

Case Summary
Office of the Judge Advocate General

DEFENDANT: SGT Dunford
TYPE OF PROCEEDING: Defence Force Magistrate
DATE OF TRIAL: 06 November 2023
VENUE: Court Martial Facility, Fyshwick, ACT

Charges and plea

	Statement of Offence	Plea
Charge 1	DFDA, s. 33(a) Assaulting another person on service land	Not Guilty
Charge 2	DFDA, s. 33(a) Assaulting another person on service land	Not Guilty

Pre-Trial: Closed hearing and non-publication orders

Application made:	No
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Trial: Facts and legal principles

The accused pleaded not guilty to assaulting two cadets in a lunch queue (an assault being the unlawful application of force without consent and in this case particularised as touching their upper bodies). He approached them in the presence of cadet staff placing his hands on them to move them aside to let two Army members go ahead of them. He argued this was ordinary social interaction and therefore not an assault. The DFM found the touching was unnecessary, was not excused as ordinary social interaction and therefore constituted an assault in law.

Findings

	Finding
Charge 1	Guilty
Charge 2	Guilty

Sentencing: Facts and legal principles

The accused was a mature man with an otherwise unblemished character. The momentary un planned assaults were not accompanied by any malice. The application of force was minimal and therefore placed this offending at the low end of the scale of objective seriousness. He had good prospects of rehabilitation and had a young family. Any financial penalty would have to be borne by his spouse so consistent with the principle of parsimony severe reprimands were sufficient to meet the aims of general deterrence and maintenance of service discipline.

Punishments and orders

Charge 1	To be severely reprimanded
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- *This summary is not intended to be a substitute for the reasons of the Service tribunal or to be used in any later consideration of the tribunal's reasons.*

Charge 2	To be severely reprimanded
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Outcome on automatic review

The Reviewing Authority's decision on automatic review was handed down on 01 February 2024.

	Conviction	Punishments / Orders
Charge 1	Upheld	Upheld
Charge 2	Upheld	Upheld

Outcome on petition

The Reviewing Authority's decision on petition was handed down on 26 March 2024.

	Conviction	Punishments / Orders
Charge 1	Upheld	Quashed, new punishment of Reprimand
Charge 2	Upheld	Quashed, new punishment of Reprimand

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