

JOHNSON WINTER & SLATTERY
L A W Y E R S

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16 October 2017

Vice President Hatcher
Fair Work Commission
chambers.hatcher.vp@fwc.gov.au

cc:
Ms Wendy Carr
TWU
legal@twu.com.au

BY EMAIL

Dear Vice President

C2017/5258: Aerocare Flight Support Pty Ltd v Transport Workers Union of Australia

We refer to the above matter and the email from Ms Carr of the TWU to your Associate at 1.49pm on Friday 13 October 2017 advising that the TWU had located “a signed copy of the TWU’s Form F18 [which] was filed with Fair Work Australia as part of the proceedings.”

In the present matter an Appeal Book has been filed and served. This has been prepared on the following basis:

- On 11 September 2017, we requested that SDP Hamberger’s Associate provide a copy of the F18 filed by the TWU in AG2012/12949.
- Later that day, we received an email from SDP Hamberger’s Associate, copied to “legal@twu.com.au”, stating “I confirm your advice that you act for the applicant in the above matter. As requested, please find attached a copy of the Form F18 filed by the TWU in relation to that matter on 21 December 2012”. The email attached a PDF document titled “Form F18 TWU”, which was an unsigned statutory declaration of Ms Therese Walton of the TWU. A copy of that email and the attached PDF of the unsigned Form F18 are in the Appeal Book.
- SDP Hamberger’s Associate provided no indication in that email that there was any other F18 from the TWU on the Commission’s file. Further, the only copy of the F18 in the possession of the Appellant is the same as that provided by the Associate, i.e. unsigned.
- On 21 September 2017, the Appellant filed its notice of appeal which clearly indicated that issue of the unsigned statutory declaration was a central issue in the appeal.
- Since that time, the TWU has been on notice of the Appellant’s position in respect of the statutory declaration not being signed.

- Between 21 September 2017 and 13 October 2017, the TWU did not seek to question or challenge the Appellant's position in respect of the statutory declaration.
- We were copied into some of the communications between Ms Carr of the TWU and your Associate about Ms Carr seeking access to the Commission's file in AG2012/12949. However, we have since become aware that at 11.26am on 13 October 2017, Ms Carr made an arrangement with your Associate to attend the Commission in "20 minutes" to access the file which was then apparently made available to her on an unsupervised basis. We were not made privy to any such arrangement.

In the above circumstances, it is unclear how the sworn F18 said by the TWU to be on the file came to be there and when it did so.

To the extent that the TWU's position in the appeal relies upon any assertion that the F18 in a proper signed form was filed and properly brought to the attention of Watson VP before he handed down his decision approving the 2012 Agreement, the Appellant's position will be that this has not been properly established. The statement of Ms Walton filed today speculates about the signed F18 being filed in the Commission, but does not confirm when or how this was done.

In the circumstances, the Appellant will be submitting that the decision at first instance should be quashed and if a rehearing is required, it should be remitted to another Member of the Commission to deal with the contested factual issues surrounding the provenance of the signed F18, the timing and circumstances in which it was made, and whether it was ever actually properly filed and brought to the attention of Vice President Watson before he made the approval decision in AG2012/12949.

We will not object to the hard copy of the Commission file being available to the Full Bench at the hearing but put all on notice of the above.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Johnson Winter & Slattery". The signature is written in a cursive, flowing style with a long horizontal stroke extending to the right.

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National Secretary
Tony Sheldon

17 October 2017

Ms Luci Mumme
Johnson Winter Slattery

By Email: luci.mumme@jws.com.au

Dear Ms Mumme,

**Re: Aerocare Flight Support Pty Ltd v Transport Workers' Union of Australia
Matter No: C2017/5258**

We refer to the above named matter. We note that you sent correspondence without seeking consent from the TWU to the Commission dated 16 October 2016. The correspondence was sent without prior notice or consent of the TWU and raised matters of substance in relation to the appeal proceedings. The conduct in sending the correspondence was inappropriate in itself.

Furthermore, the correspondence contains a number of baseless assertions in relation to the conduct of employees of the TWU. The correspondence implies that Ms Wendy Carr of the TWU's National Office may have been involved in fabricating evidence or in some way played part in the tampering with a Commission file. To make such a serious claim without any evidence is extremely inappropriate.

Ms Carr is an extremely experienced and respected solicitor whose character has been called into question by the making of serious claims without of any foundation and, apparently, without you or your client conducting any investigation of that matter. The making of such an allegation by a legal practitioner is improper conduct on your part. We note that Rule 32.1 of the Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 provides that:

A solicitor must not make an allegation against another Australian legal practitioner of unsatisfactory professional conduct or professional misconduct unless the allegation is made bona fide and the solicitor believes on reasonable grounds that available material by which the allegation could be supported provides a proper basis for it.

The TWU can only surmise by the correspondence received that the Appellant continues in its attempts to frustrate the proceedings before the Commission. On this occasion the Appellant has overstepped the boundary of what is appropriate. Again, we

totally reject these implications and the assertions that the TWU, or any of its employees, have somehow acted inappropriately.

We enclose an affidavit executed by Ms Carr in relation to her access to the Commission's file from the proceedings before Watson VP. We trust that the affidavit makes clear that there is absolutely no foundation for the insinuation contained in your correspondence.

We invite you to withdraw the allegations contained in the letter of 16 October 2017 **by 5pm 18 October 2017**. If you fail to do so, the TWU will be forced to raise the matter with the Full Bench and to give consideration to referral of your conduct to appropriate professional bodies.

Should any further information be required, please do not hesitate to contact me at 02 8114 6500.

Yours sincerely



Michael Kaine
Assistant National Secretary
Transport Workers' Union of Australia