



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT O'NEILL

C2021/7404

s.739 - Application to deal with a dispute

**Australian Salaried Medical Officers Federation
and
Goulburn Valley Health T/A GV Health, Ms Olivia Gallace
(C2021/7404)**

**AMA Victoria - Victorian Public Health Sector - Medical Specialists
Enterprise Agreement 2018-2021**

Melbourne

10.22 AM, THURSDAY, 28 SEPTEMBER 2023

Continued from 01/06/2023

PN1

THE DEPUTY PRESIDENT: Good morning. I will take the appearances, thanks.

PN2

MR J RYAN: If the Commission please, I appear for the applicant; Ryan, initial J.

PN3

MR M RINALDI: If it please the Commission, Rinaldi, initial M, seeking permission to appear. It may have been granted already in this matter.

PN4

THE DEPUTY PRESIDENT: I think it has been.

PN5

MR RINALDI: Yes. Thank you.

PN6

THE DEPUTY PRESIDENT: You're welcome.

PN7

MR RINALDI: Thank you, Deputy President.

PN8

THE DEPUTY PRESIDENT: All right. Now, this is the first of two days of hearing set aside for this matter. I understand that today we're dealing solely with the applicant's evidence, in particular hearing from Dr Palawela and Dr Verma. That is on the basis that the parties have agreed that the second day, 19 December, will be sufficient for all of the respondent's witnesses and final submissions; so we're all agreed on that?

PN9

MR RINALDI: That's right, Deputy President, yes. I understand Dr Hassan has filed one or two affidavits.

PN10

MR RYAN: One.

PN11

MR RINALDI: One affidavit, but isn't available to be cross-examined and I think my learned friend is going to – or my friend is going to seek to rely on it, but without cross-examination obviously it's going to be a matter of weight.

PN12

THE DEPUTY PRESIDENT: So I'm assume Mr Ryan will seek to admit that during the course of today.

PN13

MR RINALDI: Yes.

PN14

THE DEPUTY PRESIDENT: All right.

PN15

MR RINALDI: But other than that it's as you've stated. Thank you, Deputy President.

PN16

THE DEPUTY PRESIDENT: All right. In relation to Dr Verma and Dr Palawela, if you can ensure that whoever is going first stays in the hearing room, but the other witness stays outside the hearing room until - - -

PN17

MR RYAN: Already done, Deputy President.

PN18

THE DEPUTY PRESIDENT: Terrific. All right. Are there any housekeeping matters or any preliminary issues?

PN19

MR RYAN: Yes. In relation to the procedure that the Commission adopts in this matter - I've spoken to Mr Rinaldi about this – we are both happy if the hearing book is marked and then we don't have to mark all the individual materials that we rely upon.

PN20

THE DEPUTY PRESIDENT: I like the sound of that.

PN21

MR RYAN: Yes, and I'm not certain how we do that given that the hearing book constitutes both of our materials and some extra stuff - - -

PN22

THE DEPUTY PRESIDENT: Well, let me ask a question.

PN23

MR RYAN: Yes.

PN24

THE DEPUTY PRESIDENT: Are there any objections to be made to the admission of any of the evidence or documents in the hearing book by either party?

PN25

MR RINALDI: Not from the respondent's side. I've actually discussed this with Mr Ryan. There are, for example, some pieces of hearsay in some of the material, but, you know, we were - - -

PN26

THE DEPUTY PRESIDENT: And some relevant questions.

PN27

MR RINALDI: They are definitely relevant questions which I did want to flag, Deputy President. We say that much of the material is irrelevant to the questions, because the questions as framed are essentially legal questions about whether things are prevented by sections of the Act or clauses of enterprise agreement. They are not questions in a particular fact situation. I mean, the answer to most of the questions are, in a sense - it depends in a factual situation, but as a blanket question obviously as you've seen our submissions we say the answer is, no, these things are not prevented by those provisions.

PN28

We grapple with the idea of, you know, do we not cross-examine at all, but it seemed appropriate given I suppose two things - the work has been done; the, I suppose, desire of the witnesses to invite the issues to ventilate the issues that they have ventilated, even though we say they're strictly irrelevant - I will be cross-examining in relation to those issues to a limited extent.

PN29

They have replied already, so in terms of *Browne v Dunn* they have had the opportunity to reply already, but I just want it to be noted that in entering into that factual domain which we say, strictly speaking, is irrelevant, we are not conceding that relevance point, but we also don't want it to be said later on if you decide that it is relevant in some way, we didn't deal with that; so I hope that makes it relatively clear.

PN30

In terms of that sort of general - not objection as such, but noting that much of the material is not relevant to the questions for arbitration, which are the parameters of this matter which have been agreed and are in the hearing book at tab 1, and as far as things like hearsay - as I say, there are some examples of hearsay, they're not of great moment - we rely on the wisdom of the Commission. The Commission is not bound by the Rules of Evidence, anyway. It's a matter of weight and there's no utility in having an objection debate about those things, in my submission.

PN31

MR RYAN: Deputy President, I would adopt a similar view in relation to the respondent's evidence. I think some of that might be just opinion, but we're not going to challenge any of it in terms of admissibility. It all will go to a question of weight at the end of the argument.

PN32

THE DEPUTY PRESIDENT: All right. Well, then in light of that I think what we'll do is simply - I won't even formally mark the hearing book as an exhibit in the matter, but note that all of the material in the hearing book is properly before the Commission.

PN33

MR RINALDI: If the Commission pleases.

PN34

THE DEPUTY PRESIDENT: All right. Mr Ryan.

PN35

MR RYAN: Our first witness is Dr Rachna Verma and we'll call her.

PN36

THE ASSOCIATE: Please state your full name and address.

PN37

DR VERMA: Yes, it's Dr Rachna Verma, (address supplied).

<RACHNA VERMA, SWORN

[10.28 AM]

EXAMINATION-IN-CHIEF BY MR RYAN

[10.28 AM]

PN38

MR RYAN: Dr Verma, you have prepared a witness statement and a reply statement in this matter?---Yes, I have.

PN39

Can I ask you to go to the hearing book in front of you. If you go to page 363 - - - ?---Yes.

RACHNA VERMA

XN MR RYAN

PN40

- - - and from page 363 through to page 446 - I'm not asking you to look or read all of it, but just confirm that from 363 to 446 is that the witness statement you prepared for this matter?---I have.

PN41

Do you adopt that as your evidence?---Yes.

PN42

Is it true and correct in every particular?---I was just speaking to you earlier. I attached a wrong email in one of my attachments.

PN43

Okay. If I take you to that, if I take you to page 365 of the witness statement, the first paragraph on page 365 - - -?---Yes.

PN44

- - - you refer to attachment E and that is in reference to an email sent by myself to GVH. If I can take you to page 401 - - -?---Yes, I have it.

PN45

You've got page 401?---Yes.

PN46

It's marked 'Attachment D' where the paragraph on page 365 refers to attachment E, but is the reference in the first paragraph on page 365 meant to be attachment E?---It's supposed to be attachment D, so apologies. I made that error.

PN47

Yes?---And I have also attached the wrong email.

PN48

So attachment E is wrong?---That's correct.

PN49

Okay. So you haven't actually an email which was from myself to GVH?---I attached the wrong email.

PN50

Yes?---Yes.

PN51

That is the only correction you want to make to that part of your - - -?---Yes.

PN52

Or that witness statement?---Yes. That's right, yes.

PN53

THE DEPUTY PRESIDENT: I'm just a little bit lost there. So on page 365 the reference to attachment E should be attachment D.

*** RACHNA VERMA

XN MR RYAN

PN54

MR RYAN: Attachment D.

PN55

THE DEPUTY PRESIDENT: But what is attachment D is not - - -

PN56

MR RYAN: Is wrong.

PN57

THE DEPUTY PRESIDENT: Wrong.

PN58

MR RYAN: Yes. In other words, the email which is supposed to have been attached was not attached.

PN59

THE DEPUTY PRESIDENT: And is it intended to be produced or - - -

PN60

MR RYAN: No, it's not going to be materially - it's very much along the lines of what Mr Rinaldi said. Much of this is contextual-type material which relates not to necessarily answering the detailed questions, but - - -

PN61

THE DEPUTY PRESIDENT: So if attachment D isn't the document at attachment D, do we just strike out attachment D?

PN62

MR RYAN: Yes.

PN63

MR RINALDI: I might jump in with my understanding - and it could be wrong. It seems to me from reading this, Deputy President, that perhaps attachment D is the 'letter of complaint' referred to in the first line on 365 and attachment E is the confirmation from Dr Sherringham.

PN64

THE DEPUTY PRESIDENT: Well, that's what I thought. That's why I'm a little confused - - -

PN65

MR RINALDI: Yes. If that's right, then it's probably just a matter of - - -

PN66

THE DEPUTY PRESIDENT: Attachment D is attachment - - -

PN67

MR RINALDI: - - - inserting a reference to attachment D in the first line as a bracket perhaps, but if that's wrong then - yes.

RACHNA VERMA

XN MR RYAN

PN68

THE WITNESS: Mr Ryan had sent an email after my meeting with Dr Wadhwa and I haven't attached that email, and I've attached the wrong email which I have marked as 'Attachment D' here. So attachment D was supposed to be a different email. I have attached the wrong email. Apologies.

PN69

MR RYAN: So we can discount attachment D.

PN70

MR RINALDI: And 'E' is what it is meant to be. 'E' is the Donna Sherringham - -
-

PN71

MR RYAN: Yes.

PN72

THE WITNESS: Attachment E is correct, the reply from Mrs Sherringham, but attachment D is the wrong attachment, yes.

PN73

MR RINALDI: Okay, so just ignore 'D'.

PN74

MR RYAN: Yes.

PN75

THE WITNESS: Sorry.

PN76

MR RYAN: Now, Dr Verma, you have also filed a reply statement. If I can take you to page 496 of the hearing book and ask you to look at page 496 through to page 560?---Yes, it's correct.

PN77

That further witness statement, that is also part of your evidence in this matter?---That's correct.

PN78

That's correct in every particular?---Yes, that's correct.

PN79

Do you adopt that as your evidence?---That's right.

PN80

No further questions.

CROSS-EXAMINATION BY MR RINALDI

[10.35 AM]

*** RACHNA VERMA

XXN MR RINALDI

PN81

MR RINALDI: Dr Verma, do you have the court book there - yes, you do. Could you turn to page 292, please?---Yes.

PN82

Do you see there the - it's a called form F10, 'Application for the Commission to deal with a dispute in accordance with the dispute settlement procedure'?---Yes, I can see it, yes.

PN83

And that is the application which was filed by, according to the middle of page 292, the Australian Salaried Medical Officers Federation and/or the Australian Medical Association?---Mm-hm.

PN84

You're a member of both of those, are you?---I am a member, as far as I'm aware, AMA. I don't know about the second part.

PN85

You will just have to keep your voice up because the microphone doesn't actually amplify?---Yes.

PN86

It is just for the recording?---Yes, so - - -

PN87

So you're a member of the AMA?---As far as I know I'm a member of AMA. I don't understand the difference between AMA and ASMOF, so I can't answer that question.

PN88

We're in the same position I was about half an hour ago?---Yes.

PN89

But I've spoken to Mr Ryan and I now understand that the - ASMOF let's call it, is the union that represents employees of doctors and the AMA is the umbrella organisation representing doctors both employers and employees. Mr Ryan has filed this, if you look at page 298, as a representative of those organisations. I understand just for clarity, Deputy President, from my friend that the application is put as being by both organisations. Of course you would have noted that both are bound by the enterprise agreement.

PN90

THE DEPUTY PRESIDENT: Yes.

PN91

MR RINALDI: It's called the AMA but also binds as one.

RACHNA VERMA

XXN MR RINALDI

PN92

So Mr Ryan, if you look at 298 - it has his name in these days of electronic signatures just typed there. Now, that was one in accordance with your instructions and those of the other doctors who are witnesses in this matter?---That's right.

PN93

If you look at section 2 about the dispute, page 295 over to 296, please, there are some headings: 'Annual leave', 'Dispute' at 295 and on 286 'Workplace dispute' and then underneath that 'Limitation on private practice work outside of contracted hours'. The real dispute here that you and Dr Palawela and Dr Hassan have is with Dr Joseph Tam, isn't it?---It is a dispute with Dr Tam and what has been asked for us to do by him and the management.

PN94

Since he came into the role, which is the role of - if you look at page 295 under the 'Annual leave dispute' heading, it's the head of department, right?---Say that again. Sorry, can you repeat the question.

PN95

You see the heading 'Annual leave dispute' on page 295 in part 2.1 near the bottom of the page?---Yes.

PN96

And then the first line under that:

PN97

The paediatricians employed by GVH have been in constant dispute with their head of department, Dr Joseph Tam.

PN98

That's his title, head of department, right?---Yes, the clinical director or head of department, yes.

PN99

You anticipated my next question?---Yes.

PN100

For clarity if you look over at the heading 'Workload dispute', 296, the last sentence under that heading:

PN101

There is also a constant pressure from clinical director -

PN102

there is also a reference to Dr Tam?---That's right, yes.

PN103

So whether you call him head of department or clinical director, it's the same thing and we're talking about the paediatrics department?---That's correct, yes.

*** RACHNA VERMA

XXN MR RINALDI

PN104

Your real complaint is not about how many on-calls you're doing or how many recalls you're doing or how many hours you're working or your workload, it's really about how Dr Tam handles the hours, the workload and the rostering; isn't that right?---It is not that easy to put at. It's a little bit more complex than that. It's all kind of intertwined between each other.

PN105

Yes?---The issue is Dr Tam's leadership, but it is how it is managed, as well, so when we have a problem we approach him and how the issue is managed is a problem, as well, and the workload and the annual leave; they all kind of fit into that dispute.

PN106

Essentially the work that you're doing and the workload that you have hasn't changed from before he was the clinical director and head of department to since he has been?---Since COVID we are seeing a lot more complex behavioural children. There has been an increasing rise in kids with mental health issues. So before he started, which was just around when COVID had hit, the clinics were busy but suddenly we're seeing much more complex children since COVID has hit.

PN107

Right?---So the dynamics of patients that we are seeing are getting more complex, as well.

PN108

But the nature of the work you were doing, apart from what you just described, is essentially the same?---Yes, possibly, yes.

PN109

And the amount of work is about the same?---The amount of work has increased since the complexity has increased, so it's a little bit different than before he started.

PN110

And that's because of the effects, you think, of COVID? That's not because of Dr Tam?---Possibly a mixture of two. It's hard to determine which one is what.

PN111

So you agree with me that the main problem that you and Dr Palawela - I hope I'm pronouncing his name right - and Dr Hassan are concerned about - your main concern has been the manner in which Dr Tam deals with workload, rostering and issues generally; is that right?---Yes, yes.

RACHNA VERMA

XXN MR RINALDI

PN112

So you would accept things like if you're going to have leave, you need to give a certain amount of notice to the employer and you need to agree with the employer the period in which you're going to have leave. You don't have a problem with that?---It's accepted as long as it's applied to everyone. If it is not applied to another craft's group and it's only applied to paediatrics, for example, or when it's applied to one particular paediatrician and not the other, then it's not acceptable.

PN113

Why is that not acceptable, just theoretically?---Everyone wants a fair share of their leave. You know, if - for example, I know my colleagues in the medical department don't have to give a six-week notice to get leave, whereas we have to give a six-week notice to get our leave approved. So it has to be the same for all craft groups and the reason we were upset was because our leave was getting rejected on that basis. Audit was getting postponed, that, 'Your leave won't be approved. We'll have to look into that because you haven't given us enough notice.' So, yes, because it's not fair that other craft groups of getting their leave and we are not getting ours.

PN114

So in making that last statement - - -?---Yes.

PN115

- - - which is a good summary of your position, you're not relying on any clause of the enterprise agreement or any provision of the Fair Work Act, you're just relying on your concept of fairness?---I'm not aware of the enterprise agreement on leave, but I know as a doctor, responsible, I have to give fair notice to the hospital to get my leave, but everyone else has to give a fair notice, as well; but if it has only been affecting one craft group, not the other, then it's a problem.

PN116

The reason you say it's a problem is because you don't perceive it as fair?---Because our leave is not approved, whereas other people are getting their leave approved.

PN117

So let's assume that's the case?---Yes.

PN118

The reason you say that's a problem is because it's not fair?---Yes.

PN119

Not that it's not - - -?---Yes.

PN120

You're not saying it's in breach of any particular clause of the enterprise agreement?---I'm not aware of any clauses.

PN121

Or the Fair Work Act?---I'm not aware.

*** RACHNA VERMA

XXN MR RINALDI

PN122

No. Okay. You say - well, you don't say, but the application which was lodged in accordance with your and the other doctors' constructions says at page 295 under the heading 'Annual leave dispute' in 2.1 that you've been in constant dispute with Dr Joseph Tam over the taking of annual leave, and you also say under the 'Workload dispute' heading in that last sentence that I took you to before:

PN123

There is also a constant pressure from clinical director

PN124

-

PN125

that's a reference to Dr Tam, as you've said -

PN126

to take on more clinical support duties.

PN127

So these are part of your complaints about Dr Tam; correct?---That's correct, yes.

PN128

Is it fair to say those sorts of issues are what drove you to seek assistance from Mr Ryan and to have him lodge this application?---Yes, because we weren't getting anywhere further with the management and hence we had to approach John Ryan, yes.

PN129

All right. Then you're aware that the process for one of these matters in the Commission is that there is generally an agreed or sometimes a ruled upon by the Commission set of questions for arbitration; yes?---I was told so, yes.

PN130

And you've seen the questions for arbitration in this case?---I have.

PN131

Presumably you gave Mr Ryan instructions about those questions?---We discussed it together.

PN132

Yes?---Yes.

PN133

Thank you. It's fair to say that you preferred dealing with Dr Tam's predecessor in relation to things like leave and workload than you do with Dr Tam, yes?---That's correct.

PN134

Who is his predecessor again?---Dr Garrick.

*** RACHNA VERMA

XXN MR RINALDI

PN135

Yes. Thank you. Perhaps a large part of the motivation is what's perceived as the less favourable treatment from Dr Tam than from Dr Garrick?---Well, Dr Garrick was fair and square to everyone. There was no - not one person was partialled over the other. The rules were similar to everyone.

PN136

Do you think that one person has been preferred over others by Dr Tam?---Possibly.

PN137

Who is that?---Dr Goyadi.

PN138

Doctor - - ?---Goyadi.

PN139

Goyadi, right. That's possible, is it?---(No audible reply.)

PN140

You're not sure?---No, it is. It has happened.

PN141

In what sense?---Dr Goyadi and Dr Palawela had applied for the same conference leave and Dr Tam also was going to the same conference leave. Dr Goyadi and Dr Tam were able to go to that conference, whereas Dr Palawela didn't manage to go to that conference. He was told that two paediatricians were already off, so he won't be able to go for that conference. Dr Goyadi is a full-time

paediatrician. We all have a set of diabetic clinics to do. He hasn't been given a diabetic clinic. Diabetics clinics are quite intense because each - patients are quite complex, they need a lot of monitoring, there is lot of to and fro emails between the diabetic educator and us, making changes all the time. Dr Goyadi hasn't been offered a diabetic clinic. He has been there for two years now.

PN142

So in the conference leave example that you gave, that was because two paediatricians - Dr Tam and Dr Goyadi - were already going to that conference when Dr Palawela applied?---We're not entirely sure who applied - - -

PN143

You're not sure about the time?---Dr Palawela might know better, but from what I have heard is that his application was rejected over Dr Goyadi's and Dr Tam's.

PN144

I see, and you heard that from Dr Palawela?---From everyone. We had a discussion in our consultant meeting about it, as well.

PN145

I see?---We also questioned about the two paediatrician rule, whether that was fair - why was just only two paediatricians allowed to be off at one point where there is only one person is needed to be on-call - and this is what we were told, that that's the rule that only two paediatricians can take off and hence Dr Palawela's application was rejected.

*** RACHNA VERMA

XXN MR RINALDI

PN146

Can I ask you to have a look at the questions for arbitration, please, Dr Verma. It's tab 1, it's page 4 right at the beginning of the court book - hearing book. Have you got them there?---Yes.

PN147

You have seen those questions before?---Yes. I don't understand them that well, but I've seen them.

PN148

Yes?---Yes.

PN149

But you would agree, wouldn't you, that none of those relate to conference leave or attendance at conferences?---There is - I think I might be wrong. There was a question about annual leave or leave policy in general. That's not particularly in relation to conferences.

PN150

Yes. We are slightly disadvantaged in that your witness statement doesn't have numbered paragraphs, but if you look at page 372, please, Dr Verma, you will see that there is a point 5?---Yes.

PN151

And it's 'CD's leadership', so that means 'clinical director's leadership'?---That's correct.

PN152

So it's talking about the leadership of Dr Tam?---Correct.

PN153

These are again the main issues that have brought you here today, are they not, these sorts of issues with Dr Tam?---It is one of the issues. It is one of the issues that - - -

PN154

Yes?---Why we are here today.

PN155

What are the other issues?---Other issues are about on-calls, recalls, clinics, leave policy.

*** RACHNA VERMA

XXN MR RINALDI

PN156

Is it fair to say your main motivation is dissatisfaction with the way Dr Tam has carried out his role in relation to things such as his leadership; his questioning about colleagues' management and discussions, the underlined words at 5(a); his, as you call it, misusing the senior registrar, the underlined words at 5(b) on page 373; at 374, the lack of support to colleagues, underlined words; (e) lack of vision, 374. These are the complaints - your overall motivation in bringing this application through the AMA and as ASMOF is because of these issues relating to Dr Tam, is it not?---It started off with these issues and it is evolving to the other issues that we have discussed.

PN157

Right. Including annual leave policy, which is point 6 - - -?---Yes.

PN158

- - - on 374?---That's correct.

PN159

On-calls and recalls?---That's correct.

PN160

Yes. Okay. I don't intend to go over this at great length because you have had a reply statement - - -?---Yes.

PN161

- - - but I just want to put to you a few of the key matters arising from Dr Tam's statement. So you're a fractional paediatrician, 30 hours a week, I think?---That's correct.

PN162

And at paragraph 50 - you don't need to look at it, but I'll just refer to it for the benefit of the Commission and my learned friend - of Dr Tam's statement at 745

to 746, he talks about the workload allocated to paediatricians. He's talking about full-time paediatricians. He says, 'It is capable of being completed within 38 hours.' I suppose you can't comment on that because you're not a full-time paediatrician, anyway?---I can't comment on that.

PN163

Yes. He says the proposed change from five to six-patient clinics is 21 hours in total and in your case you would have a proportionate number of clinics?---So the way my arrangement works is I do the full-time paediatrician like Dr Hassan and Dr Tam when he was a full-time paediatrician, doing four clinics plus a diabetic clinic. So when I had my fractional specialist arrangement, my arrangement was that I would continue to work at - the clinic would be the same quota as a full-time paediatrician, however, I will do less amount of on-calls because of child care issues. So my workload for clinics is similar to a full-time paediatrician.

PN164

Similar. Right. So as far as that's concerned you would agree, would you not, that six-patient clinics of three and a half hours each is about 21 hours?---That would be correct, but that's just - sorry - face-to-face time that you're spending to see the patients.

PN165

Yes?---Yes.

*** RACHNA VERMA

XXN MR RINALDI

PN166

And the administrative time he says for a full-time person - the administrative work, there is about eight hours available in a 38-hour week when you take into account the 21 hours of clinics and the eight hours of clinical support time?---That's what he's saying.

PN167

Yes?---Yes.

PN168

And you're not full-time, but you wouldn't disagree with that, would you?---I would disagree because I think it takes more time to finish the administrative tasks that Dr Tam has quoted on that. So if I have to increase my clinics to six clinics, I won't have any time at all for finishing the task at all. I don't agree that that seven, eight hours is correct amount of time.

PN169

You don't think there is actually going to be that much time left?---Yes.

PN170

Or do you think you need more than that amount of time to do the administration work?---You will need more if you are increasing the amount of clinics.

PN171

That probably takes us on to paragraph 51 and perhaps you can have a look at it; 746. He says:

PN172

In my opinion there is around 15 minutes of administrative work per patient on average which is sufficient to deal with expected administration tasks. The complexity of patients attending the respondent's paediatrics department clinics is similar to other comparable regional paediatric clinics.

PN173

I take it you do not agree with that?---I disagree with that, yes.

PN174

You say it's longer than 15 minutes?---It is more than 15 minutes. One NDIS form, for example, takes about 15 minutes to fill. Sometimes you have to ring mental health triage for the same patient, you have to ring Child Protection for the same patient. NDIS Orange do a headspace. You know, you have to ring Allied Health, you need to ring school to get that information, so 15 minutes per patient is not enough to do all those tasks.

PN175

But you accept that Dr Tam does these tasks himself in his point 5 clinical load?---I have mentioned that in my statement. I'm not sure if Dr Tam does these tasks by himself or he uses the senior registrar to do these tasks.

*** RACHNA VERMA

XXN MR RINALDI

PN176

So you don't know?---The senior registrar is doing most of his clinics, so the senior registrar is seeing more than half of the patients. I'm assuming that the senior registrar is doing all these tasks and hence he doesn't realise how much time we are spending per patient to do all these tasks.

PN177

You're assuming that, yes, from your observations?---Exactly, yes.

PN178

Yes. I see. All right. At 54 he says that, 'Fractional general' - this is in the first sentence of 54, page 746, Dr Tam says:

PN179

Fractional general paediatricians are contracted to be available to perform on-call work.

PN180

That's correct, isn't it?---That's what I was told when I first started.

PN181

Yes, and that's what your contract says, isn't it?---That's correct. I didn't know any different when I had signed the contract.

PN182

It is no different. You are required to do on-call work; correct?---That's what I've been told by the hospital, yes.

PN183

You're not doing on-call work?---I am doing on-call work.

PN184

So your contract at 817 of the hearing book, clause 5.1, says:

PN185

The practitioner will be required to participate in the after-hours roster.

PN186

That's a reference to on-call, isn't it?---What page was it, sorry.

PN187

Page 817, clause 5.1, under the heading 'On-call/recall'?---And the question was, sorry.

PN188

The reference there in 5.1 to the practitioner being required to participate in the after-hours roster - and in this instance the practitioner is you. This is your contract?---Mm-hm.

*** RACHNA VERMA

XXN MR RINALDI

PN189

Is a reference to participating in the on-call roster?---That's correct. When I signed this contract - when I went to fractional specialist, that was because of child care difficulties. I didn't know any different, that I couldn't do on-calls, and hence I signed the contract. I have been doing on-calls since 2019, since the contract was signed.

PN190

Yes, and as far as you're aware and as Dr Tam says at paragraph 54, first sentence, it's normal that fractional practitioners are required to do on-call work?---That's what I've been told by the hospital.

PN191

Have you worked at other public hospitals in Victoria?---No.

PN192

What Dr Tam says over the page at 747, paragraph 56, top of the page, he refers to your contract and then in the second sentence that starts in the fourth line he says:

PN193

With point 8 FTE -

PN194

So that's point 8 full-time equivalent -

PN195

Dr Verma has four clinics per week plus a 1.5 diabetes clinic every five weeks.

PN196

That's correct?---It's once a month roughly, the diabetic clinic.

PN197

Yes. Okay. So every four and a half weeks, not five weeks, you say. All right. That's once a month, roughly, you said?---Yes. The diabetic clinics - we have our own patients. We have a fixed amount of patients that belong to us. They may have up and down with their blood sugars, so the parents contact the diabetic educator, the diabetic educator contacts us, we make changes to their insulin. This is not just clinic bound, it can happen any time.

PN198

Sure?---I could get an email now about a patient, that their sugars have been up and down yesterday.

PN199

Yes?---So it's not just that 1.5 hours I'm spending in the diabetic clinic.

PN200

That's talking about the diabetic patients?---Yes.

*** RACHNA VERMA

XXN MR RINALDI

PN201

Yes. I see?---Yes, yes.

PN202

Then he goes on in the next sentence:

PN203

Dr Verma is also typically rostered to be on call on average one weekend out of every five weekends.

PN204

That's correct?---Yes.

PN205

He says:

PN206

This is equivalent to 10 weekends in a year, ie, 30 days.

PN207

I gather from that that the weekend is regarded as - is it Friday, Saturday, Sunday?---That's right. We start on a Friday morning at 8 o'clock to - by the time I leave the hospital it will be Monday, 3 o'clock, the next week.

PN208

Yes?---I mean the next Monday.

PN209

Next shift, if you like?---Yes.

PN210

Yes. Thank you. Then he goes on:

PN211

This special arrangement was agreed to between Dr Verma and the previous clinical director of paediatrics -

PN212

so that's Dr Garrick?---Yes.

PN213

Because you're not able to do on-call duty on weekdays because of child care duties?---That's correct, yes.

PN214

Then he says:

PN215

Comparing to the full-time paediatricians doing 10 weeks, 70 days, of on-call a year, point 8 FTE paediatricians would normally do eight weeks, 56 days a year.

*** RACHNA VERMA

XXN MR RINALDI

PN216

So it includes - 30 days is less than 80 per cent of a full-time equivalent?---That's correct, but I'm doing a full load of full-time equivalent clinics to compensate for that.

PN217

Right?---Yes.

PN218

But you accept that you're doing less than 80 per cent of the on-call?---That's right. That was what was agreed.

PN219

Yes. Doing the four clinics plus one diabetes clinic a month to compensate for that?---That's correct. We also do occasional - roughly about two to three per month registrar supervision clinics, as well, where we have to supervise a registrar who is doing a clinic. So we have to make decisions for those patients, as well, so that could be a - you could say a sixth clinic sometimes.

PN220

I will take you to - and I know that you have done a reply statement, so I just want to make sure that nothing is missed. Turn to 752, please. There are some responses by Dr Tam to your first statement?---Mm-hm.

PN221

It's beginning at paragraph 81 of his statement at 752 and the first point that he makes is that setting up an appointment would document the actual workload about the time spent doing script writing. He says:

PN222

The final 30 minutes of each clinic is a time during which paediatricians can write scripts.

PN223

That's correct, isn't it?---That's what it's meant to be, but it never happens because you never have to find the 30 minutes because the clinic is always running late.

PN224

The clinics always run over, you say?---Yes, and we are supposed to now have emergency slots to write scripts, but that never happens. Emergency slots are booked way ahead in advance, so we'll end up doing scripts outside clinic time because there's no other time to do it. Often parents are ringing on that day, 'My child is - we've run out of medication, the child has been suspended from school.' You can't wait for another clinic to book them in, so you have to do it at that point when you get the phone call. So it often - happens very often, it happens outside the clinic time.

*** RACHNA VERMA

XXN MR RINALDI

PN225

In 82, he says that you've overstated and inflated the amount of work - the non-clinical work. In particular he says he doesn't accept that you have to regularly fill in those forms you mentioned before; NDIS forms, referrals to head space, Orange Door or Canteen, Medicare, carer allowance forms. What do you say about that?---I think Dr Tam doesn't understand that, because he doesn't see new patients from community. So his new patients are either from the registrar clinic or the patients that have got discharged from the ward, so if the patients are coming from the registrar clinic, the registrar would have done that paperwork for him. We are seeing fresh patients from the community that the GP has referred, so hence our administrative task is more than him. So I think he thinks we are inflating because he doesn't do those tasks, because he is not seeing new patients fresh from the community.

PN226

Do you know that from your own knowledge or are you speculating?---No, I know it from my knowledge.

PN227

Your knowledge being that he doesn't see patients direct from the community?---That's correct.

PN228

He only sees them - - ?---From the registrar clinic and their patients.

PN229

He says that the Medicare carer's allowance forms take five to 10 minutes. What do you say about that?---Roughly about 10 minutes. I've had incidences where - Centrelink unfortunately are very picky if you missed writing something and parents often - it often gets rejected, so you have to pay very much attention to every little detail otherwise the parents will have to keep going to and fro, and it

doubles up your work if you haven't filled it properly. So, you have to give meticulous attention to some of the details on the Medicare form.

PN230

So you say it takes 10 minutes?---About, roughly.

PN231

At 84, he says there is about a 25 to 30 per cent failure to attend rate by patients. Would you agree with that?---It used to be. Since we have had the second CSO now who are texting the parents, failure to attend rates have improved, so we are not seeing as much failure to attend. There are some patterns, some days will be worse than the other, but overall in the last couple of months or even this year the failure to attend rates are much better. I have stated this in my statement that when we do have a failure to attend it is actually double trouble, because most of these failure to attend patients come from child protection-type patients. If they haven't attended that's a red flag and we have to start ringing Child Protection for that, so we are wasting a lot more time actually trying to chase up why this patient hasn't attended. Sometimes having a patient in the clinic room is easier than not having a patient.

*** RACHNA VERMA

XXN MR RINALDI

PN232

You said that it used to be 25 to 30 per cent failure rate. It's a bit less now because of the second CSO?---I believe so, yes.

PN233

And a CSO is like a customer service officer?---They are - yes, yes, like a reception staff.

PN234

Yes. Okay. Who does follow-ups and reminds people to come to their appointments?---Exactly, yes.

PN235

Okay. So his conclusion in 84 is that he doesn't think you'll be seeing any more than 20 patients per week?---I see about four to five patients on Monday morning clinic. If I have the diabetic clinic, I see about two patients. Tuesday I have five to six, Wednesday I have five to six, Thursday I have five to six. Sometimes I supervise the registrar clinic where I would have anywhere between two to six patients for the registrar clinic. It's roughly about 25 to 30.

PN236

Okay. So he says about 20, you say 25 to 30 in total for the week?---That's correct.

PN237

Does that equate to the number of letters you would have to dictate, 25 to 30?---That's correct, yes. Sometimes the letter is just not one letter. Sometimes you have to write to school, for example, you have to write to NDIS, you have to write to CAMHS, which is Child and Adolescent Mental Health Service. We have to write to Allied Health. Sometimes when we have ordered an MRI, for

example, and the results come back normal, I often write to the parents to say, 'Your child had an MRI and the results are normal.' So it's not just one letter per child, it could be multiple letters per child.

PN238

And these are dictated?---They are dictated, yes.

PN239

For example, that last example that you gave, 'Your child has had an MRI and the results are normal,' that's essentially a one-line - - -?---There is a couple of lines, yes, yes, yes, because - - -

PN240

It would take about 10 seconds?---It does.

PN241

Yes?---Yes, but then you have to edit and sign them afterwards, as well.

PN242

You have got to check them?---Yes.

*** RACHNA VERMA

XXN MR RINALDI

PN243

Traditionally once all this has been dictated by Dr So and So, but hasn't been read by them - - -?---In our hospital we still have to sign them before it gets out to the GP or the family.

PN244

You'll see - and again you may have - forgive me if you've dealt with this directly in your reply affidavit at tab 11 and I couldn't see it, but I might be wrong. Dr Tam says at 86 that you have a proportionate workload for the number of hours that you're required to work and that you shouldn't have to do CST at home. You still say you're doing CST at home?---Yes, I have - I feel I have a heavy portfolio compared to others. I have taken this new role of allergy clinic, as well, along with another colleague, Dr Goyadi, so now I have the special care portfolio and the allergy portfolio that I share with him, so combining both writing CPGs, arranging prompt high risk meeting, plus the allergy meetings that we have, I'll have to sometimes take a lot of work home. Especially writing CPGs that I can't do in the hospital, I'm doing it at home.

PN245

I won't go through the details of 86 because you have had the opportunity to reply through your reply statement, those other subparagraphs of 86, but just going to 87, that's the point that I took you to before and it's right, isn't it, that as Dr Tam says, he's not just in an ivory tower in a management position. He has a point 5 clinical load, so he knows the work that you do and the time involved in various tasks. Do you accept that?---Yes, he does have point 5 FT, but, as I have said earlier, I don't think he understands the clinic load because of the different demography of patients that he sees.

PN246

Which is essentially not getting them off the street?---Fresh from - yes, exactly, yes.

PN247

Yes, I see. Do you accept that he has got a difficult job in terms of rostering and trying to ensure that the arrangements allow time for paediatricians to do their non-clinical tasks?---The job is not easy.

PN248

Yes?---I have taken on the acting CD job a couple of times and I can understand it is a challenging job.

PN249

Would you agree that it's a fair statement that he makes in the last sentence of 87 that he's well aware of the non-clinical time that needs to be completed? Do you accept that?---I'm hoping he's aware of it, but I don't think he realises some of the work that happens at home.

*** RACHNA VERMA

XXN MR RINALDI

PN250

You accept that he also ensures that the rostering arrangements afford the paediatricians enough time to complete their non-clinical duties?---Can you repeat the question.

PN251

He says that he is aware of the non-clinical time that needs to be completed, but also ensures that the rostering arrangements afford the paediatricians enough time to complete their non-clinical duties?---I don't understand the question really well. From what I can understand, I don't think he understands it and that's why we have a heavy portfolio and that's why we're taking the work home, if that answers the question. Sorry, I might not get the question.

PN252

So you accept that it's a difficult job?---It is a - - -

PN253

You don't necessarily agree that he's doing it well?---Exactly, yes.

PN254

That's getting back to the main point which is your main gripe, as it were, is with Dr Tam, not with the actual hospital arrangements?---It started off with that and it has got into this.

PN255

It started off with Dr Tam - - -?---Yes.

PN256

- - - and it has moved into some of the specific arrangements relating to on-call, recall and annual leave?---Correct.

PN257

All right. Thank you, Dr Verma?---Thank you.

PN258

THE DEPUTY PRESIDENT: Dr Verma, just a couple of things if you can clarify for me?---Yes.

PN259

So am I right you started at Goulburn in the beginning of 2019?---So I started as a - so I moved from the UK - - -

PN260

That's all right?---Yes.

PN261

I just want to get a couple of key pieces of information?---Yes. I did a locum job in Goulburn Valley Health for six months, 2018 to early 2019, and then I got the staff paediatrician job from 2019.

*** RACHNA VERMA

XXN MR RINALDI

PN262

Okay. So that's the contract that Mr Rinaldi took you to before and that was as a full-time specialist?---That's correct, yes.

PN263

Then because of issues you had with child care and so forth - - -?---Yes.

PN264

- - - you then moved to a fractional role?---That's correct.

PN265

That was in mid-2019?---That's correct, yes.

PN266

Then Dr Tam starts in June 2020 or thereabouts?---That's correct, yes.

PN267

So when you became a fractional specialist - - -?---Yes.

PN268

- - - was there a further contract or document?---There was just a one-page addendum to say my hours had been reduced to 30 hours per week.

PN269

Okay. All right.

PN270

MR RINALDI: Page 846.

PN271

THE DEPUTY PRESIDENT: Sorry, which - - -

PN272

MR RINALDI: That's on page 846.

PN273

THE DEPUTY PRESIDENT: 846.

PN274

MR RINALDI: One-page addendum with a covering letter at 845.

PN275

THE DEPUTY PRESIDENT: Yes, okay.

PN276

That's what you're referring to, Dr Verma?---I think, yes, yes.

PN277

Throughout your employment, from when you started in 2019 as full-time and then when you became fractional, you were working the on-call roster throughout?---I have been, yes. I have been, yes.

*** RACHNA VERMA

XXN MR RINALDI

PN278

Thank you. Any re-examination, Mr Ryan?

PN279

MR RYAN: No.

PN280

THE DEPUTY PRESIDENT: All right. Thank you very much for your evidence, you're now excused, you're free to go. You're welcome to stay and observe, that's a matter for you?---Thank you.

<THE WITNESS WITHDREW

[11.18 AM]

PN281

THE DEPUTY PRESIDENT: Are you ready for your next witness?

PN282

MR RYAN: Yes, we'll call Dr Palawela. He's coming in at the moment.

PN283

THE ASSOCIATE: Please state your name and address?

PN284

DR PALAWELA: Wasantha Palawela, (address supplied).

<WASANTHA PALAWELA, SWORN

[11.19 AM]

EXAMINATION-IN-CHIEF BY MR RYAN

[11.19 AM]

PN285

MR RYAN: Dr Palawela, you have in front of you, on the desk there - - -?---Yes.

PN286

Can I ask you to open that at page 447, have you got page 447?---Yes.

PN287

That's the commencement of your witness statement?---Yes.

PN288

And if I can ask you to go to page 483?---Eighty-three is a blank page. It will be after, yes, 484. Yes.

PN289

If you go to the page 482?---Yes.

PN290

From pages 447 through to pages 483 that is your witness statement and attachments?---Yes.

*** WASANTHA PALAWELA

XN MR RYAN

PN291

You prepared that for today's matter. Is that your evidence - - -?---Yes.

PN292

- - - in this matter?---Yes.

PN293

Is that true and correct?---True and correct.

PN294

And you adopt that as your evidence?---As?

PN295

That is your evidence?---That is my evidence.

PN296

Good. I also ask you to have a look at pages 490 to 495?---Yes.

PN297

Is that a reply witness statement that you prepared in this matter?---Yes.

PN298

Is that also part of your evidence?---Yes.

PN299

Is that true and correct?---True and correct.

PN300

That's all, Deputy President.

PN301

THE DEPUTY PRESIDENT: Thank you.

CROSS-EXAMINATION BY MR RINALDI

[11.22 AM]

PN302

MR RINALDI: Dr Palawela, I take it you're a member of the AMA?---Yes.

PN303

And a member of the Australian, let me get the title correct, ASMOF?---Yes.

PN304

The Australian Salaried Medical Officers Federation?---Yes.

PN305

And you've given instructions to Mr Ryan to bring this application in the Fair Work Commission?---Yes, we discussed with him and we thought as the appropriate action.

*** WASANTHA PALAWELA

XXN MR RINALDI

PN306

Yes. The other two doctors being Dr Verma, who's here, and Dr Hassan(?)?---Yes.

PN307

Anyone else?---No, three of us.

PN308

Okay, thank you. If you look at, in that hearing book it's called, that folder, there's a tab 4, and it starts at page 295, the document – sorry, I beg your pardon, 292, the document behind tab 4?---Yes.

PN309

And you'll see that that's called a form F10 application, for the Commission to deal with a dispute, in accordance with the dispute settlement procedure?---Yes.

PN310

You have that? And you'll see, in the middle of the page, the legal name of the business that is the applicant, is Australian Salaried Medical Officers Federation/Australian Medical Association?---Yes.

PN311

Okay. That's then been signed, in inverted commas, by Mr Ryan, on page 298?---Yes.

PN312

And lodged or dated at least, 4 November 2021, do you see that?---4 November, yes, 2021.

PN313

The main complaint that you and Dr Verma and Dr Hassan had, when you approached Mr Ryan to represent you, was a complaint about Dr Tam, Dr Joseph Tam, right?---Yes.

PN314

And it's really that you didn't like the way Joseph Tam handled matters, you much preferred the way Dr Garrick, his predecessor, did?---Yes.

PN315

And when you look at the application that Mr Ryan filed, on page 295, in the heading 2.1 'What is the dispute about', under the subheading 'Annual leave dispute'?---Yes.

PN316

I should note that just above that heading this is about – so this was filed or dated 4 November 2021 and this concerned several issues which the paediatricians have raised with GVH over the last 14 months, so that's going back to 2020, so during COVID lockdowns and the like?---Yes.

PN317

Did Shepparton have an actual lockdown, like Melbourne did?---Not that much, but certain extent, yes, compared to other states, yes.

*** WASANTHA PALAWELA

XXN MR RINALDI

PN318

You've been able to keep working since 2020, with Dr Tam as the head of department?---Yes.

PN319

In terms of doing your work it's been okay, your clinical work?---It was very difficult actually. We were more worried about from the beginning, how this department going to end up at some stage because he was – our impression, from the beginning, very soon he's destroying the department because he has previously done so in other hospital and after - - -

PN320

Previously destroyed departments in other hospitals?---Yes.

PN321

How do you know that?---Because from – we heard from the other colleagues and he was in Traralgon and every – all the paediatricians have gone everywhere and ultimately he also left.

PN322

You heard this from other colleagues?---Sorry?

PN323

You said you heard this from other colleagues?---Yes.

PN324

From other – from the La Trobe Regional Hospital or from the one - - -?---Who has left the hospital, yes.

PN325

I see. All right. So you heard, I suppose, rumours, when Dr Tam took over as clinical director?---Yes, and there are – there are reasons to believe that because after 18 years of work there he also left and he also was – I heard from Dr Hassan that actually he got appointment in Mildura. He's going from Traralgon to Mildura, we thought there's something wrong, the sudden – and Mildura, why he's going to Mildura suddenly he got an appointment in Shepparton because Dr Garrick calls one of his friends and then he came to Shepparton. But the way he started and within a couple of months my – my feeling was he's going to do something to this department as well, which is already I think happening and already why my colleague, Dr Halid(?), has left and we are almost - - -

*** WASANTHA PALAWELA

XXN MR RINALDI

PN326

That's Dr Hassan?---Yes, Dr Halid Hassan and we are almost at the same level because just too many stress. It is very stressful at the moment. I am working – I have put all the long service leave, over the last two or three months, because it is stress – I wouldn't plan to do long service leave that way, I will do it over two or three years or something, but I put all that long service leave, at least something happening here to making the environment working environment, but it is very stressful. I have sick leave about 1200 hours or something, but I did not put sick leave, still I was just planning to do long service leave and just from July onwards I did not work in Shepparton because I put long service leave and now they are employing, I think, three locum paediatricians at the moment, about per day. It is very stressful actually, because – because of the leadership.

PN327

So did you actually take long service leave?---Yes, I took long service leave from July – July/August two months, and from 1 October onwards I am again long service leave for whole year because I – I worked only last two or three weeks here for like a part of this year.

PN328

So in this dispute notification form, F10, on page 295, under that heading, 'Annual leave dispute', it says, 'The paediatricians employed by GVH', that's Goulburn Valley Health, 'have been in constant dispute with their head of department, Dr Joseph Tam, over the taking of annual leave by the paediatricians'. You had already heard rumours, as you've just said, about Dr Tam, before he took over as head of department, right?---No, actually, this well afterwards. He also said that almost every paediatrician went away and - - -

PN329

Sorry - - -?--- - - - he told me, Joseph told me, as well, that most of the paediatricians is working in different departments and these were the - - -

PN330

Different from where?---And he was telling me about the disputes also, that while listening to the disputes he explained to me they were very minor things like one paediatrician - - -

PN331

Which disputes are we talking about? Where?---In Traralgon.

PN332

Right?---He was referring to - he himself was telling me the disputes he had with the colleague, Peter Drishan(?), and they were very minor things like not to – yes, doesn't look like that is evolving into (indistinct) behind or making a big case, so I heard from him as well.

PN333

So you had – you were apprehensive about him becoming the - - -?---Not before coming, because we were not aware and we were not aware about his background or anything at all. Actually immediately coming to the department he was – another colleague, Peter Drishan, he was – he was very supportive to each other and he was raising even higher argument, bigger disputes with Dr Garrick but it was with us, he was telling to us that this is very unfair, there's too many clinics, these are too many allocations kind of thing. But immediately after becoming the CD he has turned other way round and he was doing the same to us.

PN334

So there's two points to note there, aren't there? One, he was a paediatrician doing full-time clinical work, full-time load?---Yes.

*** WASANTHA PALAWELA

XXN MR RINALDI

PN335

He now has a point five clinical load?---He was doing the full-time. He was doing full-time.

PN336

Yes, but now that he's the director he has point five?---Yes.

PN337

Okay. But the fact is, he's got experience of doing exactly the same job as you and he knows what's involved in the tasks and how long it takes to fill out the various forms and all that sort of thing?---Yes, I think so, but I am not quite agreeing with that comment because we have found, later, that some of the work he's going that's very – I mean maybe after becoming the CD, the very short cut. Like his clinics are run by the senior registrars, the senior registrar is not having many clinical role to play, there's no allocation of clinics or anything. Senior registrar is basically his secretary so although he's taking about point five, point five for the clinical work, he actually is employing another person completely for his work.

PN338

And you just mentioned - - - ?---And he's not doing the dictations. It looked like he himself mentioned, in one of our meetings, he's not doing any letters to the GPs, that is his practice, basically, but 100 per cent of time I have done my letters

and I'm sure other colleagues also have done the same, because this we have come across as well, when we are looking at when patient coming into the ward, we are looking at what has happened in the clinic. Then we come across that only the some scribbling of the notes are there but there's no dictation. Actually I enquired that in the external reviewer's inquiry also, whether we had to do it. He said, clearly, that we had to do the letters to the referrer or the GP, which is what happening like that. So therefore he's not – I'm just giving a couple of examples, but he's not working as any other colleague paediatrician therefore he's having shortcuts and therefore I don't know whether he doesn't understand or he's not spending much time as ourselves.

PN339

That's because his role has now changed from a clinical = you know, full-time clinical paediatrician to point five and having the rest of his role as administrative management, correct?---No, it is not correct. Because point five, also he's claiming that he's conducting such amount of clinics, but still I'm referring to the same patients as if he – yes, he's seen 15 patients per week, he's supposed to see seven patients. But that all seven patients, either six or five, sometimes even all, seven, done by the senior registrar and some of the time, when he's away also, the senior registrar is around the clinic, but if we look at Joseph's numbers and then look at the number of patients he has seen, those come in under Joseph. It is Joseph's clinic, there's no senior registrar's clinic, so they are four – I'm not referring that he's – that he's doing appropriate work of point five even. I'm telling that he's not even doing adequate work for point five.

*** WASANTHA PALAWELA

XXN MR RINALDI

PN340

Right, I see. You've mentioned the CD, that's the clinical director, right?---Yes.

PN341

That is the same as the head of department?---Yes.

PN342

The same person?---Yes.

PN343

Dr Joseph Tam?---Yes.

PN344

So the reason you're here today, really, and this application was made is because you're not happy with how Joseph does his job?---Actually not only that, we are worried about (indistinct) all three of us have worked there for much longer time than himself and - - -

PN345

Could you say that again, I'm sorry, a bit more slowly?---We, all three of us have worked there, in Shepparton, longer time than himself.

PN346

So that's you, Dr Verma and Dr Hassan?---Yes.

PN347

Right?---But so we are - - -

PN348

So you want it done your way and not his way?---Sorry?

PN349

You want things done your way and not his way, that's what it comes down to?---No, not at all. We don't want the director to do what we want, we are happy to work under a director. I have worked in three countries: Sri Lanka, UK and Australia, I'm in Australia under only one other director, but I have held senior leadership like this, normally director is supposed to direct us and give an example what to do and then direct and take appropriate actions for the – the betterment of the society and especially paediatric population. So we are passionate about that. When someone turns around we can tell actually, within a couple of months at least, so we are worried about he is going to completely destroy this department, which is happening already. So that is why we were worried, not – we don't want to – Garrick, senior person, he's much the senior colleague of us, he was good to us in the beginning but after becoming director he's not performing his role.

WASANTHA PALAWELA

XXN MR RINALDI

PN350

And you don't like the way he's performing his role?---Not really, again, I (indistinct) I have seen so many directors but I never thought about this director is doing wrong, anything at all up to now. I have worked now 25 years in – 20 years in paediatrics itself, but – but this is quite frustrating actually. If you were there as a registrar or a consultant in Shepparton, at least for three months, you will realise. All the junior staff also having the same feeling and they are already – a very difficult record for anybody in Shepparton at the moment.

PN351

For example, one of the things you don't like about the way he works is that he calls meetings individually with particular consultants?---Yes, little bit that as well because he's biased about some of the consultants which are – who are loyal to him, actually. They get very differential treatment after we go to the AMA especially. There's a junior consultant who joined and after he joined in, he never – obviously he was a trainee, he worked as a trainee for some time as well, so he gets the priority most of the time when – there were instances that I applied for leave nobody was in the leave roster when I looked at but suddenly himself and his junior colleague come in as the leave priority and they get the LEU.

PN352

The what roster?---The LEU, consultant leave roster, which is published on the intranet.

PN353

MR RYAN: Leave.

PN354

THE DEPUTY PRESIDENT: Consultant leave.

PN355

MR RINALDI: Leave?---Yes. He gave that and, similarly, that particular junior consultant is coming only for the clinic time and not staying in the hospital.

PN356

Who is that junior consultant?---He is Dr Goyadi.

PN357

Goyadi, yes?---Yes. Like that, so that's a different - - -

PN358

You had a complaint about not getting to go to a conference because Dr Tam and Dr Goyadi were already going?---Yes.

PN359

And you were refused?---Yes.

*** WASANTHA PALAWELA

XXN MR RINALDI

PN360

The very first – to get back to my question a moment ago, the very first thing that you complain about in your witness statement, at 447, is him calling – Dr Tam calling meetings individually to consultants, you didn't like that. You don't like that?---No, not the meetings, the way he approached the problem actually. The content of the issue, because I put some attachment, Attachment 1, I think, he has calculated my work. I am doing six clinics at the moment, three of my clinics and three of the registrar clinics, and he has calculated the hours, 20 hours if I remember correctly, I can have a look on that.

PN361

Yes, it's at page 453?---Thank you.

PN362

For clinic time he has a – is that his document or yours?---That is one of his documents he handed out to me. But this one he has calculated 20 hours for my clinic time and clinic support time six hours and total is 38 hours so like that. Available time for the clinic, 30.4 hours. So out of that I am doing only 20 hours, four times five, therefore I can do one more clinic he said. One more or even two, 5.4. But he has – here he has only calculated the face-to-face clinic time but he – there's a lot of other time, actually nearly 75 per cent – I mean out of 20 hours another 70 per cent or at least 10, 12 hours minimum, we require for non face-to-face clinic time. He also – I saw he also has agreed 15 minutes per patient
- - -

PN363

Administration, yes?--- - - - is enough for administration. So he has not calculated that here. He was insisting me to do another clinic. I said, 'No, Joseph, I come at 8, go at 5 o'clock, the earliest, but still I cannot finish work. If I do so I will have to cut off or there's a risk to the patients'. So I tried to tell him, no, he was quite argumentative at that point and he said, 'No, you can do more clinics'. Actually,

until that time we never calculated our – we were not told, basically, what is our clinic time, what is face-to-face, what is not face-to-face, but because I'm coming at 8 o'clock and going 5 or sometimes even 7 o'clock I go home. Then I'm doing the hospital work, the work for the patients. So still he is telling that I'm not doing enough work, so that is why I got – I started talking to my colleagues and then they made like that. So going back to your question, the meeting was embarrassing because he was blaming for unnecessary reason.

PN364

So it's not just the fact that meetings were called, it's the content of them?---No, not at all. No, we have meetings almost every week, that is going on. Even now we have meetings.

PN365

So you would change your statement, at paragraph 1, on 447, that's not – to have a meeting, an individual meeting, is not creating problems, it depends on what the meeting discusses?---Yes, what the meeting discusses.

PN366

Content?---It was very – if I remember, according to the table he showed me, these meetings are very special and traumatising to all of us as purpose of the meeting was blaming, unreasonably, is correct.

PN367

Then the second part that you don't like is in point 2, which is your perception that he's not working hard enough on clinical work, effectively?---Yes, that is true.

*** WASANTHA PALAWELA

XXN MR RINALDI

PN368

Trying to escape from seeing patients?---That is true as well, yes.

PN369

So those are your two main beefs against Dr Tam, it seems. Three is really a subset of 2, different work pattern et cetera 'Expects us to do work to compensate that'?---Yes.

PN370

And the lack of a start and finish time is your point 4. You've been quite happy to attack Dr Tam, haven't you?---Not really. We don't want to attack him. I don't like that - - -

PN371

You've accused him of unethical behaviour?---Yes there were very unethical behaviour from the beginning. That is different but I don't think it is under the Commission review. We have raised some concerns about bullying and these things, with the then Chief Medical Officer, Dr John Alcock(?). We, four of us, including Dr Hassan, Verma myself and another VMO, Dr Amiljivier(?), the four of us we thought meeting regarding unethical behaviour that I think November 2021, if I can remember, maybe 2022, face-to-face meeting with Dr Alcock who immediately realised that there's wrong things happening and he – he controlled everything at that point. He was – he possibly has given instructions to Dr Tam

and immediately everything stopped. Then he silenced suddenly and he, after agreeing – he agreed to have another follow up meeting, Dr Alcock, follow up meeting with us, within a couple of months and we would give some feedback afterwards, but he never followed the meeting despite of me emailing him and things, it never happened, so, yes, that is unethical behaviour, which is a little bit under control, after Dr Alcock taking that immediate steps but they were temporary steps and further – never reviewed.

PN372

So that unethical behaviour that you're alleging was alleged bullying, was it?---Yes.

PN373

All right, and that was in 2021 or 2022?---No, 2020 – no, it is 2020, November, I think. Yes.

PN374

2020 November?---Yes.

*** WASANTHA PALAWELA

XXN MR RINALDI

PN375

All right. Was there a particular incident or just some things - - -?---No, it is multiple incidents. I don't know whether it is relevant or I can mention everything here because some of the things my colleagues remember. Main thing is like if you find something wrong with one consultant or colleague, telling to other person, in the corridors, just talking to others about, 'This person has done. What do you think?. If you were the consultant on call what would you be doing?', like that. And then - - -

PN376

So your criticism of him is that he's too open?---Yes, it is very open to and not to that relevant person, he will not tell – if I have done something wrong he will never come to me and tell, unless it is very serious, he will just – just will not talk to me but talk to somebody else and tell the story, everything, and without the name sometimes, sometimes even the name has been mentioned, but everybody knows, immediately, who he's talking about. That's one thing. Then the – when there was – I think when there was – there was this Sri Lankan registrar, I'm also from Sri Lanka, and one of our colleagues has given not good feedback or something and he asked me whether there's a fight between Sri Lanka and Pakistan.

PN377

Dr Tam did?---Dr Tam asked me whether there's any dispute, because he has not treated properly to that person. Like that, he's thinking - - -

PN378

Did you say that's unethical to ask that question?---Yes, I think so. It was - - -

PN379

So you've got an interesting definition about what's unethical. So you say bullying is unethical?---Yes.

PN380

Okay. And you've accused Dr Tam of other unethical behaviour, what you call unethical behaviour, haven't you?---Sorry?

PN381

You've accused him of what you would call unethical behaviour, in other respects, as well as the two you've mentioned, talking and asking that question about Pakistan and Sri Lanka, talking openly in corridors, bullying, that's what you said today, but you've also said, previously, other things that you allege he's engaged in unethical behaviour, have you not?---Yes, I think so.

PN382

And you've done it in your witness statement?---Yes.

PN383

At paragraph 14 through to 20, at page 451. You've got a heading, 'Unethical behaviour' that heading is not an accurate description of the matters in 14 to 20 of that statement, is it? It's an overstatement to call that unethical behaviour?---Sorry, can you clarify it please?

PN384

So if you have a look at the items you've listed under – in paragraphs 14 to 20, under the heading 'Unethical behaviour'?---Yes.

*** WASANTHA PALAWELA

XXN MR RINALDI

PN385

These things are not unethical behaviour. This is you, you've got a vendetta against Dr Tam, haven't you?---There are several other instances which I cannot recall everything because I did not think I had to expose these sins in here because our - - -

PN386

Because it's irrelevant to the dispute under the enterprise agreement that you've brought, and the questions for arbitration, isn't it?---Yes.

PN387

You've seen the question for arbitration?---No, arbitration is for the number of clinics and - - -

PN388

All that stuff under the enterprise agreement and the Fair Work Act?---Yes.

PN389

So tab 1, page 4, of that hearing book, those are the questions for arbitration, if you want to turn to those?---Sorry, page number?

PN390

Four?---Yes.

PN391

Right at the very beginning, tab 1. I don't know if that has tabs as such but, yes, page 4. That was – you've seen those questions for arbitration before, haven't you? They were agreed with Mr Ryan and yourself and Dr Verma and Dr Hassan?---Yes. Number 4, sorry?

PN392

Page 4?---Yes.

PN393

I'm asking you, you've seen those questions for arbitration, because that's what this case is - - -?---Yes. Yes.

PN394

None of those questions relate to bullying or unethical behaviour or talking in corridors or asking questions about Pakistan, do they?---No, no. Actually not. They we raised separately with Dr Alcock and he – he verbally said that that is – that is unacceptable and therefore he's putting appropriate control on that.

PN395

So getting back to page 451 please, Dr Palawela?---Yes.

*** WASANTHA PALAWELA

XXN MR RINALDI

PN396

Paragraph 14, having a non transparent, as you call it, consultant's leave roster, that's not unethical behaviour, is it?---That is what I mentioned actually about the leave roster, previously, because that is – I mean I will not go by the definition - - -

PN397

Is it unethical?--- - - - this is my – this is my view. He give the priority to himself or the Dr Goyadi, putting down other consultants. Even my own application has been rejected, leave application rejected, because at one occasion I remember because two paediatricians on leave already. But later Dr Halid, who is my room mate, Dr Halid Hassan was my room mate, he applied and he got the approval and he was showing me, okay, my one got approved, your one rejected. So this is – I think this is – I mean there is no reason to reject my one so he is biased actually.

PN398

So your complaint, in that regard, is not the system or the policy, it's how it's being applied by Dr Tan?---Yes.

PN399

You say he's biased against you?---Yes.

PN400

Okay. And you say that is being unethical, do you? So it's a serious allegation?---Yes, and the thing I have mentioned, number of other things, yes, I think it is unethical.

PN401

Okay. And the next one, calling you on the phone to discuss non urgent matters?---Yes.

PN402

Even at 11 pm, that's unethical is it, according to you? That's paragraph 15, page 451?---Yes, if it is something urgent – it is – it is unnecessary, rather, actually this – yes, I don't know in legal terms or - - -

PN403

You accept that's not unethical. It might be unnecessary but it's not unethical?---Yes.

PN404

Okay, 16, 'He also calls but avoids communicating by emails, about controversial or potential problematic issues, presumably to avoid documentation of evidence'. Can I respectfully suggest to you, Dr Palawela, that you're now entering into the world of conspiracy theories? You're speculating why he does things. You're saying he doesn't send emails and you're speculating as to why, do you accept that?---Yes, that was my personal feeling.

*** WASANTHA PALAWELA

XXN MR RINALDI

PN405

It's not unethical to not send an email, is it?---Yes, normally as a responsible clinical director or the professional it appears that he almost given my tiny things, he will send an email but if there is a controversial that something going to complain or something like that, he will just give a phone call and get a lot of information from me, or anybody else. I cannot tell about others, but asking me and get all that information, but nothing in writing. When I ask to – can you send an email he will never agree to send the email, he will say, 'No, no, we can discuss over the phone'.

PN406

So can we summarise your evidence, in this regard, as two things, one, you don't like the way he does his job?---Some of the time.

PN407

Two, you agree that what you just described, not sending an email when you would have expected one, is not unethical behaviour, is it, do you accept that?---Yes.

PN408

Thank you. Paragraph 17:

PN409

Occupying two rooms for offices while other consultants have only a shared office. One of those two rooms is actually a clinic room which was used to run clinics weekly in the past.

PN410

That might be logistical, it might be managerial, but it's not unethical, do you agree?---I think work ethics, I really don't know. Again, I will – I apologise for

that if there's any of the legal terms, if it is wrong, but I think it is – we talk about work ethics, I mean like appropriate – allocating appropriate resources for everybody to give a proper work pattern or to give the service to the community. But he's occupying two rooms and those rooms are just wasted. Sometimes – most of the time he's on leave or when he's on one office, working in one office, other office is wasted but we are sharing and now he has instructed us to empty the rooms to use as hot desks, because there are too many people we cannot allocate you the desk and the room even. So that is what is happening to us but he's occupying two rooms. One sharing with Dr Goyadi, the other one is himself. When he's on-call when he's on leave it is still keeping empty but we are running – we don't have rooms to conduct our clinics. So I think we call it work ethics. I mean that's what we, in general terms, but legally may not be ethical behaviour.

PN411

It's management of resources, isn't it?---Yes.

PN412

And it's not unethical, is it?---Yes, it is up to you, I think. It is up to you, I don't know – I did not go by the definition, whatever the definition, yes.

*** WASANTHA PALAWELA

XXN MR RINALDI

PN413

Criticism 18, criticism about consultants and other work colleagues with others. Again, you may not like that but it's not unethical, is it? He's too open with everyone, that's your complaint, would you agree?---I don't know how to answer these questions, I'm a little bit – it's the same question going again and again and I don't - - -

PN414

Because each of these allegations of unethical behaviour is not unethical behaviour, that's why I'm giving you the opportunity to respond to each of them and I'm putting to you that it's not unethical to criticise people with others. It might be something you don't like but it's not unethical?---Yes, I would be happy if it is discussed with the same person first, or in a constructive way, rather than putting that person in. It is sort of gossiping. I think it is, from a professional point of view, it is unethical.

PN415

You don't like his management style, in this regard?---Yes, that particular point, yes.

PN416

Not so much his ethics?---Okay.

PN417

That seems to be the case. It's not an ethical question, is it, it's a management question, do you agree?---Yes, okay. Yes.

PN418

Nineteen, 'Finger pointing during mortality and morbidity meetings'. Again, that's a management issue or a style issue, rather than an ethical issue, don't you agree?---Yes, okay.

PN419

And 20, 'Asking about if there's a problem between Sri Lanka and Pakistan', again, maybe that's a lack of geopolitical awareness or lack of perception or lack of tact, but it's not unethical, is it?---Yes, that is just to show the way he is thinking. If some colleague is responding in a professional way like giving the feedback to the colleague or preparing the report, he thinks it is – he thinks it is a geopolitical issue, that is why, not the – not the actual meaning of it. That is just to show that he – his thinking pattern. He thinks it is a geopolitical or any other – the personal issue, rather than professional way of feedback or professional way of reporting.

PN420

That's not something that's in conflict with the enterprise agreement, is it? The enterprise agreement doesn't talk about those issues?---I actually – sorry, my idea about the enterprise agreement is very limited.

PN421

Sure?---That is why I – this is why we discussed it with the Chief Medial Officer and the AMA. The AMA is aware about that but this is, basically, my freehand statement, nobody has edited or anything. Actually we did not have any legal opinion or anything, so this is my normal statement.

*** WASANTHA PALAWELA

XXN MR RINALDI

PN422

Okay, that's fine. What it is, though, 20, again, it's your not liking Dr Tam's management style but you would agree it's not unethical, is it?---Yes, maybe. Sorry.

PN423

Maybe you would agree with that, yes? Okay. Again, in your reply statement it's obvious that your main concern, your main gripe, your main beef with Goulburn Valley Health is Dr Tam's management. You don't like his leadership and that's apparent from your comment on paragraph 10, on page 490?---Four hundred ninety, yes.

PN424

This is your second statement, your reply statement?---Yes.

PN425

You don't like about how he's dealt with the orientation program, that's at point 10?---Basically, I went through his statements and Dr Wadhwa and mainly there was some incorrect statements in his reply so I just wanted to clarify those things, rather than highlighting this management – management – criticising his management or anything. I saw some incorrect or erroneous statements in his report, his reply to our – my statement and generally report everything, so I just tried to clarify what it is rather than giving any specific - - -

PN426

And the things that you emphasised were his management that you don't like, to do with orientation programs, 10(a); to do with failing to share the content he discusses in orientation with other consultants; to do with his leadership. There was a concern, from the very beginning, requiring all the consultants to meet Dr Alcock to discuss the concern, which you mentioned, at paragraph 16. Those are your main concerns in bringing this application through the AMA and ASMOF and in putting this response statement in, weren't they?---This is, as I said previously, Dr Tam's statement I have gone through and then I found some wrong things. Rather than focusing on whatever the things around arbitration the AMA asked us to go through the statement and, 'If you have any response just make a comment'. That is the purpose of the statement, rather than going more specifically, because, as I said, I – we – I did not go through exact points in front of the Fair Work Commission, sorry about that, but I just tried to answer to the reply by Dr Tam and Dr Wadhwa.

PN427

And your main concern in answering was to voice your disapproval of Dr Tam's management style, correct?---No, actually, I went one by one, whatever actually that Dr Wadhwa has not mentioned anything significant and I think there was some lawyer statement as well, which was very technical. But Dr Tam was criticising a lot of our statements and things, therefore there were so many incorrect areas just I tried to answer those, but I did not – as I said, I was not very specific about our discussion point or anything.

*** WASANTHA PALAWELA

XXN MR RINALDI

PN428

The best summary of your position, in respect of this matter and Dr Tam, is in the top paragraph, on page 494, it summarises your position really, that you perceive, third line, 'Dr Tam is biased and not transparent'?---Yes, that is true.

PN429

That's your perception, isn't it?---That is - - -

PN430

If it's not your perception you can tell me?---That is not only my perception, I think anybody how has worked in the paediatric department could - - -

PN431

I'm asking you about yours, that's your perception?---Yes, he is biased. He's not transparent.

PN432

And that's why you're not happy?---Not really. As I said previously, it is a much broader thing than this transparent or the management style or whatever, but I am worried about, at some point, we all have to leave and there won't be – I mean the services will be disrupted, I'm worried about that, basically.

PN433

You're managing your workload okay, aren't you?---With some difficulty at the moment because, as I mentioned a number of times in my statement, my working hours are excessive and he's asking to do more and he's immediately this, the Fair Work Commission finish, he will allocate more work, that is my impression, because he has mentioned that after this one is over the new clinic roster, the new – the on-call rosters will come. Even last week I met him and he said he's going to appoint six clinics to all the paediatricians but I heard that Fair Work Commission is still ongoing, therefore I am holding him to that at the moment.

PN434

That's you saying what he said last week?---Yes.

PN435

All right. And you've – you're employed as a full-time - - -?---Yes.

PN436

- - - paediatrician, so that's a 38 hour week?---Yes. Yes.

PN437

But you've also found time to do some weekend clinics at Mount Waverley Medical Services?---Yes.

PN438

And also some at Merrifield City Medical Centre?---Yes, that is on my weekends, yes.

*** WASANTHA PALAWELA

XXN MR RINALDI

PN439

On your weekends. And some of those have been on Fridays, have they?---Not Friday, Saturday, yes.

PN440

On Saturdays?---Yes. Friday afternoon also I have done some weekend, I'm in holidays, yes.

PN441

So Friday afternoons and Saturdays - - - ?---Yes.

PN442

- - - you've worked at Mount Waverley Medical Services and Merrifield City Medical Centre?---Yes.

PN443

Okay. And you didn't discuss that with Goulburn Valley Health, or any representative of Goulburn Valley Health?---No.

PN444

Thank you, Deputy President. Thank you, Dr Palawela.

PN445

THE DEPUTY PRESIDENT: Any re-examination, Mr Ryan?

PN446

MR RYAN: Yes, Deputy President.

RE-EXAMINATION BY MR RYAN

[12.09 PM]

PN447

MR RYAN: Dr Palawela, if I can take you to page 451 of - - -?---Four hundred?

PN448

And 51?---Yes.

PN449

There's a section there, titled 'unethical behaviour', and it's paragraphs 14 to 20. Now, Mr Rinaldi asked you lots of questions about that, the question I want to ask you is, how do you form a view as to what is ethical or unethical?---I basically, in the lay terms, I thought about I mean what is – what is acceptable, appropriate action by a professional to react or to question. So when it is accepted or within the generally acceptable terms I thought it is ethical, works ethics, I mean, but some of them are not, according to my judgment so that's why I thought it is unethical.

PN450

So this is a personal perception as to what he said you thought was unethical?---Yes.

*** WASANTHA PALAWELA

RXN MR RYAN

PN451

You are not an ethicist?---No, definitely not.

PN452

Thank you.

PN453

No further questions.

PN454

THE DEPUTY PRESIDENT: Dr Palawela, thank you very much for your evidence today, you're excused and free to go?---Thank you.

<THE WITNESS WITHDREW

[12.11 PM]

PN455

THE DEPUTY PRESIDENT: Dr Hassan's statement?

PN456

MR RYAN: We're relying upon the statement of Dr Hassan, but because he's not available for cross-examination I simply have addressed that in the final submissions as to what weight can or can't be given to it. I think that's probably the appropriate way to deal with Dr Hassan's statement as signed.

PN457

THE DEPUTY PRESIDENT: And given we've adopted the approach of treating the entire hearing book as one, I don't think we need to formally treat Dr Hassan's witness statement any differently.

PN458

MR RINALDI: I'm happy with that. I just thought it needed to be - - -

PN459

THE DEPUTY PRESIDENT: Yes. No, I was looking for that.

PN460

MR RINALDI: And certainly I agree it's a matter for submissions and obviously our submission would be, it hasn't been tested by cross-examination and it's of very little weight.

PN461

THE DEPUTY PRESIDENT: Yes.

PN462

MR RYAN: That concludes the applicant's evidence in the matter. If there's nothing else, Deputy President, I think that my email to chambers this morning, saying that we will easily get through the witnesses and the final submissions on the second day is going to be very, very true.

*** WASANTHA PALAWELA

RXN MR RYAN

PN463

THE DEPUTY PRESIDENT: All right. I actually intend to move into a brief conference before adjourning so we'll go off the record and I'll just ask for just the representatives to remain. So we'll cease recording now.

OFF THE RECORD

[12.12 PM]

ADJOURNED INDEFINITELY

[12.13 PM]

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