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**A typology of employee explanations of misbehaviour  
An analysis of unfair dismissal cases**

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## **A typology of employee explanations of their misbehaviours An analysis of unfair dismissal cases**

### **Abstract**

This paper investigates an aspect of employee misbehaviour research that has received limited attention: the explanations employees provide for their behaviour. In Australia, employees dismissed for inappropriate behaviour may be able to pursue an unfair dismissal claim. To progress our understanding of employee misbehaviour, this research examines the explanations that employees provide to defend their behaviour at unfair dismissal hearings before the Australian Industrial Relations Commission. In this investigation, organisational behaviour theories of cognitive dissonance and organisational justice, and criminal sociology theory of neutralisation, underpin the contention that employees' explanations of their behaviour may reflect rationalisations of their behaviour which may differ from actual events. This paper presents the 'employee explanation model', a conceptual framework categorising the range of rationale employees provide to their employer. The model identifies three domains of rationalisation: workplace related; personal-inside; and personal-outside. These domains may or may not operate independently, with mutual occurrence demanding the employer interpret and manage a 'conflated' rationale. This model further develops the description of organisational misbehaviour contained in Vardi and Weitz's (2004) general framework.

### **Introduction**

In Australia, an aggrieved worker whose employment has been prematurely terminated may be eligible to file an unfair dismissal claim if he or she believes the dismissal was 'harsh, unjust or unreasonable' (Workplace Relations Act 1996 Part 12, Division 4[635]; Fair Work Act 2009 Part 3-2, Division 3[385]). The 'harsh, unjust or unreasonable' grounds enable

employees to seek recourse if they believe they have either substantive or procedural grounds on which to make a case. This means employees may have recourse if they perceive their dismissal was unwarranted (a substantive ground) and/or if they believe the dismissal process itself was executed unfairly by the employer (a procedural ground).

By examining dismissals resulting from serious misconduct, the aim of this paper is to provide insight into the types of defences that employees provide for their actions. This insight contributes to the broader pursuit of organisational behaviour theorists to provide ‘a more complete and accurate representation of organisational behaviours’ (MacLean et al., 2006: 68; Vardi & Wiener 1996). Organisational theory typically focuses on positive organisational behaviours. Researchers are now also focusing on the darker side of organisational behaviours (Griffin and O’Leary-Kelly, 2004) to further our understanding of workplace behaviours and practices. The value of this paper is that it contributes to our understanding of the self reported explanations of employee misbehaviour.

To underpin the examination of employee explanations of their misbehaviour, this paper draws primarily on theories of cognitive dissonance, organisational justice, and neutralisation to provide a premise for the suggestion employees may provide rationalised explanations to justify their behaviour. The literature reflects that ‘justifications are made when a failing person attempts to convince others that although the act was inappropriate, certain conditions exist that justified it’ (Goffman 1971 in Vardi and Weitz, 2004: 89). The contention of this paper is that employees, in defending their actions, may not outline the genuine cause of their behaviour; rather their defence may be an attempt to convince the investigators and/or arbitrators their behaviour was justifiable.

### **Unfair dismissal hearings in Australia’s federal tribunal**

Under the Fair Work Act 2009, Fair Work Australia (FWA) is the federal tribunal that will manage unfair dismissal claims occurring from 1 July 2009. Until this time unfair dismissal claims were heard by the Australian Industrial Relations Commission (AIRC) under the Workplace Relations Act 1996. Due to the limited history of FWA, it is appropriate to provide the process of the AIRC in this paper. It is noted though that the rudimentary processes surrounding conciliation and arbitration have remained unchanged by the Fair Work Act 2009.

The unfair dismissal claim process, as outlined by the AIRC (2009) commences with the lodgement of a claim by a discharged employee which the Commission first aims to settle privately through a conciliation conference. If unsuccessful, the convening commissioner issues a certificate which fulfils the pre-requisite conciliation requirement before arbitration proceedings can occur. The commissioner indicates on the certificate his or her assessment of the merits of the application. A dismissed employee under the 1996 Act may pursue his or her claim through an arbitration hearing within 28 days of the certificate being issued. An arbitration hearing occurs before a different member of the Commission. It is a formal process where parties make their respective submissions, supported with documentary and/or witness evidence, under oath and cross examinable. The decision of the arbitrating commissioner binds both parties.

To expedite an efficient resolution, commissioners could avoid technicalities, including rules of evidence, although natural justice must still be evident to ensure a fair hearing (CCH 2005). The 1996 Act decreed that commissioners were expected to deal with matters in a 'just and reasonable' manner and conduct their business using principles of 'equity, good conscience and the substantial merits of the case' (Part 3, Division 4[110]). The AIRC has

provision for appeal from either party against a commissioner's decision and this takes place as a further formal hearing before a panel of three members of the Commission.

### **Understandings of misbehaviour**

Deviant activity involves intentionality and counter-normative activity within the workplace. Such transgressions of workers are being examined by researchers as a pervasive workplace behaviour that can produce either functional or dysfunctional results (Bennett and Robinson, 2003; Griffin and O'Leary-Kelly, 2004; Richards 2008; Vardi and Weitz, 2004).

Organisational behavioural (OB) theorists identify a variety of terms and nuances describing what are collectively known as 'dysfunctional behaviours' in the workplace or 'organisational misbehaviour' (Griffin and Lopez, 2005; Kidwell and Martin, 2005; Langan-Fox et al., 2007). These definitions commonly deem behaviour as dysfunctional if it threatens the interests or well being of work colleagues, the organisation as a whole, or its stakeholders; or if it offends organisational or societal norms (Vardi & Wiener 1996). A further development in understanding dysfunctional behaviour from an OB perspective is the incorporation of intent, that is, whether the behaviour is intended to either benefit the perpetrator or the organisation; or alternatively to maliciously hurt others or the organisation (Griffin and O'Leary-Kelly, 2004; Vardi and Weitz, 2004). Not all behaviours that violate norms result in negative organisational consequences, for example whistle blowing and innovative thinking aim to benefit the organisation (Appelbaum et al., 2007; Kidwell and Kochanowski, 2005; Litzky et al., 2006).

An alternate view by scholars within contemporary industrial sociology considers misbehaviour materialises from the persistent management-worker 'structured antagonism' that exists within organisations (Collinson & Ackroyd 2005: 314). Through this lens,

misbehaviour is defined as 'self-conscious rule breaking' and is situated in the middle of a continuum of antagonistic behaviours, ranging from those that demonstrate overt, principled 'resistance' (which can be formally organised), through to 'dissent' which can include actions such as sabotage, time-wasting, absenteeism (Collinson & Ackroyd 2005: 306; Richards 2008).

Various studies have described and categorised dysfunctional behaviour in the workplace. Collectively, these studies contribute to building an explanation as to why (and why not) dysfunctional behaviour occurs in the workplace. An influential paper by Robbins and Bennett (1995) described political and personal deviance in their typology developed on the earlier work of Hollinger and Clark (1982) which defined production and property deviance. Researchers have identified two broad antecedents to deviant behaviour: organisational factors and individual factors. At the organisational level, not surprisingly, employees who are mistreated indicated they are more likely to engage in deviant behaviours (Lasson and Bass, 1997). Triggers of deviant behaviour, notably within management control, were identified by Litzky et al. (2006). They are compensation/reward structure; social pressures to conform; negative and untrusting attitudes; ambiguity about job performance; unfair treatment and violating employee trust. Bad management practices, aggressively based reward packages and unfair personnel policies may trigger workplace violence according to Leck (2005). Avery et al. (2008) identified lower levels of deviant behaviours occurred in organisations of higher psychological capital and Andreoli and Lefkowitz (2009) found the organisation's ethical climate had a negative relationship with predicted levels of misconduct. At the individual level, a commitment to a personal ethical standard was found to be negatively related to deviance (Henle et al., 2005). Negative workplace attitudes, such as dissatisfaction, intention to quit and employer contempt were identified as strong predictors

of absenteeism, privilege abuse, substance abuse and theft (Bolin and Heatherly, 2001). Personality and demographic characteristics such as age, gender and controlling personality, may also predict violent behaviour in the workplace (Domaglaski and Steelman, 2005; Leck, 2005). Lawrence and Robinson (2007) found specific forms of individual power will trigger specific types of workplace deviance.

Researchers have examined *specific acts* of misbehaviour, for example: sexual harassment (Lucero et al., 2003); incivility (Montgomery et al., 2004); anger (Domaglaski and Steelman, 2005); manufacturing personal artefacts at work (Anteby, 2003); organisational corruption (Pinto et al., 2008). Other researchers have focused on the organisational *contexts* in which the deviant behaviours occur. For example, Harris and Ogbonna (2002) forward the notion of ‘service sabotage’; Raelin (1986) examined deviant behaviour amongst salaried professionals; D’Abate (2005) investigated why people engage in personal business at work. Wellen and Neale (2006) investigated the influence of deviant employees on group behaviour and goal achievement.

### **The Theoretical Framework**

The theories underpinning this paper’s contention that employee explanations of misbehaviour may reflect rationalised defences, are outlined below.

#### *Vardi and Weitz’s OMB model*

Vardi and Weitz’s (2004) general framework of organisational misbehaviour (OMB) conceptualises a range of antecedents that influence an employee’s intention to misbehave. These antecedents are categorised according to a person’s individual characteristics, aspects of his or her particular job, the work group situation, and organisational wide characteristics. Actions that manifest in misbehaviour are further classified in the nature of intrapersonal;

interpersonal; production; property; and/or political (Robbins & Bennett 1995; Vardi & Weitz 2004). The conjecture in this paper is that an employees' self reported rationales for engaging in misbehaviour form a distinct dimension of the larger misbehaviour phenomenon, and can be incorporated as an additional stage in Vardi and Weitz's general OMB framework. Figure 1 demonstrates employee rationalisations as an additional dimension in the general OMB model.

(Insert Figure 1 about here)

### *Cognitive dissonance*

A fundamental in many organisational textbooks is Festinger's (1957) theory of cognitive dissonance which provides an explanation as to why people may be motivated to rationalise their behaviour (and subsequently engage in neutralisation techniques). Cognitive dissonance occurs when there is inconsistency between what a person knows or believes and how a person behaves. When this occurs, Festinger proposed that a person may feel 'psychological discomfort' (1957: 2) which 'will motivate the person to try to reduce the dissonance' (1957: 3). Cognitive dissonance is relevant to this paper because an employee dismissed for workplace misbehaviour, may be experiencing the psychological discomfort resulting from engaging in an activity that is inconsistent with attitudes or norms of the organisation and/or themselves. To reduce feelings of discomfort they may be motivated to alter their thoughts to seek an alliance between their actual behaviour and their belief as to why they engaged in that behaviour. This adaptive thinking may involve 'neutralisations' which are then verbalised in their 'rationalised' defences.

### *Psychological contracts and organisational justice*

Additional theories worth briefly noting from the OB literature which may potentially influence employee rationalisations of misbehaviour include psychological contract theory and organisational justice. The psychological contract refers to the subjective beliefs about obligations that exist between a worker and his/her employer (Rousseau, 2001). Violations of the psychological contract have been linked to decreased job satisfaction, reduced job performance and acts of deviant behaviour such as sabotage, theft and aggression (Morrison & Robinson, 1997). One of the processes attributed to the employees' perception of breaches of the psychological contract are the fairness judgements they make in relation to how they have been treated (Atkinson & Cuthbert, 2006; Morrison & Robinson, 1997: 244). The perceptions of fairness in psychological contracts equates to perceptions of organisational justice held by the employee (Atkinson & Cuthbert, 2006).

Organisational justice describes the collection of fairness theories in relation to the employee's perceptions of structural and social processes in the workplace (Greenberg, 1990). Distributive justice, a development from Adam's equity theory of pay injustices, describes employee perceptions of the fairness of an 'end result' or decision. Distributive justice has implications for the allocation of rewards, resources, training and promotion opportunities and work allocation (Rawls 1971 in Leopold, Harris & Watson 2005). Related to distributive justice is procedural justice, which is upheld when the *process* for making a decision is transparent and unbiased. Interactional justice calls for the delivery of these decisions to be made with sincerity and respect (Folger & Skarlicki, 1998; Greenberg & Alge, 1998). Incidents of workplace misbehaviour (particularly violence) have been linked to feelings of anger at being treated 'unfairly' (Greenberg & Baron, 1997). Justice theories would suggest that to reduce misbehaviour, and the consequent need for employees to rationalise misbehaviour, employees need to perceive that the allocation of resources to

themselves and others in the organisation are fair, deserved and respectfully dispensed (Everton, Jolton and Mastrangelo, 2007; Greenberg & Alge, 1998).

### *Neutralisation theory*

A theory developed within the sociological field of criminology, is that of neutralisation. This theory is included as a theoretical keystone in this paper as it provides insight into the post-event thinking of people who may have engaged in wrongful or inappropriate behaviours. In their research on juvenile delinquency, Sykes and Matza (1957: 666) developed neutralisation theory to explain how juveniles rationalised their criminal behaviour, suggesting ‘... justifications are commonly described as rationalizations. They are viewed as following deviant behaviour and as protecting the individual from self-blame and the blame of others after the act.’ The authors identify a number of strategies used to defend behaviour, such as denying responsibility; claiming it was ‘harmless’; suggesting it was retaliation; or becoming aggressive to the investigators. In essence, these strategies aim to ‘neutralise’ the engagement in bad behaviour by projecting an image of being ‘more sinned against than sinning’ (Sykes and Matza, 1957: 667). Neutralisation theory continues to provide insight for researchers across disciplines, such as inappropriate behaviour of tourists at sacred sites (McKercher et al., 2008); purchasing pirated music (Ang et al., 2001); and workplace internet deviance (de Lara, 2006).

Robinson and Kraatz (1998) adopted an organisational perspective of neutralisation strategies. They argued that in spite of management attempts to constrain misbehaviour, neutralisation strategies enable people to continue to engage in such behaviours. Neutralisation strategies, redefined for the organisational context, occur on a continuum ranging from defiant strategies of rejecting the organisations norms; redefining the organisation’s norms; deflecting comparisons; through to more compliant strategies of

redefining behaviour and concealing behaviour. The authors also postulate that the characteristics of the deviant employee may influence what type of strategy he or she will use, for example, a more senior person or an employee with a strong understanding of organisational systems is more likely to use a defiant strategy of calling into question the company norms.

## **Methodology**

Through the unobtrusive investigation of publicly available records detailing accounts of employee misbehaviour (Griffin and Lopez, 2005) this study overcomes the challenge faced by many deviance researchers - measuring beyond the level of the employee's intention to misbehave (Vardi and Weitz, 2004). This study also alleviated the need for participants to predict or alter their behaviour or responses due to the presence of a researcher or survey instrument. In this study, data were collected from the texts of unfair dismissal arbitration decisions determined by the AIRC from 2004 and 2005. These two years in the AIRC history account for the final two full years of decisions before access to unfair dismissal claims were restricted by the 2006 WorkChoices amendments to the Workplace Relations Act 1996. Under the WorkChoices amendments, employees could not bring a claim if they were dismissed for operational reasons or if they were employed by a business of 100 or less employees, which limited the range of cases. These restrictions were revoked largely by the Fair Work Act 2009.

The AIRC was required to make public its decisions, which it posted on its website. Often drawing directly from hearing transcripts, in these decisions the commissioner's generally record their deliberations which inherently referred to the employers' reasons for dismissing workers countered against the dismissed employees' defences. As the employees' and employers' statements were given under oath and were subject to cross examination, it

enhances the reliability of the data, at least to the extent offered by an arbitral hearing process.

A total of 274 substantive arbitration decisions (148 in 2005 and 126 in 2004) were identified on the AIRC website, from which 92 usable cases were identified for further exploration as they pertained to claims where the employees were summarily dismissed. Summary dismissal can be used by an employer when the employee engages in behaviour that displays a serious breach of trust, signalling a repudiation of the employer-employee contract (CCH 2008). These behaviours align to the definition of employee misbehaviour which is to violate an organisational norm or rule with the intent to either benefit oneself, the organisation or to harm others or the organisation. Albeit the ability to identify less overt deviant behaviours such as working slow or taking a sick day when not genuinely unwell, was a limitation with the data. Table 1 displays the demographics of the 92 examined cases which indicates a range of industries, skill levels and business sizes were captured within the two year collection of cases.

(Insert Table 1 here)

To assemble the data, each decision was individually searched for details pertaining to the employee's version of events and their defence. This information was generally contained amongst comments made by the employees themselves. At other times, a representative for the employee or the commissioner may have summarised the explanations employees provided as to why the employee *did what they did*.

NVivo8 software was used as a data collation tool. The NVivo software enables the coder to maintain a continuous, accessible record of identified themes and the specific tracts of text associated with each theme. The software provides an interface that allows the coder to

review the themes for parsimony before adding an additional theme. The intention of the data coding was to assemble a rich selection of employee explanations to enable the further identification of groups or patterns of explanations.

## **Findings**

Twenty themes were identified during the coding exercise. In order to classify the range of rationales employees provide to defend their misbehaviour, the 20 themes have been organised and represented in a conceptual model identified as *The Employee Explanation Model* in **Figure 2**. It is not contended that the themes listed under each domain in the model cover the full range of reasons. Continued mining of the decisions may produce additional themes which could be incorporated into the model. Of more importance and contribution, is that the model provides a framework for classifying a comprehensive range of reasons into three domains, personal-inside; personal-outside and workplace related.

(insert Figure 2 here)

### **Workplace Related Reasons**

The employer focused reasons merged into a single category devoted to ‘workplace related reasons’. Workplace related reasons are rationales pertaining either directly or indirectly to the workplace. A further explanation of each of the themes assigned to workplace related reasons follows.

#### *(a) Accepted employer practice*

This defence was identified in 19 of the 92 cases whereby the employees’ indicated they engaged in activities considered a regular practice in the organisation. In one case, an

employee found guilty of giving away product defended the action by stating '*waste grain had no value and its disposal to farmers was a cost saving ... the practice had gone on for a long time without any repercussions on individuals*' [Decision No. PR963731, 2005]. A second case where an employee was dismissed for stealing responded '*it was normal practice to claim expenses as cash from the till*' [Decision No. PR955782, 2005].

*(b) Poor communication*

Poor communication refers to defences such as employees claiming they: misunderstood instructions '*he saw the letter as implicit permission to absent himself*'; poor quality communication with supervisors '*she was offered no communication distinguishing her situation from that of her [dismissed] husband*' [Decision No. PR952575, 2004]; misinterpreted communication '*it depends how you think smirking is ... I am not sure that you can actually tell whether I am smirking or whether I am trying to hold a hiccough of something like that*' [Decision No. PR954650, 2004]; and/or deficient methods of communication '*there had been difficulties in communications ...communication was largely by text messages and emails*' [Decision No. PR955782, 2005].

*(c) Poor employer practice*

This refers to defences accusing the employer of either lacking or poorly implementing a policy or procedure. For example one case cites '*There were no guidelines or protocols to guide officers on how to behave on field trips ... This (incident) occurred in circumstances where there were no limits on what he could do imposed by the Department*' [Decision No. PR955783, 2005]. In another case, the employee claimed she '*was not given instructions by (the employer) as to correct procedures to be followed to identify a patient, or what to do if a patient was not wearing a wrist band*' [Decision No. PR955288, 2005].

*(d) Influence from another person*

This occurred in cases where employees attributed their misbehaviour to appeasing the requests of others. In one case an employee accused of leaking confidential information *'provided the information not at her own initiative but in response to requests from (her former supervisor)...out of loyalty to her former longstanding boss'* [Decision No. PR955944, 2005]. Another employee sent an email of a sexual nature to a co-worker who *'had requested the email be sent to him and was aware of the content'* [Decision No. PR959994, 2005].

*(e) Job changes*

This theme is designated on the basis of employees arguing that their job had changed from their original employment contract. For example, an employee *'complained that his duties had changed and that he was not working as a boat builder. He requested confirmation that he would be given boat builder work which he was willing to perform'* [Decision No. PR956752, 2005]. A gardener dismissed for not complying with instructions claimed *'the weeding duties did not form part of his contract of employment'* [Decision No. 947369, 2004].

*(f) Faulty equipment*

These employees defended their action by suggesting they were working with faulty equipment, for example, *'The applicant give clear evidence that the machinery was old and was maintained on a patch up basis, so as to maintain production'* [Decision No. PR962238, 2005].

*(g) Unreasonable performance expectations*

This defence occurred when employees claimed that performance expectations triggered their errant behaviour, for example, *‘one reason for her non attendance ... was that she was under pressure to reach her target hours’* [Decision No. 947653, 2004].

### **Personal-Inside Reasons**

It was evident that some of the personal reasons were of a non-tangible nature. That is, reasons based on cognitive processes, reactions or emotions of the employee. Such reasons are presented as ‘personal-inside reasons’ in the model. The following section provides an account of the themes associated with the ‘personal-inside’ category.

#### *(a) Denial*

A number of employees would not provide explanations for their behaviour and instead denied engaging in the accused misbehaviour. A typical example of denial is: *‘That is not my behaviour. I would never do that to anybody. I would never get into anybody’s face like that. And it is just not something I would do. It is something so – not me’* [Decision No. 954947, 2005].

#### *(b) Felt inequity or tension*

This theme accounts for employees who built defences on perceptions that they were being treated unfairly or felt underlying tension. An example of an unfair treatment occurred when an employer reimburses petrol costs via payroll and the employee responded *‘I got to pay tax on that now, and I can’t claim it and it’ll bugger up all my returns at the end of the year again... you can’t do that. It’s not fair’* [Decision No. PR961549, 2005]. Examples of underlying tension can be found in the employee claiming he *‘was omitted from an email list about a meeting ... had received calls from employees warning him to “watch out”’* and the

employee claiming *'he was allocated an unfair workload and allocated unusual bids'* [Decision No. PR958849, 2005].

*(c) Self defence*

This defence identifies those situations where employees felt the need to engage in self protective behaviours. In one such case the employee states, *'Obviously I would have raised my voice. It is a way of protecting oneself, but I mean, I'm not being the aggressor, I have not been put (sic) my hand up, but I mean, my voice would have been louder, really to stop the argument escalating'* [Decision No. PR957122, 2005].

*(d) Mistake*

In some cases the employee's defence was that he or she made a mistake. Examples of employees admitting they made a mistake are: *'some of the alterations were done in error ... he acknowledges the breach; apologises and indicates he acted stupidly and carelessly. He expresses sorrow and says he will never make this mistake again'* [Decision No. PR958166, 2005]. In another case, *'the employee had held an honest belief that he was not supposed to attend for work when he had a 'viral illness''* [Decision No. 963850, 2005].

*(e) Intentional behaviour*

This defence captures incidences where the employee admits they behaved with intent to do wrong. For example, one employee *'conceded he had decided to tell a lie during his security interview ... he went on to concede that most of the information he had given (the employer) in relation to the assault was, in fact, untrue'* [Decision No. PR956105, 2005]. In another case, an employee admitted he sent a major customer to a competitor with the intent of losing

his job in the hope he could *'get the money (a past co-worker) got'* as a termination payout [Decision No. PR955902, 2005].

*(f) Ignorance of employer policies and rules*

In this circumstance, employees contend that they did not realise their behaviour breached a company policy or procedure, for example, an employee admitted sending inappropriate emails but explained to investigators that *'at the time he did not fully foresee the ramifications of the email and that he was now aware of the email policy'* [Decision No. PR959994, 2005].

*(g) Frustration*

The emotion of frustration was identified as a defence for wayward behaviour. In one example, the employee took issue with a poster and admits *'he tore it down in the heat of the moment in frustration... out of frustration at (the supervisor's) attitude towards him and the way he had treated him in the past'* [Decision No. PR945691, 2004].

*(h) Atypical behaviour*

There were incidences where the employee could not account for their misbehaviour, other than to mount the defence that it was 'out of character' behaviour, for example, *'his actions were out of character. All the (co workers) giving evidence indicated they had worked well without problems'* [Decision No. PR955783, 2005].

## **Personal-Outside Reasons**

The remaining personal reasons could be attributed to physical aspects surrounding the employee. These dimensions are consequently classified as 'personal-outside reasons' and

are defined as those reasons which are non work related and exist in a tangible or measurable form. The themes associated with personal-outside reasons identified from the data were as follows:

*(a) Health issues*

This defence relates to the use of poor personal health triggering some form of misbehaviour. For example, one employee failed to contact his employer about his absence because ‘*he was “laid up” for three days and could barely move*’ [Decision No. PR957185, 2005]. In another case the arbitrator cites ‘*it was the employee’s position that the boil or boils caused him to conduct himself in the manner he did*’ [Decision No. PR945645, 2004]. While another employee’s defence against taking company files, was ‘*she had a lot of pain on the right side of her face with swelling and a high temperature. By the end of her shift on 2 March she says she was in a ‘terrible state’ ... (the employee) says she tried to explain that she took the log book home by mistake because she was very sick and did not realise that she put the logbook into her handbag*’ [Decision No. PR949961, 2004].

*(b) Family commitments*

This theme covers defences using family or household responsibilities. In one case an employee failed to provide a medical certificate before a set date because ‘*his ex-partner and his children moved house during this period and he helped them do so*’ [Decision No. PR957185, 2005]. Another employee indicated ‘*his wife was suffering a migraine headache attack and that he had to go home to look after her*’ [Decision No. PR955063, 2005].

*(c) Mood altering substances and additive behaviours*

This accounts for defences for misbehaviour due to the use of drugs, alcohol or addictions such as gambling. One employee stated *'now in hindsight, and in light of what has happened to me, I am probably in need of some help in addressing my dependence on alcohol'* [Decision No. PR951124, 2004]. A similar plea was made by the employee reported in Decision No. PR952429 in [2004], *'The applicant's defence was that he had a serious problem with alcohol and gambling. The transgressions by him in Brisbane and Darwin were the result of being intoxicated which seriously hampered his judgement'*.

*(d) Personal tragedy*

There were occasions where employees defended their behaviour on the basis of a major negative life event. For example, one employee's defence was *'the approaching anniversary of her son's death caused (the employee) to be initially upset'* [Decision No. PR957079, 2005]. In another example, an employee defence for hitting another employee was *'the comment by (co-worker) about my father was highly offensive to me ... At the time of the incident, I had not had the opportunity to properly deal with my father's death'* [Decision No. PR965161, 2005].

*(e) Financial pressures*

Living in a strained financial state was also called upon as a defence. For example, an employee testified *'that his financial position became so poor that he could not afford to make telephone calls and says this is the reason for any gaps or failure on his part to contact (the employer) as he otherwise should have ... he could not afford to telephone every day'* [Decision No. PR957185, 2005].

**Exploring the individual and conflated rationales**

Employees frequently provide more than one reason for their misbehaviour and multiple themes were identified in a number of cases resulting in a greater number of reasons (190) than examined cases (92). It is worth stating that 92 cases is too small a sample to conduct reliable statistical analysis (which was not the intention of this paper). That stated, on the basis of the uniqueness of this data, there is value in exploring the frequency counts and patterns that occurred in the sample. Table 1 has already identified that 62 per cent of the cases favoured the business and 38 per cent returned a favourable result to the aggrieved employee. Table 2 displays a further breakdown of the 20 themes and their associated arbitration results. These counts show that denial was the most frequently cited explanation but was only associated with a successful outcome for the employee in 10 of the 36 instances in which it was used.

(Insert Table 2 about here)

The results also suggest that no category provided employees with a rationale that is more likely to be accepted by the commissioner over a counter-defence provided by the employer. Of the three categories, workplace-related reasons had the most balanced distribution of outcomes between the employees' favour and the business' favour (12 per cent versus 19 per cent respectively). This suggests explanations that involve reference to conditions related to the workplace, were most frequently associated with a sympathetic response from the arbitrator. Table 2 also demonstrates that personal-inside reasons were those most frequently cited by employees with 55 per cent of the defences identifying one of the themes under this category. Personal-outside reasons were the least relied upon and also the least successful type of explanation used by the dismissed employees.

(Insert Table 3 about here)

The Employee Explanation Model in Figure 2 conceptualises that multiple rationales from across categories produce a conflated rationale. To further explore this, the figures in Table 3 indicate that in 41 per cent of the cases (38 of the 92) the employees provided a conflated rationale in their defence. The most common combination involved workplace related reasons and personal-inside reasons. It was identified in Table 2 that personal-inside reasons were most frequently cited when the employees used only a single rationale to defend their actions. These previous two points combine to indicate that personal-inside reasons were a dominate feature in employee explanations of their misbehaviour. The counts in Table 3 did not depict a conflated rationale combination that returned a favourable decision more frequently to employees than employers, other than the three-way conflated rationale, which showed only one instance of this occurring in the sample. It appears that loading the explanation with several reasons is no more likely to convince an arbitrator of hardship than if they cite only one reason in their defence.

### **Implications of this Research for Employers and Unions**

A procedurally fair discipline process requires the employer to provide the employee with an opportunity to respond to allegations of misconduct. At this point, employers and unions need to take into account the employee may be rationalising his or her explanation and may not reveal the genuine trigger for the behaviour. The unanswered challenge is that counselling the employee on the self reported reason to resolve the problem, may not address its true cause with the implication that deviant behaviour will continue to occur. Even if the employee is terminated from their job, similar acts of misbehaviour may continue amongst other employees if the dismissed employee 'neutralised' their explanation and concealed the root cause.

The sample indicated that in a moderately strong majority of cases (62 per cent), the Commission showed limited tolerance for employees who engaged in serious misbehaviour. While this is positive news for employers, unions and employee representatives may wish to review the design of their advocacy strategies and/or the training and preparation undertaken by advocates.

This study has produced a list of twenty themes used by employees to explain their behaviour. Employers and unions can draw several lessons from these themes. The sample data showed that the Commission had to deal with 190 issues across the 92 cases. Fifty-four of these issues can be accounted for by the 54 cases in which the employees cited a single reason for their behaviour (see Table 3). Personal-inside reasons featured the most frequently. The remaining 38 cases cited a conflation of reasons. This amounts, on average, to at least three separate issues for each case, with a combination of personal-inside and workplace related reasons accountable for the majority of the defences. Misbehaviour may be reduced and the subsequent need for dismissal, if during the investigation process, issues raised by the employee are isolated and managed on a piecemeal basis to ensure movement beyond the 'on-top' issue. In addition, policies and practices that offer personal support to employees such as counselling services, mentorship, and voice mechanisms such as suggestion sites and grievance processes could potentially diffuse themes identified under the personal-inside domain such as felt inequity and tension or frustration.

In terms of the workplace-related reasons cited by dismissed employees, this research emphasises the need for employers to set boundaries on employee behaviours by having clear policies, practices and expectations that establish desirable behaviours. This also alludes employers to consider the health of their employees' psychological contracts as the more specific the promises made between employers and employees, the more likelihood they will

be understood and performed (Rousseau, 2001). Further, Folger and Skarlicki (1998) identified frustration and deprivation as measures of justice perceptions and it is noted that several of the themes: unreasonable performance expectations; job changes; felt inequity; and frustration are akin to failings in organisational justice. Perceptions of unfairness in the workplace impede performance and commitments, and as a number of the cases in the sample revealed, triggered employees to engage in conduct culminating in their dismissal.

## **Conclusions**

In the workplace, employee explanations of misbehaviour are generally investigated and determined by the industrial relations or human resource experts. As such this study introduced the role of industrial relations into a topic that has been typically addressed by organisational behaviour scholars. This study investigated self reported and potentially sanitised defences that employees provide when confronted with the 'please explain' question by their employer. Cognitive dissonance and neutralisation theory provided a premise for pursuing a line of investigation suggesting employee defences may be more of a product of self preservation rather than being reflective of actual reasons for their behaviour. It is of value to understand the various types of employee provided explanations as they are relied upon by employers, unions, mediators and arbitrators (particularly in the case of sworn testimony) as the real reason for the behaviour and action is taken based on these reasons.

Within the Australian context, the sample of 92 cases citing serious misconduct as the reason for dismissal showed that employers were clearly on the receiving end of favourable outcomes when the Commission considered the explanation provided by employees for their misbehaviour and that employees relied most heavily on personal-inside reasons for their defence.

The conceptual contribution of this paper culminates from an investigation of the texts of arbitration decisions into summarily dismissed employees, as exemplars of employee defences against accusations of misbehaviour. The employee explanation model was developed which consists of a three domain typology: personal-inside reasons; personal-outside reasons; and workplace related reasons. A single element from within a domain can contain a rationale or alternatively multiple elements from within and /or across domains can be drawn upon by the employee which culminates in a conflated reason. In this investigation, a conflated rationale involved most commonly workplace related reasons and personal-inside reasons. However, it appears that presenting a conflation of reasons to the Commissioner is no more a successful strategy for dismissed employees than one were they provide a single reason for their behaviour.

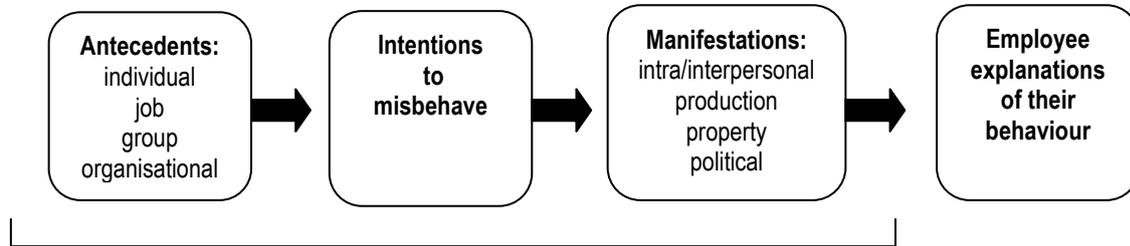
Several directions for future research are noted. Arising from a limitation of this investigation that the type of employee representation was absent from the data collection, one such direction would be an examination of the potential influence an employee representative may have on the type of explanation provided and the subsequent outcome of the arbitration hearing. The arbitrator's decision relies on the explanations provided by the employee in concert with the advocacy delivered by union representatives and human resource experts representing the employee and employer respectively (or legal experts if permitted at the arbitration table). The skills, experience and support of the union official may be a contributory factor to the quality of an employee's defence.

Future work can be devoted to validating the themes in the domains and mapping whether significant inter-relationships exist amongst elements within and between domains. For example, are people who claim they made an honest mistake also more likely to claim poor

employer policies and practices? Being able to associate behaviours with defences can provide insights for the investigation, counselling and discipline processes.

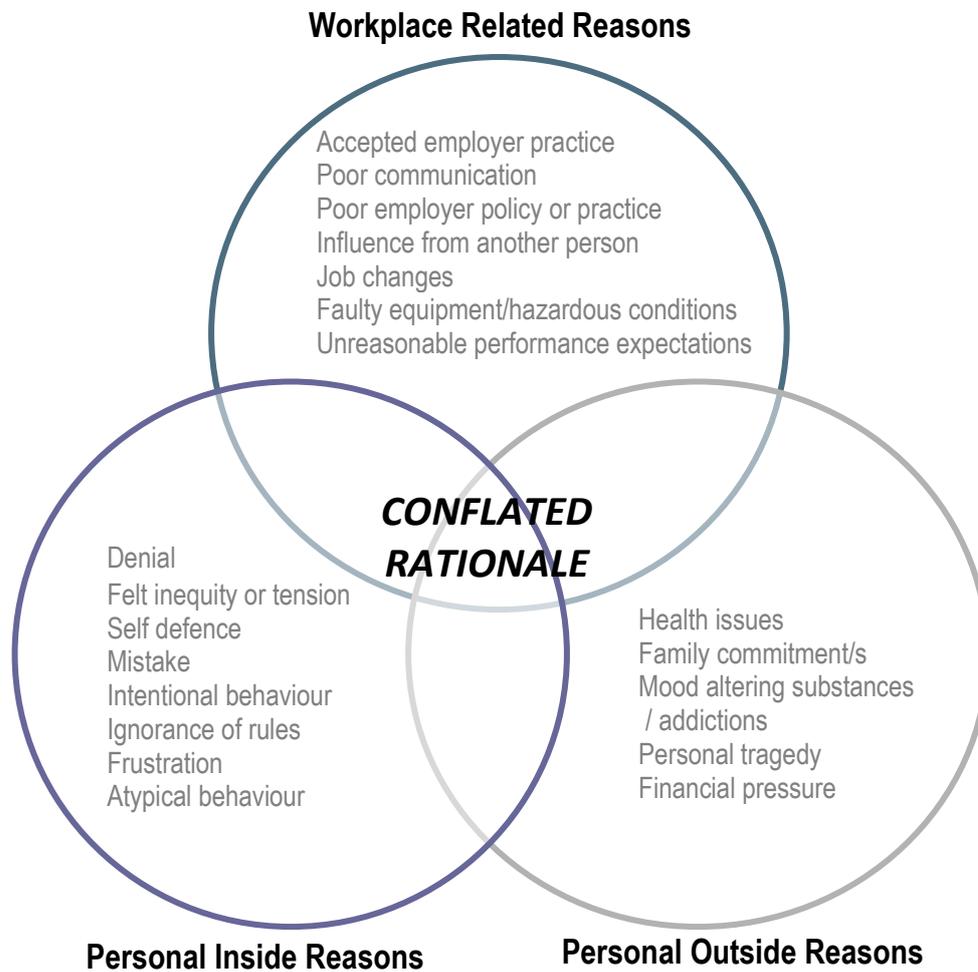
The phenomenon of employee denial was identified in this research and triggers further research questions. Denial can block the investigation process forcing the employer to make a determination on 'the balance of probability' whether or not the employee engaged in the behaviour. This suggests the need for dialogue as to how more fruitful investigations can be conducted to reduce the need for employers to make a 'balance of probability' decision over the employee's likelihood of guilt and future employment with the organisation.

**Figure 1** *Incorporating employee explanations of misbehaviour into the OMB framework*



A general framework for organisational misbehaviour (OMB) (Vardi and Weitz, 2004: 45)

**Figure 2** *The Employee Explanation Model: a typology of employee explanations of their misbehaviours*



**Table 1** *Demographics of unfair dismissal cases for serious misconduct in 2004/05*  
(n = 92 cases)

<b>Dimension</b>	<b>n / ( % )</b>	<b>Dimension</b>	<b>n / ( % )</b>
<i>Arbitration results</i>		<i>Employee gender</i>	
In the business' favour	57 (62%)	Male	75 (81.5%)
In the workers' favour	35 (38%)	Female	17 (18.5%)
<i>Industrial sector</i>		<i>Employee skill level</i>	
Services (non government)	30 (32.6%)	Managers & administrators	5 ( 5.4%)
Manufacturing/Mining/Agriculture	29 (31.5%)	Professionals	8 ( 8.7%)
Services (government)	19 (20.7%)	Associate professionals	11 (12.0%)
Retail & wholesale trade	12 (13.0%)	Trades & related workers	7 ( 7.6%)
Accommodation/cafés/ restaurants	1 ( 1.1%)	Advanced clerical & service	9 ( 9.8%)
Unassigned	1 ( 1.1%)	Intermediate clerical, sales & service workers	10 (10.9%)
<i>Human resource management</i>		Intermediate production & transport workers	28 (30.4%)
HR experts involved	71 (77.2%)	Elementary clerical, sales & service workers	6 ( 6.5%)
HR experts not involved	18 (19.5%)	Labourers & related workers	8 ( 8.7%)
Unassigned	3 ( 3.3%)		
<i>Business size</i>			
Small - up to 19 employees	9 ( 9.8%)		
Medium - 20 to 199 employees	14 (15.2%)		
Large - over 200 employees	57 (62.0%)		
Unassigned	12 (13.0%)		

**Table 2** *Individual reasons, frequency of usage and arbitration results*

<b>Explanation</b>	<b>No. of occurrences</b> <sup>1</sup>	<b>Workers' Favour</b>	<b>Business' Favour</b>
<i>Workplace Related Reasons</i>			
Accepted employer practice	19	7	12
Poor communication	17	7	10
Poor employer policy or practice	10	6	4
Influence from another person	7	2	5
Job changes	4	1	3
Faulty equipment/hazardous conditions	2	0	2
Unreasonable performance expectations	1	0	1
Subtotal	60	23	37
%	31	= 12	+ 19
<i>Personal-Inside Reasons</i>			
Denial	36	10	26
Felt inequity or tension	19	7	12
Self defence	13	7	6
Mistake	10	4	6
Intentional behaviour	9	2	7
Ignorance of rules	8	3	5
Frustration	5	1	4
Atypical behaviour	4	2	2
Subtotal	104	36	68
%	55	= 19	+ 36
<i>Personal-Outside Reasons</i>			
Health issues	8	1	7
Family commitment/s	7	1	6
Mood altering substances/addictions	5	2	3
Personal tragedy	4	1	3
Financial pressures	2	0	2
Subtotal	26	5	21
%	14	= 3	+ 11
<b>Totals</b>	<b>190</b>	<b>64</b>	<b>126</b>
%	100	34	66

<sup>1</sup> Employees frequently used multiple rationales when defending their behaviour. This resulted in 190 explanations recorded from the 92 cases examined.

**Table 3** *Single and conflated rationales by arbitration result (n = 92 cases)*

<b>Type of Reason</b>	<b>Worker's Favour</b>	<b>Business' Favour</b>
<i>Single Rationale:</i>		
Workplace Related	6	7
Personal-Inside	14	22
Personal-Outside	2	3
<i>No. of cases citing a single rationale</i>	22	32
<i>Conflated Rationale:</i>		
Workplace Related <i>and</i> Personal-Inside	10	16
Workplace Related <i>and</i> Personal-Outside	nil	2
Personal-Inside <i>and</i> Personal-Outside	2	7
Personal-Inside <i>and</i> Personal-Outside <i>and</i> Workplace Related	1	nil
<i>No. of cases citing a conflated rationale</i>	13	25
<b>Total number of cases</b>	<b>35</b>	<b>57</b>

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