DECISION

Fair Work Act 2009
s.394—Unfair dismissal

Martin Stoddard
v
Crushing Services International Pty Ltd
(U2024/13352)

COMMISSIONER SIMPSON BRISBANE, 9 SEPTEMBER 2025

Application for an unfair dismissal remedy – Making a recording of work colleagues – Use of a mobile phone – Re-torque on truck tyres – Dismissal Unfair – Reinstatement inappropriate - Compensation Awarded.

[1] On 7 November 2024, Mr Martin Stoddard (**Mr Stoddard / the Applicant**) applied to the Fair Work Commission (**the Commission**) under s.394 of the *Fair Work Act 2009* (Cth) (**the Act**) for an unfair dismissal remedy, alleging he was unfairly dismissed from his employment with Crushing Services International Pty Ltd (**the Respondent**). The matter was listed for hearing on 8 July 2025. Directions were issued for the filing of submissions and parties filed further material.

[2] The Applicant was granted an extension of time to file his application in an earlier decision, due to exceptional circumstances being present.[1]

[3] Mr James Parkinson, a Partner at Kingston Reid was granted leave under s.596(2)(a) to appear on behalf of the Respondent, and Mr Stoddard appeared on his own behalf.

[4] The Applicant provided witness statements dated 5 June 2025,[2] and a statement in reply of 30 June 2025,[3] on his own behalf.

[5] Ms Olivia Wallis, Senior People Advisor provided a witness statement dated 19 June 2025 and an amended version of that statement submitted on 4 July 2025[4] which superseded the earlier statement. The reasons for Mr Stoddard's termination was on three grounds, being:

- On 13 May 2024, he had his mobile phone on his person and used this whilst within Operational Areas.
- He had his mobile phone on and on his person whilst operating a vehicle.
- On 13 May 2024, he completed re-torques on a Company vehicle, despite the requirement that this task be performed by a qualified HD Fitter.

Background and Evidence

[6] The Applicant commenced employment on 4 October 2023 with Silverstone. There was a transfer of business from Silverstone to the Respondent on 21 March 2024. The Applicant accepted he signed a contract of employment with the Respondent when he commenced employment with the Respondent. He accepted in accordance with the Offer of Employment document he was required to comply with its policies and procedures.

[7] It was put to Ms Wallis during her oral evidence that her evidence contained a lot of technical information to do with on site. Ms Wallis was asked who she referred to for that information. Ms Wallis said General Manager of Port and Logistics, Mr Matthew Jones and Haulage Manager, Mr Peter Draper. Ms Wallis' evidence was that neither of those persons were still employed by the Respondent.

[8] Ms Wallis was asked about her evidence where she said Mr Stoddard's primary location was the Carina Site. Ms Wallis was asked where she obtained this information, and she said site leadership and rosters. Mr Stoddard put to Ms Wallis he was permanently based at Parker Range. Ms Wallis said her information did not show that.

6 October 2023 Signing of MR Transport Behavioural Expectations document

[9] Mr Stoddard accepted he signed the MR Transport Behavioural Expectations document on 6 October 2023. Mr Stoddard was referred to dot points 7, 9 and 10 in the document. Dot point 10 reads as follows:

> *"I accept that mobile phones are not permitted in the MRT Workplace and should not be used during work hours at any time."*

[10] Mr Stoddard agreed this was one of the expectations in the document he signed in 2023. Mr Stoddard said this was signed six months before the incident in May 2024, and it was in an induction room and what happens on site is completely different. Mr Stoddard said the supervisor that signed this document is the same supervisor he showed the photos to on his phone on 13 May 2024, and unbeknownst to everyone else, employees were allowed to have their mobile phones with them, even though at the top of the food chain it was said they couldn't. Mr Stoddard referred to the various text messages provided by him in his evidence where it was shown it was a different situation on site to the policy.

[11] Mr Stoddard also accepted he was bound to comply with the One MRL Cardinal Rules which included a rule that mobile phones and personal listening devices are not to be used at any time whilst driving any vehicle or operating mobile equipment.

[12] Mr Stoddard was referred to an induction questionnaire document and acknowledged that he signed that document. In response to true or false questions on this document he accepted he ticked true in the box that said 'Mobile phones are not permitted in the MR Transport workplace.'

[13] Mr Stoddard did not agree with the proposition that there was on site support to raise concerns about the safety of plant or equipment. Mr Stoddard was referred to a sample Hazard

Report which he had completed that referred to informing other drivers by Coms of a hazard. Mr Stoddard said 2-way radio could be used only if they were in the vicinity of the radio which has up to a 15km radius.

7 May 2025 Handover

[14] Ms Wallis said re-torquing of trucks was discussed at a handover meeting on 7 May 2025 and handover notes show that it was explained that "all re-torques require Fitter to be present. Only Fitter to do bar side of things".

[15] Ms Wallis said her understanding was that handover notes are for supervisors to pass information to each other at shift change. Ms Wallis said they are guidance notes for the supervisor to discuss at the prestart meeting.

9 May 2024 Handover

[16] Ms Wallis said retorquing trucks was also discussed at toolbox talks on 9 and 10 May 2024. Ms Wallis was asked how she knew this, and she said she was provided the information from site leadership, Mr Jones. Ms Wallis gave an explanation of what her understanding of a toolbox meeting was. It was put to her that her explanation described a prestart meeting and not a toolbox meeting, which has a specific safety purpose. Ms Wallis said she did not know that definition. Ms Wallis accepted she got the terms wrong, and she did not have information indicating Mr Stoddard attended a toolbox talk.

[17] It was put to Mr Stoddard that he participated in a night shift crew handover on 9 May 2024. He agreed he was there for the pre-start meeting. Mr Stoddard was referred to the handover notes and a section titled "Special Instructions or other Issues." Within a series of notes one of the notes reads as follows: "All re-torques require Fitter to be present. Only Fitter to do bar side of things".

[18] Mr Stoddard said this information was not relayed at the pre-start session. He said it was a handover document. Mr Stoddard said it was a supervisor filling out a form and handing it to another supervisor and he was never told that information. Mr Stoddard said he had never seen the document.

[19] Mr Stoddard was referred to a photograph of a whiteboard and a section in it saying "re-torques by Fitter and Driver". Mr Stoddard accepted the dates in the calendar on the whiteboard indicate the date of the photo was 10 May 2024.

[20] Mr Stoddard said the whiteboard was the drivers whiteboard for their information, it is not actually a whiteboard for them to be told what to do by management.

[21] Mr Stoddard said the proper way to have addressed the issue in relation to re-torques would have been to have a toolbox meeting which did not happen at his site. Mr Stoddard said it is easy to say he was at a meeting but there was no evidence from the Respondent about what was said at the meeting.

11 May 2024 back injury

[22] On 11 May 2024, Mr Stoddard injured his back whilst driving MRL truck TK5216 due to a faulty seat. This was reported and investigated. The truck was tagged out and the seat replaced.

[23] Mr Stoddard said he had a day of light duties, which involved sitting in a bus coordinating truck departures on 12 May 2024.

13 May 2024 photos, the recording and re-torque on truck

[24] On the morning of 13 May 2024, Mr Stoddard returned to normal duties as he felt better. Whilst driving from Parker Range Site to Carina Site on 13 May 2024 he said he pulled up at the beginning of Mt Walton Road in a park bay to take a break.

[25] Mr Stoddard said the TK5216 truck was parked opposite him preparing to go out on the Great Eastern Highway to Parker Range. He went over to the truck and asked the driver if he could have a look behind the seat. The driver said that was ok. He said when he looked, he was shocked at the state of the cab due to the seat rubbing it. He said he took some pictures to show the supervisors at Carina.

[26] Mr Stoddard said after tipping his load off he pulled into the Carina Haulage Yard as he had a tyre re-torque to do and his radio mic holder needed attention. To do this he contacted the Haulage Supervisors to let them know and they then directed him into one of the truck workshop bays. Once parked, he shut down the truck following the correct procedures. He said he removed his phone from his crib bag, placed it in his pocket and exited the cab. He said he brought his phone with him as he wanted to show the Supervisor the photos of the condition of TK5216.

[27] Mr Stoddard's evidence was that as he walked away from the vehicle towards the Administration building, he decided to hit record on his Apple Watch as he did not trust the Supervisory staff at Carina. He entered the office and asked to speak to Supervisor Mr Andrew Auld who was not available.

[28] Mr Stoddard said he also spoke to Leading Hands about radio equipment issues. He said he went back to the truck to retrieve one of the radios to swap it out with another in the office. On returning to the office with the radio, the Leading Hand informed Mr Stoddard that the Tyre Fitter was waiting for him next to the truck to do the retorque. Mr Stoddard said when locking on to the truck, a HD Fitter approached to lock onto the truck as well. Mr Stoddard said he assumed he was a Fitter as he said, "Makes it easier when a Fitter comes out". The Fitter and Mr Stoddard completed the retorque, with Mr Stoddard saying he was at the ratchet end of the retorque bar.

[29] Mr Stoddard returned to the office to get the Haulage Manager, Mr Peter Draper's details and then returned back to the truck to see how repairs were going. He said as there was no temp gun in the truck which was confirmed by the Fitter, he returned to the office to get one. Whilst in the office, Mr Stoddard said he spoke to Supervisor Mr Auld about the condition of the TK5216 seat, and produced his phone to show him the pictures taken. Mr Stoddard said Mr

Auld looked at the pictures and their discussion continued. He said Mr Auld never mentioned that having his phone was a problem.

[30] Mr Stoddard said they discussed further about the truck he was in and the condition of his current truck. He said they also discussed his back injury. Mr Stoddard said he left the office upset as he reported the condition of the current truck and Mr Auld ignored it. He said he returned to truck TK5212 to leave, started the truck, stopped the recording on his Apple Watch and then continued driving back to Parker Range Site.

[31] Mr Stoddard confirmed he did not disclose to anyone else on the recording that the recording was taking place. Mr Stoddard agreed that he said in the recording that he could show Mr Auld photos of a vehicle and they were on an electronic device, being his mobile phone. Mr Stoddard agreed the photos on his phone were of vehicle TK5216 which was the vehicle he was using when he had his back injury.

[32] Mr Stoddard agreed that he also said in the recording that the vehicle (TK5212) that he was operating that day (13 May 2024) had other faults with it that may have aggravated the injury he sustained operating vehicle TK5216. It was put to Mr Stoddard he could have just taken the individuals concerned to the vehicle rather than showing them photos. Mr Stoddard said the other vehicle (TK5216) that he had photos of, was not on site at the time.

[33] Mr Stoddard said the vehicle that he was using at the time (TK5212) also had a fault with it, and he explained the fault to Mr Auld. Mr Stoddard said Mr Auld wanted to know about it and Mr Stoddard said he was not a Fitter. Mr Stoddard said the conversation flowed on about the source of the problem and Mr Auld offered no help at all about the situation other than to tell him to report it onto MT Data. It was put to Mr Stoddard that Mr Auld said to him if there is a fault with a vehicle, he should raise it at the time it is allocated to him. Mr Stoddard responded how would he know if there is a fault with a vehicle until he starts driving it. Mr Stoddard said that was what he was doing in relation to TK5212.

[34] Mr Stoddard said he had raised his concerns about TK5216 several times. He said he was raising an issue about TK5212 with Mr Auld and Mr Auld did nothing about it. It was put to Mr Stoddard that he could have taken Mr Auld to the vehicle. Mr Stoddard said he was asking Mr Auld how to resolve the issue with TK5212, and he said to put it on MT Data which he did do. Mr Stoddard agreed he did not ask Mr Auld to come to the vehicle.

[35] Mr Stoddard gave evidence that the recording showed Mr Auld was not an approachable person. Mr Stoddard said Mr Auld should have taken action, but he did not.

[36] Mr Stoddard was asked about the recording when the re-torque was taking place. Mr Stoddard agreed it was an operational area, however it was outside the workshop. He agreed he assisted with the re-torque task. It was put to Mr Stoddard that in the recording it can be heard that Mr Stoddard was calling out positioning for torque positions 9 and 10 and then Mr Stoddard makes a grunting noise at 12 minutes 12 seconds in the recording. Mr Stoddard agreed the recording was made on his smart watch and agreed his hand was close to the re-torque activity.

[37] Mr Stoddard said that he had hurt his back two days earlier and he grunted to get down to do the retorque on the correct end. Mr Stoddard said the other end is where the Fitter was.

[38] Ms Wallis was referred to her evidence where she said she recalled hearing on the recording amongst other things:

> "between 11.00 minutes and 13.30 minutes, Mr Stoddard either performing or assisting a re-torquing of a truck."

[39] Ms Wallis accepted in her oral evidence that she could not confirm how Mr Stoddard was doing the re-torque. Ms Wallis accepted she had never performed a re-torque herself. Ms Wallis was asked whether the Fitter was disciplined for his involvement, and she answered no as the Respondent was unable to identify who the Fitter was. Ms Wallis was asked why, and she responded because the Respondent was unsure of the date of the recording.

[40] It was put to Ms Wallis the employer knew it was on 13 May 2024. Ms Wallis said that information was provided later. It was put to Ms Wallis the Respondent could have looked at the re-torque book and the Fitter's name would have been in it. Ms Wallis responded "okay".

[41] Ms Wallis was asked about her evidence at paragraph 32 in her statement about re-torques and where she obtained the information from. Ms Wallis said it was from the site leaders. It was put to Ms Wallis that torque wrenches are made to do up things, not to loosen them and she was asked where she got the reference to "loosen" from in her evidence. Ms Wallis said she is not an expert on re-torques. It was put to Ms Wallis she was misinformed, and she said it is what she was told.

[42] Ms Wallis was asked about evidence where she said the following:

> "at about 33.50 minutes, Mr Stoddard can be heard starting up a truck. The engine can be heard running in the truck and an alarm sounding which is either the Power Take-Off alarm or seatbelt alarm that starts once the keys are turned in the ignition"

[43] Ms Wallis was asked if she knew what a Power Take-Off is. Ms Wallis said not in detail. Ms Wallis was asked who told her what those sounds were. Ms Wallis said it was the General Manager, Mr Jason Holmes.

[44] It was put to Ms Wallis a Power Take-Off is used for tipping and that sound would not have gone off. It was put to Ms Wallis she did not know her way around trucks and she agreed. It was put to Ms Wallis she was relying on other people's information, and she agreed.

[45] Ms Wallis accepted that the HSE Notification which referred to smart watches had not been issued as of 13 May 2024 when Mr Stoddard made the recording.

19 May 2024 Applicant returns home due to back injury

[46] On the 19 May 2024, Mr Stoddard returned home due to his back injury. Whilst off on WorkCover, the Applicant said he set a goal to return to work for the 17 July 2024.

17 July 2024 return to work

[47] Mr Stoddard returned to work on 17 July 2024 for his 4 week swing as per the roster. During this time, he said he was unhappy that no return-to-work program was set up. Mr Stoddard said he drove another truck with a faulty seat which was not repaired, and it was also allocated to him on his next shift. He said he felt very down about it all.

4 July 2024 HSE Notification completed on 18 July 2024

[48] Mr Stoddard was referred to the General Notification issued on 4 July 2024 concerning "Use of Mobile Phones and Smart Watches in the workplace." Mr Stoddard accepted he had signed and dated a questionnaire in relation to the HSE notification on 18 July 2024. Mr Stoddard was asked about answers he gave on this form. He said at the time he signed the questionnaire it was after the recording he made on 13 May 2024. Mr Stoddard also pointed out that this HSE Notification said as follows:

> *"All workers including mobile plant operators may bring their mobile phone and / or smart watch into the workplace for use only in an allocated crib room or approved administration area."*

15 August 2024 text exchange with Ms McMillan

[49] Mr Stoddard said on his return home from swing on the 15 August 2024, Injury Management Advisor Ms Kira McMillan texted him saying "How are you Martin? Home yet or tomorrow? Thanks Kira". Mr Stoddard said he replied "On runway heading home. I was a little disappointed with swing however I will live!!"

20 August 2024 text email exchange with Ms McMillan, Ms Wallis and Mr Draper

[50] On the 20 August 2024, Mr Stoddard said Ms McMillan sent him a text hoping he was well and to feel free to call to chat and noted that he had engaged legal assistance.

[51] Mr Stoddard said after the text messages he emailed Ms McMillan and cc'd Ms Wallis and Mr Peter Draper, Haulage Manager the recording he made on his Apple Watch on 13 May 2024 and wrote the following:

> "I don't care if you listen! And I recorded it for my own protection.
>
> In a court of law it would not be acceptable however one would argue what are people hiding to not listen.
>
> If I wanted money I would have engaged a lawyer ages ago.
>
> I want people to accept there faults!!
>
> At the end of the day. I do my job. I respect every safety rule and adhere to it.
>
> I hurt myself due to neglect by management. And the crazy thing is everyone like yourself are ignoring it.

I'll add Peter Draper and Joe Bloomfield to this email.

Marty
Sent from my iPhone"

[52] Mr Stoddard confirmed in his oral evidence he made the recording on shift on 13 May 2024. It was put to Ms Wallis that after she received the recording she did not respond to it. Ms Wallis said she was not sure.

[53] Ms Wallis said she had a discussion with Mr Draper about the concerns raised by Mr Stoddard, and the concerns raised by the recording itself. Ms Wallis said the recording was shared with Mr Jason Holmes the General Manager of Port and Logistics, Mr Matthew Jones the Superintendent for Haulage, and the Industrial Relations Team.

28 August 2024 Applicant returns to site

[54] Mr Stoddard said he returned to site on the 28 August 2024. He said he did his first shift on the night of the 29 August 2024.

[55] During that shift Mr Stoddard said he noticed people breaching critical safety rules. In the morning after his shift, he emailed Mr Draper and Ms Wallis asking if someone could be present at pre-start to address these issues, and to also download footage off the loaders from the previous night.

[56] Mr Stoddard said he received a reply email from Ms Wallis that Mr Jones, Superintendent Haulage would contact him in the afternoon.

[57] That afternoon, Mr Stoddard had a phone conversation with Mr Jones in which Mr Jones informed Mr Stoddard that he was being stood down whilst an investigation was being conducted, and that a meeting was scheduled for 2 September 2024. The allegations were sourced from the recording Mr Stoddard had sent to Ms McMillan on the 20 August 2024.

[58] Ms Wallis was asked if she investigated the concerns raised by Mr Stoddard about Mr Auld (on 13 May 2024) and she said they listened to the recording but deemed the incident was closed.

[59] It was put to Ms Wallis that Mr Auld was told that machinery was not functional and he just let the driver drive off and did not do anything to discuss this with anybody. Ms Wallis said it would be expected for supervisors to investigate matters raised.

[60] Ms Wallis was asked if Mr Stoddard using his mobile phone in the office administration area to show Mr Auld the photos of the seat was reasonable. Ms Wallis said using a mobile phone in the administration area is considered a breach of the Respondent's policy and procedure.

[61] Ms Wallis was asked if Mr Auld should have done something about Mr Stoddard showing him the picture of the seat on his phone. Ms Wallis said she was not sure.

[62] Ms Wallis accepted that at the time of the commencement of the investigation she did not know the recording was made by Mr Stoddard on his smart watch, and she believed it had been made using his phone. She did not learn this was not correct until the meeting of 2 September 2024.

[63] Ms Wallis maintained that the recording on the smart watch of the truck starting on 13 May 2024 was still a breach of policy and procedure as it was a personal device that posed a risk of distraction. Ms Wallis accepted no policy referred specifically to Smart Watches as of 13 May 2024. Ms Wallis referred to the Cardinal Rules referring to Mobile Phones and personal listening devices. It was put to Ms Wallis this could be referring to headphones. Ms Wallis agreed it could include headphones.

[64] Ms Wallis was referred to a range of text messages that Mr Stoddard had provided with his evidence, that indicated it was not uncommon for employees of the Respondent to exchange text messages using mobile phones in the performance of their roles. This included with supervisors, haulage managers and included photos taken at go lines and inside trucks and on the highway.

[65] Ms Wallis said certain personnel are authorised to use their mobile phones for business purposes. Mr Stoddard put it to Ms Wallis that he was authorised to do that. Ms Wallis said no. It was put to Ms Wallis that the text messages provided show Mr Stoddard had been sending text messages to various other employees and they received them and didn't say anything. Mr Stoddard queried how zero tolerance works. Ms Wallis said it was a zero tolerance while operating machinery or in an operational area without prior authorisation.

[66] Mr Stoddard said he took photos on the go lines for the purpose of a re-enactment which he had been asked to take. He also had pictures of trucks and faulty trucks out on the road, some on public property, some on private property, some on the mine site. These were sent to his supervisors. Mr Stoddard asked if he should have been punished for taking those photos.

[67] Ms Wallis said if a supervisor asks an employee to take a photo and send that through then that person is granted authorisation in that instance. It was put to Ms Wallis that in order to take the photo he would need to have his phone with him. Ms Wallis agreed. It was put to Ms Wallis if he was not authorised to have his phone with him, how would a manager, supervisor or superintendent expect him to take such photographs.

[68] Ms Wallis said within the Yilgarn at the time, they understood the drive between Carina and Parker Range was a significant distance and employees were allowed to take their phones with them in their bag if they were turned off and could be used in the event of a breakdown. Ms Wallis accepted employees were allowed to take their phones with them.

[69] It was put to Ms Wallis that the July 2024 HSE Notification was irrelevant as it had not been issued as at 13 May 2024. Ms Wallis said at the time of the investigation, the Respondent was not aware of the time of the recording and this information was only provided a few weeks ago.

[70] It was put to Ms Wallis that the Stand Down letter refers to Mr Stoddard using his mobile phone on 13 May 2024 and she did know when the recording was made. Ms Wallis then accepted that.

[71] Ms Wallis accepted that when the investigation was commenced, she was of the understanding that Mr Stoddard was using his mobile phone to record on 13 May 2024, not his smart watch. This assists to understand the wording in the allegations.

Stand down – 30 August 2024

[72] The Applicant received the following correspondence from the Respondent on 30 August 2024.

> "Dear Martin,
>
> **RE: STAND DOWN DUE TO INVESTIGATION**
>
> I am writing to confirm a recent discussion held between yourself and Mathew Jones, Superintendent Haulage today (30 August 2024). The purpose of the conversation was to notify you that the Company intends to commence an investigation into concerns relating to your recent conduct.
>
> Whilst the investigation is being conducted the Company has made the decision to stand you down, effective immediately, on full pay pending an investigation into the concerns.
>
> For the duration of the stand down period you are expected to remain ready and available to answer questions or attend meetings in relation to the incident being investigated. Whilst you remain ready and available to attend such meetings you will continue to be paid for your ordinary hours of work and continue to accrue leave.
>
> The specific allegation(s) are outlined below:
>
> • On 13 May 2024, you had your mobile phone on your person and used this whilst within Operational Areas.
>
> o You had your mobile phone on and on your person whilst operating a vehicle.
>
> • On 13 May 2024, you completed re-torques on a Company vehicle, despite the requirement that this task be performed by a qualified HD Fitter.
>
> **POTENTIAL BREACH OF YOUR OBLIGATIONS**
>
> Although no conclusions have been reached regarding these allegations if they are substantiated, they may constitute a breach of the OneMRL Cardinal Rules, Yilgarn Operations Site Induction, Health and Safety Policy, Carina Site Rules, and your Contract of Employment and accordingly may result in disciplinary action, up to and including the termination of your employment.
>
> ***OneMRL Cardinal Rules***

• Mobile Phones and Personal Listening Devices
  o Mobile Phones and Personal Listening devices are not to be used at any time whilst driving any vehicle or operating mobile equipment.

Yilgarn Operations Site Induction

• Mobile Phone Policy
  o Only authorised persons are permitted to use a mobile phone in the workplace (outside of the administration block).
  o Mobile Phones are not to be taken out into work areas unless permission is granted by the Project Manager.
  o Are not to be used whilst driving any vehicles or operating mobile plant equipment. (MRL Carinal Rule)
  o Any breach will result in disciplinary action up to and including termination of employment.

Health and Safety Policy

• Via our Health and Safety Policy (this Policy) we will:
  o Conduct business in a health, safe and sustainable manner in recognition of the fundamental role that Health and Safety plays in enabling and supporting MRL to achieve its Purpose, Vision and Values.
  o Comply with all applicable legislation, standards and codes.
  o Maintain all necessary Safety Standards and Management Systems to assist us in conducting our business safely and effectively.

Carina Site Rules

• Retorques must be completed by a qualified Fitter.

Employment Contract

• 8.1 Duties
  o At all times during the Employment, you agree to:
    ▪ honestly, faithfully and diligently follow and perform all lawful directions and instructions of the Company;
    ▪ act in the best interests of the Company at all times;
    ▪ conduct yourself in accordance with the commercial and ethical standards commensurate with Your Role;
• 8.2 Employee obligations
  o You must comply with the requirements and directions of the Company. These requirements and directions may change from time to time. Failure to comply with these requirements and directions may result in disciplinary action, up to and including termination of Employment.
  o You must comply with all of the Company's instructions regarding safety and security and always engage in safe work practices for the protection of yourself and others.
• 8.8 Company policies

o You must comply with all policies and procedures of the Company…

DIRECTION TO ATTEND A RESPONSE MEETING

You are required to attend a meeting to respond to the allegations on Monday, 2 September 2024, at 9:00am, with Olivia Wallis, Senior People Advisor, and myself. You are welcome to bring a support person with you to the meeting, provided this person is not otherwise involved in the investigation.

CONFIDENTIALITY

You are reminded that the matters set out in this letter are strictly confidential. You are not to discuss this matter with anyone other than your immediate family, your support person and the Employee Assistance Program, Assure.

Any failure to observe these confidentiality obligations will be considered a breach of a lawful and reasonable direction and may be taken into account in determining appropriate disciplinary action (including termination of your employment).

ADDITIONAL SUPPORT

I understand this can be an unsettling time, if you require clarification on any of the details in this letter or the investigation process, please do not hesitate to contact me at your convenience.

I would also like to remind you of the Employee Assistance Program which is available to provide you with confidential counselling services. Assistance is available to you and your family by contacting the Company's external provider Assure on 1800 808 374 should you require it at any time."

Applicant email to Mr Jones 31 August 2024

[73] On the 31 August 2024, Mr Stoddard emailed Mr Jones with the following:

"As per our phone call Friday afternoon, could I please have a copy of the mobile phone procedure and retorque procedure that was current on the 13th of May 2024.

Thank you in advance
Marty"

[74] Mr Stoddard said Mr Jones replied with two attachments: General HSE Notification - The Use of Mobile Phones and Smart Watches in the Workplace (002) and HAUL-SAF-POL-0001 - PMI Pilbara Haulage Mobile Phone Policy.

[75] Mr Stoddard replied:

"Thank you Matt

The PMI one is for the Pilbara. Never issued down here. Is there one which I should have seen or signed for Yilgarn?

Marty"

[76] To which he replied "Same policy as here mate".

[77] On the evening of 1 September 2024, Mr Stoddard said he spoke with "Darryl" at the camp shop who said he would pick him up at 8am to take him to Parker Range mine admin to do a video call. Mr Stoddard said "Darryl" told him he was allowed to have a support person.

[78] Mr Stoddard said as they were at a mine the options were limited as his crew were on night shift so would be sleeping. Mr Stoddard said he asked if he could have Mr Shaun Reid, and Mr Reid was asked via radio to come off the mine and to the admin area. Mr Stoddard said he discussed the situation with Mr Reid, and he agreed to be his support person.

2 September 2024 meeting with Ms Wallis and Mr Jones

[79] Mr Stoddard said at the meeting on 2 September 2024 he informed Ms Wallis and Mr Jones that he was going to record the meeting on his phone and started recording. Ms Wallis informed him that he was not allowed to do this and to cease the recording, which he did.

[80] Mr Stoddard's recollection of the meeting was as follows:

- I was then asked to answer to the allegations.
- I asked if I could start with the retorque one first. They agreed.
- I also asked if they got the information from the recording and they said yes. I explained I did do the retorque with a Fitter and you can hear that in the recording.
- Mathew Jones said that I was holding the bar at the wrong end.
- I said I was never instructed on what end to work at. We were only told to have a Fitter present.
- He said at prestart meetings it was shown.
- I said not at any prestart I had been too.
- I then explained that I only got my phone out in the admin area to show Andrew Auld Supervisor the photos of the truck TK5216. And Andrew acknowledged the photos and did not say anything about me having my phone on me.
- I also said as you have used that recording against me, that means you accept that I needed to do the recording to protect myself. And now the recording can be used in court.
- The meeting was ended.

[81] Mr Stoddard was referred to Ms Wallis's notes of the meeting. In relation to allegation Ms Wallis's notes include the following:

"Allegation 1 – Retorque

> "In a recording sent through by yourself, it is alleged that you conducted a retorque despite the requirement this be conducted by a qualified itter. Can you please talk us through the incident.
> *I don't know which retorque you are talking about.*
> *In that recording the management in the office asked me to do that – the supervisor.*
> *I locked on and helped the fitter, he conducted the retorque.*
>
> MJ advised the requirement that the fitter needed to be on the heavy end of the bar.
> *This was never instructed to me. Never instructed to anyone.*
> *You need to show me the documentation that this is the instruction that was given to me and I signed it.*
> *Never any instruction that I needed to be on the heavy end.*
>
> MJ advised that it was discussed in the pre-start that MS attended on 5 May.
> *What was in that prestart. I'll ask Olivia to contact numerous truck drivers to ask it that was the case.*
> *I didn't do the retorque I just helped the fitter.*
> *Discussion that this was not communicated to him.*"

[82] Mr Stoddard said these notes do not record his response accurately. He said what was said in the discussion, which he said got "a bit heated" between Mr Jones and himself, was that Mr Jones took the heavy end as being the ratchet end because it would be expected that would be heavier than the other end. Mr Stoddard said you would not expect pushing down on something to be heavy, and Mr Stoddard said he and Mr Jones had a big discussion about that because Mr Stoddard said he was at the ratchet end. Mr Stoddard said this was not reflected in Ms Wallis' notes. Mr Stoddard's evidence was he understood the ratchet end was the heavy end which was the end that he was at.

[83] Mr Stoddard was also referred to Ms Wallis' notes regarding the second allegation. He was asked about the note that said he stated, "I have every right to record." He agreed. It was put to Mr Stoddard that he did not acknowledge that he should not have made the recording. Mr Stoddard said it was never asked whether the recording should or should not have been made. He accepted he never apologised for making the recording and it was never raised.

[84] Ms Wallis said the meeting on 2 September 2024 was quite short and Mr Stoddard became visibly and audibly angry, and she understood Mr Stoddard was becoming frustrated.

[85] Mr Stoddard said after the meeting he was then taken back to camp by "Darryl." Mr Stoddard said on the way he said he was going to see the medic as his back was sore from lying in bed all weekend stressing about the whole situation. Mr Stoddard said he saw the medic and explained his back was sore again probably due to lying in bed all weekend. Mr Stoddard said he also mentioned the stress he was under regarding the allegations. He said he was given some pills, and he went back to his room.

[86] Mr Stoddard said he contacted his General Practitioners (GP) office to get a phone consult with Dr Manas Gupta his GP in Brisbane. Mr Stoddard said during the phone consult he explained everything that was going on and that his back hurt and he was very stressed and

depressed about it all. Mr Stoddard said his GP gave him a medical certificate for recurrence of moderate pain after meeting with the work management team and acute stress reaction.

[87] Mr Stoddard said he forwarded this to Ms McMillan, who replied saying that it would be best for Mr Stoddard to go home as they could not accommodate the restrictions listed, and he was sent home on the 3 September 2024.

[88] Ms Wallis said she reviewed her notes from the meeting once it was finished and ultimately formed the view the allegations against Mr Stoddard were substantiated. Ms Wallis said she asked Mr Holmes for permission to issue a show cause letter, and she took Mr Holmes' response as approval to do so.

[89] On 5 September 2024, Mr Stoddard was sent a Show Cause letter as follows:

> "Dear Martin,
>
> **SHOW CAUSE**
>
> I refer to the discussion with myself and Olivia Wallis (Senior People Advisor) on 2 September 2024 where we discussed the concerns that we have in relation to your recent conduct that is inconsistent with the MRL Policies and Procedures.
>
> **FINDINGS**
>
> I write to confirm that after considering all the information and evidence available to us including information provided by yourself, the Company has completed its investigation, and have substantiated the following allegations:
>
> - On 13 May 2024, you had your mobile phone on your person and used this whilst within Operational Areas.
> - You had your mobile phone on and on your person whilst operating a vehicle.
> - On 13 May 2024, you completed re-torques on a Company vehicle, despite the requirement that this task be performed by a qualified HD Fitter.
>
> **BREACHES**
>
> The allegations are considered breaches of the following MRL policies and procedures:
>
> ***OneMRL Cardinal Rules***
>
> • Mobile Phones and Personal Listening Devices
>
> o Mobile Phones and Personal Listening devices are not to be used at any time whilst driving any vehicle or operating mobile equipment.
>
> ***Yilgarn Operations Site Induction***
>
> • Mobile Phone Policy

o Only authorised persons are permitted to use a mobile phone in the workplace (outside of the administration block).
o Mobile Phones are not to be taken out into work areas unless permission is granted by the Project Manager.
o Are not to be used whilst driving any vehicles or operating mobile plant equipment. (MRL Carinal Rule)
o Any breach will result in disciplinary action up to and including termination of employment.

Health and Safety Policy [MRL-SAF-POL-0001]

• Via our Health and Safety Policy (this Policy) we will:
o Conduct business in a health, safe and sustainable manner in recognition of the fundamental role that Health and Safety plays in enabling and supporting MRL to achieve its Purpose, Vision and Values.
o Comply with all applicable legislation, standards and codes.
o Maintain all necessary Safety Standards and Management Systems to assist us in conducting our business safely and effectively.

Carina Site Rules

• Retorques must be completed by a qualified Fitter.
MR Transport Behavioral Expectations: Professional Operators
• I accept that mobile phones are not permitted in the MRT workplace and should not be used during work hours at any time.

Code of Conduct and Business Integrity [MRL-HR-POL-0012]

• 2.1 Ensuring a Safe Workplace
o You are responsible for ensuring you understand your responsibilities to uphold the highest standards of health and safety in all that you do.
o You must:
▪ Comply with all health and safety policies, standards and procedures, which are published on our intranet, available from your site manager and reinforced through regular communications. You are expected to ask your manager if you have difficulty accessing the information or understanding the implications. Ignorance is not a valid reason for non-compliance.

Employment Contract

• 8.1 Duties
o At all times during the Employment, you agree to:
▪ honestly, faithfully and diligently follow and perform all lawful directions and
instructions of the Company;
▪ act in the best interests of the Company at all times;
▪ conduct yourself in accordance with the commercial and ethical standards commensurate with Your Role;

• 8.2 Employee obligations
  o You must comply with the requirements and directions of the Company. These requirements and directions may change from time to time. Failure to comply with these requirements and directions may result in disciplinary action, up to and including termination of Employment.
  o You must comply with all of the Company's instructions regarding safety and security and always engage in safe work practices for the protection of yourself and others.
• 8.8 Company policies
  o You must comply with all policies and procedures of the Company…

INVITATION TO RESPOND IN WRITING TO SHOW CAUSE

The findings are serious, and the Company is considering terminating your employment. Before making a decision on the outcome, I would like to provide you some time to consider the findings of this investigation and your employment history with CSI.

You are invited to respond in writing to justify why your employment with the Company should not be terminated. Your response should provide any information you feel is relevant for consideration.
No decision on the final outcome will be made until you have had the opportunity to respond. You have until 5:00pm, Sunday 8 September 2024 to provide your response in writing. Your response should be sent via email to [email].

If we do not receive a response from you within this timeframe, the Company will make a final decision based on the information available.

Your response will be considered, and a final decision provided, as part of the disciplinary process with consideration given to the following:
  • the seriousness of your conduct.
  • your overall work record, including any previous disciplinary findings and disciplinary actions.
  • any extenuating circumstances which may have had a bearing on your actions; and

INVITATION TO ATTEND AN OUTCOME MEETING

You are required to attend a meeting with myself and Olivia Wallis (Senior People Advisor) at 2:00pm on Tuesday 10 September 2024 via Microsoft Teams to determine the outcome to the investigation. You may bring a support person with you to the meeting, provided this person is not involved in the investigation.

CONFIDENTIALITY

You are reminded that the matters set out in this letter are strictly confidential. You are not to discuss this matter with anyone other than your immediate family, your support person, and the Employee Assistance Program, Assure.

Any failure to observe these confidentiality obligations will be considered a breach of a lawful and reasonable direction and may be considered in determining appropriate disciplinary action (including termination of your employment).

ADDITIONAL SUPPORT

The Employee Assistance Program remains available to utilise during this time. The service is a confidential counselling and support service provided by Assure and may be accessed at any time by contacting 1800 808 374.

Should you have any questions in relation to this letter, you are welcome to contact me at your convenience."

[90] Mr Stoddard pointed out in his evidence that the show cause letter was signed by Mr Draper and refers to himself being at the show cause meeting however Mr Draper was not at the show cause meeting, it was Mr Jones. The Respondent accepted that the reference in the Show Cause letter to Mr Draper being at the meeting on 2 September was an error.

8 September 2024 response to Show Cause

[91] On 8 September 2024, Mr Stoddard submitted a response to the Show Cause as follows:

"Dear Olivia,

I have received an **INVTATION TO RESPOND IN WRITING TO SHOW CAUSE** dated **5th SEPTEMER 2024**, from **PETER DRAPER, IN RELATION TO MY RECENT CONDUCT THAT IS INCOSISTENT WITH MRL POLICIES AND PROCEDURES**.

The specific allegations are that:

- On 13 May 2024, you had your mobile phone on your person and used this whilst within Operational Areas.
    - You had your mobile phone on and on your person and used this whilst within Operational Areas
- On 13 May 2024, you completed re-torques on a Company vehicle, despite the requirement that this task be performed by a qualified HD Fitter.

Regarding the first allegation that I had my mobile phone on and on my person and used whilst within Operational Areas:

After I parked TK5212 in a work bay to have re-torques done and to fix radio microphone which did not have a suitable microphone holder. I shut down the vehicle and chocked in accordance with MRL procedures. However, after I shut vehicle off and before leaving the cab I placed my mobile phone in my pocket as I wanted to show Supervisor Andrew Auld the pictures I had taken of the condition of the seat and the rear of the cab of TK5216.

In the teams meeting with Superintendent Matthew Jones and Olivia Wallis the Senior People Advisor. I informed them that I removed my phone in the Haulage Administration office to show Supervisor Andrew Auld the appalling condition of TK5216's seat and cabin wall behind the seat which was the initial cause of my current back injury which I was very distressed about as the truck I was currently driving (TK5212) also had a fault.

Regarding the second allegation, I did have a HD Fitter do the re-torque with me and I held the ratchet end of the re-torque bay. I also followed all isolation procedures whilst doing this

Regarding the possible breaches:

OneMRL Cardinal Rules

• Mobile Phones and Personal Listening Devices

o Mobile Phones and Personal Listening devices are not to be used at any time whilst driving any vehicle or operating mobile equipment.

I did not use or touch my mobile phone whilst driving a vehicle or operating mobile equipment. As TK5212 was turned off and fundamentally stable when I left the cabin.

Yilgarn Operations Site Induction

• Mobile Phone Policy

o Only authorised persons are permitted to use a mobile phone in the workplace (outside of the administration block).

o Mobile Phones are not to be taken out into work areas unless permission is granted by the Project Manager

o Are not to be used whilst driving any vehicles or operating mobile plant equipment. (MRL Cardinal Rule)

o Any breach will result in disciplinary action up to and including termination of employment.

I only used my mobile phone in the Haulage Administration area. The only policy that Matthew Jones could provide to me on my request that was current at the time was a PMI policy for the Pilbara. Not Yilgarn or Carina. To date I have not received a policy for Carina for the date in question. I would also like to add that Supervisor Andrew Auld did not show any problem with me producing my phone to show him the pictures.

Health and Safety Policy

• Via our Health and Safety Policy (this Policy) we will:

o Conduct business in a health, safe and sustainable manner in recognition of the fundamental role that Health and Safety plays in enabling supporting MRL to achieve its Purpose, Vision and Values.

o Comply with all applicable legislation, standards and codes.

o Maintain all necessary Safety Standards and Management Systems to assist us in conduction our business safely and effectively.

The purpose of having my phone on me was to show Supervisor Andrew Auld the condition of TK5216's seat and cabin to show my concerns. I felt that it would be reasonable and responsible to share the information to management for Health and Safety reasons. Me having my phone in my pocket did not pose any risk to other workers including myself.

Carina Site Rules

• Re-torques must be completed by a qualified Fitter.

I completed the re-torque with a HD Fitter. Whilst I was doing this, I held the ratchet end of the re-torque bar and the fitter held handle as that's where all the injuries. I have never received any documentation or visual instruction on how to do perform the re-torque. However, when working with Rivet I was VOC'd in the re-torque technique. This was conducted by current MRL trainer Trevor Morris who at the time at Rivet was the Trainer Voc'd me. Which was
to operate on MRL sites.

MR Transport Behavioural Expections: Prefessional Operators

• I accept that mobile phones are not permitted in the MRT workplace and should not be used during work hours at any time.

In a couple of prestart meetings that Superintendent Joe Bloomfield spoke in he stated that because we are so distant from families it was ok to ring family.

We are also on occasions required to use our phones to contact supervisors as we do not always have direct radio contact. So the above statement is contradictory to how Carina Haulage drivers are expected to operate.

Code of conduct and Business Integrity [MRL-HR-POL-0012]

• 2.1 Ensuring a Safe Workplace
  - o You are responsible for ensuring you understand your responsibilities to uphold the highest of health and safety in all that you do.
  - o You must:
    - ▪ Comply with all health and safety policies, standards and procedures, which are published on our intranet, available from your site manager and reinforced through regular communications. You are expected to ask your manager if you have difficulty accessing the information or understanding the implications. Ignorance is not a valid reason for non-compliance.

I do understand my obligations and responsibilities to ensuring a Safe Workplace, hence the reason informed Supervisor Andrew Auld about the condition of TK5216. I also hand in Hazard cards and Take Times.

Employment Contract

• 8.1 Duties
  - o At all times during the Employment, you agree to:
    - ▪ Honestly, faithfully and diligently follow and perform all lawful directions and instructions of the Company.

▪ Act in the best interests of the Company at all times.
▪ Conduct yourself in accordance with the commercial and ethical standards commensurate with Your Role.

• 8.2 Employee Obligations
  o You must comply with the requirements and directions of the Company. These requirements and directions may change from time to time. Failure to comply with these requirements and directions may result in disciplinary action, up to and including termination of Employment.
  o You must comply with all of the Company's instructions regarding safety and security and always engage in safe work practices for the protection of yourself and others.

• 8.8 Company policies
  o You must comply with all policies and procedures of the Company…

Except for the current allegations I have fulfilled the above Employment Contract obligations. This has been shown by my conduct since on site which has been almost a year. I began with labour hire company Silverstone and on 21st of March 2024 I was employed with MRL at a level 3 for my starting level due to my experience and conduct. I have also received my FY25 Annual Remuneration Review letter dated 3rd September 2024 which has my new full time equivalent base salary increased to $109,250 which is a level 4. This was given because I am a dedicated employee always following all procedures. To date I have never received a Record of Discussion or Breach or disciplinary action.

I would also like to say that I highly believe in all safety policies and procedures. I have not only adhered to them to the best of my knowledge. I have also encouraged others to do the same and feel I have represented MRL in a very positive manner.

I thoroughly enjoy my employment with MRL. I have referred people and have had nothing but positive comments about MRL.

I look forward to our teams meeting on Monday, 9th September 2024 at 2PM Western Australia time to finalise a positive result in regard to the above allegations."

10 September 2024 Termination

[92] On 10 September 2024, Mr Stoddard was issued a termination letter as follows:

"Dear Martin,

RE: TERMINATION OF EMPLOYMENT

The Company has recently concluded an investigation into your actions, specifically, related to your behaviours and actions on 13 May 2024.

On the 2 September 2024, you were invited to a meeting an issued a Show Cause Letter on 6 September 2024 requesting you to provide a written response by 5:00pm on 8 September 2024.

We consider your actions constitute misconduct and a breach of the following:

- Employment Contract
- OneMRL Cardinal Rules
- Yilgarn Operations Site Induction
- Health and Safety Policy
- Carina Site Rules
- MR Transport Behaviour Expectations: Professional Operators
- Code of Conduct and Business Integrity

The Company has carefully considered all available evidence, including your response and have made the decision to terminate your employment effective from 10 September 2024. You are not required to work your notice period.

You will receive the following payment:

- Wages for time worked up to and including the date of termination.
- 1 weeks in lieu of notice as per Contract of Employment
- Any unused accrued annual leave.
- Any other entitlements set out in your Contract of Employment if applicable.

I would like to remind you that you can contact our free and confidential Employee Assistance Program, Assure on 1800 808 374. This service remains available to you and any member of your household for a period of three (3) months from the date of this letter.

Should you have any questions please do not hesitate to contact me."

[93] Mr Stoddard responded to Ms Wallis as follows:

"Hi, thank you for your outcome. I was wondering if I am suppose to receive 28 days notice as I am under a workcover claim. So a CN8 form should have been completed?"

[94] Ms Wallis responded later that same day:

"Hi Martin,

Thank you for your email.

The Company believes it has met its obligations."

12 September 2024 Amended termination letter

[95] On 12 September 2024, Mr Stoddard was issued an amended termination letter as follows:

"Dear Martin,

Re: Termination of Employment

> We write to you with respect to your enquiry concerning the CN8 notice. Following further advice on the matter, the Company will provide you with a CN8 notice (attached with our correspondence).
>
> In addition to the CN8 notice, we advise that the effective date of your termination will be amended to Friday 11 October 2024 (**End Date**).
>
> From 12 September 2024 to the End Date (**Notice Period**), you will be stood down with pay and you are directed not to attend work.
>
> Please let me know if you have any questions with respect to this letter."

Relevant legislation

[96] Section 387 of the Act sets out the considerations when considering if a dismissal was harsh, unjust or unreasonable:

> **"387 Criteria for considering harshness etc.**
>
> In considering whether it is satisfied that a dismissal was harsh, unjust or unreasonable, the FWC must take into account:
>
> (a) whether there was a valid reason for the dismissal related to the person's capacity or conduct (including its effect on the safety and welfare of other employees); and
> (b) whether the person was notified of that reason; and
> (c) whether the person was given an opportunity to respond to any reason related to the capacity or conduct of the person; and
> (d) any unreasonable refusal by the employer to allow the person to have a support person present to assist at any discussions relating to dismissal; and
> (e) if the dismissal related to unsatisfactory performance by the person—whether the person had been warned about that unsatisfactory performance before the dismissal; and
> (f) the degree to which the size of the employer's enterprise would be likely to impact on the procedures followed in effecting the dismissal; and
> (g) the degree to which the absence of dedicated human resource management specialists or expertise in the enterprise would be likely to impact on the procedures followed in effecting the dismissal; and
> (h) any other matters that the FWC considers relevant."

Consideration

Valid reason

[97] The Commission must weigh all of the circumstances in the matter and objectively assess whether a valid reason existed.[5]

[98] The Respondent submitted that the Commission can be satisfied that a valid reason existed. The Respondent's valid reasons for the Applicant's dismissal were:

(a) his use of a mobile device at the workplace in breach of the Respondent's health and safety policies and procedures; and
(b) his performance of a re-torque on one of the Respondent's vehicles in a manner inconsistent with the Respondent's safety directions.

[99] Mr Stoddard submitted that the dismissal was unfair, unjust and unreasonable for the following reasons:

1. The allegations derived from a recording on his Apple Watch which no one has objected to him doing.
2. The allegations were from 3 months earlier.
3. No documentation was provided as to the rules for the alleged allegations that were relevant, even though he asked for them.
4. If he did do the retorque wrong, was the Fitter that he did it with also brought before HR as he would have been doing it wrong too.
5. He accounted for the allegations in the meeting even though nothing specific was alleged.
6. He was made to sit in his quarters on the mine site for 3 nights with no contact. No one even came to check on his welfare.
7. He was allowed a support person however not the one he wanted as he was needed to drive a truck.
8. None of the allegations were specific.
9. He was not given any results of the investigation they did.
10. He was only given 3 days to reply to a show cause letter. 1 weekday and 2 weekend days.
11. The show cause letter stated that the writer Mr Draper was at a meeting on the 2 September 2024 which he was not. Peter Draper was not even on site.
12. The show cause letter stated "You are invited to respond in writing to justify why your employment with the Company should not be terminated. Your response should provide any information you feel is relevant for consideration." This means they have decided already.
13. He was told the outcome via email as they accepted that his medical certificate warranted that he was not able to be present for a meeting.
14. I was on a Workcover certificate at the time of dismissal.
15. At first Olivia Wallis said they were happy with the way they dealt with his dismissal only to amend it two days later by accepting he was still on Workcover.
16. He got a pay rise in the middle of the dismissal process due to his good conduct and behaviour.
17. He had no previous breaches or discussions in regard to his conduct.
18. He thought the real reason they did not follow process was because they thought his service was not long enough to take a case to FWC (in the context of his transfer of employment).

Re-torquing of vehicle wheels

[100] The Respondent submitted it was the Respondent's protocol that Drivers are not to perform re-torques of truck wheels without Fitters and that Drivers should not be using the "heavy side" of the torque wrench when performing re-torques.

[101] The Respondent submitted that when first asked about the issue, Mr Stoddard did not deny having performed the re-torque with a Fitter and having operated the "heavy side". It was only in his show cause response and in Mr Stoddard's statement that he sought to suggest that he had in fact held the "ratchet" side of the torque wrench.

[102] The Respondent submitted Mr Stoddard's account is self-interested and inconsistent with his initial response to the allegation, and therefore the account in Mr Stoddard's show cause statement should not be afforded weight. The Respondent submitted if it is determined Mr Stoddard did perform the re-torque and did handle the "heavy side" of the torque wrench, it will have been a direct contravention of the Respondent's safety policies and procedures.

[103] The Respondent contended that the Applicant's breaches of the Respondent's policies and procedures relating to re-torques at the Respondent's workplace, gave rise to a valid reason for his dismissal.

[104] The evidence does not establish that Mr Stoddard did not comply with the Respondent's policy in relation to re-torques. It is common ground that the re-torques were undertaken with a qualified Fitter. Mr Stoddard's evidence was he was at the ratchet end. There is no compelling evidence to persuade me this is not correct. The Fitter was not called to give evidence by the Respondent. I do not accept that the allegation that Mr Stoddard was in breach of any policy or procedure of the Respondent in relation to this issue has been made out.

[105] Ms Wallis accepted in her oral evidence that she could not confirm how Mr Stoddard was doing the re-torque. Ms Wallis said the Fitter was not disciplined because the Respondent was unable to identify who the Fitter was however, Ms Wallis appeared to accept the Fitter could have been identified from the re-torque book.

[106] There is no direct evidence from a witness for the Respondent about what was said at shift changeovers or prestart meetings on 7, 9 or 10 May 2024 regarding re-torques on trucks. The Respondent has not established that Mr Stoddard was provided any specific instruction about specifically how the Fitter and the drivers were to divide their roles during re-torques on trucks.

[107] It also appeared that the evidence provided by Ms Wallis about re-torques was based on information that was passed on to her, and some of it was inaccurate, also undermining the value of this evidence more generally.

[108] Even if I were satisfied that Mr Stoddard had been holding the wrong end of the torque wrench when the re-torques were being undertaken, and I am not, I would still not be satisfied it would have provided a valid reason for dismissal. Mr Stoddard said he was never given any clear instructions about how re-torques were to be undertaken. Based on the evidence, it appears the issue was not the subject of a toolbox talk in Mr Stoddard's area, where clear instructions were given on the matter.

[109] The Respondent's case regarding this matter appears to rest on handover notes for a shift changeover, and a note on a whiteboard as of 10 May 2024. The evidence does not establish that either the handover notes or the note on the whiteboard were brought to the attention of Mr Stoddard. Even if the note on the whiteboard was brought to the attention of Mr Stoddard, it

does not say anything more than "retorques by fitter and driver." There is no dispute that the re-torques were done with a Fitter.

Mobile device use

[110] It was determined by the Respondent that Mr Stoddard having his mobile phone on his person and using this whilst within Operational areas, and having his mobile phone on his person whilst operating a vehicle, are matters clear from the evidence.

[111] The Respondent submitted that Mr Stoddard had a mobile phone within the MR Transport workplace, and he is heard in the recording showing other photos on a mobile phone and admitted to doing so. He is also heard discussing with another person his use of his mobile phone while operating a truck.

[112] The Respondent referred to the OneMRL Cardinal Rules which set out that:

> *"Mobile Phones and Personal Listening devices are not to be used at any time whilst driving any vehicle or operating mobile equipment."*

[113] The MR Transport Behavioural Expectations: Professional Operators sets out that:

> *"I will comply with all Company Policy, Site Requirements, Codes of Practice, OneMRL Cardinal Rules and all relevant legislation as described in the MR Transport General Induction."*
> and
> *"I accept that mobile phones are not permitted in the MRT Workplace and should not be used during work hours at any time."*
> and
> *"I understand that failure to comply with MR Transport and Site Policies and Procedures may result in disciplinary action, up to and including termination of employment."*

[114] The Respondent submitted Mr Stoddard's conduct was in breach of the Behavioural Expectations and that Mr Stoddard was aware a breach of the MR Transport and Site Policies and Procedures could result in the termination of his employment.

[115] The Code of Conduct and Business Integrity sets out at clause 2.1 that:

> *"You are responsible for ensuring you understand your responsibilities to uphold the highest standards of health and safety in all that you do.*
> *You must:*
> *Comply with all health and safety policies, standards and procedures, which are published on our intranet, available from your site manager and reinforced through regular communications. You are expected to ask your manager if you have difficulty accessing the information or understanding the implications. Ignorance is not a valid reason for non-compliance."*

[116] The Respondent submitted that for the reasons outlined above, Mr Stoddard did not comply with the various health and safety policies and procedures that applied to his employment. He was therefore in breach of the Code of Conduct.

[117] Mr Stoddard's employment contract set out at:

> *"Clause 8.2(b):*
> *You must comply with all of the Company's instructions regarding safety and security and always engage in safe work practices for the protection of yourself and others.*
> *Clause 8.8:*
> *You must comply with all policies and procedures of the Company. Notwithstanding this, the policies and procedures of the Company:*
> *(a) are for the benefit of the Company and do not impose any contractual obligations on the Company; and*
> *(b) are not incorporated into, and do not form part of, this Contract of Employment.*
>
> *A breach of any Company policy and/or procedure may be considered a breach of your Contract of Employment and may result in termination of employment."*

[118] The Respondent submitted that Mr Stoddard's failure to comply with the Respondent's instructions regarding safety and his breaches of the various policies and procedures set out above relating to mobile devices, are in breach of his contract of employment. Mr Stoddard was aware a breach of a policy or procedure could result in the termination of his employment.

[119] Mr Stoddard said there was no smart watch policy as of 13 May 2024 that he was aware of. The Mobile Phones and Smart Watches General Notification was sent out two months after he made the recording on 13 May 2024.

[120] Mr Stoddard said the only reason the allegations were made against him was because he made a recording on his Apple Watch, which he forwarded to Ms McMillan from the Injury Management Team, because she enquired if he had obtained legal representation in regard to his WorkCover claim.

[121] Mr Stoddard said the reason he made the recording was because in the past he had witnessed other drivers being bullied and terminated for minor things, and as he had hurt his back two days earlier, he was worried that someone would make up a reason to sack him.

[122] Mr Stoddard said that he felt that because he got a lawyer and had a recording of the misconduct of an MRL supervisor, they wanted him gone. He said he was not disciplined for making the recording (at the time), however the information in the recording was used to dismiss him. Mr Stoddard said he also believed that the Respondent thought he had made the recording on his mobile phone, hence the allegation.

[123] The HSE Notification of July 2024 in relation to the use of mobile devices and smart watches had not been issued as of 13 May 2024, so it cannot be relied upon to support the Respondent's case.

[124] As the evidence developed during the hearing, it became apparent that Mr Stoddard and other drivers were permitted to have mobile phones with them in their trucks as long as it was turned off an in a bag. This is quite different to the MR Transport Behavioural Rules.

[125] It is clear this practice was widely adopted and authorised and was inconsistent with the written policy as of 13 May 2024. As a matter of practice, drivers were allowed to have mobile phones with them for safety reasons in relation to the long distances they were driving. It is also apparent that employees were authorised to use their mobile phones by supervisors for different reasons while working.

[126] I was concerned by the oral evidence of Ms Wallis when she said that at the time of the investigation, the Respondent was not aware of the time the recording was made by Mr Stoddard, and this information was only provided "a few weeks ago".

[127] When it was put to Ms Wallis that the Stand Down letter refers to Mr Stoddard using his mobile phone on 13 May 2024, and that in fact she did know when the recording was made, she then accepted that was the case. This contradictory evidence tends to undermine the weight that can be afforded to Ms Wallis' evidence as she was clearly wrong on a significant issue in relation to the investigation that she was conducting, and had to be corrected on it. It was only after Ms Wallis accepted that she was wrong on this point, that she subsequently accepted that the HSE notification was irrelevant to the investigation. This evidence was concerning because it tended to indicate that Mr Stoddard was being judged against a policy that did not apply at the time of 13 May 2024, which was the time of the conduct that led to his termination.

[128] It also became clear during the evidence that the original basis of the allegation about Mr Stoddard's mobile phone use, when first made, was based on an incorrect understanding, that Mr Stoddard had made the recording on 13 May 2024 with his mobile phone and not his smart watch. Ms Wallis accepted the Respondent believed this to be the case until Mr Stoddard explained in the meeting on 2 September 2024 what had happened. There was no policy of the Respondent's in the evidence that made specific reference to the use of smart watches as at 13 May 2024.

[129] The Respondent submitted in closing that the act of Mr Stoddard walking through the workshop and going into the administrative office to show a photo to a work colleague, is not an emergency situation that would warrant a departure from the approach of having the phone with him but turned off and in a bag unless required to use it. The Respondent argued that this then takes the matter back to the primary direction that mobile phones are not to be used in operational areas including the workshop, and the site office administration area. In those circumstances, it submitted the use of the phone was a sound basis for dismissal.

[130] It is apparent from the evidence that Mr Stoddard did not use a mobile phone while operating equipment. It is apparent there was no risk of Mr Stoddard being distracted by a mobile phone while operating the Respondent's equipment because he did not use his mobile phone while operating equipment. It appears his smart watch was still recording at the time he turned on the ignition on his truck on 13 May 2024, and he turned it off at that time.

[131] It seems from the evidence, Mr Auld did not seem to have any concern with Mr Stoddard using his mobile phone to show him pictures of the seat from the TK5216 truck he had taken

that day, to demonstrate that from Mr Stoddard's perspective the ongoing unsafe state of the seat which had caused him an injury, remained unresolved.

[132] I am satisfied that the motivation for Mr Stoddard to take the photo and show it to Mr Auld, was that of a genuine safety concern. That being a seat that had caused him an injury, was still not fixed properly in his view.

[133] The fact that Mr Stoddard's supervisor took no steps to raise any concern about Mr Stoddard using his phone on 13 May 2024, tends to indicate that the Respondent's conclusion that Mr Stoddard's actions justified his dismissal, was an overreaction to the specific circumstances.

[134] I am inclined to the view that the investigation did not consider all the circumstances in the proper context, including Mr Stoddard being motivated by a legitimate safety concern, and that he had not used the phone while operating a vehicle and only used it briefly to show the photos of the TK5216 on his phone. In all the circumstances, I am not satisfied Mr Stoddard's actions in relation to the mobile phone use on 13 May 2024 provided the Respondent a valid reason for dismissal.

[135] The Respondent also submitted Mr Stoddard use of a smart watch to make the recording in Western Australia where the *Surveillance Devices Act 1988* (WA) applies, on a prima facie basis suggests that there is a contravention, and that may be suggestive of the impact it has on the employment relationship and the issue of trust and confidence.

[136] The Respondent submitted this issue taken together with the others forms a valid reason. I do not agree. I accept that Mr Stoddard making a secret recording of his work colleagues is a form of misconduct, but in the particular circumstances of this case, it is not misconduct sufficiently serious to warrant dismissal.

[137] Mr Stoddard claimed his reason for making the recording on his smart watch was that he did not trust the supervisory staff and he appeared to hold a belief that he needed to make a recording because he didn't believe his safety concerns were being taken seriously. He claimed he was fearful of the office because he had witnessed how others were treated, and he said it was frightening, and he claimed he made the recording to protect himself.

[138] Mr Stoddard did not provide any specific examples to support his claims. Having witnessed him give his evidence, I am inclined to accept that he did hold a subjective opinion that his safety concerns were not being acted on or taken seriously. Whilst this does not excuse his actions in making a secret recording, it goes some way to explain his motives. It does appear from the evidence that Mr Auld could have done more on 13 May 2024 to respond to the concerns Mr Stoddard was raising about both TK5212 and TK5216 on the day, and this response is consistent with what Mr Stoddard had been complaining about.

[139] Ms Wallis gave evidence that she was not the decision maker in relation to the dismissal and that Mr Draper and Mr Jones were. Neither Mr Draper nor Mr Jones appeared to give evidence.

[140] Ms Wallis referred to Mr Stoddard's response to the show cause, and noted his failure to show remorse. She said this contributed to the decision that it was appropriate to terminate his employment. Ms Wallis gave evidence she believed the decision to dismiss Mr Stoddard was taken on 9 September 2024.

[141] Having considered all of the evidence and based on the conclusions above, I am not satisfied that the Respondent had a valid reason for dismissal in relation to the re-torque allegation or the allegations concerning his use of his mobile phone, or despite it not being specifically referenced in the show cause letter, or the termination letter, his smart watch.

Notification of reason

[142] Mr Stoddard was notified of the "Mobile device use" and "Re-torquing of vehicle wheels" reasons.

Opportunity to respond

[143] Mr Stoddard was given an opportunity to respond to the "Mobile device use" and "Retorquing of vehicle wheels" reasons.

Refusal of a support person

[144] Mr Stoddard was permitted to have a support person present during the investigation into his conduct. This is a neutral consideration.

Size of enterprise and availability of human resource specialists

[145] The Respondent and its parent entity are large enterprises, and this is a neutral consideration. The Respondent also has internal human resources expertise, and this is also a neutral consideration.

Other considerations

[146] Mr Stoddard is 53 years of age and enjoyed working in the mining industry and aspired to continue to do so. Mr Stoddard did not have any other performance or conduct issues. He said he commenced employment at a higher level at level 3 and was promoted to level 4 within the five-level structure in his reasonably brief tenure.

[147] The evidence of Mr Stoddard is that the termination of his employment has had a significant impact on his mental health, as demonstrated by medical evidence he provided. Mr Stoddard said the termination has had a psychological impact on him and he has been seeing a psychologist.

[148] Mr Stoddard said he has been very stressed and depressed. Mr Stoddard referred to a medical certificate dated 26 May 2025 provided by his GP, stating that Mr Stoddard has been suffering from significant stress since his dismissal and has been treated for his mental health by a psychologist and medication.

Conclusion of Harsh, Unjust or unreasonable.

[149] Having considered the evidence, I have concluded the Respondent did not have a valid reason for dismissal. Whilst the Respondent followed conventional procedural steps, its ultimate decision to dismiss Mr Stoddard, in all of the circumstances of this case was harsh, unjust and unreasonable.

Remedy

[150] Mr Stoddard in his evidence in chief said that he was open to working for the Respondent again, however acknowledged that the sites he had been employed at were now closed.

[151] During cross examination, Mr Stoddard was asked if he sought reinstatement and he said if it was offered, he would accept it, but he did not seek it. He said if there was no reinstatement he wanted compensation. After further questioning, his evidence was that the remedy he wanted was compensation.

[152] The Respondent submitted in previous cases the Commission has regarded secret recording of work colleagues as a barrier to reinstatement. The Respondent relied on the decision of Deputy President Bell in *Janssens v Rowan Bustin Pty Ltd [2023] FWC 623* at [14] where the Deputy President said as follows:

> *"Mr Janssens also produced some recordings of meetings he had with the Respondent's directors. I have listened to those files. The Respondent's material indicates it objected to those recordings. Mr Janssens says the directors knew they were being recorded. I disagree, as at least one of those conversations refers to a director stating (on the apparent production by Mr Janssens of the recording device) that Mr Janssens was required to ask permission and what he was doing was "illegal". Mr Janssens' replied "what are you going to do?" On the material before me, as the recording was made in Victoria, I am not satisfied that the recording was unlawful. That said, the covert recording of work colleagues is plainly conduct destructive of a relationship of trust and confidence and it would likely tell against any order for reinstatement were Mr Janssens' application to proceed."*
> (reference omitted)

[153] I agree with the Respondent that the action of Mr Stoddard secretly recording work colleagues is relevant to the issue of trust and confidence. In any event, Mr Stoddard reached the conclusion himself during his evidence that the remedy he sought was compensation. In all of the circumstances, I have concluded reinstatement is inappropriate.

[154] The Respondent submitted that 26 weeks wages for Mr Stoddard at the time of dismissal was $83,206.88. This figure did not exceed half the high-income threshold immediately before the dismissal, which was $87,500.

[155] It is apparent from the evidence that Mr Stoddard was becoming increasingly disillusioned with the Respondent in the later part of his period of employment. This is

demonstrated by his view that he did not trust supervisors and felt a need to make a secret recording. It is also the case that his tenure with the Respondent was not particularly long.

[156] Applying the approach in *Sprigg v Paul's Licensed Festival Supermarket* (1998) 88 IR 21 I must estimate the remuneration that Mr Stoddard would have received, or would have been likely to receive had he not been dismissed. I estimate it is likely Mr Stoddard would have remained employed for no more than another 16 weeks. Dividing $83,206.88 by 26 weeks results in a weekly amount of $3,200.26. $3,200.26 multiplied by 16 equals $51,204.16.

[157] Mr Stoddard was paid 4 weeks' notice and was stood down during this time. I intend to deduct this 4 week period for which Mr Stoddard was paid from the amount of $51,204.16. $51,204.16 minus $12,801.04 equals $38,403.12.

[158] I have considered the evidence concerning mitigation. I accept that Mr Stoddard had been applying for other employment on Seek and had not received feedback or responses to his applications for other employment. I also accept Mr Stoddard suffered some adverse mental health impacts from his termination, as supported by the evidence he provided from a treating medical practitioner. I do not intend to make any further reductions to the amount of compensation based on a failure to mitigate.

[159] As the amount of compensation is assessed on a period of time that has passed, it is unnecessary to consider any further discounting based on contingencies.

[160] I have concluded that Mr Stoddard making a secret recording of work colleagues on his smart watch without their knowledge is a form of misconduct that contributed to the Respondent's decision to dismiss him. I am satisfied it is appropriate to reduce the amount of compensation I would otherwise order by a further 20% on account of that misconduct. $38,403.12 minus 20% equals $30,722.50.

Conclusion

[161] I have determined that Crushing Services International Pty Ltd should pay Mr Martin Stoddard an amount of $30,722.50 gross, taxed according to law within 14 days of the date of this decision. Further, an 11.5% superannuation contribution on that amount should be paid into Mr Stoddard's nominated superannuation account. An order will be issued separately and concurrently with this decision to that effect.

COMMISSIONER

Appearances:

M Stoddard, Applicant
J Parkinson, Solicitor for the Respondent

Hearing details:

8 July
Brisbane (by video using Microsoft Teams)
2025.

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[1] [2025] FWC 723.

[2] Exhibit 1.

[3] Exhibit 2.

[4] Exhibit 3.

[5] *Joshua Nash and Nathan Jago v Tasmanian Water & Sewage Corporation Pty Ltd t/as TasWater* [2020] FWC 3221.