

AN OCCUPATIONAL AND GENDERED REVIEW OF REINSTATEMENT AND COMPENSATION FOR UNFAIRLY DISMISSED WORKERS

Kim Southey

ABSTRACT

This article aims to inform the reader about the variation detected in arbitrated restitution orders for unfairly dismissed workers according to gender and occupation in Australia. It is possible that the form and/or amount of restitution to workers may be reflecting occupational segregation, gender interaction effects at arbitration, labour market forces and different relational approaches to the employment relationship taken by men and women. The challenge of assembling the quantity of data pertaining to women at arbitration, to investigate this issue, is also discussed.

Keywords: unfair dismissal, arbitration, compensation, reinstatement, occupation, gender

INTRODUCTION

This article compares the reinstatement and compensation orders awarded by Australia's Federal industrial tribunal to men and women who have been unfairly dismissed from their employment. The aim is to consider whether parity is being achieved between the sexes in their respective occupational skill levels. It is already known that Australian women are remuneratively undervalued and yet to achieve wages and salary parity with their male counterparts (Allebone 2011; Barns & Preston 2010; Cottrell, Sanders & Hrdlicka 2011; Sappey et al. 2009). It is then worthwhile to consider whether this imbalance is also being reflected in the restitution orders awarded to unfairly dismissed workers.

Complicating the matter of a gender pay-gap, is the occupational structure in society that categorises workers into a hierarchical 'pecking order' on the basis of the qualification and skill demands of the job they perform (Watson 2008). The occupational hierarchy influences societal thinking, whereby people associate groups of workers with levels of power within the workplace, and social prestige outside the workplace. Hand-in-hand with the effects of an occupational hierarchy is the traditional designations of an occupationally segregated workforce: the phenomenon of men tending to perform 'men's work' and women engaging in generally 'women's work'. Whether these influences can be associated with the restitution orders of Australia's unfair dismissal restorative processes provide the foundation of this paper.

This article will proceed with a brief explanation of the role of Australia's Federal industrial tribunal in arbitrating unfair dismissal claims. Thereafter, insight into the matters of gender and occupation in respect to unfair dismissal arbitration decisions will be provided. An account of the methodology and results of the analysis follow this discussion. The final part of the article contains a discussion of the findings, implications and limitations.

Kim Southey (kim.southey@usq.edu.au) is a lecturer (Management) in the School of Management and Marketing, Faculty of Business and Law, University of Southern Queensland, Australia.

AUSTRALIA'S UNFAIR DISMISSAL SYSTEM

Under The Fair Work Act 2009, in the event an unfair dismissal claim fails to settle at conciliation, the dismissed worker may seek to have his or her claim settled via arbitration in the Federal industrial tribunal, currently Fair Work Australia (FWA). At arbitration, the arbitrator will either determine that the employer was fair and reasonable in their decision and uphold the dismissal, or find that the dismissal was harsh, unjust or unreasonable and overturn the employer's decision to terminate the employee. In the second situation, the arbitrator is faced with a further task: either to make an order for the employer to reinstate the employee (to their original position or to an equivalent position); or, alternatively, the arbitrator can order financial compensation if it is considered the trust required of a functional employer-employee relationship is irreparable. Compensation is legislatively capped at half the amount of the income threshold which from July 2011 was \$59,050 (Part 3-2 Division 392 of The Act). The amount of compensation must be reduced if the employee had engaged in misconduct leading to the dismissal. And, in line with limitations on damages under common law, the compensation amount *must not* include a stress or humiliation component (Chapman 2009).

GENDER DIFFERENTIALS AS A MATTER OF INFLUENCE

In practice, Australian society has moved beyond the 'husband supporting a wife and three children' paradigm (Ridout 2005), with women active participants in the workforce. Statistics indicate that women comprise 45 percent of Australia's total workforce, 24 percent of which work full-time and 21 percent work part-time (ABS 2005b). Comparatively, for men, 47 percent work full-time and 8 percent work part-time. Despite changes in Australia's labour force composition—as the case with most advanced economies—occupational segregation has changed little, that is, men still tend to do 'men's work' and women still tend to perform 'women's work' (Barns & Preston 2010; Cobb-Clark & Tan 2011; Pocock 1998; Preston & Whitehouse 2004; Watson 2008). In spite of the propensity for women to work in part-time and casual positions, they are just as likely as men to join a union (Bray, Waring & Cooper 2011). In 2005, approximately 21 percent of female workers and 24 percent of male workers were union members (ABS 2005a). Researchers have also suggested that union members are more likely to pursue a grievance claim (Bemmels 1994; Bemmels, Reshef & Stratton-Devine 1991). What this would suggest is that Australian women have similar levels of union support to their male counterparts in seeking unfair dismissal relief. Albeit, the Australian industrial legislation (The Fair Work Act 2009) limits unfair dismissal claims from casuals with less than 12 months service in a businesses with less than 15 workers, or 6 months for larger businesses: a barrier more likely to impact the highly casualised, female workforce.

For women who do pursue an unfair dismissal claim, researchers have considered whether gender interaction effects come into play in the judgements handed to them by arbitrators. The '*paternalism and chivalry*' thesis (Staines, Tavris & Jayaratne 1974) suggests male arbitrators harbour a fatherly or protective role towards female grievants. This alludes to women receiving lighter punishments. Findings supporting the paternalism and chivalry thesis have occurred in a range of studies. (See: Bingham & Mesch 2000; Caudill & Oswald 1993; Knight & Latreille 2001; McAndrew 2000; Oswald & VanMatre 1990; Saridakis et al. 2006; Southey & Innes 2010; Wagar & Grant 1996) and Bemmels (1988c, 1988b, 1988a, 1990b, 1990a, 1991.)

The '*path-breaker*' thesis (Southey & Innes 2010) suggests female arbitrators may be more lenient on female grievants (Caudill & Oswald 1993). The premise is that women who break

through to positions of leadership (in this case the female arbitrator) are expected to possess a 'feminine' attribute of ensuring women's advancement (Eveline 2005). Additionally, women are seen to be highly perceptive of discriminatory incidences occurring to female colleagues (Gutek, Cohen & Tsui 1996).

Researchers have uncovered counter-findings that suggest decision-makers can enforce harsher disciplinary orders on women, compared to males (See: Hartman et al. 1994; Mesch 1995; Oswald & Caudill 1991; Rollings-Magnusson 2004). A female being treated more harshly by either a male or female arbitrator is underpinned by the '*Garden of Eden effect*' (Hartman et al. 1994). The underlying tenant of this effect is that women who misbehave may be seen as temptresses who have provoked the punishment. As a result, decision makers are more likely to support disciplinary actions against women who are at fault, than culpable males.

OCCUPATIONAL DIFFERENTIALS AS A MATTER OF INFLUENCE

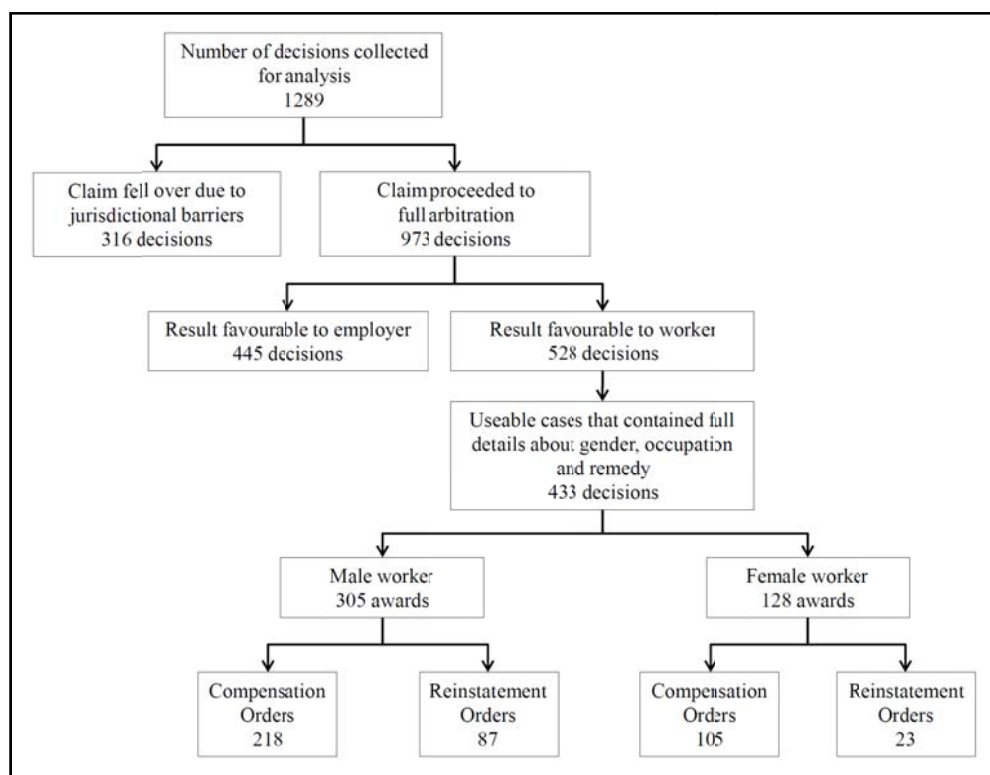
Different occupations require different types of abilities and attributes and different levels of skill, education and training. These variations lead to inherent differentials in power and job prestige, which subsequently influence the quality of people's work-life and social status (Watson 2008). Influential sociologist Marx (in Hyman 2006) and Weber (1978) theorised that people as a society, are located hierarchically in 'classes', which reflect the status derived from the type of work they perform (Watson 2008). Both Marxist and Weberian methodologies discuss power inequality and the continuous struggle of the occupationally-defined classes to achieve, maintain or improve the level of status and reward that they believe the members of their class are entitled. They also conceived a resistance and contestation each class incurs from the other classes toward such efforts (Watson 2008). Relevant then to this article is the occupational-power struggle that can be seen in a dismissed worker taking their employer to task—whether it be the private business owner or the managerial expert employed by a firm to act an 'agent' for the owner—over his or her dismissal. The dismissed worker engages in the 'struggle' with a view to recovering the sense of dignity and the autonomy to command his or her life in society that earning an income allows (Collins 1992).

How well or not the various occupational classes have fared in their unfair dismissal struggle has received only minor attention from investigators to date. Based on these empirical studies, it is thought that employees engaged in lower or semi-skilled occupations are more likely to have their dismissal overturned and restitution ordered than employees working in high skilled occupations (Bemmels 1988c; Cappelli & Chauvin 1991; Caudill & Oswald 1992; Southey 2008). In Australia, it was found this occurred more so where the decision was administered by a female arbitrator (Southey & Innes 2010). Rollings-Magnusson's (2004) Canadian investigation examined interaction effects between skill level and grievant gender and found that dismissed females from executive, professional, middle and lower-level management, clerical and trade positions received lower compensation payments than their male contemporaries. It was, however, the lowest skilled worker, the labourer, where females received 2.5 weeks *more* than male labourers. Conversely, less sympathy towards lower skilled workers was found in Block and Stieber's (1987) US study that identified significant correlations between unskilled workers and *unfavourable* arbitration outcomes.

METHOD

Australia's Federal tribunal publishes the texts of its decisions on its website. Unfair dismissal arbitration decisions from July 2000 to December 2005 were downloaded for analysis. All unfair dismissal arbitration decisions for this period were collected on the basis that previous investigators of gender effects in arbitration reported difficulties generating a pool of decisions sufficient to identify gender patterns. This is because women tend to file fewer claims than men. To illustrate this point, Figure 1 shows that from the 1,289 decisions collected for analysis in this investigation, the data yield diminished steadily as decisions were eliminated due to jurisdictional barriers, employer 'wins', and missing data. The pipeline shows that the initial pool of decisions resulted in 305 and 128 restitution orders to male and female workers respectively.

Figure 1: The Data Pipeline Yielding Unfair Dismissal Remedies by Gender



A content analysis was conducted to extract data from each decision. This involved reviewing each decision and completing a data collection sheet that captured the specifics of whether the grievant was male or female; their occupational skill level according to the Australian Standard Classification of Occupations (ASCO) (ABS 1997); and, finally, whether the employee was either 'reinstated' to work again for the employer or, alternatively, given 'compensation' via a financial settlement and the dollar value of the order.

RESULTS: FINANCIAL COMPENSATION

One hundred and five (105) compensation orders were made to women and 218 were made to male workers. Compensation ratios were calculated for each occupational group, the three skill sub-categories, and one for all occupations combined. Table 1 contains the result of this analysis.

Table 1: Federal Tribunal Compensation Order Estimates for Unfairly Dismissed Workers by Gender and Occupational Skill Level, 2000 to 2005 inclusive

Occupation	Average estimated[#] compensation order				Female to male compensation ratio *
	<i>Women</i>	<i>(n)</i>	<i>Men</i>	<i>(n)</i>	
Higher-level positions	\$11,658	19	\$11,377	39	102%
Managers & administrators	13,940	10	9,800	20	142%
Professionals	9,600	5	12,607	14	76%
Associate professionals	8,525	4	11,290	5	76%
Mid-level positions	\$ 8,171	55	\$ 8,091	132	101%
Tradespersons & related workers	7,071	7	9,182	50	77%
Advanced clerical & service workers	12,775	8	10,600	4	121%
Intermediate clerical & service workers	7,723	30	7,882	28	98%
Intermediate production & transport workers	6,600	10	6,916	50	95%
Lower-level positions	\$ 9,397	31	\$ 8,217	47	114%
Elementary clerical, sales & service workers	9,550	10	7,100	9	135%
Labourers & related Workers	9,324	21	8,482	38	110%
Average estimated compensation order (all jobs)	\$ 9,164	105	\$ 8,661	218	106%

Data were collected originally in six categorical groups: up to \$1,000; \$1,001-\$5,000; \$5,001-\$10,000; \$10,001-\$15,000; \$15,001-\$20,000; and \$20,001 plus. The midpoint of each category and a nominal \$20,000 for the final category were taken to convert the data to individual estimates before calculating an average for each occupational group.

* Calculated as: compensation amount paid to women / compensation amount paid to men

All workers combined, the total compensation ratio indicates that for every one hundred dollars paid in compensation to men, women received an extra six dollars. The compensation ratios for all three major categories also indicated that women received higher compensation payments than men. That is, women working in higher-skilled occupations received two dollars more than their male counterparts, females in mid-level occupations received an extra one dollar and females in lower level positions received an extra fourteen dollars.

However, the averaging at the summary category level conceals the negative female compensation ratios being experienced within a number of the specific occupational

categories. A case of ‘Simpson’s paradox’ has occurred because the *overall* rate is an average of the total sample, whereas the rates for the separate categories are weighted by the population of their own category (Freitas 2001; Wagner 1982). Thus, in spite of the fact that the summary averages show, in particular, almost dollar for dollar equality between men and women in higher and mid-skilled occupations, inaccurate conclusions can be drawn without looking further at the data.

Several clear inconsistencies appear at the individual occupational skill level. First, within the higher skill category is the most pronounced anomaly, weighing in favour of women. It is that women ‘*managers and administrators*’ are being awarded 142 dollars for every 100 dollars awarded to their male counterparts. Yet, within the same higher skill category also occurs the most pronounced anomaly favoured toward men. That is, female ‘*professionals*’ and ‘*associate professionals*’ are being awarded only 76 dollars for every 100 hundred dollars in compensation given to their male counterparts.

At the mid-level skill category, two stand-out variances occur. First, in the ‘*tradesperson and related workers*’, women were compensated at only 77 dollars for every 100 dollars offered to men. Yet, secondly, women workers performing ‘*advanced clerical or service work*’ were awarded at a rate of 121 dollars for every 100 dollars in compensation to men performing the same type of work.

The lower-level skilled category revealed that women workers were awarded consistently higher compensation amounts than their male counterparts. Noticeably, women performing ‘*elementary clerical, sales and service work*’ were awarded 135 dollars for every 100 hundred awarded to their male counterparts.

RESULTS: REINSTATEMENT

Twenty-three (23) reinstatement orders were given to women and 87 were given to men. Such count data alone provides little insight without knowing the overall number of successful claims of which such reinstatements form a portion. Thus, reinstatement ratios were calculated for each occupational group, the three skill sub-categories and for all jobs. Table 2 contains the result of this analysis.

Table 2: Federal Tribunal Reinstatement Orders for Unfairly Dismissed Workers by Gender and Occupational Skill Level

Occupation	Successful claims		Reinstatement orders		Reinstatement rates*	
	Women (n)	Men (n)	Women (n)	Men (n)	Women	Men
Higher-level positions	27	53	8	14	30%	26%
Managers & administrators	13	22	3	2	23%	9%
Professionals	8	26	3	12	38%	46%
Associate professionals	6	5	2	0	33%	nil
Mid-level positions	63	174	8	42	13%	24%
Tradespersons & related workers	7	60	0	10	nil	17%
Advanced clerical & service workers	11	5	3	1	27%	20%
Intermediate clerical & service workers	34	36	4	8	12%	22%
Intermediate production & transport workers	11	73	1	23	9%	32%
Lower-level positions	38	78	7	31	18%	40%
Elementary clerical, sales & service workers	12	15	2	6	17%	40%
Labourers & related workers	26	63	5	25	19%	40%
Totals (all jobs)	128	305	23	87	18%	29%

* calculated as: number of reinstatements for each gender / total number of successful claims for each gender

Table 2 reveals that, all jobs combined, for every 100 restitution orders men were reinstated in 29 of them (the other 71 being financial compensation orders). Meanwhile, women received reinstatement 18 times for every 100 successful claims (the other 82 being financial compensation orders). Save for some exceptions, men showed higher reinstatement rates than women across the occupational categories. At the individual occupational levels, the largest differential between the male and female reinstatement rate occurs in the lower-skill categories of '*elementary clerical, sales and service workers*' and '*labourers and related workers*'. Men had a 40 percent reinstatement rate in both categories, compared to a 17 percent and 19 percent reinstatement rate for women, respectively. Sizeably higher reinstatement rates for men also occurred where they worked as '*professionals*', '*tradespersons & related workers*', '*intermediate clerical and service workers*' and

'intermediate production and transport workers'. The few categories where women had higher reinstatement rates than their male counterparts were at the top end of the skill scale, where they worked as *'managers and administrators'*, *'associate professionals'* and *'advanced clerical and service workers'*.

DISCUSSION—COMPENSATION

Near equality in compensation between men and women occurred in only one category, those employed as *'intermediate clerical and service workers'* which includes occupations such as general clerks; keyboard operators, receptionists, payroll clerks; bank clerks; purchasing clerks; accounting clerks; library assistants; sales representatives; child care workers; waiters; gaming workers; fitness instructors and travel agents. For the remaining skill categories women workers were, at times, in front and at other times behind, their male colleagues. A series of explanations for these variances are now tentatively provided.

Australia has a strongly gendered workforce (Pocock 1998; Preston & Whitehouse 2004; Sappey et al. 2009). Thus the variances in the compensation ratio detected in at least four of the categories may be reflective of 'occupational segregation'. Occupational segregation promotes western stereotypes of jobs to be performed by men, and jobs to be performed by women (Watson 2008). This means that women performing typical 'female' occupations receive higher compensation and men performing typical 'male' occupations receive higher compensation. Moreover, if a female engages in a typical 'male' occupation they receive lower compensation, and similarly if a male engages in typical 'female' work. Occupational segregation would suggest that a type of 'in-group favouritism' exists, where rules may be applied rigorously to outsiders, but flexibly afforded to insiders (Williams 2003). For instance, a male dismissed from a child-care position is subjected to more rigorous standards to calculate compensation (or reinstatement) than a female child-care worker; or likewise for a female dismissed from a building trade position. To progress the 'occupational segregation' explanation, one must ascertain which occupational categories, in Australia, are typically 'male' and which are 'female'. For this reason, Table 3 displays the most dominate gender employed in each of the occupational categories, based on ABS labour force surveys.

Table 3: Dominant Gender in Occupational Skill Categories in Australia 2004

Managers and Administrators	Professionals	Associate Professionals	Trades and Related Workers	Advanced Clerical and Service Workers	Intermediate Clerical and Service Workers	Intermediate Production and Transport Workers	Elementary Clerical, Sales and Service Workers	Labours and Related Workers
Male 73%	Female 51.8%	Male 57.6%	Male 90%	Female 88%	Female 78%	Male 88.4%	Female 66.8%	Male 64.5%

(Adapted from: Richardson & Tan 2008, p. 160 using ABS Labour Force Survey, various years)

Table 3 shows that *'advanced clerical and service workers'* and *'elementary clerical, sales and service workers'* are dominated by female workers performing, in the main, stereotypical female occupations such as: secretaries, personal assistants, book-keepers; court reporters; desktop publishers, sales assistants, filing clerks; switchboard operators; checkout operators, cashiers and housekeepers. Females from these occupational categories in receipt of unfair dismissal compensation claims were awarded higher compensation rates than male workers in the same categories. Occupational segregation would suggest the favourable rates to women

workers were because they were the ‘in-group’ in these occupational categories. Conversely, ‘trades and related workers’ and ‘intermediate production and transport workers’ are dominated by male workers, performing, in the main, stereotypical male occupations such as: carpenters, plumbers, electricians, bricklayers, mobile plant operators, crane operators, forklift operators, truck drivers and miners. Women that held jobs in these male dominated, occupational categories—and thus not a member of the ‘in-group’—were awarded lower compensation rates than their male counterparts.

However, the ‘occupational segregation’ thesis does not appear to hold in the case of: ‘managers and administrators’ and ‘labourers and related workers’. Both these categories—which interestingly represent two extremes in skill and qualification demands—are male dominated categories (see Table 3) and contain occupations such as judges, general managers, resource managers, sales and marketing managers, cleaners, kitchen hands, fast-food cooks, garbage collectors, trade assistants and janitors. In both cases, these categories showed compensation ratios that were considerably more generous to women. This might partly be explained by the implications of the ‘paternalism/chivalry’ and the ‘path-breaker’ theses about gendered judgements of female transgressions. It could be that the Tribunal members involved in the arbitration process—that has an objective of providing a counter-balance to managerial power—subconsciously provided a quasi ‘affirmative action’ service, helping women at both ends of the occupational spectrum.

Still to be explained are the women who were sizeably under-compensated in comparison to their male counterparts where they worked in: ‘professional’ occupations such as engineers, accountants, librarians, doctors, teachers, solicitors, scientists, and journalists; or ‘associate professional’ occupations such as technical officers, financial advisors, chefs, hospitality managers, nurses; police officers; social welfare workers; paramedics; and retail buyers. Occupational segregation bias is an unlikely explanation, as neither category is dominated by a particular gender (see Table 3). Instead, labour market influences might provide some explanation for this trend. Some jobs are harder to replace than others and it is the higher skilled categories of workers that are in most demand in Australia (Kelly & Lewis 2001; Lewis 2004; Richardson & Tan 2008). In concert is the federal Affirmative Action (Equal Opportunity) Act 1986 which expects firms with more than 100 employees to develop affirmative action programs, facilitating enhanced promotion opportunities for women to higher ranks of an organisation. Combined, these factors may be impacting on the amount of compensation dispensed, in the expectation that professional women can expect to experience a ‘quick and painless re-entry’ (Rollings-Magnusson 2004, p. 32) into the workforce. Whether it is this or an alternate explanation, the fact remains that the compensation ratios calculated for these two occupational categories may be indicative of some form of serious, systemic bias against women in professional and associate professional occupations.

DISCUSSION—REINSTATEMENT

Reinstatement, as infrequently as it occurs, appears to be a male dominated restitution measure in Australia, noticeably for lower skilled workers. Labour market forces could be at play here as well. Older men are seen as the disadvantaged group in the lower skilled labour market, whereas older female workers are perceived—perhaps to their detriment—to have a ‘feminine advantage’ due to positive attitudes, lesser expectation of careers and greater willingness to accept casual, low-paid and low-skill work (Ainsworth 2002). For this reason, men may be receiving assistance through reinstatement, whereas women may be thought to be better equipped and more flexible in finding an alternate employer.

Additionally, intrinsic feminine attributes may mean that women do not seek reinstatement as vigorously as men. The well-supported, gender-centred theory on the sex-role identities of individuals in organisations suggests men perceive themselves to have masculine characteristics of being aggressive, forceful, strong, rational, self-confident, competitive, and independent (Fagenson 1990; Lindsay & Pasqual 1993); and women perceive themselves to possess feminine attributes of being warm, emotional, gentle, understanding, aware of others' feelings, helpful to others and relationship building. The implication of these identities is that women approach and solve problems differently from men and experience the dynamics of teamwork differently from men (Metcalf & Linstead 2003). If such identities are related to the employment relationship, women who have been dismissed from their employment may not feel the relational, collaborative, and 'soft' components of a once defunct employment relationship can be rebuilt and consequently not desire reinstatement—whereas the intrinsic competitive male attributes make it feasible to consider that men would be more forthright about 'winning' their job back and less concerned about the relational dimensions of re-engaging with previous management, supervisors and colleagues, if they were to get their job back.

LIMITATIONS

Several limitations exist in this investigation. First, the investigation was based on the assumption that each restitution order reflected equal circumstances. In practice, each arbitration decision was made on the basis of its unique set of explanatory factors. Second, in spite of the sizeable data pool, only 23 reinstatement cases for women were available for analysis which weakens the ability to determine strong patterns about reinstatement of women claimants. Finally, the initial categorical collection of the dollar value of the compensation order meant that a degree of sensitivity in the data was lost when each order was converted to the median dollar value of its relevant category.

CONCLUSION

In summary, the findings suggest that restitution practices appear to be reflecting the status of workers according to their fit within an occupational hierarchy. So far, limited research has occurred on the gendered and occupational nature of compensation and reinstatement orders. In light of the challenges of collating suitable data sets to investigate such variances, this article contributes a valuable exploration into the restitution practices for unfairly dismissed workers. It was reported that there appears to be evidence that the Federal tribunal provides essential assistance to women dismissed from the lowest of skilled occupations. However it was also found that the parity in restitution orders wane for women in higher and intermediate occupational skill levels and men working in managerial occupations, with several reasons proffered that might explain some of these variances.

Despite the tentative nature of the explanations outlined in the discussion, the risk remains that unequal restitution practices have the potential to undermine worker security and satisfaction, and inhibit people from participating in the workforce. These are weaknesses Australia cannot afford as the country manages an aging workforce, professional and trade shortages, skill creep and a global labour market. The findings suggest that Australia, in an effort to meet its present and future work demands with an adequate supply of labour, should adopt strategies that enable the sexes to breach the boundaries of occupational stereotypes. Government policy-makers and agencies, professional bodies, industry and employer associations and unions can contribute to re-wiring our patterned thinking by engaging in

policies and activities that promote typically gendered occupations as accessible and viable options to the opposite sex. Occupational categories of interest—based on the extremity of the compensation variances identified between the sexes—could target women working in professional, associate professional, and trade positions; and men in managerial, clerical, and sales positions. Further, tribunal members and advocates for dismissed women need to be aware that women claimants may be hesitant to pursue reinstatement as a remedy. The employee's advocate (be it union or legal representative) and tribunal members are best placed to explore a woman's reasons for not preferring reinstatement and can apprise female claimants that reinstatement is the legislatively preferred and viable remedy for unfair dismissal. As a final point, the findings also prompt a reminder to the parties involved in the dismissal and hearing of dismissal claims to be vigilant to the ubiquitous gender effects that have the potential to infiltrate the deliberations and actions of the participants.

REFERENCES

- Ainsworth, S 2002, 'The 'Feminine Advantage': A Discursive Analysis of the Invisibility of Older Women Workers', *Gender, Work and Organization*, 9 (5), 579-601.
- Allebone, J 2011, 'Valuing care in Australia: Achieving pay equity in the social and community services sector', Social Working Paper No. 15, Brotherhood of St Laurence and Centre for Public Policy, University of Melbourne, Melbourne.
- Australian Bureau of Statistics 1997, 'ASCO Australian Standard Classification of Occupations', 2nd edn, Commonwealth of Australia, Canberra, ACT.
- Australian Bureau of Statistics 2005a, 'Australian Labour Market Statistics, Jul 2005', (6105.0), Commonwealth of Australia, Canberra, ACT.
- Australian Bureau of Statistics 2005b, 'Employee Earnings, Benefits and Trade Union Memberships', (6310.0), Commonwealth of Australia, Canberra.
- Barns, A & Preston, A 2010, 'Is Australia Really a World Leader in Closing the Gender Gap?', *Feminist Economics*, 16 (4), 81-103.
- Bemmels, B 1988a, 'The Effect of Grievants' Gender on Arbitrators' Decisions', *Industrial and Labor Relations Review*, 41 (2), 251-262.
- Bemmels, B 1988b, 'Gender Effects in Discipline Arbitration: Evidence from British Columbia', *Academy of Management Journal*, 31 (3) 699-706.
- Bemmels, B 1988c, 'Gender Effects in Discharge Arbitration', *Industrial and Labor Relations Review*, 42 (1), pp. 63-76.
- Bemmels, B 1990a, 'The Effect of Grievants' Gender and Arbitrator Characteristics on Arbitration Decisions', *Labor Studies Journal*, 15 (2), 48-61.
- Bemmels, B 1990b, 'Arbitrator Characteristics and Arbitrator Decisions', *Journal of Labor Research*, 11 (2), 181-192.

Bemmel, B 1991, 'Attribution theory and discipline arbitration', *Industrial and Labor Relations Review*, 44 (3), 548-562.

Bemmel, B 1994, 'The determinants of grievance initiation', *Industrial and Labor Relations Review*, 47 (2), 285-301.

Bemmel, B, Reshef, Y & Stratton-Devine, K 1991, 'The role of supervisors, employees, and stewards in grievance initiation', *Industrial and Labor Relations Review*, 45 (1), 15-30.

Bingham, L & Mesch, D 2000, 'Decision Making in Employment and Labor Arbitration', *Industrial Relations*, 39 (4), 671-694.

Block, R & Stieber, J 1987, 'The Impact of Attorneys and Arbitrators on Arbitration Awards', *Industrial and Labor Relations Review*, 40 (4), 543-555.

Bray, M, Waring, P & Cooper, R 2011, *Employment Relations Theory and Practice*, 2nd edn, McGraw-Hill Australia Pty Ltd, North Rhyde, NSW.

Cappelli, P & Chauvin, K 1991, 'A test of an efficiency model of grievance activity', *Industrial and Labor Relations Review*, 45 (1), 3-14.

Caudill, S & Oswald, S 1992, 'An alternative to Bemmel's method of investigating biases in arbitration', *Industrial and Labor Relations Review*, 45 (4), 800-805.

Caudill, S & Oswald, S 1993, 'A Sequential Selectivity Model of the Decision of Arbitrators', *Managerial and Decision Economics*, 14 (3), 261-267.

Chapman, A 2009, 'Protections in Relation to Dismissal: From the Workplace Relations Act to the Fair Work Act', *University of New South Wales Law Journal*, 32 (3) 746-771.

Cobb-Clark, D & Tan, M 2011, 'Noncognitive skills, occupational attainment, and relative wages', *Labour Economics*, 18 (1), 1-13.

Collins, H 1992, *Justice in Dismissal, The Law of Termination of Employment*, Oxford University Press, New York.

Cottrell, D, Sanders, M & Hrdlicka, J 2011, 'Company Secretary: Level the Playing Field: A Call for Action on Gender Parity in Australia', *Keeping Good Companies*, 63 (1), 8-12.

Eveline, J 2005, 'Women in the Ivory Tower: Gendering Feminised and Masculinised Identities', *Journal of Organizational Change Management*, 16 (6), 641-658.

Fagenson, E 1990, 'Perceived Masculine and Feminine Attributes Examined as a Function of Individuals' Sex and Level in the Organizational Power Hierarchy: A Test of Four Theoretical Perspectives', *Journal of Applied Psychology*, 75 (2), 204-211.

Freitas, A 2001, 'Understanding the crucial role of attribute interaction in data mining', *Artificial intelligence review*, 16, 177-199.

-
- Gutek, B, Cohen, A & Tsui, A 1996, 'Reactions to Perceived Sex Discrimination', *Human Relations*, 49 (6), 791-813.
- Hartman, S, Fok, L, Crow, S & Payne, D 1994, 'Males and Females in a Discipline Situation: Exploratory Research on Competing Hypothesis', *Journal of Managerial Issues*, 6 (1).
- Hyman, R 2006, 'Marxist thought and the analysis of work', in M Korczynski, R Hodson & P Edwards (eds.), *Social Theory at Work*, Oxford University Press Inc, New York, pp. 26-55.
- Kelly, R & Lewis, P 2001, 'The New Economy and Demand for Skills', paper presented to 30th Annual Australian Conference of Economists, Crawley, Western Australia.
- Knight, K & Latreille, P 2001, 'Gender Effects in British Unfair Dismissal Tribunal Hearings', *Industrial and Labor Relations Review*, 54 (4), 816-834.
- Lewis, P 2004, 'The Australian Labour Market and Unemployment in 2004', paper presented to H R Nicholls Society's XXVth Conference, Melbourne.
- Lindsay, C & Pasqual, J 1993, 'The Wounded Feminine: From Organization Abuse to Personal Healing', *Business Horizons*, March-April, 35-41.
- McAndrew, I 2000, 'Gender Patterns in Dismissal Adjudications: The Recent New Zealand Experience', *International Employment Relations Review*, 6 (2), 49-64.
- Mesch, D 1995, 'Arbitration and Gender: An Analysis of Cases Taken to Arbitration in the Public Sector', *Journal of Collective Negotiations*, 24 (3), 207-218.
- Metcalfe, B & Linstead, A 2003, 'Gendering Teamwork: Re-Writing the Feminine', *Gender, Work and Organization*, 10 (1), 94-119.
- Oswald, S & VanMatre, J 1990, 'Arbitration and the Queen Bee Syndrome', *Review of Business and Economic Research*, 26 (1), 38-45.
- Oswald, S & Caudill, S 1991, 'Experimental Evidence of Gender Effects in Arbitration Decisions', *Employee Responsibilities and Rights Journal*, 4 (4), 271-281.
- Pocock, B 1998, 'All Change, Still Gendered: the Australian Labour Market in the 1990s', *Journal of Industrial Relations*, 40 (4), 580-604.
- Preston, A & Whitehouse, G 2004, 'Gender Differences in Occupation of Employment Within Australia', *Australian Journal of Labour Economics*, 7 (3), 309-327.
- Richardson, S & Tan, Y 2008, 'Forecasting future demands: what we can and cannot know', *Australian Bulletin of Labour*, 34 (2), 154-191.
- Ridout, H 2005, "'A fair go all round': workplace relations in the twenty-first century. Kingsley Laffer Memorial Lecture 2004', *Journal of Industrial Relations*, 47 (2), 226-241.
-

Rollings-Magnusson, S 2004, 'Gender Implications of Wrongful Dismissal Judgements in Canada, 1994-2002', *CRSA/RCSA*, 41 (1), 27-45.

Sappey, R, Burgess, J, Lyons, M & Buultjens, J 2009, *Industrial Relations in Australia Work and Workplaces*, 2nd edn, Pearson Education Australia, Frenchs Forest, NSW.

Saridakis, G, Sukanya, S, Edwards, P & Storey, D 2006, *The Impact of Enterprise Size on Employment Tribunal Incidence and Outcomes: Evidence from Britain*, Centre for Small and Medium Sized Enterprises, University of Warwick, Coventry, United Kingdom.

Southey, K 2008, 'An Analysis of Unfair Dismissal Grievance Arbitration in Australia', Master's thesis, University of Southern Queensland, Australia.

Southey, K & Innes, P 2010, 'Gender and firmographic effects in unfair dismissal arbitration', paper presented to 10th Annual Pacific Employment Relations Association Conference, Gold Coast, Australia.

Staines, G, Tavris, C & Jayaratne, T 1974, 'The Queen Bee Syndrome', *Psychology Today*, 7 (January), 55-60.

Wagar, T & Grant, J 1996, 'The relationship between plaintiff gender and just cause determination in Canadian dismissal cases', *Sex Roles*, 34 (7-8), 535-547.

Wagner, C 1982, 'Simpson's Paradox in Real Life', *The American Statistician*, 36 (1), 46-48.

Watson, T 2008, *Sociology, Work and Industry*, 5th edn, Routledge, Abingdon, Oxon.

Weber, M 1978, *Economy and Society*, University of California Press, Los Angeles, United States.

Williams, J 2003, 'Symposium: Litigating the Glass Ceiling and the Maternal Wall: Using Stereotyping and Cognitive Bias Evidence to Prove Gender Discrimination', *Employee Rights and Employment Policy Journal*, 7 (2), 287-301.