shortly afterwards. When Mr McCallum reappeared at work, the crew was not told what was happening with Mr Oram and why Mr McCallum had returned. He asked Mr Perren where Mr Oram was and was told it was none of his business. Shortly afterwards, Mr Gollschewsky learned that Mr Oram had been dismissed.

[74] Mr Gollschewsky's incident report, completed by Mr Les Bentlin on Mr Gollschewsky's behalf, is as follows:

“Sitting inside the pump shed after the pre start had been completed replying to b'day messages on my phone before heading out to perform our tasks. I heard Rob say to Joel what did you say. I had my back to the conversation but I believe Rob walked outside. I could hear a heated discussion outside but was far enough awa that I couldn't hear what was being said. The next I seen was the pair of them walk in and go different directions.”

### **Mr McKerihan's evidence**

[75] Mr McKerihan commenced employment with the Respondent in December 2004. He had previously been a trainee and contractor at the Mine since 2002. He was transferred to the Pump Crew approximately 12 years ago. He worked regularly with Mr Oram, who occasionally acted as his supervisor.

[76] Mr McKerihan recalled that during the 26 January 2025 pre-start meeting, Mr Rawlins was discussing that the results of a vote undertaken indicated that the crew was going to move to a 7/7 roster. Mr McKerihan had not been present for the vote as he had recently returned from parental leave. He stated that everyone was not happy about the decision, and they had previously expressed to the Respondent that they did not want to move to this roster.

[77] Mr McKerihan stated that Mr Oram was more unhappy than most. At the end of the meeting, Mr Rawlins asked Mr Oram if he was OK. Mr Oram responded that he was not happy with the new roster, and he left the meeting. Mr McKerihan and others followed Mr Oram out and they went to the crib room. Mr McKerihan sat at a table opposite Mr Gollschewsky, facing the doorway. Mr McKerihan was using his phone at this time. He saw Mr McCallum enter from the smoking area. Mr McKerihan stated that he was not paying much attention but thinks that Mr McCallum said something to the other crew members, who were discussing the day's work.

[78] McKerihan then heard Mr Oram say loudly, “What did you say to me?”. Mr McCallum walked out the door, followed by Mr Oram. The door was then closed. Mr McKerihan estimated that they were outside the room for less than 30 seconds before returning. Mr McKerihan believed that Mr Chelepy stood up but could not recall if he went outside.

[79] When Mr Oram and Mr McCallum returned, Mr McKerihan stated that they were speaking to each other with raised voices, but he could not recall what was said. They finished quickly, and everyone then went to work. When he was exiting the room, Mr McKerihan noticed a hole in the wall at the height of the door handle. Mr McKerihan stated that he recalled a later conversation with Mr Oram who told him that he had thrown a coffee cup, which created the hole. Mr McKerihan could not recall the date of this conversation.

[80] At approximately 9:30am, Mr McKerihan and Mr Gollschewsky received a call from Mr Rawlins, asking them to provide a statement. Mr McKerihan made a statement at the office and then returned to work. Upon returning to the crib room in the afternoon, Mr McKerihan saw the hole in the wall being repaired.

[81] Mr McKerihan recalled that Mr Oram was stood down that day, pending an investigation. Mr McCallum was stood down afterwards, but Mr McKerihan did not recall when. Mr McKerihan did not recall hearing anything further about the incident until he learned from Mr Oram that he had been dismissed.

[82] Mr McKerihan's incident report is as follows:

“Was sitting checking phone image. Heard Rob say something like what did you say then Rob walked outside. The door was closed and could not see or hear anything.”

### **Mr Chelepy's evidence**

[83] Mr Chelepy has been employed by the Respondent for approximately four years and worked with Mr Oram in the Pump Crew.

[84] On 26 January 2025, the proposed 7/7 roster was being discussed. The crew was upset as they did not wish to work the 7/7 roster, but the voting cohort was large so they could be outvoted.

[85] During the pre-start meeting where jobs were assigned by Mr Rawlins, Mr Oram was asked if he was OK. Mr Oram replied with words to the effect of, “No, I'm not alright, Gary.” Everyone then went to the crib room. On the way, Mr Chelepy said to Mr Oram, “If you're not OK, Rob, go home.” Mr Oram responded with words to the effect of, “No, I don't want to leave the crew short.”

[86] When they arrived at the crib room, Mr Chelepy sat next to Mr Oram, facing the doorway. Mr Boulton was sitting on Mr Chelepy's right, and Mr Gollschewsky and Mr McKerihan were at the other end of the table. Mr Chelepy was discussing the upcoming shift. He said that he could not do the pontoon job because he did not have CPR certification. He recalled saying that Mr McCallum and Mr Boulton could do this task, as they had worked together the previous day. At this time, Mr McCallum walked past, and Mr Chelepy said to him that he could do the pontoon task. Mr McCallum then said words to the effect of, “Why can't this dickhead do it?”, pointing at Mr Oram. Mr Chelepy replied that it made sense for McCallum and Mr Boulton to do the job, as they had done it yesterday.

[87] Mr Chelepy stated that Mr Oram then said, “Stop being last, Joel”, while Mr McCallum was walking out of the room. Mr McCallum then said something that Mr Chelepy could not hear. Mr Oram then yelled out, “What did you say?”. Mr Oram then threw the cup he had in his hand. The cup hit the wall next to the door, made a dent in the wall and fell onto the ground. At this point, Mr McCallum had turned around. He was standing outside the room, holding the door open. Mr Chelepy then observed Mr Oram stand up, walk towards the cup and pick it up as Mr McCallum was re-entering the room. Mr Chelepy stated that Mr Oram and Mr McCallum were yelling at each other, but he did not recall what they were saying.

[88] Mr Oram grabbed Mr McCallum's shirt. He said words to the effect of, “Let's go downstairs”. Mr Chelepy stated that Mr Oram pulled Mr McCallum's shirt in an attempt to force him downstairs. Mr Chelepy stood up and walked around the table, hoping to de-escalate the situation. By the time he reached them, Mr Oram had let go of Mr McCallum and had moved

back inside. Mr McCallum then went downstairs. Mr Oram and Mr Chelepy then sat down together.

[89] Mr Chelepy asked if Mr Oram was OK. Mr Oram said that he should not have done that, but Mr McCallum had annoyed him. Mr Chelepy told Mr Oram that it would be alright, but that he should calm down. A short time later, they left to commence work.

[90] Approximately 45 minutes later, Mr Chelepy received a call from Mr Rawlins, asking for a lift to where Mr Oram was working, Mr Chelepy went to Mr Oram and asked him what was going on. Mr Oram said that it was probably related to incident that occurred that morning. Mr Chelepy stated that he did not think this was correct, because he did not consider it to be a big deal, and considered that Mr Oram and Mr McCallum would have worked it out later in the shift.

[91] At about 12:00pm, Mr Chelepy was called to the office to provide a statement with Mr Gollschewsky and Mr McKerihan. At the office, Mr Rawlins said that Mr Oram had been sent home. Mr Chelepy recalled Mr Gollschewsky asking if Mr McCallum had also been sent home. Mr Rawlins said he had not. Mr Chelepy became aware that Mr McCallum was stood down soon after. Mr Chelepy then returned to work. He does not recall the matter being spoken about again, and he was not invited to participate in any further investigation.

[92] Approximately one month later, Mr McCallum reappeared at work without notice or explanation. During a pre-start meeting, Mr Chelepy recalled that somebody asked Mr Perren what had happened. Mr Perren said that the matter was still under investigation, and he could not comment. Mr Chelepy was already aware that Mr Oram had been dismissed at this time.

[93] Mr Chelepy's incident report is as follows

“Discussed daily plan when Joel used a statement towards Rob. I could hear the tones in the voices that Rob had taken offence to the statement. Joel started walking away and out the door looking at Rob then Rob threw his coffee mug and got up and walked towards Joel telling him to repeat what he said and let's go downstairs. Rob and Joel were on the stairs and I got up when I saw it escalating and I wanted to defuse it. Once I got to Joel and Rob they had separated and walked away from each other.”

[94] In evidence given during the hearing, Mr Chelepy stated that both Mr Oram and Mr McCallum were talking very loudly during the incident, noting that Mr Oram stated, “What did you say? What did you call me? Say that again.”

[95] Mr Chelepy was not paying attention to where the mug was after it had been thrown. He saw Mr Oram bend down to pick it up but noted it was possible Mr Oram did not pick it up. He stated that Mr McCallum walked a couple of steps and Mr Oram grabbed Mr McCallum by the shoulder.

### **Mr Boulton's evidence**

[96] Mr Boulton has been working at the Mine intermittently since 2013. In the past few years, he has been in the same crew as Mr Oram. Mr Boulton is employed by Workpac.

[97] On 26 January 2025, when Mr Boulton walked into the pre-start room, he noticed Mr Oram “looked a little down”. He considered that the 7/7 roster issue and the change of crib rooms were starting to affect Mr Oram. Towards the end of the pre-start meeting, Mr Boulton recalled somebody asking Mr Oram if he was OK. Mr Oram said that he was not OK. Mr Boulton thought that this was out of character for Mr Oram, as he is normally upbeat in the mornings. Mr Boulton recalled that Mr Oram said words to the effect of, “This place is stuffed.”

[98] Everyone then left the pre-start meeting and walked to the crib room. Mr Boulton went to make a coffee and then sat at a table with Mr Oram, Mr Chelepy, Mr McKerihan and Mr Gollschewsky. Mr Boulton was sitting at the end of the table, looking towards the smoking area. The entry to the crib room was to his right, and Mr Oram was to his left. The men were discussing the upcoming work for the day, including who was going to perform certain tasks.

[99] Mr Boulton observed Mr McCallum walking into the crib room from the smoking area. Mr Boulton said to Mr McCallum that they were going to have to move people around on the pontoon. He stated that Mr McCallum responded by speaking directly to Mr Oram, saying words to the effect of, “What’s that boofhead doing?”. Mr Boulton considered that Mr McCallum’s tone was such that he was trying to provoke a reaction from Mr Oram. Mr Boulton heard Mr Oram respond, “What did you call me?”. Mr Boulton was looking towards the door and could see Mr McCallum, but in his peripheral vision could see Mr Oram stand up and move around the table towards the door where Mr McCallum was standing. Mr McCallum was standing outside the door but turned around and re-entered the room to meet Mr Oram, who was now near the doorway. They met in the doorway.

[100] Mr McCallum had his hand in the doorway and Mr Oram was chest-to-chest with him. Mr Boulton stated that Mr Oram was yelling at Mr McCallum to go downstairs, and Mr McCallum was shouting back, saying that he was going to remain where he was. Mr Boulton recalled that Mr Oram and Mr McCallum were swearing at and about each other. Mr Boulton estimated that this lasted about 20 seconds. Mr Chelepy then stood up and pushed Mr Oram and Mr McCallum apart. Mr Boulton did not recall what Mr Chelepy said to them, if anything at all.

[101] Mr McCallum went downstairs, and Mr Boulton followed him to check if he was OK. As he was exiting the crib room, Mr Boulton noticed a coffee cup on the ground and a hole in the wall. Mr Boulton did not see Mr Oram throw the cup but recognised the cup as the one that Mr Oram uses, so Mr Boulton assumed that Mr Oram had thrown it.

[102] As they were ready to leave, Mr Oram went downstairs to get into his truck, walking past Mr McCallum in the process. Mr Boulton heard Mr McCallum say something to the effect of, “Don’t come near me.” When they were in the truck together, Mr McCallum said to Mr Boulton that he was going to report what had happened to Mr Rawlins. Mr McCallum wanted to know what Mr Boulton thought. Mr Boulton said that Mr McCallum might want to calm down first. However, Mr McCallum was adamant that he wanted to report the incident. They drove to the office, and Mr McCallum reported to the incident to Mr Rawlins.

[103] When travelling to the work site, a call came over the radio for the permanent employees to go to different crib rooms to make statements. Mr Boulton was not asked to provide a

statement, and he went to commence work. He did not see Mr McCallum or Mr Oram for the rest of the shift. At the end of the shift, Mr Boulton spoke to Mr Rawlins about providing a statement. Mr Boulton stated that as a contractor, he did not want to make a statement, but told Mr Rawlins that he would if required.

[104] Mr Boulton did not hear anything further about the incident until 6 May 2025, when Mr Perren asked him to provide a statement, which he did. By that time, he recalled being told that Mr Oram had been terminated, but he does not remember when this was said and by whom.

[105] In evidence given during the hearing, Mr Boulton recalled Mr Oram saying to Mr McCallum, “What did you say? Say that again!” He recalled that during the altercation, Mr Oram was blocking the door. He did not hear Mr McCallum say “boofhead cunt” to Mr Oram, only “boofhead”.

[106] He also stated that the doorway was blocked by Mr Oram, and once Mr Chelepy intervened there was lots of people in the doorway.

### **Mr Beets’ evidence**

[107] Mr Beets has worked intermittently at the Mine since November 2023. He knows Mr Oram and has worked alongside him at the Mine. When Mr Oram’s employment was terminated, Mr Beets recommended that TWM, his current employer, hire him.

[108] On 26 January 2025, Mr Beets first saw Mr Oram and the crew at the crib room. Mr Beets recalled that there appeared to be a lot of tension amongst the crew; they looked “unhappy and pissed off”.

[109] Mr Beets recalled asking Mr Oram what was happening. Mr Oram responded by asking Mr Beets whether there were any jobs available at TWM. Mr Beets initially thought Mr Oram was being sarcastic and responded by saying that TWM would not be able to afford him. Mr Oram then said he was serious and told Mr Beets that they were moving to a 7/7 roster, despite having earlier been told that they would not be moving to this roster. In evidence given during the hearing, Mr Beets said Mr Oram seemed serious about wanting a job with TMW because of the likelihood of the 7/7 roster being introduced.

[110] Mr Beets then left and went to the smoking area.

[111] While in the smoking area, Mr Beets heard shouting and noise coming from inside. He went back inside and saw Mr Oram and another person, who he now knows to be Mr McCallum, face-to-face in the doorway. Mr McCallum “had his fists raised and was quite excited” and was shouting at Mr Oram telling him to calm down and that Mr Oram was choking him. Mr Oram responded that he did not try to choke Mr McCallum. Mr Beets then saw another employee separate them. Mr Oram then went and sat down. Mr McCallum paced around and was swearing at Mr Oram. Mr Beets described Mr McCallum as “quite upset and antagonistic”.

[112] Mr McCallum then left the crib room. Mr Oram had his head down in his hands. Mr Beets went over to check if Mr Oram was OK. Mr Beets stated that Mr Oram looked exhausted

and said that Mr McCallum was lazy and that this incident was brewing and was bound to happen. They then left the crib room shortly afterwards.

[113] At the end of his shift, Mr Beets approached Mr Rawlins and asked if he needed to provide a statement. Mr Rawlins said that he hated dealing with this. Mr Rawlins did not ask Mr Beets for a statement.

[114] Over the following weeks, Mr Beets spoke with Mr Oram and checked up on him, as Mr Oram had been stood down. Mr Oram would often say that his behaviour was unlike him and that he could not believe what he had done.

[115] When Mr Oram was dismissed, he called Mr Beets and told him, as Mr Beets had asked Mr Oram to keep him updated. Mr Beets asked Mr Oram if he wanted to work for TWM, and Mr Oram said he would. Mr Beets then arranged for Mr Oram to be employed by TWM.

## **EVIDENCE OF THE RESPONDENT**

### **Mr McCallum's evidence**

[116] Mr McCallum has been employed by the Respondent as a Pump Crew Operator since April 2012. He worked with Mr Oram for over 10 years. They enjoyed what Mr McCallum considered to be a good personal and professional relationship prior to 26 January 2025. Mr McCallum stated that he and Mr Oram interacted daily on shift, and from his perspective, got along well. Mr McCallum stated that he went on camping trips with the crew, including Mr Oram, most recently in early-2024. They travelled overseas in 2017, and in June 2024, Mr Oram asked Mr McCallum to visit his home to help with electrical work while Mr McCallum was on parental leave.

[117] Mr McCallum stated that he was surprised and seriously affected by the incident with Mr Oram. He had no prior conflict with Mr Oram and did not see the incident coming.

[118] Mr McCallum denied that he mocked or degraded Mr Oram, including when Mr Oram was acting as his supervisor. Mr McCallum stated that he thought Mr Oram was good in the role and seemed to enjoy it. He further denied that he ever used any racist language towards Mr Oram or anyone at work. He stated that he never referred to Mr Oram as a "boofhead wog", "wog", or "Muslim". Mr McCallum accepted that he occasionally jokingly referred to Mr Oram and others using terms such as "boofhead". Mr McCallum described this as "light-hearted".

[119] On the day of the incident, Mr McCallum said to Mr Oram words to the effect of, "What are you doing today, boofhead?". Mr McCallum stated that he had used that term before and Mr Oram had never reacted in a way to suggest that it upset him. He stated that he did not intend his comment or behaviour to be offensive or aggressive.

[120] Throughout his employment, Mr McCallum has completed online courses on respectful behaviours. He has also participated in refresher discussions and meetings. He stated that his understanding is that the Respondent does not tolerate workplace violence, abusive conduct or aggressive comments, and that it expects all workers to treat each other with respect and fairness. Mr McCallum stated that the crew usually speaks to each other in a friendly, respectful

way. He stated that he did not see or participate in swearing, abuse or teasing. He stated that the crew would joke around at times, but this was never aggressive or mean.

[121] Mr McCallum stated he generally got along with the rest of the crew. Prior to the incident he had not been told that anyone had concerns about his performance. Approximately one month before the incident, Mr McCallum had a discussion with Mr Rawlins about his failure to attend a training course. Mr McCallum stated that this was the only time he can recall being spoken to about his performance.

[122] Mr McCallum stated that he had arrangements in place with his Superintendent allowing him to occasionally arrive late or leave early to drop off or pick up his children from childcare. He stated he always kept his supervisors informed of these arrangements. He noticed that other crew members would sometimes comment on his arrival and departure times, but he did not consider these to be serious concerns.

[123] Mr McCallum considered there was some tension towards him from some members of the crew in relation to the 7/7 roster proposal. Mr McCallum was in favour of the proposal as it was the opposite to his wife's roster, which would make it easier for them to manage childcare. Upon returning from parental leave, Mr McCallum submitted a request for a flexible work arrangement to work a 7/7 roster. He understood that the rest of the crew was not in favour of this roster and that his interest in this roster was opposed by the others who were concerned that they would be required to work the roster. Mr McCallum believed that Mr Oram raised a dispute about his application for 7/7 roster, possibly in Mr Oram's capacity as a union delegate. He stated in cross-examination that Mr Rawlins had informed him of this. Mr McCallum felt that their difference of opinion may have led Mr Oram to express frustration or anger towards him.

[124] Mr McCallum stated that he was aware of an incident in late-2024 where Mr Oram became aggressive towards another worker at the Mine over a disagreement about a pump setup. Mr McCallum stated that he did not witness the interaction, but Mr Oram informed him that he and the other worker were standing face-to-face. Mr Oram told Mr McCallum that he had "gone off" at the worker and nearly "knuckled him". Mr McCallum stated that Mr Oram is close friends with many crew members, and he believes that Mr Oram therefore has a lot of influence over crew members. Mr McCallum believes that this may have made it harder for people to raise concerns about Mr Oram's behaviour.

#### *26 January 2025 incident*

[125] On the morning of 26 January 2025, Mr McCallum attended the pre-start meeting. He then went to the crib room to put his bag and lunch away, before going to the smoking area. After re-entering the crib room from the smoking area, he stood in the doorway and spoke with Mr Boulton, who was seated at the table, across from Mr Oram. Mr McCallum asked Mr Boulton what they would be doing that day. Mr Boulton said they would be working on the pontoons. Mr McCallum stated that part of that work requires a rescue boat driver, and he assumed that Mr Oram would be doing that. Mr McCallum then looked at Mr Oram and said, "What are you doing today, boofhead?".

[126] Mr McCallum stated that Mr Oram then stood up from his chair and threw a steel coffee cup at him. Mr McCallum stated that this was a "sizeable, metal cup, bigger than a normal size

coffee cup, and insulated”. Mr Oram was not far away from Mr McCallum when he threw the cup. Mr McCallum stated that he had been standing in the doorway to the crib room and had started to walk outside when the cup hit the wall. The cup missed him by approximately 20 centimetres and hit the wall at shoulder height, leaving a hole. Mr McCallum considered that he would have been seriously injured had he been struck by the cup.

[127] When he reached the top step of the stairs, Mr McCallum realised that Mr Oram was moving quickly towards him. He turned around to face Mr Oram. Mr McCallum stated that Mr Oram then immediately wrapped his arm around Mr McCallum’s neck, placing him in a headlock. Mr Oram then attempted to pull Mr McCallum down the stairs. Mr McCallum stated that he had not moved towards him to initiate contact.

[128] Mr McCallum stated that Mr Oram shouted, “What did you say?” as he approached. While attempting to push Mr McCallum down the stairs, Mr Oram was yelling words to the effect of, “Get downstairs” or “Let’s go downstairs” repeatedly. Mr McCallum said no because he thought Mr Oram was going to hit him. Mr McCallum stated that he held onto the handrails and resisted strongly to Mr Oram’s attempts to force him down the stairs. Mr McCallum stated that he repeatedly told Mr Oram to stop, saying that he was choking him.

[129] Mr Oram eventually let go of Mr McCallum, and they both returned to the crib room. Mr McCallum said to Mr Oram words to the effect of, “All I said was ‘boofhead’. You need to calm down or just go home.” Mr McCallum then left and went to his truck. Mr McCallum stated that during the entire incident, he did not initiate any physical contact with Mr Oram and did not attack or strike him while resisting him.

[130] Mr McCallum does not consider that he engaged in any behaviour that could have reasonably justified Mr Oram’s actions. He stated he was extremely shaken by the incident and immediately reported it to Mr Rawlins.

[131] Mr McCallum’s incident report completed on 26 January 2025 is as follows:

“I, Joel McCallum was at the pump shed crib room this morning. As I left eh veranda to walk to the front door, Andrew Boulton said to me as I was next to the door, “We are doing pontoon pumps today.” I said “OK” then looked at Rob Oram and said “What are you doing Boofhead”, jokingly.

Then as I opened the door to leave he threw a steel coffee cup at me missing me and hitting the wall and putting a hole in the wall.

He then jumped out of his chair chasing me and yelling “what did you say”. By then I was out of the door on the top step of the stairs. Bob then started yelling and grabbing me “let’s go down stairs”. I did not want to go down stairs with him as he was aggravated. He then continued to try make me go down stairs. But I held on to the hand rails. He put me in a head lock and continued to try pull me down stairs but I had a hold of the hand rails. Once I yelled out stop “choking me” he let go. We walked back to the crib hut shaping nose to nose I said “mate I just said boofhead. You need to calm down or just go home.” Then I left and walked to PT6. I waited there for Andrew to

come over and go to work. Once Andrew turned up I then drove up to my supervisors office and told him about the incident and what just happened.”

[132] Following the incident, Mr McCallum experienced muscle pain in his neck and shoulders. He attended two physiotherapy sessions and was seen by his doctor.

[133] Mr McCallum was stood down from work, which he understood was part of the Respondent’s processes following a serious incident. He stated that he was told immediately that he was being stood down, and Mr Rawlins visited him and gave him a letter confirming the stand down. Mr McCallum stated that he was devastated and did not understand why he was going through that process, as he did not believe he had done anything wrong. He stated that he is still hurting mentally and physically from the incident.

[134] Mr McCallum stated that he would not feel safe working with Mr Oram again. He stated that he did not provoke Mr Oram and did not expect any violent response. Mr McCallum stated that in his view, it would not be safe to have someone on site who could “snap” in the way Mr Oram did.

[135] Mr McCallum was interviewed on 20 February 2025. It was put to him that he had said to Mr Oram, “boofhead cunt”. Mr McCallum gave the following account:

“I called Robert Oram a Boofhead no swear word was used and this is something I have always said and there has never been escalation of this sort. I was just asking a general question on what we would be doing today while in the crib hut. At no time did I try and aggravate him and was ready to go to work for the day. AS per the statement made by myself there was a coffee mug thrown at me and missed and then he came towards me grabbing me and putting me in a headlock and trying to force me downstairs. When I refused, he continued to pull while I had hold of the rail and said to him stop you are choking me. He then let go and then went back into the crib hut nose to nose, I then stated that I only called you Boofhead and said that he needs to calm down and then I went down to PT6 and waited for Andrew and then left the pump shed and reported it to my supervisor.”

[136] In cross-examination, Mr McCallum stated that he is trustworthy and denied sleeping in a car at work. He agreed that he had gone on one camping trip with the crew and had not been invited to a further camping trip.

[137] In respect of not attending the training course he was directed to participate in, he said he did not want to, and he considers that of those who did, they didn’t follow the correct steps. He could not recall saying to Mr Oram that there was no need for him to attend the training given there would be enough people with tickets.

[138] Mr McCallum conceded that sometimes he was drunk when he called Mr Oram at night. He also agreed he has called other crew members when drunk, including Mr Rawlins.

[139] As to his agreement for the 7/7 roster, he was in favour of it being introduced. He stated that he has previously worked 7/7 and he enjoys it. He denies having told Mr Oram shortly before the incident on 26 January 2026 that he was then opposed to it. He stated that he had an

arrangement with two supervisors, including Mr Rawlins, to pick up his children aged 11, 5 and 2.

[140] In describing the incident in cross-examination, Mr McCallum denied having called Mr Oram a “cunt”. Mr McCallum said he was walking out of the door when he heard the cup hit the wall. He did not see it being thrown; he heard it. He did not see Mr Oram stand up, but he knew he threw the cup. He agreed that after Mr Oram threw the cup, Mr Oram got out of his chair and walked around the table. Mr McCallum’s account is that by the time Mr Oram reached him, he was at the top of the stairs. He stated that he must have turned around as Mr Oram was facing him and then put him into a head lock. Mr McCallum stated that he had his hands around Mr Oram’s body.

[141] During the hearing, Mr McCallum demonstrated how he was then holding onto the stair rails while Mr Oram was on the step above. Mr McCallum was in danger of falling backwards down the stairs. He was extremely fearful of being seriously injured. There are 15 steps.

[142] Mr McCallum stated that when they then went back into the crib room, he stated, “All I said was ‘boofhead’”.

[143] He agrees that Mr Oram’s actions were out of character.

#### **Mr Perren’s evidence**

[144] Mr Perren is employed by the Respondent as the Superintendent – Mine Services. He has been employed by the Respondent for approximately 24 years and has served in his current role for just over one year. Mr Perren oversees four departments, including the Pump Crew. Mr Oram and Mr McCallum reported to Mr Rawlins, who reports directly to Mr Perren.

[145] Mr Perren was aware that Mr Oram was a union delegate, but he did not have any direct interactions with Mr Oram in his role as a delegate. Mr Oram would sometimes raise issues through the Site Safety and Health Representative, who would then speak to Mr Perren.

[146] In January 2025, there had been discussions about the potential introduction of a 7/7 roster. A trial had been proposed, and a site-wide vote was conducted to determine whether the roster would be introduced. Mr Perren was involved in overseeing and communicating aspects of this process. Mr Perren observed that the general sentiment amongst the Respondent’s enterprise agreement-covered employees was that they did not support moving to a 7/7 roster. He did not hear directly from Mr McCallum in relation to the roster proposal but had heard from Mr Oram that Mr McCallum was in favour of it.

[147] At the time of the incident on 26 January 2025, Mr Perren was not aware of any concerns raised about Mr McCallum by Mr Oram. He did, however, become aware at a later date when speaking with Mr Rawlins that Mr Oram had raised concerns about Mr McCallum’s attendance and performance. He noted that Mr Oram had never complained about the way in which Mr McCallum behaved towards him. Mr Perren understands that since at least 2018, Mr Oram has completed annual training on the Respondent’s Code of Conduct, as well as training modules on mental health for leaders, bystander intervention and respectful behaviours.

[148] Mr Perren was on leave at the time of the incident between Mr Oram and Mr McCallum. He received a call from Mr Byron Froneman, Line Technical Specialist and Mr Rawlins informing him of what had occurred. Mr Rawlins told Mr Perren that Mr McCallum reported that Mr Oram had thrown a coffee mug at Mr McCallum and grabbed him around the neck and tried to drag him downstairs, and that Mr McCallum was visibly distressed, shaking and teary. Mr Perren told Mr Rawlins to obtain written statements from witnesses. These were provided to Mr Perren. Mr Rawlins also provided Mr Perren with a file note he had prepared on 26 January 2025.

[149] Mr McCallum's written statement is at [131].

[150] Another witness, William Wilkins, provided the following statement:

"I William Wilkins was sitting in the pump shed crib hut around 06:30 when Joel McCallum said okay boozo to whatever Robert Oram had said. At that minute Robert Oram threw a steel cup from across the room at Joel McCallum, missed him but hit the wall near the door exit to the building. Robert Oram jump out of his seat ran around to the exit door of the crib hut and proceeded to grab Joel McCallum and push him against the outer walls of the stair well off the crib hut. At that stage I heard Joel McCallum pleading for Robert Oram to stop what he was doing. After the incident they walked in opposite directions."

[151] Mr Chelepy's statement is at [93]:

"Discussed daily plan when Joel used a statement towards Rob. I could hear the tones in the voices that Rob had taken offence to the statement. Joel started walking away fand out the door looking at Rob then Rob threw his coffee mug and got up and walked towards Joel telling him to repeat what he sold and let go downstairs. Rob and Joel were on the stairs and I got up when I saw it escalating and I wanted to defuse it. Once I got to Joel and Rob they had separated and walked away from each other."

[152] Mr Gollschewsky's statement is at [74]:

"Sitting inside the pump shed after the pre start had been completed. Replying to b'day messages on my phone before heading out to perform our tasks. I heard Rob say to Joel what did you say. I had my back to the conversation but I believe Rob walked outside. I could hear a heated discussions outside but was far enough away that I couldn't hear what was being said. The next I seen was the pair of them walk in and go different directions."

[153] Mr McKeriahn's statement is at [82]:

"Was sitting checking phone images, heard Rob say something like what did you say then Rob walked outside. The door was closed and could not see or hear anything."

[154] Mr Rawlins' file note states as follows:

"05:45 am pre start crew as normal

06:45 Joel McCallum approached me at my office and made a verbal complaint stating that Rob Oram and himself had just had an altercation at the Pump Shed crib room. Joel stated Rob had thrown a coffee mug at him and then grabbed him around the neck and tried to drag him downstairs. Joel was visibly distressed, shaking and teary. After a brief discussion and welfare check, I directed Joel to the R 32 crib hut until further direction.

07:15 Having now driven into the pit I sought Rob Oram and picked him up at Ramp 12 south inline. I brought Rob back to my office and requested a statement which he provided. I directed Rob to stay at my office until further direction.

08:00 I inspected the Pump Shed crib room and Identified a hole in the wall consistent with an object being thrown with force. Phoned my acting Superintendent and full time Superintendent to advise them of the event.

08:30 to 10:00 Progressively sourced statements from another 4 team members who were present at the Pump Shed when the event occurred. All of the statement providers, barring Joel M, requested a union delegate which was provided in person by Les Bentlin from Load and Haul.

10:00 I edited a HR letter regarding a Stand Aside action and presented it to Rob formally standing him aside until further notice. I offered EAP assistance to which Rob declined. I was confident with his demeanour and wellbeing and so assisted him with storing his tooling, collecting his crib bag and saw him from site at 10:34.

11:40 After keeping regular contact with Joel via phone conversations throughout the morning to ensure his wellbeing, I now recalled him to my office where we were able to close out on the initial investigation process. Joel was still 'at sorts' and was still visibly upset. After a period of consolation I elected to relieve Joel of his duties and offered for him to go home, rest and reset. I offered Joel EAP assistance and a lift home if needed to which he declined and stated he would be OK. I accepted this with confidence and saw Joel from site at 12:04.

I am confident both Rob and Joel have been offered appropriate support through EAP should they need further assistance. I have also reiterated to them both my availability should either need to have a conversation or provide additional information.”

**[155]** Mr Perren returned from leave on 1 February 2025 and took over the investigation at that time. He read the material Mr Rawlins had given him and then interviewed Mr Oram on 17 February 2025 and Mr McCallum on 20 February 2025. Based on the material before him, Mr Perren considered that the primary allegations were:

- (a) Mr Oram threw a metal coffee mug at Mr McCallum with enough force to create a hole in the crib room; and
- (b) Mr Oram approached Mr McCallum, grabbed him and, despite his resistance and protest, attempted to physically force him down a flight of stairs from the crib room to the ground outside by grabbing him around his neck at the top of the stairs.

[156] Prior to the interview with Mr Perren, Mr Oram contacted Mr Perren and told him that he wanted to amend the written statement provided to Mr Rawlins. Mr Perren said that would not be necessary because he would have the opportunity to provide a full response to all matters at the formal investigation interview. Mr Perren stated that he did not have any intention of denying Mr Oram an opportunity to respond to the allegations against him, but that he wanted to ensure this occurred in the appropriate forum, including with a support person of Mr Oram's choosing.

[157] During Mr Oram's interview, he confirmed that he had thrown the coffee mug at Mr McCallum. Mr Oram stated that as he walked towards the mug, Mr McCallum took a couple of steps towards him. Mr Oram was unsure who grabbed who first, but said that he grabbed Mr McCallum by the shirt near the collar and said words to the effect of, "Let's go downstairs." Mr Oram then described a physical altercation in which he and Mr McCallum were pushing and pulling each other. Mr McCallum was holding onto the railing to resist being taken down the stairs. Mr Oram was remorseful and said that he knew what he did was wrong. He was angry with himself. Mr Perren stated that Mr Oram was unable to explain his actions, but attempted to attribute the incident to ongoing frustrations with Mr McCallum's performance and work ethic.

[158] Mr Oram further claimed that Mr McCallum had provoked him by calling him a "boofhead cunt". Mr Perren stated that Mr Oram did not say anything about racist comments or being physically provoked in his first statement, but did amend his version of events during the interview by stating that after he threw the cup, he did not advance towards Mr McCallum but instead moved to retrieve the cup, and Mr McCallum came towards him. Mr Perren stated that this, and Mr Oram's recollection that he was unsure who grabbed who first, was not corroborated by the other witness statements.

[159] Mr Perren stated that during Mr McCallum's interview he was "very upset and shaken" and seemed confused and concerned about why Mr Oram had attacked him. Mr McCallum accepted that he used the term "boofhead" but said that he had previously used it to refer to Mr Oram in a joking manner and did not expect it would provoke such a response.

[160] Mr Perren did not conduct further interviews with other witnesses. He stated that he did not consider such interviews necessary because the facts were confirmed by the statements obtained shortly after the incident and the interview responses of Mr Oram and Mr McCallum. While there were some inconsistencies between the witness statements, Mr Perren did not consider this unusual and did not think the inconsistencies were significant.

[161] Mr Perren stated that he did not identify any information supporting a finding that Mr McCallum had engaged in previous inappropriate or abusive behaviour towards Mr Oram, that Mr McCallum had engaged in behaviour that could reasonably have provoked violence from Mr Oram, or that Mr McCallum had sworn at Mr Oram when he spoke to him. Mr Perren did not consider there was a reasonable basis for Mr Oram's violence towards Mr McCallum.

[162] Once the investigation was finalised and the allegations were substantiated, he and Mr Mobbs agreed that a formal show cause process was necessary. A letter was sent to Mr Oram explaining the findings of the investigation, and he was invited to attend a meeting on 10 March 2025. The meeting was attended by Mr Perren, Mr Mobbs, Mr Oram and Mr Oram's support

person. Mr Perren explained the findings of the investigation at the meeting and the ways in which Mr Oram was considered to have breached the Respondent's Code of Conduct. Mr Oram was invited to provide a written response to the letter, which he did on 13 March 2025. Mr Perren considered the matters raised in Mr Oram's response but did not consider them sufficient to justify or excuse his conduct.

**[163]** Mr Perren stated that while he made the factual findings arising from the investigation, Mr Mobbs was the decision maker in relation to the termination of Mr Oram's employment. Mr Perren was involved in discussions with Mr Mobbs about Mr Oram's employment, and he supported the decision to dismiss Mr Oram. Mr Perren considered Mr Oram's conduct a serious breach of the Respondent's Code of Conduct and expectation of a safe workplace. Mr Perren stated that in reaching this view, he considered Mr Oram's service and employment record, his acknowledgement of wrongdoing and apparent remorse, the matters raised in the response to the show cause letter, the seriousness of the conduct and risk to health and safety, and the need to uphold the Respondent's values and maintain a safe and respectful work environment.

**[164]** Mr Perren stated that in his view, physical violence in the workplace is unacceptable and in the absence of extreme or unusual circumstances, cannot be tolerated. Therefore, to have allowed Mr Oram to remain employed would have undermined the Respondent's expectations of its employees. Mr Perren stated that he considered the nature of the Mine as a safety-critical environment, noting the inherently hazardous conditions, heavy machinery, high-pressure systems and its remote location. He stated that employees must be able to trust each other to work cooperatively to ensure tasks are performed safely and that employees act responsibly and without aggression.

**[165]** Mr Oram's role as a Pump Crew Operator involved inspecting, maintaining and relocating dewatering infrastructure, often in pairs or small teams in areas where large machinery operates. This work requires effective communication and trust between workers. He stated that Mr Oram's physical aggression undermined this trust. Mr Perren therefore had serious concerns about the risk posed to team cohesion and site safety if Mr Oram were to return to work. Mr Perren stated that he also considered the position of Mr McCallum, who he understood was shocked and distressed by the incident, and Mr Perren was concerned about the potential ongoing impact on Mr McCallum's safety and mental wellbeing if Mr Oram were to remain on site.

**[166]** Mr Perren stated that he understood Mr Mobbs considered the findings of the investigation and Mr Oram's response to the show cause letter in forming his decision to terminate Mr Oram. Once Mr Mobbs made this decision, Mr Perren prepared the termination letter, which was then reviewed and signed by Mr Mobbs.

**[167]** In cross-examination, Mr Perren agreed that Mr Oram had been a trustworthy employee and he had relied upon him.

**[168]** Mr Perren denied that he had held a conversation with Mr Oram about putting Mr McCallum on a performance improvement plan because of his attitude. He stated that it had not been brought to his attention that Mr McCallum was purportedly sleeping in vehicles.

[169] Mr Perren accepted that there were medical factors put by Mr Oram as mitigation for why he behaved the way he did on 26 January 2025.

[170] Mr Perren stated that Mr Oram did not report alleged racial abuse until he was being investigated. Mr Perren conceded that during the investigation he simply asked Mr McCallum if he had called Mr Oram a boofhead before, and he did not ask him if he had called Mr Oram a wog, Arab, Muslim, cunt etc.

[171] Following the incident, while Mr Oram was stood down, Mr Perren contacted him weekly and offered EAP. Ultimately, he was of the view that none of the factors raised by Mr Oram excused his conduct.

### **Mr Mobbs' evidence**

[172] Mr Mobbs is employed by the Respondent at the Mine as the Production Manager. He has been in this role since March 2025. Prior to that, he was employed as a Mine Planning Manager and has previously served as a Superintendent. Mr Mobbs was not in his current role when the incident on 26 January 2025 between Mr Oram and Mr McCallum occurred. He began performing the role of Production Manager after the investigation had commenced. By this time, Mr Perren, who now reports to Mr Mobbs, had taken witness statements. Mr Regan, the former Production Manager, gave Mr Mobbs a handover, which included information about the incident.

[173] The investigation into the incident was led by Mr Perren. In his written witness statement, Mr Mobbs stated that he was informed of and considered all of the information gathered during the investigation, including reviewing the witness statements and notes of each interview conducted by Mr Perren. However, in evidence given during the hearing, Mr Mobbs stated that until in the witness box, he had not seen Mr Oram's interview notes replicated at [50], nor had he seen the interview notes of Mr Perren's interview with Mr Oram at [51] and Mr McCallum's interview at [135].

[174] Mr Mobbs stated when giving oral evidence that he had only seen Mr Oram's response to the show cause notice issued to him. He read Mr Oram's interview notes while in the witness box and said having read the notes, it would not have changed his decision to dismiss him.

[175] Mr Mobbs was involved in Mr Oram's show cause process and attended the meeting with Mr Oram on 10 March 2025. He stated that Mr Oram spoke very little during the meeting but provided a written response afterwards. Mr Mobbs reviewed Mr Oram's response to the show cause letter.

[176] Mr Mobbs stated that he made the decision to terminate Mr Oram's employment based on the investigation findings, witness statements and Mr Oram's responses to the allegations and show cause letter. Mr Mobbs considered that the allegations were substantiated. He stated that he was satisfied that Mr Oram threw a steel coffee mug at Mr McCallum which narrowly missed him and struck the wall and then grabbed Mr McCallum and attempted to drag him down the stairs while yelling at him. Mr Mobbs noted that Mr Oram admitted to this conduct in his statement and in his show cause response and acknowledged that what he had done was unacceptable.

[177] Mr Mobbs noted that Mr Oram raised a number of explanations and justifications for his actions, including Mr McCallum's name calling, work ethic, the fact that Mr McCallum arrived at Mr Oram's house and called him while intoxicated, and the impact of Mr Oram's medication on his mood. Mr Mobbs stated that he considered these factors, as well as Mr Oram's medical declaration in relation to the side effects of his medication but was not persuaded that they justified his behaviour. Mr Mobbs considered it was "a serious act of aggression". Notwithstanding any tension or frustration, Mr Mobbs stated that Mr Oram's "violent outburst" could not be tolerated in the workplace.

[178] Mr Mobbs did not view Mr Oram's actions as self-defence or justified provocation. He stated that there were a number of acceptable responses open to Mr Oram, none of which would have involved violence or aggression. On all versions of events related to Mr Mobbs, Mr Oram initiated a physical confrontation by "forcefully throwing a fairly heavy object at [Mr McCallum] and then moving toward him". Mr Mobbs stated that there was nothing to suggest that a physical confrontation would have occurred if Mr Oram did not engage in that behaviour.

[179] Mr Mobbs stated that he considered the impact of the incident on Mr McCallum, causing genuine distress. Mr Mobbs was concerned about the impact on Mr McCallum's wellbeing and sense of safety at work. Therefore, Mr Mobbs did not consider it appropriate to expect Mr McCallum to continue working alongside Mr Oram.

[180] After considering all the information available to him, Mr Mobbs concluded that there was no acceptable outcome other than to terminate Mr Oram's employment. Mr Mobbs considered the implications of not terminating Mr Oram's employment. He stated that he would have serious concerns about workplace culture within Mr Oram's work group if he remained employed. Mr Mobbs stated that he was also concerned about the precedent this would set and the message that would be sent to the wider workforce. Mr Mobbs stated that it would signal that violent behaviour is tolerable, and he was not willing to send that message to the approximately 1,200 workers at the Mine.

[181] Noting that the Respondent and its employees have an obligation under the Respondent's Code of Conduct to act in a manner that ensures the safety of all personnel at the Mine, Mr Mobbs stated that to have allowed Mr Oram to continue his employment would have undermined the Respondent's commitment to this obligation. Mr Mobbs stated that would have diminished employee confidence in the Respondent's willingness to enforce its own behavioural standards.

[182] Mr Mobbs stated that Mr Perren prepared Mr Oram's termination letter. Mr Mobbs signed the letter and obtained endorsement from the Respondent's employee relations specialist team. The letter was then issued to Mr Oram on 18 March 2025 at a meeting attended by Mr Mobbs. Mr Mobbs began to explain the termination decision however Mr Oram's union representative interrupted and said that they understood the outcome and did not require an explanation. Mr Mobbs then gave a copy of the letter to Mr Oram.

[183] In a supplementary witness statement filed in the Commission at my direction, Mr Mobbs produced a photograph of the stairs and railing attached to the crib room. He also measured the height of the stairs and railing. Based on his measurements, the distance from the

ground to the platform at the top of the stairs is approximately 3.2 metres, and the distance from the ground to the rail above the platform is approximately 4.1 metres.

[184] Mr Mobbs stated that Mr McCallum has been placed on a final written warning.

### **Mr Abrams' evidence**

[185] Mr Abrams is employed by the Respondent as the General Manager and Site Senior Executive of the Mine. He has held this role since September 2022 and has been employed by the Respondent for approximately 18 years. As General Manager, Mr Abrams is responsible for the operation of the Mine, including health and safety, production and financial performance. As the Site Senior Executive, Mr Abrams' role concerns the overall health and safety of people affected by mining operations. Mr Abrams is required to ensure that an appropriate management structure is in place at the Mine. Mr Abrams stated that he is responsible for ensuring a culture in which employees feel safe and empowered to speak up. As Site Senior Executive, he is required to ensure that all operations comply with the relevant mining legislation. This includes implementing systems to manage risks and ensure safety obligations are met.

[186] Mr Abrams is aware of the incident that took place between Mr Oram and Mr McCallum on 26 January 2025. He was informed by Mr Mobbs and was kept up-to-date while Mr Perren undertook the investigation, overseen by Mr Mobbs.

[187] Mr Abrams' understanding of the incident is that Mr Oram threw a coffee cup at Mr McCallum at a speed sufficient to create a hole in the wall of the crib room and then grabbed by Mr McCallum by the neck and collar and attempted to force him down the stairs to take the matter outside for a physical confrontation. Mr Abrams stated that he understood Mr Oram was dismissed for failing to meet his obligations as an employee of the Respondent, including the Code of Conduct. Mr Abrams stated that the Respondent does not tolerate any form of physical violence. He noted that a single physical altercation can result in serious or fatal injury.

[188] Mr Abrams stated that his strong view is that Mr Oram should not be reinstated at the Mine. He stated that reinstatement would undermine his responsibility as the Site Senior Executive to ensure the safety of everyone who enters the Mine and would place others at an unacceptable level of risk. Mr Abrams stated that he would find it extremely difficult to support Mr Oram's reinstatement in good conscience or in accordance with his statutory duties.

[189] Mr Abrams stated that reinstatement would send the wrong message to the broader workforce, as it may be perceived as condoning violent conduct. He stated that this would undermine the cultural expectations at the Mine. If employees considered that workers could act violently and remain in their role, Mr Abrams stated that this may lead to workers being unwilling to report instances of violence or poor behaviour for fear of inaction by the Respondent. Mr Abrams also stated that there would be practical difficulties with the reinstatement of Mr Oram, as Mr McCallum remains employed as the same crew as Mr Oram. Mr Abrams stated that expecting Mr Oram and Mr McCallum to work safely and effectively together would be unrealistic and inappropriate.

[190] Given the nature of the Mine's operations, which is a large site that requires supervision and employees who share the Respondent's values of safety, Mr Abrams stated it is necessary for frontline workers to exercise a degree of self-governance, as it is not possible to maintain a constant supervisory presence in every location. For example, Mr Abrams stated that an employee may only have direct supervisory oversight for 2-3 hours of a 12-hour shift. Therefore, Mr Abrams stated that the Respondent places a considerable focus on cultivating a strong culture of self-reporting. Mr Abrams stated that if he cannot trust an employee not to physically assault a coworker, he cannot trust them to comply with the basic safety controls that protect themselves and others.

[191] In evidence given during the hearing, Mr Abrams stated that he had not read the material relating to the investigation, including the interview notes. He had only read Mr Oram's show cause response.

[192] Mr Abrams stated that the Respondent takes a harsh view on physical violence and mitigation would be very limited. He stated that he does not think being called racist names mitigates the conduct of the incident; he does not think it is a material factor.

## **SUBMISSIONS OF THE PARTIES**

### **Applicant's submissions**

[193] Mr Oram submitted that he was unfairly dismissed and that it is appropriate for him to be awarded reinstatement and compensation for lost wages, or in the alternative an order for compensation.

[194] Mr Oram's summary of the facts was that he had concerns with the work ethic and attendance with Mr McCallum for a number of years. He had raised these issues with management, but they were not addressed. Mr McCallum also had a history of calling Mr Oram racist and insulting names, including "boofhead wog" and "wog cunt". Mr Oram attempted to address this with Mr McCallum, but he continued to use these terms.

[195] On 26 January 2025, Mr Oram was not feeling well and was upset about being told about the likelihood of moving to the 7/7 roster. After the pre-start meeting, Mr Oram, Mr McCallum and the other crew members went to the crib room. The majority of the crew were sitting at the table assigning tasks for the day when Mr McCallum, who was standing near the doorway to the smoking area, called Mr Oram a "boofhead cunt". Mr Oram said words to the effect of, "What did you call me?" and Mr McCallum repeated the insult "boofhead".

[196] Mr Oram then threw his coffee cup, which hit the wall next to Mr McCallum, who was standing in the doorway of the entry to the crib room. Mr Oram stood up to retrieve his cup. While bending over, he saw Mr McCallum re-enter the room and walk towards him. Mr Oram stood up, grabbed Mr McCallum by the shirt collar and pushed him out of the room, shouting "downstairs". Mr McCallum resisted and grabbed the handrail outside the room. The two were then broken up by another employee and Mr Oram returned to his seat. Mr McCallum continued shouting at Mr Oram for a short time before leaving the crib room.

[197] Mr Oram noted that there was conflicting evidence as to the damage to the wall that was caused by Mr Oram throwing the coffee cup. Mr Perren provided photographs of the hole however these were not taken by Mr Perren. Mr Chelepy gave evidence that the damage to the wall was not as bad as suggested by the photo. He stated that the photos were taken after the repairers had begun working on the wall to check for asbestos. Mr Oram therefore submitted that there was not enough evidence before the Commission to conclude that his throw caused the damage alleged by the Respondent.

[198] Mr Oram submitted that the Respondent's submission that he threw the cup with force should not be accepted. Mr Oram stated that he could not recall the manner in which he threw the cup, but during the hearing said that he could not have done so with the force alleged by the Respondent because of injuries to his shoulder which meant he was unable to throw overarm without difficulty. He argued that the Respondent's submissions in relation to the damage to the wall are speculation and hearsay and are inconsistent with respect to the amount of damage caused to the wall by the mug. Therefore, he submitted that the Commission cannot be satisfied that he was the only person responsible for the damage to the wall, noting Mr Chelepy's evidence that maintenance employees, in repairing the wall, made the hole significantly wider.

[199] After going to retrieve the cup, Mr Oram gave evidence that he grabbed Mr McCallum and pushed him out of the room after he had re-entered. Mr Chelepy also gave evidence that Mr McCallum was entering the room. Mr McCallum gave evidence that he did not re-enter the room before being grabbed. Mr Oram submitted that his and Mr Chelepy's evidence should be preferred in relation to this discrepancy. While Mr Oram admitted to having trouble recollecting parts of the interaction, he submitted that Mr Chelepy, though unsure if Mr Oram picked up his cup, was clear in his evidence and clearly recalled Mr McCallum walking back into the room. Mr Oram therefore rejected the Respondent's submissions that the contemporaneous witness statements do not support the allegation that Mr McCallum came back into the crib room.

[200] Following the incident, Mr Oram visited his GP to discuss the incident and his mood. Mr Oram's medication was changed and his mood subsequently improved. Mr Oram was later terminated for his involvement in the incident.

[201] Mr Oram submitted that where the reason for a dismissal includes workplace fighting, the Commission must have regard to all the circumstances in which the fight occurred, and that there is no presumption that fighting in the workplace will automatically mean a dismissal is not unfair. Mr Oram referred to the decision of the Full Bench of the Commission in *Fearnley v Tenix Defence Systems (Fearnley)*,<sup>2</sup> in which it was stated:

“We think these authorities support the view that in determining whether there is a valid a reason for a termination of employment arising from a fight in the workplace the Commission should have regard to all of the circumstances in which the fight occurred including, but not limited to:

- whether the terminated employee was provoked and whether he or she was acting in self defence;
- the employer's need to establish and retain discipline amongst its employees; and
- the service and work record of the employee concerned.”

[202] Mr Oram submitted that the incident with Mr McCallum was heated but lasted less than one minute and did not escalate to the point where they were physically fighting by attempting to throw punches. He submitted that his actions in throwing the cup were a direct result of provocation by Mr McCallum, who had a history of using antagonistic language and calling Mr Oram offensive names. It was submitted that Mr McCallum was therefore the instigator of the incident and not Mr Oram.

[203] Mr Oram submitted that he has consistently acknowledged that his actions were not appropriate and that he should not have thrown the cup. He accepted that this was a disproportionate response. However, he noted that he did not throw the cup without reason. Mr Oram noted that there were differences amongst witnesses as to what terms were used by Mr McCallum in relation to Mr Oram:

- a) Mr McCallum stated that he only used the term “boofhead”;
- b) Mr Oram stated that Mr McCallum used the term “boofhead cunt”;
- c) Mr Boulton stated that he used the term “boofhead”; and
- d) Mr Chelepy stated that he used the term “dickhead”.

[204] Mr Oram argued that differences in the recollection of witnesses are not uncommon. However, he submitted that his evidence, that Mr McCallum used the term “boofhead cunt” should be accepted. He argued that his evidence during cross-examination in this regard was clear. Even if the Commission finds that Mr McCallum did not use the word “cunt”, Mr Oram submitted that his clear evidence under cross-examination was that he found the term “boofhead” offensive, as Mr McCallum had repeatedly used the term alongside the word “wog” when referring to Mr Oram. On top of this, Mr Oram claimed that Mr McCallum used numerous racially motivated terms, including referring to Mr Oram as “the Arab”. Mr Oram stated during the hearing that when Mr McCallum used the term “boofhead”, Mr Oram related it to the more offensive term, “wog”. Therefore, Mr Oram’s reaction was not simply a reaction to a single use of the term, but instead a reaction as a result of a buildup of insults by Mr McCallum.

[205] Mr McCallum has denied using terms such as “boofhead wog” and “the Arab” and stated that he has never racially abused Mr Oram. However, Mr Oram noted that Mr McCallum also acknowledged that the Respondent takes workplace discrimination and harassment seriously and that using such a term would place his employment in jeopardy. Mr Oram argued that Mr McCallum’s denial should be considered in the context of Mr Oram’s immediate reactions to the incident, where he said to Mr McCallum that he was sick of the name calling. Mr Oram argued that the fact that he immediately referred to this issue demonstrates that he was genuinely concerned about the conduct of Mr McCallum and that the comment had an effect on him. He submitted that this reaction should be preferred over Mr McCallum’s denial to prefer Mr Oram’s evidence as to what was said by Mr McCallum.

[206] Mr Oram denied a submission made by the Respondent that Mr Oram took no action in relation to Mr McCallum’s alleged racist language. Mr Oram submitted that he gave consistent evidence about making complaints, initially to Mr Perren during the investigation and then in his statement to the Commission where he stated that Mr Rawlins was aware of the name-calling and he had made several complaints to Mr Rawlins about it. It was therefore submitted that the Respondent was on notice about Mr McCallum’s conduct for a significant period before

the 26 January 2025 incident and during the investigation. Further, Mr Oram noted that the Respondent was aware of his evidence that Mr Rawlins knew about the claims of racial name calling but did not call Mr Rawlins as a witness to refute these claims. Mr Oram therefore submitted that it is open to the Commission to draw an adverse inference about the Respondent in this regard.

**[207]** Mr Oram argued that the incident escalated when he went to retrieve his cup and Mr McCallum re-entered the room and moved towards him. Mr Oram said that he grabbed Mr McCallum, concerned that Mr McCallum was intending to cause him harm. Mr Oram dealt with this by pushing Mr McCallum out of the room and telling him to go downstairs. He submitted that he did not attack Mr McCallum or attempt to strangle him, and only sought to push him out of the door to prevent the matter from escalating further. Mr McCallum then tried to further provoke Mr Oram before leaving the crib room.

**[208]** Noting that he was a long-term employee with an exemplary service record and no history of similar incidents, Mr Oram submitted that his actions were out of character, especially given that he was not feeling well that day. He and the crew were despondent because of the proposed 7/7 roster, and he considered that his supervisor was trying to goad the crew into making an ethics complaint about his superintendent. Additionally, following his visit to his doctor and a change to his medication, Mr Oram's mood improved considerably. Both Mr Oram and his doctor believe that his mood and behaviour on 26 January 2025 could have been caused in part by the medication he was on at that time.

**[209]** Mr Oram noted that all witnesses to the incident on 26 January 2025, being Mr Boulton, Mr Chelepy, Mr Gollschewsky, Mr McKerihan and Mr McCallum, gave evidence of the fact that Mr Oram appeared unwell at the commencement of the shift. On this day and the days leading up to it, Mr Oram was experiencing mood swings and was feeling stressed. Mr Oram noted that the Respondent did not cross-examine him about his mental state that day or his mental state, and Mr Rawlins did not refute Mr Oram's evidence about this.

**[210]** Mr Oram noted that Mr Mobbs and Mr Rawlins were taken to the Respondent's fitness for work procedure and they both agreed that stress was a psychological condition to be managed under the procedure. Mr Rawlins expressed concern for Mr Oram's welfare on 26 January 2025, and Mr Oram responded that he was not OK. Despite this, Mr Rawlins did not apply the fitness for work procedure and offer assistance to Mr Oram, which might have included removing him from the workplace, which may have prevented the incident. Mr Oram noted that the Respondent could have led evidence of Mr Rawlins as to the reasons why he enquired into Mr Oram's welfare and nevertheless chose to send him to work. Mr Oram submitted that the failure of the Respondent to lead such evidence allows the Commission to draw an adverse inference that Mr Rawlins' evidence in this regard would not have assisted the Respondent's case that he acted appropriately.

**[211]** Mr Oram submitted that it would not be unreasonable to suggest that if an employee is suffering from stress or similar conditions, they may not be aware of the issue and how it is affecting them and others. For this reason, Mr Oram submitted that a company would have the ability for managers to assess employee's fitness and take appropriate action as part of a fitness for work policy. He argued that it is unfair for the Respondent to be critical of him for not having sufficient awareness of his mental state such that he could remove himself from the

workplace, in circumstances where the Respondent's management has itself failed to assist and investigate these issues.

**[212]** Mr Oram submitted that there is no evidence to support a submission made by the Respondent that the incident occurred because of the impending roster change vote. While he did give evidence that this issue was affecting his mental health, he also noted that his evidence was clear in that he was upset with management and not other employees in relation to this issue. During cross-examination, Mr Oram stated that his stress was caused by employees asking him about the vote and not about any one individual's intent to vote for or against the roster.

**[213]** In consideration of all the circumstances, Mr Oram submitted that his actions in the altercation with Mr McCallum do not form a valid reason for dismissal because they were:

- a) provoked by Mr McCallum;
- b) in response to Mr McCallum moving towards him; and
- c) out of character and due to medication affecting his mood.

**[214]** The Respondent alleged Mr Oram breached the following aspects of its Code of Conduct:

- a) a healthy and safe workplace: "you prioritise physical and psychological safety and well being";
- b) respect for all: "you respect one another, are confident about what's not acceptable, challenge behaviour that doesn't align to Our Values and speak up with any concerns"; and
- c) bullying and harassment.

**[215]** Mr Oram submitted his conduct was not appropriate, but the Respondent's findings in respect of the Code of Conduct fail to acknowledge the circumstances in which the incident occurred and fail to articulate how its code accounts for matters such as provocation. The findings do not mention Mr McCallum's provocation or his repeated behaviour towards Mr Oram over an extended period of time. Mr Oram argued that Mr McCallum's actions were similarly in breach of the Code of Conduct, as Mr McCallum disregarded his psychological safety by antagonising and insulting him, failed to respect his wishes and engaged in bullying and harassment.

**[216]** Mr Oram submitted that he was cooperative throughout the investigation and took appropriate responsibility for his actions, acknowledging his behaviour but providing reasons for his reaction to Mr McCallum. He argued that the Respondent appears not have made any findings in relation to these matters, nor taken them into account when determining to dismiss him. Mr Oram submitted that the Respondent has shown a closed mind as to the circumstances surrounding the incidents and has considered Mr Oram's behaviour in isolation. He noted that under cross-examination, Mr Perren conceded that he failed to investigate Mr Oram's allegations of racial abuse by Mr McCallum. Mr Oram submitted that this failure affected the Respondent's decision-making process.

[217] Mr Oram submitted that a single instance of an employee calling another a “boofhead” or “boofhead cunt” would not provide any justification for a reaction such as Mr Oram’s. Such a reaction would cause an employer to question whether the employee is able to act rationally and safely on a mine site. However, when viewed in the context of racially motivated insults described by Mr Oram, he submitted that the reaction becomes more understandable. Mr Oram submitted that if Mr Perren had properly investigated the context behind the incident, a finding into the conduct of Mr McCallum could have been made, as well as a finding that Mr Oram’s conduct was a reaction to the provocation by Mr McCallum.

[218] When considering the entire circumstances of the case, including Mr McCallum’s provocation and Mr Oram’s mood, caused in part by his medication, Mr Oram submitted that the Commission could not be satisfied that he contravened the Respondent’s Code of Conduct as alleged, or alternatively that any contravention was of a level that could form a valid reason for dismissal.

[219] Mr Oram acknowledged that the Respondent informed him of the allegations against him and provided him an opportunity to show cause. However, he argued that the Respondent did not consider the acts of Mr McCallum and the explanation offered by Mr Oram in relation to his medication and mood.

[220] Although Mr Mobbs stated that he had read the investigation material, he later conceded that he had not seen or read the interviews of Mr Oram and Mr McCallum. He was also unaware of the allegations that Mr McCallum had racially abused Mr Oram in the past, which explained Mr Oram’s reaction to the incident on 26 January 2025. Mr Oram noted that when Mr Mobbs became aware of these allegations, Mr Mobbs said that he could not be sure if it would have changed his mind. Mr Oram submitted that this revealed an error in the Respondent’s basis for termination.

[221] Mr Oram also submitted that the Respondent’s investigation was deficient as it did not investigate or place any weight on the concerns expressed by Mr Oram in relation to his mental state. He submitted that it is open for the Commission to find that he was suffering from stress and mood swings, and these factors played a part in his action on 26 January 2025.

[222] Mr Oram submitted that while his actions warranted some form of discipline, the Respondent failed to properly investigate and consider his claims of harassment and racial insults used by Mr McCallum, as well as his mental state. He argued that these factors provide the context for his behaviour. The behaviour was not unexplained nor unjustified, and was an aberration and not reflective of his ability to perform his role. Despite being notified of these additional issues, Mr Oram submitted that the Respondent concentrated on the isolated incident on 26 January 2025. Therefore, Mr Oram submitted that, in consideration of all of the relevant circumstances, there was no valid reason for his dismissal.

[223] In the event the Commission determines that there was a valid reason for dismissal, Mr Oram identified a number of matters the Commission should consider in determining whether he was nevertheless unfairly dismissed. First, Mr Oram noted that he had been employed for more than 12 years and in that time had not engaged in any other misconduct and had no safety or performance concerns. He also acted as a supervisor on occasions and was acknowledged for his work and dedication.

[224] Second, Mr Oram submitted that his actions were an isolated reaction to Mr McCallum's provocation, whose conduct was contrary to the Respondent's Code of Conduct. Mr McCallum's conduct had previously been raised with management but was left unaddressed. Mr Oram contended that his reactions were therefore a product of frustration, not malice. While they were not appropriate, there is no evidence to suggest they would be repeated towards other employees performing their role and comply with the Code of Conduct.

[225] Third, Mr Oram submitted he was in a visibly upset state on the day of the incident, due to news of the 7/7 roster and his medication. His mental condition has subsequently improved. Finally, Mr Oram argued that, when considering the entirety of his performance history and the circumstances surrounding the incident, his dismissal was disproportionate to any misconduct he engaged in.

[226] Mr Oram submitted that he was unfairly dismissed and is entitled to a remedy, which he argued should be reinstatement, compensation for lost wages, and continuity of service. If the Commission determines that there was no valid reason for dismissal, Mr Oram argued that there could then be no finding that the relationship of trust and confidence between him and the Respondent had been severed. Any difficulty, embarrassment or inconvenience on the Respondent's part in relation to its views about Mr Oram is not, in Mr Oram's submission, insurmountable.

[227] Even if the Commission determines there was a valid reason for dismissal, Mr Oram submitted that his employment history demonstrates that he is a competent, safe and loyal employee for 12 years, and is fit to perform his role at the Mine.

[228] In response to Mr Abrams' evidence that he had lost trust and confidence in Mr Oram to perform his duties safely, Mr Oram submitted that Mr Abrams admitted that they did not know each other and had not previously met. Mr Abrams had only read the termination letter and was not aware of Mr Oram's personal circumstances or his history with Mr McCallum. Therefore, Mr Oram submitted that the Commission should not rely upon Mr Abrams' evidence in this regard.

[229] Mr Oram submitted that because he had never previously engaged in behaviour similar to the 26 January 2025 incident, there is nothing to suggest that he would engage in such behaviour again. He argued that the incident was so out of character, there cannot be any claim that he would commit a similar act of aggression in the future, particularly in circumstances where he has acknowledged that he made an error of judgement and admitted that he should be disciplined. Accordingly, he submitted that reinstatement is an appropriate remedy.

[230] Alternatively, if the Commission determines that reinstatement is inappropriate, Mr Oram submitted that a compensation order would not have any effect on the viability of the Respondent's business. He submitted that the Commission should not reduce the amount of any compensation on account of misconduct. Mr Oram was earning \$170,773.20 per year with the Respondent and mitigated his loss by gaining alternate employment, earning a yearly salary of \$162,240. Accordingly, Mr Oram noted that he has suffered an overall loss of approximately \$8,533.20 per year in wages, as well as the following bonus and allowances, paid weekly.

- a) a housing allowance of \$16,000 per annum;
- b) a coal bonus of \$15,000 per annum; and
- c) a higher responsibility allowance for being a Trainer/Assessor of \$5,200 per annum.

### **Respondent's submissions**

[231] The Respondent submitted that on 26 January 2025, it became aware of an allegation that earlier that day, Mr Oram had thrown a steel coffee mug at Mr McCallum, narrowly missing him and causing a hole in the wall of the crib room. Mr McCallum further alleged that Mr Oram rushed at him, grabbed him around the neck and shoulders, and attempted to drag him down the crib room stairs while yelling words to the effect of, "Get downstairs." Mr McCallum was visibly shaken and teary when reporting the incident.

[232] Mr Perren investigated the allegations and witness statements were obtained. Mr Oram and Mr McCallum were stood down throughout the investigation. Mr Oram was provided with written particulars of the allegations and attended an interview on 17 February 2025. Following the investigation, Mr Perren found that the allegations against Mr Oram were substantiated and amounted to a serious breach of the Code of Conduct. Mr Oram was therefore issued a show cause letter on 10 March 2025. He provided a written response to this on 13 March 2025, which was considered by Mr Perren and Mr Mobbs.

[233] After reviewing the findings, Mr Oram's response and other material, the Respondent determined that Mr Oram's conduct was psychologically and physically violent, was not justified or excusable, posed an unacceptable risk to the safety of others and had irreparably damaged the employment relationship. Accordingly, Mr Oram was dismissed by the Respondent on 18 March 2025 for serious breaches of the Respondent's Code of Conduct.

[234] The Respondent submitted that there was a valid reason for Mr Oram's dismissal. It noted that the Code of Conduct requires employees to prioritise physical and psychological safety and wellbeing, respect each other, be confident about what is unacceptable, challenge behaviour that does not align to the Respondent's values and speak up with any concerns. Mr Oram has not challenged the reasonableness of the Code of Conduct and has not suggested that he was unaware of his obligations pursuant to it. The Respondent highlighted the fact that in his show cause response, Mr Oram acknowledged that his behaviour was inexcusable and inappropriate.

[235] Regarding Mr Oram's reliance on the decision of *Fearnley* insofar as it requires the Commission to consider any provocation leading to a workplace fight, the Respondent submitted that Mr Oram's contention that Mr McCallum had a history of antagonising him is not supported by any witnesses to the incident. The Respondent noted that Mr Wilkins thought Mr McCallum said "bozo", Mr Boulton stated that Mr McCallum said, "What's that boofhead doing?", and Mr Chelepy, Mr Gollschewski and Mr McKerihan did not say what words were used. None of these witnesses corroborated the alleged history of antagonism by Mr McCallum. The Respondent also noted that no phone records, dates or details were put before the Commission. Further, the Respondent referred to the evidence of Mr Beets, who stated that immediately following the incident, Mr Oram said that Mr McCallum was lazy, not that Mr McCallum had called him racist names. Mr McCallum denied using profanities or racist terms on any occasion, though conceded he called Mr Oram a "boofhead" but said that he did so in a

joking manner. Mr McCallum had also done this previously without any adverse reaction from Mr Oram.

[236] The Respondent submitted that the evidence reveals that Mr McCallum called Mr Oram a “boofhead”, not a “boofhead cunt”. It was argued that Mr Oram’s credibility was undermined by his refusal to accept in cross-examination that he may have misheard. Even if it were accepted that Mr McCallum used inappropriate language in his use of the term “boofhead” the Respondent submitted that Mr Oram’s response was “manifestly disproportionate”. The Respondent submitted that the term is a relatively low-level insult, not a racial slur and not a personal slur sufficiently serious to reasonably provoke a loss of self-control.

[237] In his interview on 17 February 2025, Mr Oram acknowledged that he could have asked Mr McCallum to settle down and for them to go their separate ways before speaking to Mr Rawlins or Mr Perren later in the day. The Respondent submitted that if Mr Oram was genuinely concerned or offended, he might have raised a complaint with Mr Perren, the Site Safety and Health Representative, the Mines Inspector or his union. Instead, Mr Oram chose to throw a steel mug at Mr McCallum. The Respondent submitted this was physically violent and wholly inconsistent with the standards of conduct expected by the Respondent of its employees and was a serious breach of the Code of Conduct. The Respondent submitted that Mr Oram then escalated his aggression by charging at Mr McCallum, grabbing him around the neck and attempting to force him down the stairs.

[238] While Mr Oram stated that he had complained to Mr Rawlins about Mr McCallum’s alleged pattern of behaviour, the Respondent contended that Mr Oram did not say what he told Mr Rawlins, or when or where, and that the only thing Mr Oram reported was that Mr McCallum had allegedly called people while drunk, not that he had used abusive language. Therefore, the Respondent argued that the Commission could not be satisfied that a complaint of any substance was ever made to Mr Rawlins.

[239] The more likely motivating factor behind Mr Oram’s actions was, in the Respondent’s submission, that he was upset about the impending roster change, and he sought to take this out on Mr McCallum as the sole person who had supported the change. The Respondent expressed concerns with Mr Oram’s evidence on this point. In cross-examination, Mr Oram initially said that the roster change was not a huge issue, and that his enquiry with Mr Beets about the availability of other work was in jest. The Respondent submitted that this should be rejected, as Mr Beets said that Mr Oram seemed entirely serious. Further, the Respondent noted that Mr Oram said during the hearing that he was not particularly upset with Mr McCallum about the roster, when in his interview with Mr Perren he said that Mr McCallum had upset him because of his desire to move to the new roster.

[240] The Respondent submitted that Mr Oram’s evidence in relation to the force with which he threw the mug at Mr McCallum was inconsistent. At one point, Mr Oram asserted that he did not throw the mug hard and he could not throw overarm but later claimed that he could not recall throwing it. The Respondent therefore contended that this renders Mr Oram’s evidence unreliable. The Respondent argued that the best evidence on the strength of the throw is the distance the mug travelled, the accuracy of the throw and the photograph of the damaged wall provided by Mr Perren. It was submitted that Mr Oram’s suggestion that the hole was not caused by the mug cannot be sustained, as there is no evidence that anyone had tampered with the wall.

Mr Perren's evidence was that the photograph of the wall was taken before maintenance attended. Mr Boulton's evidence was that he observed a hole in the wall when exiting the crib room, and Mr Chelepy, while initially describing the hole as a "dent", later acknowledged that the wall had partly detached and was hanging like a flap. The Respondent suggested that the flap may have simply fallen off.

[241] The Respondent submitted that Mr Oram's claim of self-defence should be rejected. In *NSW Trains T/A NSW Trainlink v Wael Al-Buseri*,<sup>3</sup> the Full Bench stated:

"...the common law test to be applied in cases involving self-defence is whether a person believes on reasonable grounds that it was necessary in self-defence to do what they did. This test is applicable in civil matters. There is both a subjective and an objective element to the test. The subjective element concerns the belief that the conduct was necessary in the circumstances. The objective element goes to whether there were reasonable grounds for the belief."

[242] The Respondent submitted that Mr Oram would bear the onus of proof in relation to any claim of self-defence. It argued that the evidence before the Commission supports the conclusion that Mr Oram was the sole aggressor, and does not support a finding that he was attempting to neutralise the threat of an impending or perceived attack. It was submitted that Mr Oram's claim that Mr McCallum posed a threat is highly unlikely, given Mr Oram's admission under cross-examination that he had lost his temper, thrown his mug, yelled at Mr McCallum and tried to push him down the stairs.

[243] The Respondent noted that on Mr Oram's own evidence, and on the evidence of Mr Boulton, Mr Gollschewski, Mr Chelepy and Mr McKerihan, he approached Mr McCallum after throwing the mug. The Respondent submitted that Mr Oram has appeared to use self-defence as a justification for this by submitting that he "grabbed Mr McCallum out of concern that Mr McCallum was coming towards him with the intent to cause him harm". The Respondent argued that this is a recharacterisation of events that is not supported by the evidence before the Commission. The Respondent noted that Mr Oram admitted to yelling, "Get downstairs" while moving towards Mr McCallum and also admitted to yelling, "What did you say?" or, "Say that again" but could not remember whether this was said while moving towards Mr McCallum. The Respondent submitted that these were words of "aggression and intimidation, not consistent with any suggestion with of retreat or de-escalation". Additionally, the Respondent noted that in Mr Oram's contemporaneous statement made on 26 January 2025, he said nothing about self-defence and did not express any concern that he might have been the subject of an attack by Mr McCallum.

[244] In response to Mr Oram's suggestion that he was simply moving forward to retrieve his mug, the Respondent submitted that this is an invention designed to justify his actions, given it was not mentioned in his initial accounts, nor by Mr McKerihan, Mr Gollschewsky or Mr Boulton. Mr Chelepy initially gave evidence that he saw Mr Oram bend down to collect the mug, but accepted in cross-examination that he did not have a good recollection of the events and accepted that this may not have occurred. In cross-examination, Mr Oram stated that he did not recall whether he actually picked the mug up, and also suggested that he may have placed it back on the table. The Respondent submitted that this evidence is inconsistent with all other evidence and is inconsistent with Mr Oram shouting at Mr McCallum to "get downstairs".

[245] The Respondent submitted that Mr McCallum did not move towards Mr Oram. Mr McCallum was clear in his evidence that he walked to the stairs and only turned around as Mr Oram was almost upon him. The Respondent submitted that Mr McCallum was a credible witness, who presented in a forthright manner and willingly made concessions, such as that he agreed that prior to the incident he believed Mr Oram was a trustworthy employee and that Mr Oram's actions appeared to be out of character. He also admitted to calling Mr Oram a boofhead in the past. Further, the Respondent argued that none of the contemporaneous witness statements, including Mr Oram's, record that Mr McCallum had moved towards Mr Oram. Mr McKerihan stated that Mr Oram followed Mr McCallum outside. Mr Wilkins described Mr Oram as having ran around to the exit of the crib room before grabbing and pushing Mr McCallum. Mr Boulton stated that Mr McCallum was out of the door but turned around and re-entered the room, however the Respondent noted that he admitted in cross-examination that his vision was obscured at the time and the doorway was blocked by Mr Oram. Mr Boulton did not deny the possibility that Mr McCallum only tried to re-enter after he had already been grabbed by Mr Oram.

[246] The Respondent noted that in cross-examination, Mr Oram admitted to trying to push Mr McCallum down the stairs and accepted that Mr McCallum was holding onto the handrail to try and stop himself being pushed down the stairs. Mr McCallum stated that he was holding on tightly, and had he not done so, he would have fallen down the stairs. Mr Oram acknowledged that both he and Mr McCallum were at risk of falling over the railing, which could have resulted in serious injury or death.

[247] Therefore, the Respondent submitted that the Respondent had a sound, defensible and well-founded reason for terminating Mr Oram's employment. Mr Oram's conduct, being the act of throwing the coffee mug at Mr McCallum and the subsequent physical attack, was said by the Respondent to have represented a serious breach of the Respondent's Code of Conduct. The Respondent submitted that the nature and seriousness of this conduct, together with the absence of any credible provocation or justification, constituted a valid reason for dismissal.

[248] The Respondent submitted that Mr Oram was notified of the reason for dismissal and was given an opportunity to respond. He was issued with a show cause letter on 10 March 2025 which set out the findings of the investigation. The letter allowed Mr Oram to respond by 13 March 2025, which he did. Mr Oram was not refused a support person at the meetings leading up to the dismissal.

[249] The Respondent argued that the criticism by Mr Oram that the Respondent had not investigated his allegation that Mr McCallum had previously used a racist slur is misplaced. The Respondent contended that the law does not oblige the Respondent to conduct a perfect investigation. Instead, the Respondent must conduct a procedurally fair process and reach findings of fact on the balance of probabilities. Any alleged imperfections in the investigation process cannot, in the Respondent's submission, be used by Mr Oram to excuse his misconduct. Even if it were accepted that Mr McCallum had made an offensive comment on a past occasion, the Respondent submitted that this would not render the dismissal unfair, as a racist comment would not justify the response of a physical attack, especially given Mr Oram had acted as a supervisor and was expected to model appropriate workplace behaviour.

[250] The Respondent denied that Mr McCallum engaged in any racial harassment of Mr Oram. It noted that Mr Oram was in a prime position to adduce evidence supporting this claim, but did not do so, and also failed to raise a complaint about it. In the face of Mr McCallum's credible denials, the Respondent submitted that the Commission should reach the conclusion that no racial abuse ever occurred.

[251] The Respondent submitted that the matters raised by Mr Oram in relation to his length of service, employment history, mental state, alleged provocation and personal circumstances, neither individually nor collectively, render the dismissal unfair. While acknowledging that Mr Oram was employed for approximately 12 years, the Respondent submitted that this does not shield him from the consequences of misconduct, and is outweighed by the severity of the misconduct he engaged in.

[252] The Respondent argued that there is no medical evidence before the Commission to suggest that Mr Oram's ability to control his actions was compromised, or that his mental state contributed to the misconduct. The Respondent noted that a letter from Mr Oram's doctor states that depression is a "rare" side effect of the medication, and anxiety is a "very rare" side effect. Regardless, the Respondent submitted that neither depression nor anxiety are synonymous with aggression. It was also submitted that a medical certificate dated 12 March 2025 which provided that Mr Oram was prescribed a medication "in response to a potential side effect from a previous medication that he was prescribed" falls "miles short" of evidence sufficient to demonstrate that his medication affected his behaviour. Additionally, the Respondent noted that Mr Oram did not disclose any such issue prior to the incident, especially considering his dosage had gradually increased from 20mg to 40mg since being initially prescribed the medication in 2022. The Respondent noted that Mr Oram seemed to be aware that he was feeling unwell, and Mr Chelepy suggested that he should go home, but he did not, nor did he seek assistance from the Respondent. Regardless, the Respondent submitted that it is entitled to expect employees will conduct themselves in a safe and respectful manner, regardless of personal stressors.

[253] In relation to Mr Oram's submission that Mr Rawlins should have sent him home, the Respondent argued that this criticism is unwarranted. It submitted that Mr Oram's comments during the pre-start meeting that he was not OK were vague, colloquial and did not convey that he was suffering from a psychological impairment or that he could not perform his work safely. The Respondent argued that it is not realistic or fair to suggest that Mr Rawlins bore responsibility for Mr Oram's choice to remain at work.

[254] The Respondent rejected Mr Oram's submission that the dismissal was disproportionate, considering the entirety of his employment history and the circumstances of the conduct. The Respondent argued that the conduct involved physical violence and was "deliberate, escalatory, and contrary to [Mr Oram's] fundamental safety and behavioural responsibilities". The Respondent argued that such conduct on a mine site is unacceptable and warranted termination.

[255] The Respondent rejected Mr Oram's submission that he has taken ownership of his actions, having regard to the tone of his show cause response, his allegations that he was acting in self-defence, his raising of various issues he had with his workplace and Mr McCallum, and his attempt to shift the blame for the incident to his supervisor.

[256] If the Commission were to determine that Mr Oram was unfairly dismissed, the Respondent submitted that reinstatement would not be an appropriate remedy. The Respondent argued that it has lost trust in Mr Oram's ability to work safely and treat other workers with respect. It submitted that Mr Oram has demonstrated a lack of insight in seeking to shift responsibility to Mr McCallum, and Mr McCallum has said that he would not feel safe working with Mr Oram.

[257] The Respondent also submitted that an order of compensation would not be appropriate. Mr Oram has been paid 4 weeks in lieu of notice, which the Respondent argued has afforded him ample time to find alternative employment. Further, the Respondent submitted that any order of compensation should be significantly reduced on account of Mr Oram's misconduct.

## CONSIDERATION

[258] A dismissal may be unfair, when examining if it is 'harsh, unjust or unreasonable' by having regard to the following reasoning of McHugh and Gummow JJ in *Byrne v Australian Airlines Ltd*:<sup>4</sup>

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

[259] I am duty-bound to consider each of the criteria set out in s.387 of the Act in determining this matter.<sup>5</sup>

***s.387(a) – whether there was a valid reason for the dismissal related to the person's capacity or conduct (including its effect on the safety and welfare of other employees)***

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

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

[261] 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.<sup>6</sup>

[262] On the evidence before the Commission, I consider it more likely than not that Mr McCallum called Mr Oram names, including racist taunts. I am satisfied that he referred to him as “the Arab”, “Muslim” (although he is not Muslim), “wog” and “boofhead”, and referred to Mr Oram needing to regularly shave throughout the day. Mr McCallum strikes me as a class clown, a social nuisance (no longer welcome on camping trips), and it was within all relevant people’s knowledge that he regularly called his colleagues drunk at night. It is astonishing that the Respondent did not act on this information and discipline Mr McCallum at the time.

[263] On the evidence before the Commission, I am also satisfied that Mr McCallum would regularly sleep in his vehicle and shirk work. This greatly irritated Mr Oram, understandably so. Only one day earlier, on 25 January 2025, Mr Boulton had told Mr Oram how lazy Mr McCallum is and stated that Mr Oram was guilty by way of association.

[264] Mr Oram’s interview notes demonstrate he was frustrated at being denied career opportunities such as drone operator or excavator skills as Mr McCallum was placed ahead of him. He expressed his deep dissatisfaction to Mr Rawlins who cut him off and it was clear to Mr Oram that Mr McCallum had priority over many attractive roles.

[265] I do not accept that Mr Oram reported the racist taunts made by Mr McCallum prior to the incident on 26 January 2025, other than to perhaps Mr Rawlins who did not give evidence in this matter. There are, however, so many avenues for Mr Oram to have reported the slurs, and if he did report them to Mr Rawlins and he did nothing about it, it was incumbent upon Mr Oram to report them more formally.

[266] Mr Oram was hostile, angry and defeated before he set foot in the crib room on 26 January 2025. He had concluded that the Mine was likely to soon convert to a 7/7 roster and this greatly upset him. His crew’s desire not to work 7/7 would be outvoted by the majority of employees. In part, Mr Oram blamed Mr McCallum, as Mr McCallum had been requesting a 7/7 flexible work arrangement. It greatly annoyed Mr Oram that Mr McCallum was so keen for a 7/7 roster but was a lazy worker. Further, Mr Oram was displeased at being used by Mr Rawlins to create tension with Mr Perren.

[267] In the pre-start meeting, Mr Oram was asked if he was OK, and replied, “This place is fucked.” It is disturbing that Mr Oram agrees in his written material to the Commission that he made such a statement but denied saying it when giving oral evidence.

[268] Mr Gollschewsky gave evidence that Mr Oram said, “I’m fucked and I don’t want to be here” before leaving the pre-start meeting. If Mr Oram had enough knowledge that he was not feeling his usual self, and he was that upset about a decision beyond his control, he ought to have removed himself from the workplace before he lay hands on others.

[269] Mr Oram also seriously asked Mr Beets if he had a job available with his employer. Mr Oram was in a spiral.

[270] Mr Oram was a union delegate, familiar with workplace rights and responsibilities. The Respondent's Fitness for Work Procedure states the following:

"It is recognised that a person can cause harm to themselves or others due to physical or psychological impairment. Where an employee becomes aware that they are suffering from a physical or psychological problem that will cause harm or problems to themselves or others, the following must occur:

- a. If an employee suspects that they may be suffering from physical or psychological impairment and could be placing themselves or others at risk, they must immediately report this to their Supervisor, Safety Representative or work colleague. If another person has cause to suspect that another person is suffering from a physical or psychological condition which may affect their ability to safely carry out their tasks, then they should report this to a Supervisor..."

[271] If Mr Oram simply said in the pre-start meeting, "This place is fucked", it would only be within his knowledge that he did not want to be there. If he did say, "I'm fucked and I don't want to be here", I conclude that it might have elicited a further response from Mr Rawlins or others to question whether he ought to be at work. I consider that Mr Oram said only, "This place is fucked". Given his disposition, Mr Oram ought to have reported that he did not consider it safe for him to be at work. I do not accept that Mr Rawlins had the responsibility of delving deeper into Mr Oram's psyche given all he had said was "This place is fucked".

[272] Upon being in the crib room, Mr Oram had enough time to consume a hot coffee, and Mr McCallum was in the smoking area outside. That is a reasonable amount of time to calm down. I find that when Mr McCallum entered the crib room after smoking, and was told he would be doing pontoon work, he said to Mr Oram, "What about that boofhead?". I do not accept that Mr McCallum said "boofhead cunt". Mr Oram is the only witness who gave evidence that it was said. Mr Oram is either mistaken or exaggerating; it does not matter. It is not accepted that the word "cunt" was used.

[273] Immediately upon being referred to as "boofhead", Mr Oram threw at force his large stainless steel mug into the wall. I am satisfied a considerable hole was made in the wall and it was thrown with significant force, whether by slingshot to the side or overarm. It was an incredibly dangerous act. Mr Oram did so while seated, and then stood up and said, "What did you call me?" before moving around the long table. He also exclaimed, "Let's take it downstairs". Mr Oram's evidence that he did not throw the cup with force is not accepted.

[274] I do not accept that Mr Oram bent down to pick up his cup and Mr McCallum came towards him. Mr Oram was intent on having it out with Mr McCallum and Mr McCallum had been halfway out the door when the cup was thrown. I conclude on the evidence before the Commission that Mr Oram went around the table, threatening to take Mr McCallum outside and that is what he did. Mr Oram did not act in self-defence, and to assert that he did so is self-serving and not consistent with the evidence. Mr Oram stated that he did not say to go downstairs as a threat, but that cannot be reconciled with the actual act of pushing Mr McCallum out of the doorway to the top of the steps.

[275] Mr Chelepy's evidence is that following the event, Mr Oram said he did what he did because Mr McCallum "annoyed him". One cannot engage in physical violence in the workplace because a colleague annoys them. Mr Beets' evidence is that Mr Oram said that Mr McCallum was lazy, it had been brewing, and it was "bound to happen".

[276] The photo of the staircase demonstrates what an extraordinarily unsafe act Mr Oram engaged in. Mr Oram was on the top step and Mr McCallum one step below. Mr McCallum was at significant risk of falling backwards down the steps. He was holding on to the handrails to prevent his fall. He was at the mercy of Mr Oram's violent act. Mr Oram is a large man; Mr McCallum a relatively slight man.

[277] Mr McCallum could have been killed or severely injured if he fell backwards down the stairs. It is surprising to me that much focus has been on the physically violent act of throwing the stainless steel cup at the wall, narrowly missing Mr McCallum, as opposed to the inherently dangerous act of nearly pushing Mr McCallum down the stairs, backwards.

[278] It is not surprising that Mr McCallum was incredibly upset after this violent act. Once safe, he said that all he had said was "boofhead" and told Mr Oram he needed to calm down. Other witnesses report swearing between the two without stating what exactly was said. It is not surprising there might have been some swearing, but in any event, Mr McCallum went downstairs, shaken. When Mr Oram later approached the vehicle, Mr McCallum continued to be apprehensive of him, stating he is not to come near him.

[279] Mr Oram's conduct in throwing the stainless steel mug with force, together with laying hands on Mr McCallum and threatening him at the top of the stairs is at the high end of workplace physical violence. Mr Oram's conduct significantly affected the safety and welfare of other employees.

[280] Even having regard to any medication Mr Oram might have been taking that might have altered his mood, he engaged in an incredibly dangerous act of physical violence.

[281] I do not accept that he was provoked by Mr McCallum. On Mr Oram's account, Mr McCallum had referred to him as "boofhead" on numerous occasions; none of those resulted in physical violence or even reporting of it. With an audience of colleagues in the crib room, all Mr Oram had to do was say, "Right, I don't like you calling me that and I'm reporting you. There's plenty of witnesses who have heard you call me boofhead. It's unacceptable."

[282] Mr Oram had a thorough understanding of the Code of Conduct. The Code of Conduct is a sensible, pragmatic document, guiding ethical and safe standards of work in the workplace for all, not just employees of the Respondent. Mr Oram breached the Code of Conduct.

[283] A workplace should be free of physical violence. Mr Oram engaged in four acts; firstly, he threw the cup with force; secondly, he moved from around the long table to lay hands on Mr McCallum; thirdly, he stated he wanted to take it downstairs; and fourthly, he held Mr McCallum in a dangerous position at the top of the stairs where Mr McCallum was at risk of falling backwards where he may have been severely injured or killed if he had fallen.

[284] There is enough there, even if any mitigating circumstances are taken into account, to comfortably determine that there was a valid reason for the dismissal. It is contested whether Mr Oram held Mr McCallum in a headlock. If it were necessary to determine if this was the case, I would find that Mr Oram did hold Mr McCallum in a headlock. Mr McCallum at times throughout the altercation used his arms to hold onto Mr Oram's torso, and then the handrails. One of Mr Oram's arms was used to hold Mr McCallum by the collar. I am satisfied that the other arm was around Mr McCallum's neck.

[285] If I am wrong about Mr Oram holding Mr McCallum in a headlock, I am still satisfied that there was a valid reason for the dismissal.

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

[286] Mr Oram was notified of the reason for the dismissal.

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

[287] Mr Oram was provided with an opportunity to respond to the reason for his dismissal. He was interviewed, gave his own document to the Respondent to consider, and also responded in writing to the show cause letter issued to him.

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

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

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

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

[290] Mr Oram was not unreasonably refused by the Respondent to have a support person present in discussions relating to the dismissal.

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

[291] The dismissal was not related to unsatisfactory performance; it was for misconduct.

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

[292] Both parties agree this is a neutral consideration.

***s.387(h) – Other matters***

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

[294] I have taken into account Mr Oram’s otherwise exemplary work history with the Respondent, including his awards, as recently as January 2025. I have had regard for his length of service of 12 years – this is a long period. I have also had regard for the remorse shown by Mr Oram.

[295] I cannot understand how an organisation the size of the Respondent fails to have a checklist for decision makers in relation to the dismissal of employees. Mr Mobbs and Mr Abrams did not review extremely important documents before the decision was made to dismiss Mr Oram. Neither of them was shown the interview documents or Mr Oram’s earlier prepared document. The only document of Mr Oram’s they relied upon was his show cause response.

[296] Mr Oram alleged in his interview notes that Mr McCallum had called him “boofhead wog”, “Arab”, “2IC Housecat”. When he was interviewed on 17 February 2025, he reported that it was well-known that Mr McCallum calls people when he is drunk, and pondered whether drug and alcohol testing did not occur immediately after the incident because it was possible Mr McCallum might not pass the test. None of this information was before the decision makers in relation to Mr Oram’s dismissal.

[297] How can such senior members of management of a very large organisation not have all relevant information before them when they dismiss a highly valued employee with a lengthy and clean service history? The Respondent needs to do better.

[298] The Respondent’s workplace is large and at times, dangerous. Trust between workers is essential and it is no place for employees to be engaging in acts of physical violence, including as violent as threatening an employee at the top of a large staircase. It is appropriate that a suitable standard is set to ensure that all workers have comfort that they will go home from their workplace, free from assault. I agree with the Respondent’s submissions that in the absence of extreme or unusual circumstances, physical violence in the workplace, the kind engaged in by Mr Oram, cannot be tolerated.

**Conclusion**

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

[300] I have determined that Mr Oram was notified of the reason for the dismissal.

[301] I have determined that Mr Oram was provided with an opportunity to respond to the reason related to his conduct.

[302] There was no unreasonable refusal by the Respondent to allow Mr Oram a support person.

[303] The dismissal was not in respect of poor performance; it was for misconduct.

[304] The size of the Respondent's enterprise did not impact on the procedures followed and it has dedicated human resource specialists.

[305] Mr Oram had a lengthy and clean service history with the Respondent and has demonstrated remorse for his conduct.

[306] The decision makers did not have all relevant information before them when they made the decision to dismiss Mr Oram.

[307] Having regard to all of the circumstances, the evidence and the submissions before me, I am satisfied that Mr Oram's termination was not disproportionate to the conduct engaged in by him.

[308] I find that the dismissal was not harsh, unjust or unreasonable.

[309] The application is dismissed. An order [[PR795532](#)] will be issued with this decision.



COMMISSIONER

*Appearances:*

*C Newman* of the Mining and Energy Union, for the Applicant.

*H Blattman KC* of Counsel, instructed by King & Wood Mallesons, for the Respondent.

*Hearing details:*

2025.

Mackay.

28 & 29 July.

*Final written submissions:*

5 September 2025.

Printed by authority of the Commonwealth Government Printer

<PR795531>

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<sup>1</sup> First witness statement of Robert Oram, at [46].

<sup>2</sup> Print S6238, 22 May 2000, [25].

<sup>3</sup> [\[2023\] FWCFB 165](#), [28].

<sup>4</sup> (1995) 185 CLR 410, [465].

<sup>5</sup> *Sayer v Melsteel* [\[2011\] FWAFB 7498](#) at [20].

<sup>6</sup> *Walton v Mermaid Dry Cleaners Pty Ltd* (1996) 142 ALR 681, 685.