



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

**VICE PRESIDENT ASBURY
DEPUTY PRESIDENT BINET
DEPUTY PRESIDENT GRAYSON**

C2023/6025

s.604 - Appeal of decisions

**Appeal by Qureshi
(C2023/6025)**

Sydney

10.30 AM, WEDNESDAY, 15 NOVEMBER 2023

Continued from 01/11/2023

PN1

VICE PRESIDENT ASBURY: Good morning. Could we just start by taking appearances. Mr Qureshi, we have you there?

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MR M ALI QURESHI: Yes, good morning.

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VICE PRESIDENT ASBURY: Good morning. And you are representing yourself today?

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MR ALI QURESHI: Yes, that's right.

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VICE PRESIDENT ASBURY: Thank you. And for the respondent?

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MS K STEWART: Good morning. Ms Stewart for the respondent, and I will be seeking permission for the respondent to be legally represented.

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VICE PRESIDENT ASBURY: Yes, thank you, Ms Stewart. You have filed some written submissions in support of your seeking to represent the respondent?

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MS STEWART: That's correct, yes.

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VICE PRESIDENT ASBURY: Mr Qureshi, you have filed some submissions objecting to the respondent being represented?

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MR ALI QURESHI: That's right.

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VICE PRESIDENT ASBURY: Do you wish to add anything orally to those submissions?

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MR ALI QURESHI: No, I already have submitted my concerns of opposition to respondent permission, yes.

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VICE PRESIDENT ASBURY: All right. Thank you for that. Having had an opportunity to consider the written submissions that the parties have filed in advance of the hearing today, we are satisfied that this is a matter where permission should be granted for the respondent to be legally represented on the basis that it does raise issues of legal complexity associated with the law with respect to repudiation, abandonment, et cetera, and that those are matters of

complexity where we would be assisted by the respondent being represented; it will enable the matter to be conducted more efficiently.

PN14

Mr Qureshi, I can assure you that, as a legal representative, there are responsibilities to act in a way that's fair and fully informs the Commission, and we are satisfied that there won't be any issue of unfairness to you by allowing the respondent to be legally represented.

PN15

On that basis, we grant permission and we will now consider the grounds of appeal and why permission should be granted. Mr Qureshi, you have filed some submissions in relation to the appeal and, as we understand it, you are seeking to tender some further evidence, some new evidence in the appeal?

PN16

MR ALI QURESHI: Yes.

PN17

VICE PRESIDENT ASBURY: Can you perhaps explain to us what that evidence is.

PN18

MR ALI QURESHI: Yes. There was some - as I mention, it's not just evidence and information, and it's a fact that it was not considered before, and there is errors of facts in the previous decision for what I provided this proof in the form of a document I received from Freedom of Information Unit of SAPOL.

PN19

VICE PRESIDENT ASBURY: As I understand it, what the respondent says is you requested that document on 25 September, which was after the hearing before the Deputy President. Is that the case?

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MR ALI QURESHI: If you can go on the hearing on - it was on 10 September, a Friday, the last day of hearing.

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VICE PRESIDENT ASBURY: Yes.

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MR ALI QURESHI: I have verbally raised that concern of mine because there was something coming in my mind, as I mention in my submissions as well, that I have got some issues pertaining to my - - -

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VICE PRESIDENT ASBURY: Was that 8 September that hearing, Friday 8 September?

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MR ALI QURESHI: The last day it was.

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VICE PRESIDENT ASBURY: Yes.

PN26

MR ALI QURESHI: 8 September, right, but, by the time, the Anderson DP said that the submissions are already submitted. On, I think, 6 September, he said that it was closed. And afterwards and during this time, I had several visits to police station. Initially, I did not get any confirmation, but they advised me that I have to apply this formally on this paper - the Freedom of Information Unit.

PN27

VICE PRESIDENT ASBURY: Okay.

PN28

MR ALI QURESHI: So then I - after receiving their advice, because it's very hard to, you know, communicate, and SAPOL, going to police stations - I have several visits - so, afterwards, I received - I had an official confirmation because, had I just raised my concerns on my declaration, I had concern that the respondents, as usual, they would have opposed that. So that's the official document, and that shows there was errors of fact as well in the previous decision. So this is a very important fact because (audio malfunction).

PN29

VICE PRESIDENT ASBURY: As I understand it, what you say is that SAPOL document shows - the document you obtained from Freedom of Information shows that on the night that you were detained, you did make a call to the Royal Adelaide Hospital security desk. That's - - -

PN30

MR ALI QURESHI: That's right.

PN31

VICE PRESIDENT ASBURY: Right. What I am asking you, Mr Qureshi, is to explain - as I understand it, you didn't know - when did you know or when did you recall that you had made that telephone call?

PN32

MR ALI QURESHI: Just because I have - I was on medicine and medication, and still I am taking some of that medication, so I recall that in early September, just before of the hearing, and then in early September somewhere that was - I recall the event that this was happened just before - just before the hearing.

PN33

VICE PRESIDENT ASBURY: Okay.

PN34

MR ALI QURESHI: So that's why I raised - - -

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VICE PRESIDENT ASBURY: Can you tell us where the transcript shows that you raised this in the hearing on 8 September?

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MR ALI QURESHI: It was - - -

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MS STEWART: Vice President, may I assist on this point?

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VICE PRESIDENT ASBURY: If you are able to, that would be good, thank you.

PN39

MS STEWART: I have the transcript here and I can indicate on 8 September, commencing from PN 2771.

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VICE PRESIDENT ASBURY: Yes, but, as I understand it, the requests that Mr Qureshi had made that are referred to in that part of the transcript were in relation to a document from Telstra that showed his mobile telephone had been disconnected or cut off.

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MS STEWART: No, Vice President, that's a different part. It can be seen in the paragraph commencing at PN 2772 that Mr Qureshi is referring to a call.

PN42

MR ALI QURESHI: Yes, PN 2771 and 2772.

PN43

VICE PRESIDENT ASBURY: 2771?

PN44

MR ALI QURESHI: And 2772 and 2773 and then further.

PN45

VICE PRESIDENT ASBURY: Okay. So in PN 2772, you raised a concern with the Deputy President that you recalled that, while you were in remand, you requested SAPOL to let you contact your workplace, and I think someone has made a call in the security office on 2 April, and if you find the phone, official phone, of the duty supervisor or the control room, there should be some conversation. I understand. All right, so you say that the Deputy President erred by not allowing you to call further evidence in relation to that matter?

PN46

MR ALI QURESHI: That is right.

PN47

VICE PRESIDENT ASBURY: Okay. I understand. And that this evidence now that you have obtained from SAPOL supports what you said on that day - - -

PN48

MR ALI QURESHI: Yes.

PN49

VICE PRESIDENT ASBURY: - - - that you had made a phone call?

PN50

MR ALI QURESHI: Yes.

PN51

VICE PRESIDENT ASBURY: Yes, I understand. All right, thank you. And you were not able to obtain the evidence from SAPOL at the time of the hearing before the Deputy President because you had only just remembered it?

PN52

MR ALI QURESHI: No, I was not able to produce it before.

PN53

VICE PRESIDENT ASBURY: All right. But you say that you should have been given an opportunity to do that?

PN54

MR ALI QURESHI: That's right.

PN55

VICE PRESIDENT ASBURY: When you say that you recalled because of a statement given by Mr Brett Morris - can the respondent assist what that statement was?

PN56

MS STEWART: Yes, Vice President. That was an aspect of Mr Morris' evidence whereby he said that Mr Qureshi had been marked absent by way of sick leave on 3 April. That evidence - - -

PN57

VICE PRESIDENT ASBURY: Can you take us to the page of the court book or the appeal book?

PN58

MS STEWART: Yes. I can refer to 6 September at PN 1285.

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VICE PRESIDENT ASBURY: So this is in the transcript?

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MS STEWART: Yes.

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VICE PRESIDENT ASBURY: PN 1285?

PN62

MS STEWART: 1285.

PN63

VICE PRESIDENT ASBURY: Thank you. I'm sorry to put you in that position, Ms Stewart, where we have to ask for your assistance, but it's appreciated.

PN64

MS STEWART: That's quite all right, that's quite all right.

PN65

VICE PRESIDENT ASBURY: So we're talking about two possible phone calls. The first one is information received by the Royal Adelaide Hospital that Mr Qureshi was unable to attend for work, and then a further phone call that was alleged to have been received by a female saying that Mr Qureshi would be overseas for a month?

PN66

MS STEWART: Vice President, if I may just clarify. The trial was certainly run on the basis that there was only one phone call received by the Royal Adelaide Hospital security desk, and that was the one by the unknown female caller on 4 April who suggested that Mr Qureshi was overseas.

PN67

VICE PRESIDENT ASBURY: And then it was subsequently in the final hearing that Mr Qureshi recalled, based on Mr White's statement - or that's what you say, Mr Qureshi - what you were seeking at the final hearing was to put evidence before the Deputy President that you in fact remembered that you had made a call?

PN68

MR ALI QURESHI: Yes, because the thing is my memories are reduced or are disturbed due to the traumatic incident, so I basically wanted to request Deputy President to either check - because that was a very crucial fact. All the case was and all the, you know, submissions of the respondent as well was depending on this point that I did not inform during that period of when I was arrested and, had they been informed, there would have been a different scenario, that the decision could have been different of the respondent. But I was not being granted permission or not being advised to further bring something that relates to what I was bringing up before the Commission.

PN69

But this is a fact, and you understand I had several visits to Port Adelaide Police. The first two times, they, like, they say, 'It's hard to go back, you know, but if you have made the call, it should be there, you can ask your employer.' But I said that I need to double investigate by some responsible officer from the police because this has happened, but this is my words and the memory that I recall.

PN70

So they gave me that document. They say, 'You have to come officially from the government agency and then we will further investigate.' They investigated and then it took - they say, 'We're going to take - like could be a month or maybe more', but I said, 'I want to escalate this matter, I need it immediately, as soon as possible.'

PN71

So, in October, they issued me this - the Freedom of Information Unit in which they have explained that - they have confirmed that I have informed to my

workplace just after when I was arrested that night from police station in the presence of the duty sergeant, and, yes, these phone calls were made and that I inform my workplace that I'm not able to come to work and I'm arrested, and that's what in front of you.

PN72

VICE PRESIDENT ASBURY: I understand. So what you're alleging is that the Deputy President did not give you fairness by not allowing you to try to pursue this point, that, even though the evidence was closed, the Deputy President should have allowed you to seek some information from the call records at the Royal Adelaide Hospital or given you some time to seek this information from the South Australian Police?

PN73

MR ALI QURESHI: That's right, Deputy President, because this is not just a word by declaration or something, this was - this was a major fact where all the centre of gravity of the case, of the position, is managed to be concentrated. So, given the, you know, information I have - because I'm not alone - I just read the website of the Fair Work and I know that Fair Work Commission have the powers, they have their inspectors, they can further investigate and they can allow the people to bring more evidence, and so by the time - and hearing was already going on, hearing was not finished at this stage. So I had an expectation that the Deputy President will be like, you know, giving - like he will consider this crucial fact because my whole case was depends on that.

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VICE PRESIDENT ASBURY: I understand. So you say that the Deputy President should have allowed you to call further evidence on this point?

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MR ALI QURESHI: That's right, Deputy President.

PN76

VICE PRESIDENT ASBURY: Before he decided the entire case?

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MR ALI QURESHI: That's right, Deputy President.

PN78

VICE PRESIDENT ASBURY: I understand. All right. So that's essentially the error that you say there is with this decision, that it's a failure to provide you with fairness by not allowing you to call this crucial additional evidence that you highlighted to the Deputy President before the case was concluded and that he should, and could, have allowed you an opportunity to call that evidence?

PN79

MR ALI QURESHI: That's right, Vice President, because you know already police has taken a long time to investigate and then issue - so definitely it is reasonable to expect that they could have given me some additional time to produce this crucial evidence, yes.

PN80

VICE PRESIDENT ASBURY: I understand. Thank you for that. Is that all you wanted to say about the evidence? Do you still press the Telstra document? Do you still want that to be provided?

PN81

MR ALI QURESHI: I want to - basically, the Telstra evidence - on the hearing of 6 September, or some day on hearing when the respondent's lawyer did some cross-questioning and she was not satisfied from her end that my services were, you know, disconnected on the basis of the evidence I provided earlier, so just after listening that, I contacted Telstra and I said, 'My services were disconnected in April, so I want that letter you have sent me - like the suspension letter.' So they said - they put me on hold and they said they did send me some correspondence but they are unable to generate, so I say I want written proof from the company, from the provider. So that's what they provided me and that, you know, substantiate what I said.

PN82

VICE PRESIDENT ASBURY: But do you agree that, despite the fact he didn't have that documentation, the Deputy President still found that your services were disconnected and that it would have taken you at least a week to reconnect them? It seems the Deputy President made that finding, even though he didn't have that documentation, so he's already made the finding that your services were disconnected and - - -

PN83

MR ALI QURESHI: Yes, that's fine, but he already made that finding in appeal, so, I mean, already I have - you know I have explained and so - - -

PN84

VICE PRESIDENT ASBURY: Yes.

PN85

MR ALI QURESHI: This document, if you add or not, so it's not going to be make a big difference, the Telstra one, I know, but - - -

PN86

VICE PRESIDENT ASBURY: But the SAPOL one does?

PN87

MR ALI QURESHI: The SAPOL one, it's the all - everything depends on that because that's a matter of fact here.

PN88

VICE PRESIDENT ASBURY: Yes, I understand. Thank you, Mr Qureshi, thank you for that. Is that all you wanted to say about why the new evidence should be admitted?

PN89

MR ALI QURESHI: Yes, because I explained that I was not able - why I was not able to produce further evidence, and based on the evidence of fact, yes, it should be admitted and, yes, that's right, Deputy President.

PN90

VICE PRESIDENT ASBURY: Thank you. Thank you for that. Ms Stewart, do you have anything you want to say in response?

PN91

MS STEWART: Yes, thank you, Vice President. I want to just refer back, first of all, to that extract from the transcript that we went to in relation to Mr Qureshi's point about raising the SAPOL-related issue on the last day of hearing. So if I can refer you back to that part of the transcript, that was on 8 September, starting at PN 2771.

PN92

VICE PRESIDENT ASBURY: Yes.

PN93

MS STEWART: We can see, at the end of that first paragraph, that what Mr Qureshi said was that it had just come into his mind after the conversation today and in the light of the statement from Mr Brett Morris, and we saw a little earlier that statement from Mr Morris was that Mr Qureshi had been marked as absent on sick leave on 3 April. At the following paragraph, PN 2772, what Mr Qureshi goes on to say - and this is in the second half of that paragraph that begins with:

PN94

I requested to SAPOL to please let me contact my workplace, so I have a clear doubt, but I think someone has made a call in the security office on 2 April. I don't know if it's too late because we are going to closing submissions.

PN95

He then, in the following paragraph, PN 2773, refers to some conversation happening between 2 and 3 April.

PN96

So I think it is worth emphasising, first of all, that it was not Mr Qureshi's position at that stage that he had made a phone call to security and, further, that has to be assessed against the evidence that Mr Qureshi gave at trial, which I have set out in the respondent's written submissions, namely, that he gave a quite different version, namely, that he had made one phone call from the police station and that that was to a friend of his who he had asked to contact the security desk on his behalf, but which he told the tribunal that, having made subsequent enquiries of that friend when he was released, that the friend indicated that he had not done so.

PN97

So from the point of view of establishing the first test insofar as whether or not new evidence should be admitted, namely, was it possible for this evidence to have been put before the Commission at first instance, then we say, in circumstances where Mr Qureshi put a different version of events before the

Commission, we say that there is no reason why he couldn't have put the version that he now seeks to put, if that was indeed the case.

PN98

As we have highlighted, Mr Qureshi makes no acknowledgement whatsoever in any of the documentation that he did give entirely contrary evidence at first instance.

PN99

That leads into the second test, namely, whether or not it would be likely to make a difference to the outcome if the evidence was admitted and, in that respect, I just want to take you, Vice President, to the letter from SAPOL so we can actually have a look at the precise wording of it.

PN100

VICE PRESIDENT ASBURY: Yes.

PN101

MS STEWART: On that letter, the second-last paragraph tells us that enquiries were made and that a Sergeant Sadonka(?) had reviewed the detention logs and had passed on information, which is summarised in the last paragraph of the letter, namely that, apparently, two phone calls were made by Mr Qureshi to the security desk, the first at 4.43 am, and the second, the 11.21 am - sorry, to a solicitor, that second phone call said to be sent to.

PN102

Now all it states in relation to the call to the RAH security was that Mr Qureshi supposedly informed them that he wasn't going into work. That's the only wording that we have in that letter.

PN103

In my submission, even if this letter is admitted, the letter does not go far enough to establish that what Mr Qureshi did was contact the security desk and explain what had happened, namely, that he had been arrested and was potentially going to be held on remand. There is no evidence of that either from Mr Qureshi himself or, indeed, in this letter from SAPOL. The implication, in my submission, is that, if this call was made, namely, that Mr Qureshi said he wasn't going into work, that he only referred to the fact that he wasn't going to be going into work that day, in other words, on 3 April.

PN104

In support of that, I can refer you, first of all, to evidence from the appellant himself. If I can ask you to turn to the 5 September transcript at PN 341.

PN105

VICE PRESIDENT ASBURY: Yes.

PN106

MS STEWART: Actually, if you look at my question to Mr Qureshi that preceded it at PN 30 where I asked Mr Qureshi:

PN107

Well, are you telling us the truth when you tell us that you did actually ask him to contact your work?

PN108

And that is in relation to the friend that Mr Qureshi said he had contacted and had asked him to contact the RAH on his behalf. His answer to that question - he confirms that he did - and he said:

PN109

I have to tell him because work is also important, and I have in my mind, based on the information I was given by SAPOL, that I will be released on bail. So in my mind, I thought my shift is 2 pm, I may catch that shift, I may not. So the security office, if they get the information beforehand, they can organise some substitute, or know what's going on so they don't have any problem. That's what my agenda and my perspective at the time was.

PN110

Essentially at the time of this alleged phone call.

PN111

I say that when that evidence from Mr Qureshi is taken into account, together with the extent of the wording in the SAPOL letter, all it amounts to is that Mr Qureshi gave an explanation and was essentially excused from attending work on 3 April.

PN112

Now, importantly, as far as what the Deputy President then went on to find insofar as what the repudiatory conduct comprised of, as can be seen from the correspondence that is included in the body of the Deputy President's decision, the letters that were sent to Mr Qureshi from the employer warning him of the potential consequences of his unexplained absences start from 4 April, not 3 April.

PN113

So there is still, despite this letter from SAPOL, in my submission, nothing to overturn the findings of the Deputy President, namely, that there was an unexplained absence by Mr Qureshi starting from 4 April and continuing two weeks thereafter, and that it was that that comprised the repudiatory conduct and, obviously, brought things to an end. Conversely, had it been a dismissal, which obviously the Deputy President found it was not, but, had it been, then those same set of circumstances provided a valid reason and justifies the Deputy President's findings that the dismissal was not unfair.

PN114

So I say that, even if this letter is admitted, it does not go as far as what Mr Qureshi is asking you to find for those reasons.

PN115

Just lastly, on the letter, as far as the third test of new evidence being clearly the extent to which it's credible, clearly it comes from a credible source - this is obviously coming directly from SAPOL - I don't take any issue with that - but it is

vague in its content insofar as what is being said is actually being based upon. It's not clear, for example, whether Sergeant Sadonka was the officer on duty at that particular time and whether Sergeant Sadonka had actually witnessed this phone call.

PN116

The letter says at the end that it's unknown what phone numbers were actually dialled with regard to these calls, so we can't confirm things one way or the other that way, and it could be that Sergeant Sadonka was simply taking this information from notes that were recorded. We don't have the notes, so we don't know if what is stated there is a fair conclusion to draw or not. So while it is a credible source, there are still doubts, in my submission, over the veracity of the information and can't be relied on blindly in that respect.

PN117

VICE PRESIDENT ASBURY: Even if that is so, Ms Stewart, assuming for the sake of the argument that all that the letter establishes is that a phone call was made to the security office at the Royal Adelaide Hospital at a particular time by the appellant, as I understand it, the appellant seeks to make the point that fairness would have required him to be given an opportunity to provide some evidence.

PN118

Would it have been so contrary to the respondent's interests to allow the appellant at first instance some more time to make enquiries - and he's saying the security guard will have a log of calls, he will have logged the calls - to allow him to find out, well, who was the security guard on duty that night and what did the appellant say when he called the security guard because surely that was a central issue?

PN119

It wasn't some peripheral issue in the dispute; it was highly unusual circumstances that the appellant was in that were well known in the first instance hearing, and it should have been a relatively simple thing to have a brief adjournment to allow the appellant an opportunity to get that evidence.

PN120

MS STEWART: To that, Vice President, I would say that it has to be remembered that, as I have said, Mr Qureshi ran his entire case on a completely different basis, and during that case, both, of course, remembering that there was an initial extension of time hearing as well as then, obviously, the subsequent merits hearing, both hearings of which Mr Qureshi stuck to his original version of events insofar as making this phone call to a friend, and in relation to what he then went on to say insofar as his attempts to contact the employer, he referred, of course, to this request that he says he made while in remand, namely, you will have seen it referred to in the decision as a KEX request.

PN121

Now what Mr Qureshi did was attempt to get, basically, information from the authorities that would demonstrate that he had, in fact, made that KEX request, and I have referred to this in our written submissions insofar as he did that, he obtained that information during the hearing and he was permitted to admit that

evidence. So he demonstrates squarely, in my submission, by that action that he was perfectly capable, and in fact did, pursue an external third party in order to support what he said was a key part of his case, and it wasn't until the very last moment, when the evidence had obviously already closed, that he alluded to something different to what he had led the Commission to believe was his case up until that point.

PN122

As we have seen from the evidence that I took you to insofar as what it was that he said to the Deputy President on that last day, it did not obviously go anything like so far as what he is now seeking to say and adduce through this letter by SAPOL.

PN123

Indeed, it is also relevant, in my submission, to keep in mind that the Deputy President knew that the relevant conduct that was in issue was the conduct that commenced from 4 April onwards. So Mr Qureshi seeking to raise a new point or the opportunity to get evidence that may determine that he had an explanation in relation to 3 April was of no consequence.

PN124

Now we obviously don't know whether that formed part of the Deputy President's consideration and thought process at the time, but it is, as a matter of fact, accurate and we say that, as well as, obviously, that being a relevant consideration then, it's also a relevant consideration today insofar as whether or not Mr Qureshi meets the relevant tests and, for the reasons I have outlined, he clearly does not on any front.

PN125

VICE PRESIDENT ASBURY: Yes, I understand your submission. Do you have any questions?

PN126

DEPUTY PRESIDENT GRAYSON: No.

PN127

DEPUTY PRESIDENT BINET: No.

PN128

VICE PRESIDENT ASBURY: Thank you. We might just - sorry, Mr Qureshi, did you have anything you wanted to say in reply to Ms Stewart's submissions about whether this document should be admitted?

PN129

MR ALI QURESHI: Just what Ms Stewart has mentioned, I want to say something. I have some concerns, like the information I applied to SAPOL, I have mentioned my content - particularly I was looking to the phone calls I made after my arrest to the - particularly related to that, and in which I explained that I am arrested and I'm not able to come to work, and afterwards police investigated and they give their document.

PN130

In respect to the dates, so the events start and everything was started from 2 April, so regardless of 4 April, so I think it's much better and it had made the work of the respondent and my employer much easier because I informed them regarding my arrest and I am unable to come to work just after when I was arrested after a few hours. So what's the point of like saying that the events started from 4 April? The events did not start from 4 April, they truly started from 2 April and the night of 2 and 3 April, yes.

PN131

The difference - the respondent is saying why it's made a difference, so I want to refer to the cross-questioning session happened between that what I did to Ms Hayley Valente in which she mentioned that, for her, it's something usual and she had experienced such incidents in her career in the past where people have informed about they were arrested and they informed to the employer that they were arrested, and I asked her then what happened next, were they allowed to continue with their work on that time, and Ms Hayley Valente says that, yes, once they got out of the, you know, custody or something, so they had meetings, so the employer had a meeting with those people and then they were allowed to continue with their jobs.

PN132

I read somewhere in the Fair Work's rules that treating of two - you know, like, if employer treats one employee with one rule, so keeping the view - considering the concept of the fairness of treating the employees, they should have treated everyone the same. So in that case, when I have informed them - and evidence is front of the Commission - so I should have been given the same opportunity just like they gave to the other employees in the past. That's what Ms Hayley Valente has spoken to me during the cross-examination session on 6 September.

PN133

The other thing, I mentioned that I'm not medically - still I'm not - it's very hard to recall everything. Even if you raise something, what happened on 5 September, I need half hour to check the document and recall what I spoke to the Commission, and because of the incidents and the experiences I am going through, especially the medication, which I have already discussed to my GP recently and he might change my medication to something else because it's like really damaging my memory.

PN134

When I made this call, I verbally said - the police also confirming that - police hasn't provided the audio transcript. My concern was I informed that I was arrested and I informed to the workplace. So had I told this just my declaration, the employer would have just, you know, denied this, so I have to append this evidence, this solid proof, so the honest goes to the employer as well. When I raised this even on 8 September of hearing, so what employer has done? Did they check? Did they verify who was on duty and what happened, what phone calls were made around those times? They have the full office, they have the reports, 24/7 maintain records. My question is why they are not giving the truthful information, what investigation they have done, why they are tendering with their

reports. So I have a doubt with the conduct and veracity of the respondent as well in that case.

PN135

VICE PRESIDENT ASBURY: Mr Qureshi, the problem that the respondent raises, which Ms Stewart raises, is that all the way through the hearing, you said, 'I made a phone call to my friend and I asked him to ring my work and he didn't do it and that's why I didn't make contact, and then I tried to get permission to make a phone call to my work and I was not allowed to make the phone call to my workplace.' You have never said at any time during these proceedings, 'I did try to make a phone call - I did make a phone call to the Royal Adelaide Hospital and this is what I said to the person in the security office.'

PN136

MR ALI QURESHI: That's the reason I mention in my submissions because I had the mental issues, the memory issues I was going because of the traumatic incidents and the medication I was taking. When I recall that, I bring that evidence and information before the Commission, and I was able to recall.

PN137

VICE PRESIDENT ASBURY: But you are still not putting any evidence before the Commission, or you are not trying to put any evidence before the Commission about what you said in that phone call that you made to the security office.

PN138

MR ALI QURESHI: To the security office, I informed that I am arrested, I am unable to come to work, I'm in police station. That's what I informed.

PN139

VICE PRESIDENT ASBURY: Yes, but even when you asked for us to receive that additional evidence, you haven't said - prior to now, you haven't said what you said in that phone call. You haven't given any evidence about that prior to now, have you?

PN140

MR ALI QURESHI: I mean I think it's mentioned in my submission that I informed that I was arrested and it's - - -

PN141

VICE PRESIDENT ASBURY: In your submission about why you should be allowed to put this document in?

PN142

MR ALI QURESHI: Yes, can you double-check if - otherwise I - - -

PN143

DEPUTY PRESIDENT GRAYSON: Mr Qureshi, are you relying upon some words in the paragraph headed 'Introduction' in your appeal submissions where you say:

PN144

Surprisingly, a very crucial fact uncovered a few days ago and I was able to recall the events that happened from 2 April onwards where I found that I did inform to my security office when I was arrested by SAPOL and taken to the police station on the night of 2 April 2023.

PN145

Is that what you mean? That's a submission as opposed to evidence, but is that what you are relying upon to say that you brought that to our attention? Is there something else that you want to take us to?

PN146

MR ALI QURESHI: Yes, that's right, Vice President, I explain already in my witness statement and rest. I am here, I am telling you by myself what else they want to know.

PN147

VICE PRESIDENT ASBURY: So that's the evidence you are relying on, what you have said in that submission?

PN148

MR ALI QURESHI: Yes, Vice President.

PN149

VICE PRESIDENT ASBURY: All right. Thank you. We take it, Ms Stewart, that you would say that it's too little too late given the way the appellant conducted his case at first instance?

PN150

MS STEWART: I would make that submission, Vice President, and added to that, I would say that the documentary evidence that I referred you to in my written submissions also is relevant here because it gives credence to the original version of events that was led by the appellant.

PN151

VICE PRESIDENT ASBURY: All right. I understand your submission. We might stand the matter down for a few minutes and just consider whether to admit the further evidence of the SAPOL document, and we will resume shortly. Just bear with us for a moment.

PN152

MS STEWART: Thank you.

SHORT ADJOURNMENT

[11.29 AM]

RESUMED

[11.45 AM]

PN153

VICE PRESIDENT ASBURY: I can indicate to the parties that we have considered the appellant's application to admit the SAPOL - I'll refer to it as the SAPOL or the FOI request document - and we have decided that we do intend to allow the appellant to tender that further evidence in the appeal.

PN154

We also intend to adopt an approach whereby we give the appellant an opportunity to adopt his submissions, so his submissions in the appeal from the heading 'Introduction' and 'Explanation' down to the first dot point. We propose to give the appellant an opportunity to adopt those submissions as his evidence and also to accompany the SAPOL document and also to give the appellant an opportunity to adopt his witness statement in support of permission to adduce further evidence, subject, of course, to giving you, Ms Stewart, an opportunity to cross-examine the appellant on those statements if you wish to do so.

PN155

Would you like to consider what cross-examination you may have in relation to those two documents?

PN156

MS STEWART: I don't think that will be necessary, thank you.

PN157

VICE PRESIDENT ASBURY: Do you want to have an opportunity to cross-examine the appellant about those statements?

PN158

MS STEWART: You are referring to both the appellant's submissions as well as the one that he headed up 'Witness Statement'?

PN159

VICE PRESIDENT ASBURY: Yes, so the document - the appeal submissions from the heading 'Introduction' and the heading 'Explanation' down to the bottom of the font that's in bold. So the first dot point onwards would not be taken to be a statement; it's simply a submission from there.

PN160

MS STEWART: Yes. Okay.

PN161

VICE PRESIDENT ASBURY: And then the witness statement to get permission to add further evidence.

PN162

MS STEWART: Yes, all right. Am I being given any time in which to consider those questions?

PN163

VICE PRESIDENT ASBURY: Certainly. Would you like some time?

PN164

MS STEWART: Yes, if I may. Could I have half an hour?

PN165

VICE PRESIDENT ASBURY: Certainly.

PN166

MS STEWART: Thank you.

PN167

VICE PRESIDENT ASBURY: Certainly. Mr Qureshi, just so you're clear here, what we are going to do is allow you to tender the Freedom of Information Act application document, and we are also going to allow you to adopt part of your appeal submissions as though they were your evidence about that document, and also your witness statement to get permission to add further evidence, we are going to allow you to put that into evidence before us and we are going to give Ms Stewart an opportunity to question you or cross-examine you about those two statements. Do you understand?

PN168

MR ALI QURESHI: I understand, Vice President.

PN169

VICE PRESIDENT ASBURY: All right, thank you. Obviously, Ms Stewart, we accept your submission in relation to the weight. There's still a question of weight that needs to be put on the SAPOL document and the other matters that you have raised certainly go to weight and we don't intend to allow the appellant to admit any further evidence beyond that that we have identified.

PN170

MS STEWART: Thank you.

PN171

VICE PRESIDENT ASBURY: So the submissions you made today are not evidence; it's only what's contained in those documents that we have identified.

PN172

MS STEWART: Yes, thank you.

PN173

VICE PRESIDENT ASBURY: All right. Thank you for that. So we are going to adjourn for half an hour, Mr Qureshi. It's now 10 to 12, I think.

PN174

MS STEWART: Yes.

PN175

VICE PRESIDENT ASBURY: Sydney time. So we will adjourn for half an hour and we will resume - we may as well make it for 40 minutes. We will resume at half past.

PN176

MS STEWART: Thank you.

PN177

VICE PRESIDENT ASBURY: We will adjourn.

SHORT ADJOURNMENT

[11.49 AM]

RESUMED

[12.42 PM]

PN178

VICE PRESIDENT ASBURY: Thank you. Ms Stewart, you've had an opportunity to consider some cross-examination?

PN179

MS STEWART: Yes, thank you.

PN180

VICE PRESIDENT ASBURY: And you wish to cross-examine Mr Qureshi?

PN181

MS STEWART: I do, yes.

PN182

VICE PRESIDENT ASBURY: All right, then we will administer an affirmation, Mr Qureshi, if you'd like to just repeat after my associate.

PN183

THE ASSOCIATE: Mr Qureshi, can you please state your full name and address for the record.

PN184

MR ALI QURESHI: Yes, my full name is Muhammad Ali Qureshi, (address supplied).

<MUHAMMAD ALI QURESHI, AFFIRMED

[12.43 PM]

EXAMINATION-IN-CHIEF BY VICE PRESIDENT ASBURY

[12.43 PM]

PN185

VICE PRESIDENT ASBURY: Thank you, Mr Qureshi. Can I just ask you to identify some documents that you provided to the Fair Work Commission. The first document is your outline of submissions filed in relation to this appeal and it's headed, 'Appeal submissions.' Have you got that document in front of you?---Yes - - -

PN186

I think my associate might have emailed - - -?---Appeal submissions, F7?

PN187

No, the document – I think my associate emailed it to you. It's your appeal submission, the typed document that my associated emailed to both parties in the break. It's headed, 'Appeal submissions?---Yes. Yes.

PN188

Yes, you've got that?---Yes, I've got that, yes.

*** MUHAMMAD ALI QURESHI

XN VICE PRESIDENT ASBURY

PN189

Great, all right. And if you could look at the words under the heading, 'Introduction' - - -?---Yes.

PN190

And under the heading, 'Explanation'?---That's right, yes.

PN191

And there's a dot point and then the rest of the type is in bold and the last words in the part that we're looking at state, 'Gone through in April 2023.' Do you see that?---Yes, that's right. Yes.

PN192

All right. And to the best of your knowledge the contents of that document are true and correct?---That's right. Yes, that's correct.

PN193

And if I could then ask you to look at a document that is headed, 'Witness statement to get permission of adding further evidence'?---Yes.

PN194

That document concludes with the words, 'The sufferer employees can maintain their trust and hope with justice on the system'?---Yes, that's right.

PN195

And to the best of your knowledge the contents of that document are true and correct?---Yes, it's true and correct.

PN196

Okay, and you've also tendered a document dated 19 October 2023 which is from the South Australian police?---Yes.

PN197

And it's regarding a Freedom of Information Act application?---Yes, that's - - -

PN198

So, that is the document you obtained by way of making a freedom of information application?---Yes, that's right. I did.

PN199

All right, we'll mark the first document or the first statement as exhibit A1.

EXHIBIT #A1 APPLICANT'S DOCUMENT HEADED 'APPEAL SUBMISSIONS'

PN200

The statement headed, 'Witness statement to get permission of adding further evidence', as A2.

*** MUHAMMAD ALI QURESHI

XN VICE PRESIDENT ASBURY

EXHIBIT #A2 APPLICANT'S DOCUMENT HEADED, 'WITNESS STATEMENT TO GET PERMISSION OF ADDING FURTHER EVIDENCE

PN201

And the Freedom of Information Act application document on South Australia Police letterhead as A3.

EXHIBIT #A3 FREEDOM OF APPLICATION ACT DOCUMENT ON SOUTH AUSTRALIA POLICE LETTERHEAD

PN202

So that material is now evidence before the Commission, Mr Qureshi, and those witness statements are as though you read them out loud, okay?---Yes, Vice President. I need your attention to the F7 document, the appeal I submitted.

PN203

Just, I need your attention on - - -

PN204

Yes?---On page number – page number 7.

PN205

Yes?---I was just asked that I have not like explained regarding what I said in the phone call that I made from police station to workplace, so – I've written, I mean, on number 7 in the highlighted - - -

PN206

Yes, I understand, Mr Qureshi?---Yes.

PN207

That's before us already. Your grounds of appeal are before us already and we're just admitting those statements into evidence that I've just identified, okay?---Yes. I mentioned that he informed the security officer regarding his arrest circumstances so - - -

PN208

Yes, I know what you've stated in your form F7 but what is going into evidence is those three documents that I've marked as exhibit A1, A2 and A3, okay? Thank you for that. Now, Ms Stewart will have some cross-examination for you, so if I could just ask that you respond to her questions, thank you. Ms Stewart?

CROSS-EXAMINATION BY MS STEWART

[12.48 PM]

PN209

MS STEWART: Thank you. Can I just ask, Mr Qureshi, before we start do you have a copy of the appeal book in front of you and copies of the transcripts?---Yes.

*** MUHAMMAD ALI QURESHI

XXN MS STEWART

PN210

Do you have all those documents?---Yes, I have.

PN211

Okay, thank you. So, Mr Qureshi, when you appeared before the Commission, before Deputy President Anderson you told the Commission that on the night of your arrest you made one phone call from the police station and that to your friend, Sayeed, correct?---Yes.

PN212

So, was that a lie?---Sorry?

PN213

Was that a lie?---No.

PN214

Well, you're now asked - - -?---(Indistinct) was truth and - - -

PN215

Sorry, there - - -?---To the best of my knowledge.

PN216

Sorry, I didn't catch that answer, Mr Qureshi?---Everything I said was truth and to the best of my knowledge.

PN217

Mr Qureshi, you say it was true but you're now asking the Commission to accept a different version of events, namely that the night you were arrested that you did in fact contact your work. So, both versions can't be correct. So, which is it?---Both versions are correct. This is a different call. And there are witnesses before you regarding the phone call I made to the workplace.

PN218

Mr Qureshi, when you gave your evidence originally you were specifically asked whether or not you were you were allowed, first of all, one phone call, or more than one phone call. And your answer was that you were allowed one phone call only. Do you recall giving that answer?---I – I said that as per my memory and to the best of my knowledge I gave my answers. But all the things I said was including, like today's evidence, is truth and to the best of my knowledge.

PN219

Well, Mr Qureshi, I'm asking you, do you recall giving evidence where you said that you were only permitted one phone call at the police station that night? Would you like me to direct you to the part of the transcript where you say this?---If it's written in the transcript I don't know where it is written.

PN220

I can take you to it, Mr Qureshi. If you refer to the transcript on the first day, so that was on the 5 September. Do you have that there?---If it is written then whatever is said it's already written.

*** MUHAMMAD ALI QURESHI

XXN MS STEWART

PN221

So, you accept that that's what you said, that's what you told the Commission, namely that you were only allowed one phone call, yes?---If it's on the transcript, so what is recorded. What does the - - -

PN222

VICE PRESIDENT ASBURY: Can you give us the reference please, Ms Stewart?---Yes.

PN223

MS STEWART: Yes, certainly. So, 5 September.

PN224

VICE PRESIDENT ASBURY: Yes.

PN225

MS STEWART: And there was two different occasions but I'll just give you one of them, which is at PN347.

PN226

VICE PRESIDENT ASBURY: Thanks.

PN227

MS STEWART: Actually, sorry, I have the other one, as well, which is at the end of PN3332 which goes – my apologies, Vice President.

PN228

VICE PRESIDENT ASBURY: Thanks.

PN229

MS STEWART: It goes into PN333.

PN230

VICE PRESIDENT ASBURY: Okay, thanks.

PN231

MS STEWART: Now, just let - - -?---Ah - - -

PN232

Sorry, Mr Qureshi?---Yes, the – they mention two phone calls. The other phone calls when I late, they allow. The term that the police used for the lawyer, particularly it was not just – they say a lawyer, a lawyer or any supporting friend, like it could be a friend, it could be a lawyer, so that's what they are referring to where I talked to the – my friend, Sayeed, the other phone call that telling about. Because I was – did not organise the lawyer by the time when this call made and I didn't – did not talk to my lawyer but I talked to my friend. So the term they used, the lawyer, was referring to the – to the call that I make to my friend.

*** MUHAMMAD ALI QURESHI

XXN MS STEWART

PN233

So, Mr Qureshi, am I understanding you correctly. You're suggesting that the information that is contained in the letter from SAPOL that refers to you - - - ?---Yes.

PN234

That refers to you making a call to a solicitor, you're saying that was actually a call to a friend? Is that what you're saying?---Yes. That's right. They allow – because they allow the call to the lawyer or any supporting person that could be a friend, as well. That's how it happened.

PN235

And you say it was to a friend?---Yes.

PN236

Despite the fact that the letter from SAPOL clearly says it was to a solicitor?---It is – I need to open it again. 'Made phone call to solicitor, 11.21 am.' In – it's – no, in the morning - basically this call I did not make. That was related to the – I think why – it was – it was connected by the police and it's – they haven't specifically mentioned with adding – that's what I presumed that if they have mentioned – if what they mean is to – because I talked to the Sayeed on the phone call that I made.

PN237

Well, Mr Qureshi - - -?---I didn't have the lawyer at that time. I don't know what the – that's what I can remember if they are referring to the call that I talked to the Sayeed.

PN238

So, are you - - -?---So, this person - - -

PN239

So, Mr Qureshi, are you suggesting that when South Australia police say in their letter that at 11.21 am you made an outgoing phone call to a solicitor, that they are wrong in that? Is that what your evidence is?---I'm not saying they're wrong but it could – - -

PN240

Mr - - -?---Why the (indistinct) - - -

PN241

Mr Qureshi, do you say you say you made a phone call to a solicitor at 11.21 am that day?---I – 11.21 am – this event I don't really remember about the 11.21 but specifically regarding my workplace calls, that I am 100 per cent sure, but why the other thing and what phone call if I made, I don't – I'm not sure about this point of this. Because I did not organise a lawyer to represent me in the court, so I don't know what does it mean, what they want to say about this thing. I'm - - -

*** MUHAMMAD ALI QURESHI

XXN MS STEWART

PN242

So, Mr Qureshi - - -?---I'm sure about – I'm sure about that, the other point of eleven – the workplace call I made. And the main purpose of my appeal and the letter I wanted – the permission I was seeking was that.

PN243

All right. Mr Qureshi, my question to you at the moment relates to what is stated to be an outgoing call made by you to a solicitor. Now, is it your evidence that you made that call or not?---I – that 11.21 am, I doing call to solicitor, I don't remember that.

PN244

You don't remember, or you didn't do it?---I don't – it's – I don't remember. Because in the mornings outgoing call – because the outgoing call – I was arrested around 10.00, 11.00 pm(sic) and the outgoing calls was – happened between the time of the – after, like earliest morning or the late night. That's what I remember. So, this I don't remember at all.

PN245

But - - -?---The outgoing call to the solicitor. I don't remember, yes.

PN246

Okay. But you - - -?---But - - -

PN247

But you - - -?---But the solicitor one I'm not sure.

PN248

Mr Qureshi, but yet you do remember, you say, making a phone call to security?---Initially when I – as I said, I mentioned in my submissions that I was not categorically called there because of the trauma, and I have got – I have got memory issue I clearly mentioned and I'm discussing this with my GP. And I have already provided the documents of the medication I'm taking that – that is impacting my mental health and the side effects are coming on my memory. That was the reason.

PN249

Mr Qureshi - - -?---But I – the thing which I recall, I was not hundred per cent. I was having some doubts with my memory. That's why I rang for the support. And the thing which I won't recall, taken from about the workplace call. That's what I know.

PN250

Yes but you've just told us that you have no memory of making this phone call to a solicitor. And yet you're asking us to accept that you do have a memory of making a phone call to your work. Is that your evidence?---Not at that time when I first applied to the Fair Work Commission.

PN251

No but I'm asking - - -?---Because if it was - - -

*** MUHAMMAD ALI QURESHI

XXN MS STEWART

PN252

I'm asking you - - -?---If it was in my memory why would – actually, Fair Work (indistinct). If Fair Work (indistinct) why wouldn't I – why wouldn't I bring it before to the Commission, before?

PN253

Well, that is a - - -?---Why wouldn't I do it?

PN254

Well, that's a - - -?---Because (indistinct) my (indistinct), yes.

PN255

Mr Qureshi, I suggest that you did not raise any issue with your memory during the original hearing, did you?---Whatever is said is written in the hearing.

PN256

No, I'm asking you, Mr Qureshi whether you - - -?---(Indistinct).

PN257

Whether you agree that you did not raise any issue about your memory?---How would a person, if he forget something, how would – if someone has got mental issues due to stress, stress and (indistinct) and medication, how would he know that - unless that he got some even that he was not able to previously recall, how can you expect him to tell that I have a memory issue? Once I recall that event, what's happening, so something's going on, then I start realizing that – otherwise if I already, you know, able to recall this event in the first instance when I was submitting the case against the Spotless. So, I would - - -

PN258

Mr Qureshi, you were able to recall that you made supposedly a phone call to your friend, Sayeed, and that that was the only phone call you made. You were able to recall that evidence and that was the evidence you gave, wasn't it?---Whatever came in my mind, whatever I was able to recall that time I submitted with the help of the maximum evidence I could have given. This thing, I – came in my mind later and I brought the evidence before Commission and you. So, I don't know what else you are expecting me to say.

PN259

Well, I suggest, Mr Qureshi, that this came into your mind when you received the decision that informed you that you had been unsuccessful in your application. And that this is just a wee invention by you in an attempt to win your case. What do you say to that?---This is totally wrong because I raised this issue on – before decision, when the decision was made on 18 September. But I already raised this issue on 8 September.

PN260

Okay, well, let's – let's - - -?---How you can say that I raised when (indistinct)? I - - -

*** MUHAMMAD ALI QURESHI

XXN MS STEWART

PN261

Let's go to that (indistinct)?---Before making (indistinct) I recall that.

PN262

VICE PRESIDENT ASBURY: Mr Qureshi, I'm sorry. You're being allowed to put in further evidence on the basis that you can be cross-examined. And what you need to do is just answer the questions and not argue with Ms Stewart while she's trying to cross-examine you. You've been given this opportunity and you need to take the opportunity by just answering the questions. I know it's difficult but there's no point getting upset. Just answer the questions that you're being asked, okay?---Yes.

PN263

Thanks.

PN264

MS STEWART: So, Mr Qureshi, you just referred there to 8 September. Can I ask you to turn to the transcript of 8 September and where it starts at PN2772?---Yes. Two seven seven - - -

PN265

Do you have that?---Yes, I have.

PN266

And you refer there to a statement given by Mr Brett Morris that you had been marked off as sick on 3 April, yes?---It's written there.

PN267

Yes?---Yes.

PN268

And you state there that you requested to people to let you contact your workplace, 'and so I have a clear doubt but I think someone has made a call in the security office on 2 April', that's what you said, yes?---Yes.

PN269

So, even at that late stage, and when you say that you raised what you now seek to introduce by way of further evidence, you did not allege there that you made a phone call to the security office on 2 April, did you?---I did raised what came in my mind, in my memory and I did raise this.

*** MUHAMMAD ALI QURESHI

XXN MS STEWART

PN270

But my question to you, Mr Qureshi, is you didn't raise that you supposedly contacted security on the night of 2 April?---I've written I requested to SAPOL that please let me go back to my workplace, or if not me that someone have informed to me. Because that's what I – I referring to them how many issues I had. So, I wanted to have before saying anything, hundred per cent clarity or I was looking to the Deputy President Anderson for them investigate this point, so – and I was expecting that if that call was made, so I can reasonably expect the least level of voracity and credibility from the people who are calling for the security office, the manager or the supervisor, duty supervisor. So, it will be, you know,

substantiated and with the help of the records if I have made, because that's all I remember the issue.

PN271

But Mr Qureshi, what you are seeing in the transcript that we can see here is that this memory has been triggered for you by what Mr Morris said, yes?---One – one reason, and one reason was that, one reason.

PN272

But what I'm suggesting to you is that despite - - -?---You have to - - -

PN273

Mr Qureshi, just let me ask the question. What I'm suggesting to you is that despite hearing Mr Morris' statement on this you still didn't read that you supposedly made this call, did you?---When? (Indistinct) gave a statement just the day before, on the hearing session so - - -

PN274

Mr Qureshi, we're still on the same part of the transcript that I referred you to a couple of moments ago?---Yes.

PN275

And I've read to you what you have said, what you are recorded as having said in that part of the transcript?---Yes.

PN276

And I am - - -?---Yes, okay.

PN277

Yes, and I'm suggesting to you that there is nowhere contained within that paragraph any suggestion by you that you made a phone call to the security desk after you were arrested, is there?---I (indistinct) the question. I have written. I was requested to say, well, please let me contact my work (indistinct) so I'll appear now that I – if me or someone has made from - - -

PN278

You don't (indistinct) I think - - -?---I have (indistinct) the word (indistinct) it out. It's written, please. You can have a look. I have it here somewhere.

PN279

Right, so your suggestion is that the transcript is incorrect, is that correct, is that right?---No, transcript is right and transcript actually says the same thing what I'm telling you now that I have – I have said, what I requested to SAPOL and then I said, so I have a clear doubt. That was my doubt. Even that time I was not able to (indistinct) and recall. That's what I mentioned to one of the – Deputy President, that I have a clear doubt.

PN280

Mr Qureshi, do you have the appeal book there?---Yes.

*** MUHAMMAD ALI QURESHI

XXN MS STEWART

PN281

Can I ask you to turn to page 298?---Right.

PN282

Do you have that?---Yes.

PN283

So, this is an email to yourself to Mr Paul Mason on Monday 8 May 2023, yes?---Which page number you said?

PN284

298?---Oh.

PN285

And it's the number that is the bottom right-hand corner?---Two hundred and ninety – right.

PN286

So, I'm saying that should be an email from you to Paul Mason dated 8 May 2023. Is that what you have in front of you?---Yes.

PN287

So, this was an email that you sent to Mr Mason after he had indicated to you that your employment had ended because you had repudiated the contract, and this was your reply to him. Do you recall that?---Mm-hm.

PN288

And the first - - -?---It's on the book?

PN289

Sorry?---I can read that, yes. It's in the document.

PN290

Yes, and you have a recollection of this doc?---It's – I opened just now. Yes. It's there.

PN291

So, in the first paragraph you say that you were wrongly detained by SAPOL in the remand centre?---Yes.

PN292

And then you go on to say that 'there was no one at my home and I didn't have any access to communication channels to contact my workplace and inform you people.' Do you see that?---Yes, on 8 of May, yes.

PN293

You sent on – there, yes?---The 8 of May.

*** MUHAMMAD ALI QURESHI

XXN MS STEWART

PN294

Yes but you are referring in this email to the circumstances that you find yourself in as to where you had been for the past couple of weeks back in April?---Yes.

PN295

And you say in this email, you quite clearly tell Mr Mason that you had no access to communication channels to contact your workplace and to inform your people of, presumably your whereabouts. That's what you said to Mr Mason, isn't it?---Yes. Mr Mason, I've written the name in, yes.

PN296

Yes, and my suggestion to you, Mr Qureshi, is that that is quite contrary to the evidence that you are now seeking to lead which suggests that you did contact your workplace and inform them of where you were?---That is not contrary because - -

-

PN297

How do you say - - -?---There's a reason. Because I did not make and I was not given opportunities that I – someone had could have in a normal circumstances. The only opportunity I got in which I informed you that in my arrest and the situation was (indistinct) APOL (indistinct) from the (indistinct) document. And why I didn't mention here, I already explain in my outline of submission that I had a memory (indistinct). And why I brought it before now, because I will (indistinct) go now, and that's – that's the reason. If I was able to recall at that time I would have mentioned definitely, but yes, so that's the very simple – and that's the same thing I'm saying now.

PN298

Well, Mr Qureshi, I suggest to you that that is not correct. And that this email that we can see in front of us is clearly evidence of what you told Mr Mason at the time which was entirely consistent with the evidence you gave during the hearing that the only call you made was to Sayeed who did not inform Spotless of your whereabouts. And that's why you've written what you've written in this email?---The email was sent on 8 May, was correct to the best of my knowledge. My ability to speak, to communicate that time and the appeal letter I submitted now with the evidence, is true, correct to the best of my knowledge and ability at this stage and I have brought that evidence as well, so that's what I'm saying. I'm – what I – whatever happened I just say then. I don't know why in this email Mr Paul(sic) did not check the records of the security office because I explained that they should have known it. If I forget that employer would have correct me there that yes, there was a phone call on the night of your arrest. So, why – I don't know if – if I become a patient, everyone else was not a patient.

PN299

Mr Qureshi, look at the following paragraph. And the second half of that you state, 'I was detained as soon as I came out of the detention and when it became possible to reply you. I'm contacting you now and available'?---Mm-hm.

*** MUHAMMAD ALI QURESHI

XXN MS STEWART

PN300

That is just further evidence from you which is consistent with the original position you put that the only call you made was to Sayeed who didn't contact your work. And that is the truth of the matter, isn't it?---This is incomplete information. He made this - - -

PN301

Mr Qureshi, just answer the question I've asked you?---Can you repeat what you said?

PN302

I am suggesting to you that what is contained in the second paragraph of this email is further evidence consistent with the evidence you gave at the hearing that the only call you made was to Sayeed, who didn't contact Spotless, and that that is the truth of this matter?---No, this is not the complete truth as I said. This email information is – is true but incomplete. It's incomplete. The complete information is what I gave in my appeal with the help of evidence, so you can't just take one communication from my side and leave the other which benefits you, I believe. And I can say this with absolute – this email was not wrong but this is incomplete information.

PN303

Okay. Well, what about the text request that you made while on remand, Mr Qureshi?---Yes.

PN304

Why would there have been a need for you to make contact with your workplace to explain where you were and what was happening if you had already done so?---The condition in the goal is – is very poor. It's different. In police station you may have some, you know – you may have some opportunity to contact or communicate but - I do have a complaint to the Corrections Department. But given the, you know, conditions of – because they are – you can see in the news, as well, like they've already claimed that they are very (indistinct) and it takes a lot of time to the people to send where – to send the – any complaints or request via correction centre. So, that's why it was remaining pending. I – I tried to - - -

PN305

Mr Qureshi - - -?---I tried to get official report. Yes? Sorry.

PN306

Mr Qureshi, you're not answering my question?---No, no. I tried to get official record from corrections centre, as well, regarding that but they didn't give me, but SAPOL gave me. They gave me.

PN307

Mr Qureshi, that is not my question. My question to you was why was there a need for you to make that request in circumstances where you're telling us now that you had in fact already contacted Spotless and explained where you were?---Why I had a need to do that?

*** MUHAMMAD ALI QURESHI

XXN MS STEWART

PN308

Yes. Why did you need to make a text request that would have informed Spotless that you were being held in remand when you say they already knew that?---Because I – whenever I got the opportunity I tried my best and I wanted to stay connected with my employer to keep them informed what I'm – what I am going through, as much as I can.

PN309

Mr Qureshi, I suggest to you that you are making this up in an attempt to overturn the decision that went against you, aren't you?---No.

PN310

Can I refer you to back to the appeal book, if you'd turn over to page 296?---Yes.

PN311

That should be a letter that was sent to you by Mr Morris on 11 April 2023, yes?---Where is the letter?

PN312

Do you have that letter in front of you?---On page number, can you repeat?

PN313

296?---Two hundred – six, yes. Yes, the letter is there.

PN314

You have that?---Yes.

PN315

And this letter sets out the number of times that you have failed to report for your shift, starting from 4 April 2023, yes?---That was sent (indistinct), yes. It's written there.

PN316

Yes?---Mm-hm.

PN317

But what the letter is informing you is that you failed to report for your rostered shift from 4 April onwards and that you haven't been in contact with anybody to say where you were. That's what the letter says, isn't it?---That's what – that's what the letter says, that I – Mr Morris has sent, yes.

PN318

Yes?---That's the letter, yes.

PN319

So, what I'm suggesting to you, Mr Qureshi, is that this is yet another example of something that would have been entirely inaccurate and unnecessary for Spotless to do if they knew already where you were?---That's what I'm wondering, that when I informed them why still they were sending these letters. That's what my concern is.

*** MUHAMMAD ALI QURESHI

XXN MS STEWART

PN320

Well, I suggest to you that the reason for that is because you hadn't informed them, had you, Mr Qureshi?---I did inform (indistinct) of you.

PN321

Mr Qureshi, you accept, don't you, that you were marked as absent by way of sick leave on 3 April 2023, yes?---That's what Mr Morris said. I heard from his mouth.

PN322

Yes. And I referred a little earlier to some evidence that you gave around the time that you were arrested. If I can ask you to turn back the transcript from 5 September?---Okay, 5 September.

PN323

At PN341?---PN three four - - -

PN324

One?---Yes. To home address. No letter was delivered to me. This was PN341?

PN325

341. It starts with, 'Even though you told us that your primary concern.' Do you have that paragraph?---What number you said?

PN326

Well, there isn't a page number as such on the transcript. It just gives paragraph references. So, the paragraph reference is PN341?---PN341, it says 'at your home address.' No letter was delivered to me in my post box. That was PN341, you're saying.

PN327

No, are you looking at the correct page? This is from 5 September to the first day of the hearing?---Okay, I go back. 5 September, you say?

PN328

Yes?---Six, 6 September.

PN329

Fifth of September?---6 of September I have - - -

PN330

VICE PRESIDENT ASBURY: It's the 5th, Mr Qureshi, the 5th, not the 6th?---I have – I think I've lost that. I (indistinct) on 5 September. I need to open it. I don't know where it has gone.

PN331

MS STEWART: I can read the paragraph or the relevant lines from the paragraph to you?---Okay.

*** MUHAMMAD ALI QURESHI

XXN MS STEWART

PN332

All right. So, this is where you have just given evidence to the effect that you had called your friend, Sayeed, from the police station, all right? And you have answered a question of mine which was, 'Are you telling the truth in relation to that?' And you talked about what you had in your mind at that time, okay? So, what it says in the - - -?---No.

PN333

I'm reading to you what it says in paragraph 341. You said, 'I have to tell him', that is Sayeed, 'because work is also important and I have in my mind based on the information that is given by SAPOL that I will be released on bail. So, in my mind I thought my shift is 2pm, I may catch that shift, I may not, so at the security office if they get the information beforehand they can organise some substitute or they know what's going on so that they don't have a problem.' That's what you said at that time and you described that as your agenda and your perspective at that time, all right?---Okay.

PN334

So, if we accept what you're asking us to accept, Mr Qureshi, namely that a phone call was made to the security office, I suggest to you that whoever made that call if it happened only said that you were sick and would not be attending work on 3 April. What do you say to that?---No. It is not term that I say that I am sick.

PN335

But you were marked down as 'sick' as Mr Morris explained to you, yes?---That's why I'm wondering. They only mark anyone sick if they have got some information that the person is not coming to work. So which means I had to get – they were aware that I'm coming – not coming into work and they knew about it, the phone call, so why did they hide this information if I was not able to recall. And that thing, why did they mark me sick? Maybe it's a standard process of someone is not present – if someone informed that due to an illness and is not coming to work, is going to organise the – to organise the replacement. He marked me sick. So that was my concern was why did he mark me sick? And even if he marked me sick that means that I did inform, I did have a communication with the employer and the security office, so why did they hide it? Why did they not disclose this? What if I was not able to make contact was my concerns.

PN336

Well, I suggest they didn't hide it, Mr Qureshi. What they did was mark you as sick for 3 April only and ask for your whereabouts from 4 April onwards, didn't they?---I don't know why did they do it but when I had informed that I am not coming to work, I'm arrested and I called them from police station while I was in police station. So, why did they not take it into consideration that conversation? That's what my concern is. Now it's up to them if they mark me sick, if they mark me missing. Because if you – if you're just concerned over Mr Morris (indistinct) they relied on a fake – on a undue, unverified phone call from some female that – they're actually relying on that, as well. So, I don't know why did they doing this. But they can tell it better.

*** MUHAMMAD ALI QURESHI

XXN MS STEWART

PN337

All right. Mr Qureshi, I don't have any further questions for you.

PN338

VICE PRESIDENT ASBURY: Thank you. Thanks, Mr Qureshi, you're excused.

<THE WITNESS WITHDREW

[1.27 PM]

PN339

Mr Qureshi, do you want to say anything in addition to your written submissions in the appeal or would you like us just to have regard to your written submissions?

PN340

MR ALI QURESHI: I want to have opportunity if you allow me to do some cross questions to the respondent.

PN341

VICE PRESIDENT ASBURY: No - - -

PN342

MR ALI QURESHI: (Indistinct). No?

PN343

VICE PRESIDENT ASBURY: No, I'm sorry. No because the – she's not a witness. You're the only witness. We've allowed you the privilege of giving further evidence in these proceedings only based on the fact you've been cross-examined and it was limited to those documents. It doesn't give you the right to cross-examine Ms Valente. So, do you want to say anything more in support of your appeal?

PN344

MR ALI QURESHI: Yes. Yes, there are a few things.

PN345

VICE PRESIDENT ASBURY: Okay.

PN346

MR ALI QURESHI: I want to say in support of my appeal because a question what asked me about why I did not inform this crucial factor because had I informed this earlier so the situation, the case, everything, it would – it would be very different. But as per the (indistinct) and the submission of the respondent themselves, court book, additional court book, all the documents in front of you, everything is clear. So, but why I was not able to inform, I've explained that.

*** MUHAMMAD ALI QURESHI

XXN MS STEWART

PN347

They – the reasons regarding my memory, the medical (indistinct) circumstances and trauma I was going through. When I was able to recall and I – with the help of the evidence I brought this before honourable Commission and the respondent. In regards to the other call you say that I met – I talked to my friend and what communication happened. If the Commission allows me I can go back

to the police station and I will write another document but it may take a few weeks.

PN348

The police provide the evidence or the information regarding the communication happened between me and my friend, Sayeed. Because he was the first point of contact for me when I was arrested. So, if you allow me just for the health of the – Mrs Stewart's concerns I am ready to do that.

PN349

The other thing about the Mr Morris point, that was just one factor that triggered my memory, one – that was one reason that he said he would mark I'm sick. As far as I know, because I have worked in security office in the position of my work, I have done some desk jobs, as well, so what had happened, generally the supervisor don't straight away mark anyone absent or sick.

PN350

What Mr Morris is saying that he was sick and that shows that my replacement was organised prior to the start of the shift, that shows that I had informed with the security office regarding my circumstances. So, the onus goes to the employer and Mr Morris and management of the security department. It is reasonable to expect that given the situation and the information that they – if they deliberately gave something wrong with the records, well when I did – and they show me those letters that went missing on shifts because they wanted to get rid of me on some things, some other reasons. Could be a personal or professional issues. And it escalating (indistinct) in this particular security department.

PN351

And when I was – and when they fully satisfied that I am so not able to recall and I already informed them regarding my circumstances at work that they're sensing that I was arrested and I informed that just after my arrest to security office. So, they just remained silent. So, if I – if I had mental issues – not all management has got trauma. They were not having mental issues. Why didn't they check and why didn't they tell this to Commission (indistinct)? And why they were sending me those documents?

PN352

That was my concern. And I reasonably suspect, I am hundred per cent confident that from an employer perspective it is reasonably suspected that they were aware back before the starting of the shift that I'm not coming off the shift, I am arrested, I'm at police station. You can see the document I informed them. But later on they become silent and Mr Morris and all, like, respondent, they were like saying, all right, he (indistinct) away was just missing.

PN353

That's not – that is not consistent and that is also not consistent in light of the statement what Mr Morris there he said, he was marked sick. It means that my replacement was already organised. So, this is very inconsistent to the letters, to the communication for respondents that respondent was sending me, and the work Mr Morris says (indistinct) in the cross-examination session.

PN354

So, my point of argument is very clear, that I didn't know what I did, others, what I eat in the police station, how many calls I made, how many calls I have received. These are how many, and I went to washroom or something. These are some things that are not relevant with – directly with the case.

PN355

But the thing which is relevant is I did inform that I am arrested and I'm at police station and not able to come and work.

PN356

VICE PRESIDENT ASBURY: Okay, we understand that submission, Mr Qureshi. We understand that's why we're here because you're making that submission, so is there anything else you wanted to say?

PN357

MR ALI QURESHI: I have some other concerns regarding the fairness and the justice of – apart from this new – this information about the – about what we interpret today, the new information of the SAPOL freedom of information in here. I have some other doubt – concerns, as well, with the position of the Deputy President because he learned that this case is (indistinct) wage.

PN358

I mean, what I understand according to his words there, he said, 'Fairness lies in the eye of the beholder.' Fairness lies in the eye of the beholder and the decision to take to – take in regards to the unfair dismissal case has to be blunt, has to be clear. So, if this – because not clear, so I hope that it is now blunt if you consider this evidence is. And just one thing I want to say that is not technically the limit as the case may be, but ethically this is (indistinct). If you allow me two minutes I want to say something.

PN359

VICE PRESIDENT ASBURY: This is your opportunity, Mr Qureshi.

PN360

MR ALI QURESHI: Yes.

PN361

VICE PRESIDENT ASBURY: Say what you want to say.

PN362

MR ALI QURESHI: I'm not against the respondent to what they did to me. They have the opportunity to do – to do anything. They even go beyond that. They even go to my director. They went made calls to my – other people in talking. That happened. This is a different story. Why I am here in front of the Commission, I just – I'm here for justice, just a reasonable compensation. If they don't want to give me a – if they don't want to employ me, that's all, that's fine. I'm happy. But at least I deserve some compensation and how the treatment I have gone through.

PN363

I came to this country like seven years ago. Like, I have raised the question regarding the justice and fairness of the Department of Fair Work Commission why? Because I had a hope that the Fair Work people with the quality and they do, people get the reasonable compensation when they're not (indistinct). But that doesn't happen in my country. I am from Pakistan. I tell you very clearly, in my country departments work like under franchise of big people.

PN364

In any decision that a ruling elite wins the case against the common man. So, I have got my skill educational experience so I didn't get the (indistinct) in Australia. I had the belief on Australian system, on the coat of arms. Because I was told by the Australian representative in my country that came to say, if you come to Australia you study and you work here, you will get the opportunity and you will be able – you will be treated equally here, the fairness here, best place we – so I came here.

PN365

But unfortunately I didn't get the same treatment. I have been subjected to racism on my workplace with racist comments. And so far it was – I'm not blaming all Australians necessarily. Australian people are very good. This is great country. But there's still, Deputy President, we are not treating equally. We – they skilled in – I'm a skilled immigrant. I didn't come by boat. I came legally with all my documents, proof, valid, justified. But I didn't get this equal treatment.

PN366

I am a father of three month old baby. I have a – I have my wife, my mother, father to look after. Lot of people have a trust on me. Respondent – this question on my credibility with corrected evidence within this (indistinct). I can (indistinct) 50 more corrected evidence from Australia and overseas, as well if they want to check my voracity and my character.

PN367

That's what my (indistinct) can do. You have the power. You are the upper hand. I am the begging hand. I don't know what position you made. Because the begging hand has no, nothing to do. We can just take what you say and I have to respect your decision. I'm a law abiding citizen.

PN368

But when you don't get the justice, when you don't get treated well and you don't – you don't receive the same fairness that's what you do to society and that – it hurts. Deputy President, it hurts and I am hurt. I'm not a - - -

PN369

VICE PRESIDENT ASBURY: Mr Qureshi, what decision are you asking us to make?

PN370

MR ALI QURESHI: I believe that I wasn't fairly treated. The information and the facts were not considered. And there is an error of fact by the end of respondent and they knew – they knew it. And even if you consider all of the

evidence is you can see that this time the fairness doesn't lie in (indistinct). The fairness is here. I am unfairly dismissed and I deserve reasonable compensation. What other compensation in (indistinct). That's what I believe. That's my appeal. That's my appeal, Deputy President.

PN371

VICE PRESIDENT ASBURY: Okay. Well, Mr Qureshi, the Deputy President has found that you were not dismissed. So, all the outcome of this appeal can be if you succeed with the appeal, is that we change that decision and we find that you were dismissed and then the matter has to go back and be heard all over again as to whether your dismissal as unfair. Do you understand that?

PN372

We can't make a finding in this appeal that your dismissal was or was not unfair. What's being dealt with in this appeal is, was the Deputy President correct to find that you had not been dismissed. That's what we're dealing with, only that.

PN373

MR ALI QURESHI: All right, Deputy President. I don't know about law that much but I am ready to – to be present for any further – for the process, whatever it would be if there would be further process. I am fully present myself before the Commission. And I also expect if Commission allows to the respondent if they want to communicate to me to find out some better resolution, some resolution other than the, you know – as for me like, the domain of the Fair Work Commission if they still want to, you know, settle the issue. So, I am also happy to do that.

PN374

VICE PRESIDENT ASBURY: All right. But just as long as we're clear. If you win this case, if you win this appeal, all that we will do is reverse the finding that you were not dismissed and then the whole matter will have to go back and be determined in relation to, if you were dismissed, was the dismissal unfair and what remedy should you get. That's what will have to happen.

PN375

MR ALI QURESHI: I understand now, Deputy President. I didn't know that before, but now I understand.

PN376

VICE PRESIDENT ASBURY: Okay, well, are you still maintaining that you're seeking that to happen, that outcome, in this appeal? You're understanding now that you're going to have to go back all over again and run an argument about whether your dismissal was unfair, because all we can find is were you or were you not dismissed. That's still what you're seeking?

PN377

MR ALI QURESHI: Yes, Deputy President.

PN378

VICE PRESIDENT ASBURY: Okay. Thank you. From the respondent's perspective, Ms Stewart, do you want to make any submissions in relation to the

issues in this appeal, because for my part at least it appears that there has been a lot of focus on whether the new evidence should be admitted or not and really there is a further issue in this appeal which is whether the approach that the Deputy President took to determining if there was a dismissal or not was correct.

PN379

MS STEWART: Well, a couple of things to that, Vice President. First of all, I agree and accept that the focus has been on whether or not the new evidence should be admitted, but the reason for that is because it was the only ground of appeal put forward by the appellant. So in circumstances where he has not raised any other ground that goes to the correctness of the decision as far as whether or not there was a repudiation or indeed whether or not his dismissal was fair or unfair, then we say he obviously had that opportunity in bringing the appeal and chose not to do so.

PN380

VICE PRESIDENT ASBURY: Wasn't the whole point of bringing that additional evidence to establish that there was not a repudiation?

PN381

MS STEWART: Well, it goes to both the repudiation and potentially the dismissal, but the point being though that there has been - as we have said in our submissions, even if it is accepted, even if the evidence is accepted, we say that it would not impact on the outcome and that relates to both obviously the repudiation and the dismissal. Of course noting, Vice President, that while it was Anderson DP's primary finding insofar as being no repudiation, he did also go on to consider whether or not the dismissal was fair or unfair.

PN382

VICE PRESIDENT ASBURY: And arguably the appeal grounds raise a further issue as to whether the matters that the Deputy President took into account in assessing the fairness were all of the matters that should have been considered; whether there was some further consideration that should have applied to the fairness aspect having regard to the position that the appellant was in.

PN383

I mean, I accept the appeal is not very clearly pleaded, but I think, you know, again from my perspective it raises an issue of whether the approach to deciding that the appellant had repudiated his contract was correct and whether there were other matters going to fairness that should have been considered.

PN384

MS STEWART: But the only issue that the appellant seeks to introduce into that consideration, Vice President, is the letter from SAPOL. As I've already submitted, in circumstances where at its highest it just simply states that a call was made from - that he wasn't going into work, not what date that encompassed and given the documentary evidence as well as obviously the appellant's own evidence at the hearing that I've taken the Full Bench through this morning, we say it's perfectly clear that the relevant periods - both that was taken into account by the employer and that was subsequently taken into account by the Deputy President - was from 4 April onwards.

PN385

This letter, whether it's admitted or not, doesn't get the appellant over that line insofar as it amounting to an explanation for his absence over the relevant period that he was found to have otherwise repudiated the contract.

PN386

VICE PRESIDENT ASBURY: Well, for my part, Ms Stewart, that might go to the validity of the reason for dismissal, but I also think it is arguable in this case that there wasn't a repudiation at all and that in fact your client's acceptance of the repudiation is what ended the employment relationship, so that the question of whether there was a dismissal or not is at issue.

PN387

MS STEWART: But the repudiatory conduct, both by the employer as is contained in the decision - the letter that I took Mr Qureshi to a short while ago from the employer makes it clear that the dates that were taken into account only commenced from 4 April onwards.

PN388

VICE PRESIDENT ASBURY: But there is a more fundamental point. The clear language of that letter says, 'We accept your repudiation of your employment contract.'

PN389

MS STEWART: Yes.

PN390

VICE PRESIDENT ASBURY: And from my perspective, speaking for myself, I'm not sure that that acceptance doesn't constitute a dismissal.

PN391

MS STEWART: Well, obviously the Deputy President has set out his reasoning as to why he says it did not amount to a dismissal, but my point is that there has been nothing raised by the appellant to put into doubt that reasoning process.

PN392

VICE PRESIDENT ASBURY: Except the appellant says, 'I didn't repudiate anything.' He said that all the way through the hearing, 'I repudiated nothing.' He kept on saying that and now he says, 'When you consider my evidence of the SAPOL letter, then I'm saying that I didn't repudiate and arguably they knew at that point at least where I was.'

PN393

For the sake of the argument, Ms Stewart, again speaking from my perspective, let's just assume that they marked Mr Qureshi off as being sick. Arguably the issue is they had contact with him saying, 'I'm sick', and proceeded after a certain period of time to consider that was repudiation of the contract and accept the repudiation, and thereby bring about his dismissal even if it's just that they thought he was sick.

PN394

To me there is an argument here that the acceptance of the repudiation is what brought about the dismissal and if you haven't perceived that was at issue in the appeal, then that's a matter we can address by allowing you to make some further submissions, but, for my part, this is not just a simple matter of the SAPOL evidence. This is a bigger issue about whether the approach to repudiation in this decision is correct and whether there was a failure to have regard to the overall circumstances Mr Qureshi was facing in reaching the conclusion that even if there was a dismissal it wasn't unfair.

PN395

MS STEWART: Well, Vice President, I can see that I have proceeded on the basis that the only issue was whether or not the new evidence should be submitted, because that is the only ground of appeal that was raised by Mr Qureshi. So if you require me to address the question of the reasoning process behind the repudiation more generally, then, yes, I would appreciate the opportunity to put in further submissions in relation to that point.

PN396

VICE PRESIDENT ASBURY: Okay. Well, for my part I would be - and also the overall issue of the fairness and whether that was properly had regard to in terms of the circumstances, but I guess the primary issue is was there a dismissal or not.

PN397

MS STEWART: Yes.

PN398

VICE PRESIDENT ASBURY: Because as I understand it the appellant is saying, 'I didn't repudiate', and perhaps not clearly - I accept not clearly articulated, but as I understand it the issue is, 'This piece of evidence shows I didn't repudiate', but the fundamental point is, 'I didn't repudiate', and he said that in response. He said it all along.

PN399

MS STEWART: Well, he said it - - -

PN400

VICE PRESIDENT ASBURY: And I - - -

PN401

MS STEWART: Sorry.

PN402

VICE PRESIDENT ASBURY: You go ahead.

PN403

MS STEWART: Sorry, I was going to say he said it all along, Vice President, but in circumstances where it was accepted by the appellant that the first time that he made contact with Spotless Security was sometime after he was released from remand.

PN404

VICE PRESIDENT ASBURY: And again that may be the case, but then the issue arises, well, was there an error in terms of fairness by not allowing the appellant to pursue that before the hearing concluded, because he raised it relatively quickly while final submissions were being made. While that would have cost more time and effort, I assume, arguably in this case the appellant should have been able to avail himself of that, because it doesn't seem that anybody focused on the marking off sick on 4 April until the final submissions.

PN405

MS STEWART: Well, as I say, the evidence was that he had been marked as sick on 3 April, but that that had not affected the conduct that was taken into account by both the employer and ultimately the Deputy President.

PN406

VICE PRESIDENT ASBURY: What was the submissions and evidence about the basis upon which he had been marked off sick? Just that it had been done?

PN407

MS STEWART: Yes.

PN408

VICE PRESIDENT ASBURY: So arguably when an issue arose in the final submissions that, 'Hang on a minute, why did he get marked off sick' - either the supervisor spontaneously just decided, 'I'm going to give him a leave pass', on the 3rd or he had some reason to do so. So when the appellant raised that issue - and again I accept not clearly and it's nice to have 20/20 vision in the appeal case. I fully accept, you know, that's what often occurs, but in that circumstance the argument really is why shouldn't the appellant have been given that opportunity given that was central to the whole case.

PN409

MS STEWART: All right. As I say, if we can be given the opportunity to make further submissions, then we shall do so.

PN410

VICE PRESIDENT ASBURY: How long would you like? I'm assuming you want to do that in writing.

PN411

MS STEWART: Yes.

PN412

VICE PRESIDENT ASBURY: You're not in a position to do that now given you weren't aware that this could arise.

PN413

MS STEWART: I would like the opportunity to take instructions as far as the extent to which there is any further evidence around the issues that you have raised, Vice President.

PN414

VICE PRESIDENT ASBURY: All right. Well, if we give you seven days to do that, is that acceptable?

PN415

MS STEWART: I wonder if I could have just slightly more because I'm in a trial all of next week.

PN416

VICE PRESIDENT ASBURY: Fourteen days?

PN417

MS STEWART: Fourteen days would be great. Thank you.

PN418

VICE PRESIDENT ASBURY: All right. Mr Qureshi, what we're doing here is allowing you to put forward an appeal that you haven't really clearly pleaded in your appeal grounds and I accept it's difficult for you because you're unrepresented, but we have indicated to Ms Stewart that we are concerned as to whether there actually was a repudiation here and whether the employer in fact didn't dismiss you; whether the conclusion of the Deputy President that you were not dismissed is correct.

PN419

MR ALI QURESHI: No, I have objection on the decision. My appeal is just not related to this crucial central issue of - - -

PN420

VICE PRESIDENT ASBURY: But, Mr Qureshi, if it's found that you did make contact and tell them where you were, then you didn't repudiate your contract and it was wrong for the Deputy President to find that you were not dismissed.

PN421

MR ALI QURESHI: Yes.

PN422

VICE PRESIDENT ASBURY: That's the outcome really of this whole thing if you're right. You as the appellant did not say that clearly in your grounds of appeal, so what we're doing is we're saying to Ms Stewart now that's how we're taking your appeal. What you're saying is, 'I didn't abandon my employment. I was detained. I had no control over it and I told them where I was - - -'

PN423

MR ALI QURESHI: Yes.

PN424

VICE PRESIDENT ASBURY: - - - 'on the 3rd and they should have known where I was and that I was not repudiating my employment, and the Deputy President should have let me call evidence about that and if he had it would have changed the outcome and he would have found I was dismissed. I didn't repudiate my employment and I was dismissed', or he might have found that the acceptance

of that by the Deputy President is what brought about the dismissal and that's really what this appeal raises.

PN425

MR ALI QURESHI: Yes, exactly. That's what I wanted to - - -

PN426

VICE PRESIDENT ASBURY: But, Mr Qureshi, the point is if that's what you wanted to do you didn't put that in your form F7 in a clear way and Ms Stewart is entitled to say, 'When I read the form F7, I didn't understand that's what Mr Qureshi was really saying', and we agree with that. You haven't clearly set out the grounds of appeal. Now we've heard you we understand what they are and we need to give Ms Stewart an opportunity to put in some additional submissions to address those issues. Do you understand?

PN427

MR ALI QURESHI: I understand, Deputy President. A lot of things - you know, it's hard for me to - - -

PN428

VICE PRESIDENT ASBURY: Mr Qureshi, I'm not being critical of you. I'm simply pointing out the reality of the situation is you weren't clear in your appeal grounds. Now we understand what they are, Ms Stewart needs to get an opportunity to put in some written submissions and if you want to avoid a whole other day of - or days on end more of hearing, which is at best what you're going to get. That's at best what you're going to get.

PN429

If you win this appeal you will have to have another hearing all over again about whether your dismissal was unfair, so if you want to have some discussions to avoid that you can feel free to do so, as well, in the intervening period, but we'll give Ms Stewart two weeks to put in some submissions and then if you want to reply to those you can let us know when you get them. Okay?

PN430

MR ALI QURESHI: All right, Deputy President, but how much time you giving? Two weeks, you said to the - - -

PN431

VICE PRESIDENT ASBURY: I'm giving Ms Stewart two weeks. Once you get the submission, if you want to reply to them you need to send an email and say, 'I want to reply and I need this much time.' Do you understand?

PN432

MR ALI QURESHI: Yes. This is regarding the decision of the appeal?

PN433

VICE PRESIDENT ASBURY: Yes.

PN434

MR ALI QURESHI: My appeal process.

PN435

VICE PRESIDENT ASBURY: Yes.

PN436

MR ALI QURESHI: Okay.

PN437

VICE PRESIDENT ASBURY: This is about the additional grounds of the appeal that we have identified. Mr Qureshi, in your form F7 all you have talked about is crucial information that the Deputy President didn't have regard to, being the SAPOL information, okay? That's all you talked about. Ms Stewart is entitled to think that's all the appeal was about. What we have now said is this appeal raises a bigger issue about whether the decision that the Deputy President made, which was that were not dismissed, was correct.

PN438

MR ALI QURESHI: Yes, that's right. I agree what you're saying.

PN439

VICE PRESIDENT ASBURY: Yes, and you haven't raised that in your form F7, so Ms Stewart is entitled - you haven't clearly said, 'I appeal this decision on the basis that the Deputy President was wrong to say that I was not dismissed. I was dismissed and this is why.' You haven't said that in your grounds of appeal, but reading between the lines that's what this appeal is intending to pursue.

PN440

MR ALI QURESHI: Yes. Actually I tell you the reason why - - -

PN441

VICE PRESIDENT ASBURY: Mr Qureshi, you don't have to tell me why. We accept that that is the issue this appeal raises.

PN442

MR ALI QURESHI: Yes.

PN443

VICE PRESIDENT ASBURY: And because you haven't raised it clearly, we're giving Ms Stewart an opportunity now to respond to it because she didn't have an opportunity because you didn't clearly raise it, but now it has been raised. Okay?

PN444

MR ALI QURESHI: Yes, I understand now, because now it is clear. Before in my form F7 it was not clearly written, so can I have - may I have - if you give me some opportunity if I can further write something so that would - - -

PN445

VICE PRESIDENT ASBURY: You need to wait until you get Ms Stewart's submissions and then if you want to write something in response, you can, okay?

PN446

MR ALI QURESHI: I understand now, yes. Thank you for bringing explanation to what I wanted to say, Deputy President.

PN447

VICE PRESIDENT ASBURY: No problem. All right.

PN448

MR ALI QURESHI: Because I'm - okay.

PN449

VICE PRESIDENT ASBURY: Okay. Thank you for that. Thank you, Ms Stewart, for your forbearance today, too, and we'll wait for the 14 days to get your submission. If you think that you would be assisted by having a further opportunity to articulate that in an oral argument, then we will consider any request to that effect, as well, if you want a further hearing.

PN450

Mr Qureshi, we may need to have a further hearing to explore this matter a bit more, but in the meantime we'll wait to get the submissions. In the meantime do you want to attempt a member-assisted conciliation or do you want to pursue this through to the nth degree, Mr Qureshi? Do you want to attempt to conciliate this matter to avoid a further hearing?

PN451

MR ALI QURESHI: Yes, I want to have a conciliation member assisted - - -

PN452

VICE PRESIDENT ASBURY: Ms Stewart, what is the respondent's view about that?

PN453

MS STEWART: I'm sorry, Vice President, I'm just taking some instructions on that. Yes, Vice President, we are willing in principle to give it a try.

PN454

VICE PRESIDENT ASBURY: Okay. Well, we'll arrange a member of the Commission rather than a conciliator to undertake a member-assisted conciliation. Given you're in a trial next week, it might be we try to do that quickly. I don't know that you need to be present at it. I'm sure the respondent can participate in that itself, but, in any event, we'll arrange that as quickly as possible so you know the position you're in; whether you have to put on these additional submissions.

PN455

We're really looking at two more hearings if this - we might have to have another hearing on the appeal and then, Mr Qureshi, you'll have to have a further hearing even if you win the appeal about whether this was an unfair dismissal; so it's probably an idea that you both in the circumstances participate in a further attempt to conciliate. If that's clear, on that basis I'll adjourn these proceedings.

PN456

MS STEWART: Thank you, Vice President.

PN457

VICE PRESIDENT ASBURY: Thank you.

ADJOURNED INDEFINITELY

[2.04 PM]

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EXHIBIT #A2 APPLICANT'S DOCUMENT HEADED, 'WITNESS STATEMENT TO GET PERMISSION OF ADDING FURTHER EVIDENCE	PN200
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