



DECISION

Fair Work Act 2009

s.789FC - Application for an order to stop bullying

Re Camilleri

(AB2024/896)

COMMISSIONER CRAWFORD

SYDNEY, 15 MAY 2025

Application for a FWC order to stop bullying – nine allegations of bullying – two allegations substantiated – behaviour of worker unreasonable and has contributed to manager’s behaviour – order made for mediation between the worker and manager.

BACKGROUND

[1] Adam Camilleri is employed by NBN Co Limited (**NBN Co**) as a Field Engineer. Mr Camilleri commenced employment with NBN Co in 2016. Mr Camilleri claims he has been bullied at work by his Field Area Manager, Paul Fitzpatrick. Mr Camilleri has reported directly to Mr Fitzpatrick since he commenced acting as Field Area Manager for the NSW Metro South Team on 1 July 2024. Mr Fitzpatrick was formally appointed to this role on 21 August 2024. This decision concerns whether actions taken by Mr Fitzpatrick towards Mr Camilleri in his role of Field Area Manager constitute Mr Camilleri being “bullied at work”, and whether any stop bullying orders should be made.

[2] A schedule identifying the evidence and submissions relied upon by the parties is attached at the end of this decision. NBN Co supported Mr Fitzpatrick in defending the allegations of bullying. Mr Camilleri was represented by the CEPU.¹ All witnesses were cross-examined on their evidence during hearings on 16 and 17 April 2025 in Sydney. A further hearing via video was held for closing submissions on 6 May 2025. I have considered all the evidence and submissions.

[3] Mr Camilleri’s application and submissions initially named other NBN Co employees as being responsible for bullying him and raised concerns about conduct that was not related to Mr Fitzpatrick. These matters do not need to be addressed in the decision given they were not pressed by Mr Camilleri. For completeness, I do not consider any of the other complaints raised by Mr Camilleri that are not dealt with in this decision could constitute Mr Camilleri being bullied at work by Mr Fitzpatrick. The other complaints are not directed at the behaviour of Mr Fitzpatrick.

AUTHORITIES

¹ Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia.

[4] In *Amie Mac v Bank of Queensland Limited & Ors*² (**Mac**) Vice President Hatcher (as his Honour then was) identified that s.789FF of the *Fair Work Act 2009* (**FW Act**) establishes three prerequisites to the exercise of the power to make anti-bullying orders, being:

- 1) A worker must have made an application under s.789FC;
- 2) The Commission must be satisfied that the applicant worker has been bullied at work by an individual or group of individuals; and
- 3) The Commission must be satisfied that there is a risk that the applicant worker will continue to be bullied at work by the individual or group of individuals.

[5] In *Mac*, Vice President Hatcher (as he then was) provided the following list of examples of conduct that may constitute “bullying at work”:

“... intimidation, coercion, threats, humiliation, shouting, sarcasm, victimisation, terrorising, singling-out, malicious pranks, physical abuse, verbal abuse, emotional abuse, belittling, bad faith, harassment, conspiracy to harm, ganging-up, isolation, freezing-out, ostracism, innuendo, rumour-mongering, disrespect, mobbing, mocking, victim-blaming and discrimination.”³

[6] Section 789FD(2) of the FW Act states the definition of being bullied at work “does not apply to reasonable management action carried out in a reasonable manner.”

[7] In *Re SB*⁴, Commissioner Hampton (as the Deputy President then was) identified that: “determining whether management action is reasonable requires an objective assessment of the action in the context of the circumstances and knowledge of those involved at the time... The test is whether the management action was reasonable, not whether it could have been undertaken in a manner that was ‘more reasonable’ or ‘more acceptable’.”⁵

FIRST PREREQUISITE – MAKING AN APPLICATION

[8] I am satisfied that Mr Camilleri has made a valid application under s.789FC of the FW Act. The first prerequisite for the making of an anti-bullying order is satisfied.

SECOND PREREQUISITE – BULLIED AT WORK

[9] Mr Dwyer, on Mr Camilleri’s behalf, ultimately advanced the following nine instances of alleged bullying by Mr Fitzpatrick towards Mr Camilleri during closing submissions. I deal with each of the allegations in turn below.

#1 – The use of time records prepared by Mr Fitzpatrick as justification for the removal of Mr Camilleri’s RDO roster

² (2015) 247 IR 274; [2015] FWC 774 at [75].

³ *Mac* at [99].

⁴ (2014) 244 IR 127; [2014] FWC 2104.

⁵ *Re SB* at [49] and [51].

[10] Up until around 17 October 2024, Mr Camilleri worked under an RDO rostering arrangement whereby he worked an additional 51 minutes each day to accrue a paid day off each fortnight. Mr Camilleri worked from 7:00am to 3:56pm.

[11] There is an ongoing dispute between the CEPU and NBN Co about how travel and work time is calculated for Field Engineers such as Mr Camilleri. That dispute appears particularly directed at whether employees should be paid for preparatory work they perform at home before leaving for their first job site.

[12] NBN Co's position is that employees working an RDO roster are required to:

- i. Leave home at 6:30am to attend their first job site; or
- ii. Arrive at their first job site by 7am.

[13] This means employees can leave home after 6:30am, provided they will have enough time to reach their first job site by 7:00am. Employees have complied with the requirement if they leave home at 6:30am, even if they arrive at their first job site after 7:00am.

[14] Mr Camilleri and his union questioned the clarity and legal source of this requirement as part of this anti-bullying case. Mr Camilleri's concerns did not rise to the level of an argument that NBN Co had not issued a lawful and reasonable direction for employees to either leave home at 6:30am or arrive at their first job site by 7:00am. It appears that argument may be advanced in other proceedings. For the purposes of this case, I will assume that the direction was lawful and reasonable because it has not currently been established that it was not. I also note Mr Camilleri provided a copy of an NBN Field Services Travel Time Guideline that refers to employees spending 30 minutes of travel to their first job in their own time.⁶

[15] Mr Fitzpatrick said that shortly after he commenced managing Mr Camilleri, he began noticing on the "Director" timekeeping application that Mr Camilleri was leaving home later than 6:30am and arriving at work later than 7:00am. Mr Fitzpatrick raised this issue with Suzanne Sheppard (Regional Area Manager – Sydney Metro). Ms Sheppard directed Mr Fitzpatrick to run a timesheet review on Mr Camilleri. Ms Sheppard suggested that Mr Fitzpatrick speak with Krish Patel (Mr Camilleri's previous Field Area Manager) about the methodology for the review, because Mr Patel had undertaken a similar timesheet review for Mr Camilleri earlier in the year.

[16] Mr Fitzpatrick subsequently prepared a spreadsheet summarising Mr Camilleri's working times from 29 July 2024 to 6 September 2024, using ignition data obtained from his work vehicle. The spreadsheet identified that Mr Camilleri regularly left home after 6:30am and regularly arrived at his first job site after 7:00am.

[17] There are several issues with Mr Fitzpatrick's spreadsheet, which Mr Dwyer highlighted extensively during cross-examination and closing submissions. For example, the spreadsheet states Mr Camilleri was required to leave home at 6:30am each day and that he was "100% non-compliant" with this requirement. That is not correct. Mr Camilleri was not required to leave home at 6:30am if he could leave later and still arrive at his first job site by 7:00am. The "100%

⁶ Attachment AC10 to Exhibit A2.

non-compliant” figure also included a training day, a non-workday, and two days where Mr Camilleri’s start time was impacted by needing to take a 10-hour break after call-out or stand down work. These errors are problematic given Mr Fitzpatrick later stated in an email to Ms Sheppard that “he never manages to leave home on time on a single day out of all 24.” This email forms part of the communications which led to Ms Sheppard agreeing with Mr Fitzpatrick’s proposal to remove Mr Camilleri’s RDO arrangement on the basis that he was not working the required number of hours.

[18] Mr Fitzpatrick subsequently met with Mr Camilleri on 17 September 2024 to provide Mr Camilleri with four weeks of notice that his RDO rostering arrangement would cease, and his last RDO would be taken on or before 17 October 2024, depending on when it falls. It is clear from the documentary evidence that the decision to remove Mr Camilleri from the RDO roster was made before Mr Fitzpatrick met with Mr Camilleri on 17 September 2024, and that Mr Camilleri was not provided with the timesheet data to review prior to the meeting commencing. Mr Camilleri was also not advised the meeting was directed at the removal of his RDO. Mr Camilleri was hence not provided with a genuine opportunity to bring a support person to the meeting with Mr Fitzpatrick because he did not know the significance of the meeting. Mr Fitzpatrick stated he was advised by Ms Wright from NBN Co’s support services team that Mr Camilleri did not need to be offered a support person for a meeting regarding the removal of a RDO. It appears that advice was given on the basis that the removal of the RDO was an administrative matter, rather than a disciplinary matter. I doubt that advice was well placed, even if it was strictly correct.

[19] A change to rostering arrangements will often be more of an administrative or operational matter, which may trigger consultation requirements, but would not be classified as a disciplinary matter. However, this was an isolated decision to remove Mr Camilleri’s entitlement to an RDO due to concerns about his conduct. That is clearly a disciplinary action, akin to deciding not to offer overtime to an employee due to performance issues. It would have been appropriate for Mr Camilleri to be provided with proper notice of the meeting and an opportunity to bring a support person to the meeting.

[20] Despite the significant shortcomings identified above, it is also clear that on the evidence available to Mr Fitzpatrick, Mr Camilleri was regularly not complying with the direction to leave home at 6:30am or arrive at his first job site by 7:00am. Mr Camilleri also indicated in response to questions from me during the hearing that he leaves after 6:30am to take account of preparatory tasks he has to complete before he leaves each morning.⁷ As referred to above, the non-payment of time spent doing preparatory work is part of an ongoing dispute between the CEPU and NBN Co.

[21] It appears Mr Camilleri had been adjusting his work hours because he considers NBN Co is unfairly refusing to pay employees for time spent on preparatory tasks each day before they start work. That was an inappropriate and highly risky approach. The dispute about whether preparatory tasks should be paid working time did not provide Mr Camilleri with the right to refuse to comply with a lawful and reasonable direction.

⁷ Transcript at PN599 and PN1345.

[22] On balance, I find Mr Fitzpatrick's decision to remove Mr Camilleri's RDO, which was approved by Ms Sheppard, was reasonable management action carried out in a reasonable manner. I consider the significant shortcomings with the approach implemented by Mr Fitzpatrick in relation to the removal of Mr Camilleri's RDO fall into the category of conduct that should have been "more reasonable" or "more acceptable", rather than conduct that meant it was not reasonable management action carried out in a reasonable manner.

[23] My objective assessment is that the removal of Mr Camilleri's RDO was reasonable management action carried out in a reasonable manner, given Mr Camilleri's ongoing failure to comply with the requirement to leave home at 6:30am or arrive at work at 7:00am. Mr Fitzpatrick got several of the steps right in relation to how he carried out the action of removing Mr Camilleri's RDO. Mr Fitzpatrick collected data and sought advice from higher levels of management. Mr Fitzpatrick arranged a meeting with Mr Camilleri. However, Mr Fitzpatrick also got several steps wrong and these shortcomings come very close to meaning the reasonable management action was not "carried out in a reasonable manner."

[24] My finding that the removal of Mr Camilleri's RDO was reasonable management action carried out in a reasonable manner means it does not constitute Mr Camilleri being "bullied at work" by Mr Fitzpatrick.

#2 – Mr Fitzpatrick called meetings about performance or disciplinary matters without notice which did not allow Mr Camilleri to arrange a support person

[25] This allegation relates to the meeting Mr Fitzpatrick held with Mr Camilleri on 17 September 2024 regarding the removal of his RDO, and a disciplinary meeting that was ultimately held on 13 February 2025 regarding alleged issues with Mr Camilleri's conduct in October 2024.

[26] I have determined above that Mr Fitzpatrick's actions in relation to the 17 September 2024 meeting fall marginally within the meaning of "reasonable management action carried out in a reasonable manner." That means Mr Camilleri was not "bullied at work" in relation to the 17 September 2024 meeting.

[27] The circumstances with the 13 February 2025 meeting were quite different to the 17 September 2024 meeting. Mr Fitzpatrick initially called Mr Camilleri to raise issues with his conduct. Mr Camilleri requested the concerns in writing. A meeting was eventually held via video on 13 February 2025 which Mr Camilleri attended with a support person, Ken Hardisty (CEPU Organiser). Following the meeting Mr Fitzpatrick provided a letter outlining the allegations. Mr Camilleri provided a written response. Mr Fitzpatrick considered the response and issued Mr Camilleri with a written warning on 5 March 2025.

[28] Mr Fitzpatrick engaged in a detailed and lengthy process before issuing the written warning on 5 March 2025. I see no substantive issues with the process implemented by Mr Fitzpatrick. I consider Mr Fitzpatrick engaged in reasonable management action carried out in a reasonable manner concerning the process he followed in arranging the meeting on 13 February 2025 and subsequently.

[29] I find Mr Camilleri was not “bullied at work” by Mr Fitzpatrick in relation to the 17 September 2024 meeting or the 13 February 2025 meeting.

#3 – Mr Fitzpatrick took disciplinary action taken against Mr Camilleri concerning an RDO taken on 18 October 2024

[30] On 17 September 2024, Mr Fitzpatrick sent Mr Camilleri a follow-up email after their meeting earlier in the day. The email relevantly stated:

“As mentioned in the meeting, you will be removed from the RDO roster as of 4 weeks from today. This means your last RDO will be on or before 17/10/2024 depending on where it falls, and you will return to a 7:00am to 3:06pm roster or a 8:00am to 4:06pm roster.”

[31] Mr Camilleri took a day of personal leave on 17 October 2024. Mr Camilleri was absent from work on 18 October 2024 on what he claims was an RDO. Mr Fitzpatrick determined that Mr Camilleri had failed to comply with the Flex Day Guidelines and directions from management in relation to taking 18 October 2024 as an RDO.

[32] There was clearly some confusion between Mr Camilleri and Mr Fitzpatrick about the removal of Mr Camilleri’s RDO. Mr Fitzpatrick’s letter to Mr Camilleri dated 20 February 2025 stated “NBN ended the flex day arrangement in September 2024 because you were not completing sufficient hours to receive a Flex Day in accordance with the Flex Day Guidelines.”⁸ That was not entirely correct. NBN Co gave four weeks of notice on 17 September 2024 that Mr Camilleri’s RDO roster was ending. That means Mr Camilleri should have remained on the RDO roster for the four-week notice period, or until around 17 October 2024. Mr Camilleri should have continued working from 7:00am to 3:56pm during the four-week notice period and should have continued accruing RDOs. If Mr Camilleri was not working the required hours during the notice period, NBN Co could have taken disciplinary action against Mr Camilleri.

[33] It appears therefore that Mr Camilleri may have been entitled to the RDO on 18 October 2024 because of additional hours he worked during the four-week notice period. That would be consistent with the UKG and SMAX records Mr Camilleri provided to Mr Fitzpatrick in response to his 20 February 2025 letter.

[34] The warning letter issued by Mr Fitzpatrick to Mr Camilleri on 5 March 2025 also states:

“I confirm that there was an error in UKG and SMAX where the Flex Day was showing up. However, this issue has since been rectified. In addition, as you know, you had been provided verbal and written notice that your Flex Day arrangement was ending, therefore you should not have made the assumption it was continuing.

Accordingly, I consider that you have failed to comply with the Flex Day Guidelines and management direction by failing to work sufficient hours to receive Flex Day and continuing to take the Flex Day despite being notified that the arrangement had ended.”

⁸ Attachment AC7 to Exhibit A1, DHB page 58. This appears to be the only document that captures Mr Fitzpatrick’s letter. It also contains Mr Camilleri’s response in the same document. No issue was taken with the accuracy of the excerpts of Mr Fitzpatrick’s letter that Mr Camilleri included in this document.

[35] Mr Fitzpatrick was unable to conclusively answer whether Mr Camilleri had worked the hours necessary to take an RDO on 18 October 2024 during cross-examination.⁹

[36] I find Mr Fitzpatrick's conduct in relation to the 18 October 2024 RDO to be problematic. Although Mr Fitzpatrick clearly communicated that Mr Camilleri was being given four weeks' notice of his removal from the RDO roster, there was a distinct lack of clarity about the working arrangements and RDOs during the notice period. Mr Fitzpatrick was made aware that NBN Co's own systems showed Mr Camilleri was on an RDO on 18 October 2024 prior to making the decision that Mr Camilleri had breached the Flex Day Guidelines and management direction. I do not consider these findings were open on the evidence before Mr Fitzpatrick.

[37] I find Mr Fitzpatrick behaved unreasonably towards Mr Camilleri in relation to the issue of the RDO Mr Camilleri took on 18 October 2024. While it was reasonable for Mr Fitzpatrick to seek information from Mr Camilleri about what had occurred, it was not reasonable to make any finding against Mr Camilleri once he had identified the issue with NBN Co's internal systems.

[38] I find Mr Fitzpatrick's conduct in making findings against Mr Camilleri in relation to the RDO he took on 18 October 2024 was not reasonable management action carried out in a reasonable manner. I consider Mr Fitzpatrick's frustration about ongoing issues¹⁰ with Mr Camilleri clouded his assessment of Mr Camilleri's conduct in relation to the RDO he took on 18 October 2024. Mr Fitzpatrick acted unreasonably in finding that Mr Camilleri had breached a policy or direction concerning the 18 October 2024 RDO.

[39] There was no challenge to Mr Camilleri's evidence about the health issues he has experienced because of his interactions with Mr Fitzpatrick.¹¹

[40] I find Mr Fitzpatrick's behaviour towards Mr Camilleri in finding that Mr Camilleri had breached a policy and direction in relation to the 18 October 2024 RDO was unreasonable and the behaviour created a risk to Mr Camilleri's health and safety.

#4 – Mr Fitzpatrick prevented Mr Camilleri from taking single days of annual leave and prevented Mr Camilleri from taking leave every second Friday

[41] I consider there is little merit to these allegations. It is clear Mr Fitzpatrick continued approving single days of annual leave for Mr Camilleri during late 2024 and early 2025, including on some Fridays.

[42] I find Mr Fitzpatrick has behaved reasonably towards Mr Camilleri in relation to the approval of single days of annual leave, including on Fridays. Even if Mr Camilleri's evidence about Mr Fitzpatrick verbally indicating single days would not be approved is accepted, I do

⁹ Transcript at PN2341 to PN2345.

¹⁰ This is evident from the email sent by Mr Fitzpatrick to Ms Sheppard and others on 30 September 2024 where he states: "I think he will keep asking about it now he sees a gap in the policy he can work to his advantage."

¹¹ Exhibit A1 at [78].

not consider this statement would be sufficient to establish unreasonable behaviour from Mr Fitzpatrick given the evidence shows that Mr Camilleri subsequently had several single days of annual leave approved, including on Fridays.

[43] I have reviewed Mr Fitzpatrick's email to Mr Camilleri dated 25 September 2024 regarding taking annual leave on every second Friday. I consider this email constitutes reasonable management action carried out in a reasonable manner. In any event, it appears it was Ms Sheppard that instigated the raising of concerns about Mr Camilleri taking leave every second Friday, not Mr Fitzpatrick.¹²

#5 – Mr Fitzpatrick relied on Mr Patel previously issuing a warning to Mr Camilleri about his working hours to justify the removal of his RDO, when no warning had been issued

[44] There is limited evidence before me in relation to this allegation. There is no evidence that a formal "warning" was issued to Mr Camilleri by Mr Patel. However, there is an email sent by Mr Camilleri on 16 April 2024 which was a reply to an email from Mr Patel headed "Re: RDO and 9-5 Roster 4 weeks notice to improve." In response, Mr Camilleri asked for data about "occasions where you believe I have been 'failing to start on time, and failing to work to the end of (my) working day.'" ¹³

[45] While it may have been preferable for Mr Fitzpatrick to not use the term "warning" if no formal warning had been issued to Mr Camilleri, it is clear Mr Patel had previously raised concerns about Mr Camilleri not starting work on time.

[46] I consider Mr Fitzpatrick's reference to Mr Patel previously warning Mr Camilleri about starting work late was reasonable management action carried out in a reasonable manner. I do not consider Mr Fitzpatrick's behaviour in referring to a previous warning from Mr Patel was unreasonable. The use of arguably imperfect language by Mr Fitzpatrick does not establish Mr Camilleri was "bullied at work."

#6 – Mr Fitzpatrick took disciplinary action against Mr Camilleri regarding his conduct during a callout to CEVA on 10 October 2024

[47] In an email to Mr Camilleri dated 20 February 2025, Mr Fitzpatrick alleged Mr Camilleri breached NBN Co's policies on 9 October 2024 by leaving home immediately after receiving a call-out and not waiting for confirmation from CEVA that the relevant part required for the job was ready to be picked up. CEVA operates a warehouse which supplies equipment to NBN Co. It turns out the relevant incident occurred in the early hours of 10 October 2024. The error with the date is reasonably minor but it is quite unhelpful in the context of the escalating issues between Mr Camilleri and Mr Fitzpatrick.

[48] Mr Camilleri denies that he left home on 10 October 2024 before he knew the relevant part was ready to be picked up by CEVA. Mr Camilleri ultimately said he received a phone call from CEVA confirming the part was ready. Mr Camilleri unhelpfully did not provide any phone

¹² Exhibit R4 at [51].

¹³ Exhibit A3.

records to Mr Fitzpatrick to prove the call occurred during the investigation process. Mr Camilleri's evidence that Mr Fitzpatrick did not specifically ask for phone records was unconvincing and unhelpful. This type of pedantic approach from Mr Camilleri provides an example of why his conduct is contributing to the issues he is having with his employment at NBN Co.

[49] During the hearing, NBN Co tendered a document showing ignition times for Mr Camilleri's work vehicle on 10 October 2024. This record indicates Mr Camilleri turned on his ignition at 1:41am and arrived at CEVA's Minchinbury store at 3:26am after stopping at Wallgrove. Mr Camilleri picked up the relevant part and proceeded to Edgecliff to complete the relevant job. Mr Camilleri turned the ignition off at home at 5:41am. This data is relevant in terms of identifying when Mr Camilleri's ignition was turned on and off on 10 October 2024. However, it does not conclusively confirm Mr Camilleri's movements and the reasons for his movements on 10 October 2024. I am also conscious Mr Camilleri did not have a reasonable opportunity to explain the data because it was not provided by NBN Co ahead of the hearing.

[50] I do not consider the evidence clearly establishes whether Mr Camilleri left home prior to receiving confirmation from CEVA that the relevant part was ready on 10 October 2024. For example, when cross-examined on this issue Mr Camilleri said he usually sits in his car when he is making phone calls so as not to wake up his family.¹⁴

[51] However, I do not consider Mr Camilleri has established that Mr Fitzpatrick behaved unreasonably in relation to his conduct during the call-out on 10 October 2024. Mr Fitzpatrick is entitled to raise legitimate queries about Mr Camilleri's conduct. Mr Camilleri has not been able to establish that Mr Fitzpatrick's query was baseless or that he complied with NBN Co's policy.

[52] I find Mr Fitzpatrick's behaviour in relation to the CEVA call-out was reasonable management action carried out in a reasonable manner. I consider it was open on the evidence for Mr Fitzpatrick to conclude that Mr Camilleri breached NBN Co's policy on 10 October 2024 and that this was also reasonable management action carried out in a reasonable manner.

[53] I do note that Mr Camilleri turned his vehicle on at 1:46am and completed a call-out job which involved picking up a part and considerable travel by 5:41am. The completion of this job in around four hours does not present as particularly unreasonable or detrimental to NBN Co.

#7 – Mr Fitzpatrick unreasonably alleged that Mr Camilleri did not perform duties for several hours without explanation on 1 July 2024

[54] An email exchange occurred between Mr Fitzpatrick and Mr Camilleri on 2, 3, and 4 July 2024 regarding Mr Camilleri's movements at work on 1 July 2024. Mr Fitzpatrick referred to Mr Camilleri's vehicle being idle for 3 hours and 32 minutes during the day in an email on 2 July 2024. Mr Camilleri explained in an email sent on 3 July 2024 that technical issues with an Egress Drive caused the delay and that Mr Camilleri was required to seek assistance. Mr Fitzpatrick responded on 4 July 2024 and raised further issues with Mr Camilleri's movements

¹⁴ Transcript at PN2778.

on 1 July 2024. Mr Fitzpatrick indicated he expects to be informed about delays and that a failure to do so may lead to coaching conversations or disciplinary action.

[55] I consider Mr Fitzpatrick's email to Mr Camilleri on 4 July 2024 was harsh. Mr Camilleri had provided a reasonably detailed response to Mr Fitzpatrick's query on 2 July 2024. Mr Camilleri ultimately completed the relevant job within the allocated time. Mr Fitzpatrick's email on 4 July 2024 may have set a negative tone for his further interactions with Mr Camilleri.

[56] However, I consider Mr Fitzpatrick's emails on 2 and 4 July 2024 constitute reasonable management action carried out in a reasonable manner. Mr Fitzpatrick is entitled as a manager to query the time management of staff. I do not consider Mr Fitzpatrick's behaviour in sending either email was unreasonable. Mr Fitzpatrick did not proceed to take any further action against Mr Camilleri in relation to his movements on 1 July 2024.

#8 – Mr Fitzpatrick unreasonably alleged that Mr Camilleri was not available to take a call when he was on standby for a callout on 7 October 2024

[57] Mr Fitzpatrick alleged in an email dated 20 February 2025 that Mr Camilleri was at a barbeque on the Labour Day public holiday on 7 October 2024 and did not respond to a call-out, despite being paid an allowance to be on standby.

[58] Mr Camilleri provided a response to this allegation in which he denied receiving the call-out and denied being at a barbeque. Mr Camilleri stated he was at home all day with his phone next to him and it did not ring. Mr Camilleri provided evidence that a technical issue may have arisen because the call to him was made via Microsoft Teams rather than the Control Tower number. Mr Camilleri provided evidence that Mr Fitzpatrick had also not responded to a call-out on the same date.

[59] Mr Fitzpatrick decided not to take any further action in relation to this issue in the outcome letter to Mr Camilleri dated 5 March 2025.

[60] Although Mr Fitzpatrick did not take any further action in relation to this issue, I consider the manner that it was raised by Mr Fitzpatrick constitutes unreasonable behaviour towards Mr Camilleri. Mr Fitzpatrick should have made more enquiries before alleging in writing that Mr Camilleri was at a barbeque and suggesting this was why he missed a call-out on 7 October 2024. I consider this was an example of Mr Fitzpatrick unreasonably making Mr Camilleri respond to an allegation in writing without having sufficient evidence to justify making the allegation. I do not accept the raising of this allegation in the overall context was reasonable management action carried out in a reasonable manner. I consider Mr Fitzpatrick overreacted to the issue because of his ongoing frustration with Mr Camilleri.

[61] I consider in most cases raising an allegation against an employee and then taking no further action against the employee after receiving their response would constitute reasonable management action carried out in a reasonable manner. The point of difference in this case is the range of issues Mr Fitzpatrick had been raising with Mr Camilleri's conduct in mid-to-late 2024. I consider this is an example of Mr Fitzpatrick unreasonably deciding to raise an issue with Mr Camilleri that Mr Fitzpatrick would not have raised with other employees in

comparable circumstances. I consider Mr Fitzpatrick was actively looking for issues to raise with Mr Camilleri's conduct because of his ongoing frustration.

[62] There was no challenge to Mr Camilleri's evidence about the health issues he has experienced because of his interactions with Mr Fitzpatrick.¹⁵

[63] I find Mr Fitzpatrick's behaviour towards Mr Camilleri in raising the allegation that he was at a barbeque and missed a call-out on 7 October 2024 was unreasonable and the behaviour created a risk to Mr Camilleri's health and safety.

#9 – Mr Fitzpatrick verbally approved Mr Camilleri taking annual leave in January 2025 but then refused to approve the annual leave

[64] Mr Camilleri alleges he booked a holiday for January 2025 because Mr Fitzpatrick verbally approved him taking five days of annual leave during a phone call on 3 October 2024. Mr Camilleri said when he subsequently applied for leave, Mr Fitzpatrick rejected the application on 6 November 2024. Mr Camilleri said that was the same day his union complained in writing about Mr Fitzpatrick's behaviour towards him. Mr Camilleri said he has lost around \$4,000 in non-refundable expenses arising from cancelling his holiday.

[65] Mr Fitzpatrick denies ever giving verbal approval for Mr Camilleri taking annual leave in January 2025. Mr Fitzpatrick says he approved Mr Camilleri having time off over Christmas 2024 which is the most sought-after period for employees. Mr Fitzpatrick states he tries to manage leave fairly for all employees and Mr Camilleri's leave request for January 2025 could not be accommodated. Mr Fitzpatrick said allowing Mr Camilleri to swap leave dates with other employees was explored, but a swap could not be arranged.

[66] I do not consider there is sufficient evidence to establish Mr Fitzpatrick verbally approved Mr Camilleri taking five days of annual leave in January 2025. I do not consider Mr Fitzpatrick acted unreasonably in refusing Mr Camilleri's leave application for operational reasons on 6 November 2024. I consider Mr Fitzpatrick's behaviour was reasonable management action carried out in a reasonable manner.

Conclusion – bullied at work

[67] I have found that Mr Fitzpatrick did not bully Mr Camilleri at work in relation to seven of the nine allegations relied upon by Mr Dwyer in closing submissions.

[68] I have found that Mr Fitzpatrick behaved unreasonably towards Mr Camilleri in relation to finding that Mr Camilleri had breached policy and directions in relation to the 18 October 2024 RDO and by alleging in writing that Mr Camilleri did not respond to a call-out because he was at a barbeque on 7 October 2024. I have found that each of these behaviours created a risk to Mr Camilleri's health and safety given his uncontested evidence about health issues he has experienced following his interactions with Mr Fitzpatrick.

¹⁵ Exhibit A1 at [78].

[69] I am satisfied that Mr Fitzpatrick has repeatedly behaved unreasonably towards Mr Camilleri while at work and that Mr Fitzpatrick's behaviour has created a risk to Mr Camilleri's health and safety. I am satisfied Mr Camilleri has been "bullied at work" by Mr Fitzpatrick within the meaning of s.789FD(1) of the FW Act.

[70] The second prerequisite for the making of an anti-bullying order is satisfied.

THIRD PREREQUISITE – RISK OF CONTINUED BULLYING

[71] The third prerequisite for the making of an anti-bullying order is that there is a risk that Mr Camilleri will continue being bullied at work by Mr Fitzpatrick.

[72] Mr Camilleri remains employed by NBN Co and is being managed by Mr Fitzpatrick. I have found that Mr Fitzpatrick has behaved unreasonably towards Mr Camilleri on two occasions. I have also found that there were shortcomings in relation to Mr Fitzpatrick's management of Mr Camilleri in relation to other allegations. I consider the requirement for Mr Fitzpatrick to continue managing Mr Camilleri means there is a risk Mr Camilleri will continue to be bullied by Mr Fitzpatrick.

[73] The third prerequisite for the making of an anti-bullying order is satisfied.

ANTI-BULLYING ORDERS

[74] Given the three prerequisites in s.789FF of the FW Act are satisfied, I have the discretionary power to make any order I consider appropriate to prevent Mr Camilleri being bullied by Mr Fitzpatrick (but not a pecuniary payment order).

[75] Mr Camilleri seeks the following orders to prevent further bullying from Mr Fitzpatrick:

- 1) Mr Camilleri to be assigned an alternative manager.
- 2) Mr Fitzpatrick to have no further contact with Mr Camilleri.
- 3) Mr Camilleri's RDO roster to be reinstated.
- 4) Mr Camilleri's written warning dated 5 March 2025 to be withdrawn.

[76] The circumstances of this case are unusual and unique. Although I have found that Mr Fitzpatrick has bullied Mr Camilleri at work, this behaviour has not arisen in a vacuum.

[77] I consider Mr Camilleri has acted unreasonably towards Mr Fitzpatrick on several occasions. Mr Camilleri repeatedly decided to disobey a lawful and reasonable direction to leave home at 6:30am or arrive at work at 7:00am because he has a separate dispute about not being paid for preparatory tasks. That was inappropriate behaviour which not surprisingly triggered a response from Mr Fitzpatrick. Mr Camilleri was also difficult and disrespectful to Mr Fitzpatrick in relation to a direction for Mr Camilleri to return his existing work vehicle.¹⁶ Mr Camilleri needs to respect Mr Fitzpatrick's authority and to comply with his lawful and reasonable directions. Mr Camilleri also needs to comply with NBN Co's policies and to be

¹⁶ Exhibit R1.

able to prove that he has complied with those policies, if reasonable concerns are raised. A lot of Mr Camilleri's concerns are likely to be resolved if Mr Camilleri amends his behaviour.

[78] The comments above should not be understood as suggesting that Mr Camilleri should stop agitating concerns about his employment conditions. Mr Camilleri is perfectly entitled to do this and is protected from adverse action. However, raising concerns and disputes does not negate the need for Mr Camilleri to comply with lawful and reasonable directions and to be accountable for his actions at work.

[79] Mr Camilleri previously raised bullying complaints against other NBN Co managers. While those complaints have not been assessed in this decision and they could conceivably have merit, I consider Mr Camilleri needs to reflect on why he is clashing with various managers at NBN Co and whether he can modify his behaviour to reduce the conflict he is experiencing at work. It is likely Mr Camilleri has previously been permitted to operate relatively autonomously and without significant scrutiny on his movements and that Mr Camilleri was completing the required jobs under that managerial approach. However, Mr Camilleri does not have a legal right to be managed in that way. Mr Camilleri is not being bullied merely because Mr Fitzpatrick is monitoring his movements at work more closely.

[80] Turning to the orders sought by Mr Camilleri, it is doubtful an order for Mr Camilleri's RDO to be reinstated could be made in an anti-bullying matter. The legislative scheme is not directed at punishing past bullying behaviour or compensating the victims of such behaviour. It is directed at stopping future bullying behaviour.¹⁷

[81] The removal of a written warning could arguably assist in preventing further bullying behaviour via escalating disciplinary action which takes account of the earlier warning. However, I do not consider making an order that the warning be withdrawn is appropriate in this case. I consider it is appropriate that Mr Camilleri has a warning on his record for his behaviour in not complying with lawful and reasonable directions. Mr Camilleri is somewhat fortunate that more severe penalties have not been imposed. I do not consider it is necessary to make an order amending the warning to more accurately reflect what I consider to be the appropriate basis for the issuing of a warning. I consider this decision can be relied on by the parties in that regard.

[82] There is clearly power to make orders that Mr Camilleri be assigned a different manager and to have no further contact with Mr Fitzpatrick. However, I do not consider that Mr Camilleri and Mr Fitzpatrick are incapable of having a professional and safe working relationship. I consider Mr Camilleri and Mr Fitzpatrick will both need to modify their behaviour towards each other to prevent Mr Camilleri from being bullied at work by Mr Fitzpatrick.

[83] I have decided to order that Mr Camilleri and Mr Fitzpatrick attend mediation with an external provider and for this to be arranged and paid for by NBN Co. The order is to be complied with by all parties within 30 days. I am satisfied that an order for external mediation in conjunction with the findings in this decision will prevent Mr Camilleri from being bullied at work by Mr Fitzpatrick.

¹⁷ *Re McInnes* (2014) 241 IR 158; [2014] FWCFB 1440 at [9].

[84] I encourage Mr Fitzpatrick and Mr Camilleri to approach the mediation in good faith, put the past events behind them, and focus on steps that can be taken to improve their relationship moving forward.

[85] An anti-bullying order in the terms identified above will be separately issued.¹⁸



COMMISSIONER

Appearances:

Mr Dwyer and Mr Hardisty from the CEPU representing Mr Camilleri.

Mr Diqer and Ms Targett representing NBN Co and Mr Fitzpatrick.

Hearing details:

2025.

16 & 17 April.

Sydney.

2025.

6 May.

Sydney (via video using Microsoft Teams).

Printed by authority of the Commonwealth Government Printer

<PR787339>

¹⁸ PR787340.

SCHEDULE

Evidence

Mr Camilleri

- A1** Adam Camilleri witness statement dated 10 March 2025 and annexures.
- A2** Adam Camilleri witness statement dated 31 March 2025 and annexures.
- A3** Email from Mr Camilleri to Krish Patel dated 16 April 2024 requesting “data for the occasions where you believe I have been “failing to start on time, and failing to work to the end of (my) working day.””

NBN Co and Mr Fitzpatrick

- R1** An email thread which includes an email from Mr Camilleri to Mr Fitzpatrick and others dated 19 November 2024 in relation to Mr Camilleri’s work vehicle.
- R2** Paul Fitzpatrick witness statement dated 20 March 2025 and annexures.
- R3** An activity report for Mr Camilleri’s work vehicle for 10 October 2024.
- R4** Suzanne Sheppard witness statement dated 21 March 2025 and annexures.

Submissions

Mr Camilleri

Written submissions dated 10 March 2025.

Mr Dwyer provided oral submissions during the hearing on 6 May 2025.

NBN Co and Mr Fitzpatrick

Outline of submissions dated 19 March 2025.

Mr Diqer provided oral submissions during the hearing on 6 May 2025.