FEDERAL CIRCUIT COURT OF AUSTRALIA

FAIR WORK OMBUDSMAN v TUSCAN LANDSCAPE COMPANY PTY LTD & ORS *[2014] FCCA 1421*

Catchwords:
INDUSTRIAL LAW – FAIR WORK – Penalty – s.342 *Fair Work Act 2009* (Cth) – adverse action – exercise of a workplace right – alteration of employee's position to his prejudice – coercion – threat to cease employment – penalty awarded.

FAIR WORK – Penalty – agreed statement of facts – factors going to penalty – deterrence – quantum of penalty – nature of loss and damage – instinctive synthesis test – totality principle.

FAIR WORK – Penalty – factors going to penalty – small business – oppressiveness of penalty – effect of penalty on shareholders – effect of penalty on respondent employees.

Legislation:
Crimes Act 1914 (Cth), s.4AA
Fair Work Act 2009 (Cth), ss.340, 342, 343, 539, 546, 557

Cases cited:
Australian Ophthalmic Supplies Pty Ltd v McAlary-Smith (2008) 165 FCR 560
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v Visy Packaging Pty Ltd (No 4) [2013] FCA 930
Community and Public Sector Union v Telstra Corporation Ltd (2001) 108 IR 228
Fair Work Ombudsman v AJR Nominees Pty Ltd (No 2) [2014] FCA 128
Fair Work Ombudsman v Maclean Bay Pty Ltd (No 2) [2012] FCA 557
Kelly v Fitzpatrick (2007) 166 IR 14
Mornington Inn Pty Ltd v Jordan (2008) 168 FCR 383
Plancor Pty Ltd v Liquor, Hospitality and Miscellaneous Union (2008) 171 FCR 357
Ponzio v B & P Caelli Constructions Pty Ltd (2007) 158 FCR 543

Applicant:	FAIR WORK OMBUDSMAN
First Respondent:	TUSCAN LANDSCAPE COMPANY PTY LTD

Second Respondent:	STEVEN COMMONS
Third Respondent:	MATTHEW THOMPSON
File Number:	BRG 867 of 2012
Judgment of:	Judge Burnett
Hearing dates:	28 April 2014; 30 April 2014
Date of Last Submission:	30 April 2014
Delivered at:	Brisbane
Delivered on:	13 May 2014

REPRESENTATION

Counsel for the Applicant:	Ms C. Hartigan
Solicitors for the Applicant:	Fair Work Ombudsman

Mr M. Camilleri, director, appeared for the First Respondent.

The Second Respondent appeared on his own behalf.

The Third Respondent appeared on his own behalf.

ORDERS

(1) A declaration that in or around late September to early October 2011, the First Respondent, by reason of section 793 of the *Fair Work Act 2009* (Cth) (**FW Act**) contravened section 340(1) of the FW Act by taking adverse action against Thomas Karbanowicz (**the Employee**), namely it injured the Employee in the Employee's employment and altered the Employee's position to his prejudice within the meaning of section 342(1), items (b) and (c) of the FW Act, by the Third Respondent, an employee of the First Respondent, ceasing to communicate directly with the Employee regarding the Employee's hours of work and employment, including by telling the Employee that

his hours of work would return to normal after the Employee's claim was resolved and not offering the Employee any work with the First Respondent, because:

(a) the Employee had a workplace right, namely his entitlement to the benefit of a workplace instrument, namely the benefit of a vehicle allowance in accordance with clause 16.8 of the *Commercial Sales Award 2010* (**Workplace Right to a Vehicle Allowance**);

(b) the Employee exercised his workplace right to make a complaint or inquiry in relation to his employment; and

(c) the Employee proposed to exercise his Workplace Right to a Vehicle Allowance.

(2) A declaration that on or around 11 October 2011, First Respondent, by reason of section 793 of the FW Act contravened section 340(1) of the FW Act by taking adverse action against the Employee, namely it injured the Employee in the Employee's employment, altered the Employee's position to his prejudice and discriminated between the Employee and other employees of the First Respondent within the meaning of section 342(1), items (b), (c) and (d) of the FW Act, by the Third Respondent, an employee of the First Respondent, ceasing to engage or offer to engage the Employee in casual employment, because:

(a) the Employee had a Workplace Right to a Vehicle Allowance;

(b) the Employee exercised his workplace right to make a complaint or inquiry in relation to his employment; and

(c) the Employee proposed to exercise his Workplace Right to a Vehicle Allowance.

(3) A declaration that on or around 20 September 2011, the First Respondent, by reason of section 793 of the FW Act, contravened section 343 of the FW Act by threatening the Employee with the intent to coerce the Employee to not exercise his Workplace Right to a Vehicle Allowance, including by the Third Respondent, an employee of the First Respondent, telling the Employee that if the Employee

"kicked up a fuss" the *"big bosses"* probably would not be happy and would say to the Third Respondent *"look, just sack this guy."*

(4) A declaration that on 11 October 2011, the First Respondent, by reason of section 793 of the FW Act, contravened section 343 of the FW Act by threatening the Employee with the intent to coerce the Employee to not exercise his Workplace Right to a Vehicle Allowance, including by the Second Respondent, an employee of the First Respondent, telling the Employee that if the Employee was not satisfied with the proposed resolution of the Employee's claim for his Workplace Right to a Vehicle Allowance, the Employee and the First Respondent should go their separate ways.

(5) A declaration that on 25 October 2011, the First Respondent, by reason of section 793 of the FW Act, contravened section 343 of the FW Act by threatening the Employee with the intent to coerce the Employee to not exercise his Workplace Right to a Vehicle Allowance, including by the Second Respondent, an employee of the First Respondent, stating to the Employee in an email that if the Employee's claim for his Workplace Right to a Vehicle Allowance could not be resolved in accordance with the First Respondent's vehicle policy, the Employee and the First Respondent should mutually agree to cease their work commitments effective immediately.

(6) A declaration that on a date between 19 September 2011 and approximately 11 October 2011, the First Respondent, by reason of section 793 of the FW Act, contravened section 343 of the FW Act by threatening the Employee with the intent to coerce the Employee to not exercise his Workplace Right to a Vehicle Allowance by the Second Respondent, an employee of the First Respondent, threatening to take the action of forcing the Employee to travel to work locations by public transport, including by saying words to the effect of if the Employee wanted to make such a big deal about using his motor vehicle the First Respondent could force him to use public transport to get to work.

(7) A declaration that on a date during the period from approximately June 2011 to approximately 11 October 2011, the First Respondent, by reason of section 793 of the FW Act, contravened section 343 of the FW Act by threatening the Employee with the intent to coerce the Employee to not exercise his Workplace Right to a Vehicle Allowance,

because the Third Respondent, an employee of the First Respondent, threatened to significantly reduce the Employee's hours of casual employment, including by saying to the Employee that if the First Respondent wanted to get rid of the Employee the First Respondent could start allocating only local stores to the Employee.

(8) A declaration that the First Respondent contravened section 343 of the FW Act by taking action against the Employee with the intent of coercing the Employee to cease exercising his Workplace Right to a Vehicle Allowance, namely by ceasing to engage the Employee as a casual Merchandiser.

(9) A declaration that the Second Respondent was involved in each of the First Respondent's contraventions set out in Declarations 4 – 6 and pursuant to section 550 of the FW Act is thereby taken to have contravened the same provisions of the FW Act.

(10) A declaration that the Third Respondent was involved in each of the First Respondent's contraventions set out in Declarations 1 – 3 and 7 and pursuant to section 550 of the FW Act is thereby taken to have contravened the same provisions of the FW Act.

(11) The First Respondent is to pay penalties pursuant to section 546(1) of the FW Act in the amount of $9,000.00 in respect of the First Respondent's contraventions of the FW Act as declared by the Court in Declarations 1 – 8 above.

(12) The Second Respondent is to pay penalties pursuant to section 546(1) of the FW Act in the amount of $540.00 in respect of the Second Respondent's contraventions of the FW Act as declared by the Court in Declarations 4 – 6 above.

(13) The Third Respondent is to pay penalties pursuant to section 546(1) of the FW Act in the amount of $550.00 in respect of the Third Respondent's contraventions of the FW Act as declared by the Court in Declaration 1 – 3 and 7 above.

(14) The First, Second and Third Respondents are to pay the penalty amounts set out about in Orders 11 – 13 above respectively to the Consolidated Revenue Fund of the Commonwealth pursuant to section 546(3)(a) of the FW Act within 28 days of the date of this Order.

(15) The First Respondent is to pay compensation pursuant to section 545(2)(b) of the FW Act in the amount of $3,381.00 made up as $2,381.00 economic loss and $1,000.00 non-economic loss (of which $2,381.00 is to be less applicable tax).

(16) The First Respondent is to pay interest pursuant to section 547(1) of the FW Act at the rate applicable under s.77 of the *Federal Circuit Court of Australia Act 1999* (Cth).

(17) The First respondent is to pay the compensation and interest referred to in Orders 15 and 16 within 28 days of the date of this Order.

FEDERAL CIRCUIT COURT
OF AUSTRALIA
AT BRISBANE

BRG 867 of 2012

FAIR WORK OMBUDSMAN
Applicant

And

TUSCAN LANDSCAPE COMPANY PTY LTD
First Respondent

STEPHEN COMMONS
Second Respondent

MATTHEW THOMPSON
Third Respondent

REASONS FOR JUDGMENT
(Revised from transcript)

1. Small business is the economic workhorse of the nation. The significant contribution it makes to our economy often goes unrecognised. To succeed small business entrepreneurs need to be adaptive and flexible. In a highly regulated environment there is a high risk that adaptiveness and flexibility will occasion conflict with regulation. That is, in my view, what has happened in this case.

2. The material facts of this case are relatively uncomplicated. The First Respondent, Tuscan Landscape Company Pty Ltd, conducts an import and distribution business. It imports goods from overseas and sells them to the Bunnings hardware group. Given the annual turnover figure disclosed, it is fair to infer that the profit margins of the business are slim. It supplies Bunnings stores exclusively throughout Victoria,

New South Wales, Queensland and the Northern Territory. In essence, it has no other clients.

3. The Second Respondent, Mr Commons, was the regional manager of the First Respondent and responsible for New South Wales, Queensland and the Northern Territory. The Third Respondent, Mr Thompson, was the Queensland local manager.

4. The aggrieved employee, Mr Karbanowicz ("**the employee**"), was employed as a merchandiser by the First Respondent. His role was to travel to Bunnings stores, attending to the particular merchandising needs of each as required. His employment was casual. He would travel from his residence to each store and return home daily. Some stores were closer to his residence than others, the furthest being approximately 100 kilometres away. Merchandisers were often paired in teams of two, composed of a junior employee and a supervisor.

5. Mr Camilleri, a director of the First Respondent, informed the Court that the First Respondent had a fleet of 20 vehicles available for employees to undertake such work travel as was required. It appears that the business required that the senior employee would collect the junior employee. He stated that these employees would usually travel as a team, such that the senior of the two employees would retain the vehicle and collect the other at the start of the day, travel to the relevant Bunnings store and then return the other employee at the end of the day.

6. For reasons which were not explored by the parties, the Court was not informed of why this particular practice was departed from in the case of this employee, who provided his own transport on many occasions. It is accepted that as he did provide his own transport on those occasions he was entitled to be paid a vehicle allowance as provided for by clause 16.8 of the *Commercial Sales Award 2010*. The First Respondent accepts that the employee did use his own vehicle on numerous occasions, but such occasions were unparticularised.

7. Those occasions occurred between 7 April 2011, when he commenced employment, and 11 October 2011, when he ceased employment. It follows that the Respondents accept that the employee was entitled to be paid a vehicle allowance on those occasions and that the First

Respondent did not pay such allowances until after the employee made a complaint. His complaints were made first to Messrs Thompson and Commons, and then to the Applicant ("**FWO**").

8. While the actual chronology concerning the involvement of Messrs Thompson, Commons and Mr Camilleri is unclear, it is agreed that each of them was aware of the employee's claims and complaints at some stage prior to his termination, as well as both before and after the employee had made his complaint to the FWO.

9. The employee first complained to his line manager, Mr Thompson, in June 2011. Mr Thompson acknowledged that he did not address the complaint with the care it warranted. He recalls that in or about June 2011 the employee had a conversation with him and asked about his entitlement to an allowance for the use of his motor vehicle in the performance of his duties. In response to that question, Mr Thompson informed the employee that he was not entitled to a fuel allowance because all employees needed to pay for their own travel to work. In or about July 2011 the employee had a further conversation with Mr Thompson and again asked about his entitlement to an allowance for use of his motor vehicle in the performance of his duties.

10. In response to that inquiry, Mr Thompson again informed the employee that only full-time employees were entitled to a fuel allowance and that casual employees were not entitled to a fuel allowance. Then, in or about late July or early August 2011, the employee had a further conversation with Mr Thompson, again asking about whether he was entitled to an allowance for the use of his motor vehicle in the performance of his duties. On that occasion Mr Thompson informed the employee that if he wanted to claim any sort of allowance for the use of his vehicle, he should keep a logbook of his work-related travel and claim it on his tax.

11. Following that third inquiry the employee telephoned the Fair Work information line to find out about his employment entitlements. Soon after one of the Fair Work information line discussions the employee then spoke to Mr Thompson again about whether he was entitled to his allowance for the use of his vehicle. On that occasion the employee informed him that he had found out that the modern award included a provision for a vehicle allowance of $0.74 per kilometre.

12. In response to that final inquiry Mr Thompson informed the employee that he would need to speak to his superiors about the issue, but warned him that he should not expect a good outcome and that if he pursued the issue further he might be fired for causing trouble. Soon after that inquiry Mr Thompson advised him that the First Respondent would not pay him an allowance for the use of his own vehicle in the performance of his duties, and that the only option available for him was to keep a logbook and claim the expenses on his tax.

13. The matter, as I have noted, was the subject of a formal complaint to the FWO. On 19 September 2011 the FWO then wrote to the First Respondent informing it that a complaint had been made. On that day, after having been notified of the FWO complaint, Mr Thompson telephoned the employee regarding the complaint and said the he thought that the issue of the vehicle allowance had been sorted out. He also said that if the employee continued to kick up a fuss the "*big bosses*" would probably become unhappy and say to him "*look, just sack this guy*."

14. It was sometime after the initial inquiry, but before the employee's employment ceased, that Mr Thompson also said to the employee words to the effect that if the First Respondent wanted to get rid of him it could start allocating only local stores to him, which would significantly have the effect of reducing his hours of employment.

15. Mr Thompson says that at about this stage he reported the complaint to his direct supervisor, Mr Commons. It is accepted that sometime after the FWO complaint had been made and before the employee's employment had been terminated, the employee also spoken with Mr Commons. It is agreed that in the course of conversation with Mr Commons, he said to the employee that if he wanted to make such a big deal about using his motor vehicle, then the First Respondent could force him to use public transport to get to work. He added that if the employee could not get to his work on time, then it would be his problem and not the First Respondent's. He also said, presumably sarcastically, that while he was sorry that the employee was so much smarter than himself, the fact was that he had "*only been a manager for the last 10 years*" and it was lucky that the employee was a "*lawyer*" who knew all about his workplace rights.

16. On 28 September 2011 Mr Commons informed Nicole Rurade, the First Respondent's Senior Bookkeeper/Assistant Accountant, by email that if the First Respondent was required to pay the employee vehicle allowance, he would reduce the employee's hours of work or prohibit him from using his motor vehicle for work-related purposes.

17. On 10 October 2011, after discussions with Mr Domenico Marano, the Financial Controller of the First Respondent, an inspector of the FWO informed the employee that the First Respondent was willing to resolve the complaint by paying to him a vehicle allowance for travel between stores on the condition that he provide details of his claim, including dates, locations and kilometres travelled.

18. The next day Mr Commons telephoned the employee. He said that, if he was not satisfied with the proposed resolution, he and the First Respondent should go their separate ways. The employee asked Mr Commons for copies of any records, such as those showing the days and/or locations he had worked, to assist him in preparing an account for the use of his motor vehicle in the performance of his duties. In response Mr Commons said that he did not have such records and that the only person who would have such records would be Mr Thompson. Mr Commons also said that if the employee could not provide an accurate logbook of the use of his vehicle, then he would not do anything for him.

19. Following that conversation the employee sought to contact Mr Thompson. On 11 October 2011 he sent him an email raising his concerns regarding the non-payment of the vehicle allowance, a claim for reimbursement for work-related telephone calls, over-time, travel time and meal breaks. He requested roster information to assist him in drafting a logbook and also requested that Mr Thompson forward his email to Mr Commons.

20. Mr Thompson informed the employee that he only recorded the number of hours that the casual workers worked in any given week and therefore he did not have records of where or when the casual employees worked on any particular day. In any event, consistent with the request on 11 October 2011, Mr Commons sent an email to the employee seeking details of his claim, including dates, times and

distances travelled. The employee has not worked for, or has been offered work with, the First Respondent since around 11 October 2011.

21. On 13 October 2011 Mr Commons forwarded to the employee an email attaching the First Respondent's purported policies for expenses, travel and private vehicle use. He also asked the employee to confirm whether he intended to make a claim. The employee ultimately constructed an estimated log of travel he undertook in his own vehicle in the performance of duties based on the number of hours of work noted on his payslips and discussions he had with other fellow employees.

22. On 17 October 2011 he sent an email to Mr Commons attaching the log of kilometres he wished to claim by way of vehicle allowance and shortly after also sent a text message to Mr Thompson inquiring as to why he was not being engaged to work by the First Respondent. In response Mr Thompson sent him a message informing him that his hours of work could return to normal until after the dispute between them had been resolved. On 24 October 2011 Mr Commons informed the employee that he would be reimbursed $1085.10 (gross) in resolution of his claim, and that the claim had been amended because of the application of the First Respondent's travel policy. That action did not resolve matters.

23. On 25 October 2011 the employee wrote to the First Respondent through Mr Commons to advise that he was not satisfied with the outcome proposed by him, to which he received a response the same day noting the First Respondent's travel policy. Mr Commons added that if he remained unsatisfied he could offer no more assistance, and that if resolution could not be met he and the First Respondent should mutually agree to cease their work association.

24. Later that day the employee sent a second email to Mr Commons. In that email he confirmed that Mr Commons had telephoned the employee earlier that day, noted his confusion about Mr Commons' understanding of the travel policy, noted that he had requested phone records and would submit them to the First Respondent, and noted that he had issues regarding the travel time and overtime that had not been dealt with in his claim.

25. It would seem that in response Mr Commons sent a second email to the employee noting that the overtime matter had been settled and, in his view, $130.00 was owing. He added that he had approved a payment of $1085.10 in respect of the employee's claim for a vehicle allowance based on the log and the travel policy, and that he could not be of any further assistance to the employee. Still matters remained unresolved.

26. On 26 October 2011, the employee sent an email to Mr Commons further disputing the First Respondent's travel policy. A reply to this inquiry noted that the First Respondent's interpretation of the travel policy had never changed and that it would not be in any further communication with the employee concerning those matters.

27. On 26 October 2011, the sums which I have earlier noted[1] were paid by the First Respondent to the employee. On 9 December 2011, the First Respondent informed an inspector of the FWO by email that it would be willing to amend its travel policy so that its employees could be reimbursed for the use of their own car between work locations and for travel exceeding 20 kilometres from an employee's residence to the first work location of the day and for travel exceeding 20 kilometres from the last work location of the day to the employee's residence.

28. In accordance with that amended travel policy, further sums were paid to the employee.[2] It is apparent that the employee and Mr Commons communicated throughout October 2011 concerning the balance of the travel allowance due, with the quantum ultimately resolved in December.

29. The dispute over allowances for private and work travel appears to have dragged out. It is obvious that the dispute arose because the employer's approach to paying travel allowance was informed by Fringe Benefits Tax ("**FBT**") considerations. It concluded that travel of up to 50 kilometres was strictly private. The employee did not appear to accept that and, as is noted, the matter was ultimately resolved with it being agreed on 9 December 2011 that the first 20 kilometres was to

[1] $1085.10 for the vehicle allowance and $130.00 for the overtime claim. $365.10 was withheld as PAYG tax. This left a net sum of $850.00.
[2] Being $1687.20 as an additional payment after applying the 20 kilometre policy, with tax withheld of $365.10.

be treated as private and the remainder then to be regarded as work travel.

30. In any event, it is understandable that this sort of dispute has arisen in what is a relatively vexed area. That matter, I should note, was not the subject of formal debate. However I think that FBT in relation to private travel is now such a common issue in the work environment that it hardly required any expression by either of the parties.

31. In a table attached to its submissions, the FWO initially contended that the facts demonstrated 11 contraventions, which it contended could conveniently be grouped into four categories.

32. The Respondents in this instance were self-represented. Accordingly, it was in the interests of justice necessary for the Court to be more active in the consideration of the case advanced by the FWO to ensure that the Respondents were not unfairly dealt with. Upon consideration of the material relied upon by the FWO, it was difficult to discern the 11 contraventions specifically being pursued.

33. The FWO was requested to provide a draft of specific declaratory relief sought and it now seeks declarations against the First Respondent in respect of eight contraventions, against the Second Respondent in respect of three contraventions, and against the Third Respondent in respect of four contraventions.

34. The contraventions fall into the four categories which the FWO has identified. Declarations are accordingly sought. Broadly, the contraventions accepted by all parties are as follows:

    a) Category 1 – reduction of direct communication about Employment.

        i) Declaration 1 – "*that in or around late September to early October 2011, the First Respondent, by reason of section 793 of the Fair Work Act (Cth) (FW Act) contravened section 340(1) of the FW Act by taking adverse action against Thomas Karbanowicz (the Employee), namely it injured the Employee in the Employee's employment and altered the Employee's position to his prejudice within the meaning of section 342(1), items (b) and (c) of the FW Act,*

by the Third Respondent, an employee of the First Respondent, ceasing to communicate directly with the Employee regarding the Employee's hours of work and employment, including by telling the Employee that his hours of work would return to normal after the Employee's claim was resolved and not offering the Employee any work with the First Respondent, because:

(1) the Employee had a workplace right, namely his entitlement to the benefit of a workplace instrument, namely the benefit of a vehicle allowance in accordance with clause 16.8 of the Commercial Sales Award 2010 (Workplace Right to a Vehicle Allowance);

(2) the Employee exercised his workplace right to make a complaint or inquiry in relation to his employment; and

(3) the Employee proposed to exercise his Workplace Right to a Vehicle Allowance."

b) Category 2 – ceasing to engage or offer to engage the employee for casual employment on or about 11 October 2011.

i) Declaration 2 – "*that on or around 11 October 2011, First Respondent, by reason of section 793 of the FW Act contravened section 340(1) of the FW Act by taking adverse action against the Employee, namely it injured the Employee in the Employee's employment, altered the Employee's position to his prejudice and discriminated between the Employee and other employees of the First Respondent within the meaning of section 342(1), items (b), (c) and (d) of the FW Act, by the Third Respondent, an employee of the First Respondent, ceasing to engage or offer to engage the Employee in casual employment, because:*

(1) the Employee had a Workplace Right to a Vehicle Allowance;

(2) *the Employee exercised his workplace right to make a complaint or inquiry in relation to his employment; and*

(3) *the Employee proposed to exercise his Workplace Right to a Vehicle Allowance*."

ii) Declaration 3 – "*that on or around 20 September 2011, the First Respondent, by reason of section 793 of the FW Act, contravened section 343 of the FW Act by threatening the Employee with the intent to coerce the Employee to not exercise his Workplace Right to a Vehicle Allowance, including by the Third Respondent, an employee of the First Respondent, telling the Employee that if the Employee "kicked up a fuss" the "big bosses" probably would not be happy and would say to the Third Respondent "look, just sack this guy."*"

iii) Declaration 8 – "*that the First Respondent contravened section 343 of the FW Act by taking action against the Employee with the intent of coercing the Employee to cease exercising his Workplace Right to a Vehicle Allowance, namely by ceasing to engage the Employee as a casual Merchandiser*."

c) Category 3 – threatening to cease the employee's employment.

i) Declaration 4 – "*that on 11 October 2011, the First Respondent, by reason of section 793 of the FW Act, contravened section 343 of the FW Act by threatening the Employee with the intent to coerce the Employee to not exercise his Workplace Right to a Vehicle Allowance, including by the Second Respondent, an employee of the First Respondent, telling the Employee that if the Employee was not satisfied with the proposed resolution of the Employee's claim for his Workplace Right to a Vehicle Allowance, the Employee and the First Respondent should go their separate ways*."

ii) Declaration 5 – "*that on 25 October 2011, the First Respondent, by reason of section 793 of the FW Act, contravened section 343 of the FW Act by threatening the Employee with the intent to coerce the Employee to not exercise his Workplace Right to a Vehicle Allowance, including by the Second Respondent, an employee of the First Respondent, stating to the Employee in an email that if the Employee's claim for his Workplace Right to a Vehicle Allowance could not be resolved in accordance with the First Respondent's vehicle policy, the Employee and the First Respondent should mutually agree to cease their work commitments effective immediately*."

d) Category 4 – threatening to take adverse action, other than ceasing the employee's employment.

i) Declaration 6 – "*that on a date between 19 September 2011 and approximately 11 October 2011, the First Respondent, by reason of section 793 of the FW Act, contravened section 343 of the FW Act by threatening the Employee with the intent to coerce the Employee to not exercise his Workplace Right to a Vehicle Allowance by the Second Respondent, an employee of the First Respondent, threatening to take the action of forcing the Employee to travel to work locations by public transport, including by saying words to the effect of if the Employee wanted to make such a big deal about using his motor vehicle the First Respondent could force him to use public transport to get to work*."

ii) Declaration 7 – "*that on a date during the period from approximately June 2011 to approximately 11 October 2011, the First Respondent, by reason of section 793 of the FW Act, contravened section 343 of the FW Act by threatening the Employee with the intent to coerce the Employee to not exercise his Workplace Right to a Vehicle Allowance, because the Third Respondent, an employee of the First Respondent, threatened to significantly reduce the Employee's hours of casual employment, including by saying to the Employee that if the First Respondent wanted*

to get rid of the Employee the First Respondent could start allocating only local stores to the Employee."

35. In summary, then, there are eight contraventions alleged against the First Respondent:

    a) One Category 1 contravention;

    b) Three Category 2 contraventions;

    c) Two Category 3 contraventions; and

    d) Two Category 4 contraventions.

36. As against the Second Respondent, Mr Commons, there are:

    a) Two Category 3 contraventions; and

    b) One Category 4 contravention.

37. As against the Third Respondent, Mr Thompson:

    a) One Category 1 contravention;

    b) Two Category 2 contraventions; and

    c) One Category 4 contravention.

38. It is also agreed that had the contraventions alleged not taken place, the employee would likely have remained in casual employment with the First Respondent until a time of his choosing. It is agreed that the employee did not return to gainful employment from 12 October 2011 until 19 November 2011 when he was successful in obtaining other employment. As a result of that, he suffered economic loss and damage including being denied the opportunity to remain in casual employment with the First Respondent and being denied the opportunity to work as a casual when hours were available.

39. His economic loss is constituted by the earnings he would have received had he remained in his casual employment with the First Respondent until 19 November 2011, based on his average weekly

earnings prior to 11 October 2011.[3] In addition, there was non-economic loss and damage including stress and anxiety, hurt, humiliation and inconvenience.

40. There is no dispute that the Court has the power to make the declarations that are sought and that this is an appropriate case for the exercise of that power, as was submitted by the FWO. Furthermore, there is a public interest to be served in making the declarations, as they will help to educate employers about their obligations under the FW Act and warn them of the consequences of contravention. The making of declarations will also mark the Court's disapproval of the contravening conduct.

41. The FWO also seeks the imposition of penalties. The maximum penalties provided for by s.546(2) FW Act are 60 penalty units in the case of an individual and 300 penalty units in the case of a body corporate. The *Crimes Act 1914* (Cth) defines penalty unit[4] and provides that the value of a penalty unit for the relevant period as $110.00. Therefore, it follows that, in respect of the First Respondent, the maximum penalty in respect of each contravention is $33,000.00 and, in respect of the Second and Third Respondents, $6600.00.

42. So far as the approach to determining penalty is concerned, the relevant principles are well settled. The broad approach applied by courts in determining the appropriate penalty to impose for contraventions of civil remedy provisions effectively involves four significant steps. The first is for the court to identify each occurrence of the contraventions. Each contravention of each separate obligation found in the FW Act is a separate contravention for the purposes of s.539(2) FW Act, and should be identified individually.

43. Secondly, the court must then have regard to s.557(1) FW Act, which has the effect that where two or more contraventions of a civil penalty provision referred to in s.557(2) are committed by the same person and the contraventions arose out of the same course of conduct, those contraventions are taken to constitute a single contravention of the provisions.

[3] It seems that the employee's average weekly earnings were $427.47 (gross) per week. It follows that he would have been likely to have earned $2381.00.
[4] Part IA – s.4AA.

44. Thirdly, the Respondents should not be penalised more than once for the same conduct. It is open for the court to group separate contraventions together where various contraventions may be said to overlap with each other and arise from essentially the same conduct, and/or where they involve a punishment for the same or substantially similar conduct.

45. The court also needs to fix a penalty for each contravention that is an appropriate response to what the contravening party did. This is distinct from and in addition to the formal application of what is referred to as the totality principle, that is, finally, having fixed the appropriate penalty for each separate contravention or course of conduct, the court should then consider the aggregate penalty to determine whether it is an appropriate response to the conduct which led to the contraventions. The court should apply an instinctive synthesis test in making this assessment and have regard to the 'totality principle.'

46. In *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v Visy Packaging Pty Ltd (No 4)* [2013] FCA 930, Murphy J identified succinctly the general principles to be applied in the imposition of penalties. At [16], his Honour stated:

> "*[16] The purposes to be served by the imposition of penalties are threefold:*
>
> > *"1. Punishment - which must be proportionate to the offence in accordance with prevailing standards;*
> >
> > *2. Deterrence - both specific and general; and*
> >
> > *3. Rehabilitation."*
>
> *[17] Courts exercising industrial jurisdiction have identified a range of factors for assessing the appropriate penalty which, while not mandatory considerations, may be relevant to the circumstances of a particular case. These include:*
>
> > *"(a) the nature and extent of the conduct;*
> >
> > *(b) the circumstances in which the conduct took place;*
> >
> > *(c) the period of the conduct;*

(d) the nature and extent of any loss or damage sustained as a result of the conduct;

(e) whether there has been similar previous conduct by the respondents;

(f) whether the contraventions arose out of one course of conduct;

(g) whether senior management was involved in the conduct;

(h) whether any contrition has been exhibited;

(i) whether any corrective action has been taken;

(j) the cooperation of the respondents; and

(k) the need for deterrence.""

[18] However, the court's task in assessing penalty is one of instinctive synthesis. This process requires the court to take all relevant factors into account to arrive at a single result which takes due account of them. Care should be taken with the use of a checklist setting out a range of relevant factors as they give rise to a risk of transforming the process of instinctive synthesis into the application of a rigid catalogue of matters for attention.

[19] Proportionality and consistency commonly operate as a final check on the penalty assessed, but the penalty should not be derived from comparing the case which is the subject of assessment with any other particular case.

[20] The totality of the penalties imposed must also be appropriate. The totality principle requires that the total penalty for all related contraventions ought not exceed what is proper for all contravening conduct involved. The rationale of the principle is to ensure that the proposed penalty is proportionate when the contraventions are viewed collectively.

(Citations omitted)

47. Here, the First Respondent has admitted to a total of eight contraventions, as I have particularised earlier. The maximum penalty payable for the eight contraventions is $264,000.00.

48. The Second Respondent has admitted to a total of three contraventions. The maximum penalty payable for those three contraventions is $19,800.00.

49. The Third Respondent has admitted to a total of four contraventions. The maximum penalty payable in respect of those contraventions is $26,400.00.

50. The FWO submits that it is appropriate to consider the maximum penalties that could be imposed on the Respondents as part of the comparative exercise in assessing where the current contraventions sit. So much is consistent with authority.[5]

51. However, before proceeding to deal with the specific penalties, there needs to be further consideration of matters that I addressed earlier. First, dealing with the course of conduct and grouping of contraventions; As I have noted, the statutory course of conduct provision is provided for in s.557(1) FW Act, however that provision does not apply to contraventions of s.340 or s.343 FW Act.

52. In this instance the FWO correctly acknowledges that there are authorities importing criminal sentencing principles and applying them to course of conduct circumstances in the context of civil penalty provisions. It says, and I accept, that it is open to the Court to group separate contraventions together with the contraventions that may be said to overlap with each other or involve the potential punishment of the Respondents twice for the same or substantially similar conduct. The Full Court of the Federal Court in *Australian Ophthalmic Supplies Pty Ltd v McAlary-Smith* (2008) 165 FCR 560 accepted that this approach is open in determining appropriate penalties, and I consider it appropriate in this instance.

53. The FWO also accepts that some of the contraventions have common elements and that they should be taken into account in considering an appropriate penalty to ensure that the Respondents are not punished

[5] *Mornington Inn Pty Ltd v Jordan* (2008) 168 FCR 383.

more than once for the same or substantially similar conduct. I agree with this approach and will adopt a grouping consistent with those principles.

54. The groupings fall into four categories:

a) Category 1 – reduction of direct communication about employment;

b) Category 2 – ceasing to engage or offer to engage the employee for casual employment on or around 11 October 2011;

c) Category 3 – threatening to cease the employee's employment; and

d) Category 4 – threatening to take adverse action, other than ceasing the employee's employment.

55. I have already noted a number of the relevant considerations as set out by Murphy J. However, I think that the following points require amplification.

Nature and extent of the conduct

56. I deal first with the nature and extent of the conduct and the circumstances in which the conduct took place. As I have earlier noted, the First Respondent distributed landscape products to retailers in Queensland, New South Wales and Victoria, and their principal customer was the Bunnings hardware group.

57. Messrs Commons and Thompson had control of and directed part of the First Respondent's day-to-day operations. I will explore their particular circumstances in a moment, however it is fair to say at this point that, notwithstanding their somewhat grandiose titles, they were relatively minor employees in the scheme of this operation. They had, obviously, extensive control in respect of their areas, but this was an operation largely governed from Victoria and one in which the principal cause of difficulty has been a failure of corporate governance.

58. The employee was employed by the First Respondent on a casual basis as a merchandiser from 7 April 2011 to 11 October 2011. He was required on numerous occasions to use his own motor vehicle to

transport himself to and from work locations and he was not paid for the time it took to travel from his home to the first work location or from the last work location to his home on any given day. I note the First Respondent's evidence that it had a fleet of vehicles and a transport arrangement in place, but there was no explanation as to why that arrangement failed in this instance.

59. In or about June 2011, the employee made initial inquiries about his entitlement to an allowance for the use of his motor vehicle in the performance of his duties. He subsequently had to make second, third and fourth inquiries. He received no satisfactory response to those requests for information.

60. The nature of the Respondents' adverse action in contravention of ss.340 and 343 is that it commenced immediately after the employee sought to exercise his workplace right, so it continued in effect from June 2011 through to October 2011, that is, a period of five months, during which time there was a deterioration in the relationship between the parties.

Nature of the loss suffered

61. The employee did suffer economic loss as a consequence of the contraventions. He was denied casual employment and the opportunity to work when hours were available. Those matters have previously been touched upon, but it is likely that he suffered a loss of about $2381.00. In addition, he contends that he has suffered non-economic loss and damages as a result of the contraventions, including stress, anxiety, hurt, humiliation and inconvenience. However, as I will address in due course, he is a young man and did seem to find employment with reasonable ease following these events. This would suggest that any hurt, humiliation or inconvenience was not longstanding.

Previous conduct and size of the First Respondent

62. There is no suggestion that there have been any previous contraventions by the Respondents. At the time relevant to these events the First Respondent employed approximately 65 staff. It is a small business, although it is important to note that the fact that it is a small

business is not of itself a defining factor. As was said by Tracey J in *Kelly v Fitzpatrick* (2007) 166 IR 14:

> "*No less than large corporate employers, small businesses have an obligation to meet minimum employment standards and their employees, rightly, have an expectation that this will occur. When it does not it will, normally, be necessary to mark the failure by imposing an appropriate monetary sanction. Such a sanction "must be imposed at a meaningful level": see Australian Competition and Consumer Commission v ABB Transmission & Distribution Ltd [2001] ATPR 41-815 at [13]*."

63. I note the submission of the FWO that there should be no reduction afforded on the basis that the First Respondent is a small business. However, respectfully, I do not think that submission took into account the words of Tracey J when he made the observation that it was a matter of imposing "*an appropriate monetary sanction*." Ultimately, that is a matter of discretion in which all the relevant factors must be weighed. Respectfully, I do not think that this matter has been properly considered by the FWO in their submissions.

64. The FWO does, however, correctly submit that any weight that the Court gives to those factors must be balanced with the weight to be attributed to the objective seriousness of the contravening conduct and the need to impose a meaningful and significant deterrent. Even so, it should not be ignored that the maximum penalty sought by the FWO against the First Respondent equates to 25 percent of the annual net profit of the business.

65. That is simply a disproportionate response to the contraventions complained of. It also ignores the other factors involved with the conduct of business, such as the entitlement of shareholders to expect some return on the risked capital that they put forward. That is particularly so given the overall profitability of the First Respondent.[6] Bearing that consideration in mind, a penalty approaching 10 percent of annual net profit would be meaningful and more appropriate in the circumstances.

Deliberateness

[6] While these matters were put before the Court I do not think it necessary to rehearse them in this judgment, for reasons of commercial confidence.

66. As I have earlier noted from the recitation of the facts, there is no evidence that there was any deliberateness on the part of the Respondents. There was, plainly, a misunderstanding of the First Respondent's obligations under the award. However, as was expressed by Mr Camilleri for the First Respondent, once the matter came to his attention an accountant was immediately assigned the task of resolving the difficulty between the parties.

67. Subsequent dispute between the parties appears to have borne out of difficulties in determining appropriate allowances for FBT.

Involvement of senior management

68. Plainly, the senior management of the company was involved. The Second Respondent is the Regional Manager for Queensland, New South Wales and the Northern Territory. The Third Respondent was a local manager.

69. However, I think that the Second and Third Respondents' titles overstate their status. The Second Respondent had a more senior role, as is reflected by his income of about $100,000.00 per annum, but, as is apparent from the income of the Third Respondent (about $60,000.00 per annum), he was not a significant employee in the scheme of this modest business operation. It would be a mischaracterisation to suggest that their relative seniority bestowed on them a high level of managerial sophistication. They were not highly paid functionaries, but were paid commensurate with their status in what is essentially a small business, albeit one which trades across a broad geographic area.

70. There has been an acceptance of wrongdoing by each of the Respondents. They have made admissions in respect of the contraventions at a very early stage. Indeed, the evidence of Mr Camilleri was that once the matter came to his attention it was placed in the hands of the Chief Financial Officer for swift resolution. It appears that once that occurred matters moved fairly promptly.

71. However, this illustrates the key failing of the First Respondent in this case, and that is a failure of corporate governance. That encompassed both the failure of the directors to properly oversee decisions made by regional and local managers, as well as the failure to have in place

systems for the training of personnel so as to ensure that they were conscious of their obligations under the FW Act.

72. It seems unlikely that the risk of future regulatory contraventions by the First Respondent and/or its managers remains high. I do, however, understand that in a small business these matters are often overlooked; that is not a matter which I think illustrates any deliberateness or lack of contrition. It is however clear that this matter requires further action on the part of the First Respondent. No doubt the imposition of penalties will remind the company of the seriousness with which these contraventions are regarded.

Contrition and corrective action

73. There has been an admission of liability, which of itself demonstrates a degree of contrition. The Respondents have cooperated with the FWO by entering into a Statement of Agreed Facts, thereby eliminating the need for a contested hearing. The FWO contends that on that basis there ought be a discount on penalty in the order of 20 percent. It is imperative for the Court to set a penalty range that reinforces the fundamental importance of compliance with the general protections provisions of the FW Act.

74. It should be remembered that employees are entitled to exercise workplace rights free from adverse action and discrimination; that is a fundamental employment protection in Australia. This occasion obviously instances a failure in that regard. To that end, matters of both specific and general deterrence are important. Insofar as specific deterrence is concerned, I accept the observations of Gray J in *Plancor Pty Ltd v Liquor, Hospitality and Miscellaneous Union* (2008) 171 FCR 357, where his Honour observed:

> "*Specific deterrence focuses on the party on whom the penalty is to be imposed and the likelihood of that party being involved in a similar breach in the future. Much will depend on the attitude expressed by that party as to things like remorse and steps taken to ensure that no future breach will occur.*"

75. As I have noted, there is evidence in the Statement of Agreed Facts concerning an agreement to pay compensation for both economic and non-economic loss. There is otherwise demonstrated contrition.

Deterrence

76. The First Respondent continues to employee staff, so it should not be left in any doubt that the contraventions will not be tolerated. Likewise, each of the Second and Third Respondents no doubt will continue their careers and progress through the ranks of management to more senior positions. They too need to be cognisant of their obligations.

77. I formed a very favourable impression of Mr Camilleri as an experienced businessman who is running a business on tight margins in challenging economic times. I think that he has fully cooperated and acknowledged his responsibility. He did not seek to resile from any of the contravening conduct, and I accept that had these matters came to his attention earlier he would have resolved them much more quickly. I am confident he will now put in place systems to ensure that there is no repetition of these events. It follows that while there is a need for specific deterrence it is not a matter which I think requires a great deal of emphasis.

78. Insofar as the role of general deterrence is concerned, Lander J made pertinent observations in *Ponzio v B & P Caelli Constructions Pty Ltd* (2007) 158 FCR 543 at [93]:

> "*In regard to general deterrence, it is assumed that an appropriate penalty will act as a deterrent to others who might be likely to offend: Yardley v Betts (1979) 22 SASR 108. The penalty therefore should be of a kind that it would be likely to act as a deterrent in preventing similar contraventions by like minded persons or organisations. If the penalty does not demonstrate an appropriate assessment of the seriousness of the offending, the penalty will not operate to deter others from contravening the section. However, the penalty should not be such as to crush the person upon whom the penalty is imposed or used to make that person a scapegoat. In some cases, general deterrence will be the paramount factor in fixing the penalty: R v Thompson (1975) 11 SASR 217.*"

79. Similar observations were made by Finkelstein J in *Community and Public Sector Union v Telstra Corporation Ltd* (2001) 108 IR 228, which I now restate:

> "*… even if there be no need for specific deterrence, there will be occasions when general deterrence must take priority, and in that case a penalty should be imposed to mark the law's disapproval of the conduct in question, and to act as a warning to others not to engage in similar conduct: R v Thompson (1975) 11 SASR 217.*"

80. Here it is contended that the penalties should be imposed at a meaningful level so as to deter other employers from committing similar contraventions and make it clear that employers have a positive obligation to ensure compliance with the obligations they owe to their employees under the law. In that regard, I accept their contention that, adopting the observations of Marshall J in *Fair Work Ombudsman v Maclean Bay Pty Ltd (No 2)* [2012] FCA 557 at [29]:

> "*It is important to ensure that the protections provided by the Act to employees are real and effective and properly enforced. The need for general deterrence cannot be understated. Rights are a mere shell unless they are respected.*"

Proposed penalty ranges

81. Once that activity is undertaken it is necessary then to consider the application of the totality principle and the instinctive synthesis test. I note that the specific penalty ranges sought by the FWO in respect of the First Respondent's contraventions are as follows:

a) Category 1 contravention – 60-70 percent

b) Category 2 contraventions – 60-70 percent

c) Category 3 contraventions – 60-70 percent

d) Category 4 contraventions – 60-70 percent

That is a total penalty in the range of $80,000 to $90,000. A penalty of this size would absorb approximately 25 percent of the company's annual net profit.

82. In respect of the Second Respondent, the FWO seeks penalties as follows:

a) Category 3 contraventions – 60-70 percent

b) Category 4 contravention – 60-70 percent

The imposition of these penalties would result in total of about $8000 to $9000. They are sought in respect of an employee who earns approximately $100,000.00 per annum.

83. In respect of the Third Respondent, the FWO seeks penalties as follows:

a) Category 1 contravention – 60-70 percent

b) Category 2 contraventions – 60-70 percent

c) Category 4 contravention – 60-70 percent

The imposition of these penalties would result in total of about $16,000.00 to $18,500.00. They are sought in respect of an employee who earns approximately $60,000.00 per annum.

84. Needless to say, I consider the penalties contended for by the FWO to be simply astonishing. They are particularly crushing and utterly fail to consider the instinctive synthesis test or any notion of totality. They are patently unreasonable when regard is had to the process that ought be adopted of considering the penalties separately. Further, to use the words of Lander J, they seem likely to make scapegoats of the Respondents. That is particularly so in respect of the Second and Third Respondents, who are low level, young and informally educated men on modest incomes.

85. As I have earlier noted, the penalties sought against the First Respondent would approximate 25 percent of its net profit for the year. The First Respondent's fault is merely a systemic one, although it is inexcusable even on that basis. Notwithstanding the failures of corporate governance, to impose such a large penalty would be unduly harsh on the company and its shareholders. I make that observation particularly because I am satisfied that Mr Camilleri and the other senior staff of the First Respondent would have resolved this matter amicably and immediately had it been brought to their attention at an

earlier stage. It was not brought to their attention because of their own failings. A matter which is not uncommon in small enterprise.

86. While it was not addressed by the parties, it is obvious that the FBT issues underlying the dispute, particularly concerning the quantum to be allowed, have had a significant impact. So much was evident from the email exchange addressing the question of whether a motor vehicle allowance should commence at 20 or 50 kilometres from home. I do not propose to comment further upon this issue, other than to observe that FBT is a particularly vexed area.

87. In my view, an appropriate model for dealing with multi-party and multi-factual contraventions can be gleaned from observations of Gilmour J in *Fair Work Ombudsman v AJR Nominees Pty Ltd (No 2)* [2014] FCA 128. There, commencing at [68], his Honour dealt with a question of multiple penalties:

> "*[68] The Court must fix a penalty appropriate for each individual contravention and then, at the end of the process, consider whether the aggregate is appropriate for the total contravening conduct …*
>
> *[69] The principle is designed to "ensure that the aggregate of penalties imputed is not such as to be oppressive or crushing" …*"
>
> (Citations omitted)

Penalties imposed

88. My initial assessment of the appropriate penalties is that they ought be awarded as listed below.

89. In respect of the First Respondent ($11,000.00):

    a) Category 1 ($1000.00)

        i) A penalty of $1000.00

    b) Category 2 ($6000.00)

        i) Second contravention – $2500.00

        ii) Third contravention – $1000.00

iii) Eighth contravention – $2500.00

c) Category 3 ($2000.00)

i) Fourth contravention – $1000.00

ii) Fifth contravention – $1000.00

d) Category 4 ($2000.00)

i) Sixth contravention – $1000.00

ii) Seventh contravention $1000.00

90. In respect of the Second Respondent ($600.00):

a) Category 3 ($400.00)

i) Fourth contravention – $200.00

ii) Fifth contravention – $200.00

b) Category 4 ($200.00)

i) Sixth contravention – $200.00

91. In respect of the Third Respondent ($1100.00):

a) Category 1 ($200.00)

i) First contravention – $200.00

b) Category 2 ($700.00)

i) Second contravention – $500.00

ii) Third contravention – $200.00

c) Category 4 ($200.00)

i) Seventh contravention – $200.00

92. Those figures do not allow for the application of the totality principle or the instinctive synthesis test. However, having fixed the appropriate penalty for each group of contraventions, it is then necessary to

proceed to consider the aggregate penalty to determine whether it is an appropriate response to the conduct which led to the contraventions, or whether it is oppressive or crushing.

93. From a perspective of instinctive synthesis, I am of the view that penalties of $9000.00 for the First Respondent, $540.00 for the Second Respondent, and $550.00 for the Third Respondent are more appropriate. These figures better account for the individual circumstances of each Respondent, as well as their varying degrees of culpability.

94. The reduced penalties should therefore be allocated as follows. In respect of the First Respondent ($9,000.00):

a) Category 1 ($800.00)

i) A penalty of $800.00

b) Category 2 ($5000.00)

i) Second contravention – $2100.00

ii) Third contravention – $800.00

iii) Eighth contravention – $2100.00

c) Category 3 ($1600.00)

i) Fourth contravention – $800.00

ii) Fifth contravention – $800.00

d) Category 4 ($1600.00)

i) Sixth contravention – $800.00

ii) Seventh contravention $800.00

95. In respect of the Second Respondent ($540.00):

a) Category 3 ($360.00)

i) Fourth contravention – $180.00

ii) Fifth contravention – $180.00

b) Category 4 ($180.00)

i) Sixth contravention – $180.00

96. In respect of the Third Respondent ($550.00):

a) Category 1 ($100.00)

i) First contravention – $100.00

b) Category 2 ($350.00)

i) Second contravention – $250.00

ii) Third contravention – $100.00

c) Category 4 ($100.00)

i) Seventh contravention – $100.00

97. I further determine that a sum of $1000.00 should be allowed to the employee on account of hurt, humiliation and embarrassment. In coming to this figure I am conscious that he was about 19 years of age at the time of these events, and that he appears to have found new employment soon after this experience; the trauma of these events is unlikely to be longstanding.

98. Therefore, in addition to the penalties, the First Respondent should pay to the employee:

a) the compensation due by way of loss of wages, which sum has been agreed; and

b) non-economic compensation of $1000.00.

I certify that the preceding ninety-eight (98) paragraphs are a true copy of the reasons for judgment of Judge Burnett

Associate:

Date: 4 July 2014