



TRANSCRIPT OF PROCEEDINGS

Fair Work Act 2009

VICE PRESIDENT CATANZARITI

C2023/1918

s.604 - Appeal of decisions

**Appeal by Thomas
(C2023/1918)**

Sydney

2.00 PM, MONDAY, 8 MAY 2023

PN1

THE VICE PRESIDENT: Thank you, please all remain seated. I have with me on the Bench this afternoon Deputy President Anderson, Deputy President Beaumont and myself. We are also sitting virtually from around Australia. The appearances – I know, Mr Thomas, you're representing yourself?

PN2

MR D THOMAS: That's correct.

PN3

THE VICE PRESIDENT: And for the respondent I have the national industrial relations manager, Mr Graham.

PN4

MR GRAHAM: Yes, Your Honour.

PN5

THE VICE PRESIDENT: Thank you. This matter is listed for permission to appeal only, therefore the arguments have to be limited to that issue. Mr Thomas, I note that in relation to the directions that were issued, you have not put on any written submissions or an appeal book. Notwithstanding that, I will give you half an hour to make oral submissions and you are limited to half an hour. Please proceed.

PN6

MR THOMAS: I have sent many submissions there and as for the appeal book, yes, I believe I have but that's - - -

PN7

THE VICE PRESIDENT: Well, what you've sent – you work on the basis I've got all of that, right? So I've seen that.

PN8

MR THOMAS: Thank you. As previously stated, solicitor Brown has brought nothing to this hearing but lies and subterfuge. Deputy President Saunders knew that Brown was lying and Saunders continued to assist Brown. I believe Saunders had private conversations with Brown which I was not privy to. Saunders must let Serco and Brown win. Think about how many times Serco comes to the Fair Work Commission and how horrible Serco will make it for the judges at the Fair Work Commission if they rule against a huge case like this which involves lies, collusion, drugs, animal cruelty, to say the least.

PN9

What a mockery this will make of the system if a man, uneducated, comes and beats the lawyers, (indistinct) from the fourth-largest firm on the planet. There are only two ways Deputy President Saunders would come to that conclusion, that Johnston had recorded contemporaneous notes – that is if he was stupid, which I do not believe he is – or if there is some form of collusion with Brown. Deputy President Saunders made comments that I lost my house. Where did this information come from?

PN10

THE VICE PRESIDENT: Mr Thomas, just you're reading something so if you could just slow it down a bit because you're going quite fast.

PN11

MR THOMAS: It had to be Serco and Brown, because if you check the transcripts there was no mention of this. I did not say that and this is not true. That is gossip that Saunders got from private gossip conversations with Brown and Serco. Brown also knows nothing about dogs, prisons, armed escorts or any other operational role and he is particularly lazy because he has not bothered to establish the geographical knowledge about the Clarence Correctional Centre and this makes him a hindrance in establishing points in particular that are features, processes, timing, practicalities of events and protocols in the gaol, which is why he contributed nothing in the examination of witnesses and the establishing of physical timelines for the events.

PN12

Brown wrote false, knowingly and willingly wrote false statements for du Preez. Brown stated that du Preez's statements and contemporaneous notes were more accurate than a recording that was transcribed verbatim. You can't have one's cake and eat it too. How could an additional statement by Brown be added after the facts were established that a recording took place? How could Brown now assist du Preez by allowing him to change a verbatim statement that is accepted by Deputy President Saunders? Brown knowingly, deliberately and willingly lied when he said the statement that du Preez said there will be no recordings. That never happened, nor did many of the things in Brown's statements happens.

PN13

Brown made du Preez out to be some form of legal genius, which he is not. He is a failed lawyer and he doesn't even know what a tourniquet is. He doesn't know the definition of trafficking. He does not understand that a gun or a mobile phone cannot enter a correctional facility without the express permission of the commissioner of CS New South Wales. Du Preez does not understand how an escort works, how to handle a weapon or how to make a security assessment, yet Brown and Serco allowed du Preez to investigate these false allegations. Du Preez had only one witness during the interview and that was Rod Katieli. Rod wisely left the interview because he did not want to be part of the rubbish and because he knew it was lies and corruption.

PN14

Brown has also added false contemporaneous notes submitted as evidence which du Preez wrote after the fact. Serco and Brown were given the opportunity to submit this evidence or notes and there was a court order to produce them. Brown had months to produce these statements and du Preez did not say, 'I do not give permission for a recording!'. Brown produced this the day after it was established there was a recording and why he did this – because Brown needed time to figure out a lie. Brown made a statement in his final statement and said Johnston had a personal mobile phone on her which she took contemporaneous notes on the escort. Brown had to make this lie up because Johnston made the lie up under oath.

PN15

Johnston was asked how she could remember lengthy verbatim quotes and she said, 'In my brain'. When I laughed, as I should because not even the most intelligent law enforcement officers are trusted to remember such things as memory and it has been tested time and time that the mind is notorious for fault. Professional law enforcement officers use contemporaneous notes. That is the only way you can recall facts and be tested in court. Johnston could not be trusted to write a basic escort log and this log is the most basic requirement of an officer. Officers who are on their first day of the job are expected to write a complete log. She failed to do so and then we heard Johnston make up a lie that she wrote notes on her personal mobile phone, which is physically impossible to have on her unless she committed the ridiculous offence of smuggling that phone into a gaol.

PN16

Johnston did have a work phone and if you allow the narrative to be changed against to accommodate this lie, then you're colluding with them. There was no phone and as you can see from Johnston's texts, which have been submitted to the court book, Johnston stated that Clarence Correctional Centre was rolling from one disaster to another. She required a favour from Serco to keep her job because she was bullying women at the gaol. Johnston was asked her understanding of the psychologist B. F. Skinner, pertaining to dogs in regard to positive punishment. This statement was written for her by Matthew Hewlett in his mangled, rudimentary, uneducated version of Skinner's established and proven psychology.

PN17

Johnston and Hewlett think that positive punishment means you actually punish the dog, which is far from it. It means adding something at first, such as a nagging technique, or a correction to get the desired behaviour or extinguish a behaviour. But of course Hewlett has no desire or interest in canines, their training and definitely not their welfare, he could not explain it to Johnston to cover up her lie. So we got a version from her on transcript that sounds like it was written by one of the kids from Deliverance. Now, the peak of stupidity: Brown was told multiple times during this case that he is a tourist. This is my world and I am an expert and clearly Voss, Johnston, du Preez, Hewlett and Sparrey are tourists too because the extent of their idiocy is on display for all to read off the transcript.

PN18

Now, we start with the collective putrid lies. Johnston was asked the question – is everyone still there because I can't see anyone.

PN19

THE VICE PRESIDENT: We can certainly see you and hear you.

PN20

MR THOMAS: Thank you. Johnston was asked the question under cross-examination: 'Describe the inmate, size, age, what was the inmate wearing', and she said, 'I don't recall'. Johnston could not recall what time I left, what time the handover of the weapon, what time Sparrey was sent to the hospital for the correct

set up which was unlawfully done and directed by Hewlett. Johnston did not make any notes in the escort log, almost like she was directed to so that if CS New South Wales were to investigate they would not see these criminal acts. Remember, Serco and Brown did not give up this log of their own free will. I had to drag it out of them in a GIPA order.

PN21

Johnston said, 'I don't recall', after she had been given a break by Saunders so she could converse with the legal team that was in position at Clarence Correctional Centre to coach and groom her. On her return Johnston said that she took contemporaneous notes on her mobile phone. These notes were not screenshotted. They were not submitted as evidence and nor was the phone offered for inspection. But Brown went on with the lie in his final statement, a crucial lie, because that would give Johnston and Serco the reprieve they needed to tie up the lie. Like I said, Brown was a tourist in my world because Johnston started that escort from inside the gaol. That's where the prisoners live. They live inside the gaol.

PN22

She was in a prison van and when you leave the gaol, you would not have the opportunity to have your personal mobile phone with you. In order to have her personal mobile phone Johnston would have to come in the morning, smuggle it past an x-ray machine, a hand-held metal detector by her officers, a walk-through metal detector, and if she was asked to go outside of the gaol and bring it in she would have to smuggle it in through the sully port through another hand-held metal detector. This is a criminal offence and it is two years in gaol. It is difficult for one person to lie but is almost impossible for a conglomerate to get their stories straight. If Johnston was (audio malfunction). This was a lie. Deputy President Saunders knew it was a lie, Johnston knew it was a lie, Brown knew it was a lie. Remember, Johnston was asked – and this is in transcript – 'Why was the weapons handover unsafe? Did you see me spinning the gun on my finger like a cowboy', and Johnston said, 'I don't recall'.

PN23

We have established that she never had her personal mobile phone on her. She lied about it and she was stated by Saunders as being a reliable witness. Johnston was in trouble at the time of dismissal. She had her criminal brother who was attempting – who she was attempting to gain favour with CS New South Wales to save his job and it was also presented in the evidence book that she was stalking and harassing officers at the centre at the time because she was a jilted lover like the female version of Rocky Raccoon. Look at page 431 - - -

PN24

THE VICE PRESIDENT: Mr Thomas, Mr Thomas – you're going to have to – you're making a lot of emotional statements which I'm allowing you to go on with but you are making some serious allegations the way you're presenting them. So if you can just make it as a statement rather than make it too colourful, if I can suggest that to you. Just make statement. This is permission to appeal we're dealing with. Are you still there, Mr Thomas?

PN25

MR THOMAS: Yes, I can hear you, and they're not emotional. These are facts -
- -

PN26

THE VICE PRESIDENT: Mr Thomas, you disappeared. You've turned your camera off.

PN27

MR THOMAS: I haven't turned it off. This is the system that's turned off. I've done nothing to it. I can't – I'll have to log back in and out, if you'd like me to. If you can hear me we can continue.

PN28

THE VICE PRESIDENT: How long is your written submission to go?

PN29

MR THOMAS: Well, I've only got 30 minutes so it's got to fit into the 30-minute time frame.

PN30

THE VICE PRESIDENT: Okay, well, bear in mind that you've also got to deal with the public interest issue under the Act so I'm waiting for you to talk to that as well.

PN31

MR THOMAS: Well, in regard to public issue – public interest - - -

PN32

THE VICE PRESIDENT: I don't want to throw you off, I'm just alerting you to it. Please continue with what you were reading.

PN33

MR THOMAS: No worries. With public interest, it is of the public interest. A correctional services dog got – got viciously, viciously treated in an inhumane, unlawful manner, which is a criminal offence. There were drugs at this prison. They called me a drug offender. They never submitted any evidence of such and they have lied under oath and it is the public's interest because this is a public case and the media is attached to this. It is in the public's interest to hear the truth. And this is the truth. If we look at page 431, Johnston says: 'I have been annoying the fuck of CS New South Wales to try and build a case of my own and fight for him' – her brother James – 'but it feels like so many dead ends. Clarence and Olivia Wratten' – HR – were not at or helping. I'm trying to put my own shit on the backburner to be there for James and fight for him'.

PN34

That is Johnston asking for a deal with the devil and a deal she got in exchange for her soul. She had to lie under oath and those lies, these documents and those transcripts, are now on the desk of the Commissioner of CS New South Wales where she's earned a slight reprieve from the hang man. Serco, Hewlett and Brown have ruined that weak-minded woman's career. She will never work again for another correctional facility and now this is in the public and they know she is

a liar and she has no integrity. I warned Brown several times in writing and Mr Brown and Deputy President Saunders were happy to let the circus continue.

PN35

Johnston owed Serco and she had to lie and now she's being caught up with those lies and the case falls apart. Johnston wrote on page 755 of the court book: 'They are trying to set Dylan up. They are going to make it look like he fucked up when he hasn't', et cetera, et cetera. Now, Brown's special counsel accidentally left this in the evidence book and this is the email on page 755. That was the email she wrote to du Preez, the HR manager, and then Serco got in her ear and said, 'If you want to keep your job you better do our bidding, because we need Thomas gone because he won't shut up about animal cruelty and the corruption at the centre'. How simple do you have to be to pretend that this email that was sent on the day after the escort to du Preez regarding George Sparrey being directed by Hewlett to go to the hospital to make it look like I abandoned the escort, this email was written by Hewlett and du Preez and Johnston and sent from her mobile phone on 10 May to make it look like I had stuffed up and this was when my discipline hearing was supposed to be made. Why in god's name would that woman sit on an email of this importance? Remember Johnston said that I was going to – she felt that I was going to shoot people with a hollow-point, 40-cal slug in a public hospital and you propose that she sat on this email for over two months? That is a lie.

PN36

Tiana Johnston said she made a risk assessment. Here is a tactical shipwreck for you: Johnston doesn't make risk assessments. If Johnston wants to sharpen her pencil on escort, she needs permission. The dog squad officer makes tactical assessments. The guy who wrote the training, the guy who has done thousands of hours of tactical escort training, selection courses, reinforcement courses, operations, admissions and servicing – the operator makes the decision, not the woman with the criminal brother, not the woman who is not competent enough to write an escort log. Imagine if Johnston was on escort, where a criminal were to abscond from her custody. Imagine when the police came to her and said, 'Give us a description of what the inmate was wearing', and Johnston would say, 'I don't recall what he looked like, I don't recall anything, what corrections he has or any description of this criminal'. Imagine that.

PN37

Do you honestly believe that when Johnston and du Preez, they lied and said there was a gun inside the gaol, strapped to my leg, and that would be the only way that I would be on that escort brief. Du Preez doesn't know where the gunnery is. Think about the lies Hewlett said when he said he has nothing to do with the escorts, nothing to do with the dog squad selection, the emergency response selection or any other operation in the gaol. That is plausible deniability. Who do you think in the gaol does this role? Hewlett said a lot of people do it. He doesn't want you to believe that the senior response group supervisor has nothing to do and no responsibilities. Hello.

PN38

THE VICE PRESIDENT: Yes, we're still listening, Mr Thomas.

PN39

MR THOMAS: Okay, Hewlett knows it has always been the dog squad's officers' risk assessment on the escort. This is Hewlett and Serco distracting you from the fact that he and George Sparrey are responsible for animal cruelty. They have committed an offence against a correctional services dog and you are committing an offence if you allow this. Do you honestly believe that the dog squad officer just stays on an escort for ever? Who replaces him? When does the dog in the truck eat? When do they go to the toilet? Who does night shift for the dog squad officer? Again, another example of tourists entering my world, collusion and lies. Think about it for one second: Matthew Hewlett sent George Sparrey to the hospital to set me up. He did not say a word to me when he saw me in the gaol and he knew I was asking the general manager, Tony Voss, for footage. He has plausible deniability to everything. He denied on oath that he gave his mate, Wade Pistorius, the dog squad job corruptly. He denied he gave my job to Sean Wilson. He denied having any input into the escort process and then he lied and said the decision to remove myself from the escort process is an assessment taken by a manager some 20 minutes away from the escort to the gaol.

PN40

Hewlett knows this never happens. Hewlett knows this has never happened before. Think about how stupid you have to be to swallow this rubbish. I am Dylan Thomas, eight years of operational experience in the military, issued medals for that service, worked as a small arms specialist in that service, never a blemish on my career doing far more complex jobs than that escort at Grafton Base Hospital. I was a commercial construction driver under enormous duress. Never a safety breach with my work. I went to a male maximum security gaol in the state of Victoria and served with courage and a faultless record. I served Serco for seven years. They just robbed me of my long-service career, by the way, my dogs and my home.

PN41

I worked in the emergency response team for them. I never failed them in any operation or duty. I fought the most dangerous detainees for them. I escorted them back to their home countries. I took outlaw motorcycle gang members on chartered planes to and from Christmas Island. I was in charge of the security operation like it was Con Air for three days. I extracted the most violent individuals from cells and yards, I taught junior operators my techniques that I had learnt. I was an ERT medic for this company, pumping on the chest of dead detainees for this company. I've been assaulted numerous times in the course of my duties: kicked, blood, spit, faeces and my dog has defended in units staff against the most horrible people that persons like yourself could never imagine. She did it for free and you treated her like she was disposable.

PN42

I developed and taught these techniques in armed, medical escorts. I literally wrote the training and up until I asked to see this footage I never, ever had a blemish on my record from Serco and asked you, how stupid or corrupt do you have to be at this Commission to believe that I came back two days from leave after this service and all this experience – Serco accused me of the most putrid and vile misconduct. Serco accused me of making disparaging comments to

Hewlett. Where is this written? I've submitted evidence that Hewlett has written messages calling ERT officer Ben Wright and Brodie Matheson drug users and failed to tell the commissioner. That is bullying and disparaging if he does not tell the commissioner and breaches his duties and responsibilities.

PN43

Hewlett said there was no evidence of drugs in the prison in his statement to du Preez and this was written and submitted to the Fair Work Commission. I said Hewlett was a bully. Hewlett denied this. He wrote that in a statement. I have now submitted to the Commission that Hewlett went on to call his female boss a fat cunt and her husband only got promoted because of her. The Fair Work Commission has this evidence. Saunders would not let me present it. It is on the onus of the Fair Work Commission to afford those victims of bullying legal protection from Hewlett. If you don't you know that it will be on transcript and it will be received by the minister.

PN44

Serco said that I failed to allow Hewlett time to investigate. Not only did Hewlett and Serco not investigate, they deliberately deleted the footage. Brown said: 'You will have to sue us for the footage'. Why would you only have footage of the 20th and 21st and not the weekend leading up to it'? I asked for the footage of Hewlett. Du Preez, Voss, White, Soames – I asked for it in a GIPA request. I asked for it from you in a court order and the Fair Work Commission allowed Serco to get away with it. That is collusion. I will send that to the minister. They have deleted it because it shows Sparrey smashing Tauvey's tail and leaving the dog in pain.

PN45

Serco's SOPs for the dog squad now reflect that they are required to report all incidents immediately and this was changed because of that incident. Serco and Brown said that Tauvey cut her tail on a piece of wire in a run yard, a statement that has no evidence to back it up. There are no contractor receipts to show any repairs in the past, no wires were reported previously to be a hazard, no pictures were taken and no evidence was submitted to the Fair Work Commission. Just looking at that evidence, looking at that injury, giving some allowance for some mediocre intelligence, does that even look like, remotely like a dog would cut its tail on a wire so severely, so savagely, it needed to be amputated? Even if I remove part of my brain in a frontal lobe lobotomy it would still come to the conclusion that it is more likely George Sparrey, a man that could not honestly tell this Commission how many dogs were in the kennels on the weekend of that incident, of which there were at least 10 with only three kennels for German shepherds – five German shepherds were on site, Tauvey being the most difficult to control with a non-qualified, inexperienced handler smashed that tail in the door, trying to get her from the run yard to the kennel that was too small for her.

PN46

At no stage does the vet report concur with Hewlett or any other liar at Serco. At no stage did Hewlett go to the vet and say that a medical kit or equipment – at no stage did a vet tell Hewlett that a medical kit and equipment is the same for Hewlett. I just want to give you a tactical (indistinct) – we are different species with a different anatomy. Like the special forces punching to a bar fight and the

dog gets injured and they just hook it up with some O positive from a handler. The truth is Hewlett was told to get the appropriate safety equipment and he didn't. Again, he lied to the Fair Work Commission. I then had to cancel my holidays and nurse Tauvey back to health. I came back to work on the 8th.

PN47

Hewlett sets up training which I was not invited to on an escort with full knowledge and fashioned and they did try and Hewlett then lies again and states that he was never informed that I returned to site. How do you know when Hewlett is lying? Because his lips are moving. When a vehicle returns to site the radio call is made on a - - -

PN48

THE VICE PRESIDENT: Mr Thomas, you're going to have to come to a conclusion because you are pretty much repeating that which we're already aware of.

PN49

MR THOMAS: Okay.

PN50

THE VICE PRESIDENT: What further do you wish to say in relation to the public interest rather than the findings of fact that you've gone through?

PN51

MR THOMAS: In relation to the public interest – as I said, sir - - -

PN52

THE VICE PRESIDENT: I understand that – is there anything further you wish to say?

PN53

MR THOMAS: The public need to know about this. This is collusion and corruption - - -

PN54

THE VICE PRESIDENT: You've already said that. I'm asking – and the transcript of today will show that you've already said that. Is there anything additional you wish to say on the public interest?

PN55

MR THOMAS: It is in the public interest, sir. How could - - -

PN56

THE VICE PRESIDENT: Mr Thomas, you've already said that. You don't need to repeat what you've already said. Is there anything additional to what you've already said from the material you've already given to us?

PN57

MR THOMAS: The public need to know about this. They have to know about the corruption. They have to know about the - - -

PN58

THE VICE PRESIDENT: Mr Thomas, you've already told us that more than once today. Is there anything additional than what you have said? We've given you ample time so far. So there's no point in repeating what you've already said. Is there anything additional?

PN59

MR THOMAS: I think that covers it, sir. I think I've covered it.

PN60

THE VICE PRESIDENT: All right, okay. We'll note that. Mr Graham, is there anything you wish to say in relation to the permission to appeal question, noting that the matter is only permission to appeal today – the directions did not require the respondent to do anything at this time. It is up to the Full Bench first to consider whether permission will be granted or not. If permission is granted then there is a second hearing. Is there anything you wish to say, Mr Graham?

PN61

MR GRAHAM: Thank you, Your Honour. We understand that the onus in this matter is on the applicant to convince the Commission to exercise its discretion in the applicant's favour. We did not make any submissions in this matter. We were not invited to and we understand the reasons for that. It's simply our submission that the Fair Work Commission in the exercise of its discretion should not grant the leave to appeal that is sought, if the Commission pleases.

PN62

THE VICE PRESIDENT: Thank you. Anything further, Mr Thomas?

PN63

MR THOMAS: Do I have any more time to speak or have I completed my 30 minutes?

PN64

THE VICE PRESIDENT: Well, you've completed your time. We understand your point and we have the full material in front of us. So unless there's any additional you need to say we'll take as read that you've completed.

PN65

MR THOMAS: Well, I have, but many, many points of lies and corruption that happened factually - - -

PN66

THE VICE PRESIDENT: We are at the permission to appeal stage of this matter and we understand the flavour of your submissions and we will now go away and deliberate upon them.

PN67

MR THOMAS: Okay, thank you very much.

PN68

THE VICE PRESIDENT: Thank you. The Commission is adjourned, the decision is reserved.

ADJOURNED INDEFINITELY

[2.32 PM]