



DECISION

Fair Work Act 2009

s.394 - Application for unfair dismissal remedy

Michael Ramsey

v

The Trustee for the Roman Catholic Church for the Diocese of Parramatta
(U2016/2429)

VICE PRESIDENT HATCHER

SYDNEY, 27 JANUARY 2017

Application for relief from unfair dismissal.

Introduction

[1] Mr Michael Ramsey has applied under s.394 of the *Fair Work Act 2009* (FW Act) for an unfair dismissal remedy in respect of his summary dismissal from his employment as IT Project Manager in CatholicCare Social Services by the respondent (the Diocese) on 9 May 2016. The termination letter issued to Mr Ramsey on the day of his dismissal gave the reason for the dismissal as follows:

“I refer to the incident that occurred on Monday, 9th May 2016 between yourself and the Manager of People & Culture; Desiree Rashada. During the incident you placed your hand on Ms Rashada’s shoulder and physically shoved her in anger, this constitutes violence in the workplace and police were called to the incident. As such we consider that your actions constitute serious misconduct warranting summary dismissal.”

[2] Mr Ramsey contends that his dismissal was unfair, primarily for the reason that he did not engage in the conduct alleged in the termination letter. He seeks compensation as a remedy.

[3] The matter was the subject of a hearing before me on 12 and 13 September 2016. I had earlier determined, pursuant to s.399 of the FW Act, that the matter was most appropriately dealt with in a formal hearing because of the major factual contest between the parties. Both parties were granted permission to be represented by counsel pursuant to s.596(2)(a) of the FW Act. Mr Ramsey gave evidence in support of his own application, and also called evidence from the following witnesses:

- Otto Charles Henfling, who was until August 2014 the Executive Director of CatholicCare Social Services (CatholicCare);
- Sister Eileen Quade, who worked for the Diocese in various capacities, including in CatholicCare, from 2006 until January 2016;

- John Edwin Kelly, who was the Executive Director of CatholicCare from August 2014 until February 2016; and
- Reg Sinha, who was Finance Director of CatholicCare until May 2016.

[4] The Diocese called evidence from the following witnesses:

- Joe Cashman, the Director of Administrative Services for the Diocese;
- Tony Jose, the Director of Financial Services for the Diocese;
- Lee Netana, the IT Manager for the Diocese;
- Geoff Officer, the Chief of Operations and Finance of the Diocese; and
- Ms Desiree Rashada, the Manager, People and Culture of the Diocese.

[5] Having heard the evidence concerning the alleged incident involving Mr Ramsey and Ms Rashada on 9 May 2016, I considered that I would be assisted by requiring the production of NSW Police records and documents arising from their attendance at the offices of the Diocese in Parramatta on 9 May 2016 following the alleged incident. An order for production for these documents was issued on 14 September 2016. There was some delay in the production of the documents by the NSW Police, and they were not received at the Commission until 12 October 2016. It was then necessary to give the parties an opportunity to file further evidence in response to these documents. The hearing continued on 1 December 2016, during which a further witness statement made by Ms Rashada was tendered and closing submissions were received.

Preliminary matters

[6] Section 396 of the FW Act requires that four specified matters must be decided before the merits of Mr Ramsey's application may be considered. There was no contest between the parties about any of those matters. I find that:

- (a) Mr Ramsey's application was made within the period required by s.394(2);
- (b) Mr Ramsey was a person protected from unfair dismissal;
- (c) the Diocese was not a "*small business employer*" as defined in s.23 of the FW Act, so that the Small Business Fair Dismissal Code was inapplicable; and
- (d) the dismissal was not a case of genuine redundancy.

The facts

Background

[7] CatholicCare is a service that is operated by the Diocese. It was previously known as Centacare. Mr Ramsey was initially engaged as an IT contractor in May 2009, and in July 2010 he was offered and accepted a full-time position as IT Project Manager. In that role his

primary responsibility was to maintain the CatholicCare network and workstations. For the major part of his employment Mr Ramsey worked at offices in Parramatta, but in 2013 he was relocated to CatholicCare's office at Blacktown.

[8] In about October or November 2013 Mr Ramsey injured his neck and back at work as a result of lifting heavy computer equipment and accessories. He had surgery for this injury in February 2014, but in about November 2015 he aggravated the injury due (he said) to lifting he was required to undertake when CatholicCare's Parramatta and Blacktown offices were merged into a new office at Blacktown.

[9] Apart from this injury, Mr Ramsey's employment was uneventful until about March 2016. There was nothing adverse on his employment record. Mr Henfling, Mr Kelly, Mr Sinha and Sister Quade all had a high opinion of him, regarding him as hardworking and competent in the performance of his duties, courteous and generous in his dealings with colleagues, and popular with and respected by other staff.

Issues emerge

[10] At the time of the office merger, Mr Ramsey reported to Mr Netana as IT Manager for the Diocese. The office merger required a NBN connection to be arranged for the new office in Blacktown on a time-critical basis so that the IT systems would operate smoothly, and CatholicCare requested that the Diocese's central office (or Chancery) in Parramatta arrange for the NBN contract to be established. An initial draft of the order form was prepared by somebody within CatholicCare, which may have been Mr Sinha or someone acting on his behalf but was not Mr Ramsey. It contained an incorrect ABN for CatholicCare. Mr Netana then reviewed the order form and made some amendments, but did not detect that the ABN was incorrect. The order form was then sent to Mr Sinha, and copied to Mr Ramsey, for review and finalisation. Mr Ramsey was listed on the order form as the "technical contact" person and, as far as he was concerned, his only role was to review the technical aspects of the form, not the administrative details. Mr Sinha ultimately signed the finalised form. The error in the ABN later, in March 2016, caused the NBN service to be disconnected for three days. There was no difficulty in the technical information in the application.

[11] A further difficulty arose in March 2016 concerning the renewal of the anti-virus protection system for CatholicCare's email servers. The anti-virus software had last been renewed in 2014, and at that time Mr Ramsey was only given approval to purchase 50 anti-virus software licenses due to lack of funds. These licenses were due to expire on 30 March 2016. Mr Ramsey raised the issue with Mr Sinha, but Mr Sinha had by this time been stripped of his management authority and appears to have been the subject of a process led by the Chancery designed to exit him from the organisation. Mr Sinha told Mr Ramsey that he would need to get the requisite authorisation from Mr Netana. Mr Ramsey therefore approached Mr Netana about it in early March. Mr Ramsey's evidence was that Mr Netana in response told him words to the effect of: "*Leave the matter with me. I will not be renewing the existing TrendMicro anti-virus because I prefer to use the same anti-virus that we use at the Diocese*". Mr Netana did not in substance contradict this evidence, and I accept it. They agreed that about 220 licenses were required to protect all the electronic devices in CatholicCare. Mr Ramsey informed Mr Netana not later than 18 March 2016 that there were only 50 existing licenses.

[12] On a number of times during March 2016 Mr Ramsey reminded Mr Netana by email or telephone of the need to update the anti-virus software, but Mr Netana delayed in either renewing the existing anti-virus software licences or obtaining new software. As a result, the existing licences expired on 30 March 2016, which meant that they ceased to be updated to deal with new viruses. On 8 April 2016 the CatholicCare networks were subject to a significant virus attack. This required Mr Ramsey to disconnect the affected computer, reformat its hard disk to eliminate the virus, and recover affected data from the backup system.¹

[13] In the week beginning 4 April 2016, Mr Ramsey began to suffer significant pain from his neck injury. He continued to work that week with the assistance of pain relief medication. However on medical advice he was obliged to go off work the following week. While Mr Ramsey was off work, on 13 April 2016, Ms Rashada telephoned him and required him to attend for a job performance review. This was eventually scheduled to occur on 27 April 2016, from 1.00pm to 5.00pm at the Diocese's Chancery Office at Parramatta. Mr Ramsey lodged a WorkCover claim with respect to his injury on 18 April 2016. He subsequently returned to work on the basis that he would perform only light duties on restricted days (Mondays, Wednesdays and Fridays).

Job performance review

[14] Mr Ramsey attended the Chancery Office at 1.00pm on 27 April 2016 for the scheduled job performance review meeting. Upon arrival, Ms Rashada directed him to sit at a particular desk, and then said that she would return later. Mr Ramsey waited until 4.45pm, by which time Ms Rashada had not returned. He then approached Mr Netana to inquire about what was happening in relation to the meeting. Mr Netana indicated that Ms Rashada was occupied with other duties, and rescheduled the meeting for 29 April 2016 at 8.30am at the Chancery Office.

[15] Mr Ramsey attended the Chancery Office at the rescheduled date and time, but on arrival was told that Ms Rashada was busy but would see him later. She eventually saw him at 12.30pm, and told him that it was now too late for the meeting, and rescheduled the meeting again for 9.00am on Monday 2 May 2016 at the Chancery Office. It may be observed that this represented two occasions on which Ms Rashada had kept Mr Ramsey waiting fruitlessly for almost four hours for meetings which she had arranged. At the very least, this treatment of Mr Ramsey may be characterised as arrogant and disrespectful. However there is no evidence that Mr Ramsey registered any complaint about his treatment at the time.

[16] The further rescheduled meeting on 2 May 2016 proceeded with Mr Ramsey, Mr Netana, Ms Rashada and Mr Jacob Makdessi, the new HR Manager for CatholicCare, in attendance. There was a dispute as to what was said at this meeting, but it is at least clear that three issues were raised: Mr Ramsey's back/neck injury, the erroneous ABN number in the NBN application form, and the virus attack on the CatholicCare networks. It is not necessary to make findings about all that was said at this meeting, but I consider that the evidence makes the following matters clear:

¹ Transcript 13 September 2016, PNs 1816-1819

- Mr Netana blamed Mr Ramsey for the virus attack on the CatholicCare networks because there were licenses for only 50 computers, with the majority being unprotected;
- Mr Ramsey in turn blamed Mr Netana for not acting promptly to obtain 220 new licenses, having been made aware that there were only 50 existing licenses and they expired on 30 March 2016.
- Mr Ramsey was also blamed by Mr Netana and Ms Rashada for the erroneous ABN number on the NBN application form, and Ms Rashada advised him that he needed to take greater care in his work and take responsibility for it.

[17] I note at this point that, during the hearing, Mr Netana made other criticisms of Mr Ramsey's performance. In particular, he said that Mr Ramsey had not arranged proper backing up of the data on the CatholicCare system and in support of this relied upon a technical audit report which was over three years old. However the evidence does not establish that this was properly raised as a performance issue at the 2 May 2016 meeting, and in any event Mr Ramsey's evidence was that there was a proper backup system. Mr Netana also said that he raised issues about Mr Ramsey's financial procurement skills at the meeting, but this appears largely to have been in response to Mr Ramsey's defence that he was never given a proper or adequate budget for the maintenance of the CatholicCare computer system. I do not consider that it was properly identified as a performance issue in its own right.

[18] The outcome of the 2 May 2016 meeting was that Mr Ramsey was to receive his first warning letter and was required to attend for work at the Chancery Office at Parramatta in future. Although Ms Rashada denied it, Mr Netana's evidence was that Ms Rashada said to Mr Ramsey: *"You are trying to put your mistakes on someone else's shoulder. You'll receive the first warning. You are not allowed to return to your workplace at Blacktown from now on"*.² Mr Ramsey was directed to report for work at the Chancery Office on 4 May 2016 after he had collected his belongings from the Blacktown Office.

Transfer to the Chancery Office

[19] As arranged, Mr Ramsey attended at the Blacktown office at about 9.00am on the morning of Wednesday 4 May 2016 to collect his possessions before relocating to the Chancery Office at Parramatta. However, he did not arrive at the Chancery Office until about 11.20am. This was because, he said, when he arrived at Blacktown he was requested by Ms Western to assist with an IT problem concerning the billing and invoicing system which the Diocese's IT personnel had been unable to resolve. Mr Ramsey's evidence was that this took him about 90 minutes to fix, and he then collected his belongings and signed out of the Blacktown office at 10.45am and travelled to Parramatta.

[20] Shortly after he arrived at the Chancery Office, Mr Ramsey was upbraided by Ms Rashada. There was a difference between them about what precisely was said, but even on her version of events she was critical of him for doing work at the Blacktown office contrary to an alleged direction not to do anything except pick up his belongings. That criticism seems to me to be misplaced and unfair given that Mr Ramsey had only responded to Ms Western's request for IT assistance.

² Transcript 13 September 2016, PN1858

[21] When Mr Ramsey tried to log into his work account on the computer system at the Chancery Office that day, he found that his account had been suspended and he could not gain access. Mr Netana gave evidence that Mr Ramsey's access had been limited to the three days per week (Mondays, Wednesdays and Fridays) he was medically authorised to be at work, but this does not explain why Mr Ramsey was unable to access the system on Wednesday 4 May 2016. He took this as a negative indication about his employment future. That evening after work, feeling that there was "*something going wrong*" with his employment, Mr Ramsey began to print off from his laptop all his email communications with the Chancery Office in order to protect his position. Mr Ramsey also that evening sent by email a long letter addressed to Father Peter Williams, the Administrator of the Diocese, complaining about his treatment by Ms Rashada and Mr Netana. The email was also sent to the Archbishop of Sydney, Anthony Fisher, and to Mr Officer, Mr Cashman, Ms Rashada and Mr Netana. In his letter, Mr Ramsey set out a chronology of the events since about mid-February 2016, and then alleged that he was being subjected to "*discrimination, victimisation and unethical bullying and pressure*" because of the lodgement of his WorkCover claim. He also linked his treatment to the "*leadership problems and internal power struggles*". He ended by making a formal complaint against Ms Rashada and Mr Netana, and finished by saying: "*I will expect a reply from you within seven days after which I will have no other alternative but to seek Legal advice and redressment [sic] before the Anti-Discrimination Board of New South Wales*".

Warning letters

[22] Also on 4 May 2016, two letters were prepared by the Diocese which bore that day's date but which were not delivered to Mr Ramsey until 6 May 2016. Both were signed by Mr Cashman but had been drafted by Ms Rashada. The first was headed "*1st Warning Letter*"; it referred to the 2 May 2016 meeting, and went on to state:

"... At this meeting you were advised that your performance in the role of CCSS IT Manager has been unsatisfactory, and that immediate improvement is required.

In the meeting you were given the opportunity to discuss your performance in the role and you demonstrated a clear lack of accountability for your management duties.

In order to support your performance to an acceptable standard, we will enter into a formal performance management process.

It is expected that your performance improves to the required standard within the timeframes outlined in your performance improvement plan. Failure to improve your performance to the required standard may result in further disciplinary action or termination of employment.

This is your first warning letter. If you wish to respond to this formal warning letter please do so in writing."

[23] The second letter was simply "*Warning Letter*" It referred to Mr Ramsey's delay in attending the Chancery Office on 4 May 2016, and alleged that Mr Ramsey's performance of work at the Blacktown office that day was in breach of an instruction given to him on 2 May 2016. It also criticised him for not informing Mr Netana or Ms Rashada that he was delayed. The letter ended:

“... Failure to improve your attendance to the required standard may result in further disciplinary action or termination of your employment.

This is a formal warning letter. If you wish to respond to this formal warning letter please do so in writing.”

[24] I consider the warning letters, and the associated performance improvement plan, to have been issued without any proper justification. In relation to the first warning letter, the only two performance matters properly raised at the 2 May 2016 meeting were the NBN application form with the erroneous ABN, and the virus attack on the CatholicCare networks. In relation to the former matter, Mr Ramsey did not have primary responsibility for the form and did not sign it; Mr Sinha was the person who bore the requisite responsibility. To the extent that Mr Ramsey was culpable in that he did not spot the wrong ABN, he was no more culpable than Mr Netana who also failed to pick it up. Mr Sinha and Mr Netana were both senior to Mr Ramsey in the Diocese. In relation to the virus attack, I consider that Mr Netana, not Mr Ramsey, was the delinquent employee. Mr Ramsey did not have the authority to obtain the new anti-virus software licenses. He informed Mr Netana that the existing licenses would expire on 30 March 2016, and also told him that there were only 50 licenses for the approximately 220 computers. Mr Netana took responsibility for dealing with the matter. Despite a number of reminders from Mr Ramsey, Mr Netana failed to obtain new licenses for the CatholicCare networks before 30 March 2016 or before the virus attack in April 2016. Ms Rashada, who had not previously dealt with Mr Ramsey, did not attempt any independent investigation or analysis of these matters but simply took Mr Netana’s part.

[25] As for the second warning letter, I consider it to have been a completely excessive response to a delay caused by Mr Netana providing assistance to resolve Ms Western’s IT problem. It was not as if Mr Ramsey had any real work to perform at the Chancery Office, having been locked out of the computer system there. Additionally, the process of constructing and delivering two separate warning letters at the same time, instead of one letter, was entirely artificial and, I infer, intended to build up an adverse employment record for Mr Ramsey.

[26] It is difficult to determine the reason for this patently unfair conduct towards Mr Ramsey. He asked me to infer, from the forced departure of Mr Kelly and Mr Sinha from CatholicCare in about the same period, that the Chancery Office was conducting a clean-out of CatholicCare’s management, and that he had become one of the targets. That is an arguable proposition, but for reasons which will become clear it is unnecessary for me to consider drawing an inference of that nature. It is sufficient to say that the events of 2-4 May 2016 demonstrated that certain managers in the Chancery Office, particularly Ms Rashada, had developed a disposition against Mr Ramsey which it is difficult objectively to explain.

Performance improvement plan

[27] When Mr Ramsey attended for work on Friday 6 May 2016, Mr Netana gave him a performance improvement plan. Mr Netana and Mr Ramsey gave conflicting evidence about the discussion which ensued, but it is at least clear that Mr Ramsey declined to sign it that day and Mr Netana told him to take it home and think about it over the weekend. On Saturday 7 May 2016 Mr Ramsey sent a letter by email to Mr Cashman responding to the warning letters he had been given. Much of the letter was intemperate in tone and indicated that Mr Ramsey

was extremely angry about the way in which he had been treated. As an example, Mr Ramsey described the meeting of 2 May 2016 in the following terms:

“... the meeting was a feeble and farcical prosecution séance where I was expected to sit tight and keep quiet while two people take a power trip in making the wrong accusations and false allegations about my previous and current performance while trying to sugar coat and minimise their own mistakes and incompetence.”

[28] Mr Ramsey denied that his performance had been unsatisfactory, expressed his “outrage” and his refusal to be “*bullied and harassed at work by people who did not follow the proper and ethical procedure*”, alleged that his treatment was in response to his WorkCover application and “*the current takeover of CatholicCare by the Parramatta Diocese*” and that the disabling of his access to the computer system was an attempt to force him to leave his employment, and stated that he would not sign or follow the proposed performance improvement plan.

[29] When he was cross-examined about this letter and his state of mind at the time he wrote it, Mr Ramsey (among other things) denied that he had formed a negative view about Mr Netana or Ms Rashada; denied that he had criticised their competence; and denied that he was “*outraged*” when he wrote the letter and, when it was pointed out that he had used that very word in the letter to describe his state of mind, claimed to not fully understand what it meant. I do not consider that this evidence is credible and I do not accept it. It is clear, from the terms of the letter, that Mr Ramsey was very upset when he wrote the letter, as he eventually admitted.

9 May 2016

[30] The following Monday, 9 May 2016, Mr Ramsey attended for work at the Chancery Office at Parramatta. He proceeded to the work station to which he had been assigned, which was a desk in an open corridor behind a low-level (perhaps waist-high) partition wall. Photos of the workstation were admitted into evidence, and it appears to me to have originally been designed as a space for secretarial support. It was diagonally opposite Mr Netana’s office, the door of which was about three metres away. When Mr Ramsey arrived at the workstation, he found a note asking him to reset about 40 IP handsets which had been placed on his desk and an adjacent small circular table. Mr Ramsey then began to undertake this task.

[31] At about 10.30am there occurred a conversation between Mr Netana, Ms Rashada and Mr Ramsey concerning the performance improvement plan. There was a conflict in the evidence of Mr Netana and Ms Rashada concerning how this conversation was initiated. Mr Netana said that he approached Mr Ramsey and asked him whether he had signed the performance improvement plan; when he said he had not, Mr Netana left and obtained Ms Rashada from her office on the other side of the building, who then returned with him to continue the conversation. He denied that the discussion had been in any way pre-planned, and he sought Ms Rashada’s assistance because he was at a loss as to how to proceed after Mr Ramsey’s refusal to sign the performance improvement plan. Ms Rashada’s evidence was that she initiated the conversation and began talking to Mr Ramsey, and Mr Netana then joined them almost immediately. It is not necessary to resolve this conflict, but it may be noted that it is the first of a number of radical differences between the evidence of Mr Netana and Ms Rashada concerning the events of 9 May 2016.

[32] During the conversation which followed, Mr Ramsey remained seated at his desk, with Mr Netana and Ms Rashada standing side-on to the desk at the open side of the workstation just beyond where the partition wall ended. I consider that it was entirely inappropriate to conduct the discussion, which was significant for Mr Ramsey's future employment, in this fashion for two reasons. First, such a meeting should have been conducted in a private location, not in an open corridor. Second, to conduct the discussion with Mr Netana and Ms Rashada standing and Mr Ramsey seated was inherently likely to make Mr Ramsey feel he was at a disadvantage.

[33] There was a conflict in the evidence about what was said in the conversation. It is not necessary for me to resolve this conflict in its entirety. It is at least clear that Mr Ramsey persisted in his refusal to sign or engage with the contents of the performance improvement plan, and Mr Netana and Ms Rashada challenged him about this. One matter is of note. Mr Ramsey gave evidence that when he described the difficulty of doing what was required in the performance improvement plan, Ms Rashada replied "*Well you are refusing because you don't want to do any work*". Mr Netana agreed that Ms Rashada had said words to this effect, and Ms Rashada said she did not recall whether she said this but did not deny it. I find that Ms Rashada did make this remark, and that it was provocative and constituted an uncalled-for personal attack. There was nothing to suggest that Mr Ramsey was simply trying to avoid performing work. Mr Netana's observation was that Mr Ramsey was "*quite emotional, agitated and getting louder*" as the conversation progressed, but was not aggressive or angry.

[34] At a certain point Mr Netana left the conversation to return to his office for a brief period. Mr Ramsey thought that it was for the purpose of answering a telephone call (Mr Netana had been holding his mobile phone throughout), but Mr Netana said he wanted to obtain a copy of the performance improvement plan in order to facilitate the discussion with Mr Ramsey (although he conceded that his office telephone began ringing at the same time). In any event, Mr Ramsey and Ms Rashada were left alone for a short period of time. From this point on, it is necessary to set out the separate and highly divergent accounts of Mr Ramsey, Ms Rashada and Mr Netana of the events which followed.

Mr Ramsey's version of events

[35] Mr Ramsey's evidence was that as Mr Netana went into his office, Ms Rashada moved to the opposite side of his desk, behind the partition wall, and a conversation to the following effect ensued:

Rashada: *You know what, you are not going to stay here, I will sack you.*

Ramsey: *Why? What have I done wrong?*

Rashada: *What the fuck do you think you are?*

Ramsey: *Watch your words, this is discrimination and bullying to me. Lee is here and witness[ed] your F word.*

Rashada: *I didn't say anything and Lee didn't hear anything.*

Ramsey: *Are you catholic, and you are at the Diocese of Parramatta and working here with words of God helping people, you will never go away from God.*

[36] Mr Ramsey said at this point Ms Rashada looked around to see whether any other person was visible, screamed without reason and twice said “*Don’t touch me*”. He replied “*I didn’t touch you*”, to which Ms Rashada replied “*you are sacked, I will call the security to throw you out of the office*”. On Mr Ramsey’s account, Mr Netana then returned from his office, did not say anything, and left with Ms Rashada. After 2-3 minutes Mr Ramsey decided to call the police in order to try to establish his innocence, and his mobile phone recorded that at 10.47.39am he had rung the emergency number and a conversation ensued which lasted 2 minutes and 34 seconds. Shortly afterwards, Mr Ramsey said, Ms Rashada returned with the security guard who escorted him from the building.

[37] According to Mr Ramsey, the police then arrived and spoke to him while he was just outside the building where the Chancery Office was located. Mr Cashman arrived at the scene soon afterwards. The police took no action about the matter. Mr Ramsey gave his work property (laptop, mobile phone and car and office keys) to the police, who in turn gave them to Mr Cashman. Mr Ramsey then went home in a taxi. He received his termination letter two days later on 11 May 2016.

Ms Rashada’s version of events

[38] Ms Rashada’s evidence was that Mr Netana had left the conversation because he was frustrated that it was going around in circles, and she denied that there had been any phone ringing when he left. He left for a period of about two to two and a half minutes. Ms Rashada said that as the conversation continued, Mr Ramsey became louder and quite mad and frustrated. She denied that she had moved her position as suggested by Mr Ramsey. In response to those parts of Mr Ramsey’s witness statement concerning the conversation which followed (as set out in paragraph [35] above), she said in her own witness statement that she did not recall any of the words alleged by Mr Ramsey, but she did not deny any of it. However she did deny parts of it when cross-examined. She did recall that Mr Ramsey said “*You are not acting like a Catholic*”, to which she responded “*Being Catholic has got nothing to do with it*”. Mr Ramsey, who was much taller and larger than her, at some stage stood up in front of her “*on an angle, not fully face to face*”, at about an arm’s length distance from her. She had also by this time herself moved considerably closer to Mr Ramsey. She said that when Mr Ramsey stood up, “*I’ve stood my ground*”. Her evidence was that Mr Ramsey then used his right arm and hand to shove her on her right shoulder. In her witness statement, Ms Rashada described it as “*a decent shove*”. In her oral evidence, Ms Rashada went further and said that the shove had forced her two or three steps backwards.³ She said that she then said loudly: “*Get your hands off me, don’t you dare touch me. We don’t tolerate that kind of behaviour*”. At this point Mr Netana and another employee, Mr Alfie Ramirez, came out to see what was happening.

[39] The next part of Ms Rashada’s evidence is crucial. She said that she quickly left the area with Mr Netana, and proceeded to have a discussion with Mr Cashman and Mr Officer about the incident with Mr Netana remaining in the vicinity. Mr Cashman was in his office at the other side of the building at this time, and she walked around to see him. She denied that

³ Transcript 13 September 2016, PN2494

she had rung Mr Cashman to ascertain his location, and said she did not have her mobile phone with her at the time. According to her, Mr Cashman and Mr Officer agreed that Mr Ramsey should be dismissed. About 15 minutes later she and Mr Netana went back to Mr Ramsey and told him to leave, but he then refused. She then left, obtained the security guard, and returned to the area with the security guard. She told him “*Your employment is terminated*”. Mr Ramsey then said “*I want a letter*”, and she replied “*I can’t do it right now, you have to leave. I will send a letter to you*”. After again refusing to leave, Mr Ramsey eventually agreed to do so in the company of the security guard. Ms Rashada said she was absolutely clear in her recollection that her communication to Mr Ramsey of his dismissal followed a discussion about the matter between her and Mr Cashman, Mr Officer and Mr Netana. She gave the following evidence (in re-examination by the Diocese’s counsel):

“... Ms Rashada, I am going to put a proposition to you and the proposition is set in this timeframe, from when you left the area on 9 May 2016 with Mr Natana and when you returned, so that is the timeframe we are talking about. Now, the proposition is this: what would you say to the proposition that you did not in fact have a conversation with Mr Cashman, Mr Officer and Mr Natana before returning to seeing the applicant in these proceedings?---I definitely had a conversation with Mr Cashman. I know definitely Mr Officer was there. Lee, I believe he wasn't actively there in the - you know, in the conversation, but he was there; he'd come over the same side of the building as well, but I wouldn't say Lee was active in that.

Do you say he was physically present?---Was he in the same room as Joe, Geoff Officer and myself? No, he was in the corridor, so he was over the other side of the building, he'd followed me over.”⁴

[40] Ms Rashada’s evidence was that when the police arrived, she spoke to one of the officers, who asked her: *Do you wish to make a formal report?*”, to which she replied “*No not really, this is an employment issue*”. She said she was not asked to explain what happened, as the officer made it clear that he had already been told that Mr Ramsey had shoved her. She claimed to have been in a distressed state at this time, and said she did not wish to have criminal charges laid against Mr Ramsey because she was not injured and she felt sorry that he had lost his employment, including his car.

[41] In relation to the termination letter, Ms Rashada said it was prepared in the afternoon after Mr Ramsey and the police had left. She had drafted it, and Mr Cashman had signed it.

Mr Netana’s version of events

[42] Mr Netana’s evidence was that after he went into his office and left Mr Ramsey and Ms Rashada talking, he heard Ms Rashada say, after less than a minute had passed, words to the effect of “*Ouch, don’t push me, don’t touch me, that is unacceptable*”. He then came out of his office and saw Mr Ramsey standing over Ms Rashada face to face, looking down at her. Ms Rashada then said “*Effective immediately, your employment is terminated*”. Mr Netana did not understand that Ms Rashada had any authority to dismiss anybody. He did not make any inquiry of Mr Ramsey about what had happened. Mr Ramsey refused to leave the premises, so he and Ms Rashada then left to get the security guard. When they returned with the security guard, Mr Netana observed that Mr Ramsey was upset and agitated, and he told them: “*I’ve*

⁴ Transcript 13 September 2016, PNs 2571-2572

phoned the police". The security guard said to Mr Ramsey words to the effect of: "*Michael please leave, Desiree asked you to*". Mr Netana said that Mr Ramsey eventually agreed to leave once the police arrived outside. Mr Ramsey went outside to the front of the building and spent some time with the police. He and Ms Rashada were initially in the foyer of the building while this was happening, but then he went back upstairs to his office after a short while. He was not aware of any joint decision being made with Mr Cashman and Mr Officer to dismiss Mr Ramsey prior to him leaving the building. Ms Rashada was with him for the whole period prior to him returning to his office.

Other evidence

[43] Mr Cashman's evidence was that at the time the police were called to the Chancery Office (and the events prior to that), he was not in the building, but was attending a meeting in another building that was within walking distance of the Chancery Office. While he was at the meeting, he noticed a number of missed calls on his phone, including from Ms Rashada. He eventually took a call from Ms Rashada, and then he walked back to the Chancery Office. He arrived at the building at about 11.10am, and saw Mr Ramsey and the police out the front. Critically, Mr Cashman gave the following evidence about this stage of events:

"Yes?---I came straight back to the building and at the entrance of our building discovered the police, standing with Michael Ramsey.

MR PETERSEN: So he'd already been verbally told he'd been dismissed, at that point, or not?---I assumed at that time, yes he had been.

So you hadn't been involved in that decision?---No.

So who made that decision, do your knowledge?---I don't know. Afterwards, with this letter, where was further conversations [sic] that was around the formalising of that and making a decision, I suppose. This happened after."⁵

[44] Mr Cashman said he found Mr Ramsey upset and in tears. He recovered Mr Ramsey's work property from him, consisting of a laptop, mobile phone and car keys. He never sought to obtain Mr Ramsey's version of the events which had led to the situation.

[45] Concerning the termination letter, Mr Cashman's evidence was that it was prepared at some time in the afternoon of 9 May 2016. It was drafted by Ms Rashada, and Mr Cashman signed it on her recommendation. Insofar as the letter referred to the police having been called, Mr Cashman was not aware that it was in fact Mr Ramsey who had called them.

[46] Mr Officer's evidence about the events of 9 May 2016 was that he did not find out about the alleged incident until after Mr Ramsey had left the building and the police had come and gone. He thought someone had told him about it "*in the corridor*" at the Chancery Office, but he could not remember whom. He said that Ms Rashada did not have the authority to dismiss any member of staff, and would have to receive authorisation from her superiors to effect a dismissal. His understanding was that Mr Cashman had made the decision to dismiss Mr Ramsey.

⁵ Transcript 13 September 2016, PNs 1391-1394

[47] The documents produced by the NSW Police included a transcription of Mr Ramsey's call to the emergency 000 number and the subsequent report of the police attendance outside the Chancery Office. The transcription of the telephone call included Mr Ramsey initially saying:

“Yeah, this is Michael Ramsey, I'm currently um employed um at CatholicCare, and I've been pushed out of work at the Diocese office, Diocese of Parramatta. Ummm, the lady of the HR umm, came to my office here and she used the f-word and she accused me of touching her body and she run away -”

[48] The transcription later recorded Mr Ramsey saying:

“She used the f-word, and I said, ‘look, you're not supposed to say the f-word, I'm going to ring the police’, she said ‘you're going to ring the police? Ok’ and then she scanned, looked around her, no one actually looking at her, and she go ‘oh, he touching me, I'm going to call the police now for you’.”

[49] The record of the incident on the NSW Police computer records system showed that the incident was initiated on the system at 10.51.49am, police attended the scene at 11.09.59am, and the attendance was noted as finished at 12.06.11pm. The narrative of the police attendance stated (capitalisation removed):

“Police attended AA and spoke to inft. Inft stated that he was terminated and another employee accused him of assault and he wanted police there to disprove the assault. Police spoke to the employee who did not disclose an assault and didn't want any police intervention. Police then assisted the inft with returning his company car and lap top to the executive director. NFPA”

Conclusions re 9 May 2016 incident

[50] The Diocese seeks to sustain its dismissal of Mr Ramsey on the basis of the allegation in the termination letter that, on 9 May 2016, Mr Ramsey placed his hand on Ms Rashada's shoulder and physically shoved her in anger. Its case in that respect depends entirely on the acceptance of Ms Rashada's evidence about the incident, there being no other witness (apart from Mr Ramsey) present at the time the conduct allegedly occurred.

[51] I cannot accept Ms Rashada as a witness of credit. Although her account about the alleged shoving incident cannot be tested against the evidence of other witnesses, what she said about the other events of that day can be. Much of what she said was directly contradicted by Mr Netana, Mr Cashman and Mr Officer.

[52] I consider that Mr Netana, although he had been involved in the earlier unfair treatment of Mr Ramsey, gave an account of the events of 9 May 2016 which was, to the best of his recollection, truthful. He gave clear evidence that when he came out of his office after hearing Ms Rashada complain about Mr Ramsey touching her, he saw and heard Ms Rashada purporting to immediately dismiss Mr Ramsey. This is consistent with Mr Ramsey's own evidence. It is also consistent with the call Mr Ramsey made to the emergency number almost immediately afterwards, where he made it reasonably clear that he understood that he had been dismissed (“...pushed out of work...”).

[53] Ms Rashada's version was that she had a discussion involving Mr Cashman and Mr Officer in the Chancery Office immediately after the alleged incident during which it was jointly decided to dismiss Mr Ramsey, and it was only after that occurred that she told Mr Ramsey (who by this time had already called the police) that he was dismissed. Ms Rashada expressed no doubt about the accuracy of her recollection in that respect. However that evidence was plainly false. Not only was it directly inconsistent with the evidence of Mr Netana and Mr Ramsey, but it was also contradicted by Mr Cashman and Mr Officer. Mr Cashman was not in the building at the time, and returned only after Mr Ramsey had left the building (having been told that he was dismissed by Ms Rashada) and after the police had arrived. He assumed, correctly, that Mr Ramsey had already been dismissed by this time (although, curiously, he did not question how this could have happened without his authority). Mr Officer did not find out about the incident until later in the afternoon, in a corridor conversation.

[54] It is not necessary for me to form any final conclusion as to why Ms Rashada advanced this false version of events, although it appears to me that the most likely reason was to obscure the fact that she purported to dismiss Mr Ramsey on the spot without having any authorisation to do so.

[55] There are numerous other aspects of Ms Rashada's evidence and conduct which cause me to question her veracity. It is sufficient for present purposes to give three examples:

- (1) Ms Rashada said in her oral evidence that it was Mr Ramsey who signed the NBN connection order form (which she described as a "*contract*"), and that Mr Ramsey said he had signed it at the meeting on 2 May 2016.⁶ That was untrue on both counts; the document was in fact signed by Mr Sinha, not Mr Ramsey, and Mr Ramsey never said that he signed it. When pressed on this, Ms Rashada changed her evidence and said that Mr Netana had told her that Mr Ramsey signed it.⁷ This could not be correct either because Mr Netana knew at all relevant times that Mr Sinha, not Mr Ramsey, had signed it.⁸
- (2) Ms Rashada said in her oral evidence (but not in her witness statement) that the alleged push by Mr Ramsey forced her 2 or 3 steps backwards. That cannot have occurred, because Mr Netana's evidence was that when he emerged from his office immediately upon hearing Ms Rashada complain about being pushed, he "*saw that Michael was standing over Desiree face to face*"⁹ (underlining added). Ms Rashada did not suggest that after the alleged push either of them moved back towards the other.
- (3) In the part of the termination letter earlier quoted, which was drafted by Ms Rashada, she wrote: "*During the incident you placed your hand on Ms Rashada's shoulder and physically shoved her in anger, this constitutes violence in the workplace and police were called to the incident*". The reference to the police was plainly intended to emphasise the seriousness of the matter, but was misleading in that it omitted to explain that it was Mr Ramsey

⁶ Transcript 13 September 2016, PNs 2324-2329

⁷ Transcript 13 September 2016, PNs 2330-2334

⁸ Transcript 13 September 2016, PNs 1716-1722

⁹ Statement of Lee Netana, paragraph 28

who had called the police in an attempt to establish his innocence. It is important to note that Mr Cashman, who agreed to sign the letter, did not know until the hearing that it was Mr Ramsey who had called the police.

[56] Because of these evident deficiencies in Ms Rashada's evidence and conduct, I do not consider her to have been a credible witness and I have no confidence that she has given a truthful and accurate account of the incident between herself and Mr Ramsey. Based on the other evidence, I consider that the following findings can be made about the events of 9 May 2016:

- (1) Mr Ramsey was generally aggrieved and upset about the treatment he had received the previous week. For the reasons which have earlier been given, Mr Ramsey had considerable justification for feeling this way.
- (2) At about 10.30am, Mr Netana initiated in an ad hoc way a discussion with Mr Ramsey about the performance improvement plan. After it became clear that Mr Ramsey would not sign the performance improvement plan, he brought Ms Rashada into the discussion.
- (3) The subsequent discussion occurred with Mr Ramsey seated at his desk and Mr Netana and Ms Rashada standing side-on to the desk. This was an inappropriate way to have such an important discussion, and it was inherently likely to cause Mr Ramsey to feel at a disadvantage.
- (4) As the discussion progressed, Mr Ramsey became more upset and agitated and began speaking more loudly, but he was not aggressive and angry.
- (5) In response to the concerns Mr Ramsey expressed about the specified duties in the performance improvement plan, Ms Rashada said: "*Well you are refusing because you don't want to do any work*". This was a provocative and uncalled-for remark and it likely upset Mr Ramsey further.
- (6) At a certain point, Mr Netana left the discussion and returned to his office for a short period to obtain a copy of the performance improvement plan, although there was a reasonable basis for Mr Ramsey to think that he left to answer a telephone call.
- (7) The discussion continued in Mr Netana's absence and escalated in tone. I am prepared to find that Ms Rashada swore at Mr Ramsey as he said in his evidence. I am persuaded to that view because his evidence in this respect was consistent with what he said in his telephone call to the emergency line almost immediately afterwards. It is also apparent from both Mr Ramsey's and Ms Rashada's evidence that he challenged her Catholicity.
- (8) During the conversation, Mr Ramsey stood up out of his chair and Ms Rashada moved much closer towards Mr Ramsey. The order in which these events occurred is unclear. I consider that Mr Ramsey's recollection that Ms Rashada moved to the opposite side of the desk and the partition during the conversation to be mistaken, since when Mr Netana came back he saw them standing face to

face. Mr Ramsey may have been confused with a later stage in the events after Mr Netana had returned.

- (9) Ms Rashada said loudly something to the effect that Mr Ramsey should not touch or push her. I will return to what caused her to say this. She said this loud enough to cause Mr Netana to return when, as earlier stated he saw them standing face to face, with Mr Ramsey looking down at her because of his greater height.
- (10) Ms Rashada, in Mr Netana's presence, told Mr Ramsey that his employment was terminated immediately and that he should leave the building immediately. He refused. Ms Rashada and Mr Netana then left to get the security guard.
- (11) While they were absent, Mr Ramsey (at 10.47am) called the emergency line and requested the attendance of the police.
- (12) Ms Rashada and Mr Netana then returned with the security guard, and Mr Ramsey was eventually persuaded to leave the building, probably because by this time (11.10am) the police had arrived.
- (13) Mr Ramsey spoke to the police and gave them his version of events. Ms Rashada, as the police record confirms, did not allege to the police that Mr Ramsey had pushed her.
- (14) Mr Cashman, who had not been in the building, arrived at the scene and the return of Mr Ramsey's work property was arranged. Mr Ramsey took a taxi home, and the police left at 12.06pm.
- (15) That afternoon Ms Rashada drafted the termination letter and Mr Cashman signed it. Mr Officer found out about the incident during the course of the afternoon.
- (16) No form of investigation of the alleged incident was undertaken by the Diocese, and indeed it does not appear that anyone in authority was even aware that Mr Ramsey denied that he pushed Ms Rashada as alleged.

[57] I am not satisfied, on the balance of probabilities, that Mr Ramsey pushed Ms Rashada as she alleged. The primary basis for this conclusion is that, for the reasons earlier given, I consider that Ms Rashada was not a credible witness. I have also placed weight upon the following matters:

- Mr Ramsey's conduct in calling the police immediately after the incident was not consistent with him having engaged in the conduct alleged. While it is conceivable that a person of cunning might have quickly conceived this as a clever tactic to obscure his guilt, it is abundantly clear to me from Mr Ramsey's own evidence before me and what Mr Henfling, Mr Kelly and Sister Quade said about their experience of his character that he was not such a person.
- Ms Rashada did not disclose anything to the police to the effect that Mr Ramsey had touched or pushed her.

- Apart from the single sentence in the termination letter drafted by Ms Rashada setting out the allegation against Mr Ramsey, there was no contemporaneous record taken of Ms Rashada's version of events which might support the allegation.

[58] I am not prepared positively to find that the push incident was faked by Ms Rashada, as alleged by Mr Ramsey. Applying the principles stated in the judgment of Dixon J in *Briginshaw v Briginshaw*¹⁰, a finding of that gravity should not be made on the basis of inexact proof. I have sufficient doubt about the credibility of Mr Ramsey's evidence, arising from his cross-examination in relation to his 7 May 2016 letter, not to rely upon it as the sole foundation for a finding of serious moral delinquency on the part of Ms Rashada.

[59] The position that is left is that it is not possible, on the evidence before me, to make a firm finding about what caused Ms Rashada to cry out that she had been pushed by Mr Ramsey. I have rejected her evidence as lacking credibility. I am not positively persuaded to accept Mr Ramsey's version of events. There are other possibilities, for example that in the heat of their argument Mr Ramsey and Ms Rashada invaded each other's personal space and some accidental contact ensued. But that is as far as the matter can be taken.

Post termination events

[60] Mr Ramsey has been unemployed since his dismissal. He underwent surgery in relation to his neck injury on 18 July 2016, and spent the following week in recovery in hospital. He was certified unfit to work from that time until the end of November 2016 (at which time the position was to be reviewed). He began receiving the Newstart allowance from late August 2016 at the rate of \$560 per fortnight. He is pursuing a workers compensation claim against the Diocese, but has not yet received any workers compensation payments.

Was Mr Ramsey's dismissal unfair?

[61] Section 387 of the FW Act requires the Commission, in considering whether a dismissal was harsh, unjust or unreasonable, to take into account a number of matters specified in paragraphs (a) to (h) of the section. I will deal with each of these matters in relation to Mr Ramsey's application in turn below.

Whether there was a valid reason for the dismissal related to the person's capacity or conduct (s.387(a))

[62] For the reasons earlier stated, I am not satisfied, on the balance of probabilities, that Mr Ramsey pushed Ms Rashada as she alleged. Consequently I am not satisfied that there was any valid reason for Mr Ramsey's dismissal related to his capacity or conduct. It was not submitted by the Diocese that any other conduct on the part of Mr Ramsey constituted a valid reason for his dismissal. At one stage in the proceedings it was suggested that Mr Ramsey's unauthorised copying of documents on 4 May 2016 might constitute a valid reason, but no submission along those lines was ultimately made. In any event, I do not consider that any such submission could have been sustained. Mr Ramsey was entitled to copy his own email

¹⁰ (1938) 60 CLR 336 at 360-363

communications and correspondence to and from the Diocese that related to the continuation of his employment in order to protect his position.

Whether the person was notified of that reason and was given an opportunity to respond to any reason related to the capacity or conduct of the person (s.387(b) and (c))

[63] Mr Ramsey was not properly notified of the conduct-related reason for his dismissal prior to that dismissal being effected by Ms Rashada, and consequently he was not given an opportunity to respond to that reason. Indeed, it is difficult to imagine a more gross denial of procedural fairness. No allegation of misconduct was ever made by Ms Rashada to the Diocese's management prior to the dismissal, no investigation took place, and no opportunity was given to Mr Ramsey to provide his version of events. Ms Rashada simply took it into her own hands to dismiss Mr Ramsey immediately and have him removed from the building, despite having no authority to do so. Neither Mr Cashman nor Mr Netana took any step to intervene to ensure that proper procedures were followed, but simply acquiesced in what Ms Rashada had done. The consequence was that it was not even known to the Diocese's management that Mr Ramsey denied pushing Ms Rashada until after these proceedings were initiated.

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

[64] There were no discussions relating to Mr Ramsey's dismissal prior to him being given the notice of termination. Accordingly the issue of him being allowed a support person does not arise.

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

[65] Mr Ramsey was not dismissed for unsatisfactory performance.

The degree to which the size of the employer's enterprise or 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 (s.387(f) and (g))

[66] The Diocese is a substantial employer and has dedicated human resource management specialists, so there should have been no reason why it could not have followed proper procedures in effecting the dismissal of Mr Ramsey. The only mitigating factor in this respect is that the management personnel of the Diocese involved in the dismissal do not appear from their conduct to have a basic understanding of modern HR principles and practice.

Any other matters that the Commission considers relevant (s.387(h))

[67] I consider that the following matters are relevant and favour the conclusion that Mr Ramsey's dismissal was unfair:

- the decision to dismiss him was made by Ms Rashada, who was the alleged victim and only witness of Mr Ramsey's alleged misconduct, and thus was entirely lacking in impartiality;

- the Diocese acquiesced in Ms Rashada's conduct in dismissing Mr Ramsey despite her evident lack of authority to do so;
- Ms Rashada was permitted to draft the termination letter, despite her clearly partial position in the matter;
- Mr Ramsey had been employed for almost six years when he was dismissed, and a number of other persons who had worked with him in CatholicCare attested as to the quality of his service;
- Mr Ramsey had an unblemished employment record prior to the week before his dismissal; and
- the dismissal has caused Mr Ramsey significant personal distress and financial loss.

Conclusion re unfair dismissal

[68] I find that the dismissal of Mr Ramsey was harsh, unjust and unreasonable. I am not satisfied that there was a valid reason for the dismissal, Mr Ramsey was denied procedural fairness, Mr Ramsey was dismissed by a person lacking both impartiality and authority, he was an employee with a good record and considerable length of service, and the dismissal has caused Mr Ramsey distress and loss.

Remedy

[69] I do not consider that reinstatement is an appropriate remedy. Mr Ramsey does not wish to return to work at the Diocese, and I consider that, objectively speaking, there is a proper basis for him to have lost confidence that the Diocese would be capable of treating him with dignity and fairness in the future. A viable working relationship cannot therefore be re-established.

[70] I consider that the award of compensation to Mr Ramsey would be appropriate given that his unfair dismissal has caused him financial loss. It is therefore necessary an assessment to be made as to the amount of compensation which should be ordered. In assessing compensation, it is necessary under s.392(2) of the FW Act to take into account all the circumstances of the case including the specific matters identified in paragraphs (a)-(g) of the subsection, and it is also necessary to consider the other relevant requirements of s.392. In undertaking this task, I shall use the established methodology for assessing compensation in unfair dismissal cases which was elaborated upon in the context of the FW Act in *Bowden v Ottrey Homes Cobram and District Retirement Villages Inc.*¹¹

Remuneration that would have been received if the dismissal had not occurred (s.392(2)(c))

[71] Despite the fact that a number of employees in CatholicCare have been made redundant, the Diocese disavowed the proposition that Mr Ramsey would have been made redundant had he not been dismissed for misconduct. The Diocese clearly had some issues with Mr Ramsey's work performance, but had these been worked through in a fair and respectful fashion and with the appropriate degree of management guidance and support, I see

¹¹ [2013] FWCFB 431; 229 IR 6

no reason why these performance issues might have resulted in Mr Ramsey ultimately being fairly dismissed, had he not been dismissed for misconduct. Therefore I consider that Mr Ramsey would have remained employed for at least a further two years had he not been dismissed. However, Mr Ramsey's neck injury and the operation for this has prevented him from working for a period of approximately five months. If he had continued working, he would not have had sufficient sick leave entitlements to cover this period, and may have been forced to take annual leave, long service leave or unpaid leave to cover this period. Mr Ramsey was paid his accrued leave entitlements on termination, so it would be double counting to reckon as a loss that he might have taken these entitlements during the period of unfitness for work. He may ultimately be awarded workers' compensation benefits for this period, but again there is no loss in that respect because any entitlement to such benefits is not affected by dismissal. I will reduce the period of two years' potential paid employment by 18 weeks (noting that Mr Ramsey had approximately two week's accrued sick leave at the date of his dismissal). That makes a total of 86 week's potential paid employment (52 weeks x 2 years - 18 weeks = 86 weeks).

[72] Mr Ramsey's gross weekly income at the time of his dismissal was \$1576.05; 86 weeks' pay is therefore \$135,540.30.

Remuneration earned (s.392(2)(e)) and income reasonably likely to be earned (s.392(2)(f))

[73] In relation to income actually earned since his dismissal, Mr Ramsey has not to date earned any alternative employment income. He has earned the Newstart allowance since late August 2016, but this to a large extent overlaps with the period of unfitness to work which I have already discounted. I consider that there should only be a discount of \$1000 on this score. That reduces the amount to \$134,540.30.

[74] In relation to future likely earnings over the balance of the potential employment period (that is, until May 2018), some account needs to be taken of the prospect that Mr Ramsey will obtain alternative employment. Mr Ramsey had IT skills to make him employable, but his summary dismissal from the Diocese, his injury and his age will work against him in that respect. My assessment is that he will have a 50% prospect of obtaining 12 months' employment at the same wage rate as at the Diocese during the potential employment period. This results in a further discount of \$40,977.30 (52 x \$1576.05 x 50%), leaving \$93,563.00. I will deduct, on the basis of estimation only, a further \$12,000 on account of future Newstart payments that may be paid in the event that Mr Ramsey does not obtain other employment. That leaves \$81,563.00.

Other matters (s.392(2)(g))

[75] Having regard to the deductions already made, I do not consider that there is any basis for further deductions for "contingencies". In relation to taxation, compensation will be determined as a gross amount and it will be left to the Diocese to deduct any amount of taxation required by law.

Viability (s.392(2)(a))

[76] I do not consider that an award of compensation would pose any risk to the viability of the Diocese.

Length of service (s.392(2)(b))

[77] Mr Ramsey's period of service does not justify any adjustment to the amount of compensation that might otherwise be ordered.

Mitigation efforts (s.392(2)(d))

[78] There is little evidence of effort by Mr Ramsey to obtain alternative employment, but I accept that his neck injury, the operation and the recovery period have inhibited his capacity to seek such employment. There will be no adjustment on this score.

Misconduct (s.392(3))

[79] I cannot find that Mr Ramsey committed any misconduct, so no deduction is required under s.392(3).

No component for shock, distress, humiliation or other analogous hurt (s.392(4))

[80] I confirm that the compensation amount assessed contains no component for any shock, distress, humiliation or other analogous hurt suffered by Mr Ramsey as a result of the manner of his dismissal.

Compensation cap (s.392(5))

[81] The amount of compensation that is derived from the above calculations is above the compensation cap, which in Mr Ramsey's case is \$40,977.30 (\$1576.05 x 26). The compensation amount must therefore be reduced to \$40,977.30.

Instalments (s.393)

[82] I do not consider that there is any reason for compensation to be made by way of instalments.

Conclusion re Remedy

[83] I consider \$40,977.30 (less applicable taxation) to be an appropriate amount of compensation having regard to all the circumstances of the case. A separate order will issue to give effect to this decision.



VICE PRESIDENT

Appearances:

E. Petersen counsel with *G. Hanna* solicitor for *M. Ramsey*.

D. O'Sullivan counsel with *C. Fini* solicitor for the Trustee for the Roman Catholic Church for the Diocese of Parramatta.

Hearing details:

2016.

Sydney:

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