



Summary of Decision

24 March 2014

Appeal by Colson, Mark

C2013/7488

1. This decision concerns an appeal against a decision of Deputy President Gostencnik issued on 11 November 2013 in which the Deputy President solely considered the question of remedy in relation to an unfair dismissal matter on remission from a Full Bench. The initial Full Bench had previously determined Dr Colson's (the Appellant) dismissal was unfair.
2. The Deputy President found it was inappropriate to reinstate the Appellant to his former position and made an order for compensation in the amount of \$59,050.00, the maximum available at the time of the Appellant's dismissal.
3. The Appellant raised 22 grounds of appeal primarily regarding the Deputy President's findings regarding reinstatement as a remedy and the conclusions drawn by the Deputy President. The key grounds identified by the Appellant are:
 - (a) that the Deputy President failed to apply the statutory object of "emphasis on reinstatement";
 - (b) the Deputy President misapplied the law in considering the "only question" is whether reinstatement "is appropriate";
 - (c) the Deputy President came to an incorrect conclusion regarding the effect of loss of trust and confidence on the operations of the workplace;
 - (d) the Deputy President erred in finding that Dr Tomlinson is unable to have a professional and constructive relationship with the Appellant;
 - (e) the Deputy President erred in determining that the inadequacy of compensation could be taken into account; and
 - (f) the Deputy President made an erroneous conclusion on reinstatement.

The Full Bench in the current appeal found no significant error in the Deputy President's decision and refused permission to appeal. The Full Bench dismissed the appeal:

"[96] The decision of Deputy President Gostencnik that reinstatement in this case is inappropriate was reached, on balance, following an extensive and careful consideration of the competing considerations and evidence in relation to them. We are not satisfied that the Appellant has established an error of law or significant error of fact. Whilst we accept that this matter is of extreme significance to both the Appellant and the Respondent, in the absence of error, we are not satisfied that raises matters of public interest which would support permission to appeal."

[\[2014\] FWCFCB 1949](#)

- *This statement is not a substitute for the reasons of the Fair Work Commission nor is it to be used in any later consideration of the Commission's reasons.*

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