PROCEEDINGS

PART II

Theme
Sustainability, Inclusiveness and Governance: People management issues in the organisation of the future

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PROCEEDINGS – PART II

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GENDER AND FIRMOGRAPHIC EFFECTS IN UNFAIR DISMISSAL ARBITRATION

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Abstract
This study involved the analysis of 935 unfair dismissal arbitration decisions of the Australian Industrial Relations Commission from 2000 to 2005. It explores whether gender effects were present in the arbitration decisions, and whether dismissed employees received different arbitration decisions according to firmographic factors of industry sector, size of firm, occupational skill and HR expertise. The study shows major findings supporting the role of HR expertise in lowering the favourability towards grievants. In terms of gender effects a logistic regression analysis suggests two interesting effects, aligned with bivariate analysis, which suggested male arbitrators were associated with favourable decisions toward female workers and female arbitrators were associated with favourable decisions toward low skilled grievants. Such findings support our typology which positions male arbitrators as paternalistic and chivalrous, and female arbitrators as path breaking. These findings have implications for HR/IR professionals, unions, industry bodies and government policy and legislation in terms of how we manage sections of our workforce and protect vulnerable workers.

Introduction

This paper examines gender effects and firmographic factors in arbitration decisions of Australia's federal industrial tribunal pertaining to managerial action involving the dismissal of a worker. This study responds to the suggestion that research into decision making in workplace grievance arbitration is limited, including whether there are case characteristics that produce different results (Klass, Mahony, & Wheeler, 2006, p. 26). Gender effects between male and female arbitrators could exist for the reason that gender related differences occur between value systems, perceptions of justice, and decision making processes (Crow, Fok, Hartman, & Payne, 1991). Whereas firmographic characteristics describe different categories of organisations and it maybe that employees from particular types of organisations have different dismissal experiences because of cultures, processes and practices peculiar to their job or industry. The firmographic characteristics explored in this study are: industry sector, size of firm, occupational skill level of the worker and whether the employer has human resource expertise onboard.

Conceptual model

Fair Work Australia (which recently replaced the Australian Industrial Relations Commission) offers a conciliation and arbitration service to employees who feel they have been unfairly dismissed from their employment. Chapter 3, Divisions 3-385 and 3-387 of The Fair Work Act 2009 (similar Divisions also existed the Workplace Relations Act 1996) empowers the arbitrator to consider whether a dismissal was

'harsh, unjust or unreasonable' and Division 390 of the Act allows the arbitrator to order reinstatement or financial compensation in lieu of reinstatement (capped at 26 weeks pay) if they find the dismissal was harsh, unjust or unreasonable.

Figure 1 presents a conceptual diagram of the gender and firmographic factors as they relate to the arbitration process. The three boxes in the model outline the arbitration process and the dotted arrow contains the characteristics under investigation. Unlike the merits of the case (second box) which are directly assessed by the arbitrator (Nelson & Kim, 2008), the characteristics under investigation are not direct facts that feed into the decision making process. Justice principles would indicate that they should not influence the decision maker (CCH Australia Ltd, 2005). Instead, this study's gender and firmographic characteristics are *inherently* present during arbitration.
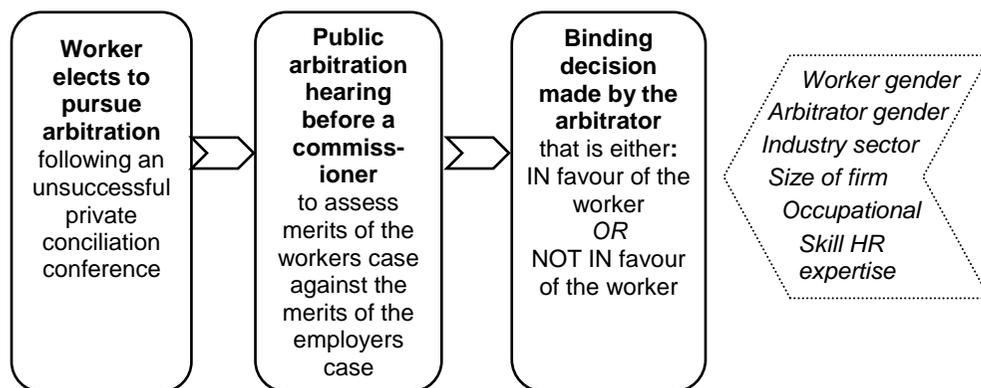
Figure 1. *Concept map of gender and firmographic characteristics on arbitration decisions*

Gender Effects

Studies on the presence of gender effects in arbitration decisions in other countries have found a variety of findings under an array of different conditions. For instance, Bingham and Mesch (2000), Dalton and Todor (1985), Bemmels (1991), Caudill and Oswald (1992) and Knight and Latreille (2001) found traits of favourable consideration between male arbitrators and female grievants. Alternatively, Gely and Chandler (2008); Crow and Logan (1994), Dalton, Owen and Todor (1986), Wagar (1994) and Bemmels (1990) suggest gender effects are not present in workplace arbitration proceedings. Although finding a mix of results, the following comment by Bemmels (1990, p. 60) suggests it is difficult to discount the influence of gender when making judgements:

> *In practice, discharge arbitration involves a hearing where the grievant generally gives testimony. Thus the grievant's gender is observed by the arbitrator first hand in face-to-face contact. Merely reading a grievant's name and pronouns indicating his/her gender may not elicit the same gender related biases from an arbitrator as would face-to-face contact.*

Figure 2 presents a typology which represents four possible approaches about gender effects in arbitration. The cells are oriented to pertain to decisions rendered to female grievants. The implication being whether female grievants may be treated either more favourably or harshly when compared to the decisions rendered to male grievants.

Favourable decisions to female grievants			
Female arbitrator	1. PATH-BREAKER	3. PATERNALISM AND CHIVALRY	**Male arbitrator**
	2. QUEEN-BEE	4. EVIL WOMAN	
Unfavourable decisions to female grievants			

(*Source:* Developed for paper)

Figure 2. Gender effects matrix: Four approaches to arbitration decisions for female grievants based on the arbitrator's gender

Quadrant 1 - the 'path-breaker' is based on observations during case study research of women in leadership (Eveline, 2005). Women who break through to positions of leadership are expected to "possess a 'feminine' attribute of ensuring women's advancement" (Eveline, 2005, p. 651). This suggests a hypothesis that female arbitrators might lean towards favourable decisions towards female grievants under the influence of supportive, sisterhood aspirations.

Quadrant 2 - the 'queen-bee' syndrome suggests that women in authority or leadership positions have high expectations of other women based on their own experience of having to work hard to get to their position of power (Staines, Tavris, & Jayaratne, 1974). This theory underpins a prediction that female arbitrators might treat female grievants more harshly because the grievant has behaved in a manner that offends the arbitrator's expectations of the feminine work ethic.

Quadrant 3 - paternalism and chivalry has been used to reason preferential treatment of women in the criminal justice system by male judges. This theory gives scope to suggest that male arbitrators harbour a fatherly or protective role towards female grievants (Moulds, 1978; Nagel & Hagan, 1983) and thus may exhibit leniency towards them compared to male grievants.

Quadrant 4 - the 'evil woman' theory gives scope to suggest male arbitrators might treat a female grievant more harshly because through her misdemeanours she has offended the female stereotype that women are honest, good and moral (Nagel & Hagan, 1983).

Firmographic Factors
The description of the firmographic factors and research into each are discussed below.

Occupational Skill

Occupational skill is based on the ABS ASCO classification which is a nine level classification using skill level and skill specialisation as the primary criteria for classifying occupations. The major groups are differentiated according to formal education, training and previous experience usually required for an occupation. An earlier study suggests employees working in lower skilled occupations (such as elementary clerical, sales and service workers, labourers and related workers) are more likely to have their dismissal overturned than employees working in high skilled occupations (Southey, 2008). Conversely, less sympathy towards lower skilled workers was found in older studies by Caudill and Oswald (1992) and Cappelli and Chauvin (1991). Higher skilled occupations are those such as managers and administrators, professionals and associate professionals. Intermediate skilled occupations are those such as tradespeople, production and transport workers and intermediate to advanced clerical workers.

Industry Sector

Bemmels and Foley (1996) indicate the need for further research to explain the wide variation in grievance activity across industries. Variations in grievance activity across industries may be the result of differences in union and management policies or the quality and clarity of collective agreements (Bemmels, 1994) and industry variations in wages and alternative job opportunities (Cappelli & Chauvin, 1991). Bemmels' 1994 Canadian survey found, for example, the railway transport industry had an average grievance rate of 48.2 grievances per 100 employees per year, the Canadian federal government had a 23.3 per cent grievance rate, and the lowest was a .6 per cent grievance rate in the education industry. Klass, Brown & Heneman III (1998) analysed the 1991 Australian Industrial Relations Survey (AIRS) of 1,596 workplaces and identified wide variations in employee dismissal rates in industry. This analysis identified that, compared to the manufacturing industry, less dismissals occurred in mining, communications, utilities, construction, transportation, financial services, public administration and community services.

HR Expertise and Firm Size

Employers are expected to administer the dismissals with justice and due process. The dismissal of employees is a human resource management responsibility. Yet smaller firms are unlikely to employ an HR expert to develop the more methodical or formalised HR processes of larger firms (Kotey & Slade, 2005; Mazzarol, 2003). Earnshaw, Marchington and Goodman (2000) found that businesses without HR expertise, tended to have their dismissal actions overturned due to a fault in the process they followed in dismissing the worker, more so than the reason they dismissed the worker. Thus a number of firms administer their dismissal without HR or legal expertise and inadvertently risk administering a dismissal with due process. In Australia, large businesses are those employing 200 or more persons and the SME (small and medium sized enterprises) sector incorporates medium sized firms of 20 to 199 workers and small firms employing up to 19 workers and includes single operator (non-employing) businesses (ABS, 2007). SMEs account for nearly 99 per

Table 1: Frequency statistics for values within each variable

	EMPLOYER'S FAVOUR	WORKER'S FAVOUR	TOTAL
DEPENDENT VARIABLE: Arbitration decision	444	521	**965**
PREDICTOR VARIABLES:			
Gender characteristics			
Male worker	346	369	715
Female worker	98	152	250
total			**965**
Male arbitrator	331	407	738
Female arbitrator	113	114	227
total			**965**
Reason dismissed			
Serious misconduct	174	160	334
Performance	120	114	234
Employee resigned	17	26	43
Short term/contract/casual/probation	7	20	27
Made redundant	90	156	246
Medically unfit	26	18	44
Other reason	10	27	37
total			**965**
Occupational skill level			
High skilled work	105	94	199
Intermediate skilled work	223	258	481
Low skilled worked	86	140	226
Skill level unknown	30	29	59
total			**965**
Industry sector			
Agriculture and mining	22	31	53
Manufacturing	121	145	266
Construction, gas, water & electricity	47	44	91
Retail and wholesale trade	38	65	103
Hospitality& recreation related	30	36	66
Business/property/legal/personal/transport services	114	142	256
Government services	72	58	130
total			**965**
Business size/sector			
Large private (200 staff or more)	197	180	377
SME private (up to 199 staff)	128	196	324
Private sector but size unknown	59	114	173
Government sector	60	31	91
total			**965**
Presence of HR expertise			
HR available	284	222	506
Unknown if HR available	73	125	198
No HR available	87	174	261
total			**965**

cent of all businesses in Australia, with only 5,876 (<1 per cent) businesses employing 200 or more staff members at June 2007 (ABS, 2007).

Data Collection
Data were collected from arbitration decisions of the Australian Industrial Relations Commission (AIRC) between July 2000 and July 2005. This yielded 965 useable cases where the Commissioner determined whether or not an employee's dismissal was harsh, unjust or unreasonable. These decisions can be found on the FWA website and they contain factual information about the case, defending parties' suppositions and the arbitrator's reason for their decision. Text analysis of each case was undertaken to convert text into quantitative data which was entered into SPSS for statistical analysis. Information on the presence of human resource expertise within a firm was at times supplemented with a database search of Australia's Business Who's Who. Table 1 contains frequency statistics of the 965 cases categorised according to the dependant and independent variables.

Defining the Dependent Variable
In this study, the dependent variable is whether the arbitrator either upheld or reversed the dismissal action taken by the employer. Decisions in the 'employer's favour' reflect claims where the arbitrator upheld the employer's decision to dismiss the worker. A dismissal reversal reflects one that is in the 'worker's favour' which means the arbitrator either reinstated the worker to his or her job (with or without backpay) or ordered financial compensation to the dismissed worker. The frequencies in Table 1 show that workers were successful in their claims 54 per cent of the time (521 of 965 claims).

Data Analysis – Gender Effects
Initially, chi-square tests were conducted to identify if statistically significant differences existed between the arbitration decisions and the gender of the arbitrator. The results of these tests are presented in Table 2.

One significant result was found in Table 2. Test A revealed that male arbitrators were associated with decisions that returned favourable outcomes to female workers ($p=.010$). The success rate for female workers appearing before a male arbitrator was 62.7 per cent, compared to 52.2 per cent for male workers. Further analysis of this finding was conducted to rule out Simpson's paradox, which, if in effect, can lead to incorrectly assessing the overall success rate. Simpson's paradox is detected through descriptive data analysis (Wagner, 1982) and occurs were the overall percentages or rates of an event occurring in either negative or positive direction (in this case positive decisions to female workers from male arbitrators) reverses when the subjects are partitioned into a further descriptive category (Freitas, 2001). Simpson's paradox occurs 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.

Table 2 shows the separate success rates for female workers before male arbitrators according to those that were dismissed due to misconduct; performance; redundancy and for 'other' reasons. This analysis shows misconduct and performance had lower success rates than the overall rate, yet redundancy and

other categories had higher success rates than 62.7 per cent. The redundancy and 'other' categories eliminate Simpson's paradox.

Table 2. Gender effects in unfair dismissal arbitration Pearson chi-square tests (n=965)

	Gender of Arbitrator	Gender of Worker	Arbitration Decision		
			Employer's favour	*Worker's favour*	*Worker's success rate**
TEST A: Are male arbitrators associated with decisions favouring either male or female workers?	**male arbitrator** $n = 738$	male worker	255	279	52.2%
		female worker	76	128	62.7%
		$\chi^2 = 6.577$, df 1, $p = .010$, significant			
TEST B: Are female arbitrators associated with decisions favouring either male or female workers?	**female arbitrator** $n = 227$	male worker	91	90	49.8%
		female worker	22	24	52.2%
		$\chi^2 = .088$, df 1, $p = .767$, Not significant			
TEST C: Is arbitrator gender associated with decisions favouring either workers or employers?	male arbitrator female arbitrator $n = 965$	n/a	331	407	55.1%
		n/a	113	114	50.2%
		$\chi^2 = 1.698$, df 1, $p = .193$, Not significant			

* no. of decisions in worker's favour / (no. of decisions in employer's favour + no. of decisions in worker's favour)

Table 3. Female claim success rates decided by a male arbitrator

Reason the employee was dismissed	Success Rate	
Misconduct	Won 30 of 52 claims	57.6%
Work performance	Won 19 of 43 claims	44.2%
Redundancy	Won 49 of 62 claims	79.0%
Other (eg medical fitness, probation, abandoned)	Won 30 of 47 claims	63.8%
Overall success rate	**Won 128 of 204 claims**	**62.7%**

Whilst the chi-square indicates association between the two categorical variables, a logistic regression enables the assessment of the probability of a particular arbitration decision occurring based on the gender and firmographic characteristics under examination. Logistic regression is appropriate when the data is unordered and categorical in nature and where the dependent variable consists of two

outcomes (Agresti, 2002), which in this study is whether the decision favoured either the worker or employer.

Table 3 provides the results of two logistic regression models, one each based on the arbitrator's gender (that is, male arbitrators presiding over 544 cases and then female arbitrators presiding over 180 cases). The models are presented as a hierarchical regression with five progressive blocks, including variables from firmographic measures and then individual measures successively.

Block 1 initially examines *industry* (non-services); block 2 adds the *size* of the employee's firm (that is, SMEs employing up to 199 workers) and whether the firm has incumbent *HR expertise*; block 3 adds employee *skill* (lower and higher) and *gender* (female); block 4 adds the *reason* for unfair dismissal (serious misconduct, performance, and redundancy); while the final block 5 adds three interaction measures which examine the potential impact of employee gender (female) with (i) SME, (ii) lower skill, and (iii) firm with HR expertise. In all, ten models are presented: one for each of the five successive blocks in each of the two models (male and female arbitrators).

For each model, the overall test for model fit (–LogLikelihood), with a model r squared (Nagelkerke) and chi square significance test are presented at the bottom of each column. The blocked design is useful for examining the impact of additional variables, controlling for those previously included into the model. Therefore, our logistic regression analyses represent multivariate analyses which are hierarchically arranged into blocks in order to examine the importance of variables independent from logically prior conditions.

The pseudo R^2 of the two final (right hand columns) male and female arbitrator's decisions explain over 10% and 21% of variation in the outcomes respectively. Whilst this is not a large explanation of the difference in the odds of receiving a favourable arbitration outcome, it is not 'inconsequential' and nor should it be interpreted as a measure of the strength of the relationship (D'Andrade & Dart, 1990). The widely followed convention in the social sciences is that an R^2 of .10 indicates the model has power to detect 'medium' effects (Murphy, 2002). Models with medium-low R^2 in cross-sectional studies can provide useful information through its parameter estimates of the predictor variables (Hill, Griffiths, & Judge, 2001).

In spite of the significance of a gender association between male arbitrators and female workers reported in Table 2, the logistic regression modelling indicated that employee gender alone is not a significant factor in predicting arbitration decisions. However, we make two important extensions to this point. First, we did find a marginal, but significant, interaction effect between male arbitrator's decisions concerning female employees in smaller firms. Second, our two separated models also indicate some key differences in the predictive factors for male against female arbitrators. In addition, Table 3 reveals the firmographic factors that might better predict arbitration results. These factors are discussed below.

TABLE 3. SPSS *Logistic regression analysis of demographic and firmographic influences on male and female arbitrator unfair dismissal arbitration decisions favouring the worker*

Male Arbitrator

	Block 1	2	3	4	5
Industry Non-Services	.072	.118	.054	-.055	-.034
Size: Small SME	-	-.212	-.249	-.277	-.667
HR Expertise	-	-1.148 ***	-1.124 ***	-1.116 ***	-1.419 ***
Employee Skill: Lower	-	-	.185	.206	.147
Employee Skill: Higher	-	-	-.301	-.282	-.264
Employee Gender	-	-	.303	.217	-.799
Reason: Serious Misconduct	-	-	-	-.154	-.139
Reason: Performance	-	-	-	-.392	-.387
Reason: Redundancy	-	-	-	.231	.195
Employee Gender X Size: Small SME	-	-	-	-	1.185 *
Employee Gender X Skill: Lower	-	-	-	-	.096
Employee Gender X HR_Expertise	-	-	-	-	.835
Constant	0.088	0.93 ***	.877 **	1.046 **	1.386 **
-2LL	752.1	723.9	718.3	712.6	708.5
R Squared	0	0.068 ***	0.081 ***	0.094 ***	0.103 ***
Block Change in R Squared	-	0.068 ***	0.013	0.013	0.009

Female Arbitrator

	Block 1	2	3	4	5
Industry Non-Services	.189	.213	.041	-.114	-.066
Size: Small SME	-	-.767	-.740	-.763	-.783
HR Expertise	-	-1.797 ***	-1.914 ***	-1.776 ***	-1.799 **
Employee Skill: Lower	-	-	1.256 **	1.349 **	1.446 **
Employee Skill: Higher	-	-	.403	.380	.369
Employee Gender	-	-	.205	.110	.302
Reason: Serious Misconduct	-	-	-	-.945	-.895
Reason: Performance	-	-	-	-.384	-.368
Reason: Redundancy	-	-	-	-.346	-.358
Employee Gender X Size: Small SME	-	-	-	-	.046
Employee Gender X Skill: Lower	-	-	-	-	-.917
Employee Gender X HR_Expertise	-	-	-	-	-.096
Constant	-0.071	1.363 *	1.076	1.642 *	1.599 *
-2LL	249.2	232.6	223.2	219.1	218.5
R Squared	0.003	0.12 ***	0.182 ***	0.207 ***	0.211 **
Block Change in R Squared	-	0.117 ***	0.062 *	0.025	0.004

*p<.05; ;***p<.05;   **p<.01;   ***p<.001

Results: Key Factors in Predicting Arbitration Decisions

Firmographic factors.

The two initial blocks of factors predicting arbitrators' favourable employee decisions includes **industry** (non-services); the **size** of the employee's firm (SMEs employing up to 199 staff); and whether the firm has incumbent **HR expertise**. Broad industry sector (manufacturing, mining and utilities as distinct from services) and size of firm was not a significant predictor in either male or female arbitrator models. However, firm HR expertise was a strong factor, negatively associated with favourable employee decisions in both male and female arbitrator models: That is, it is the absence of formal HR expertise which increases the probability of favourable employee decisions in arbitration.

The antilog, or odds ratio, of the B coefficient for HR expertise shown in the two final models for male and female arbitrators, can enable us to predict the probability of a win for those workers dismissed by a firm engaging a HR expert. We start by suggesting employees enter the arbitration process with baseline odds of 1 to 1 in favour of the worker (that is, a 50 per cent chance of winning his or her claim). Therefore, a worker dismissed by a firm with HR expertise and appearing before a *male arbitrator*, has a 19.5 per cent chance of winning his or her case {B = -1.419 yielding an odds ratio of .2419 thus [.2419 / (1 + .2419)]}. Whilst a worker dismissed by a firm with HR expertise and appearing before a *female arbitrator*, has only a 14.2 per cent chance of winning his or her claim {B = -1.799 yielding an odds ratio of .1655 thus [.1655 / (1 + .1655)]}.

Among male arbitrators HR expertise explains about 7% of variation in decisions, which accounts for, as a single factor, about 70% of the total variation in the final model. Among female arbitrators, the presence of firm HR expertise explains about 12% of the variation in decisions, while larger in total explanation than their male arbitrator counterparts, represents only about 50% of the final model r squared. In all, this suggests employers with HR expertise are better at defending their decision to dismiss an employee.

Individual Factors.

The coded **reason for dismissal** was not significant among either male or female arbitrators' models. Employee occupational **skill level** (lower and higher) and **gender** (female) are also sequentially added to the model. Among male arbitrators, occupational skill level was not significant however, employees with low occupational skill jobs were a significant and positive predictor of female arbitrator's decisions which were favourable to the employee. Using the same methodology described previously for the HR expertise variable, we predict the probability that a dismissed worker from a low skill-level job has an 81 per cent chance of a favourable finding if his or she has a claim determined by a female arbitrator {B = 1.446 yielding an odds ratio of 4.2461 thus [4.2461 / (1 + 4.2461)]}.

Among female arbitrators lower employee skills explain about 6% of the variation in decisions, which represents just over a third of the total variation in the final model. Alone, employee gender was not significant, which is somewhat in contrast to the previous Table 2 results, however, is not surprising given the multivariate context of the sequential test. For example, if we had entered gender into the modelling presented in Table 3 first, it would have shown the same effects as those in Table 2.

However, we have been careful to sequence our multivariate model in a logical order, such that we can say that controlling for the firmographic factors of environmental (industry) and key organisational characteristics (size and HR expertise) before individual employee factors, the gender of the employee is no longer significant at conventional levels. This, however, does not preclude the interest in our interaction effects, and final sequenced analyses, next.

Individual-Organisational Interactions.
The final block adds three interaction measures which examine the potential impact of employee gender (female) with: (i) firm size (SME); (ii) skill level (low); and (iii) firms with HR expertise. These are importantly placed last in the multivariate hierarchical modelling because any effects represent enduring combinations of factors controlling for either gender or organisational measures alone (in previous blocks). The results, presented in Table 3, indicate that only one interaction effect was significant. Among male arbitrators, female employees from small and medium sized enterprises were more likely to receive favourable decisions. We predict the probability that a female worker from an SME sized firm has a 76.6 per cent chance of a favourable finding if she has a claim determined by a male arbitrator {B = 1.185 yielding an odds ratio of 3.2707 thus [3.2707 / (1 + 3.2707)]}. It should be noted that this result was a marginal result, potentially adding very little to the final model. However, we are interested in this result because it represents the most conservative method for showing a persistent effect.

Discussion

Ubiquitous Effects
The non-significant influences between the industry sector and arbitration results that favour the worker may be indicating that, across industries, employers are consistent in the treatment of staff with regard to justice and fairness during employer initiated dismissal processes. This is a positive finding, as it would suggest that no particular industry is significantly harsh on its employees to the point that arbitrator's are consistently overturning their dismissal actions. This is an interesting result as much literature has focused on industry culture between manufacturing and service sectors as an important contextual variable in which firm labour relations are differentially oriented (Barrett & Rainnie, 2002). Part of the possible explanation for the non-effects of industry, is the role and skills which human resource managers bring to firms.

The results of the model clearly suggest that human resource expertise is a major benefit to employers if they wish to avoid their dismissal actions being overturned by an industrial arbitrator. This finding occurs in spite of successive federal industrial legislations declaring that arbitrators need to take into account the size of the business and the presence of a human resource manager when determining whether the business acted harshly, unfairly or unjustly during a dismissal. Our HR expertise measure was ubiquitous in driving down the probability of a favourable employee decision among both male and female arbitrators.

Gender Effects
This study revealed two important effects which underscore the impact of gender in arbitration decisions. Each of these effects concerns the employee's and the arbitrator's gender respectively. First, the multivariate logistic model eliminated

significant independent gender effects in this study comparing male and female arbitrators. However, we found some effects which aligned our bivariate analyses and our interaction effects in the multivariate analyses indicating that male arbitrators were marginally more likely to favour female employees (in the context of small and medium sized firms). Second, and perhaps most striking in light of our modelling approach, is that female arbitrators were significantly more likely to be attentive and favourable to lower skilled employees in general. This was a strong result in our female arbitrator model.

In terms of the key typology featured at the start of this paper (see Figure 2) two quadrants are particularly relevant to our results. First, we found marginal evidence in support for quadrant 3 representing male arbitrators favouring female grievants labelled "Paternalism and Chivalry". This quadrant suggests the male arbitrator engenders a fatherly or protective role toward females when arbitrating their unfair dismissal claims. Second, the more significant result of female arbitrators favouring lower skilled grievants is a variant on quadrant 1, labelled "Path Breakers" where we suggest that female arbitrators have extrapolated their own struggle to succeed with a more generally precarious employee status marked by those with low skills. Arguably, while not a direct result drawn from this study, our conceptualisation of path breakers might include the notion of general concerns for advocacy which aligns with our result concerning female arbitrators' favourable bias towards any employees with low skills – not just low skilled employees from small and medium sized businesses.

The favourable treatment of lower skilled workers (by female arbitrators) may also be an indication that people in low skilled occupations are being often subject to harsh, unjust or unreasonable dismissal practices which are being identified by arbitrators who restore justice by finding in favour of their claims. This could be an indication that lower skilled employees are less aware of natural justice principles and thus less likely to articulate their rights to a fair process. Alternatively, the competition for high skilled employees may mean that employers are prepared to only dismiss their highly qualified staff after ensuring they have exhausted discipline or development avenues and with these actions withstanding arbitrator scrutiny.

In summary, this paper has isolated several important factors which have general effects beyond the gendered nature of the arbitration process, and several specific gendered effects which are novel but important. However, the study is not without its limitations. In general, the positivist research paradigm, featured through the standardised coding of 935 unfair dismissal arbitration decisions, prevents one from comprehensively understanding the nature of gender effects within and between stakeholders in the process. Qualitative research is much better positioned, epistemologically, to engage the causal explanations which underpin our results and typology. Alternatively, there are other designs which might bring to light the mediation and moderation of intervening factors, such as arbitrator experience or the type of explanation given by the worker, which further unpack the logic of the decision process. Further, different study designs, such as a longitudinal analysis, may produce a different result which might identify changing gender-related attitudes over time which can underpin our understandings of how general and specific factors impede and intervene in the decision process.

Conclusion

While our study underscores the effectiveness of firm-based HR expertise, we have also isolated several persistent results characterising the gender of arbitrators and grievants. Australia's federal industrial tribunal is providing an important service in protecting the rights of lower skilled workers. From the employer perspective, human resource expertise provides a significant level of protection for employers when they are processing their dismissals. Firms that do not have HR expertise are typically smaller businesses, emphasising an ongoing importance for successive governments to be continually sensitive to small business operators. While our major findings support the role of HR in firms, such skills explain only a portion of the outcomes in unfair dismissal claims. While more trivial, the role of gender among grievants can indicate what we have presented as evidence of a paternalistic and chivalrous bias among male arbitrators towards female grievants from small and medium sized firms. A stronger result is the focus of female arbitrators on lower skilled employees, which we argue is evidence of "path breaking" advocacy. Given the marginal and partial dependency of decisions upon the gender of the stakeholders, we caution readers to not allow such findings to outflank our general and more conventional results. However, such results are important in highlighting the difficult terrain which unfair dismissal arbitration covers, and the potential role of identity which arbitrators bring to the process.

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