



TASMANIAN INDUSTRIAL COMMISSION

CITATION: Radu Georghe Tudor v Minister administering the State Service Act 2000/Department of Health [2026] TASIC 50

PARTIES: Radu Gheorghe Tudor (Applicant)

Minister Administering the State Service Act 2000/Department of Health (Respondent)

SUBJECT: Industrial Relations Act 1984, s 29(1A) application for hearing of an industrial dispute

FILE NO: T14932 of 2022

HEARING DATE(S): 18 November 2022, 9 February 2023 (President D J Barclay)

HEARING LOCATION: Microsoft Teams

DATE REASONS ISSUED: 11 August 2026

COMMISSIONER: Commissioner S D Thompson

CATCHWORDS: Industrial Law – Termination of employment – COVID-19 pandemic – Public health order rendered duties unlawful unless vaccinated or exempt – Whether valid reason for termination based on breach of lawful and reasonable direction and operational requirements – Whether termination otherwise unfair.

REPRESENTATION:

R Tudor, the Applicant

M Jehne (State Litigation Office) for the Respondent

**RADU GEORGHE TUDOR v MINISTER ADMINISTERING THE STATE SERVICE
ACT 2000/DEPARTMENT OF HEALTH**

REASONS FOR DECISION

11 August 2026

[1] This is an application for an unfair dismissal remedy arising out of the termination of Mr Tudor's employment on 13 April 2022. Until then, Mr Tudor worked for the Department of Health (the Department) as a systems support manager for the 'eHealth' information technology program.

[2] It is notorious that the world experienced the COVID-19 pandemic from late 2019 onwards. Tasmania was not immune. In response, the Director of Public Health (the Director) issued several directions under the *Public Health Act 1997* (the PHA). One such direction required employees of the Department, including Mr Tudor, to provide evidence of sufficient vaccination against COVID-19 or a valid medical exemption. Mr Tudor did neither of those things. The Department's Secretary then directed Mr Tudor to comply. But Mr Tudor did not. The Secretary terminated Mr Tudor's employment on the basis that he failed to comply with a lawful and reasonable direction.

[3] This case is not about COVID-19. It is not about vaccinations. It is not about privacy law. It is about whether the impediment to Mr Tudor performing his duties and his failure to comply with his employer's direction justified his termination. I conclude that the Department had a valid reason for terminating Mr Tudor and that his termination was not unfair. Mr Tudor's application will be dismissed.

Reasons for the delay in giving this decision

[4] Before explaining why Mr Tudor's application fails, it is appropriate to address the lengthy delay in determining this matter.

[5] The hearing was conducted by Microsoft Teams on 18 November 2022 and 9 February 2023. The Commission reserved its decision at the end of the hearing but the matter was not determined prior to the end of the appointment of the Commissioner who heard it. The matter was recently reallocated to me. With the parties' consent, I have read the transcript and had regard to the parties' documentary evidence and submissions. There was very little oral evidence; documents were tendered through a representative of the Department and she was cross-examined.¹ Because credit findings need not be made, I do not consider my reliance on the transcript in place of observations of the sole witness' evidence to have adversely affected my ability to determine the matter.

[6] The Commission apologises to Mr Tudor and the Department for the delay.

¹ Transcript p30.

Facts

[7] The facts are not in dispute. My findings are based on the documentary evidence as well as the statement and oral evidence of Ashleigh Thompson,² an employee relations consultant within the Department.

[8] Mr Tudor was a permanent employee under the *State Service Act 2000* (the SSA), having commenced with the Department on 7 June 2021. He worked on the Department's eHealth program, which was part of the 'Health ICT' area of the Department. Mr Tudor was accountable to, amongst other persons, Barbara Ringeisen Arnold. Ms Arnold was the Director eHealth. As an employee under the SSA, Mr Tudor was subject to the State Service Code of Conduct under s 9 (the Code).

The Public Health Direction is issued

[9] As I foreshadowed earlier, this matter has its genesis in the pandemic. The Director issued several directions under the PHA over the course of the pandemic. He was permitted to do so by the PHA, s 16. The direction in issue is Direction No 7, described as 'Public Health Direction – Vaccination Requirements for Certain Workers' (the PH Direction).³ It is a lengthy document which need not be set out in full. Relevant to Mr Tudor's case, it provided that from 31 October 2021, a State Service employee who worked for or on behalf of the Department was to be sufficiently vaccinated against COVID-19. If the employee was not vaccinated, or if there was no relevant exception, the employee was not permitted to provide services to the Department.

[10] Two aspects should be noted. First, this part of the PH Direction applied not just to front-line or public-facing employees, but to the Department's employees at large. Second, the PH Direction was enforceable against both the Department and its employees. Non-compliance was punishable by a fine or imprisonment.

The Department requests its employees' compliance

[11] To comply with the PH Direction, the Department requested that its employees provide evidence of either sufficient vaccination or a relevant exemption. In substance, this request had the same effect as the PH Direction. It was made by an email sent from the Secretary to all employees, including Mr Tudor, on 24 September 2021.⁴

[12] The email referred to the PH Direction, noted that all employees were required to provide evidence of vaccination or exemption, and provided details of how to provide that information. The Secretary or other representatives of the Department made similar requests by email over the following weeks.

[13] Although none were addressed to Mr Tudor personally, the Department nonetheless made requests by email on the following days in October 2021: 5th,⁵ 7th,⁶

² Ibid p23

³ Exhibit R2 p10.

⁴ Ibid p4.

⁵ Ibid p28.

⁶ Ibid p24.

14th,⁷ 15th,⁸ 19th,⁹ 25th,¹⁰ again on the 25th,¹¹ and 27th.¹² I will explain an additional email in detail: On 21 October 2021, an email from the Secretary earlier that day was forwarded by the Director eHealth to her team, including Mr Tudor, encouraging all employees to provide their vaccination status by 22 October in order to finalise rosters after 30 October. The email informed employees that if they failed to provide evidence of sufficient vaccination by 30 October, they would (i) be unable to enter a medical or health facility in Tasmania to perform work; (ii) be the subject of a disciplinary process to terminate their employment if a relevant permanent employee (which Mr Tudor was); and (iii) not be paid from 31 October.

[14] Mr Tudor did not comply with the Department's requests. The Department had earlier warned that:¹³

If you are a permanent employee of the Department of Health, on and from 31 October 2021 a State Service process will commence to terminate your employment. You will not be paid on and from 31 October during this process.

[15] As will be seen, that is what happened.

The Department's lawful and reasonable direction to Mr Tudor

[16] Faced with Mr Tudor's non-compliance, the Department then wrote to him individually about the matter.

[17] On 31 October 2021, the Secretary wrote to Mr Tudor. She noted that he had not provided evidence that he was either sufficiently vaccinated or not required to be vaccinated by the PH Direction. The letter stated that as Mr Tudor was unable to carry out his duties he was stood down effective 31 October. The letter also directed him to:¹⁴

provide evidence of being sufficiently vaccinated as requested by the [PH Direction] or that you meet the requirements of paragraph (g) for an exemption as soon as possible, but no later than 5pm Sunday, 7 November 2021.

[18] It noted that:¹⁵

Failure to comply with this lawful and reasonable direction may result in me taking action to determine whether a breach of the [Code] has occurred... If a breach is so determined, there is a risk that your employment could be terminated in accordance with s 44 of the [SSA].

[19] I will call this the Department's lawful and reasonable direction (the LRD).

[20] It is uncontroversial that Mr Tudor did not comply with the LRD. The Secretary therefore wrote to him on 15 November 2021. Her letter noted that Mr Tudor had been

⁷ Ibid p30.

⁸ Ibid p32.

⁹ Ibid p36.

¹⁰ Ibid p51.

¹¹ Ibid p52.

¹² Ibid p61.

¹³ Ibid.

¹⁴ Ibid pp278-279.

¹⁵ Ibid.

directed on 31 October 2021 to provide evidence of sufficient vaccination as soon as possible but no later than 5:00pm 7 November 2021. The letter went on to state that Mr Tudor had not done so and an investigation into an alleged breach of the Code had commenced under Employment Direction No 5 under the SSA (ED5). Mr Tudor was invited to respond in writing by 5:00pm on 22 November 2021.¹⁶

The Code of Conduct investigation

[21] That same day, being 15 November 2021, the Secretary appointed an investigator, Gemma Merrick, to investigate whether Mr Tudor had breached the Code by failing to comply with the LRD. Clause 6 of the Code states that:

An employee must comply with any standing orders made under section 34(2) and with any lawful and reasonable direction given by a person having authority to give the direction.

[22] Ms Merrick duly investigated the matter in accordance with ED5. She afforded Mr Tudor an opportunity to participate. Over the following days, Mr Tudor sent several emails to the Secretary, Ms Merrick, or Health HR about the investigation and related matters. Significantly, Mr Tudor did not contend that he had complied with either the PH Direction or the LRD. Instead, Mr Tudor challenged the PH Direction, the LRD, and Ms Merrick's appointment.

[23] Ms Merrick found there to be reasonable evidence to substantiate the allegation that Mr Tudor had failed to comply with a lawful and reasonable direction.

Mr Tudor's employment is terminated, Mr Tudor appeals to the Commission

[24] The Secretary wrote to Mr Tudor on 8 February 2022.¹⁷ Her letter enclosed Ms Merrick's report and indicated her inclination to accept its findings and terminate his employment. She invited Mr Tudor to respond by 5:00 pm on 22 February 2022.

[25] The Secretary subsequently delayed her decision and considered some material sent by Mr Tudor which, in substance, challenged the LRD. Evidently, the Secretary did not change her mind.

[26] On 21 April 2022, she again wrote to Mr Tudor. This time she gave notice of her decision to terminate his employment effective 23 February 2022.¹⁸ I observe that the letter was dated *after* the putative termination date. In any event, nothing turns on it: the termination was effective 21 April 2022. The reason for Mr Tudor's termination was his breach of the Code.

[27] Mr Tudor then challenged his termination in the Commission.

Unfair dismissal principles

[28] This is an unfair dismissal case. The *Industrial Relations Act 1984* (IRA), s 30 addresses disputes relating to termination of employment. An employee with a reasonable expectation of continuing employment must not be terminated unless there

¹⁶ Ibid pp250-251.

¹⁷ Ibid pp405-407.

¹⁸ Ibid pp 154-156.

is a valid reason connected to the employee's capacity, performance, or conduct, or the employer's operational requirements.¹⁹ The employer bears the onus of establishing a valid reason. I accept the Department's submission that it need only identify a valid reason, which need not be the same reason as that which was relied on for termination. But the circumstances giving rise to that reason must have existed at the time of termination.²⁰

[29] That is not the end of the matter. If a termination has a valid reason, it may nonetheless be challenged on the basis that it is unfair. The employee has the onus of proving unfairness.²¹ Validity and fairness must not be conflated. Unfairness does not, by the fact itself, establish absence of a valid reason. A termination may be for a valid reason but nonetheless unfair.²²

[30] Where an employee is terminated for reasons connected to capacity, performance, or conduct, she or he must be "informed of those reasons and given an opportunity to respond to them, unless in all the circumstances the employer cannot be reasonably expected to provide such an opportunity".²³ But the employer is not obliged to do this where the valid reason is connected with the "operational requirements of the employer's business".²⁴

[31] Thus, I must decide whether there is a valid reason for Mr Tudor's termination. If there is, I must determine whether it was nonetheless unfair. But Mr Tudor need not establish *error* on the part of the employer.²⁵

Did Mr Tudor have an expectation of continuing employment?

[32] Continuing employment is defined as "employment that is of a continuing or indefinite nature or for which there is no expressed or implied end date to the contract..."²⁶

[33] Mr Tudor had an expectation of continuing employment. So much is conceded by the Department and is apparent from Mr Tudor's appointment as a permanent employee under the SSA, s 37(3)(a).

Is there a valid reason for Mr Tudor's termination connected to his capacity or conduct?

[34] The test for whether there is a valid reason is well-established and uncontroversial. A reason will be valid if it is "sound, defensible or well-founded".²⁷

[35] The Department relies on two reasons for termination notwithstanding that the Secretary relied only on Mr Tudor's breach of the Code. It is convenient to consider

¹⁹ *Industrial Relations Act 1984*, s 30(3).

²⁰ *Byrne v Australian Airlines Ltd* (1995) 185 CLR 410 at 430 and 467 (McHugh and Gummow JJ); *Sunbird Plaza Pty Ltd v Maloney* (1988) 166 CLR 245 at 262 (Mason CJ).

²¹ *Industrial Relations Act 1984*, s 30(6).

²² *Cosco Holdings Pty Ltd v Thu* (1997) 79 FCR 566 at 592 (Lindgren and Lehane JJ).

²³ *Industrial Relations Act 1984*, s 30(7).

²⁴ *Industrial Relations Act 1984*, s 30(3)(a) and (7).

²⁵ *Minister Administering the State Service Act v Tasmanian Industrial Commission* [2023] TASSC 10 at [71], [81]-[84] (Porter AJ).

²⁶ *Industrial Relations Act 1985*, s 30(1).

²⁷ *Selvachandran v Peterson Plastics Pty Ltd* (1995) 62 IR 371 at 373 (Northrop J); followed in *Konrad v Victoria* (1999) 91 FCR 95 at 102-102 (Ryan J) and 105 (North J).

each reason separately, recalling that the Department need only establish one of them.

The Department's operational requirements

[36] The Department's primary contention is that Mr Tudor was unable to perform his duties because of the PH Direction. It required *all* the Department's employees to provide evidence of sufficient vaccination or a valid exemption. Mr Tudor did neither of those things.

[37] I repeat that the PH Direction was not limited to front-line, patient-facing, or clinical roles. It applied to *all* employees of the Department. I understand Mr Tudor to contend it to have been an overreach and that he could have worked from home to mitigate any risk. This misses the point. Had Mr Tudor performed his duties, he and the Department would have been in breach of the PH Direction. It was the PH Direction, not the LRD, which rendered Mr Tudor's performance of his duties unlawful. The employer had no control over the PH Direction.

[38] I understand Mr Tudor to attack the validity of or justification for the PH Direction. That is presently irrelevant. I must take the PH Direction at face value. On its face, it rendered Mr Tudor's performance of his duties unlawful.

[39] So viewed, Mr Tudor was unable to perform his duties from 31 October 2021. This was a genuine reason for his termination. The Department made extensive efforts to encourage Mr Tudor to provide evidence of vaccination or a sufficient exemption. Mr Tudor was warned that he would be unable to perform his duties (inaptly described by the Department as being 'stood down') were he not to comply. The situation continued for nearly six months. Mr Tudor was not performing duties, but his employment had not yet been terminated. There was no suggestion that Mr Tudor's compliance with the PH Direction or its revocation was imminent.

[40] As a result, the Department was deprived of its ability to manage its workforce including allocation of work. There was no work that Mr Tudor could perform. That it *may* have been possible for Mr Tudor to be transferred to another Department²⁸ not subject to the relevant parts of the PH Direction is not to the point. Termination may be valid even if is not an unavoidable consequence of the operational reason.²⁹ Its employees being lawfully able to render service was a genuine operational requirement of the Department.

[41] I find that the Department's operational requirements were a valid reason for Mr Tudor's termination.

²⁸ Noting that, strictly speaking, the employer is not the Department but the Minister Administering the *State Service Act 2000*: *State Service Act 2000*, s 14.

²⁹ *Carter v Village Cinemas Australia Pty Ltd* (2007) 158 IR 137 at [28]; *Cosco Holdings Pty Ltd v Thu* (1997) 79 FCR 566 at 592 (Lindgren and Lehane JJ). As to redeployment or transfer, see *Tasmania Development and Resources v Martin* (2000) 97 IR 66.

Mr Tudor's capacity, conduct, and performance

[42] In the alternative, the Department contends that Mr Tudor's breach of the Code was a valid reason for his dismissal.

[43] Mr Tudor's employment was terminated on the basis that he breached the Code. He breached the Code by failing to comply with the LRD. So much is not disputed. I understand Mr Tudor to contend that the LRD was not, in fact, lawful and reasonable. If it were not lawful and reasonable, failing to comply with it would not constitute a breach of the Code.

[44] Contrary to Mr Tudor's submission, the substance of the LRD need not be expressly authorised under a contract or agreement. It is both an implied term and a requirement of the Code, cl 6 that an employee will obey the employer's lawful and reasonable directions.³⁰ A direction or requirement is lawful if it involves no illegality and is within the scope of the employment contract.³¹ But there need not be an express term in the contract. Mr Tudor was required to perform duties. The duties could only be carried out if in compliance with the PH Direction. The LRD was directed to ensuring compliance with the PH Direction so that Mr Tudor could carry out his duties. I accept the Department's submission that whether or not Mr Tudor could perform any service for his employer is "squarely within the employer/employee relationship and goes directly to Mr Tudor's duties for the State".

[45] Mr Tudor makes several arguments why the LRD was neither lawful nor reasonable.³² Several of these are pseudo-legal arguments involving phrases such as "living persons [with] rights from nature" and "personal data of proprietary value". They are meritless.³³ Mr Tudor further contends that the LRD purports to unilaterally vary or expand his employment contract. This too may be dealt with briefly. The PH Direction was not issued by the employer. It was issued by the Director in exercise of his independent statutory functions. The LRD was issued to ensure compliance with the PH Direction and to facilitate management of its workforce. *Moers v The Trustee for Williamstown Family Trust*,³⁴ which Mr Tudor relies on, is distinguishable on that basis. There, the employer purported to require a medical capacity assessment as required by a contract for employment. While Mr Tudor may not have had an express contractual obligation to participate in an assessment, the LRD found its force in the PH Direction which, in turn, found its force in the PH Act, s 16. I am satisfied that the LRD was both lawful and reasonable. It follows that the requirement to produce medical evidence (of sufficient vaccination or an exemption) was reasonable.

[46] The LRD was not trifling or insignificant. Nor was Mr Tudor's breach of it. Mr Tudor took no steps to comply with the LRD notwithstanding the Department's earlier requests, advice, and offers of assistance to provide the information required prior to the LRD being issued.

³⁰ As to it being an implied term, see *Bayley v Osborne* (1984) 4 FCR 141 at 145.

³¹ *R v Darling Island Stevedoring and Lighterage Company Ltd; Ex parte Halliday and Sullivan* (1938) 60 CLR 601 at 621-622 (Dixon J).

³² It is unclear whether these arguments are directed to unfairness or the lack of a valid reason for termination. I have taken them into account with respect to both limbs.

³³ For example, Mr Tudor overlooks that, by s 10, an employer is not subject to certain provisions of the *Personal Information Protection Act 2004*.

³⁴ [2025] FWC 1344.

[47] Moreover, the Department put this allegation to Mr Tudor as part of its ED5 investigation. Mr Tudor was afforded an opportunity to participate in that investigation and to subsequently show cause to the Secretary why he should not be dismissed. The Department's process was procedurally fair and, in the absence of submission to the contrary, complied with the IR Act, s 30(7).

[48] I find that Mr Tudor's capacity and conduct were a valid reason for his dismissal.

Was Mr Tudor's termination unfair?

[49] There is no evidence that Mr Tudor's termination was unfair. Mr Tudor's non-compliance with the PH Direction and the LRD was serious and sustained. It rendered him unable to perform duties for his employer. It left the Department in a state of uncertainty in respect of which it was unable to manage its workforce.

[50] Only a small percentage of the Department's workforce had not complied with the PH Direction. Mr Tudor was treated no differently to any other employee who was subject to it. Mr Tudor was alerted to the consequences of non-compliance and given several reminders and offers of assistance to comply. Other employees who did not comply were also dismissed. The Commission has previously determined two of those dismissals to not be unfair.³⁵ While each matter will turn on its own facts and, indeed, no two cases will be identical, those decisions inform fairness as between similarly positioned employees.

[51] Mr Tudor has not established that his termination was unfair. It has been unnecessary to draw a *Jones v Dunkel*³⁶ inference as sought by the Department. There is simply *no* evidence of unfairness³⁷ and none may be inferred.

[52] I am not satisfied that Mr Tudor's termination was unfair.

Conclusion

[53] Mr Tudor was terminated for a valid reason. His dismissal was not unfair. The application fails and is dismissed.

A red circular stamp of the Tasmanian Industrial Commission. The outer ring contains the text 'THE TASMANIAN INDUSTRIAL COMMISSION' at the top and 'TASMANIA' at the bottom. In the center is the coat of arms of Tasmania. A black ink signature is written across the stamp.

S D Thompson
Commissioner

³⁵ *Blume v Minister Administering the State Service Act* [2023] TASIC 37; *Biner v Minister Administering the State Service Act* [2024] TASIC 25.

³⁶ (1959) 101 CLR 298.

³⁷ Mr Tudor decided not to give evidence.