DECISION

Fair Work Act 2009
s.789FC - Application for an order to stop bullying

Terrence Mahoney
(AB2025/1051)

DEPUTY PRESIDENT LAKE BRISBANE, 13 MARCH 2026

Application for an FWC order to stop bullying – bullying did not occur at work – none of the allegations against the named individuals demonstrate unreasonable behaviour – application dismissed

[1] On 16 December 2025, Mr Terrence Mahoney (the **Applicant**) made an application to the Fair Work Commission (the **Commission**) seeking stop bullying orders against Telstra Corporation Limited (**Telstra**), his employer, and two named individuals, Mr Josh Leigh and Ms Tamora Wells (**Persons Named**).

[2] Telstra raised jurisdictional objections that the Applicant was not "at work" when the alleged bullying occurred and that the alleged bullying was reasonable management action.

[3] For reasons outlined below, I have accepted Telstra's submission that the Applicant was not at work when the alleged bullying occurred.

[4] However, I have also found that the Applicant was not bullied because none of the incidents he describes demonstrate unreasonable behaviour, let alone repeated unreasonable behaviour. In fact, the Applicant has repeatedly behaved unreasonably towards his manager, Mr Leigh. If anyone is in a position to make a claim of workplace bullying, it is Mr Leigh.

Background

[5] The Applicant has worked for Telstra for 36 years.

[6] In September 2024, the Applicant sustained a work-related psychological injury. Following the injury, initially the Applicant was worked full time, with reduced duties. The Applicant then commenced working three days a week. The Applicant was then on leave for approximately two months.

[7] In February 2025, the Applicant returned to work, working three days a week.

[8] In early April 2025, the Applicant's treating practitioner reportedly recommended that the Applicant temporarily remove himself from the workplace while he commenced

medication. The Applicant has been certified as wholly incapacitated for work since 23 April 2025.

[9] The Applicant outlines 15 “incidents” which he says are bullying. I have considered each of those incidents below. The incidents primarily relate to a dispute process relating to the Applicant’s performance assessment for the 2024/25 performance year.

[10] For context, I have outlined the performance review process below as it relates to this application.

[11] Under Telstra’s enterprise agreement, Job Family employees, including the Applicant, receive fixed remuneration and are also eligible for a Short-Term Incentive, which is given the unfortunate acronym of STI.

[12] The STI payment is based on company results and individual performance. The employee’s individual performance is used as a multiplier to calculate payments. Employees are rated on a scale from 1 to 5 (with 5 being the highest). Employees who receive a rating of 1 receive no STI payment. Employees who receive a rating of 2 and above receive an STI payment.

[13] For the performance review process for the 2024-25 period, which took effect on 1 October 2025, the Applicant’s performance was rated as a 3. A rating of 3 means that the employee is rated as consistently delivering on objectives and key results each quarter. Telstra advised that the reason for the rating of 3 was that the Applicant had been absent for three quarters of the year. Telstra stated that it is their policy to give employees a rating of three when they have been on extended leave such that their performance is unable to be assessed. The same approach is taken for employees on parental leave, for example.

[14] The Applicant received an STI payment of $29,876.05 with a rating of 3.[1] The Applicant seems to believe that he should have been rated at a 4. This is, in my view, an astounding assertion by the Applicant. The Applicant has received a substantial bonus notwithstanding his absence. Why should the Applicant be rated as having met goals each quarter when he was absent for almost three quarters of the year? In any event, it is not necessary for me to determine this issue, as that is the subject of a general protections application.

Alleged incidents

Incidents 1, 2 and 3

<u>Teams exchange on 7 April 2025</u>

[15] The Applicant sent four lengthy messages to Mr Leigh via Microsoft Teams on 7 April 2025.[2]

[16] In those messages, the Applicant advised that his illness has now “progressed into chronic depression”. The Applicant said he would be commencing “full time sick leave” soon.[3]

[17] The Applicant thanked Mr Leigh for investigating how the performance review process would apply.[4] The Applicant told Mr Leigh that he felt the method of assessing his performance proposed by HR was "not fit for purpose".[5]

[18] The Applicant stated that his medical team advised that he should not participate in the performance review process, and he asked how that process would now be handled.[6]

[19] At the time of his messages, the Applicant was taking sick leave rather than workers' compensation payments to avoid a loss of take home pay. The Applicant then said "the only way to get that loss of remuneration back is if I launch a civil law claim. This has to be done within a certain timeframe. I have a very strong case but I fear going though that process would only exasperate my condition".[7]

[20] The Applicant had 255 days of accrued sick leave.[8] He asked if his sick leave could continue on a discretionary basis after those accrued days were exhausted. As there are approximately 250 working days in a year, the Applicant was effectively asking what would happen in more than a year's time.

[21] Mr Leigh replied to the Applicant on 7 April 2025 with the following:

> Hi Mahoney, Terry - Thank-you for sending all of this through to me. I really appreciate all of the detail you have supplied and I really wish you all the absolute best at all times and hope you can start to feel like you are recovering in line with how you hope to feel.
>
> Thank-you also for sending through your queries above. I will take them away and come back to you with answers. As I am sure you can imagine, there hasnt to date been a quick answer to some of the more complex questions so l will need to go to HR and the return to work team and to my leaders to ask for some guidance and direction and then come back to you with some answers. I will be on leave for 2 weeks over Easter and Anzac Day break so will need to get back to you later in the month when I return but I will kick off the queries to the relevant teams now to aim to get an answer before you go on the sick leave you mention above.
>
> If you would like to catch up 1:1 at all please do let me know. As always, please know we want to do whatever we can to support you and help you along your recovery journey.[9]

[22] The Applicant replied with:

> Thanks so much Josh, I really appreciate yours and everyone's help. <u>There is no super rush on any of those, so take all the time you need and as l said don't feel like you have to go against any process or policy to get answers that may suit me but not the business</u>. I just was seeking some clarity as the policies seem a bit loose. I don't hold you personally responsible for any answers you get. You are just representing the company in your current role. I know you are a deeply empathetic and caring leader and I really appreciate it. Enjoy your time off.:)[10]
>
> (emphasis added)

<u>Follow up on 14 May and 25 July 2025</u>

[23] The Applicant sent Mr Leigh two follow up messages via Teams on 14 May and 25 July 2025 enquiring into the status of his queries.[11] The Applicant says that Mr Leigh's failure to reply was unreasonable.

[24] Mr Leigh explained that the reason why he did not reply in a timelier manner is because he was taking advice from HR on his responses. Knowing the Applicant was on leave, Mr Leigh did not want to provide a reply to the Applicant unless he was sure it was correct. Mr Leigh also noted that the Applicant is a longstanding employee who was employed, at one point, under an Australian Workplace Agreement (**AWA**) and has since been covered by many instruments, some of which may preserve previous leave entitlements. As a result, there is complexity in answering questions regarding the Applicant's ability to take discretionary sick leave – the employer had to look at the predecessor instruments in order to determine the Applicant's entitlement.

[25] On 30 July 2025, the Applicant received an email from Ms Tulika Chatterjee.[12] That email confirmed that the Applicant would be assigned a rating of 3 for the 2024/25 performance year. Ms Chatterjee explained the Telstra processes where an employee is on extended leave:

> …in line with the process, Telstra considered the events during the performance (including your leave absences), and in this regard, we were unable to evaluate your performance throughout the year. Where performance is unable to be evaluated in these circumstances, the employee's rating is assigned as a 3. (refer to the graph below)…
>
> Once again, I confirm that the 3 rating is not a reflection of your performance.
>
> I am happy to discuss this with you in more detail should you wish or happy to answer any questions via return email.[13]

Incidents 4, 5, 7 and 8

<u>31 July 2025 meeting</u>

[26] The Applicant attended a Teams meeting with Mr Leigh and Ms Chatterjee.

[27] The Applicant took notes of the meeting which he produced in evidence.[14] The Applicant apparently started by saying that he was going to ask "uncomfortable questions" and asked Mr Leigh and Ms Chatterjee if they were okay with that. The questions which the Applicant wrote down mostly relate to the Applicant's questions to Mr Leigh and why they were not responded to. The Applicant's notes list approximately 20 questions which he asked Mr Leigh and Ms Chatterjee. He did not record their answers in those notes.

[28] During this meeting, the Applicant was given the opportunity to ask questions about his performance rating of 3. The Applicant stated that during this meeting, Mr Leigh declined to seek confirmation from HR as to whether the policy for assessing performance also applied in situations of workers compensation leave.[15] The Applicant states that Mr Leigh agreed that the Applicant could contact the relevant HR person directly and Mr Leigh suggested that any future communications should be via email rather than Teams.[16]

[29] The Applicant also asked Mr Leigh about accessing preserved sick leave entitlements under his previous AWA. The Applicant alleges that Mr Leigh "declined to take ownership of this question and stated that it was the responsibility of Telstra Rehab and HR, and that I should raise it with them directly".[17]

[30] Mr Leigh recalled that the Applicant was aggressive during the meeting on 31 July 2025.[18] He later described this behaviour for the purpose of an independent medical examination briefing.

[31] The Applicant sent an email to Mr Leigh and Ms Chatterjee after the meeting recording his "key takeaways".[19] The Applicant noted that Mr Leigh stated he had been advised by the Rehab team not to contact the Applicant and that this was the reason Mr Leigh had not responded to the Applicant's Teams messages.

1 August 2025 emails

[32] On 1 August 2025, Mr Leigh replied to the Applicant confirming his summary of the meeting. Mr Leigh said:

> Hi Terry,
>
> Thanks for your time yesterday. To confirm, the session organised was to explain the way in which your rating was determined.
>
> My summary of our session is as follows:
> - We advised your rating was determined as NA due to extended leave however as per the HR policy in this situation we are to enter a rating 3 and ensure the comments reflect the NA situation. This has now been completed.
> - We advised we sought direction from HR on how to complete your annual performance review for FY25.
>
> In regards with the lack of reply to the 2 Teams messages - I would ask if you can please send emails with any queries you have for me as the Chapter Type Lead of Tech Delivery as I can receive in the region of 50 Teams messages a day and find it difficult to reply to all of them meaning some can get lost in the list and drop off my radar within a couple of days. We did not intentionally avoid reply to your messages however some of the questions were quite complex and we have sought direction from HR ahead of Annual Performance Review rating delivery and as such reached out this week to give you an update. I have been in conversations with Nathan in the rehab team for updates on your situation and we did discuss your contact arrangements with Telstra but there was no direction given to not respond to you - Apologies if that was not made clear in the call.
>
> I will come back to you next week Terry on the next steps on clarification of your sick leave and your annual performance review.[20]

[33] The Applicant said that Mr Leigh "altered the narrative" through this email in the following ways:

- providing a different explanation for why he had not followed up on his 7 April 2025 commitment, stating that Telstra Rehab had not told him not to contact me (while apologising for any confusion caused by what he had said in the meeting). He instead stated that the Teams message had been missed due to volume, that he preferred email communication, and that the questions were complex; and
- stating that he would now follow up the questions regarding extended leave and AWA sick leave entitlements, without acknowledging that he had declined to do so in the meeting the previous day and had directed me to pursue them myself.[21]

8 August 2025 emails

[34] On 8 August 2025, Mr Leigh reverted back to the Applicant via email. The Applicant was upset that Ms Chatterjee had not been included in that email as she was a "witness" to what was said in the meeting on 31 July 2025. The Applicant described Mr Leigh's behaviour as "changing and expanding the narrative". This is a melodramatic characterisation of what is a very benign email. Mr Leigh's email of 8 August 2025 states:

> Hi Terry
>
> Thank you for meeting with Tulika and I on 31 July 2025 to discuss the rating applied to you for the 2024/2025 review period.
>
> In the discussion you advised that you wished to dispute the 3 rating, which I again confirm was provided as a result of the business being unable to evaluate your performance throughout the year. Where performance is unable to be evaluated in these circumstances, the employees rating is assigned as a 3.
>
> I agreed to discuss your concerns with HR and I have sought relevant guidance on next steps as result of you wishing to dispute your rating and in line with process, if you wish to proceed in disputing the rating the next steps are to submit your dispute via the Internal Resolution Process. AskUs - Internal Resolution Policy (IRP) - Australia
>
> You also asked me to provide details of a HR representative for whom you can discuss the above with. I have clarified that all communications regarding Annual Performance Review or sick leave queries must come through me and I will in turn seek answers from HR as necessary.
>
> In summary, and in line with Stage 1 of the process, please complete the document and email it to me so I can also complete the document and schedule a time to discuss in an effort to resolve your dispute.
>
> Further information on the Annual Review process AskUs - Annual Performance Review (APR)
>
> Thanks Terry, I will await receipt of the completed form to then schedule a time to discuss further.
>
> In regards with your query on sick leave - Can you please send me an email with what you would like specifically queried with HR and I will submit a request to clarify.[22]

[35] The Applicant replied on 8 August 2025 with the following:

> Hi Josh, below is not an accurate description of what was said in the meeting. Tulika should be able to validate this as my Chapter Lead and having witnessed the conversation.
>
> I wrote notes as we went along. As I said to you both in the call. With my mental health injury, I have to very deliberate and careful about how I approach conversations. To this point I had written out what I was going to say and ask during the call and had run through it completely with my psychologist that morning.
>
> When you joined the call, you apologised for the lack of communication for the last few months. I thanked you for that as it seemed out of character with how I thought you would behave. I said that was one of the things I was going to ask about later. I then asked you if someone had asked you not to contact me. You said Nathan had said I was in a no contact mode. I said that made sense now of why you didn't respond to the messages in chat in April. May and July when you had given an undertaking that you would.
>
> I said Nathan had misinterpreted and miscommunicated many items over the months and this was another, as I had never said I was to have no contact. I then shared this email artefact with you after the call, along with the key takeouts. You responded saying Nathan had not directed you to not contact me and you apologised if you didn't make that clear during the meeting. It is very strange that this was addressed the

next day, rather than during the conversation when we spent 5 minutes on it and you were very clear in what you saud. In your response you then also said you didn't respond earlier as you had possibly lost it in chat and that likely wouldn't have lost it if it had of been in email. I don't know why you didn't ask for it in email at the time if that was your preferred method, As you committed to get back to me in the medium I used. You could have addressed that concern then.

You say in this email that I said I wanted to dispute my rating. I never said that and in fact I said the opposite. I said I am going to ask some uncomfortable questions. Are you both ok with that. I said we can stop the call there if you are not. You both said yes.

I then said I want to alleviate any concerns here for you both, I am just seeking clarification. I am not going go any further than this call as, I am not going to use the dispute process.

You then interrupted my questions and took me through how you reached out to HR and they looked at my Sick Leave in Workday and decided it fitted under the extended leave policy in regards to eligibility for Annual Review.

I then asked you if the HR consultant knew if it was sick leave for a work injury as opposed to personal sick leave, as they both appear the same in Workday.

I said this is very relevant as it isn't clear that workers comp sick leave is included in that policy. I also said could you ask the HR consultant this and also if it is included in the policy, is the policy fit for purpose as every person should have a fair opportunity to achieve the best rating they can over the year and this was denied to me via a work injury when liability has been accepted for that injury and through no fault of my own I was unable to work at my full capacity

You say below that you agreed in the meeting to ask this of the HR consultant. You in fact did the opposite. You said you wouldn't go to HR as the decision had already been made. You also said that you presumed the HR person knew I was on workers compensation sick leave.

I then asked if I could have the HR consultants details, so as I could contact them and ask them the above questions. You said yes you would do that.

I then asked you about your answer to my question on Sick Leave under AWA, which had been asked many months earlier. I explained that I had taken very little sick leave in my 35 years. I said HR did an audit which the system could only go back 5 years. I said that the audit produced a report that showed I had only taken 2 days of sick leave in that 5 years prior to my workers compensation sick leave.

I said to you that I was on an AWA contract for many years and one of the aspects of AWA was it stopped accumulating Sick Leave during the time people were on AWA as it became at the managers discretion to grant sickleave.

I said as part of agreeing to come off the AWA contract it was a policy from Telstra that it would remain a managers discretion to approve extra sick leave for an ex AWA employee. This is to make up for the sick leave not accrued in Workday and any more thought worthy. I said in the policy you are responsible for that decision.

You said no, that is all through Nathan, Tanvi and HR.

I said ok, I will create a chat of yourself, Tulika, Tanvi, Nathan and the HR consultant and ask all of these questions to all, as the last 10 months everyone has been pointing to someone else. You then said could I make it an email rather than a chat as you get can get too busy in chat.

I said OK.

I wasn't going to dispute the rating at this time but now you have asked me to, I will fill in the form[23]

[36] The Applicant says that Mr Leigh's email of 8 August 2025 had changed the narrative in the following ways:

- The Applicant says he had never intended to dispute the rating, he only wanted to ask "uncomfortable questions";
- Mr Leigh asked the Applicant to send queries through him instead of going directly to HR;
- Mr Leigh asked the Applicant to put the Applicant's question about his sick leave in an email where the Applicant felt he had already explained the issue in his earlier Teams messages; and
- Mr Leigh did not include Ms Chatterjee on the email, "excluding" her as a "witness".[24]

Incidents 6 and 9

Change to reporting line

[37] The Applicant's reporting line was changed to Mr Leigh on 4 August 2025. Previously, the Applicant's line manager had been Ms Chatterjee.

[38] The Applicant said it was bullying for his direct manager to be changed without informing him.

[39] On 12 August 2025, Mr Leigh informed the Applicant that he would now be reporting directly to Mr Leigh. Mr Leigh explained to the Applicant that this would take some load off Ms Chatterjee, who was a new manager. Mr Leigh noted that if the Applicant returned to work, he would be assigned back to a chapter lead.

[40] Mr Leigh gave evidence that Ms Chatterjee was a new manager who had only been in the role for a few months and "to protect her health" Mr Leigh made the decision for the Applicant to report directly to him.

Incident 13

[41] Though incident 13, as it is titled by the Applicant, is canvassed later in his submissions, it takes place chronologically following incident 6 and 9.

[42] On 27 August 2025, the Applicant emailed Mr Leigh to ask if Mr Leigh had an answer regarding accessing discretionary sick leave.

[43] Mr Leigh advised the Applicant that the sick leave balance showing in the internal system was correct and if the Applicant believed that balance was not correct, he should raise a query though the internal "AskUs" HR system.[25]

[44] The Applicant replied to Mr Leigh stating:

> "In regards to my Sick Leave and AWA, can you let me know what was asked and what was responded. For some reason; after many attempts to ask you the question you do not seem to have represented the issue correctly."[26]

[45] Again, Mr Leigh suggested that the Applicant raise a request through AskUs.[27]

[46] The Applicant responded to Mr Leigh with:

> "The questions I asked about Sick Leave and AWA were specific to my managers decision, which now is you. Can you please follow this up with the specifics of what has been asked and revert with your decision. I shouldn't have to ask these questions so many times, over such a long period of time."[28]

[47] I pause at this point to note that the Applicant has stated that he remained polite and respectful throughout the review process. The Applicant's passive aggressive and disrespectful response to Mr Leigh on 27 August 2025 demonstrates to me that that is not true. The Applicant's remark that "I shouldn't have to ask these questions so many times, over such a long period of time" is particularly egregious given, at the time, Mr Leigh was his direct manager.

[48] Nevertheless, Mr Leigh replied in a polite manner. He said: "In regards with your personal (sick & carers) leave - your total personal leave remaining is 1195.61 hours. Any further decisions on your paid personal leave beyond this amount as an ex AWA employee will be decided if you exhaust all of your current personal leave. I will not be making any decision on this until closer to that time".[29]

Incidents 10, 11, 12

[49] Following his email of 8 August 2025, the Applicant initiated an internal review process regarding the STI payment.

<u>Meeting on 29 August 2025</u>

[50] As part of the internal review process, the Applicant attended a meeting with Mr Leigh on 29 August 2025. Mr Leigh told the Applicant that he was surprised the Applicant was challenging the rating of a 3 when the Applicant had chosen not to participate in the performance review process. The Applicant was offended by the assertion that he "chose" not to participate, as he was advised by his medical team not to participate.

[51] The Applicant also states that Mr Leigh misrepresented the review process. Mr Leigh told the Applicant that if the matter did not resolve at stage 1, the next step was for the matter to go to HR. The Applicant said he asked Mr Leigh to check the process and Mr Leigh reportedly declined to do so.

<u>1 September 2025 email</u>

[52] Following the meeting on 29 August 2025, the Applicant checked the review process and emailed Mr Leigh. The Applicant provided a screenshot of the review policy stating that Mr Leigh may have overlooked Step 5.

[53] On 1 September 2025, Mr Leigh emailed the Applicant as follows:

> Hi Terry,
>
> As per previous communications - I have moved you to report directly to me for an interim period to reduce some workload from Tulika who is a new Chapter Lead and also as I am being asked to attend and be the lead for your ongoing workers compensation case. When your return date is confirmed I will move you back into a chapter with a Chapter Lead. For the IRP - Tulika is the initial decision maker for the rating and is fully aligned. I am the 1-up.
>
> Are you requesting a session with Tam (Tulika's 2-Up) to discuss your IRP?
>
> Can I also please confirm if you would like [name redacted] cc'd on all communication? I understand [name redacted] attended the Stage 1 IRP as a support person but need confirmation if you would like [name redacted] cc's on emails.[30]

[54] The Applicant then replied confirming he would like a meeting with Tam, who is Tamora Wells, the second named person in this matter.

[55] The Applicant claims that Mr Leigh's email was incorrect and "There was no acknowledgement or apology from Josh for having been incorrect about the policy on multiple occasions."[31]

[56] The Applicant stated that he wanted Ms Chatterjee to attend the meeting as she had "first hand knowledge" of the way the Applicant had been treated during the PRDP process. Mr Leigh confirmed that he made the decision for Ms Chatterjee to not be involved in the meeting.

<u>2 September 2025 emails</u>

[57] On 2 September 2025, Ms Wells emailed the Applicant stating that she was happy to meet with the Applicant and Mr Leigh and stated that she would organise the meeting.

[58] The Applicant responded with:

> Thank you Tam,
> If we can allow an hour please. This is not a money issue, although I think I have very fair questions about the rating process, this is more about how I have been treated.
> Anyone after 4pm today or between 11 am and 3pm tomorrow would suit me.[32]

[59] Ms Wells did not respond to the Applicant's email and did not schedule the meeting.

[60] The Applicant said he felt "devastated" by Ms Wells not scheduling the meeting.

[61] Ms Wells gave evidence during the determinative conference, which I accept, that her lack of response was not intentional. She explained that she gets a lot of requests for meetings in the period following the delivery of the performance review outcomes. She explained she was in back-to-back meetings that afternoon. She has an executive assistant who schedules

things for her, but in this case, it slipped through the cracks. Ms Wells said that normally if she had not responded to somebody, they would email her again or send a Teams message. The Applicant did not follow up with Ms Wells regarding the meeting. Instead, he named her in a bullying complaint on 9 October 2025.[33]

Incident 14

[62] On 24 October 2025, Mr Leigh, as part of a request for information for an independent medical examination (**IME**) briefing, provided his view of events. That email was not copied to the Applicant and the Applicant only found out about what was said later during the IME, it seems.

[63] Mr Leigh described the Applicant as having been argumentative during the meeting on 31 July 2025. He said that the Applicant asked complex and specific questions during the meeting which Mr Leigh and Ms Chatterjee could not answer at that time. Mr Leigh described the Applicant becoming agitated when advised that his questions could not be answered at that time, causing Mr Leigh to end the meeting after 15 to 20 minutes.

[64] Mr Leigh stated that due to the behaviours exhibited by the Applicant in the meeting, along with the fact that Ms Chatterjee was new in her role and was inexperienced in dealing with complex situations, the decision was made for the Applicant to report directly to Mr Leigh.

[65] Mr Leigh further described the Applicant as being aggressive during the meeting on 29 August 2025.

[66] Mr Leigh stated that the Applicant had not submitted a request for Stage 2 review and that the Applicant had missed the deadline for escalation.

[67] The Applicant asserts that Mr Leigh's email, which again was part of an IME briefing and was not copied to the Applicant, was misleading and incorrect. The Applicant also complained that he was not given an opportunity to reply to those assertions.

Incident 15

[68] The final incident involved Mr Leigh emailing the Applicant about the AWA sick leave question he had asked about previously.

[69] Mr Leigh emailed the Applicant on 27 November 2025 as follows:

> Dear Terry
>
> Following on from our previous discussions, and your most recent request for further clarification in relation to your request for paid discretionary leave to support potential ongoing absences from work due to illness, I wish to confirm the following;
>
> - Under our current Personal Sick/Carers leave policy, employees are entitled to 15 days of paid personal leave per year, which accrues annually. Once this entitlement is exhausted, additional leave may only be taken as unpaid leave or through other approved leave types such as annual leave, subject to manager approval.

> - For employees previously covered under AWA agreements, any discretionary paid leave provisions were specific to those agreements and do not apply under current arrangements, unless explicitly stated in your AWA termination documentation. As outlined in our current policy, ex-AWA employees who have exhausted all of their accrued paid Personal Leave may be granted additional paid Personal Leave at their People Leader's discretion, provided that the entitlement is referenced in the letter provided on termination of their AWA.
>
> In this regard, and as outlined above, Telstra is not obligated to provide discretionary paid leave under the arrangements outlined above. In saying this, as you currently have paid sick leave available, we will revisit your request once this entitlement has been fully exhausted.
>
> I hope this clarifies your query.

[70] The Applicant said that Mr Leigh's email was "unsolicited" and that it "re-triggered" the issue which had already been addressed on 27 August 2025 in a way that "caused significant psychological harm".

[71] I put to the Applicant that he had previously complained that Mr Leigh was not communicative enough and was now complaining about the opposite, that Mr Leigh was too communicative in proactively following up on the Applicant's query. The Applicant did not see the irony. He maintained that Mr Leigh behaved unreasonably in both situations.

Not at work objection

[72] Telstra objected to the application on the basis that the Applicant was "not at work" during the relevant period. During all of the incidents described above, the Applicant was on leave with an accepted workers' compensation claim.

[73] The Act does not define what "at work" means in the context of a bullying application. The leading authority on the meaning of "at work" in the context of s.789FD(1) of the Act is *Bowker v DP World Melbourne Ltd* [2014] FWCFB 9227 ('*Bowker'*). The Full Bench held in *Bowker*:

> [48] We have concluded that the legal meaning of the expression 'while the worker is at work' certainly encompasses the circumstance in which the alleged bullying conduct (ie the repeated unreasonable behaviour) occurs at a time when the worker is 'performing work'. Further, being 'at work' is not limited to the confines of a physical workplace. A worker will be 'at work' at any time the worker performs work, regardless of his or her location or the time of day. As we have mentioned, the focal point of the definition is on the worker (ie the applicant). The individual(s) who engage in the unreasonable behaviour towards the worker need not be 'at work' at the time they engage in that behaviour.
>
> [49] While a worker performing work will be 'at work' that is not an exhaustive exposition of the circumstances in which a worker may be held to be at work within the meaning of s.789FD(1)(a). For example, it was common ground at the hearing of this matter that a worker will be 'at work' while on an authorised meal break at the workplace and we agree with that proposition. But while a worker is on such a meal break he or she is not performing work. Indeed by definition they are on a break *from*

the performance of work. It is unnecessary for us to determine whether the provisions apply in circumstances where a meal break is taken outside the workplace.

[50] In our view an approach which equates the meaning of ‘at work’ to the performance of work is inapt to encompass the range of circumstances in which a worker may be said to be ‘at work’.

[51] It seems to us that the concept of being ‘at work’ encompasses both the performance of work (at any time or location) *and* when the worker is engaged in some other activity which is authorised or permitted by their employer, or in the case of a contractor their principal (such as being on a meal break or accessing social media while performing work).

[52] As noted in the Workplace Bullying Report, workplace bullying manifests itself in a diversity of circumstances and it is appropriate that we take a cautious approach to delineating the boundaries of what is meant by the words ‘at work’ in s.789FD(1)(a). It is preferable that the approach to this issue develop over time, on a case by case basis.

[53] In most instances the practical application of the definition of ‘bullied at work’ in s.789FD will present little difficulty. But there will undoubtedly be cases which will be more complex, some of which were canvassed during the course of oral argument. For example, a worker receives a phone call from their supervisor about work related matters, while at home and outside their usual working hours. Is the worker ‘at work’ when he or she engages in such a conversation? In most cases the answer will be yes, but it will depend on the context, including custom and practice, and the nature of the worker’s contract.

[74] In support of the objection, Telstra referred to the decisions of *Re Whitnall-Comfort* [2024] FWC 2767 and *Mrs Angelina Gimena* [2025] FWC 3257. The latter decision of Commissioner Connolly involves a different issue in my view. In that decision Commissioner Connolly was satisfied that there was no future risk of bullying and dismissed the application under s.587(1)(c) on that basis.

[75] Although the Applicant was engaging in a Telstra dispute process, and corresponding with managers on that basis, I am not satisfied that the Applicant was “at work” when the alleged bullying occurred. The Applicant was not performing work in this period. He was also not, in my view, engaging in an activity which was “authorised or permitted by their employer” such as the meal break example given in *Bowker*. The Applicant, of his own volition, decided to initiate communication with Mr Leigh while the Applicant was on leave. The Applicant also, voluntarily, participated in an internal review process. He was not directed by the employer to engage in these communications and processes. The Applicant was later sent to an IME (presumably he was directed to attend) but that action by the employer does not form part of the Applicant’s bullying claim.

[76] If I am wrong and the alleged bullying occurred while the Applicant was “at work” then I would still dismiss the application. For the reasons outlined below, none of the 15 incidents of alleged bullying amount to unreasonable behaviour. Therefore, the Applicant has not been bullied within the meaning of s.789FD of the Act.

Consideration

[77] The Applicant seems to believe that any action by a manager which he does not like is bullying. That is not what bullying is.

[78] Prior to the determinative conference, before the Applicant filed his evidence, I referred the Applicant to Vice President Hatcher's (as His Honour then was) decision in *Application by Mac* [2015] FWC 774 and provided the Applicant with an extract of that decision at [99]:

> [99] Ms Mac's case involved the proposition that Ms Hester, Ms Van Den Heuvel, Mr Thompson, Ms Locke and Ms Newman had bullied her at work - that is, either individually or as a group had repeatedly behaved unreasonably towards her - in placing her on a PIP and in commencing to implement the PIP. However the overall nature of Ms Mac's case in this respect was somewhat elusive. It was not suggested by her that the identified individuals were acting with malice or sinister intent, or had conspired in some way to cause detriment to Ms Mac. During a longueur in the hearing, I attempted to draw up a list of the features at least some of which one might expect to find in a course of repeated unreasonable behaviour that constituted bullying at work. <u>My list included the following: intimidation, coercion, threats, humiliation, shouting, sarcasm, victimisation, terrorising, singling-out, malicious pranks, physical abuse, verbal abuse, emotional abuse, belittling, bad faith, harassment, conspiracy to harm, ganging-up, isolation, freezing-out, ostracism, innuendo, rumour-mongering, disrespect, mobbing, mocking, victim-blaming and discrimination</u>. However no instance of behaviour of this nature has been alleged against Ms Hester, Ms Van Den Heuvel, Mr Thompson, Ms Locke or Ms Newman in the Points of Claim. Although Dr Jetnikoff's report, from which I have earlier quoted, indicated that Ms Mac had reported to him some perception on her part of victimisation and targeting by Ms Van Den Heuvel, that did not feature in the evidence that Ms Mac gave at the hearing.
>
> (emphasis added)

[79] Clearly the Applicant either did not read this passage or read it and decided to ignore it. There was no identification of any of the behaviours listed by Vice President Hatcher in *Application by Mac* [2015] FWC 774.

[80] In summary, the conduct described by the Applicant said to amount to bullying is as follows:

- Mr Leigh did not reply to the Applicant's Teams messages after the Applicant had told Mr Leigh to "take all the time you need".
- Mr Leigh said the Applicant should raise his query regarding any preserved sick leave entitlements with HR and then stated that he would follow up with HR directly and that queries should be directed to Mr Leigh.
- Mr Leigh gave the Applicant differing reasons for why he did not reply to the Applicant's Teams messages in the meeting versus over email.

- Mr Leigh did not copy in Ms Chatterjee on an email.
- Mr Leigh said the Applicant disputed his rating when, according to the Applicant, he only disputed the process and policy behind that rating.
- Mr Leigh asked the Applicant to put his query regarding the preserved AWA sick leave entitlements in the form of a question.
- The Applicant's line manager was changed without the Applicant being informed beforehand.
- Mr Leigh told the Applicant that any decision regarding accessing preserved sick leave entitlements would be made once the Applicant had exhausted his accrued sick leave entitlements.
- Mr Leigh said that the Applicant chose not to participate in the PRDP process.
- Mr Leigh told the Applicant that step 2 of the review process was to go to HR.
- Mr Leigh told the Applicant that he had decided that Ms Chatterjee would not be in the IRP meeting.
- Ms Wells failed to schedule a meeting with the Applicant after saying that she would.
- Mr Leigh sent an internal email, for the purpose of an IME briefing, describing the Applicant's behaviour in the meetings on 31 July 2025 and 29 August 2025 as "aggressive". Mr Leigh also said that the Applicant had not submitted a request for a Stage 2 review and had missed the deadline for escalation.
- Mr Leigh provided the Applicant with a detailed response regarding his AWA sick leave query. The Applicant said this was "unsolicited" despite having previously complained about Mr Leigh not "taking ownership" or answering his questions on that issue.

[81] As can be seen in the summary above, Ms Wells is only involved in one instance of alleged unreasonable behaviour. The Applicant has not demonstrated that she engaged in "repeated" unreasonable behaviour. Therefore, she has not bullied the Applicant. Further, the Respondent's representative said that if failure by a manager to reply to an email constitutes bullying, then every busy manager in Australia can be found to have engaged in bullying. I agree. Ms Wells' failure to reply does not meet the threshold of unreasonable behaviour.

[82] In *Application by Mac* [2015] FWC 774, Vice President Hatcher provided the following useful observations about when conduct is "unreasonable" at law:

> [90] The second observation is that unreasonableness and its converse, reasonableness, are familiar legal concepts applicable in a range of diverse contexts. In *Giris Pty Ltd v Federal Commissioner of Taxation*. Windeyer J said: "It is, of course,

true that, as a measure in fact of time, space, quantity and conduct, reasonableness is a concept deeply rooted in the common law...". Where, in an anti-bullying case such as this one, the requisite repeated unreasonable behaviour towards the workers is said to be constituted by or include unreasonable discretionary managerial decisions directed to that worker, some useful guidance may be obtained in assessing whether the definitional standard in s.789FD(1)(a) is met from decisions concerning judicial review of administrative discretionary decision making. In *Minister for Immigration and Citizenship v Li* the High Court considered the standard of unreasonableness applicable to such decision-making. The plurality (Hayne, Kiefel and Bell JJ), in considering the well-known formulation of unreasonableness stated in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation*, said that the legal standard of unreasonableness "should not be considered as limited to what is in effect an irrational, if not bizarre, decision - which is to say one that is so unreasonable that no reasonable person could have arrived at it". They concluded their analysis by saying: "Unreasonableness is a conclusion which may be applied to a decision which lacks an evident and intelligible justification". That formulation provides a useful yardstick for the application of the provision in a case such as this one.

[83] In relation to the alleged bullying by Mr Leigh, none of the behaviour described meets the threshold of "unreasonable" behaviour. That is not to say that Mr Leigh followed a perfect process. In general, it seems Telstra's bureaucratic processes frustrated the Applicant. That is understandable. However, Telstra is a large organisation. It must respond to the queries and complaints of thousands of employees, not just the Applicant.

[84] In relation to each of the incidents involving Mr Leigh, my conclusions are as follows:

Incidents 1, 2 and 3 – not replying to the Applicant's Teams messages after the Applicant followed up twice.

[85] While the delay in answering the Applicant's questions was not ideal, this behaviour is not unreasonable.

[86] I accept Mr Leigh's explanation that he was taking advice from HR regarding the AWA sick entitlement issue. It was not a simple question, as the Applicant suggests. The interaction between the various industrial instruments which have covered the Applicant may indeed be one of great complexity. Mr Leigh's conduct is also not unreasonable because the Applicant told him to take his time. Further, in relation to the sick leave issue, the Applicant had accrued over a year's worth of sick leave, excluding any entitlement he may have under the old AWA. It was not, in my view, necessary for Mr Leigh to urgently respond to a hypothetical question about what might happen in a year when the Applicant ran out of accrued sick leave.

Incidents 4, 5, 7 and 8 – "altering the narrative"

[87] Mr Leigh's behaviour was not unreasonable.

[88] I do not accept that Mr Leigh "altered the narrative". Mr Leigh told the Applicant that he had been told not to contact the Applicant by the rehab team. This was evidently a misrepresentation of what the Applicant had told the rehab team. Mr Leigh also provided an

explanation that he received a lot of Teams messages and that the questions the Applicant had asked were complex and should be put in writing. The Applicant insinuates that there is some kind of conspiracy in Mr Leigh providing multiple reasons for why he did not reply to the Teams messages, as if only one explanation can apply. I reject that.

[89] I do not read Mr Leigh's email as indicating that he missed the Teams messages because they were not sent via email, but rather that the response was delayed because he was taking direction from HR. This is consistent with the evidence Mr Leigh gave in the determinative conference, that he did not reply as he was cognisant that the Applicant was on medical leave and so did not want to reply and provide the Applicant information which may not have been correct, hence why he waited to instructions from HR.

[90] The second aspect in which Mr Leigh is accused of "altering the narrative" is of no consequence, in my view. The Applicant states that during the meeting, Mr Leigh had said the Applicant could contact HR directly regarding his questions about discretionary sick leave. In his email of 1 August 2025, Mr Leigh stated that he would come back to the Applicant with next steps.

[91] The tenor of the Applicant's argument is that when Mr Leigh says something, even in passing, he is bound by that. Of course, the Applicant does not apply the same level of scrutiny to his own inconsistent behaviour. Mr Leigh told the Applicant that he could pursue his query with HR directly. Mr Leigh then told the Applicant that Mr Leigh would follow up on the enquiries himself. Those two statements are inconsistent, but it is not an inconsistency that amounts to anything. Mr Leigh can change his mind or contradict himself without that necessarily being unreasonable conduct. In this case, Mr Leigh stated in the determinative conference that he was informed by HR that the queries should go through the line manager, hence his changed instructions to the Applicant. This is reasonable as it avoids an unnecessary burden on HR.

[92] In relation to Mr Leigh not including Ms Chatterjee in emails, that is not unreasonable behaviour. Mr Leigh explained that the reason Ms Chatterjee was not included in the process was because she was a new manager, and for her health, Mr Leigh made the decision for the Applicant to report directly to him.

[93] The Applicant said he never disputed his rating of a 3. The Applicant clearly did dispute the rating, and I do not accept his suggestions to the contrary. The Applicant says he only wanted to "ask difficult questions" and did not challenge the rating. If that is the case then why, in the Applicant's own evidence, does he say he used these words at the meeting:

> Although I think I have a genuine case to warrant a different outcome, it isn't back and white and quite an unusual set of circumstances. My case is based on my pre injury performance and the belief that every employee should have a fair opportunity to achieve the highest rating. I was denied that opportunity due to a failure of work to provide a safe working environment and no personal fault of my own.[34]

[94] The Applicant is engaging in a pedantic exercise. He is saying that he challenged the performance review policy and said it was not "fit for purpose", but did not challenge the outcome arrived at by using that policy. I do not accept that argument. The Applicant admitted in the determinative conference that he wanted a rating of 4.

[95] The Applicant says it was unreasonable for Mr Leigh and Ms Chatterjee to not respond to the substance of what the Applicant said in his email of 8 August 2025. It was not. It did not require a response from management in circumstances where the Applicant stated that he would fill in the dispute form and commence the dispute process.

Incidents 6 and 9 – change in reporting line

[96] I wholly reject the argument that the Applicant should have been informed of the change in his reporting line before it took effect.

[97] The Applicant did not have to be informed of a change in who his manager is before the decision was implemented – the Applicant does not get to decide who his manager is. The Applicant is also upset that he was not informed of the change in reporting line until 4 days after it took effect. I fail to see how that is critical where the Applicant is not at work. In any event, it was preferable in this situation for the Applicant's direct manager to be Mr Leigh. Mr Leigh was acquainted with the Applicant's circumstances and queries. Further, the explanation provided by Mr Leigh for the change was reasonable. Ms Chatterjee is a new manager and, following the Applicant's behaviour in the meeting on 31 July 2025, Mr Leigh decided that the Applicant should report to him.

Incident 13

[98] Mr Leigh's emails of 27 August 2025 do not amount to unreasonable behaviour.

[99] As stated above, the question of whether accessing sick leave entitlements under the AWA is not "straightforward" as the Applicant suggests. It was perfectly reasonable for Mr Leigh to say, as he did in his email of 27 August 2025, that the decision of whether the Applicant could access paid sick leave under the AWA would be reviewed once the Applicant had exhausted his existing sick leave entitlements. At that time, the Applicant had 1,195 hours accrued.

Incident 10 and 11 – Mr Leigh's statements regarding the review process

[100] None of the matters described in incidents 10 and 11 amount to unreasonable behaviour.

[101] The Applicant provided what he says is an accurate but edited version of the transcript of the meeting on 29 August 2025.[35] Mr Leigh noted that the Applicant had chosen not to participate in the performance review process. He did not partake in feedback conversations or submit a self-assessment. Mr Leigh said he was therefore surprised that the Applicant had disputed the rating. This was a reasonable comment in my view. Though the Applicant may have been acting on medical advice, it was ultimately his choice whether he participated in the performance review process.

[102] In relation to Mr Leigh's comments about step 2 of the internal review process, it does seem he was incorrect. However, merely being incorrect about a policy does not amount to unreasonable behaviour, particularly where the Applicant had access to the policy and could have, and indeed did, review that policy.

[103] It was not unreasonable for Mr Leigh to determine that Ms Chatterjee should not be involved in the meeting. This decision is explicable on the basis that Mr Leigh was the Applicant's direct manager, Ms Chatterjee was a junior manager, and Mr Leigh noted that the Applicant was, according to him, aggressive in the meetings on 31 July 2025 and 29 August 2025.

Incident 14 – Mr Leigh's email used in an IME briefing

[104] It was not unreasonable for Mr Leigh to describe the Applicant's behaviour as "aggressive" during the meetings on 31 July 2025 and 29 August 2025.

[105] I put to the Applicant that Mr Leigh might have genuinely felt the Applicant was aggressive during the meetings. The Applicant accepted this and said his concern was not regarding Mr Leigh's opinion of the conversation, but rather that he did not have an "opportunity to respond" to the opinion. This submission demonstrates a misunderstanding of what an IME is. It is an *independent* medical examination. When briefing a specialist for an IME, the employer may put a number of reports and documents before the specialist in order for them to make an independent decision. The employee would not normally be given an opportunity to respond before the IME. The purpose of the IME is for the specialist to examine the Applicant, examine the evidence, and come to their own conclusions.

[106] My conclusion is the same regarding the Applicant's concern with Mr Leigh saying, for the purpose of an IME briefing, that the Applicant had not complied with the stage 2 process.

[107] Mr Leigh is entitled to have his own opinions regarding the Applicant's behaviour. It was not unreasonable for him to provide those opinions when he was requested to do so.

Incident 15 – Email on 27 November 2025

[108] It was not unreasonable for Mr Leigh to email the Applicant on 27 November 2025 with Telstra's position on accessing AWA sick leave entitlements. Mr Leigh was providing a further update to the Applicant on a query which was important to the Applicant.

[109] As I put to the Applicant, he initially complained that Mr Leigh was not communicative enough. Incident 15 is the opposite argument – that Mr Leigh is too communicative.

Conclusion

[110] The Applicant has not demonstrated that any of the conduct alleged amounts to unreasonable behaviour. I am not satisfied that the Applicant has been bullied by Mr Leigh and Ms Wells. Further, I am not satisfied that the behaviour complained of occurred while the Applicant was "at work".

[111] Although I agree that Mr Leigh could have responded to the Applicant faster, that is not sufficient for a claim of bullying. Mr Leigh's actions were not always perfect, but no manager is perfect. The Applicant does not seem to appreciate that Mr Leigh and Ms Wells are people too.

[112] It is unfortunate that the Applicant has seen fit to waste the Commission's time with what is, in my view, a spiteful campaign against Mr Leigh fuelled by a series of pedantic complaints and an unwavering belief that he must be right. The Applicant could have instead spent that time focussing on his recovery. I am hopeful that the Applicant reads this decision and reflects on his own behaviour.

[113] The application is dismissed. I Order accordingly.

DEPUTY PRESIDENT

Appearances:
T Mahoney for the Applicant
W Spargo of Landers & Rogers for the Respondent

Hearing details:
17 February 2026
Hearing via Microsoft Teams
Brisbane

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[1] Digital Hearing Book, page 249.

[2] Digital Hearing Book, page 75-76.

[3] Ibid.

[4] Ibid.

[5] Ibid.

[6] Ibid

[7] Ibid

[8] Ibid

[9] Ibid 77.

[10] Ibid.

[11] Ibid

[12] Digital Hearing Book, page 32

[13] Ibid

[14] Digital Hearing Book, page 118-119

[15] Digital Hearing Book, page 52

[16] Ibid

[17] Ibid
[18] Digital Hearing Book, page 179
[19] Digital Hearing Book, page 121
[20] Digital Hearing Book, page 124-125
[21] Digital Hearing Book, page 54
[22] Digital Hearing Book, page 31
[23] Digital Hearing Book, page 30-31
[24] Digital Hearing Book, page 56
[25] Digital Hearing Book, page 39
[26] Digital Hearing Book, page 38
[27] Digital Hearing Book, page 37
[28] Digital Hearing Book, page 37
[29] Digital Hearing Book, page 36-37
[30] Digital Hearing Book, page 41-42
[31] Digital Hearing Book, page 63
[32] Digital Hearing Book, page 40
[33] Digital Hearing Book, page 73
[34] Digital Hearing Book, page 118
[35] Pages 137-146 of the Digital Hearing Book.