DECISION

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

Kee Onn Yong
v
UGC Holdings Pty Ltd
(U2025/16366)

COMMISSIONER LIM PERTH, 23 MARCH 2026

Application for an unfair dismissal remedy – no valid reason – no procedural fairness- dismissal unfair – compensation ordered

1. Introduction

[1] **UGC** Holdings Pty Ltd is a civil contracting and commercial landscaping company based in Perth Western Australia.[1] UGC employed Mr Kee Onn Yong as a Supervisor from July 2024 to 2 October 2025 when he was dismissed. Mr Yong says his dismissal unfair and has applied to the Fair Work **Commission** for a remedy under s 394 of the *Fair Work **Act** 2009* (Cth).

[2] In its Form F3, UGC asserted that Mr Yong was dismissed for serious misconduct as he knowingly allowed another staff member to use a "no-authorised access" side doorway that was intentionally blocked off as an emergency evacuation point. The Form F3 states that Mr Yong allowed the doorway to be used as an access point between the depot and outside yard to load and unload vehicles.

[3] I conducted a hearing for Mr Yong's application on 20 March 2026. I granted permission for Mr Yong to be represented by Mr Patrick Mullally. UGC did not attend the hearing.

[4] Having considered the submissions and evidence available, I find that Mr Yong was unfairly dismissed. I also find it appropriate to award Mr Yong $39,498.90. The detailed reasons for my decision are below.

2. Procedural history

[5] I listed the matter for a Case Management Conference on 7 January 2026. The notice of listing was served on Mr Nathan Ulrich, the Managing Director for UGC, as he is the UGC contact on its Form F3. On 23 December 2025, Mr Ulrich wrote to Chambers seeking an adjournment to February 2026 on the basis that he was on leave and returning on 19 January 2026. Mr Ulrich also indicated that UGC would be briefing legal counsel on the matter. My Chambers explained that the matter was listed for a Case Management Conference, not a Hearing, and asked Mr Ulrich to confirm whether he still sought an adjournment. Mr Ulrich did not respond.

[6] UGC did not attend the Case Management Conference on 7 January 2026. That same day, my Chambers sent the following email to the parties:

> "Dear Parties,
>
> I refer to the Case Management Conference for this matter held on Wednesday, 7 January 2026. The Respondent did not attend.
>
> The Commissioner notes from the Respondent's Form F3 that it objects to the application on the basis it complied with the Small Business Fair Dismissal Code. However, the Form F3 also states that 22 employees were engaged at the time the Applicant was dismissed. The threshold for a small business is less than 15 employees. Further information can be found here [link removed].
>
> So that this matter can progress, Commissioner directs the Respondent to confirm by 5:00pm AWST, Wednesday 21 January 2026:
>
> 1. Whether it still relies on the Small Business Fair Dismissal Code, and if yes, on what grounds; and
> 2. Whether it wishes to participate in a conference with the aim of resolving this application by agreement."

[7] We received an autoreply from Mr Ulrich stating that he would be back at work on 19 January 2026. No other response was received. On 27 January 2026, my Chambers wrote to the parties with directions for the filing of material. This email also contained the following:

> "**1. Directions**
>
> The Respondent raised in its Form F3 that it relies on compliance with the Small Business Fair Dismissal Code, but also that it employed 22 employees at the time Mr Yong was dismissed. This is above the threshold for a small business. We wrote to the parties to ask the Respondent to clarify its position. The Respondent did not respond. The Commissioner has accordingly issued the attached directions on the basis that the Respondent employed 22 employees and was thus not a small business under the Act. If the Respondent disagrees with this, they are to notify Chambers **as soon as possible.**"

[8] No autoreply was received from Mr Ulrich's email.

[9] Under the directions UGC were to file their materials by 24 February 2026. UGC did not file any materials. In the afternoon of 24 February 2026, my Chambers wrote to the parties to highlight UGC's noncompliance and directed UGC to file its materials by 12:00pm the next day. UGC did not respond.

[10] On 26 February 2026, my Chambers called Mr Ulrich's mobile number. He did not pick up. On 3 March 2026, my Chambers called UGC's head office through the number on their website to confirm Mr Ulrich's contact details and to advise that the Commission was seeking a response. A staff member confirmed that the phone number and email address for Mr Ulrich was correct. After that phone call, an email was sent to the parties with the following:

> "…
>
> **Contact with the Respondent**
>
> Earlier this afternoon, the Commission called the Respondent's reception, who confirmed that the email address and phone number we have on record for Mr Ulrich are correct. We called Mr Ulrich's phone number on Thursday, 26 February 2026, with no success. I confirm that the Respondent has not filed any materials with Chambers."

[11] On 17 March 2026, the below email was sent to the parties:

> "Dear Parties,
>
> Please find **attached** the Digital Court Book for the hearing listed for **9:30AM AWST this Friday, 20 March 2026**.
>
> …
>
> Please also note that if a party does not attend the hearing the Commissioner will still proceed with hearing the evidence and submissions for this matter. A party's failure to attend the hearing may impact on the weight that can be given to their materials and/or result in adverse findings for their case."

[12] UGC did not attend the hearing on 20 March 2026. My Chambers called Mr Ulrich on the day of the hearing and left a message. He did not return the call. UGC has not engaged with the Commission since 23 December 2025 despite:

- our multiple emails to Mr Ulrich's email address, which appears to be correct given he emailed Chambers from it on 23 December 2025; and
- our calls to Mr Ulrich's mobile and the front desk for UGC.

3. The evidence

[13] During the hearing I asked Mr Yong several questions about his evidence. I found Mr Yong's recall to be good, and he came across as an honest and credible witness. Mr Yong also tendered a witness statement from Ms Isobel Pianta, a former UGC employee. I accepted Ms Pianta's witness statement, but ultimately, I find that not much turns on her evidence given my findings on Mr Yong's credibility.

[14] In terms of UGC's evidence, I have taken its Form F3 and attachments as both submissions and evidence, though the weight that can be attributed to those documents is affected by UGC's lack of engagement.

3.1 The dismissal meeting

[15] On 2 October 2025 UGC's HR Manager summonsed Mr Yong to a meeting in the company boardroom. The HR Manager informed him that the company had decided to dismiss him for the following reasons: undermining the authority of a supervisor in a disciplinary meeting; personal and professional lines being overstepped; not complying with the process for applying for leave; and using a side door in an improper and unsafe manner.

[16] With UGC's Form F3 it filed a document titled "Meeting Minutes" which I took to be minutes of the meeting on 2 October 2025 between UGC's HR Manager and Mr Yong. Mr Yong's evidence is that the first time he saw those minutes was when the Form F3 was filed. The minutes record as follows:

Issue one: undermining another supervisor in a disciplinary meeting

[17] The HR Manager raised an issue where Mr Yong had been asked to participate in a disciplinary meeting led by another supervisor with a team leader who was being issued a warning. During this meeting, Mr Yong undermined the other supervisor by disagreeing with the decision to issue a warning to the team leader.

[18] The minutes show that Mr Yong explained to the HR Manager that he had not been told what the meeting was for and that as he heard what the supervisor was saying, he felt he needed speak up as he disagreed. The HR Manager and Mr Yong discussed what Mr Yong how the matter could have been handled differently. Mr Yong also explained that he had apologised to the other supervisor and felt that they had moved on from the matter.

Issue two: overstepping of personal/professional lines

[19] The HR Manager raised concerns that Mr Yong could not separate personal and professional relationships. The HR Manager did not give particulars on this, with the minutes stating that, "*There is an overall feeling from fellow colleagues that they've noticed you can appear to be defensive or unwilling to collaborate, or engage when it comes to discussing issues about employees who are noticeably doing the wrong thing. Or dismissive when fellow supervisors are raising concerns*".

[20] Mr Yong's evidence at the hearing was that the HR Manager did not say this during the meeting. What the HR Manager said to him was that he should not be socialising with subordinates outside of work hours.

Issue three: taking leave without formal approval

[21] The minutes show that Mr Yong explained that he was unaware of the correct procedure for taking annual leave and that he had checked with another supervisor who had informed him that the schedule looked fine for him to take the leave. The HR Manager expressed that she did not believe that Mr Yong did not know the correct procedure given he had followed the correct process before.

[22] At the hearing Mr Yong explained that there had been a recent change to the process of taking annual leave, as the HR Manager had informed employees that she would no longer be handling leave requests, and that they needed to go through Mr Ulrich. Mr Yong's evidence was that he attempted to communicate with Mr Ulrich regarding his leave request, but that he had been unavailable, and so he communicated through the other supervisor and an operations manager.

Issue four: the door

[23] The minutes show that the HR Manager raised that Mr Yong had allowed another employee to use an access way that was intentionally blocked off when there was a designated access way for use in the depot. The HR Manager stated that another supervisor had discussed it with Mr Yong and Mr Yong had stated that until he was told why the door had been blocked off, he would continue to allow employees to use the access way. This was on the basis that Mr Yong did not, "blindly follow instructions without being told the reasons why".

[24] The minutes state:

> "Understood. As your aware, due to the serious nature of the topic, you were then approached directly by Nathan on this topic, who asked you to explain your mis-understanding around the purpose/use of this door as it had become apparent you were not planning to follow the instructions and adhere to this safety standard. You reiterated to Nathan the same point about not being willing to follow any processes when you aren't told the reasoning why. Nathan promptly explained to you that we have certain WHS legislation that as a company we are bound to adhere to. And if we are found to be in breach of those, we will be promptly issued with a notification which remains on our record. And that as a Supervisor is it a large part of your role to not only follow process, by lead by example. And that knowingly allowing an employee who reports into you, to breach this safety protocol repeatedly, is a huge lack of regard for safety, the company and your role as a Supervisor. It is noted that your responses to this explanation still remained argumentative & unaccepting and felt like a large lack of ability to take accountability for your actions & the severity of the situation.
>
> This door formed part of an emergency evacuation plan for the building, hence why it was so clearly blocked from use. And most importantly, should an emergency evacuation be required, and this door was in use for the 'loading of a vehicle', this would present a massively serious risk to the larger group upon attempting to evacuate per the plan.
>
> This constitutes a breach in safety and the company has determined falls under the category of serious mis-conduct."

[25] At the hearing Mr Yong disagreed that the HR Manager comments had been as detailed as what the minutes show.

[26] The minutes show that the HR Manager then informed Mr Yong that he was being dismissed immediately for serious misconduct. Mr Yong also disagreed with this – his evidence is that the HR Manager informed him of his dismissal at the start of the meeting.

[27] On 6 October 2025, UGC's Human Resources Manager sent Mr Yong the following email:

> "Good Afternoon Kee Onn,
>
> As you are aware, your employment with UGC Group, as a **Supervisor** was terminated effective immediately on **Thursday the 3nd of October, 2025** in a verbal conversation with you & I present.
>
> The reason's we reached this decision were delivered to you in this meeting, with the main determination of serious misconduct stemming from you breaching safety protocol, by knowingly allowing an employee who directly reports to you (and is part of the leadership group) to breach a clear safety process set by upper management (and in line with WHS legislation set by WorkSafe WA that we are obligated to adhere to as a company). It is noted that you have been forthcoming about the breach in the protocol.
>
> Your company laptop was retrieved on this date. You confirmed you aren't in the possession of a company mobile phone. Per our records, you are not in the possession of any keys that grant you access to the building at 18-24 Bannick Crt. If this is not accurate, please declare this immediately and return them to the Office Manager.
>
> Please ensure all company issued PPE & uniform is returned to the Office Manager at UGC Group within business hours by week ending Friday 10th of October, 2025.
>
> Your final pay will be this **Thursday the 9th of October, 2025.** Your leave entitlements will be included in this pay.
>
> If you have any questions, please contact me via email.
> Thank you for your effort during your time with UGC Group. We wish you all the best."

3.2 What is the side door?

[28] Mr Yong's evidence is that UGC's premises has a side door that leads to the outside of the warehouse so that employees can access vehicles and load equipment for jobs. In the beginning of September 2024, an A4 piece of paper with the words, "no entry or exit" was pasted on the door and the handle was shackled with a chain. This is despite the door having an emergency exit sign above it. No explanation was given to Mr Yong.

[29] Mr Yong provided a picture of the side door as part of his evidence, which is included in this decision as Annexure A. Mr Yong explained that the chain around the door handle could be unlatched from the door frame.

[30] Mr Yong's evidence is that crew members asked him if he knew why the door had been blocked off. He did not, and the other supervisor did not either. As a result, when employees asked him if they could continue to use the side door for easier access to the vehicles, Mr Yong agreed on the basis he could not see any safety issues.

[31] On 16 September 2025, another supervisor advised Mr Yong that Mr Ulrich had put the sign up. Mr Yong said to the other supervisor that he wanted to know why the door had been blocked off so he could explain it to the crew. Mr Yong then attempted to find Mr Ulrich to ask about the door.

[32] Mr Yong's evidence is that he bumped into Mr Ulrich in the afternoon of 16 September 2025. Mr Yong asked Mr Ulrich about the door. Mr Yong said that Mr Ulrich would not explain why the door had been blocked off and asked who was still using the door so he could issue them with a warning. Mr Ulrich also said that the crew did not need to know the rationale, they just had to follow instructions.

[33] Mr Yong's further evidence is that half an hour after this interaction, he approached Mr Ulrich in his office and told Mr Ulrich that he wasn't trying to go against him but had been offering an opinion on the matter. Mr Ulrich told Mr Yong that he was open to such conversations, but that the crew should follow instructions. Mr Yong agreed.

[34] Mr Yong's evidence is that after this conversation he did not allow any crew members to use the side door.

[35] Ms Pianta was employed by UGC from August 2024 to October 2025 and reported to Mr Yong. Ms Pianta's evidence is that up until Mr Yong's dismissal, she did not know why the side door had been locked and did not know that it was considered an emergency exit until after Mr Yong was dismissed. Ms Pianta's further evidence is that UGC did not communicate anything to her or the staff about why the door was locked.

4. Preliminary matters

[36] There is no contest, and I find that:

(a) Mr Yong had completed the minimum employment period and earned less than the high income threshold. Mr Yong was protected from unfair dismissal under s 382 of the Act;

(b) Mr Yong's application was made within the time prescribed in s 394(2) of the Act; and

(c) Mr Yong's dismissal was not a case of genuine redundancy.

[37] As set out earlier in this decision, UGC's Form F3 stated that it objected to Mr Yong's application on the basis it was a small business employer and it had complied with the Small Business Fair Dismissal **Code**. The Form F3 also stated that there were 22 employees at the time Mr Yong was dismissed.

[38] Based on UGC's Form F3, I find that UGC was not a small business at the time of Mr Yong's dismissal. The Code therefore did not apply. If I am wrong on this and the Code did apply, UGC did not provide evidence or submissions discharging its onus to prove compliance with the Code.

4. Consideration

[39] Section 387 of the Act requires me to consider certain criteria in assessing whether a dismissal is harsh, unjust or unreasonable. I set out my consideration below.

4.1 Section 387(a) – was there a valid reason for the dismissal related to Mr Yong's capacity or conduct?

[40] A valid reason is one that is 'sound, defensible or well-founded'[2] and should not be 'capricious, fanciful, spiteful or prejudiced'.[3]

[41] UGC dismissed Mr Yong for allowing employees to use a door that had been designated as an emergency egress. I accept his evidence that UGC did not communicate to the employees that blocking usage of the side door formed part of an evacuation plan. Mr Yong's picture of the door shows that the handle had been shackled with a chain. It is unclear how UGC expected employees to know that the door had been designated as an evacuation path when *firstly*, it was not communicated to the employees, and *secondly*, a shackled door is not generally considered a safe or sensible part of an evacuation plan.

[42] Even if I accepted the meeting minutes unchallenged, I find that Mr Yong allowing staff to use the side door was not sufficiently serious enough to warrant dismissal, particularly summary dismissal. It seems to me that staff using the side door is less of an issue to any safety evacuation plan than UGC shackling the door without explanation.

[43] It is unclear whether UGC relies on the other three issues in dismissing Mr Yong, but I will address them for completeness:

(a) Mr Yong speaking out during the disciplinary meeting wasn't particularly tactful, but I accept that Mr Yong was not told what the meeting was for beforehand. Mr Yong not following a particular script shows that he may not be good at reading a room, but it is not something that calls for dismissal.

(b) As noted earlier, the meeting minutes do not provide particulars of how Mr Yong was bad at keeping professional boundaries with employees he was friendly with. I make no finding in that regard. Mr Yong socialising with subordinates outside work in this case is not a valid reason for dismissal.

(c) Lastly, I find that Mr Yong's explanation on how he applied for annual leave was cogent and I accept it. Even if I were to accept what is in the meeting minutes, that Mr Yong did know the procedure for taking annual leave and ignored it, I find that this was not a valid reason for dismissal.

[44] I find that there was no valid reason for Mr Yong's dismissal.

4.2 Section 387(b) and (c) – notification of valid reason and opportunity to respond

[45] An employee protected from unfair dismissal should be notified of the reason to terminate their employment before the decision to dismiss is made.[4] Failure to do so impacts on their ability to respond to that reason before the decision to terminate is made.[5]

[46] Mr Yong's evidence is that he was told of the reason for dismissal at the meeting on 2 October 2025 and did not have the opportunity to respond. At the hearing, Mr Yong also gave

evidence that between 16 September 2025 and 2 October 2025, UGC did not give any indication that there were any issues or that they were considering terminating his employment.

[47] Mr Yong's evidence included a text message from the HR Manager dated 1 October 2025, where she asked him to head into the office the next day to "discuss some items". There was no indication in the text message of what the meeting would be about.

[48] I accept that Mr Yong was first put on notice of UGC's concerns in the same meeting he was dismissed. I find that UGC had made the decision to dismiss Mr Yong before the meeting, and that Mr Yong was not given an opportunity to respond to the reason for dismissal.

4.3 Section 387(d) – any unreasonable refusal by UGC to allow a support person

[49] Mr Yong was not notified of the reason for the meeting on 2 October 2025 and thus could not request a support person. This is a neutral consideration.

4.4 Section 387(e) – warnings concerning performance

[50] Mr Yong says he had not received any prior warnings. I accept this evidence.

4.5 Section 387(f) and (g) – size of UGC's enterprise and whether the absence of dedicated human resource management specialists or expertise would be likely to impact on the procedures followed

[51] As noted above, UGC had 22 employees at the time of Mr Yong's dismissal. They have a HR Manager. In the absence of any other evidence or submissions, I do not make findings on this point.

4.6 Section 387(h) – any other matters the Commission considers relevant

[52] Mr Yong submits that UGC's decision to close the side door without informing the staff and dismissing him for it was capricious and spiteful. I have addressed this in my consideration of whether there was a valid reason and do not need to make any further findings in this regard.

4.7 Conclusion – Mr Yong's dismissal was unfair

[53] I have made findings in relation to each matter in s 387 as relevant to this case. The considerations in s 387(a), (b) and (c) weigh in favour of a finding that the dismissal was unfair. The other considerations in s 387 are neutral. I find that there was no valid reason for Mr Yong's dismissal. I further find that Mr Yong was denied procedural fairness in his dismissal. There are no mitigating factors. I find that Mr Yong's dismissal was unfair.

5. Remedy

[54] I now turn to the issue of the remedy, if any, that I should order in the circumstances. I am satisfied pursuant to ss 390(1) and (2) that Mr Yong has made an application for unfair dismissal, is a person protected from unfair dismissal and was unfairly dismissed.

[55] Mr Yong does not seek reinstatement. I turn now to consider s 390(3)(b). As stated by the Full Bench in ***Nguyen*** *v Vietnamese Community in Australia*,[6] the question of whether to order a remedy in a case where a dismissal has been found to be unfair remains a discretionary one.[7] Section 390(3)(b) requires that all circumstances of the case to be taken into consideration. As to what this consideration requires, I respectfully adopt the reasoning of the Full Bench in ***Bowden*** *v Ottrey Homes Cobram and District Retirement Villages Inc*[8] at [40]:

> "As to whether an order for the payment of compensation by Ottrey to Ms Bowden is appropriate in all the circumstances of the case, we note that the phrase "all the circumstances of the case" in s.390(3)(b) of the FW Act is also contained in s.392(2). However, in s.392(2) the phrase is followed by a reference to the matters in ss.392(2)(a) to (g) and s.392(2)(g) concerns "any other matter that the FWC considers relevant." In this case, we think the matters in ss.392(2)(a) to (g) embrace all the circumstances of the case relevant to our consideration of whether a compensation order is appropriate. In *Henderson v Department of Defence* it was recognised that the same matters may serve different purposes in s.170CH of the WR Act, as it was prior to the Work Choices amendments…"

[56] In this regard, all the circumstances of the case are considered, including the specific matters identified in ss 392(2)(a)–(g).

5.1 Effect of the order on the viability of UGC's enterprise: s 392(2)(a)

[57] UGC did not make any submission on this point. There is nothing for me to consider in this regard.

5.2 Length of Mr Yong's service: s 392(2)(b)

[58] Mr Yong worked for UGC for approximately 15 months. I consider that Mr Yong's length of service does not support reducing or increasing the amount of compensation ordered.

5.3 Remuneration that Mr Yong would have received, or would have been likely to receive, if he had not been dismissed: s 392(2)(c)

[59] As stated by a majority of the Full Court of the Federal Court in *He v Lewin*:[9]

> [i]n determining the remuneration that the employee would have received, or would have been likely to receive… [the Commission must] address itself to the question whether, if the actual termination had not occurred, the employment would have been likely to continue, or would have been terminated at some time by another means. It is necessary for the Commission to make a finding of fact as to the likelihood of a further termination, in order to be able to assess the amount of remuneration the employee would have received, or would have been likely to receive, if there had not been the actual termination.

[60] Mr Yong's hours would vary from week to week. Mr Yong provided the payslips for the last 26 weeks of his employment with UGC, which show that he earned $39,498.90, or an average of $759.59 per week.

[61] Mr Yong submits that he would have worked at least another year with UGC, as he considered the role with UGC a career job. If I take UGC's materials at its highest, Mr Yong perhaps lacked tact, but there were no issues with his general performance of his role. I accept that he would have continued to work at UGC for another year. This is the 'anticipated period of employment'.[10]

[62] I calculate that Mr Yong would have earned $78,997.80 gross, plus superannuation, during the anticipated period of employment.

5.4 Efforts of Mr Yong to mitigate the loss because of the dismissal: s 392(2)(d)

[63] Mr Yong's evidence is that he applied for new jobs post dismissal and found new employment on 17 November 2025. I accept this evidence. I find that no deduction should be made.

5.5 Remuneration earned and remuneration likely to be earned: ss 392(2)(e)–(f)

[64] Mr Yong obtained new employment on 17 November 2025. His evidence is that his rate of earning is the same as what he was earning at UGC.

[65] It has been 18 weeks since Mr Yong started his new job to the date of this decision. I calculate that he has earned $13,672.62 in this period. An order will be issuing with this decision, which will order that UGC is to pay Mr Yong compensation within 14 days. I calculate that Mr Yong will earn $1,519.18 gross in this period.

5.6 Other matters: s 392(2)(g)

[66] No other matters were brought to my attention. I note that Mr Yong was summarily dismissed, and so was not paid notice.

5.7 Determining the amount of compensation

[67] The well-established approach to the assessment of compensation under s 392 is to apply the '*Sprigg* Formula', derived from the decision of the Full Bench of the Australian Industrial Relations Commission in ***Sprigg*** *v Paul's Licensed Festival Supermarket*.[11] This approach was articulated in the context of the current legislative framework in *Bowden.* I adopt the *Bowden* methodology but observe that *Bowden* and the formulation in *Sprigg* serve as a guide, rather than a decision rule.

[68] The approach in *Sprigg* can be summarised as follows:

> Step 1: Estimate the remuneration the employee would have received, or would have been likely to receive, if the employer had not terminated the employment.
>
> Step 2: Deduct monies earned since termination. Workers' compensation payments are deducted but not social security payments. The failure to mitigate loss may lead to a reduction in the amount of compensation ordered.
>
> Step 3: Discount the remaining amount for contingencies.
>
> Step 4: Calculate the impact of taxation to ensure the employee receives the actual amount he or she would have received if they had continued in their employment.
>
> Step 5: Apply the legislative cap on compensation.

[69] In this matter, I have estimated that Mr Yong would have received $78,997.80 if he had not been dismissed. From this amount I deduct the $13,672.62 that Mr Yong has earned since 17 November 2025, and the $1,519.18 he will earn between the date of this decision and actual compensation. This comes to a total of $63,806.

[70] With regards to contingencies, I refer to the Full Bench decision in ***McCulloch*** *v Calvary Health Care Adelaide*,[12] which observed that a deduction for contingencies is applied to prospective losses, that is loss occasioned after the date of the hearing. Referring to *Ellawala v Australian Postal Corporation*,[13] the Full Bench in *McCulloch* stated that a discount for contingencies is a means of taking account of the various probabilities that might otherwise affect earning capacity. In this case, I find that no deductions should be made for contingencies. I have considered the impact of taxation and have elected to determine the amount as a gross amount plus superannuation and leave taxation for determination.

[71] As I have found that there was no misconduct on Mr Yong's part, I make no deduction in respect of s 392(3). I also confirm that the compensation amount assessed has no component for any shock, distress, humiliation or analogous hurt Mr Yong suffered because of his dismissal as per s 392(4).

[72] In this matter, the relevant compensation cap is the total amount of remuneration Mr Yong received during the 26 weeks immediately before his dismissal, being $39,498.90. As the amount of compensation calculated is higher than this amount, this cap applies.

5.8 Conclusion on compensation

[73] Having regard to all the circumstances of this matter applied to the considerations in s 392 of the Act, I consider it is appropriate to make an award of compensation to Mr Yong of $39,498.90.

[74] Given my findings above, I am satisfied that the application of the *Sprigg* formula does not lead to an amount that is excessive or clearly inadequate, and I am satisfied that the level of compensation is an amount that is appropriate having regard to all the circumstances of the case.[14] Accordingly, I order that UGC pay to Mr Yong compensation in the amount of $39,498.90 to be taxed by law, plus make a 12% contribution to Mr Yong's nominated superannuation account.

[75] The compensation payment is to be made within 14 days of this Decision. An Order to this effect will issue separately.[15]

COMMISSIONER

Appearances:
P Mullally, for the Applicant.

Hearing details:
2026.
Perth.
20 March.

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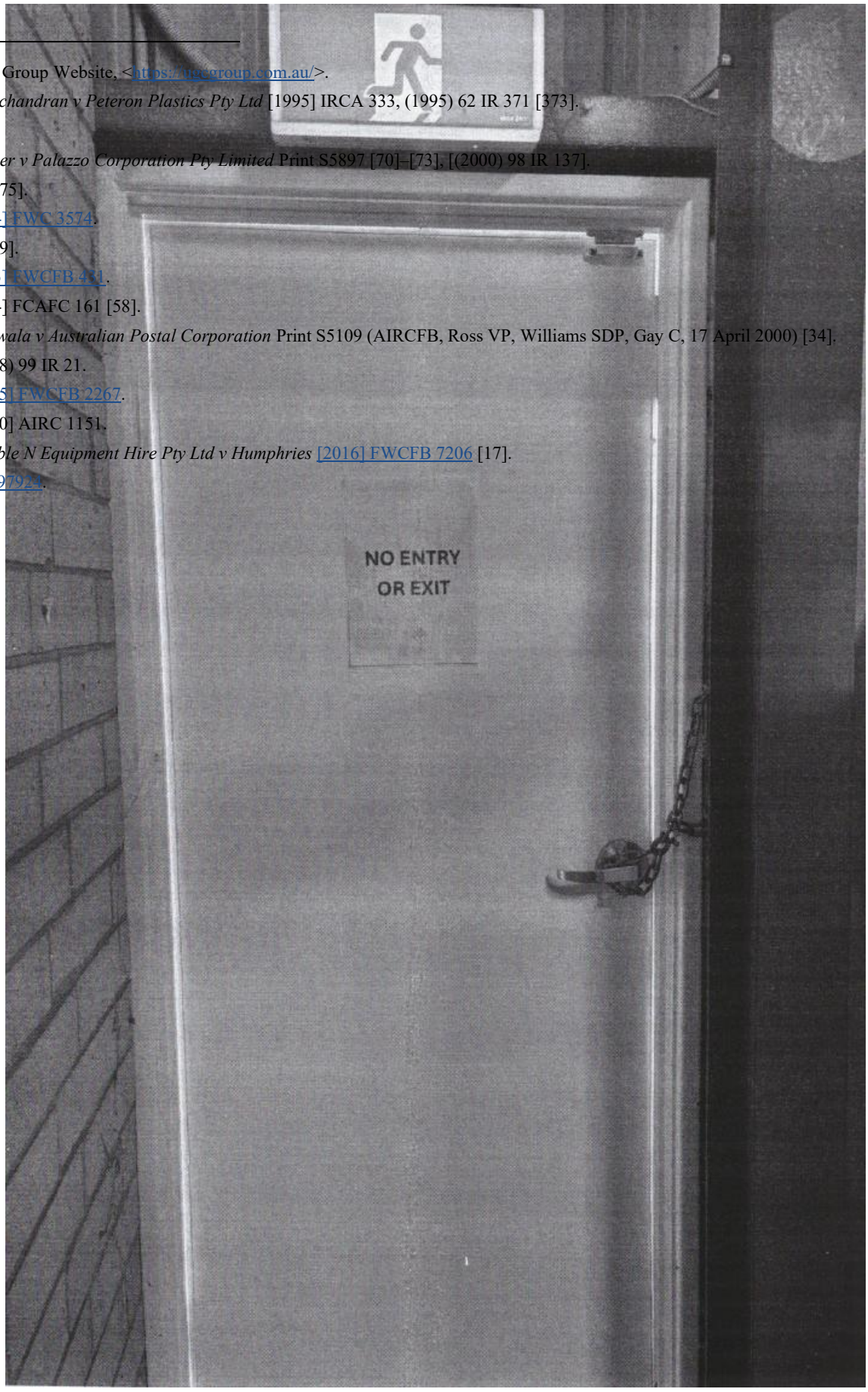
Annexure A



[1] UGC Group Website, <https://ugcgroup.com.au/>.

[2] *Selvachandran v Peteron Plastics Pty Ltd* [1995] IRCA 333, (1995) 62 IR 371 [373].

[3] Ibid.

[4] *Crozier v Palazzo Corporation Pty Limited* Print S5897 [70]–[73], [(2000) 98 IR 137].

[5] Ibid [75].

[6] [2014] FWC 3574.

[7] Ibid [9].

[8] [2013] FWCFB 461.

[9] [2004] FCAFC 161 [58].

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

[11] (1998) 99 IR 21.

[12] [2015] FWCFB 2267.

[13] [2000] AIRC 1151.

[14] *Double N Equipment Hire Pty Ltd v Humphries* [2016] FWCFB 7206 [17].

[15] PR797924.