



TASMANIAN INDUSTRIAL COMMISSION

CITATION: Shanahan v Minister Administering the State Service Act 2000 (No 2) [2026] TASIC 52

PARTIES: Karen Shanahan (Applicant)

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

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

FILE NO: T14901 of 2022

HEARING DATE(S): 24 January 2023 (President D J Barclay)

HEARING LOCATION: Hobart

DATE REASONS ISSUED: 1 September 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 termination of long-standing employee unfair

REPRESENTATION:

K Shanahan, the Applicant

M Jehne (State Litigation Office) for the Respondent

SHANAHAN v MINISTER ADMINISTERING THE STATE SERVICE ACT 2000 (NO 2) [2026] TASIC 52

REASONS FOR DECISION

1 SEPTEMBER 2026

Background

[1] Ms Shanahan contends that she was unfairly dismissed by her employer, the Department of Health (the Department).¹ Until her dismissal on 3 January 2022, Ms Shanahan was working as a Business Support Officer with Ambulance Tasmania within the Department.

[2] The background to Ms Shanahan's dismissal lies in the COVID-19 pandemic. As a response to the pandemic, the Director of Public Health issued several directions under the *Public Health Act 1997* (the PHA). One such direction (the PH direction) required employees of the Department to provide evidence of sufficient vaccination against COVID-19 or a valid medical exemption. Ms Shanahan did neither of those things and, in consequence, was unable to perform her duties. The Department then terminated her employment on the basis that she had breached the Code of Conduct (the Code) under the *State Service Act 2000* (SSA), s 9.

[3] The Commission, differently constituted, has already determined that the Department had a valid reason for Ms Shanahan's termination. The sole issue that I must decide is whether the termination was unfair. For the reasons that follow, Ms Shanahan has not demonstrated that her termination was unfair. Her application therefore must be dismissed.

The unusual and unfortunate procedural history

[4] It is appropriate to explain several things before turning to the facts.

[5] The first is the course that this matter took. Ms Shanahan's claim was allocated to the Commission's then President. At the employer's request, he determined as a preliminary issue whether there was a valid reason for Ms Shanahan's termination. After receiving written submissions, on 9 December 2022 the learned President found that there was a valid reason for Ms Shanahan's termination: *Shanahan v Minister Administering the State Service Act 2000/Department of Health/Ambulance Tasmania* (Preliminary Decision).² But that is not the end of the matter. Ms Shanahan's claim nonetheless succeeds if she establishes that her termination was unfair. To that end, the President heard evidence and reserved his decision on 24 January 2023. However, the President did not determine the matter prior to the end of his appointment.

[6] The matter was recently reallocated to me. With the parties' consent, I have read the transcript and had regard to the documentary evidence and submissions. There was little oral evidence: Ms Shanahan and a representative of the Department

¹ The Minister administering the *State Service Act 2000* is the employer. For convenience, I refer to the Department as Ms Shanahan's employer.

² T14901 of 2022.

were the only witnesses. Because credit findings need not be made, I do not consider my reliance on the transcript to have adversely affected my ability to determine the matter.

[7] The Commission apologises to Ms Shanahan and the Department for the delay in determining the matter.

[8] The second is that, while I am not bound by the President's ruling that there was a valid reason for termination, I have decided to follow it. In my respectful view, the ruling is correct. Moreover, there is no reason, and no request by a party, to reopen the issue. Because there was a valid reason for termination, it is unnecessary to consider the alternative reason proffered by the Department: Ms Shanahan's breach of the Code resulting from her failure to comply with a lawful and reasonable direction given by the Department which mirrored the PH Direction. Although the Department invited me to determine whether that alternative is a valid reason, I have decided not to do so as it would require re-considering much of the same ground covered in the Preliminary Decision and would have caused further delay.

Some brief facts

[9] The facts are not in dispute. My findings are based on the oral evidence of Ms Shanahan and Ashleigh Thompson, an employee relations consultant within the Department, and the documents that were tendered. My factual findings should be read in conjunction with the Preliminary Decision, which I gratefully adopt.

[10] Ms Shanahan was a permanent employee under the SSA, having commenced with the Department on 21 March 2001. She worked as a Business Support Officer within the logistics area of Ambulance Tasmania. As an employee under the SSA, Ms Shanahan was subject to the Code. Employment Direction 5 (ED5) prescribed the procedure for investigating whether an employee has breached the Code, which the Department was required to follow.

[11] Like *Tudor v Minister Administering the State Service Act 2000/ Department of Health*,³ this matter has its genesis in the pandemic. In *Tudor*, I said at paragraphs 9-10:

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). It is a lengthy document which need not be set out in full. Relevant to [the employee'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.

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

³ [2026] TASIC 50; T14934 of 2022.

large. Second, the PH Direction was enforceable against both the Department and its employees. Non-compliance was punishable by a fine or imprisonment.

[12] 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 Department's Secretary to all employees, including Ms Shanahan, on 24 September 2021. 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] The request was communicated several times. Ms Shanahan was aware of the communications. She did not become vaccinated because she was concerned about the vaccines which were then available. Instead, she wanted to take a traditional protein vaccination which was not yet available.

[14] The Secretary then⁴ directed Ms Shanahan to provide evidence of either sufficient vaccination or a relevant exemption. Ms Shanahan did neither, although she did explain that she did not wish to take the vaccination. Instead, she wanted to be redeployed to an agency not subject to the PH Direction as this would have allowed her to work.

[15] The Secretary commenced an investigation under ED5 into whether Ms Shanahan had breached the Code.⁵ The investigation occurred and its findings were presented to the Secretary. The Secretary accepted the findings, determined that Ms Shanahan had breached the Code, and that the sanction of dismissal should be imposed. In doing so, the Secretary failed to afford Ms Shanahan the period of time within which to respond as required by ED5. I will return to the relevance of this.

[16] As the Preliminary Decision explains, Ms Shanahan was subsequently dismissed.

Termination of employment – principles

[17] It is unnecessary to set out all the principles relating to termination of employment. As discussed earlier, the Commission has already determined that there was a valid reason for Ms Shanahan's dismissal. But 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. Ms Shanahan has the onus of proving unfairness.⁶ 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.⁷

[18] 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".⁸ But the employer is not

⁴ On 31 October 2021.

⁵ Transcript p44, l17.

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

⁷ *Cosco Holdings Pty Ltd v Thu* (1997) 79 FCR 566 at 592 (Lindgren and Lehane JJ).

⁸ *Industrial Relations Act 1984*, s 30(7).

obliged to do this where the valid reason is connected with the “operational requirements of the employer’s business”.⁹

[19] Thus, I must decide whether Ms Shanahan’s termination was unfair. While Ms Shanahan bears the onus of establishing unfairness, she need not establish *error* on the part of the employer.¹⁰ I must form my own view whether termination was unfair. It follows that, using the language of *House v The King*¹¹ (to which the President and the Department referred during oral submissions), Ms Shanahan need not prove that her dismissal was unreasonable or plainly unjust. So much would otherwise be inconsistent with *Minister Administering the State Service Act v Tasmanian Industrial Commission*.¹²

Was Ms Shanahan’s termination unfair?

[20] As I understand Ms Shanahan’s case, her primary argument is that the Department acted unfairly by moving quickly from *encouraging* vaccination to *investigating* her for breaching the Code and, subsequently, *terminating* her employment. Ms Shanahan contends that termination was unfair and disproportionate having regard to:

- her willingness to be redeployed and perform other work which would not breach the PH Direction;
- the finite length of the PH Direction;
- her long tenure;
- the availability of alternative and lesser sanctions in the SSA;
- the Department’s failure to comply with ED5;
- the Department’s failure to adequately advise her of the consequences of non-compliance, the reasons why compliance was required, and options available to Ms Shanahan such as redeployment; and
- later delays in receiving her final salary and leave payments and communication regarding the same.

[21] The notion of unfairness is broad. It is, however, informed by the requirements of the IR Act. To my mind, unfairness permits an evaluation of both the *outcome* (i.e. is termination of employment unfair *on the employee*) and the *process* which led to termination (i.e. was the employer’s *process* of determining to terminate procedurally unfair). That is, however, subject to legislation. As I noted above, the procedural fairness requirement in the IR Act, s 30(7) applies only to termination for reasons relating to conduct, capacity, or performance. Although Ms Shanahan was terminated *because* of conduct, capacity, or performance, the Department relies on its operational requirements as the reason for termination. I repeat that the Commission has already determined those requirements to be a valid reason for Ms Shanahan’s termination.

⁹ *Industrial Relations Act 1984*, s 30(3)(a) and (7).

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

¹¹ *House v the King* (1936) 55 CLR 499 at 504-504 (Dixon, Evatt and McTiernan JJ).

¹² *Supra* note 10.

[22] In Ms Shanahan's case, there may be something unjust about that. The Department ostensibly terminated Ms Shanahan because she breached the Code. But the Department did not afford Ms Shanahan the period of time prescribed by ED5 to make submissions in respect of the investigation into the breach. Thus, the procedures relevant to the Code were not complied with. Before the Commission, the Department relied on a different reason for termination: its operational requirements. The Commission found that to be a valid reason. It follows that any non-compliance with ED5 or with s 30(7) is irrelevant to the question of unfairness. If I am wrong about that, I am nonetheless not persuaded that the process was procedurally unfair. As Gleeson CJ said in *Re Minister for Immigration and Multicultural Affairs; Ex parte Lam*¹³:

Fairness is not an abstract concept. It is essentially practical. Whether one talks in terms of procedural fairness or natural justice, the concern of the law is to avoid practical injustice.

[23] There is no evidence that the non-compliance with ED5 meant that Ms Shanahan missed an opportunity to make submissions to the Secretary. Nor is there any evidence that, had she been given clearer warning about the *likelihood* of termination rather than the mere *possibility*, she would have taken steps to comply with the PH Direction such that she could perform duties.

[24] As I understand the Minister's submission, that the Commission has determined there to have been a valid reason for termination renders matters informing that validity to be irrelevant. Assuming that I have correctly understood the submission, I reject it. It is inconsistent with the IR Act's text, context, and purpose. A circumstance that is relevant to *validity* may also be relevant to *fairness*. Whether Ms Shanahan *could* have performed duties elsewhere in the employ of the Minister, which I consider below, is such an example. I do not consider this approach to be inconsistent with Lindgren and Lehane JJ's observations about a similar provision in the *Industrial Relations Act 1988* (Cth) in *Cosco Holdings Pty Ltd v Thu*¹⁴. It is true that whether there is a valid reason based on the employer's operational requirements ignores the personal effect on the employee. But it does not follow that a matter informing the operational requirements (i.e. validity) *cannot also* be relevant to the effect on the employee (i.e. unfairness). The relatively undemanding test of *validity* cannot be used to artificially narrow the path to establishing *unfairness*.

[25] I now return to the reasons why, to my mind, Ms Shanahan's dismissal was not unfair.

[26] First, while Ms Shanahan may not have appreciated the *likelihood* of termination, that itself does not render her dismissal unfair. The Department had drawn her attention to the PH Direction and its application to Ms Shanahan, to its own lawful and reasonable direction, and to the potential for termination. In particular, Ms Shanahan was aware that she could not work for the Department unless she complied with the PH Direction. For the reasons that I have endeavoured to explain above, any deficiencies in advising Ms Shanahan about the *likelihood* of an ED5 investigation and termination are irrelevant given the reason relied upon by the employer. That the putative reason for termination was based on a breach of the Code rather than the

¹³ (2003) 214 CLR 1; [2003] HCA 6 at [38].

¹⁴ (1997) 79 FCR 566 at 592-593.

Department's operational requirements does not change the fact that Ms Shanahan was aware of the possibility of termination.

[27] Second, it was not known how long the PH Direction would be in force. Although it ended up being in force for a further six months following Ms Shanahan's dismissal, it could have been in effect for longer. In any event, Ms Shanahan was unable to perform duties, and the Department was unable to manage its workforce while it was in effect. Neither knew how long it would be in effect for. The Department's inability to manage its workforce – Ms Shanahan occupied a position but was unable for an undetermined period to perform the duties of that position – was significant.

[28] Third, and connected to the second, that the employer made no attempts to find alternative duties for Ms Shanahan does not produce unfairness. The PH Direction was sufficiently broad that Ms Shanahan could not perform *any* duties for the Department of Health which necessarily excluded Ambulance Tasmania. Ms Shanahan contends that she could, or should, have been redeployed to another agency where the PH Direction did not prevent her from working. That may have been possible; Ms Shanahan was employed by the Minister rather than the Department. However, and notwithstanding Ms Shanahan's long tenure, it was not unfair for her employer not to have considered redeployment. Redeployment would have been to a different position with different duties in a different agency with a different budget, possibly under a different Award, for an indeterminate period of time. Moreover, that the Department was in the midst of, and preoccupied with, a global pandemic provides some justification for the Department's failure to consider redeployment.¹⁵

[29] Fourth, the Department's failure to answer some of Ms Shanahan's enquiries regarding the vaccine and her options does not render her dismissal unfair. I am prepared to accept Ms Shanahan's evidence that the Department was non-responsive in the face of her requests and questions. However, it is relevant that Ms Shanahan's employer did not issue the PH Direction and had no control over it. It could do little in answer to her questions about it. Both the Department and Ms Shanahan were subject to and at the whim of the PH Direction.

[30] Fifth, Ms Shanahan's long tenure and her desire for a traditional protein vaccine are of comparatively little weight. I understand Ms Shanahan to contend that her long tenure meant that that the Department should have considered redeployment. However, that is outweighed by other factors. With respect to her reasons for non-vaccination, I understand Ms Shanahan to submit that she was not against *all* vaccines but instead had considered the matter and made a reasoned decision not to take the particular vaccines available, preferring to wait for a traditional protein vaccine. That may be so. But it does not render her dismissal unfair. Termination was not a *punishment* for Ms Shanahan's views, but a response to the Department's operational requirements.

[31] Sixth, I accept the Minister's submission that the SSA, s 10(1) confers a discretion with respect to sanction. The fact that I may consider an alternative, lesser sanction to have been open or even preferable does not mean that a harsher sanction

¹⁵ I do not express a view about whether, in the absence of a pandemic, the Department should have considered redeployment. Each case will turn on its own facts.

– termination – was unfair. Put differently, the question that I must answer is whether termination was unfair, not whether I would have imposed a lesser sanction.

[32] Seventh, I do not overlook the opprobrium that dismissal may bring. But as the Minister submits:

[T]here is often a black mark or stain associated with an employee's termination at the initiative of the employer no matter what the reason given. Even cases of genuine redundancy, where the employer does not need the employee's job to be performed by anyone, casts a stain on the utility of that employee's previous role.

[33] Eight, only a small percentage of the Department's workforce had not complied with the PH Direction. Ms Shanahan was treated no differently to any other employee who was subject to it. Ms Shanahan 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 three of those dismissals to not be unfair.¹⁶ 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. While those employees' personal circumstances (particularly Ms Shanahan's long tenure and desire for redeployment) may differ, the effect on the employer did not.

[34] Ninth, I do not consider conduct occurring *after* termination to be relevant. Ms Shanahan contends that the Department poorly managed the aftermath of her termination. I am prepared to accept her evidence that there were significant delays in the Department paying out Ms Shanahan's leave entitlements. That is regrettable. However, it could not render her dismissal unfair. I am of the same view with respect to the revocation, some six months later, of the PH Direction.

[35] Weighing up these matters, I am not satisfied that Ms Shanahan's termination was unfair.

Conclusion

[36] Because Ms Shanahan has not persuaded me that her termination was unfair, her application fails and is dismissed.



S D Thompson
Commissioner

¹⁶ *Blume v Minister Administering the State Service Act 2000/Tasmanian Health Service* [2023] TASIC 37; *Biner v Minister Administering the State Service Act 2000/Tasmanian Health Service* [2024] TASIC 25; *Tudor v Minister administering the State Service Act 2000/Department of Health* [2026] TASIC 50