



**TRANSCRIPT OF PROCEEDINGS**

*Fair Work Act 2009*

**VICE PRESIDENT CATANZARITI  
DEPUTY PRESIDENT CROSS  
COMMISSIONER MCKINNON**

**C2023/895**

**s.604 - Appeal of decisions**

**Appeal by Stork  
(C2023/895)**

**Sydney**

**11.30 AM, TUESDAY, 21 MARCH 2023**

PN1

THE ASSOCIATE: This Commission is now in session, C2022/895, section 604 appeal by Mr Perry Stork and ABN Group Victoria Pty Ltd, trading as Boutique Homes and Home Buyers Centre and Rob Bird and Ors, for hearing.

PN2

VICE PRESIDENT CATANZARITI: Yes, good morning, I have on the bench with me Cross DP and McKinnon C.

PN3

Ms Stork, do you have a camera available to switch the camera on?

PN4

MR P STORK: Well, I do have a camera, but it's not going on.

PN5

VICE PRESIDENT CATANZARITI: I wonder if you could just try again and see how you go.

PN6

MR STORK: I've been trying for the last - about the last 25 minutes.

PN7

VICE PRESIDENT CATANZARITI: All right. Well, we'll do our best. This matter is listed for hearing. Permission to appear has been sought by a Mr Valance, he's put on submissions. Mr Stork, do you have anything to say about the permission to appear?

PN8

MR STORK: I just think it's - I don't believe it's actually warranted. I'm a self-represented applicant, they've got a full on HR department there, with Crystal there. She's been involved in this case since the start, pretty much, and I think it's an unfair advantage.

PN9

VICE PRESIDENT CATANZARITI: Thank you. We've read the submissions of Mr Valance, we are going to grant permission to appear. We think it would be more efficient, having regard, particularly, to the amount of material that's been filed.

PN10

Now, the Full Bench has read the submissions. It now invites you, Mr Stork, to make any oral submissions you wish to make in relation to the appeal, noting that you don't have to make any oral submissions, we've read the material in relation that, and we are limited to the question which his on appeal, which is the directions hearing of 20 January. So feel free to make any oral submissions you wish to make.

PN11

MR STORK: All right. Well, the way that I – look, I'm not a lawyer, so I don't know how to go about this, I'll give it my best shot.

PN12

The way I look at it is that those set of directions that were issued by Yilmaz C failed to take into account the substantive orders - sorry, the issues that were before the Commission, the evidence that was before the Commission. She was progressing very, very in a direction where she wasn't providing me with the opportunity to actually provide evidence while she granted that opportunity to the respondents. That's just not a fair hearing. When you can put a muzzle on someone and then release the other party to do as they please, that, to me, is a breach of a fair hearing rule. That, in itself, in the first instance, like there is not - I know that the Fair Work Commission has allowed some of these submissions from - and allow the respondents, who have failed to respond to a form 72 application, and I cannot see - and I cannot see anywhere in the Act, except under the guise of the Commission informing itself, that there is no part of the Act that says that respondent's that fail to put in an application and provide evidence, that evidence is non-existent. It can't - the Commission cannot make a decision on evidence that's not in front of it and that hasn't been provided.

PN13

So, therefore, Yilmaz C, in her directions and orders, included those people and said, in the orders, that these people were in fact - they had opinions to express, with regard to the manner in which the proceedings were running. They didn't supply or they didn't provide any evidence, they didn't provide any counter, they did nothing and yet they're included in an actual appeal to deny me of actually getting this proceeding sorted out and heading in the right direction. When I say 'the right direction', I'm talking about taking into account the overwhelming evidence that's before the Commission, and this is what it all rides on.

PN14

Those orders, the Commissioner is supposed to be able to turn their eye to a matter and be able to establish, very, very quickly, the actual merits of the case. The way that I see it is that the Commissioner's get handed a report by their very, very well learned staff that provide a summary of the actual - the case, so there's no way that Yilmaz C can go to a - - -

PN15

VICE PRESIDENT CATANZARITI: Mr Stork, that is not evidence, of course. I mean the case is at the directions hearing stage, that's what this appeal is about. The evidentiary journey has not actually been undertaken yet, in terms of evidence before the Commission and her dealing with the actual evidence. So the report that comes, the triaging report is not evidence.

PN16

MR STORK: Sorry, what was that?

PN17

VICE PRESIDENT CATANZARITI: The report that you referred to, that starts the matter off, is not evidence. Evidence occurs when the actual hearing occurs, which has not yet occurred at this point. There is no actual evidence before the Commission.

PN18

MR STORK: Yes. Well, at that point, though, the Commission is able to actually decide a matter on the papers. So therefore the Commissioner should be well informed of the actual facts and there's no way possible she could go to a conciliation without an understanding of the merits of the case. If that's what this whole thing is about, if that's the Fair Work Commission and how the Fair Work Commission operates, well then it's really not there to support the people that actually need fair work, that need fair justice brought into a matter, because it is absolutely void of substance.

PN19

The respondents did not respond, so there is no evidence for 100 per cent of the application that I submitted, there is not one piece of evidence that goes against the encounters, the allegations that I have made. So how can a Commission of any jurisdiction or any level of law, how can you take anything into effect, or how can you take any matter into consideration when there is no upstanding evidence? Even on the basis that a respondent does not submit evidence, for the fear of self incrimination, well, even on that basis, you can't consider the evidence. So it baffles me as to how the Commissioner, someone in any position of - a decision making position that is in the Fair Work Commission to oversee.

PN20

My application must be taken under consideration that I am a worker, an injured worker, that was accepted - the accepted liability by the insurer, with an investigation, and that has not even come into play. There was no talk about that in conciliation, all that the Commissioner was interested in, in the conciliation, was to get - - -

PN21

VICE PRESIDENT CATANZARITI: Mr Stork, the Commission is not allowed to deal with what happened in conciliation, all right. What happens in conciliation is a private matter and you can't raise matters from conciliation into this appeal. The appeal before us is limited to the directions hearing. It remains open to you, of course, to put an application for summary judgment, for example, against the respondent, if your view is that, you know, the matter is at such a stage that you think you can press that case, that's a separate case, all right. That, again, is not before us and the respondent, no doubt, will seek to challenge that and put on the evidence they need. But the only matter in front of us, at the moment, is the directions that have been issued in this matter, to progress the matter. That's what this appeal is about.

PN22

MR STORK: Do you want to go through the directions?

PN23

VICE PRESIDENT CATANZARITI: That's the only appeal in front of us. The only decision that's been made, to date, really, is the issuing of directions to progress the matter further. That's all that's happened. There has been no finding made, on the merits of your case, by the Commissioner.

PN24

MR STORK: Yes, but she was heading to an arbitration without any evidence at all.

PN25

VICE PRESIDENT CATANZARITI: But, Mr Stork, until the evidence goes on, following those directions, one does not know what the evidence is. You've come to the Full Bench at a stage where you say there's something wrong in the directions, and that's what you're challenging. What is not in front of us and can't be in front of us is the evidence, because it's not at that stage. Of course, if she runs the case to finality and you don't like that decision, you can appeal that decision because she will have heard the case. But, as I keep saying to you, the only matter in front of us is the directions that have been issued to progress the case.

PN26

MR STORK: Okay. Can I run through the directions?

PN27

VICE PRESIDENT CATANZARITI: You can run through the directions and say why an appeal should lodge. Also address the out of time issue as to why you applied late, in relation to challenging those directions.

PN28

MR STORK: Okay. Well, that's on record as well, I mean I've already answered that and there's no - I just got it wrong, simple as that. That's - I've got no - that's for you to judge, against the merits of what I'm arguing. So, as I said, I'm recovering from a work - an injury at work and I'm trying to get back to work and this thing is a massive stress on me and they've created it. I am doing everything, according to the Act. The objective of the Act is for an injured worker to get back to work as soon as possible, that's what I'm trying to do. They are refusing me to get back to work. So the orders have to be taken in light of that. You can't just take the orders in isolation, you have to look at what's been ordered against. So these orders are against a case where there is no evidence from the other side. There is none. Zero. There is no reason for Yilmaz C to have taken the path that she's taken. There is not one piece of that - there is not one order in her orders that actually puts any emphasis on the respondent's providing evidence at all. I've actually answered that and I've sent the Commissioner examples of unreasonable management, broken down into, 'Is it a management action?' 'Yes'. 'Have they done -', I've broken all that down. So there's no excuse for someone to actually grab a matter like this and treat it in this matter.

PN29

So I'll just quickly run through the orders. So order 1, first of all was the fact that she didn't actually get the - she called the furthest conference, that she's calling it now, it was originally a conciliation. So a conciliation, according from the research that I've done, it's a voluntary process. If you go through the conciliation and it's unsuccessful then I was of the opinion, and I'm not sure if it's right or wrong, that I was of the opinion that you could actually then not choose to go into another conciliation and then apply for a hearing, or ask for the matter to be taken to a hearing. The parties are so far apart, there was no chance of any sort of conciliation to be settled.

PN30

So the first matter is the actual type of conference. So that gave me the right, in my opinion, according to the Act, that it was my liberty whether I decided to actually continue in a conciliatory process - - -

PN31

VICE PRESIDENT CATANZARITI: Mr Stork, I've read the material and I've read your correspondence in relation to that and, speaking for myself, when you said you didn't want to have a second conciliation conference she then said, 'Okay, well, I'm now going to proceed on the path of directions, leading to a hearing'. So that's what - - -

PN32

MR STORK: No, she said it was compulsory.

PN33

VICE PRESIDENT CATANZARITI: She has said - the material will speak for itself, Mr Stork, but she's made it very clear. Once you wrote to her and said you didn't want a second conciliation, that's not what was going to happen, right. I have read that fairly carefully, Mr Stork, because she was planning a second conciliation, which is quite common in this jurisdiction. Members have multiple conciliations of the parties are happy to do that. When the parties reach a point where conciliation is not useful, then it goes into a hearing mode. She was enlivened by your correspondence, right, she then said, 'Okay, I'm going to now program the matter for directions', and that's what happened.

PN34

MR STORK: Really? Okay. Well, I disagree.

PN35

VICE PRESIDENT CATANZARITI: You can disagree, but I've read your correspondence, Mr Stork, which triggered that result. She wanted a second conciliation but you said, 'No, I do not want a conciliation'.

PN36

MR STORK: That's right.

PN37

VICE PRESIDENT CATANZARITI: Therefore she didn't proceed with a conciliation.

PN38

MR STORK: Yes, that's correct. But she went down the path of a determinative hearing.

PN39

VICE PRESIDENT CATANZARITI: No, she went down a path of directions being issued to go to a hearing. She's not conducted a hearing on the merits of your case.

PN40

MR STORK: So which part of her orders would you choose as to what type of hearing or conference? Which paragraph would you choose to rely on, except - - -

PN41

VICE PRESIDENT CATANZARITI: I'm not here to - we're here to deal with your appeal, continue with your argument on what's wrong with the orders that you see are appropriate.

PN42

MR STORK: That is a part of the orders. That is the - - -

PN43

VICE PRESIDENT CATANZARITI: All right, I've heard you on that and I've read your submissions, so keep going.

PN44

MR STORK: No, I want your answer. I'd like - - -

PN45

VICE PRESIDENT CATANZARITI: Mr Stork, it's not the role of the Full Bench to be telling you - I've drawn your attention to the correspondence that you put it, because you said that you were entitled to a hearing, right? When you said you didn't want a conciliation she actually said, 'Okay, I will set the matter for directions leading to a hearing'.

PN46

MR STORK: Really? But what I'm asking, Vice President, is which - - -

PN47

VICE PRESIDENT CATANZARITI: It's not a question at all, really. We're not going to have a debate about it, right.

PN48

MR STORK: Hang on, there's - - -

PN49

VICE PRESIDENT CATANZARITI: It's your correspondence.

PN50

MR STORK: I'm sorry, but the orders change 15 times in the conference classification. If anyone is smart enough to work out what that directions hearing/conciliation/conference/hearing/arbitration, pick which one it is, because they've all got a different meaning. It's all in the Fair Work Bench books, it's everywhere. They are completely different outcomes or objectives for each type of conference. It's either determinative or non determinative, as far as I'm aware and the ones that she was listing were all determinative. If you look at the orders, in whole, she was very, very easily going - she was clearly going, blocking my - if there was going to be evidence to go to - she says:

PN51

*If we are to head to an arbitration, if we are going to do an arbitration, this is the matters we need to do and, Mr Stork, you are not to submit any further evidence or submissions.*

PN52

That is just discriminatory, absolutely outright discrimination, just like her order for the IME. She's got nothing to do with the IME and the IME, she is not taking into account the performance, under the Act, under the WRC Act of the respondent, in failing to go through any steps of the WRC Act. The only step that my employer followed in the actual consideration of the compliance codes was appointing a return to work coordinator. They failed every other instance. Then she brings in the IME into the orders without even considering the fact that they haven't taken all the steps. According to the Act that is incorrect. I've sent you the actual diagrams, just to make it easy to explain, because I wouldn't want to get taken for a ride on that sort of point.

PN53

So the fact of the matter is, I know the process. You can talk as much as you like about, you know, how this is supposed to be run, I know how it's supposed to be run and this will be - this matter will go before higher authorities, I can assure you right now. It's not going to stop here because these orders are discriminatory, they are absolutely biased. There is not anything about these orders that actually present any balance in how she's treating the parties at all. You don't have to be a Rhode scholar or a judge to work that out, you can have half a brain and actually be able to read and you can see for yourself. It's just absolutely appalling that you guys can sit there and pretend to carry on like this when it's absolutely - there is no doubt, there is nothing uncertain about what this whole case is about and how it's been treated, nothing uncertain. I can assure you this will become - this will become a very, very public matter and everyone will be held accountable, I can assure you of that.

PN54

So to go through the orders, the things that I really am, if you want to call it, pissed off about, well I'm pissed off about the fact that she has taken no evidence into consideration at all. Nothing. The respondent's don't have any answer, or they have not contended my allegations, number 1.

PN55

Number 2, the respondent's form 73 has not got one factual piece of information that can stand up, not one. I've answered that in another document which is before the Commission and I've proven it with dates and correspondence. There is nothing. It's all baseless. The respondents failed to carry out, in the first instance, any investigations, and that's at their own admission. They admitted that they have never, ever taken any investigation into any matter. So how can you have an opinion, based on what? Based on fresh air? Then they can actually - and everyone can pretend that that actual evidence exists? How can you pretend like that? That is just a joke. You're all - this is appalling behaviour by a statutory body that is supposed to be looking after the interests of an injured worker. I've applied for a stop bullying order in a matter where I've been bullied from the top down, and I've come here with a very, very clear and precise and a very, very thorough application which includes correspondence from both



parties. It is not a matter of hearsay, this is on record. They are attacking my evidence, like you'd not believe, on my side, on my PC and on my Wi-Fi, they attack it every day.

PN56

Mark Valance has actually, in the last couple of letter that he's sent, I've actually got conclusive proof that I can take to the Federal Police and the - - -

PN57

VICE PRESIDENT CATANZARITI: Mr Stork. Mr Stork, I have to bring it back to what we're dealing with. Your evidence has not actually gone to a hearing at this point. Everything you say may well be true when the matter is fully heard.

PN58

MR STORK: So are you saying, Vice President, that the Commissioner had no responsibility to assess the evidence before her, prior to taking the matter to conciliation and understanding the merits of the case or the weight of evidence?

PN59

VICE PRESIDENT CATANZARITI: The process in the Commission is, it goes to conciliation to see whether the matter can be resolved or not. If it doesn't resolve at that stage then the matter goes to a hearing. That is where this matter is headed, to a hearing.

PN60

Now, if you say that - back to the Commission you say, 'I am dissatisfied with the conciliation process and I think, in my view, she is biased and I want to put an application on to (indistinct) for bias, and I don't want her to conduct the hearing, I want a hearing before another member, that's a different application, if that's what you're saying.

PN61

As I say, we weren't present at the conciliation and are unable to go behind the conciliation, right. All we have, at the moment, is orders programming the matter for a hearing. That's the appeal you have in front of us, right? That's all. Your hearing has not - on the merits, your hearing has not occurred. There has not been a hearing on the merits. Everything you say may be correct, right, but it has not been heard.

PN62

MR STORK: So are you saying that it means that a self-represented applicant can be left in the dark as to what type of conference they're heading to, where there's orders denying the applicant of making further submissions and yet orders that allow the respondents to make further submissions? So regardless of what type of hearing, that, in itself, is discriminatory. You can say that it's for the purpose of narrowing down the issues. There's only one person - there's only one answer to your own party in this proceeding that's narrowed down the issues and that's me.

PN63

I have actually provided the breakdown of reasonable management and the other crowd can't even - they don't even know what it is because they can't recognise

it. They don't even recognise unreasonable management. They don't understand the breach of not carrying out investigations. This is the very foundation of the matter. The fact of the matter is, I'm a builder, if I built a house without foundations I'd be - I'd never, ever build again. And this is what you're telling me that this is allowed. You're saying that we can progress a proceeding, unknown as to the actual objective or the purpose of that next hearing, because it's named under about 13 different classifications, and it's like take your pick. At the same time, I'm not going to let you submit anything and if you do, I'm going to pull your application. Now, come on. That is just ridiculous.

PN64

If we're talking about the merits of an appeal, it only takes one instance of one case, one clause or whatever you want to call it, one piece of evidence, that those orders are short of fact or their void of fact, and there's one of them. The fact of the matter is, she's written this whole proceeding on the wrong application. The application that's before the Commission, that was sent out by the Commission, is dated 11 November. It's 110 pages long and it's been chopped up by someone with motive to get rid of my evidence. Then I repair one document, send it in, only to find that another section's been chopped out. Of the appeal book that you've got in front of you, this second submission I made, that I thought I repaired completely, has got six pages missing out of the exhibit 2, which is the actual F7 application. Six pages taken out, which are very critical evidence. It's the actual example that I used to Yilmaz C, of the annual leave being wrongly rejected, without any consideration, without any - nothing.

PN65

I wrote my boss a letter stating the reasons why I needed to make applications, prior to the next year, I gave them all the time in the world, I gave them a full explanation saying that we'd just got a camper van and we needed to book holidays, because of COVID and because we're going to caravan parks, they needed to be booked 12 months in advance a lot of the time and you've very lucky to get in short notice.

PN66

Look, this is just an example of how unreasonable my boss and my management is, because they took eight applications for annual leave, that was made well in advance, and most of those applications, five or six of them, were for one single day. They were so - they were so inconsequential that they were refused, without consideration, without consultation, without any response to me at all, even after I've pleaded with the fact that we've put deposits down and stuff like that, and I've got a big family, I've got five kids, the only holidays we can go on is caravan park style holidays. We can't jump on a plane and go in a hotel and that sort of stuff, this is our recreation.

PN67

I knew I needed that because we were coming up to a part where I knew I was getting sick, because of the pressure I was under and the abuse that I was dealing with and they knew that I was getting - that I wasn't well, because they were listening. They were actually covertly surveilling me, using the insurers Sure Fact Investigations, their exclusive private investigator, who I ran into and who

introduced themselves to me, and nearly a month prior to me submitting my application. So this is how corrupt this proceeding is, right from the start.

PN68

Then you've got an obligation period that starts on 24 February 2002, without a return to work plan ever getting off the ground, nothing. Every return to work plan this company has issued me was under suspension, under suspension that they were refusing to - - -

PN69

VICE PRESIDENT CATANZARITI: Mr Stork, I keep saying to you, all that you say may well be 100 per cent correct, but this Full Bench does not have the ability to be actually looking at all this evidentiary material. We're focusing on problems you say exist in relation to the directions that were made, all right? That's the focus.

PN70

If material has been missing, for example, from the file, then that should be remedied. There's no explanation as to why material should be missing from the Commission's file, I can't answer that, if there's any materials missing, but that clearly should be before the Commissioner.

PN71

MR STORK: Well, you know, as I said, the fact of the matter is that the orders that were issued - can you just - can someone tell me which order they believe is to be compliant for the purpose of which my application was designed? My application is designed, form 72, is a stop bullying order, it's a precautionary stop bullying - it's precautionary so that I don't get reinjured, right. So someone tell me how a Fair Work Commissioner can issue orders like this, in light of the application and the evidence before them? You can argue all day you like, but I've read the Bench books and the Bench books clearly state that a Commissioner can make a decision, after the applications are lodged at the Commission, based on the evidence before them. Therefore, there's no way that a person in their right mind could make such a decision without understanding, having a full understanding of the merits of the case. It's impossible.

PN72

So at that stage of hitting a conciliation, or whatever conference, they know what is going on. They should be able to narrow the argument. They should be able to point out to the parties their strengths and weaknesses. They should be able to be balanced and impartial. That's what this is all about. That's what I believed in, in any case. Maybe my belief in this system is incorrect. Maybe I'm wrong to believe that that's what you're there for and that's what my application is for. It's not to stay out of work, it's not to try and fleece someone, an insurer, for money and pretend that I'm ill when I'm not. I'm fit to go back to work. I was fit to go back to work in October, in September. I wrote to the company on 26 February, four days after my application went in, and I said, 'Please, can we start a process of reconciliation?', and I outlined a whole plan to them, on the 26th and then on the 1st. Everything ignored completely.

PN73

So what I'm saying is, you might want to limit things to - you know, the orders are the orders and the orders relate to a case. The orders relate to a submission and to an application. So unless you take the applications into account, how can the orders mean anything, because the applications speak for themselves.

PN74

COMMISSIONER MCKINNON: Mr Stork, can I ask a question, please, it's McKinnon C here. I've read the directions that the Commissioner issued, it seems to me that the directions are all about preparation for the hearing, the directions hearing that was due to happen on 7 February. My understanding, from looking at the file, is that that directions hearing was adjourned until 28 February, at which time it occurred. If that's what's happened, isn't the whole argument moot because everything in those directions has now lapsed, because the directions hearing has been held?

PN75

MR STORK: Look, I don't know - I don't know the - I'm not a lawyer, so I put my application in. If that was the case, why would you assemble? Why would you bother assembling the Full Bench to actually hear this matter if that was the case? If that's the case you should have just written to us saying, 'This is the matter, this is how it is. Sorry, but we're not hearing the appeal for this reason'. Why waste the time?

PN76

COMMISSIONER MCKINNON: We have to give you an opportunity to be heard, just as we have to give other parties in the case an opportunity to be heard, and that's what today is about.

PN77

MR STORK: You could have done that in writing. You could have done that without even holding this Full Bench. Look, as I said - - -

PN78

COMMISSIONER MCKINNON: Do you agree that the directions no longer have work to do, because the directions hearing has already been held?

PN79

MR STORK: Well, I think that you've got to - there's work to do to straighten up the proceedings. I didn't want anyone dismissed or taken off the - like removed from the proceeding, or anything like that. All I wanted was corrections to take place. All I wanted was for someone to look at the orders and say, 'Look, this is not right, that's right, this is not', like, to me, when I look at the orders, all I see is a complete document of discrimination, of - like how can anyone be reliant on orders that aren't defined? I've looked - I've spent the last three - since these orders were released I have spent my time on the internet looking at all the other orders of the Fair Work Commission, the actual High Court, all of the - you know, the Federal Circuit Court, there is no orders out there that change the actual classification of the actual conference. They are defined and they stay in their lane, they don't switch lanes.

PN80

So, as a self-represented - as a self-represented person, with a building background, I just look at that and I think, if I was doing a scope of works for a client or for a court case or anything like that, you can't be so vague that people don't know where they stand. Then when the actual applicant asks questions, they don't get answers. There's nothing that's defined. They just continue to keep me in the dark. If that was the case, if I'm wrong and it was clear as day, well, I don't know how it's supposed to be then, because I have not come across another set of orders or directions that come anywhere near this, nowhere near it. There's so many classifications it's like playing Russian roulette. You know, take your pick, which one is it?

PN81

Then look at the orders in the whole. Look at the orders in relation to the fact that it's so absolutely vague and undefined and then look at the orders associated with that and look at what falls underneath that. Banning me from further submissions. Allowing the other party submissions. We could possibly have gone straight to an arbitration, everyone knows that. I've taken advice on this, those orders were set up to do whatever the Commissioner pleased to inform itself and to make decisions as they consider fit. Those orders gave me no protection or no satisfaction at all. There's nothing anyone can say about those orders that gives certainty about anything.

PN82

COMMISSIONER MCKINNON: All right. We hear what you said and we've read all of your submissions in this case, so is there anything else you want to say that you haven't already either put in writing or said this morning?

PN83

MR STORK: No. Look, it all comes down to the foundation, at the first instance, as they say, as you guys call it. I call it pouring the foundations. The foundations are non-existent. There has been no narrowing of issues and all Mr Valance has done, and all my employer has done, is absolutely muddy the water, that's what they've tried to do. There's been no narrowing of issues at all, nothing. Nothing. There's been no submission that has an ounce of fact. He's got his dates wrong, he's got the actual - he's named correspondence that was completely incorrect, for the purpose that it was written for. Like there's no evidence on the other side and no one's picking up on it.

PN84

COMMISSIONER MCKINNON: All right. I think you've made that point, Mr Stork.

PN85

MR STORK: When does that happen? When does the Fair Work Commission step in and say, 'Listen, ABN, what have you got that's going to actually persuade us to not make orders with this application? Can you please state your case?', because they're - - -

PN86

COMMISSIONER MCKINNON: Mr Stork, please just listen. I think the Vice President has already explained to you that there's still work to do in this

case. There's still a process to happen. There hasn't been any directions issued for the filing of evidence in the case yet. The directions that have been issued are only for the purposes of that directions hearing that eventually happened on 28 February. So it's likely that the next step will be directions will issue for the hearing and that will be the chance for both you and the others involved in the case to make their submissions and file their evidence in support of or in defence of your application for orders to stop bullying at work.

PN87

So that process is still to come and you will have that opportunity, as will they, and whether you and they take up those opportunities is a matter for you. But it will be on the basis of the evidence filed in the case that a decision is made and that's - - -

PN88

MR STORK: I'm glad you say that. I'm glad you say that because I'd like to see - I'd like there to be a ruling on this that's going to actually - what evidence are you talking about, because there is no evidence.

PN89

VICE PRESIDENT CATANZARITI: Mr Stork, that's the point. We're at a premature stage - - -

PN90

MR STORK: No, that's crap.

PN91

VICE PRESIDENT CATANZARITI: They may not be able to put on any evidence. When we go through that process there may not be evidence. We don't know what they're going to put on yet because we're not at that stage. These are preliminary directions, leading to a path to a hearing. Now, your evidence will be on, there's will be on or not on, and it's at that point that the Commission will actually have a hearing, on the merits.

PN92

MR STORK: Look, the merits were supposed to be assessed objectively and in the balance of probabilities, that's supposed to be done up front. That's the - - -

PN93

VICE PRESIDENT CATANZARITI: Well, Mr Stork, that's not the way the process actually occurs. Conciliation is an attempt to try to resolve the matters and Yilmaz C is not determining, at that point, the evidence of who is right and who is wrong, they're trying to see if the matter can be resolved. There is - - -

PN94

MR STORK: How can the Commission make decisions on the papers before the evidence - based on the applicant - - -

PN95

VICE PRESIDENT CATANZARITI: It's not making a decision on the papers, in relation to your anti-bullying matter. Mr Stork, it is not actually being determined.

PN96

MR STORK: No, that's what I'm saying. The Commission has a - you've got a mandatory obligation to actually assess the information objectively so you can steer the proceeding in the right direction. How can you actually go into this without any - how can you actually write up orders in the manner that Yilmaz C has, without any evidence from one side and with abundant and overwhelming evidence from the other?

PN97

VICE PRESIDENT CATANZARITI: We have heard you in relation to those orders, right, so I think we're exhausted on that point of this appeal. There are further matters to occur on the evidentiary trial after this appeal, but really I think we do understand your point, in relation to those orders.

PN98

We'll now hear from Mr Valance, in relation to the appeal that is in front of us.

PN99

MR VALANCE: Thank you, very much, your Honour. There was just a couple of points that I'd address before I briefly address the Full Bench, in relation to the nature of the appeal.

PN100

The first is, just as a point of correction for McKinnon C, there was a conference/directions hearing scheduled for 28 February, unfortunately the process never got beyond an initial discussion, as part of the conference, and a directions hearing was never actually held. That process is still to be undertaken, so I just wanted to clarify that scenario.

PN101

The second thing that I just wanted to note, to the Full Bench was that unfortunately it appears, and I think, Mr Vice President, you've seen, is that there seems to be some misapprehension as to the purpose of the directions hearing and as to what's to be achieved by that, on the part of the appellant, insofar as it's to program the substantive hearing of the matter and allow the parties to present their evidence for the Commission's consideration which, unfortunately, has, I think, led us to be at this point we are today.

PN102

In relation to the appeal that's before you, as you will be aware, the specified respondent has filed written submissions, in a form that was consistent of the President Hatcher J, on 16 March, and did so, simply to assist the Fair Work Commission with the efficient conduct of today's hearing.

PN103

In those hearings the specified respondents have addressed the matters that are to be considered as part of today's hearing, that being the request for an extension of



time on the appellant's stay application and permission to appeal. The specified respondents are content to rely on those written outline of submissions and I don't intend to reiterate those, though I am more than happy, of course, to answer any questions that the Full Bench may have.

PN104

I did, though, just wanted to address a couple of matters that arose from the recent correspondence that had been filed by the appellant, in particular the correspondence that was sent by the appellant on 19 March. There was a number of emails that were sent on that day. The email in particular that I'm looking at is the one that was marked at 6.55 pm on 19 March.

PN105

The first point that I wanted to raise and thought was appropriate to do so, in respect of that, and simply to make sure there's no misunderstanding in response to the appellant's various references to the employer's legal representatives, is to make clear that I'm a paid agent and I haven't presented myself as a lawyer, I just want to make that clear, given the nature of what's been explained in that correspondence.

PN106

The first matter of substance though that I'd like to address to the Full Bench, and it relates to a matter that was reiterated by the appellant in his email yesterday, of 12.38 pm and has been raised again in this morning's proceedings, is that the respondent, in some way, has altered or removed documents. We simply categorically reject that that has occurred. I know that that's not related to the content of the matter that you need to deal with, but I thought it was appropriate to record that.

PN107

In respect of the extension of time issue, the appellant has, in the last sentence on page 1 of the email that I referred to a moment ago, acknowledged that the appeal was filed outside of time and has identified, at the top of page 3, that the appeal was filed 21 working days after Yilmaz C's directions were issued.

PN108

The appellant, however, has not, in his recent correspondence, addressed the main issues raised by the specified respondents, that being that the standard form F7 very clearly sets out that an application for an appeal needs to be lodged within 21 calendar days. The appellant hasn't, in that regard, explained when he accessed the form or how it came to pass that he missed that detail.

PN109

The appellant also hasn't satisfactorily explained how it came to pass that the appeal was only lodged on 21 February, in the context of directions being issued for a conference/directions hearing on 7 February. The form F7 has been dated 5 February 2023, although I do note that the appellant has asserted, without any substantiation as I can identify, that the form has been tampered with.

PN110



We submit, and when I say 'we', the specified respondents submit that the information provided by the appellant doesn't support a request for an extension of time.

PN111

The appellant does, at the bottom of page 2 of his email, make an observation regarding the time at which he filed his written submissions on 8 March 2023. He's noted that the timing for filing didn't cause any prejudice to the respondent or the Commissioner and the objection raised by the specified respondent was inconsequential. But the relevant point to be made, and I'm sure that the Full Bench has grasped this, is that the directions issued by the President directed that the appellant's submissions be filed by 5 pm on that day. Those directions made clear that there was a consequence, or potential consequence, I should characterise it that way - - -

PN112

VICE PRESIDENT CATANZARITI: I don't think you need to address us on that because we're not going to take being slightly late on the filing of the submissions in the appeal as being a relevant factor. People use their best endeavours and it has not prejudiced the respondent in this case so we're not going to be taking that into account.

PN113

MR VALANCE: Certainly, Vice President.

PN114

I did want to touch on, very quickly, the appellant's observations, in the fourth paragraph on page 2 of that email, regarding the filing of the form F73, to the extent that it has any relevance to today's proceeding. I will just simply note there, the Commission's records should show that the response filed by the respondent, the employer respondent, was filed within the seven day timeframe for filing.

PN115

In respect to the comments made by the applicant halfway through page 3 of the email, regarding paragraph 8, what were specified in the respondent's outline of submissions, which relate to the prejudice that would be experienced by the specified respondents if permission was granted, the specified respondent's assertion, which is simply no, doesn't - assertion as to prejudice, I should say, was not objected to or addressed by the appellant.

PN116

In the second half of page 4 of the appellant's email the appellant makes comment about the lodgement date for the substantive application. We submit that that's simply a matter of fact and at attachment 5 to the outline of submissions, clearly note a recorded lodgement date of 2 November 2022.

PN117

There's only two other brief submissions that I would seek to make to the Full Bench. The first is that whilst we've had very little time to consider the materials that were filed by the appellant overnight, which are quite extensive, it appears

that those materials are directed at the substantive matter and not actually the issues that are being dealt with by the Full Bench in relation to this appeal, therefore are of little to no relevance.

PN118

The only other matter that I consider it appropriate to address is the correspondence sent by the appellant on 19 March at 6.59 pm. There was an email titled, 'ABN threat to employment', simply, for the Full Bench's benefit, we consider it appropriate to note that the 15 March 2023 email that was included is correspondence that had been sent by the appellant to the employer, shortly before an IME delegate had been arranged, in response to concerns about the appellant's fitness for work.

PN119

The respondent had unsuccessfully attempted to have the appellant attend an IME previously, having regard for its duty of care obligations and then issued a reasonable health instruction to attend a second scheduled IME, noting that a failure to do so would likely lead to disciplinary consequences.

PN120

We would submit that that email isn't relevant to today's proceedings but that, in any event, the requirement to attend an IME was reasonable and lawful and there was nothing inappropriate of noting the potential consequences for a failure to attend.

PN121

There is some relevance - - -

PN122

VICE PRESIDENT CATANZARITI: If it's not relevant to today's proceedings you really shouldn't be going through that material at all, because it is not relevant to the appeal to day.

PN123

MR VALANCE: The only element of relevance, Mr Vice President, was that the orders that were issued by Yilmaz C, on 20 January - - -

PN124

VICE PRESIDENT CATANZARITI: Yes, if you are directed to go to an IME you should go to it, I understand that point, but you have gone beyond that in what you've just said.

PN125

MR VALANCE: I don't need to take it any further, Mr Vice President.

PN126

I was actually proposing to end the submissions on that point, to the Full Bench, unless there was any questions that the Full Bench had of me.

PN127

VICE PRESIDENT CATANZARITI: Is there any questions from Cross DP or McKinnon C?

PN128

DEPUTY PRESIDENT CROSS: No.

PN129

COMMISSIONER MCKINNON: No.

PN130

VICE PRESIDENT CATANZARITI: Thank you. Mr Stork, anything in reply?

PN131

MR STORK: Look, as I said, my system has been smashed since - prior to when I (indistinct). I've got a lot of evidence. This evidence will be actually submitted to the Information Commissioner as well as the Australian Federal Police, and there's no doubt that we've had a lot of data breached and that will be handed at a separate time. This is obviously not the forum, so all I can say is it will be addressed.

PN132

VICE PRESIDENT CATANZARITI: Just to be clear, Mr Stork, are you suggesting that - it's not a data breach with the Fair Work Commission you're talking about now?

PN133

MR STORK: No, I don't believe so.

PN134

VICE PRESIDENT CATANZARITI: Thank you. I just wanted clarification as to whether there was any suggestion there'd been a data breach within the Fair Work Commission.

PN135

MR STORK: Well, what's really interesting from the Fair Work Commission though is that in the initial stages I was receiving receipts of documents that I was producing and sending, that was completely turned off. Then I brought it to their attention a few days ago, actually a couple of days ago, and all of a sudden the receipts switched back on again and they started sending me receipts for submissions.

PN136

But, yes, there's nothing more to add on that that's relative to this and, yes, as I said, even with regard to Mark's - Mr Valance's references to me being late, yes, I take that on the chin. I'm late. It was just a matter of me being overwhelmed, not being - not making - I had a lot going on, not just with this case, but with trying to get back to work so, yes, I made a mistake and that's on the chin. You can make that decision, if that rules out my application, so be it.

PN137

VICE PRESIDENT CATANZARITI: All right, thank you. The decision is reserved, the Commission is adjourned.

**ADJOURNED INDEFINITELY**

**[12.26 PM]**