



# DECISION

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

**Dean Dunlop**

v

**BHP Billiton WAIO Pty Ltd T/A BHP**  
(U2021/7550)

COMMISSIONER WILLIAMS

PERTH, 11 APRIL 2022

*Application for an unfair dismissal remedy*

[1] On the 25th of August 2021 Mr Dean Dunlop (Mr Dunlop or the Applicant) made an application for an unfair dismissal remedy under section 394 of the *Fair Work Act 2009* (the Act). The Respondent is BHP Billiton WAIO Pty Ltd Trading (the Respondent or BHP).

## Background

[2] On the 19th of August 2021 BHP terminated Mr Dunlop's employment.

[3] The termination of employment letter<sup>1</sup> says this followed an investigation into allegations of sexual harassment and unwanted physical contact in the workplace. The letter refers to Mr Dunlop's actions in January 2021 and on 19 June 2021 as being totally unacceptable and being serious breaches of BHP's Charter Values and Code. The letter explains that following a show cause process BHP decided that the allegations were substantiated and so had made the decision to summarily dismiss Mr Dunlop with immediate effect for serious misconduct.

[4] On 10 November 2021 the Commission issued an Order, PR 735665, that pseudonyms be used instead of the names of two of the witnesses who gave in evidence the proceedings in any reasons for decision made in this matter. Accordingly, those witnesses are referred to in this decision as Complainant 1 and Complainant 2. That Order also provides that none of the parties or their representatives or support persons may publish or disclose the names or addresses of those two witnesses.

[5] At the hearing of this matter evidence was given by Mr Dunlop on his own behalf.

[6] The Respondent called the following witnesses. Complainant 1 regarding events in June 2021 and Complainant 2 regarding events in January 2021, Ms Jennifer Veiga who is the national co-director of Minter Ellison's National Workplace Investigation Team, Mr Ben Townsend who is the ESS Support Services Pty Ltd (ESS) Unit Manager at the Spinifex village camp and Mr Wade Zanetti who is BHP's Eastern Mobile Workshop Superintendent in the Mobile Equipment Maintenance Department at BHP's Yandi Mine.

## **Evidence and factual findings**

### Mr Dunlop

[7] Mr Dunlop's evidence in chief relevantly is that he is 58 years old. He has an extensive background in maintenance and camp construction since 2010.

[8] He commenced employment with BHP in 2018. He was employed as a Service Technician in De-Watering.

[9] He was based at BHP's Yandi mine site.

[10] It is not in dispute that ESS is a contractor to BHP. Employees of ESS undertake various tasks on the Yandi mine site including cleaning the accommodation units occupied by BHP employees.

[11] Mr Dunlop says that on 19 June 2021 he had just finished a 12 hour shift and was walking back to his on-site accommodation.

[12] He says he crossed paths with a housekeeper, an employee of ESS. He says he had never seen her before.

[13] He assumed she was a housekeeper because she had a trolley and was standing outside another room being cleaned.

[14] He says he started a conversation with her, asking her how her day was. She replied it was not too bad but there were dingoes hanging around.

[15] He told her to be careful of the dingoes, and that if you've got food you have to be careful that they don't attack you.

[16] He says she didn't appear to know about the dingoes and so he assumed she was new on-site.

[17] He says he asked if she was new, to which she indicated she'd been there for the last 6 to 7 months but had never done a full swing there.

[18] He says she told him she was new but was not liked by a lot of her work colleagues because she had got someone sacked. He was curious and asked her who was fired and she told him she had doxed someone into the manager for a crime they were involved in back in Perth. She then referred to a barman and someone who worked in the bar but she couldn't recall his name.

[19] He says he empathised with her saying that it's no good she didn't have friends, and that no one wants to know you.

[20] He says she then told him about her personal life, saying that on top of that she's got problems at home with her dad and auntie who are arguing over money and land, something to do with her grandparents.

[21] His evidence in chief was that he was feeling sorry for her. He then gave her a pat on the back.

[22] He said, 'you will be right' and offered to chat with her if she needed "someone to talk to or catch up and have a beer" and offered her his phone number.

[23] His evidence in chief was that she typed his phone number into her phone and rang the number in front of him so her number would come up on his phone. However, when she rang the number, he realised that his phone was not on him, but it was left at work.

[24] His evidence was they both laughed at the silly mistake he had made.

[25] He says they parted ways and he went to his room.

[26] His evidence in chief was he said to her "I'll ring you" and she replied, "yeah okay".

[27] He returned to work to get his phone and then called the housekeepers number and offered to have a beer with her.

[28] He says she told him 'I got to go to the gym and sought some stuff out'. He said that's okay and offered to drink with her another time. He said she replied that she would see how she goes tomorrow.

[29] He says after their conversation he went back to his room and spoke to his wife on the phone then went to the camp tavern wet mess for some beers and later the dry mess for dinner.

[30] He then went back to his room and spoke to his wife again for 30 or 40 minutes.

[31] He then rang the housekeeper again to discuss catching up the next day for a beer and a catch up. He says the call did not go through and he assumed it was due to poor phone coverage.

[32] He went to work as usual the next day.

[33] At 11 AM he was notified by his supervisor Mr Bradbury to come to the office. He went to the office and was told that he needed to see the superintendent Mr Zanetti.

[34] Mr Zanetti told him he would be required to go back to his room as he was being stood down and sent home. He asked what was going on and Mr Zanetti said I can't tell you. You're being stood down and under investigation.

[35] He then flew off site and returned to his home.

[36] On approximately 27 June 2021 he rang his supervisor Mr Bradbury who didn't know what was going on. He then rang Mr Zanetti who said he would escalate the matter to find out what's going on.

[37] On 4 July 2021 he was contacted by Mr Zanetti who told him that someone from HR will be in contact with him.

[38] On 15 July 2020 Ms Veiga from HR rang him and told him that there were allegations around sexual harassment and they would send an email to him outlining these allegations and he should read them and reply to them.<sup>2</sup>

[39] He says 5 to 10 minutes later he received the allegations by email and read them. His evidence in chief was he was shocked to see these false allegations and deleted the email in the heat of the moment.

[40] He refers to the allegations detailed in BHP's response to his application as follows,

“You Pinned the reporter's arms back to her side and whispered in her ear I'm going to fuck you so hard”

“You sexually harassed the reporter by grabbing and squeezing her left breast and said being a housekeeper you must see things you don't want to see, for instance, if you cleaned my room, you'd see white stains in the shower”

[41] He says he called Ms Veiga back straight away. She asked him about the first incident which referred to a housekeeper, which he denied. He says she asked him to give a sequence of events in relation to their communication and he proceeded to tell her about the communication he had with the housekeeper on 19 June 2021.

[42] He refuted the allegation that he had said anything to the housekeeper about seeing white stains in his shower if she cleaned his room.

[43] He says she next asked him about the second allegation regarding sometime in January 2021 that he had hugged and pinned a person's arms back in the tavern and had whispered something in the person's ear. He immediately denied that and told her that this never happened.

[44] He told her there are usually 20 or 30 people at the tavern and no person ever saw it happen because it never did happen. He told her it was never brought to his attention in the last six months by anyone.

[45] He says that after providing his answers to the allegations to Ms Veiga she told him he should call back in the next few days if he could think of anything else.

[46] He says he called Ms Veiga back three days later and repeated his denials, referring to the January 2021 allegation he says he would have been on a window seat flight back, implying he would have been immediately reprimanded and dealt with at the tavern if the allegation had been true.

[47] He also told her that he's obviously been put under investigation and been profiled and that someone doesn't like him. He was shocked that this incident was about something that supposedly happened six months ago. He questioned the lack of details of the allegation. He told her the person would know what day it was, what temperature it was, and exactly what had happened. Instead, he said the allegation was vague and referred to merely sometime in January 2021 without a date or time. He said there wasn't any references to any witnesses or any CCTV footage of his behaviour because it never happened.

[48] He says Ms Veiga then referred the matter to a third-party investigator.

[49] On 23 July 2021 he says as a result of the mental stress and anxiety, and having been left in the dark and receiving no answer to his enquiries he felt he was being forced into a corner and offered his resignation.<sup>3</sup>Mr Zanetti by email advised he was not able to accept his resignation. He advised he had escalated the urgency to finalise the investigation.<sup>4</sup>

[50] Mr Dunlop's evidence in chief was that on 12 August 2021 Mr Zanetti called him and told him that the allegations were substantiated and he was already terminated. He was told he was to be notified by a show cause letter and would be asked to provide a show cause answer.

[51] He says he never received any contact from any investigator.

[52] He received a show cause letter on 16 August 2021 advising him that he should provide a written response by 18 August 2021.<sup>5</sup>

[53] He replied to Mr Zanetti in a text message as follows,

"I will not be attending the meeting and found guilty from the start with no concern and communication with this investigation to which I have been treated unfairly... I have been thrown under the bus and been made a massive scapegoat and example of out of this. To be falsely accused makes me sick to the stomach for a third party to have condemned me and has no idea about what my character is all about. I will not sit and hear false malicious allegations to defend myself to a decision already made of being guilty... my evidence is the truth and nothing but the truth. This did not happen and has been fabricated to suit someone who obviously needs help".

[54] On 17 August 2021, a day later, he says HR asked him for a last response despite already being terminated and he sent this text message on 18 August 2021.

"This will be my final response...I am bewildered from a phone call I received yesterday to say the allegations were substantiated and I have been terminated on charter values with sex harassment and a decision has already been made. I am a proud indigenous man brought up by a proud single indigenous woman with a sister. My mother was a part of the stolen generation and was raped as a young woman. It was instilled in me at a young age for me to respect women and protect women against any form of racism, discrimination at any time...I know these allegations did not happen and to me I have been set up for personal gain/agenda which is why I handed in my resignation letter four weeks ago not because of guilt, I repeat no guilt at all" (sic)

[55] Mr Dunlop's evidence was that on 19 August 2021 he was sent the termination of employment letter.

[56] Under cross-examination Mr Dunlop agreed that he was trained in, and understood that he was required to comply with the Code of Conduct and BHP's Charter Values. He says he understood the expectations in regard to harassment and bullying.

[57] He agreed that any unwelcome physical conduct might make people uncomfortable.

[58] He agreed that any sort of sexual harassment, verbal or physical might make people uncomfortable.<sup>6</sup>

[59] Mr Dunlop agreed he was a regular patron of the tavern at the mine site and would usually drink alcohol there and chat to people including employees of BHP and of contractors. He agrees he would occasionally speak to people even if he didn't know them and would converse with people who were much younger than him.<sup>7</sup>

[60] Under cross-examination he says he was rostered to work at the Yandi mine site between 14 and 21 January 2021 and attended the tavern during that period. He agrees he attended the tavern around mid-January 2021.<sup>8</sup>

[61] Regarding Complainant 1 and the allegations concerning January 2021, his evidence was he did not know who she was and he did not ask one of her colleagues about her a few days beforehand. He says he never asked Ms Jones whether Complainant 1 would be interested in him and Ms Jones never mentioned he should back off.<sup>9</sup>

[62] It was put to Mr Dunlop that during the course of the evening at the tavern he was hanging around Complainant 1 and her colleagues and he intercepted her on the way to the bar. He says that never happened. His evidence was he never gave Complainant 1 a hug. He denies he gave Complainant 1 a hug without asking her consent.<sup>10</sup>

[63] Mr Dunlop did not accept that he possibly just didn't recall giving Complainant 1 a hug. He was adamant in his answers that he did not hug Complainant 1 and he did not whisper anything in her ear. He says these things never happened. He denies those allegations.<sup>11</sup>

[64] Mr Dunlop denies that on later occasions at the tavern he would try to hang around her and her colleagues. He denies that she would make it clear that she didn't want him to hang around her and would glare at him until he left.<sup>12</sup>

[65] In regard to Mr Dunlop's interaction with Complainant 2 in June 2021 he agreed that on that day she was wearing her ESS branded uniform.

[66] He agrees that at the time he approached her she was working, he says cleaning a room.<sup>13</sup>

[67] Mr Dunlop's evidence was that he had never spoken with her before that interaction and had never seen her before.<sup>14</sup>

[68] He agreed he had a sixpack of Cooper's beer in his crib bag with the strap of the bag over his shoulder.<sup>15</sup>

[69] He denies he had an open beer in his hand. He denies he had been drinking before. He says he was not intoxicated.<sup>16</sup>

[70] He agrees he didn't need to speak to Complainant 2 for a work-related reason, about housekeeping or to clean his room.

[71] His evidence was that as he walked past her, and like he usually says to everyone, he asked her how her day was going.<sup>17</sup>

[72] He denies he approached her to make a pass at her and that he found her attractive.<sup>18</sup>

[73] He does not accept that she may have felt uncomfortable in his presence.

[74] Whilst in his witness statement he said that he touched Complainant 2 on her back, under cross-examination he said it was her shoulder.<sup>19</sup>

[75] He agrees she didn't ask him to touch her, and he didn't seek her consent.<sup>20</sup>

[76] He first agreed he asked Complainant 2 if she would like to come and have a beer in his room, but then denied he invited her back to his room when he had suggested having a beer with her.<sup>21</sup>

[77] Mr Dunlop also denied he told Ms Veiga what she recorded in her notes,<sup>22</sup> that he "Did not want to go back to the tavern and have beer, no how people misconstrue situation."(sic)<sup>23</sup>

[78] His evidence was that he religiously has a few beers at the tavern every night but also has beers outside his room talking to his wife on the phone before he goes to the tavern.<sup>24</sup>

[79] He did confirm that he offered to have a beer with Complainant 2.<sup>25</sup>

[80] Mr Dunlop denies that he said to her that if she was cleaning his room she would see white splatters all over his shower.<sup>26</sup>

[81] He did however confirm that he offered to have a beer with her.<sup>27</sup>

[82] Mr Dunlop denies he told her that he couldn't find his phone and asked her to help by calling it. He denies he asked her to call his number so that he could have her phone number.<sup>28</sup>

[83] Mr Dunlop denies standing in her way to stop her leaving and putting his hand out and grabbing her breast.<sup>29</sup>

[84] His evidence was that he is aware that Complainant 2 has made multiple written statements asserting that he touched her breast.<sup>30</sup>

[85] He agrees they did not know each other, and he had never seen her before.<sup>31</sup>

[86] Mr Dunlop could not point to any reason why Complainant 2 would make up allegations against him.<sup>32</sup>

[87] He agrees that he later rang her to asked to have a beer that evening. He says she didn't agree but the only reason was she was going to the gym. He says that he asked if she wanted to have a beer at some other place. He says she didn't say anything to this.<sup>33</sup>

[88] He agrees that he then rang her later to make contact that evening to see if she wanted to catch up and have the beer.<sup>34</sup>

[89] Under cross-examination he denied he was pestering her at all. He said he had done this as a father figure, as a mentor. He says he's there to help people.<sup>35</sup>

[90] He agrees he rang later that evening to again try and offer to have a beer with her.<sup>36</sup>

[91] He did not accept it was four times that he tried to offer to have a drink with this young female contractor, because two of those offers were in the one phone call.<sup>37</sup>

[92] Summarising his evidence on the frequency of phone contact, he says that on this evening after their interaction in person Mr Dunlop rang and spoke to Complainant 2 on two occasions and during both phone conversations repeated his original suggestion that they meet to have a beer. He says that during these conversations she did not agree, but did not decline. Mr Dunlop later that evening rang Complainant 2 for the third time, intending to again offer to meet her to have a beer, but she did not answer the phone.

[93] Mr Dunlop agreed that where in his witness statement he has referred to the woman who spoke to from HR being Ms Vernath her name actually was Ms Veiga.<sup>38</sup>

[94] Mr Dunlop confirmed he received an email from Ms Veiga on 15 July<sup>39</sup> which detailed the allegations as follows,

“In January 2021 you committed sexual harassment by hugging a person (Impacted Person # 1) while at the Tavern without her consent and with her arms pinned to her body making the following comment, “I’m gonna fuck you so hard”. It is further alleged that on 19 June 2021 near the Laundry that you sexually harassed the impacted person (Impacted Person # 2) by grabbing her chest without her consent, telling her “being a housekeeper you must see a lot of things you don’t want to see, for instance, if you clean my room you’d see white stains in the shower” and by calling the impacted person twice around 9:06 PM and 9:10 PM after deceptively obtaining the impacted person’s mobile phone number.”

[95] He says he read the allegations in the email and rang Ms Veiga back. He then had an opportunity to provide his version of events and respond to the allegations. He simply denied the allegations.<sup>40</sup>

[96] Mr Dunlop conceded that the date in his witness statement was wrong, and that the resignation tendered to BHP was submitted on 23 July 2021, eight days after he spoke with Ms

Veiga. He agrees that at this point he had not been told that the allegations were substantiated or told that the investigation was finalised, nor had he been told BHP was considering terminating his employment.<sup>41</sup>

[97] He agrees he was told he was stood down by Mr Zanetti. He agrees that Mr Zanetti gave him a lift to the airport as he was leaving the site and that during that drive he asked him whether being stood down had anything to do with the ESS girl.

[98] His evidence was he asked this because crossing paths with her was the only thing out of the ordinary that had recently happened and that she had told him that she had gotten someone sacked previously.<sup>42</sup>

[99] He agrees that Mr Zanetti told him on 12 August 2021 that he would be sent a show cause letter and be asked to provide a response.<sup>43</sup>

[100] He was invited to attend the show cause meeting on 16 August 2021, but he decided not to attend.<sup>44</sup>

[101] He agreed that the letter sent to him by BHP<sup>45</sup> doesn't say his employment had already been terminated but that BHP was considering terminating his employment.<sup>46</sup>

[102] He said he believed BHP had already made up their mind, but did make a response in a text message to Mr Zanetti on 18 August 2021 at around 1:30 PM, in which he maintained his denial.<sup>47</sup>

[103] He received the letter of termination on 19 August 2021.

[104] He agreed he had received a number of previous warnings in the form of coaching notes. One related to behaviour in his room which his neighbours found disruptive, in January 2021.

[105] He says he has no knowledge of a prior complaint of making a comment to a woman that made her feel uncomfortable.<sup>48</sup>

[106] In re-examination, Mr Dunlop explained his intentions when he spoke to Complainant 2. He said he first offered to take her out for a drink because she seemed like someone who was down and out, had no friends and needed some support, which was what he offered. He offered support as a father as he would do with his daughters.<sup>49</sup>

#### Complainant 1

[107] Complainant 1's evidence in chief is that from December 2020 to June 2021 she worked for ESS Support Services as a mine site cleaner based at BHP's Yandi mine.

[108] She was provided with a room at Spinifex Village which is on the mine site.

[109] This was her first job in the resources industry. She had never been on a mine site before nor had she lived in a mining camp prior to this.

[110] When she first started at Yandi she was reluctant to go to the drinking area camp known as the tavern, as she did not know many people on site. After a few swings she started to get to know more people and felt comfortable occasionally going to the Tavern after work for a drink.

[111] She says that one night in mid-January 2021 she was at the Tavern with three co-workers after the end of shift.

[112] She said she noticed a person hanging around their table. She was still new to site and tried to be friendly to everyone so she smiled at him and said hi. She had seen this person around the Tavern a couple of times and had been told his name was “Deano”.

[113] At the hearing of this matter, which was conducted in person, Complainant 1 identified the Applicant as being this person, about whom she subsequently complained.

[114] She says she had never spoken directly with Mr Dunlop before that night but he had previously joined in conversations with groups of people she was sitting with.

[115] Her evidence in chief was at around 7:30 PM she got up from the table to go to the bar and saw Mr Dunlop was walking back from the bar. She got about three steps from their table when he grabbed her in a big bear hug. He had her in a strong grip with her arms pinned by his side.

[116] Her evidence was that while he was holding her, he brought his face close to her ear and said,

“I am going to fuck you so hard”.

[117] She says she was very uncomfortable and tried to push him off, but it was difficult because her arms were pinned. While he was grabbing her, she was facing away from her table and towards the tavern entrance. She could see there was a table full of guys in BHP shirts and she tried to mouth to them, “Help me.” but they just laughed it off.

[118] Her evidence was that after about 10 seconds with his arms wrapped around her she managed to push him off with her shoulders.

[119] When she got back to the table she told to her co-workers what had happened. They both seem shocked. One said to her something like,

“Oh yeah, he was asking if you would go for him the other day, and we all told him to back off”.

[120] She says his behaviour made her feel really uncomfortable.

[121] At the time she was 21 years old. She didn’t know how old Mr Dunlop was, but he looked much older than her. She says she would have felt uncomfortable if anyone had grabbed her like that and made such inappropriate comments, but the age gap made it worse.

[122] She says she decided not to make a complaint about his behaviour at the time. She says this was because she was used to dealing with this sort of behaviour happening when she'd been out with friends however this was the first time anything like this had happened to her at work.

[123] She also thought the behaviour might not be taken seriously as he had not tried to rape her or anything like that.

[124] Her evidence in chief was that Mr Dunlop tried to hang out with them at the Tavern a couple of times after this incident and she would often catch him staring at her. If he came up to their table she says she would always just glare at him until he would leave as she didn't want to be around him. One time he tried to talk to her at the Tavern and she told him to just please leave. She thinks Mr Dunlop eventually got the hint as he stopped trying to hang around with them.

[125] In mid-June 2021 she was approached by another cleaner, Complainant 2, who was also employed by ESS and seemed quite upset.

[126] She says Complainant 2 told her that Deano had groped her that evening and got her phone and put his number in it and had been trying to call her.

[127] She then told Complainant 2 that he had done something similar to her before and she said to Complainant 2 what he did was actually worse because he grabbed her.

[128] She says Complainant 2 replied "Yeah, I want to report it. Should I report it? and she said "Yeah, absolutely. And if you report it, I will back you up and I will report my incident too because he should not be able to get away with it, especially if he's doing it to other people."

[129] Complainant 1 says she had worked with Complainant 2 quite a bit and had a good relationship with her.

[130] She thinks Complainant 2 told her about her encounter with Mr Dunlop because although she hadn't previously told Complainant 2 about the incident with him in January, she had made a comment to Complainant 2 to be careful because he is a bit creepy. She said this because he would still try and hang around them at the tavern and she wanted Complainant 2 to be careful around him.

[131] Complainant 1's evidence in chief was that she thinks Complainant 2 must have reported the incident to ESS because the next morning she got a call from Mr Townsend to come into the office and he told her he had heard about her incident in January and asked her to fill out and sign an incident report which she did.<sup>50</sup>

[132] She says a few weeks later, around 8 July 2021 she got a phone call from Ms Veiga who told her she was investigating her complaint on behalf of BHP. She asked her questions about the January 2021 incident, and she told her everything that had happened.

[133] Under cross-examination Complainant 1 advised she has not lodged a workers compensation claim against ESS or any other party.

[134] She agreed she did not remember what specific date in January 2021 the alleged incident with Mr Dunlop occurred.

[135] Under cross-examination she explained she did not report the incident at the time, because this kind of thing happens frequently. She explained she has had many experiences whilst with her friends when these incidents occur, and that you brush them off because it happens so regularly.<sup>51</sup>

[136] Her evidence was that Mr Dunlop's behaviour was harassment of a sexual nature.<sup>52</sup>

[137] Under cross-examination she was asked whether she would have lodged her complaint against Mr Dunlop if Complainant 2 had not done so, and she replied that she would probably not have.

[138] She explained that if it had happened only to her, then at the time she did not believe it was a big deal. However, after hearing that it had happened to another girl, she did not want to stay silent as it could happen again in the future. She says this is what made her realise it was time to report it.<sup>53</sup>

[139] When asked why she had not reported the matter to the police, Complainant 1 explained that she could have taken it to the police if she had wanted to, but this was a work incident and she was happy to let work handle it.

[140] She denied that she had conspired with Complainant 2 to put together allegations to result in the termination of Mr Dunlop.

#### Complainant 2

[141] Complainant 2's evidence in chief is that from around 10 December 2020 until late June 2021 she worked for ESS Support Services at Level 2 Utilities classification based at BHP's Yandi mine.

[142] In this role she would perform mine site cleaning, tavern work, kitchen hand duties and housekeeping for the worker's accommodation blocks at Spinifex village. She was provided with a room at this in Spinifex village.

[143] When she started this job she was 18 years old. This was her first job in the resources industry and she had never been out on a mine site nor lived in accommodation villages before.

[144] Her evidence in chief is that on 19 June 2021 she was assigned the role of housekeeping, which required her to go around with a housekeeping trolley tidying up rooms and replacing dirty linen.

[145] She says around 6:40 PM she had finished cleaning a block where the BHP employee's rooms are and was near one of the laundry rooms. She had plugged in her electric trolley and was going through her end of shift checklist.

[146] She was approached by a BHP employee with “Deano” written on his BHP shirt.

[147] At the hearing of this matter, which was conducted in person, Complainant 2 identified the Applicant as being this BHP employee, about whom she subsequently complained.

[148] She says she had never met or spoken with him before but had seen him around the village.

[149] Her evidence in chief was that he had a sixpack of Cooper’s beer in his hand and was also drinking one.

[150] He started talking to her and said something like “I haven’t seen you around here before”. She says she tried to be friendly to him but was tired and just wanted to finish work, so she did not really engage.

[151] She says she could tell he had been drinking and he was standing so close to her she could smell alcohol on his breath. He asked her whether she would like to come back to his room and drink with him which she says she politely declined.

[152] Her evidence in chief was that he then said something like,

“You are a housekeeper, you must see some stuff you don’t want to see.”

[153] She asked what he meant and she says Mr Dunlop said,

“For instance, if you are cleaning my room, you would see white splatters all over the shower”.

[154] Her evidence was she thought the comment was gross and inappropriate, because she knew that he was talking about semen.

[155] She says he then made a scene about losing his phone saying, “Oh shit, I lost my phone I really need it”.

[156] He asked her if she had her phone and she said yes, because it was in her hand and he could see it, and he then asked if she could call his phone to see if someone had picked it up. Mr Dunlop told her his number and she tried to call it but it went straight to voicemail.

[157] Her evidence was that she then tried to leave but he was standing in front of the footpath she needed to go down to sign out and he was blocking it.

[158] When she went to go around him, she says he reached out his arm and grabbed her left breast, using his left hand.

[159] Her evidence was that it definitely was not an accident. He extended his arm and firmly clenched her breast. It only lasted for a brief second but she was petrified and froze on the spot.

[160] She felt violated and it was disgusting. He did not say anything while this happened.

[161] She says after he let go she barged past him and walked off and started bawling her eyes out.

[162] She went straight into the ESS office and signed out of work. There was no one there so she asked one of the village security guards nearby to take her back to her room by buggy because her room was far away from everything out. She says she got back to her room about 7.15.

[163] Complainant 2's evidence was that later that night she had a number of calls from a number she didn't recognise which she didn't answer. These were at 9:06 PM and 9:10 PM.

[164] When she checked her call log <sup>54</sup>she saw these calls were from the number Mr Dunlop had given to her.

[165] She then called her father and told him what had happened.

[166] She says later that night she got three or four calls from a private number which she also didn't answer. She had another missed call from a private number the next day.

[167] Her evidence was that she did not speak to Mr Dunlop on the phone at all.

[168] She was upset that night and did not sleep much.

[169] Her evidence was that the next day she went into work but still felt very shaken and upset and didn't feel like she should be working. She spoke to her manager and reported that she had been sexually assaulted the night before.

[170] ESS asked her to write out an incident statement which she did. <sup>55</sup>

[171] She then returned to work and ESS arranged for her to have a housekeeping buddy so she wouldn't be working alone.

[172] Part way through the shift she was contacted by Mr Townsend who asked her to send through a screen shot of her call logs and to give a description of Mr Dunlop.

[173] The next morning when she went into the ESS office she broke down and they told her that they would send her home and she flew off site later that day.

[174] She says the incident made her feel violated and disgusted. She never thought that she would be a victim of sexual assault.

[175] She did not return to the site after she left on 21 June 2021 even though Mr Dunlop had been removed. She felt too unsafe.

[176] She says she did not want to be involved in these proceedings because she has been trying to just move on with her life and not think about what happened. But she has decided to

be involved because she does not think Mr Dunlop should get away with what he did to her and she did not want him to have a chance to do it again.

[177] Under cross-examination Complainant 2 states she has not filed a workers compensation complaint nor any other form of action against ESS or BHP.

[178] Before she drafted her incident statement on 20 June 2021 she had not been given any information by anyone else nor did she collaborate with anyone to put together her statements.

[179] She agreed that when she wrote the incident statement she put things in a different order from her evidence in chief. She agrees that in the incident statement she did not mention alcohol on Mr Dunlop's breath nor mention him having a sixpack of Cooper's.

[180] With respect to the Cooper's beer she clarified that he had the six pack in his crib bag and one in his hand.<sup>56</sup>

[181] Her evidence was that other than asking her how long she had been there Mr Dunlop didn't ask her anything else, he never asked information about her family and she did not volunteer information about her family.

[182] She agreed in cross examination that she did however tell Mr Dunlop that she had got someone sacked.

[183] Under cross-examination Complainant 2 explained that she had been at work when a Crimestoppers advertisement came up on her Facebook and it was a photo of a guy that worked on site as a groundskeeper. Consequently, she had called Crimestoppers and told them she knew of this person.

[184] She agrees she did tell Mr Dunlop some other personal information.

[185] Her evidence was that when Mr Dunlop had suggested they talk or catch up and have a beer, he did not appear genuine, and she thought he was trying to entice her to go back to his room.<sup>57</sup>

[186] Her evidence was that when she advised ESS the next morning of what had occurred she was told to call the police. She did not do so because she didn't want to.<sup>58</sup>

[187] Her evidence was her father when she spoke to him the previous evening suggested that she report what occurred to her employer.<sup>59</sup>

[188] Under cross examination she denied that she had collaborated with Complainant 1 in the preparation of her evidence in chief.

[189] She agrees that she and Complainant 1 had a discussion before she reported the incident to ESS.

[190] Her evidence under cross examination was that, before knowing what had occurred to Complainant 1 in January, she had told Complainant 1 that she had been touched by Mr Dunlop.

[191] The catalyst for approaching her was Mr Dunlop groping her. She says she approached Complainant 1 because she saw her as a role model.<sup>60</sup>

[192] Her evidence was that Complainant 1 had not instructed or guided her to put in a complaint, she wanted to report it herself right after the incident.<sup>61</sup>

[193] Her evidence was that the outcome she hoped to achieve by reporting the incident was to make herself feel safer, and for Mr Dunlop to lose his job, so as to stop a similar assault happening to anyone else.<sup>62</sup>

### Ms Veiga

[194] Relevantly, the evidence of Ms Veiga was that she undertook the investigations into the complaints made by Complainant 1 and Complainant 2.

[195] She interviewed Complainant 1 on 8 July 2021 and interviewed Complainant 2 on 14 July 2021.

[196] Her evidence in chief included the detail of what she was told during those interviews.

[197] She interviewed the Applicant on 15 July 2021 via telephone. She took a contemporaneous file note of her discussions with the applicant.<sup>63</sup>

[198] Her evidence was that Complainant 1 gave her the name of one ESS employee, Ms Jones who she was sitting with on the night of the alleged incident involving Mr Dunlop, in January 2021 near the Tavern. This employee was the only person she was with that night that was still employed by ESS.

[199] Ms Veiga's evidence covered the discussion she had with Ms Jones.

[200] Her evidence was that this employee told her that she knew Mr Dunlop from talking to him around the camp. She says she remembered drinking with Complainant 1 and other ESS colleagues on a night in January 2021 when she had seen Mr Dunlop awkwardly hug Complainant 1 after she had gotten up from the table to get drinks from the bar.

[201] Ms Veiga's evidence was that Ms Jones told her that Complainant 1 had her arms by her side and appeared uncomfortable and that the hug lasted quite long and at one point she saw Mr Dunlop lean down and whisper something in Complainant 1's ear.

[202] Ms Veiga says Ms Jones told her that when Complainant 1 eventually returned to the table she told her what had been said and that Mr Dunlop had said to her "I wanna fuck you".

[203] She told Ms Veiga that on this night of the hug incident Mr Dunlop had asked her whether he had a chance with Complainant 1, to which she told him "no" and she believed that occurred before the hug.

[204] She told Ms Veiga she knew Mr Dunlop liked to hug people but she had never seen him hug a man during the time she worked at the camp.<sup>64</sup>

[205] Ms Veiga evidence was that she later became aware that BHP had notified the Western Australian State Department of Mines, Industry Regulation and Safety in relation to Complainant 2's allegations against Mr Dunlop.

[206] Her evidence was that the outcome of the investigation was that she concluded that both of the allegations against Mr Dunlop were substantiated.<sup>65</sup>

[207] Her evidence under cross examination was that she found Mr Dunlop's explanation as to how Complainant 2 came to have his phone number in her mobile phone inconsistent.<sup>66</sup>

[208] Under cross-examination Ms Veiga confirmed her evidence in chief that during the interview with Mr Dunlop he specifically told her that he invited Complainant 2 to his room for a drink.<sup>67</sup>

[209] Her evidence was that there was no CCTV footage from the Tavern.<sup>68</sup>

#### Mr Townsend

[210] Mr Townsend's evidence was that on 20 June 2021, the ECC Safety advisor with Complainant 2 came to him and informed him that Complainant 2 had been harassed the previous evening by a BHP employee.

[211] He says that Complainant 2 explained that the previous night she had gone to one of the laundry storerooms at Camp, where they keep housekeeping trolleys, and was approached by a man wearing a BHP shirt that had "Deano" on the front.

[212] She said she had seen him around the Tavern but had not spoken to him before. Complainant 2 said that Deano had engaged in general conversation with her, asking how she was and about her day.

[213] Complainant 2 explained that at some point Deano told her his phone was missing and asked her if she could call his phone number so he could try and find where it was. She said she was wary of doing so because he would then have her number but eventually she used her phone to call what she believed was his number. She said that shortly after she called his phone, Deano had approached her and briefly grabbed her breast.

[214] Complainant 2 told him that Deano left her shortly after touching her breast.

[215] He says he recalls Complainant 2 also told him that at one point during their interaction, Deano had made an inappropriate comment about her seeing "white stains" in his shower, or words to that effect.

[216] Mr Townsend's evidence was that as Complainant 2 explained the incident to him, she appeared very shaken up by what she had experienced. She looked visibly uncomfortable and it was clear that it was hard for her to talk about what had happened without becoming upset.

[217] After speaking with Complainant 2, he reported the incident through BHP's central incident reporting system EthicsPoint, which is standard procedure.

[218] His evidence was that Complainant 2 then filled out an incident report.<sup>69</sup>

[219] He then asked Complainant 2 what she wanted to do now and that she could go home if she wished and that if she wanted to report the matter to the Police, they would support her.

[220] His evidence was she said she would speak to her father about talking to the Police but said she wanted to stay at Camp so that she could be around people who could support her.

[221] He spoke with her the next day, 21 June 2021, and she told him that she did not want to report the incident to Police at that time.

[222] Mr Townsend's evidence was that Complainant 2 requested to fly home on Monday 21 June 2021, two days earlier than scheduled, citing the incident as the reason.

[223] This was the last time that she worked at Yandi, as she resigned shortly after.

[224] Later on 20 June 2021, Complainant 1 and her supervisor came to Mr Townsend and informed him that Complainant 1 had also previously been harassed by a BHP employee she believed to be the same person.

[225] Complainant 1 told him that earlier that year, around mid to late January 2021, she had been drinking in the Tavern with some colleagues after work. Complainant 1 said that a BHP employee, who she knew as 'Deano', had been hanging around the table where she was sitting at the Tavern.

[226] Complainant 1 explained that she had been in brief group conversations with Deano but never spoken to him one-on-one. She then explained that at one point in the night she had gotten up from the table to go to the bar and had been approached by Deano. She said that Deano then gave her a tight hug that pinned her arms by her sides and leaned into her ear to make a comment to the effect of "I want to fuck you so hard."

[227] Complainant 1 told him this made her extremely uncomfortable and she tried to mouth 'help' to nearby BHP employees. She explained that she tried to laugh off Deano's comment and then used her shoulders to push him off her and then walked away.

[228] She explained that when she got back to her table, she told what had happened to one of her colleagues.

[229] Mr Townsend's evidence was that as Complainant 1 was talking to him she appeared relatively calm, but it was clear from the tone of her voice that the incident was distressing for her and had made her feel uncomfortable. When he asked Complainant 1 why she had waited to report the incident, she said words to the effect that she didn't know whether it would be taken seriously. She explained that after Complainant 2 told her about what she had experienced, she felt compelled to report it because she did not want it happening to others.

[230] After she was finished explaining to him what happened to her, he asked Complainant 1 to fill out an incident report regarding her interaction with Deano.<sup>70</sup>

[231] After meeting with Complainant 1 he reported her allegations through EthicsPoint.

[232] His evidence was he was not aware that either of Complainant 1 or Complainant 2 had lodged any other complaints during their time at ESS. If they had done so he would expect that he would have been informed about it.

[233] He says he is not aware of any complaint made by either Complainant 1 or Complainant 2 having led to the termination of any ESS, BHP or BHP contractor employee.

[234] Mr Townsend's evidence was that he is not aware of any reason why Complainant 1 or Complainant 2 would lie about their interactions with any person who worked at Yandi or the Camp.

[235] Under cross-examination Mr Townsend was asked whether he believed the statements of Complainant 2 and his response was that he believed the emotion that was in front of him when they were telling him. He was asked whether he believed Complainant 2 to be truthful and his evidence was that he had no reason to think otherwise.<sup>71</sup>

#### Mr Zanetti

[236] Mr Zanetti's evidence is that employees of BHP who work at Yandi are provided accommodation at the nearby Spinifex Accommodation Village (Camp). The Camp is a purpose-built facility that houses BHP employees in motel-style accommodation. ESS provides facility management services at Camp, including the provision of meals and cleaning services.

[237] Almost all BHP WAIO employees engaged at Yandi work on a 'fly-in, fly out' (FIFO) basis.

[238] As a member of the team he manages, Mr Zanetti knew Mr Dunlop and would interact with him regularly while he was working in the workshop.

[239] As an employee of BHP, Mr Dunlop was subject to the obligations set out in the Code of Conduct and BHP's charter Values. These obligations were clearly set out in Mr Dunlop's Contract of Employment.<sup>72</sup>

[240] Mr Dunlop had received training explaining these requirements.<sup>73</sup>

[241] He had received copies of the handbook detailing these requirements.<sup>74</sup>

[242] Having been made aware of the allegations made against Mr Dunlop, on 20 June 2021 he met with Mr Dunlop and advised him that he would be stood aside on full pay whilst the allegations of inappropriate behaviour were investigated. His evidence was he later drove Mr Dunlop to Newman that day to catch a flight home.

[243] On the drive to Newman, Mr Dunlop asked him what the allegations were and he replied that he did not know the nature of the allegations but it had something to do with an incident at camp. He says Mr Dunlop replied with words to the effect of,

“It doesn’t have anything to do with that ESS girl does it?”.

[244] He replied that he did not know any further information.

[245] Same day he sent a message to Mr Dunlop to advise him that someone would be in contact with him and also to give him the number of BHP’s employee assistance provider.

[246] On 23 July 2021 he received an email from Mr Dunlop attaching a resignation letter. On 27 July 2021 he emailed Mr Dunlop and advised that the resignation was not accepted as the investigation was pending.<sup>75</sup>

[247] On 11 August 2021 he received the report from Ms Veiga who had investigated the allegations. That report found the allegations to be substantiated. He then spoke to Ms Veiga who explained the investigations and the outcome.

[248] Consequently, Mr Zanetti agreed that Mr Dunlop’s conduct amounted to a serious breach of the charter values and the code of conduct. He sought endorsements to proceed to a show cause process which was granted.

[249] Mr Zanetti’s evidence is that on 12 August 2021 he rang Mr Dunlop and informed him the investigation had been completed and had found the allegations to be substantiated. He told Mr Dunlop BHP were considering terminating his employment as a consequence of his misconduct and there would be a show cause meeting held on 16 August 2021 in Perth.

[250] He explained to Mr Dunlop the show cause meeting was his opportunity to bring anything forward that he wanted to be considered before BHP made a decision as to whether or not he should be terminated. He says Mr Dunlop told him that he had said everything, he was not guilty and he had nothing more to say.

[251] He travelled to Perth to attend the show cause meeting on 16 August 2021 and on that morning received a text message from Mr Dunlop informing him that Mr Dunlop did not wish to attend the show cause meeting and providing a reply to the allegations.

[252] Given Mr Dunlop did not attend the show cause meeting a letter was prepared explaining the outcome of the investigation and directing him to show cause in writing as to why his employment should not be terminated. This correspondence required he provide a written response by 18 August 2021.

[253] On 18 August 2021 he received a text message from Mr Dunlop replying to that letter.<sup>76</sup>

[254] In summary the text message says it will be his final response to the allegations. He says he is baffled and bewildered. He talks about his personal and family background and his morals

and principles. Regarding the January incident he says if this was so shocking anyone would know the date, day and time and would have reported it immediately.

[255] Mr Zanetti's evidence was that after considering the text message he determined that Mr Dunlop had failed to provide any justification for his actions beyond his blanket denials and had failed to provide sufficient reasons why his employment should not be terminated. Consequently, he decided that Mr Dunlop's employment should be terminated.

[256] Subsequently a letter was prepared to Mr Dunlop explaining that he was terminated without notice for serious misconduct. His evidence was he was satisfied that the investigation had established that Mr Dunlop had engaged in conduct justifying immediate termination without notice.

[257] On 19 August 2021 he sent the termination letter to Mr Dunlop via email.<sup>77</sup>

[258] Considering the witness evidence above it is self-evident there is a fundamental conflict between the evidence of Mr Dunlop and the evidence of Complainant 1 and the evidence of Complainant 2.

[259] Mr Dunlop denies ever hugging Complainant 1 and denies making a lewd statement to her whilst hugging her.

[260] Mr Dunlop denies making a lewd statement to Complainant 2 and denies touching her breast.

[261] Consequently, the Commission must consider the conflicting evidence of these witnesses and decide what in fact did occur.

[262] Mr Dunlop does agree with some of the evidence of Complainant 2.

[263] He agrees he had an interaction with Complainant 2 on the evening of 19 June 2021. He agrees they had not met before. He agrees he had bottles of Coopers beer in his crib bag. He agrees he started a conversation with her. He agrees she mentioned someone being fired for a crime they were involved in back in Perth. He agrees with her that he suggested they catch up and have a beer. He agrees that he gave her his phone number which she put into her phone and she rang his number. He agrees he rang her later that evening after they had separated.

[264] I accept the evidence of Complainant 1 and Complainant 2 that later that evening on 19 June 2021 they met and discussed what Complainant 2 says happened to her earlier in the evening.

[265] There is no contest that both complainants completed written incident reports the following day 20 June 2021.

[266] The written incident report completed by Complainant 2, in its critical aspects is consistent with the statement she gave during the investigation to Ms Veiga and is consistent with the evidence she gave in the hearing.

[267] Under cross examination Complainant 2 conceded some points made by Mr Dunlop's lawyer but was unshaken as to Mr Dunlop having made the lewd statement to her about his shower and having touched her breast.

[268] It is not contested that Complainant 2 did not know Mr Dunlop nor had she had previously interacted with him.

[269] No reason has been put to the Commission as to why Complainant 2 would make a report of false allegations against Mr Dunlop.

[270] Considering the above and also having had the opportunity to observe both witnesses I prefer the evidence of Complainant 2 over that of Mr Dunlop to the extent that they are in conflict as to the detail of their interaction on the evening of 19 June 2021.

[271] Consequently, I do find that Mr Dunlop said to Complainant 2:

“...if you are cleaning my room, you would see white splatters all over the shower”.

[272] I further infer that he was referring to semen in his shower.

[273] I also find that as she went to move around him and leave he reached out and grabbed her left breast.

[274] I will now consider the conflict in the evidence between Complainant 1 and Mr Dunlop as to the alleged events in January 2021.

[275] If I was to accept Mr Dunlop's explanation that he never had any physical interaction with Complainant 1 in January 2021 then I must accept that;

On the evening of 19 June 2021, in response to Claimant 2 telling Complainant 1 about her earlier interaction with Mr Dunlop that evening, Complainant 1 instantly invented her own story about Mr Dunlop hugging her, which never happened and,

Complainant 1 immediately committed to report her invented story about Mr Dunlop and,

The next morning Complainant 1 told this invented story about Mr Dunlop in detail to Mr Townsend and,

Complainant 1 then wrote a Personal Statement detailing her invented story and,

In her written personal statement Complainant 1 included a further invention that she had told Ms Jones and Jereme what had happened to her and,

Then Complainant 1 must have engaged Ms Jones in a conspiracy for Ms Jones to confirm this invented story when Ms Jones spoke to the investigator Ms Veiga<sup>78</sup> and,

Complainant 1 then persisted with her invented story about Mr Dunlop hugging her in making a lewd statement to her when giving her evidence at the Commission hearing under oath.

[276] No reason has been put to the Commission as to why Complainant 2 would make a report of false allegations against Mr Dunlop and go to the considerable lengths detailed above.

[277] Complainant 1 was challenged as to why she had not reported the alleged incident in January, at the time it happened.

[278] Her explanation was that she has experienced these type of incidents when out with her friends and that they brush it off because it happens regularly.

[279] This though she explained was the first time it had ever happened in the workplace.<sup>79</sup>

[280] She said that after hearing this had happened to another girl, Complainant 2, she would not stay silent and let this happen to yet another person. She explained she then realised it was time to report it.<sup>80</sup>

[281] Under cross examination Complainant 1 agreed she probably would not have complained about Mr Dunlop if Complainant 2 had not reported him.<sup>81</sup>

[282] Considering the above, and also having had the opportunity to observe both witnesses I prefer the evidence of Complainant 1 over that of Mr Dunlop's denial that there was any physical interaction between them in January 2021.

[283] Consequently, I do find that Mr Dunlop, in January 2021 in the vicinity of the Tavern, did hug Complainant 1 without her consent, pinning her arms to her sides.

[284] I also find that while physically controlling her in this manner he whispered words to the effect of,

“...I am gonna fuck you so hard”.

### **The Legislation**

[285] Section 387 of the Act prescribes matters the Commission must take into account when considering whether a dismissal was harsh unjust or unreasonable and so and unfair dismissal. This section is set out below.

#### **“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**

**[286]** I have had regard for both the parties’ written submissions filed in the Commission and also the closing oral submissions each party’s representative made at the conclusion of the hearing.

#### Valid reason

**[287]** Both hugging Complainant 1 without her consent and whispering to her the lewd statement, as he did in January 2021 were each separately valid reasons for Mr Dunlop’s dismissal. This was sexual harassment which amounted to serious misconduct.

**[288]** Both saying the lewd statement to Complainant 2 and grabbing her breast as he did on 19 July 2021 were each separately valid reasons for Mr Dunlop’s dismissal. This was sexual harassment which amounted to serious misconduct.

**[289]** While superfluous, the Commission also accepts that these instances of sexual harassment were breaches of the BHP Charter Values and the Code of Conduct which Mr Dunlop was bound to comply with under his contract of employment. These breaches were valid reasons for his dismissal.

#### Notification of that reason

**[290]** During the investigation Ms Veiga had emailed to Mr Dunlop a notification detailing the allegations made against him by the complainants. Following this a show cause letter was

sent to him on 16 August 2021 that set out the allegations the Respondent had found were substantiated and that explained it was considering terminating his employment for.

Opportunity to respond

[291] The show cause letter invited Mr Dunlop to respond to these reasons for which he was likely to be dismissed. He was invited to attend a meeting to discuss the investigation outcomes but he chose not to do so. The Applicant however provided responses to the show cause letter in the form of text messages to Mr Zanetti on the 16th and 18 August 2021.

Refusal to allow a support person

[292] There was no refusal to allow him a support person at any meeting related to his dismissal.

Warnings about unsatisfactory performance

[293] Mr Dunlop was not dismissed for unsatisfactory performance.

The size of the employer's enterprise and/or the absence of dedicated human resource management specialists

[294] The employer's enterprise is large and the employer does have dedicated human resource management specialists and accordingly the procedures followed in effecting Mr Dunlop's dismissal were appropriate.

Other relevant matters

[295] The applicant had been employed since 2018 and is 58 years old.

## Conclusion

[296] Taking into account all the matters above I am satisfied that the dismissal of Mr Dunlop was neither harsh, nor unjust nor was it unreasonable.

[297] Mr Dunlop was not unfairly dismissed. Consequently, this application will be dismissed and an order issued to that effect.



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<sup>1</sup> Court book page 396.

<sup>2</sup> PN 332.

<sup>3</sup> Court book page 49.

<sup>4</sup> Court Book page 50.

<sup>5</sup> Court book page 51.

<sup>6</sup> PN 117- 136.

<sup>7</sup> PN 138-151.

<sup>8</sup> PN 152 – 154.

<sup>9</sup> PN 154 – 158.

<sup>10</sup> PN 159 – 161.

<sup>11</sup> PN 167 -173.

<sup>12</sup> PN 175 – 177.

<sup>13</sup> PN 188.

<sup>14</sup> PN 190.

<sup>15</sup> PN 191 – 193.

<sup>16</sup> PN 194 – 198.

<sup>17</sup> PN 203.

<sup>18</sup> PN 204 – 207.

<sup>19</sup> PN 211 – 218.

<sup>20</sup> PN 219 – 220.

<sup>21</sup> PN 222, 226.

<sup>22</sup> Court book page 121, 2nd paragraph.

<sup>23</sup> PN 228 – 238.

<sup>24</sup> PN 239 – 241.

<sup>25</sup> PN 242 – 245.

<sup>26</sup> PN 246 – 253.

<sup>27</sup> PN 242 – 245.

<sup>28</sup> PN 263.

<sup>29</sup> PN 265 – 275, 278.

<sup>30</sup> PN 278.

<sup>31</sup> PN 279 – 280.

<sup>32</sup> PN 287, 288.

<sup>33</sup> PN 289 – 296.

<sup>34</sup> PN 298.

<sup>35</sup> PN 302.

<sup>36</sup> PN 311.

<sup>37</sup> PN 312.

<sup>38</sup> PN 330.

<sup>39</sup> Exhibit R2 PN 346.

<sup>40</sup> PN 352.

<sup>41</sup> PN 372 – 377.

<sup>42</sup> PN 453, 454.

<sup>43</sup> PN 410.

<sup>44</sup> PN 412, 413.

<sup>45</sup> Court book page 52.

<sup>46</sup> PN 423.

<sup>47</sup> PN 425 – 427.

<sup>48</sup> PN 446 – 450.

<sup>49</sup> PN 463 – 465.

<sup>50</sup> Court book page 94.

<sup>51</sup> PN 1300.

<sup>52</sup> PN 1305.

<sup>53</sup> PN 1310 – 1317.

<sup>54</sup> Court book page 87.

<sup>55</sup> Court book page 88.

<sup>56</sup> PN 935 – 947.

<sup>57</sup> PN 1004 – 1007.

<sup>58</sup> PN 1025 – 1030.

<sup>59</sup> PN 1035.

<sup>60</sup> PN 1050 – 1056.

<sup>61</sup> PN 1071 – 1078, 1093.

<sup>62</sup> PN 1095 – 1099.

<sup>63</sup> Court book page 120.

<sup>64</sup> Court book page 102.

<sup>65</sup> Court book page 102 paragraph 71.

<sup>66</sup> PN 617 – 619.

<sup>67</sup> PN 620, 621, 625.

<sup>68</sup> PN 661 – 665.

<sup>69</sup> Court book page 143.

<sup>70</sup> Court book page 144.

<sup>71</sup> PN 1453, 1454.

<sup>72</sup> Court book page 34.

<sup>73</sup> court book page 248.

<sup>74</sup> Court book page 255.

<sup>75</sup> Court book page 381.

<sup>76</sup> Court book page 394. 395.

<sup>77</sup> Court book 396 -398.

<sup>78</sup> PN 1344.

<sup>79</sup> PN 1300.

<sup>80</sup> PN 1312, 1313.

<sup>81</sup> PN 1311.