



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

1056407

DEPUTY PRESIDENT ASBURY

U2018/5137

s.394 - Application for unfair dismissal remedy

**Mr Jordan Lamacq
and
Smerff Electrical
(U2018/5137)**

Brisbane

10.19 AM, MONDAY, 27 AUGUST 2018

PN1

THE DEPUTY PRESIDENT: Good morning, please, be seated. I'll open this hearing into matter U5137 of 2018. The matter is an application by Mr Lamacq seeking a remedy in respect of his alleged unfair dismissal by Smerff Electrical. If I can just start by confirming the appearances. Mr Lamacq, you're representing yourself today?

PN2

MR LAMACQ: Yes.

PN3

THE DEPUTY PRESIDENT: Okay, and Mr Hickey, you're for the respondent employee?

PN4

MR HICKEY: Yes.

PN5

THE DEPUTY PRESIDENT: Yes, okay. I think the most efficient way to deal with this is I'm going to administer an oath or an affirmation, your preference, to both of you and then I'm going to allow you both to tell me your version of events and you are both under oath the whole time because otherwise we have to put you in the witness box, do it one at a time, and I think it's a lot more efficient if we just do it, you both tell me your story and if someone disagrees with something, I'll give you an opportunity to tell me why you disagree with it. If we could just one person speak at a time and if someone wants to clarify something then they can ask me to, "Hang on a minute, I just want to say something in response to that", and we'll try and get through this as efficiently as we can. So, what I'll do is I'll get my associate to come down and administer. Mr Lamacq, will you take an oath or an affirmation?

PN6

MR LAMACQ: I can take an oath.

PN7

THE DEPUTY PRESIDENT: Okay, great.

<JORDAN LAMACQ, SWORN

[10.21 AM]

PN8

THE DEPUTY PRESIDENT: Thanks. Mr Hickey, would you prefer an oath or an affirmation?

PN9

MR HICKEY: I may as use - the same one is fine.

<SIMON HICKEY, SWORN

[10.21 AM]

PN10

THE DEPUTY PRESIDENT: Thanks. Okay, just some preliminary things before we start. Do we agree that the respondent at the time you were dismissed, Mr Lamacq, had less than 15 employees?

PN11

MR LAMACQ: Yes.

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THE DEPUTY PRESIDENT: You agree with that?

PN13

MR LAMACQ: Yes.

PN14

THE DEPUTY PRESIDENT: And that's what you say, Mr Hickey?

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MR HICKEY: Yes, your Honour, yes.

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THE DEPUTY PRESIDENT: All right. So, that means that the respondent employer is a small business, so, the Small Business Fair Dismissal Code applies. So, we're not disputing that. You need to say yes or no.

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MR LAMACQ: No, sorry.

PN18

THE DEPUTY PRESIDENT: Okay, so, you're not disputing that. All right. So, perhaps, if I can, so, the starting point of the Small Business Fair Dismissal Code is whether the dismissed employee was dismissed for serious misconduct. So, Mr Hickey, do you say that the reason you dismissed Mr Lamacq, was for serious misconduct?

PN19

MR HICKEY: Yes, I do.

PN20

THE DEPUTY PRESIDENT: Okay. So, at the point you dismissed Mr Lamacq, what was the reason that you had for dismissing him?

PN21

MR HICKEY: Well, at the time it was the fact that he wouldn't give me the address of a job that he had been doing, a cash job I know that he had been doing with his friend, Wouter, who I refer to as Hansy. At the time, it wasn't as serious as what I thought it was until I looked further into it and found, you know, it was like the tip of the iceberg when I started looking into it and it just reaffirmed that the decision I made was correct. Before we proceed, though, I'd like to go back to his original statement. Jordan said he was signed up on September, the 6th, of 2017, and dismissed in May of 2018, which makes the term of his employment

less than 12 months - which makes the term of his employment less than 12 months. During last winter, he went with Michael Kadzer and did NBN work over the winter and I've got his pay slips and the group certificate from 2017 to show his income over that time.

PN22

THE DEPUTY PRESIDENT: Okay.

PN23

MR HICKEY: And it's my position that we shouldn't proceed further because he hasn't been employed for a minimum of 12 months.

PN24

THE DEPUTY PRESIDENT: Okay. All right. So, what do you say about that, Mr Lamacq?

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MR LAMACQ: I never actually left the company. I went to do some - - -

PN26

THE DEPUTY PRESIDENT: Well, let's just get - - -

PN27

MR LAMACQ: Yes.

PN28

THE DEPUTY PRESIDENT: Sorry, before you start, let's just get this straight. So, can you give me those dates? So, Mr Lamacq was employed on a contract as an apprentice, is that the case?

PN29

MR HICKEY: He was signed up as an apprentice in September of 2017.

PN30

THE DEPUTY PRESIDENT: September 2017, yes.

PN31

MR HICKEY: I'm only going by his statement, which I assume is right.

PN32

THE DEPUTY PRESIDENT: Yes.

PN33

MR HICKEY: He was employed casually prior to that and employed casually the previous summer, but as all the employees know, our business is very seasonal. It's mostly to do with air-conditioning, so, as at the end of summer, pretty much 80 per cent of them, you know, go elsewhere and find their own way during winter.

PN34

THE DEPUTY PRESIDENT: So, can you take me through all of his history of the times he has been employed with you starting from the earliest?

PN35

MR HICKEY: Well, I'm going by the tax forms that we have got up to that point. It shows that it was 23 January, or something like that. I'll just find it here.

PN36

THE DEPUTY PRESIDENT: Okay.

PN37

MR HICKEY: From 23 January 2017 to 30 June 2017, Jordan made a total of \$8,500 - 8,454.

PN38

THE DEPUTY PRESIDENT: Yes.

PN39

MR HICKEY: Which, if you break it down to weeks, it's a total of \$328 per week over six months which is - that's if you average it, which is nearly impossible for it, you know, to be a full-time wage for that period.

PN40

THE DEPUTY PRESIDENT: Right.

PN41

MR HICKEY: So, it shows that he was either absent for a significant period of it or only doing a day or two here and there, which I know he wasn't doing a day or two. He was employed for most of the week or not at all. So, it's my position using these tax documents that he wasn't employed full time until August/September of 2017, which still leaves us outside or doesn't take us - - -

PN42

THE DEPUTY PRESIDENT: So, full time, August/September 2017. Do you have the form? Like, any documents to show when he - - -

PN43

MR HICKEY: I've got all his pay slips that I could rectify here as well as the group certificate if it might assist.

PN44

THE DEPUTY PRESIDENT: Okay. All right. Do you have copy of those?

PN45

MR HICKEY: Just the copies that I have got here, but that's all right.

PN46

THE DEPUTY PRESIDENT: All right.

PN47

MR HICKEY: I can print them out again if I have to.

PN48

THE DEPUTY PRESIDENT: No, we can make copies of them, that's fine. Okay. So, you say he had this period of employment from 23/1/2017 to 30/6/2017, where he just worked a week here, a week there.

PN49

MR HICKEY: Correct. Although, he may not have been employed at all as of June 2017. That's just when the group certificate expires because it's the end of the financial year.

PN50

THE DEPUTY PRESIDENT: Okay. So, do you have any other records that can show what the break was between the last period of casual employment and the point that he started as an apprentice?

PN51

MR HICKEY: I do. In that big pile there, there's all his pay slips.

PN52

THE DEPUTY PRESIDENT: Yes.

PN53

MR HICKEY: The earliest pay slip I could find was August and then the previous one to that was February and they're all in there.

PN54

THE DEPUTY PRESIDENT: So, August. Earliest pay slip you can find is August when?

PN55

MR HICKEY: I'm not sure. It's on the date. The date is on there. I'm sorry, it's on there.

PN56

THE DEPUTY PRESIDENT: Okay, let's have a look. So, we've got a PAYG payment summary from 23 January to 30 June, but that could just be because that's when it was provided.

PN57

MR HICKEY: Correct, end of financial year.

PN58

THE DEPUTY PRESIDENT: Yes, end of financial year. So, then we've got a pay slip, 9/10/2017, 28/8/2017, 24/7/2017, 7/8/2017, 18/9/2017, 11th of the 9th. Then we've got 31st of the 7th, there's a pay slip, hourly rate, \$15, pay from 24th of the 7th to the 30th of the 7th. So, that's July 2017. And then these are all - - -

PN59

MR HICKEY: They're all from February as well.

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THE DEPUTY PRESIDENT: These are all October, August, 26/2/2017. So, you say if I look at these, so, the 20th to the 26th - what I might do is I'm going to just put them in chronological order.

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MR HICKEY: Yes.

PN62

THE DEPUTY PRESIDENT: Sorry, just bear with me for a minute. I'm just going to - - -

PN63

MR HICKEY: It may be complete. It's as complete as I could make it with the records that I have.

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THE DEPUTY PRESIDENT: Yes, okay. Righto. So, we've got - that's the group certificate. So, then we've got 2/10/2017, 21st of the 8th, 17th of the 7th, 30th of the 7th, 18th of the 9th, 4th of the 9th, 8th of the 10th. Okay, so, the earliest one seems to be 20 February 2017 to 26 February 2017 when the pay slip states Mr Lamacq worked 48 hours. Then we have a pay slip from - the next one is 17th of the 7th, 2017 to 23rd of the 7th. The 30th of the 7th, the 5th of the 8th, the 20th of the 8th - sorry, the 14th of the 8th. The 21st of the 8th, the 28th of the 8th, the 4th of the 9th, the 18th of the 9th, 11th of the 9th. No, it should be earlier. 2nd of the 10th and the 9th of the 10th. So, what was happening between 20 February 2017 and 17 July 2017?

PN65

MR HICKEY: Is that question directed to me or Jordan?

PN66

THE DEPUTY PRESIDENT: Either one of you. What do you say?

PN67

MR HICKEY: We wind down for summer about that time, March, because it gets cooler, of course. Most of the staff go off and do other stuff during winter. There may have been a day or two's work here and there Jordan did over the winter. It by no means was full time at all as the PAYG statement reflects for that amount of income for that whole period. He went off and did NBN there with Michael Kadzer for a while. Michael is overseas at the moment or else he would be here as a witness, but I don't think Jordan can deny that. And as a result, my position is he wasn't employed during that period. You know, he wasn't fired, but he wasn't employed either.

PN68

THE DEPUTY PRESIDENT: So, at the point in - at that point, he was a casual employee.

PN69

MR HICKEY: Correct.

PN70

THE DEPUTY PRESIDENT: So, we've got a week - we've got a week from the 20th of the 2nd to the 26th of the 2nd where there were 48 hours worked and then after that we don't seem to have a pay slip until the 17th of July 2017. So, you say during that period he might have worked intermittently, but it's a period in winter when you don't have a lot of work on.

PN71

MR HICKEY: We don't have enough for the guys that we have.

PN72

THE DEPUTY PRESIDENT: Right.

PN73

MR HICKEY: So, it would have been lucky to be, you know, one day a fortnight if that for that period between March and - - -

PN74

THE DEPUTY PRESIDENT: Okay, all right. So, you say he didn't work for you in that period.

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MR HICKEY: Correct.

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THE DEPUTY PRESIDENT: Or if he did, it was intermittent, it was a day here and a day there.

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MR HICKEY: Correct.

PN78

THE DEPUTY PRESIDENT: And then from the period where we have got, you know, relatively - - -

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MR HICKEY: It jumps quite back up - back up to normal level.

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THE DEPUTY PRESIDENT: It goes back up to 20 hours on 17 July and then to 45 hours on 24 July. So, that was the period when he came back on.

PN81

MR HICKEY: Correct.

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THE DEPUTY PRESIDENT: And when do you say the apprenticeship was commenced?

PN83

MR HICKEY: I'm only going by Jordan's statement, but he said it was 6 September or something that he was signed up. I assume that's right. It was around that time.

PN84

THE DEPUTY PRESIDENT: All right, okay. So, Mr Lamacq, what do you say? What do you say you worked and what happened in that period between February and July 2017?

PN85

MR LAMACQ: Well, during that period, I did work for Michael, as Simon said, but I did also work for Simon. He did also pay me cash numerous times while I was still working for Michael. So, whether I can show it to you or not because it was paid in cash in hand, I was still working for Simon at that time.

PN86

THE DEPUTY PRESIDENT: But how much do you say you were working?

PN87

MR LAMACQ: I can say it wasn't every week, but it was at least a day or two a fortnight.

PN88

MR HICKEY: I'll dispute that because I don't pay cash unless I really, really have to because the cash is mine.

PN89

THE DEPUTY PRESIDENT: Yes, but do you agree that it might have been one to two days per fortnight?

PN90

MR HICKEY: Yes, I agree to that, but I don't agree he was paid cash during that period.

PN91

THE DEPUTY PRESIDENT: Okay, all right. Okay.

PN92

MR HICKEY: It's probably an accurate figure, the 8,545, taking into account - through his account.

PN93

THE DEPUTY PRESIDENT: All right. Okay, so, that's the position there. Well, I'll need to consider that, but just so I don't have to haul you all back in the event that, you know, and waste your time, shall we move on.

PN94

MR HICKEY: Yes.

PN95

THE DEPUTY PRESIDENT: So, on or around what point do you say that you became concerned about these cashies, Mr Hickey?

PN96

MR HICKEY: It did develop all of a sudden. It was only when I discovered an ongoing theft by who I considered was Jordan's best friend at the company. They always used to work together and that was what made me think Jordan either knew something about it or was involved with it. When I discovered it, I had already got rid of Wouter and I hit Wouter up and said, "Oy, you can pay me the money you owe me or I'll go to the police", and he just - he was smart about it, so, he didn't pay me anything. So, I said to Jordan, "You can tell me what's going on with that and you can tell me the address of the cash jobs you've been doing", because he came and collected some gear for a job. He said it was for his aunty or Hansy's aunty or something like that. And I just give them - I got them the stock.

PN97

It was only bits and pieces here and there on the Saturday morning, of which I've got the GPS records, and he wouldn't give me an address of the job and I knew by that stage it wasn't his aunty's house or someone like that, although I still referred to it as his aunty's house. It was the address of a cash job that he'd done and it says that in these text messages that Jordan supplied - in that I wanted to go and see what had been done, what materials had been used, if there was any more than what I'd given them, the standard of workmanship and talk to the customer and find out, you know, where they did get the work from, i.e. whether they were pinching my customers or not.

PN98

THE DEPUTY PRESIDENT: So, as I understand it, you say that the text messages I've been given copies of are selective and there was a series of - there was more that I should look at. So, do you have those?

PN99

MR HICKEY: I don't make a habit of keeping a record of my text messages because I don't plan to bring it up at future hearings, but I think to be fair, if any of those messages are to be taken into account, we should see the whole series of them leading up to them in that you have only got a handful of my own ones. You've got nothing in response of his or nothing in response of Hansy's.

PN100

THE DEPUTY PRESIDENT: Okay.

PN101

MR HICKEY: And I don't think it's fair to consider just those, but even so, they still allude to the truth and the truth is I wanted the information that he would give me. I wanted the address of that job so I can go and talk to the customer.

PN102

THE DEPUTY PRESIDENT: Okay. Did you have a verbal discussion first before you started texting or was it mainly through text messages?

PN103

MR HICKEY: Not really. I rang and there was no answer, so I texted him, because I'd just got off the phone to Hans - or Wouter. I just got off the phone to

him and I was cranky. I rang Jordan and didn't answer, so, I texted him. I'm sure that's how it went down.

PN104

THE DEPUTY PRESIDENT: So, this was after Wouter was dismissed?

PN105

MR HICKEY: Wouter was dismissed in, like, February, and I didn't discover his thefts until May.

PN106

THE DEPUTY PRESIDENT: February 2017?

PN107

MR HICKEY: Correct.

PN108

THE DEPUTY PRESIDENT: Yes.

PN109

MR HICKEY: In that it wasn't so much as a confrontation fight on the spot. I had made a decision not to give him any more work. I wasn't happy with his performance. I caught him cheating on his hours, so I knew he was cheating. And then it wasn't until I was going through the fuel statements in May and I should have been more vigilant, I agree, but I was going back through for another reason. Then I discovered all these diesel transactions and we don't have any diesel vehicles. So, then it sort of grew out of control. So, that was when I rang Hansy, first of all, and got - and demanded the money back. He refused and just said - you know, give me some smart arse answer - smart alec answer, so, that's when I started trying to get information Jordan and I think that if the boss asks you for a direction to give you the details of a job that you've done using his vehicle and his tools and that he knows that I know and vice versa, then there's no reason he shouldn't give me that information unless there's something more serious to hide. I've since been to that job and the person at that address denied that they were there, but the GPS records show accurately that that's exactly where they were and I was suspicious about it at the time but, of course, it's someone's house so you can't do anything. They just say, "Okay, you're now allowed to", so
- - -

PN110

THE DEPUTY PRESIDENT: Now, these GPS records, are they ones you have provided to me in your material?

PN111

MR HICKEY: Yes, yes, I have and I've got copies of them.

PN112

THE DEPUTY PRESIDENT: So, can you take me to those because there's a little bit of material here, so, I just want to make sure I have got the right information.

PN113

MR HICKEY: Yes, it's a page document or it should be a full page. It's got a vertical green line going south and north with, "Ranchwood Street, Browns Plains" written on it.

PN114

THE DEPUTY PRESIDENT: Hang on a minute. Ranchwood Street, Browns Plains, and it's got a red box saying, "Hard to tell which, I " - - -

PN115

MR HICKEY: Correct. "I door-knocked and I'm sure it's the one house just from the occupant's reaction to me."

PN116

THE DEPUTY PRESIDENT: Yes, okay. So, just tell me what this shows me.

PN117

MR HICKEY: It just shows the GPS movements from Jordan's house that morning at 6 am.

PN118

THE DEPUTY PRESIDENT: So, 1 March or 23 March, which is highlighted.

PN119

MR HICKEY: So, no jobs on 31 March at all. So, it was the 31st and just on the left, it's not conclusive, but that just shows all my March job sheets showing that there's nothing there for 31 March.

PN120

THE DEPUTY PRESIDENT: Okay, got you. Right, yes.

PN121

MR HICKEY: So, on 31 March, Jordan's come down from home. He stopped in at my place to get some gear. You can tell - - -

PN122

THE DEPUTY PRESIDENT: So, hang on one second.

PN123

MR HICKEY: Yes.

PN124

THE DEPUTY PRESIDENT: Just tell me where the starting point is. Is that where the "S" is?

PN125

MR HICKEY: Correct, the little red "S".

PN126

THE DEPUTY PRESIDENT: So, that's the starting. That's Jordan - Mr Lamacq's house?

PN127

MR HICKEY: Correct.

PN128

THE DEPUTY PRESIDENT: Right, yes. So, he's come down to where?

PN129

MR HICKEY: He's come down to my place where that loop is down about two-thirds of the way down.

PN130

THE DEPUTY PRESIDENT: Yes, got that, yes.

PN131

MR HICKEY: He's picked up some gear for the job because that's - at the time that's how I knew that it happened and then he's continued further south to Browns Plains and that's where it stopped for most of the day until he's backtracked nearly the identical course. And you can see in the close-up where it's nearly overlapping, but that's irrelevant. The main point of it is the little blue marks in that red box are the point where he was parked up for six hours that day and there's only a couple of houses there and I've been - I've been and door-knocked those ones and the occupants said, "No, no", they hadn't done any - hadn't had any work done. I'm sure it was one of them, but, of course, it's a residence, so there's not much you can do. And the fact that they denied it as well was a little bit funny - I thought a little bit fishy.

PN132

THE DEPUTY PRESIDENT: Okay. So, that's 31 March and that shows stopping most of the day at this street in Browns Plains.

PN133

MR HICKEY: Correct.

PN134

THE DEPUTY PRESIDENT: And the applicant, Mr Lamacq, in that vehicle.

PN135

MR HICKEY: Correct.

PN136

THE DEPUTY PRESIDENT: Right, okay. And at that point, Wouter had already been dismissed?

PN137

MR HICKEY: I'm sure Wouter was there that day. It was a cash job. It wasn't a company job. I'm sure Wouter met him there or something like that. He didn't come in the vehicle with him.

PN138

THE DEPUTY PRESIDENT: But Wouter had been dismissed by then if he was dismissed in February.

PN139

MR HICKEY: Correct. Wouter wasn't working for us at that stage at all.

PN140

THE DEPUTY PRESIDENT: Right, okay. So, the applicant had your vehicle, your materials and this is what - and, so, you got to May and realised there were some discrepancies in the fuel diesel purchases on the fuel card.

PN141

MR HICKEY: Correct.

PN142

THE DEPUTY PRESIDENT: And you started looking back at what had been happening.

PN143

MR HICKEY: Correct.

PN144

THE DEPUTY PRESIDENT: So, on the day, on 31 March, do you remember what you - did you ask about the job?

PN145

MR HICKEY: That was when he told me it was Hansy's aunty's or his aunty's or someone aunty's or maybe grandma, I don't know, because I had a rule with them because the guys would do cash jobs, you know, they'll do it anyway whether you allow them to or not and the rule is basically if it's an emergency, if it's your mum or it's your dad or a close family member, just do it, tell me what you've used, that's fine, you know, I don't even charge for it most of the time. And they - and they came and they asked or Jordan came and he asked for a couple of bits and pieces here and I was like, "Okay, no worries, take it", and that was - - -

PN146

THE DEPUTY PRESIDENT: Did he say it was Wouter's aunty or his aunty?

PN147

MR HICKEY: Someone's aunty. I can't recall.

PN148

THE DEPUTY PRESIDENT: Because, can I just put this to you, if you'd sacked Wouter in February and he said, "I want to do a job for Wouter's aunty", you might not have been happy about that?

PN149

MR HICKEY: I agree with that, yes.

PN150

THE DEPUTY PRESIDENT: So, you don't think it was Wouter's aunty, he said?

PN151

MR HICKEY: I'd agree with that totally. Although, again, I hadn't had a confrontation with Wouter at that stage. I hadn't officially like fired him, but I

just made the decision not to give him any work because I knew he was dodgy and there was stuff going on.

PN152

THE DEPUTY PRESIDENT: So, was Wouter a casual?

PN153

MR HICKEY: Wouter was - Wouter was signed - he started employment in October.

PN154

THE DEPUTY PRESIDENT: Yes.

PN155

MR HICKEY: Come December, he told us, "Look, I'm only weeks off getting my licence, I just need to get signed up just for my Capstone." Capstone is just your last electrical exam before you get your licence.

PN156

THE DEPUTY PRESIDENT: Right.

PN157

MR HICKEY: "I just need to get signed up for that." And I'd caught him cheating already by that stage and I was, like, I ended up doing it because I thought if he's that close, you know, I'll just sign him up, he'll get his licence and off he goes. As it turned out, once I'd signed him up, he was only a second-year apprentice. He was going back to TAFE doing second year and that was - and it just all sort of hit home at once come February that he had taken me for a ride and that it was, "No, you're out." So, I don't - you're right, it probably wasn't Hansy's aunty's that particular job, but it was someone's close relative, I'm sure that that's what they told me.

PN158

THE DEPUTY PRESIDENT: "They"?

PN159

MR HICKEY: Jordan. That's what Jordan told me.

PN160

THE DEPUTY PRESIDENT: That's what Mr Lamacq told you, all right. And, so, you weren't worried about it until later on when you went back and did some looking?

PN161

MR HICKEY: Correct. I mean, I'd given him a couple of bits and pieces, I forget what it was, on good faith and then for him to not give me the address of the job considering he knew that I knew about the job was even more funny in that what was he trying to conceal.

PN162

THE DEPUTY PRESIDENT: So, this was - so, later on you've discovered the diesel issue, you've gotten more concerns about Wouter and you went back and

you then realised that Mr Lamacq had done this job in March and you wanted to know more about it and so you asked him about it and he wouldn't tell you where it was.

PN163

MR HICKEY: Correct.

PN164

THE DEPUTY PRESIDENT: Okay. And when they're doing the job - are you a licensed electrical?

PN165

MR HICKEY: I am.

PN166

THE DEPUTY PRESIDENT: So, it's under your licence?

PN167

MR HICKEY: Well, that particular one wasn't and I remember thinking at - I remember thinking at the time, like, what are they going to do? But we had a couple of other licensed tradesmen that were working with us and quite often the tradesman will turn up at the end of the job, do the connection and that's it.

PN168

THE DEPUTY PRESIDENT: Right.

PN169

MR HICKEY: It's perfectly legal for apprentices and for air-con technicians to do the entire installation right up to the connection to the power supply.

PN170

THE DEPUTY PRESIDENT: Yes.

PN171

MR HICKEY: And that's - and I assume that that's what they were doing.

PN172

THE DEPUTY PRESIDENT: Okay, all right. So, this is the job you were concerned about. Now, is there anything else at the point - at the point you dismissed Mr Lamacq, was there anything else that caused you to dismiss him besides he wouldn't give you the address of the job?

PN173

MR HICKEY: I'd like say at that point there, he actually brought the van back before the deadline, before he was fired. I told him - I had given him until the end of the day, so, I'd agree that I gave him - I'd agree that I had given him a deadline that he would have been fired, but he brought it back. He brought the van back by the end of the day. I had suspicions about other stuff. They were only little - they were only little things, but that was the main point of why I made the deadline. That and I was cranky that, you know, I could be so generous with him, but yet he wouldn't give me the address of the job, so he must have been hiding stuff. There's a couple of other little incidents that we had over the summer. Jordan's

phone was one of them, when I caught him cheating his phone records. That wasn't - it didn't have a huge amount to play in that particular incident.

PN174

THE DEPUTY PRESIDENT: So, what did you catch him doing with his phone, do you say?

PN175

MR HICKEY: Basically, with the prepaid rules now with phones is 40 bucks a month and you can have unlimited calls and texts with most carriers. So, there's a couple of guys I supply the SIM card for and I pay their entire phone bill and a couple of the guys, if they use their phone frequently for work, just calling customers and stuff, I just say, "Put \$40 a month on your time sheet as expenses", and I pay the 40 bucks to cover their phone bill. And it's quite clearly said per month, but I noticed Jordan's was becoming more frequent and more frequent and I'm very busy so I didn't pay much attention. It's only 40 bucks here and there.

PN176

In the end, I confronted him because I noticed it two weeks in a row and I said, "What was this? How come you've got 40 bucks again this week?" And he says, "It's just something, something", and he said it and trailed off, like, sort of, made a bit of a joke out of it. But at the time I was really cranky because he'd tried to take advantage of the fact that I was so busy and forgetful to get more money out of me, and that was when I told him, "That's it, I'm not paying your phone any more at all, you get nothing." And that was over the summer. I haven't got an exact date for you, but that was an example of his dishonesty. I've got - I've got more information on it here.

PN177

MR LAMACQ: If I could jump in, sorry.

PN178

THE DEPUTY PRESIDENT: Yes.

PN179

MR LAMACQ: At the time when Simon said we could get the money for our phones, he said to me in front of Aaron who was outside that we could put \$40 on our expenses, \$40. He didn't specify how often and I was using my phone, my personal phone, all my data to get to jobs. There's no GPS supplied. We were doing jobs from anywhere from Gold Coast to Sunshine Coast, even further, so, it did take a large toll on my data and calls and texts aren't free. So, they're all using my personal phone.

PN180

THE DEPUTY PRESIDENT: So, you're saying it was data as well because you were using your phone as a - - -

PN181

MR LAMACQ: Yes, it was large amounts of - large amounts.

PN182

THE DEPUTY PRESIDENT: So, there wasn't GPS in the vehicle?

PN183

MR LAMACQ: No, there was no GPS in the vehicle. I was using my personal phone.

PN184

THE DEPUTY PRESIDENT: Right.

PN185

MR LAMACQ: It was required pretty much every day.

PN186

MR HICKEY: There are Refidexes in the vehicle.

PN187

THE DEPUTY PRESIDENT: sorry?

PN188

MR HICKEY: There are Refidexes in the vehicle.

PN189

THE DEPUTY PRESIDENT: Refidexes, but not like a - - -

PN190

MR LAMACQ: There were no maps, GPS's, nothing in the vehicles.

PN191

MR HICKEY: It's irrelevant. I mean, I pay Glen's bill every month and he has never gone over his \$40 and I don't go over my \$40, so - - -

PN192

THE DEPUTY PRESIDENT: All right. I understand, yes. Okay, so, you were a bit concerned about his phone use. What else did you have in your mind at the point you dismissed?

PN193

MR HICKEY: At that time, that was really it, just those little things, the phone, the cashies, his association with Hansy and the fuel. At that point in time, I didn't have reason to suspect there were other things until I've gone back through and now I've uncovered a heap more stuff. None of it by itself is probably, you know, apart from the cashies, is a sackable offence, but combined together, it's totally 100 per cent.

PN194

THE DEPUTY PRESIDENT: So, tell me about the fuel. What do you say the material you have provided shows me about fuel?

PN195

MR HICKEY: Wouter's fuel or Jordan's fuel?

PN196

THE DEPUTY PRESIDENT: Jordan's because Wouter is beyond me.

PN197

MR HICKEY: Separate, I agree, yes.

PN198

THE DEPUTY PRESIDENT: I'm not dealing with Wouter.

PN199

MR HICKEY: I agree, I agree.

PN200

THE DEPUTY PRESIDENT: Yes.

PN201

MR HICKEY: There is a certain - Jordan must have done something. My friend started within the first or second day, he told me that Wouter was dodgy and watch him, so - and if Jordan was working with him all summer, he must have known something. So - and then my friend had to go back to his normal job. But Jordan's fuel, there's not a huge - a huge number of discrepancies, but, again, I haven't had time to go right through everything. I've only found the ones that are glaringly obvious where he wasn't - he wasn't anywhere near the fuel purchases at the time.

PN202

THE DEPUTY PRESIDENT: So, did each of them have a card? Was it in a vehicle or was it given to them personally?

PN203

MR HICKEY: It was given to them, but it had the vehicle's registration number on it.

PN204

THE DEPUTY PRESIDENT: On it, right, okay. So, this document, BP Plus fleet control, and you say orange is Wouter using Giraffe's card in Helensvale before he had access to BP app, meaning Giraffe had given him the card, Giraffe wasn't in Helensvale. So, as I understand it, that means you say Mr Lamacq had given Wouter his card and Wouter was using it in Helensvale.

PN205

MR HICKEY: Correct. Wouter's whole excuse in this whole thing is because I agreed on this email to give him access to use the card for his thing without - without actually having a card that I was then liable to pay his fuel for the rest of his life. That's his argument. If we - even if we accept that, which I don't, that email was sent to me on the 6th. On the bottom - on the bottom page there, it's on 6 December.

PN206

THE DEPUTY PRESIDENT: Sorry, which email?

PN207

MR HICKEY: It's (indistinct) BP email that is giving them permission to fill up from their phones.

PN208

THE DEPUTY PRESIDENT: Right.

PN209

MR HICKEY: But these purchases on his BP statement happened on the - happened prior to that as shown by the dates on there, which is November. I did agree that Hansy could fill up his card about three times over the summer, a maximum of four, like, total, the whole time. He wasn't to take his car to every job as I found out later he was doing. It's highly doubtful that this was one of those occasions because it shows that Hansy has taken the fuel card home with him and there's no - well, if Jordan wasn't - Jordan lives in Salisbury, Hansy lives in Merrimac, and so there's no way Jordan would have gone with him to Helensvale to fill up and then back. So, Hansy must have taken that fuel card with him.

PN210

THE DEPUTY PRESIDENT: So, Merrimac is near Helensvale?

PN211

MR HICKEY: Correct, down the Gold Coast.

PN212

THE DEPUTY PRESIDENT: Down the Gold Coast, yes, right, okay.

PN213

MR HICKEY: A good nearly hour's drive in traffic at that time of day.

PN214

THE DEPUTY PRESIDENT: So, this was the card, so, the fuel card, this white Hiace vehicle 111-KZL, was that the card and the vehicle that was assigned to Mr Lamacq or Wouter?

PN215

MR HICKEY: Mr Lamacq.

PN216

THE DEPUTY PRESIDENT: Right.

PN217

MR HICKEY: Wouter didn't have a car or a card.

PN218

THE DEPUTY PRESIDENT: Okay. So, you're saying, well, why is this being - why is this card being used at Merrimac when Mr Lamacq shouldn't have been anywhere near Merrimac?

PN219

MR HICKEY: Correct.

PN220

THE DEPUTY PRESIDENT: Okay. And, also, why was he at Hervey Bay on 4/11/2017 when there was no requirement for him to be at Hervey Bay.

PN221

MR HICKEY: Correct, and that's on the fuel docket there and there's also a fine from when he was up there that he has left for me to pay.

PN222

THE DEPUTY PRESIDENT: Right, okay.

PN223

MR LAMACQ: Could I also just add in that the fuel cards were passed around to anyone that needed them. Aaron didn't have a van for most of the time that he was working for Simon and he was given a card the majority of the times when he needed to fill up. Wayne, another one of Simon's employees, was also given a fuel card very often. He also had my fuel card for a very large amount of time. I'm not denying that those transactions were from Wouter.

PN224

THE DEPUTY PRESIDENT: Well, were you at Hervey Bay on 4 November?

PN225

MR LAMACQ: I was. I probably - I would have been at Hervey Bay at that time, yes.

PN226

THE DEPUTY PRESIDENT: Why were you there?

PN227

MR LAMACQ: I would have been visiting family or it might have been from one of the jobs that Simon has sent me up for.

PN228

THE DEPUTY PRESIDENT: Well - - -

PN229

MR LAMACQ: I can't remember - - -

PN230

MR HICKEY: There was no jobs. There was no jobs at that time. I've got the job sheets from - I've got the job sheets from then.

PN231

THE DEPUTY PRESIDENT: So, if there's no job sheet, so, you could have - you could have been using the company car and fuel card to go and visit your family in Hervey Bay?

PN232

MR LAMACQ: Simon allowed that, yes.

PN233

THE DEPUTY PRESIDENT: Did he?

PN234

MR LAMACQ: Yes, I asked him in person at that time.

PN235

THE DEPUTY PRESIDENT: Right. Mr Hickey, do you know?

PN236

MR HICKEY: I didn't even know about it until I got the fine. Until I got the fine.

PN237

MR LAMACQ: In Hervey Bay? You're talking about the one in Sunshine Coast.

PN238

THE DEPUTY PRESIDENT: No, I'm talking about Hervey Bay where you've used the card. It looks like you used the card and the car in Hervey Bay and also Mr Hickey says you got a fine on that day.

PN239

MR LAMACQ: That would be a separate time because at the time I went to Hervey Bay, you said it was in Gold Coast and I wouldn't have - in Sunshine Coast and I wouldn't have stopped in Sunshine Coast to get a parking fine.

PN240

THE DEPUTY PRESIDENT: Well, there's one in Hervey - there's 4/11/2017, it looks like someone has used that card in Hervey Bay.

PN241

MR LAMACQ: Yes, and can we find out what date the fine - the parking fine was?

PN242

MR HICKEY: You just - you just stated that you wouldn't have stopped in there to get the fine, but the GPS records show you were exactly on that spot getting the fine on that day.

PN243

MR LAMACQ: On the same day?

PN244

MR HICKEY: Yes.

PN245

THE DEPUTY PRESIDENT: Well, where are those records?

PN246

MR HICKEY: They should be with the stuff that you already have, but they're here as well.

PN247

THE DEPUTY PRESIDENT: Yes, I've got a big bundle, so, can you just tell me the page - what the page it was?

PN248

MR HICKEY: The one where it says - the one where it says, "Final notice", well, that's just a copy of the fine.

PN249

THE DEPUTY PRESIDENT: Hang on.

PN250

MR HICKEY: Which there's a GPS record on the left of that image as well.

PN251

THE DEPUTY PRESIDENT: Final notice, hang on.

PN252

MR HICKEY: It's a map with some job sheets on the side of it.

PN253

THE DEPUTY PRESIDENT: Yes, yes, okay.

PN254

MR HICKEY: So, that shows his GPS travel records for that day. On the top right of that page there's also the job sheets for that day showing that there was only two guys working and it was Glen and - - -

PN255

THE DEPUTY PRESIDENT: And one was at Tingalpa and one was at St Lucia.

PN256

MR HICKEY: Correct, both in Brisbane.

PN257

THE DEPUTY PRESIDENT: Yes.

PN258

MR HICKEY: So, Jordan wasn't even working that day, but it shows him up at, well, at Hervey Bay, at Eumundi getting the fine and then back again.

PN259

MR LAMACQ: That's Sunshine Coast, sorry.

PN260

THE DEPUTY PRESIDENT: Yes, Eumundi is on the Sunshine Coast, yes. Hervey Bay is further up, isn't it?

PN261

MR LAMACQ: Yes.

PN262

THE DEPUTY PRESIDENT: So, what date was this?

PN263

MR HICKEY: 4 April, I think.

PN264

THE DEPUTY PRESIDENT: 4 April. So, it's not the - it's not November last year. So, on this day, 4 April, were you up in the Sunshine Coast?

PN265

MR LAMACQ: I was, yes.

PN266

THE DEPUTY PRESIDENT: Right, in the company car?

PN267

MR LAMACQ: Yes, again, Simon allowed me to use the company car.

PN268

THE DEPUTY PRESIDENT: Right. When did you ask him, "Can I take the company car up the Sunshine Coast for the day?"?

PN269

MR LAMACQ: I would have asked him that week.

PN270

THE DEPUTY PRESIDENT: I'm not interested in you would have. I'm interested in when did you ask him.

PN271

MR LAMACQ: Well, yes, that week, the week before.

PN272

THE DEPUTY PRESIDENT: Right. So, you said, "I want to go up and I'm having a day off and I want to take the car up to the Sunshine Coast and use it"?

PN273

MR LAMACQ: Yes, it was for my birthday, yes, 4 April.

PN274

THE DEPUTY PRESIDENT: Right. Do you agree with that, Mr Hickey?

PN275

MR HICKEY: Not at all. The first I knew about it was when I got the fine and the fine was way overdue. They'd already tacked on heaps of fees and if he had have paid it when he first got it, I probably would never have known about it.

PN276

THE DEPUTY PRESIDENT: Okay, did you get the fine?

PN277

MR LAMACQ: I was not aware of it from what Simon - all the emails I got from Simon that it was a \$60 fine. I would have. If I had the fine and knew about the

fine, I would have paid it. It's \$60. I wasn't in bad - I was - Simon and I had like a good relationship at the time, so, I had no reason to leave a fine to him.

PN278

THE DEPUTY PRESIDENT: Right, okay. And anything else you want to say about the diesel, Mr Hickey?

PN279

MR HICKEY: No, it's not Jordan's. I know Jordan wasn't involved in that theft on the large scale as what it was. I just - I just believe he would have known something was up, that's all.

PN280

THE DEPUTY PRESIDENT: Okay, all right. So, those were the things you had in your mind when you dismissed Mr Lamacq?

PN281

MR HICKEY: Well, when I gave the deadline, yes. I, again, reiterate that he brought the van back and resigned before he was dismissed. But, again, I made it.

PN282

THE DEPUTY PRESIDENT: So, you say also he - you say he wasn't dismissed, he resigned?

PN283

MR HICKEY: He brought the van back before the deadline expired, which was 4 or 5 pm that day. I would have dismissed him had he not given me the information, so, I agree I made the conditions as such that he would have been. But he pre-empted that by bringing the van back.

PN284

THE DEPUTY PRESIDENT: So, you saw him bringing it. What happened when brought the van back?

PN285

MR HICKEY: He didn't even bring it back to - back to us. He took it down to a job site that was nearest to his work - nearest to his home, which was on another one of these pages, and it shows the GPS not being activated until it hits that site. So, he brought the van back and he talked to Glen at the time and told him what was going on and he fiddled around - Glen told me that he fiddled around with the dash and with the wiring for a few minutes, which was obviously activating the GPS as the records show and then I had to arrange to get that van back from the site, back to - - -

PN286

THE DEPUTY PRESIDENT: So, who's Glen?

PN287

MR HICKEY: Glen's an employee who still works for me.

PN288

THE DEPUTY PRESIDENT: He still works for you?

PN289

MR HICKEY: Yes.

PN290

THE DEPUTY PRESIDENT: Okay. So, what date was this?

PN291

MR HICKEY: It's on the thing there. 16 May. It shows the beginning of the GPS point, which is remarkable just in that it's such a little piece of information that's so important in that it shows the beginning period when the GPS was first active that day was when it was switch on to be brought back to my house. It doesn't show leaving Jordan's house or what was done all day - what it had done all day prior to that.

PN292

MR LAMACQ: If I could jump in, sorry. I never brought the van to the job site. The job site was down the road from my house. I jumped on my motor bike with the keys to that van and I gave the keys to Glen - Glen - Glen never saw me with the van.

PN293

THE DEPUTY PRESIDENT: So, why did you do that? Why did you give the keys back?

PN294

MR LAMACQ: Well, because I didn't feel right giving the information to Simon, giving someone else's personal information. It wasn't just the details to his - to Wouter's aunty's house. It was his employment details as well, where he was working.

PN295

THE DEPUTY PRESIDENT: What do you mean his employment details?

PN296

MR LAMACQ: Where he was working, currently working.

PN297

THE DEPUTY PRESIDENT: Right, okay. So, basically, you said if he has giving me this ultimatum, he is going to sack me if I don't give the information, then I'm going to get the sack and I'm taking the keys. So, you took the keys back to the - - -

PN298

MR LAMACQ: To Glen, yes.

PN299

THE DEPUTY PRESIDENT: To Glen at the site.

PN300

MR LAMACQ: Yes.

PN301

THE DEPUTY PRESIDENT: And gave them to Glen and that was the end of it.

PN302

MR LAMACQ: He later picked up the van, yes.

PN303

THE DEPUTY PRESIDENT: Right, okay. All right.

PN304

MR LAMACQ: So, there was no way Glen could have seen me playing with the GPS because the van never left my house until they come and picked it up.

PN305

THE DEPUTY PRESIDENT: Right, okay. All right. Is there anything else you want to tell me, Mr Hickey, about the reasons for this all transpiring?

PN306

MR HICKEY: That covers most of my position.

PN307

THE DEPUTY PRESIDENT: Okay. Mr Lamacq, anything you want to tell me?

PN308

MR LAMACQ: Where will I start? So, the messages that I have apparently left out weren't relating to any of my dismissal. I have copies. I'm sure you have copies as well.

PN309

THE DEPUTY PRESIDENT: No, I only have what you attached to your application.

PN310

MR LAMACQ: Yes, well, that's - that's what I had.

PN311

THE DEPUTY PRESIDENT: So, if there's more messages then I'd like to see them.

PN312

MR LAMACQ: So, these - I've got all the ones that Simon sent me. I'm pretty sure I've sent them to you - you've got them there.

PN313

THE DEPUTY PRESIDENT: Yes, well, let's have a look. Callum will come and get them. That's fine. You can stay back there.

PN314

MR HICKEY: If this is the list that was submitted as evidence, it's by no way complete at all.

PN315

THE DEPUTY PRESIDENT: Okay, well, let's have a look.

PN316

MR LAMACQ: There was no phone call from Simon before any of those messages were sent. As I can see, I initiated the first - like, the first message. There were no other interactions between me and Simon apart from his emails which were - - -

PN317

THE DEPUTY PRESIDENT: So, you say the first text message was, "Oy, can you give us a call, please?"?

PN318

MR LAMACQ: Yes, because I had just got off the phone to Walter and Walter - - -

PN319

THE DEPUTY PRESIDENT: Who is Walter?

PN320

MR LAMACQ: Wouter, however you want to pronounce his name. He's South African.

PN321

THE DEPUTY PRESIDENT: Yes.

PN322

MR LAMACQ: He called me telling me that he was - he had just got off the phone to Simon and that he was going to contact Fair Work, Department of Education and everything trying to - going to report him for all of the - for whatever reason he wanted to report him and that, "You should - you should just be warned." So, that's why I called Wouter to see - I tried to call Simon and then I sent him that message.

PN323

THE DEPUTY PRESIDENT: But this series of text messages is, "What's going on with you and Wouter? Did he really report you?"

PN324

MR LAMACQ: Yes.

PN325

THE DEPUTY PRESIDENT: So, he - - -

PN326

MR LAMACQ: Either he was going to report him or he had reported him, I can't remember.

PN327

THE DEPUTY PRESIDENT: But Mr Hickey is saying this message is from Mr Hickey.

PN328

MR LAMACQ: I sent the message to Simon.

PN329

THE DEPUTY PRESIDENT: You sent the message.

PN330

MR LAMACQ: Yes.

PN331

THE DEPUTY PRESIDENT: So, you're the, "Oy, can you give us a call, please?"?

PN332

MR LAMACQ: Yes, that was me, yes.

PN333

THE DEPUTY PRESIDENT: Mr Hickey, "What do you want?"

PN334

MR LAMACQ: Yes.

PN335

THE DEPUTY PRESIDENT: You, "What's going on with you and Wouter? Did he really report you?"

PN336

MR LAMACQ: Yes.

PN337

THE DEPUTY PRESIDENT: And then the rest - so, the light colour is Mr Hickey?

PN338

MR LAMACQ: Yes, the messages on the right are from me.

PN339

THE DEPUTY PRESIDENT: And the dark colour is you.

PN340

MR LAMACQ: Yes.

PN341

THE DEPUTY PRESIDENT: Right, got it, okay.

PN342

MR HICKEY: How come I haven't got a copy of that?

PN343

THE DEPUTY PRESIDENT: It's the same. It's only the same messages, so - - -

PN344

MR LAMACQ: Those were the only instructions I had with Simon from the point - from that day which is the day I was let go.

PN345

THE DEPUTY PRESIDENT: Right, okay.

PN346

MR LAMACQ: Yes.

PN347

THE DEPUTY PRESIDENT: So, what do you say about the period of your employment?

PN348

MR LAMACQ: So, I was still employed by Simon during that period. I did work with Michael at the same time. I did jobs for Simon while I was working for Michael. I was on a - I was casually employed, so, what's casual? One - one shift or day a month or something like that. I think that's the terms of being a casual.

PN349

THE DEPUTY PRESIDENT: Well, have you got any documentation from when you were working with Michael to show what hours you were doing there?

PN350

MR LAMACQ: No, I don't because everything was done digitally and I didn't get copies of the digital receipts or time sheets.

PN351

THE DEPUTY PRESIDENT: Well, did you keep them?

PN352

MR LAMACQ: I'd - there was - you don't get receipts. Well, with the way that Michael did his, you have to lodge your hours you did online and then you didn't get like a printed out receipt or like a copy of it at all. It just went to - - -

PN353

THE DEPUTY PRESIDENT: So you haven't got any record of what you lodged online?

PN354

MR LAMACQ: For Michael?

PN355

THE DEPUTY PRESIDENT: Yes.

PN356

MR LAMACQ: No.

PN357

THE DEPUTY PRESIDENT: Do you have a group certificate from Michael?

PN358

MR LAMACQ: No, I don't.

FALSE (SEE Group Certificate Exhibit x)

PN359

THE DEPUTY PRESIDENT: How come?

PN360

MR LAMACQ: I don't think he sent one. I might - I might have one in my emails.

PN361

THE DEPUTY PRESIDENT: Okay, well, do you want to check that?

PN362

MR LAMACQ: Yes.

PN363

MR HICKEY: I'd like to say that he was full time at Michael's there for at least a month that I know about. That was every day of the week.

PN364

THE DEPUTY PRESIDENT: Because Michael would have sent you that 30 June as well, wouldn't he?

PN365

MR LAMACQ: Sorry?

PN366

THE DEPUTY PRESIDENT: Michael would have had to send you a group certificate for the period of the year ending 30 June?

PN367

MR LAMACQ: Yes, he would have.

PN368

THE DEPUTY PRESIDENT: So, can you just have a look at and see if you've got that.

PN369

MR LAMACQ: I will do.

PN370

THE DEPUTY PRESIDENT: Okay.

PN371

MR LAMACQ: I'm not able to find that.

PN372

THE DEPUTY PRESIDENT: Okay. And can I just show you this document that's been provided. This is your employment contract, as I understand it. Do you recognise that document?

PN373

MR LAMACQ: I don't.

PN374

THE DEPUTY PRESIDENT: Is that your signature on the back of it?

PN375

MR LAMACQ: It could be, but it does not look like my handwriting.

PN376

THE DEPUTY PRESIDENT: Okay. Do you want to show - you say you've never seen that before?

PN377

MR LAMACQ: It does not - no.

PN378

THE DEPUTY PRESIDENT: Right. Mr Hickey, can you look at that document. Is that what you say the employment contract is with Mr Lamacq?

PN379

MR HICKEY: That's the standard one.

PN380

THE DEPUTY PRESIDENT: That's your standard contract, is it? "If you don't like the wage rate, you can fuck off. No one is forcing you to work here."

PN381

MR HICKEY: Pretty much, yes, well, I know - I understand it's probably not professional but - - -

PN382

THE DEPUTY PRESIDENT: No, perhaps, you should rethink your employment relations practices, Mr Hickey, can I say that?

PN383

MR HICKEY: Yes, I'd agree with that, but at the time, I added that in. It's a template that you downloaded and add your own stuff to it.

PN384

THE DEPUTY PRESIDENT: Right.

PN385

MR HICKEY: But, yes, it's probably right.

PN386

THE DEPUTY PRESIDENT: Can you get it back, please, Callum? It's really not a good look, I have to say. Anyway, Mr Lamacq but for this issue arising because here's the thing, if I do find you come within the minimum employment period and I find that you've been unfairly dismissed, one of the key issues I have to consider is but for this occurring, how long would you have stayed in employment and can I put the proposition to you that probably not long?

PN387

MR LAMACQ: I would have liked to have finished my apprenticeship at least.

PN388

THE DEPUTY PRESIDENT: How long did you have to finish your apprenticeship?

PN389

MR LAMACQ: It's a four-year apprenticeship. I was not quite a year in.

PN390

THE DEPUTY PRESIDENT: Right. And you seriously think that Mr Hickey taking the view he took about your involvement with Wouter and the exchanges between the two of you that you would have stayed there for a lengthy period of time?

PN391

MR LAMACQ: Well, to be fair, after - when I had the choice of giving the van - not having a job or giving Wouter's details, I didn't see myself being treated the same, even if I did give him the details because of everything that has happened, how angry he got with all the messages and all of that. So, that's one reason I chose that decision. And, like, I was happy there. I was - I had my own van. I didn't know any other apprentices that had their own vans. I was allowed to go do my own jobs by myself or with other apprentices. I was quite happy at the job, even though it was only seasonal work. So, I could see myself - could have seen myself staying there for my full apprenticeship.

PN392

THE DEPUTY PRESIDENT: Okay. What do you think, Mr Hickey?

PN393

MR HICKEY: I agree with most of his statement that the incident with Wouter did change everything at the company in that I had a lot on that summer and I felt I had been taken advantage of by him and there's another one as well - as well as those two. It probably wouldn't have been the same, but by the same token, I believe that if I was able to talk to that person in Browns Plains and do - spend more time with the investigation, I'd uncover a whole lot more. I don't think - after that incident, I don't think he would have been able to finish his time there. We did have a good relationship up until that point, which was soured by a few minor incidents, but, you know, that was - and it wasn't - it wasn't Hansy's personal details, I was interested in. I was interested in where he was working, but the primary - the primary thing, which is even on these texts is, is that I want that address of that cash job he did. And that was specifically the point or the goal. So, when he says it's Hansy's personal details, it's the address of the job that he did in my vehicle using my equipment and it was - it's something that I should go and check to make sure the standard of work was there, whether there was a tradesman to sign off on it and what materials went into it, whether it was just the stuff that I gave them or whether there was more - more to it.

PN394

MR LAMACQ: If I could jump in, during that whole - pretty much my whole apprenticeship, I was doing jobs with my own van. There was never a trade qualified person that come and fit off the power - the power or the legally required things, so - - -

PN395

THE DEPUTY PRESIDENT: Well, here's the thing, I'm not the Electrical Licensing Board.

PN396

MR LAMACQ: I'm just - - -

PN397

THE DEPUTY PRESIDENT: You know, that's not my issue. But you can agree or disagree with this, that leaving aside the unfortunate language in the exchange and, again, Mr Hickey, it probably would assist if you just confined yourself to not using offensive language in the text messages.

PN398

MR HICKEY: I'd agree with that.

PN399

THE DEPUTY PRESIDENT: But Mr Hickey was asking, arguably, a reasonable question. He wasn't asking you for - in these text messages, he wasn't asking you for Wouter's address. He was saying, "Where is the job that you did on this particular day?"

PN400

MR LAMACQ: I won't disagree with that, but if - - -

PN401

THE DEPUTY PRESIDENT: Well, tell me where in the text message it tells me that he was asking you for Wouter's home address and personal information?

PN402

MR LAMACQ: It was - it should be on the first page where it says - - -

PN403

THE DEPUTY PRESIDENT: Well, leaving aside, "Cunt's been charging \$350", "What's the address of that cashie you did with him recently? It wasn't his aunty place. You can tell me where Hans is working and where that cashie is.

PN404

MR LAMACQ: Yes.

PN405

THE DEPUTY PRESIDENT: So, you can agree or disagree with this. You could have said, "I'm not comfortable telling you where he's working or I don't know where he's working, but here's the address of where we went and did the job."

PN406

MR LAMACQ: I don't believe it was to check our standard of work. He has - - -

PN407

THE DEPUTY PRESIDENT: Whatever you believed, let me put this to you and you can agree or disagree with it. And I accept it's highly offensive language, et cetera, but you're using - you and Wouter to do this job, you're using Mr Hickey's

vehicles, Mr Hickey's equipment, Mr Hickey's time, diesel to get there, et cetera, and he's - why is he not entitled to say, "Where did you do that job? I want to know"?

PN408

MR LAMACQ: He allowed us to do many cashies. He changed the rules or his rules of being able to do any cashies for anyone to just family and then later, I think a month after that job or just after that job, he's changed it to just being electrical only and leave the air-cons for him.

PN409

THE DEPUTY PRESIDENT: But he asked you for the address. What was the issue with you providing the address of the job at which his materials and equipment were used?

PN410

MR LAMACQ: I didn't see it relevant because it wasn't through his business.

PN411

MR HICKEY: The other thing I'd like to add is does it sound logical that I would allow him to do unlimited infinite cashies for whoever they like? It doesn't sound - it's not logical. Our business couldn't survive if the - if every - all the staff were just doing cashies for everyone.

PN412

MR LAMACQ: I can disagree and say - and Aaron can back me up saying that he did allow us to do cashies.

PN413

MR HICKEY: Again, I've admitted to that and I said - all I said for your close personal - for your family - immediate family.

PN414

THE DEPUTY PRESIDENT: Yes, I understand.

PN415

MR LAMACQ: It wasn't always just for close personal.

PN416

THE DEPUTY PRESIDENT: But whether Mr Hickey allowed you to do cashies or not, he was asking you, "What was the address of this one because now I'm pretty unhappy about it." And you can agree or disagree with me, but that's what he is asking you. He's not asking you for Wouter's home address so I can go around and do whatever. He's asking you for the address at which that cashie was done and you could have said, "Not giving you his workplace, don't even know it or whatever, but here's the address."

PN417

MR LAMACQ: I didn't actually know what the address was because Wouter actually showed from Simon's GPS's coordinates. We met at Simon's house and then he showed me the directions from there. I followed him.

PN418

THE DEPUTY PRESIDENT: Who met at Simon's house?

PN419

MR LAMACQ: I met at Simon's house with Wouter - to meet Wouter there and then from there, I followed Wouter to the address.

PN420

MR HICKEY: No, Wouter never ever came to my house that day, never, and I can get the CCTV. I don't have it here.

PN421

THE DEPUTY PRESIDENT: Leaving that aside, you can agree or disagree with this, you could have assisted Mr Hickey by telling him, "Look, I can't remember exactly, but it was Browns Plains, I think it was this street, I could probably - I followed Wouter there, I could probably - you know, if I drove back there I could probably find it again." You could have assisted with what the address of the cashie was, couldn't you?

PN422

MR LAMACQ: I could have, yes.

PN423

THE DEPUTY PRESIDENT: And you chose not to.

PN424

MR LAMACQ: Yes.

PN425

THE DEPUTY PRESIDENT: Right, okay. All right. Now, you've got two witnesses, one of them wants to tell me she was with you when you got the text messages.

PN426

MR LAMACQ: Yes.

PN427

THE DEPUTY PRESIDENT: Not really - - -

PN428

MR LAMACQ: Yes, that's fine.

PN429

THE DEPUTY PRESIDENT: - - - not really going to assist me. I know you got the text messages.

PN430

MR LAMACQ: Yes.

PN431

THE DEPUTY PRESIDENT: You've provided copies of them. And what's the other one going to tell me?

PN432

MR LAMACQ: Well, he was actually fired the day after for literally no reason.

PN433

THE DEPUTY PRESIDENT: Yes, well, that's not a matter that's for me, yes.

PN434

MR LAMACQ: Yes, that's not a matter - but he was - he can back me up saying that the fuel card was given around to anyone, that Simon allowed us to do cashies whenever we liked at the time.

PN435

THE DEPUTY PRESIDENT: But, again, cashies - is a business person going to say, "Sure, take my van, take my equipment, use my diesel and go and do whatever you like whenever you like for whoever you like." Is that what you're asking me to accept?

PN436

MR LAMACQ: Well, he has said to me before the quiet season where I worked with Michael that I could go - if I replaced the materials, I could go off on my own and do cash work using his vehicle.

PN437

THE DEPUTY PRESIDENT: So, you replaced the materials, but not his fuel and his - - -

PN438

MR LAMACQ: No, because he allowed to use the van for, like, our own personal reasons as well.

PN439

THE DEPUTY PRESIDENT: Right, okay. All right. Look, I think Mr Hickey has agreed he let you do cashies. I don't think I even need to hear from the other witness, particularly. I mean, you can call him if you want to.

PN440

MR HICKEY: I don't agree he was fired. He failed his TAFE and that.

PN441

THE DEPUTY PRESIDENT: yes, but I'm not dealing with whether he was fired or not, so, I'm not even remotely interested. If you want to call him, we'll swear him in and you can get him to tell me whatever he wants to tell me. But I'm not interested in hearing about his tale of woe, I can assure you. I'm dealing with yours.

PN442

MR LAMACQ: Yes. I don't think it's necessary.

PN443

THE DEPUTY PRESIDENT: All right. Okay. Anything else you want to say?

PN444

MR HICKEY: No, I've said everything I need to, I think.

PN445

THE DEPUTY PRESIDENT: All right, okay. All right, well, I'll indicate that I will reserve my decision. You're not seeking reinstatement, as I understand it, Mr Lamacq.

PN446

MR LAMACQ: No.

PN447

THE DEPUTY PRESIDENT: No, no.

PN448

MR LAMACQ: Before we finish up, I'd also like to add in a message I was sent last week from Simon. It was a threat.

PN449

THE DEPUTY PRESIDENT: A text message?

PN450

MR LAMACQ: It was an email.

PN451

THE DEPUTY PRESIDENT: An email. Have you got a copy of it?

PN452

MR LAMACQ: I do.

PN453

MR HICKEY: That in no way constitutes any threat.

PN454

MR LAMACQ: Simon has changed his website since that email was sent and on it it did have a face - Wouter's face with - pretty much slandering him saying that he's a thief, this is his address.

PN455

MR HICKEY: It's not slander. It's true and under the civil code, I can publish it if it's true.

PN456

MR LAMACQ: And all sorts of things, defaming Wouter and pretty much threats saying - - -

PN457

MR HICKEY: Again, Wouter's free to lodge a civil action and in which case I can prove it's true and that's it, dismissed.

PN458

THE DEPUTY PRESIDENT: Okay. So, you're saying this was a threat against you in relation to your unfair dismissal application?

PN459

MR LAMACQ: Yes.

PN460

THE DEPUTY PRESIDENT: Right, okay. Thank you. I will mark that and do you agree you sent this email, Mr Hickey?

PN461

MR HICKEY: I agree I sent it, but I don't agree it constitutes a threat. I agree it represents fair and accurate reporting of the truth as I see it.

PN462

THE DEPUTY PRESIDENT: Well, it says, "If you cancel your Friday extortion attempt before close of business tomorrow, I will refrain from publishing the Jordan Lamacq version. Do you really want my entry being number 1 of page 1 of Google search results for 'Jordan Lamacq'."

PN463

MR HICKEY: I'd agree that's exactly what it said.

PN464

THE DEPUTY PRESIDENT: And can I put it to you that by that you are saying, "Withdraw your application in the Fair Work Commission"?

PN465

MR HICKEY: I agree with that.

PN466

THE DEPUTY PRESIDENT: Right.

PN467

MR HICKEY: I'd also state that - - -

PN468

THE DEPUTY PRESIDENT: Well, perhaps, you should stop talking now, Mr Hickey, because it is an offence under the Fair Work Act to threaten a person or to in any way threaten adverse action against a person because they have made an application to the Fair Work Commission or even if they are giving evidence or have made a statement to the Fair Work Commission. So, I don't think you should keep on talking because you're potentially incriminating yourself in relation to the email. And I will deal with it in the appropriate way and, Mr Lamacq, if you get any more things that you think are threatening, I suggest you contact the police.

PN469

MR LAMACQ: I will do.

PN470

THE DEPUTY PRESIDENT: Yes, all right. And, Mr Hickey, you should refrain from sending those kinds of emails because it's an offence under the Fair Work Act and it's one that I may have to consider reporting to the appropriate authorities.

PN471

MR HICKEY: I wasn't aware, but, okay.

PN472

THE DEPUTY PRESIDENT: So, we can do without it, thank you. All right. Well, I will indicate that I will - sorry, Mr Lamacq, before we finish, have you obtained other employment?

PN473

MR LAMACQ: I have not.

PN474

THE DEPUTY PRESIDENT: So, since your dismissal, you haven't obtained other employment?

PN475

MR LAMACQ: No, and I believe that's greatly - - -

PN476

THE DEPUTY PRESIDENT: Have you been looking?

PN477

MR LAMACQ: Yes, I have. I have had a fair few interviews with other companies and I believe that my dismissal has been a large factor of my unemployment. Most of the time when they - well, my previous employment has brought up, the interview ends pretty much afterwards.

PN478

THE DEPUTY PRESIDENT: So, what do you say?

PN479

MR LAMACQ: I try to go into detail without it sounding too bad because obviously it's an interview, but I pretty much say I was unfairly dismissed because I failed to give details to my employer that were irrelevant.

PN480

THE DEPUTY PRESIDENT: Okay.

PN481

MR HICKEY: They're welcome to call me a reference.

PN482

THE DEPUTY PRESIDENT: Sorry?

PN483

MR HICKEY: They're welcome to call me for a reference.

PN484

THE DEPUTY PRESIDENT: Well, you could forgive Mr Lamacq if he didn't get anyone to call you for a reference, Mr Hickey. I could well understand someone who'd worked for you wouldn't. The last person on earth they would offer as a

referee would be you given the tone of your commentary. But, in any event, I understand, so you haven't gained alternative employment.

PN485

MR LAMACQ: No.

PN486

THE DEPUTY PRESIDENT: And are you receiving unemployment benefits?

PN487

MR LAMACQ: Yes.

PN488

THE DEPUTY PRESIDENT: And they are?

PN489

MR LAMACQ: Youth allowance from Centrelink.

PN490

THE DEPUTY PRESIDENT: Youth allowance.

PN491

MR LAMACQ: Yes.

PN492

THE DEPUTY PRESIDENT: All right. And how much is that?

PN493

MR LAMACQ: I'm only getting 560 a fortnight.

PN494

THE DEPUTY PRESIDENT: 560 a fortnight.

PN495

MR LAMACQ: Yes.

PN496

THE DEPUTY PRESIDENT: And I've got details of your pay slips to show me what your earnings were before that. Yes, all right, okay. Thank you.

PN497

MR HICKEY: Thank you.

PN498

THE DEPUTY PRESIDENT: We'll adjourn.

ADJOURNED INDEFINITELY

[11.20 AM]

LIST OF WITNESSES, EXHIBITS AND MFIs

JORDAN LAMACQ, SWORN.....PN7
SIMON HICKEY, SWORN.....PN9