

UNIVERSITY OF SOUTHERN QUEENSLAND

A N A N A L Y S I S O F
U N F A I R D I S M I S S A L G R I E V A N C E
A R B I T R A T I O N I N A U S T R A L I A

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ABSTRACT

This study identifies statistically significant associations between unfair dismissal arbitration decisions and inherent characteristics pertaining to the unfair dismissal claims. The inherent characteristics examined are the industry sector in which the employee worked, the occupational skill level of the employee's position, size of the business, presence of human resource expertise within the business, the reason for dismissal, and the genders of both the employee and arbitrator. This research contributes to the body of knowledge on grievance activity within the workplace. It focuses specifically on arbitrated grievances and as such, AIRC unfair dismissal decisions are investigated as an exemplar of arbitrated grievance activity. This study is within an Australian context which may limit its world-wide generalisability but its strength is that it addresses across industry and across occupational data.

Empirical analysis is undertaken using data collected from unfair dismissal arbitration decisions made by the AIRC during 2004 and 2005. Three hundred and eighty-four (384) cases are analysed, with 34.4% of the arbitration findings occurring in the grievant's favour and 65.6% in the employer's favour. It is noted that this figure is inflated in the employer's favour because it includes cases lodged and later rejected by the commission for jurisdictional reasons. The split counting the 274 *within* jurisdiction cases is 51.8% in the employer's favour and 48.2% in the grievant's favour. The results of chi-square tests indicate that six characteristics have statistically significant association with the arbitration outcome. These characteristics are: occupational skill level of the grievant; the size of the business; the presence of HR expertise; the reason dismissed; the grievant's gender; and the arbitrator's gender. No association was found between the industry sector and arbitration decision, although there is a significant association between industry sector and jurisdictionally rejected claims.

The collective finding of the hypotheses tests suggests that the type of aggrieved employee associated with a favourable arbitration outcome is one from an organisation of between 50 and 100 employees without an HR expert, working in a lower skilled occupation, having been made redundant, is female and appears before a male arbitrator. Whereas, the type of employer associated with a favourable arbitration outcome is one who has either up to 50 staff, or over 200 staff with an HR expert, who dismissed a male employee working in a higher skilled occupation for serious misconduct with the case before a female arbitrator.

A major policy implication of this research relates to the Rudd government's proposed legislative reforms of the unfair dismissal provisions. This study identifies disadvantaged groups of workers when it comes to dismissal practices of employers, namely employees from businesses of 50 to 100 workers and lower skilled workers. Identified also was the need for training for businesses to enable them to engage in procedurally fair redundancy processes and for gender bias awareness for arbitrators. In terms of further research, this study provides the foundation for predictive statistical analysis. The variables suitable for further analysis are occupational skill level, business size, reason for dismissal and gender in relation to their influence on the arbitration outcome. Additional descriptive research could also be conducted in terms of conducting international comparatives with a view to identifying the outputs that different legislation/arbitration frameworks produce for workers and employers.

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TABLE OF CONTENTS

	<i>Page</i>
Chapter 1 Introduction and Overview of Thesis	1
1.0 Introduction	1
1.1 Unfair Dismissal and Workplace Grievances: the Conceptual Link	2
1.2 Research Justification and Contribution	4
1.3 Research Objective and Supporting Research Questions	7
1.4 An Explanation of Key Terms and Concepts	10
1.5 Brief Overview of the Research Design	12
1.6 Scope of the Research	14
1.7 Thesis Structure	17
1.8 Chapter One Summary	19
Chapter 2 Theories of Workplace Grievance Activity and Unfair Dismissal Arbitration in Australia	21
2.0 Introduction	21
2.1 Theoretical Explanations of Workplace Grievance Activity	22
2.2 Contextualising Workplace Grievance Activity within Australia	33
2.2.1 Industrial Legislation Relevant to Grievance Arbitration in Australia	34
2.2.2 The Unfair Dismissal Claim Process in the AIRC	36
2.2.3 Unfair Dismissal Arbitration by the AIRC: Historical Records ...	39
2.2.4 Claims of Bias in the AIRC	41
2.3 Chapter Two Summary	45
Chapter 3 The Concept Map and its Rationale	47
3.0 Introduction	47
3.1 The Research Questions and the Concept Map	47
3.2 Research Question One: Literature Review	51
3.2.1 Industry: Australian Issues	52
3.2.2 Industry and Grievance Activity: Previous Research	54
3.2.3 Business Size: Australian Issues	57
3.2.4 Business Size and Grievance Activity: Previous Research	58
3.3 Research Question Two: Literature Review	60
3.3.1 Occupational Skill Level: Australian Issues	60

3.3.2	Occupational Skill Level and Grievance Activity: Previous Research	62
3.4	Research Question Three: Literature Review	63
3.4.1	Reason Dismissed and Grievance Activity: Previous Research ...	63
3.5	Research Question Four: Literature Review	65
3.5.1	Grievant Gender: Australian Issues	65
3.5.2	Vulnerability of Women to Discipline in the Workplace	67
3.5.3	Grievant Gender and Grievance Activity: Previous Research.....	69
3.6	Research Question Five: Literature Review	71
3.6.1	Arbitrator Gender: Australian Issues	71
3.6.2	Arbitrator Gender: Previous Research	71
3.7	Chapter Three Summary	74
Chapter 4	Research Methodology	77
4.0	Introduction	77
4.1	The Research Paradigm	77
4.2	The Type of Research	79
4.3	The Research Method: Secondary Analysis	80
4.4	The Target Population	80
4.5	Data Source and Sample Size	82
4.6	Data Classification	84
4.6.1	Independent Variable: Industry Sector (Research Question 1)	84
4.6.2	Independent Variable: Business Size (Research Question 1)	88
4.6.3	Independent Variable: HR Expert (Research Question 1)	90
4.6.4	Independent Variable: Occupational Skill Level (Research Question 2)	92
4.6.5	Independent Variable: Reason for Dismissal (Research Question 3)	95
4.6.6	Independent Variable: Gender (Research Questions 4 and 5)	96
4.6.7	Dependent Variable: Arbitration Outcome	97
4.7	The Data Interpretation Method: Non Parametric Tests & Chi Squares	98
4.8	The Matters of Reliability and Validity	101
4.9	Chapter Four Summary	102
Chapter 5	Statistical Analysis	105
5.0	Introduction	105
5.1	Recounting the Research Questions and their Hypotheses	105

5.2	Results of Statistical Analysis	107
5.2.1	Research Question 1: Hypotheses 1 to 4	108
5.2.2	Research Question 2: Hypothesis 5	118
5.2.3	Research Question 3: Hypothesis 6	120
5.2.4	Research Question 4: Hypotheses 7 and 8	122
5.2.5	Research Question 5: Hypotheses 9 and 10	126
5.3	Chapter Five Summary	131
Chapter 6	Discussion of Results and Conclusions	137
6.0	Introduction	137
6.1	Discussion of Results	137
6.1.1	Descriptive Statistics	137
6.1.2	Research Question One: Discussion	139
6.1.3	Research Question Two: Discussion	145
6.1.4	Research Question Three: Discussion	147
6.1.5	Research Question Four: Discussion	149
6.1.6	Research Question Five: Discussion	151
6.2	Conclusions	154
6.3	Policy Implications of this Research	160
6.4	Further Research	161
6.5	Chapter Six Summary	164
	List of References	167
	List of Figures and Tables	x
	Papers Published as Part of Research and Thesis Preparation	xi

Appendix One:

Frequency Counts and Percentage Values for
Categories within each Variable in the Statistical Analysis

Appendix Two:

List of Value Labels Used in Data Input *and*
Raw Data Table

LIST OF FIGURES AND TABLES

Figure 1.1	Diagram of Thesis Structure
Figure 2.1	A flowchart outlining the process of handling unfair dismissal grievances by the AIRC
Figure 3.1	The concept map of characteristics associated with grievance arbitration
Figure 5.1	100% Stacked Column Chart: Arbitration Claims Successfully Lodged or Rejected by Industry Sector
Figure 5.2	100% Stacked Column Chart: Arbitration Outcome by Industry Sector
Figure 5.3	100% Stacked Column Chart: Arbitration Outcome by Business Size
Figure 5.4	100% Stacked Column Chart: Arbitration Outcomes for Small and Medium Sized Business
Figure 5.5	100% Stacked Column Chart: Arbitration Outcome and Human Resource Expertise
Figure 5.6	100% Stacked Column Chart: Arbitration Outcome by Occupational Skill Level
Figure 5.7	100% Stacked Column Chart: Arbitration Outcome by Reason for Employee Dismissal
Figure 5.8	100% Stacked Column Chart: Arbitration Claims Lodged or Rejected by Grievant Gender
Figure 5.9	100% Stacked Column Chart: Arbitration Outcome by Grievant Gender
Figure 5.10	100% Stacked Column Chart: Arbitration Outcome by Arbitrator Gender
Figure 5.11	100% Stacked Column Chart: Male Arbitrator Decisions According to Grievant Gender
Table 1.1	Terminology used in this Thesis
Table 2.1	Social Science Theories and their Potential Application in Workplace Grievance Research
Table 2.2	History of Unfair Dismissal Applications / Arbitration Decisions by the AIRC
Table 2.3	History of Unfair Dismissal Full Bench Appeals in the AIRC
Table 2.4	History of Unfair Dismissal Arbitration Orders by the AIRC
Table 3.1	Comparison of Unionisation Rates in Five Australian Industries between 1993 and 2003
Table 3.1	Gender Mix of Full Time and Part Time Employees in Australia
Table 4.1	Valid and Missing Data Count for each Study Variable
Table 4.2	ANZSIC Industry Categories grouped into Three Sectors for Analysis
Table 4.3	Business Size Classification for Analysis
Table 4.4	ASCO Occupational Skill Categories grouped into Three Levels for Analysis
Table 4.5	Reasons for Dismissal
Table 4.6	Arbitration Outcomes
Table 5.1	Chi-Square Test for H_1
Table 5.2	Chi-Square Test for H_2
Table 5.3	Chi-Square Test for H_3
Table 5.4	Chi-Square Test of SME Arbitration Outcomes
Table 5.5	Chi-Square Test for H_4
Table 5.6	Chi-Square Test for H_5
Table 5.7	Chi-Square Test for H_6
Table 5.8	Chi-Square Test for H_7
Table 5.9	Chi-Square Test for H_8
Table 5.10	Chi-Square Test for H_9
Table 5.11	Chi-Square Test to Check Random Allocation of Cases to Arbitrators
Table 5.12	Chi-Square Test of Female Arbitrator Decisions
Table 5.13	Chi-Square Test for H_{10}

**PAPERS PUBLISHED
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Southey, K 2005, 'A Preliminary Investigation into Unfair Dismissal Decisions in the AIRC', paper presented to 9th Annual Waikato Management School Student Research Conference, University of Waikato, Hamilton, New Zealand, 25 October.