



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

**VICE PRESIDENT ASBURY
DEPUTY PRESIDENT GOSTENCNIK
DEPUTY PRESIDENT CLANCY**

C2023/2621

s.604 - Appeal of decisions

**Appeal by Edwards
(C2023/2621)**

Brisbane

2.00 PM, TUESDAY, 18 JULY 2023

PN1

THE ASSOCIATE: The Fair Work Commission is now in session for matter C2621/2023, a section 604 appeal, listed for hearing before the Full Bench.

PN2

VICE PRESIDENT ASBURY: Good afternoon. Could we just start by taking the appearances, please? Mr Edwards, you're the appellant?

PN3

MR C EDWARDS: That's correct, yes.

PN4

VICE PRESIDENT ASBURY: Thank you. For the respondent?

PN5

MR R GREIG: Robert Greig, lawyer for the respondent.

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VICE PRESIDENT ASBURY: And you're seeking permission, Mr Greig?

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MR GREIG: Yes, I am seeking permission to represent in this matter.

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VICE PRESIDENT ASBURY: Mr Edwards, did you have a view, in relation to whether the respondent should be granted permission to be legally represented?

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MR EDWARDS: Yes, I had sort of tried to put it in the material that I'd sent through earlier but it felt slightly unfair, given the power balance already, I guess. I understand that it's at the discretion of the members.

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VICE PRESIDENT ASBURY: Well, thank you for that. Given that the matter involves a jurisdictional objection and it may have some complexity, I think we're satisfied that it will enable the matter to be dealt with more efficiently if the respondent is permitted to be legally represented, so permission is granted to the respondent for that purpose.

PN11

Mr Edwards, you've sent in a written submission, would you like to speak to that submission?

PN12

MR EDWARDS: Yes. Sorry, I'm not sure if it's possible, but I believe I sort of outlined that given my current financial circumstances, and the fact that they're not necessarily typical, that I'm someone with a high income but who, essentially, had no income for a period of time and my lifestyle choices sort of mean that I am not able to be represented here and now and I wonder if there's any way that we can possibly have a more conversational way of doing this, as possible, in that I'm not sure if I'm just given one opportunity to speak straightaway that I'll have all of

my thoughts and have everything collected in order to be able to put everything forward that I want to be able to put forward.

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VICE PRESIDENT ASBURY: Okay. Well, you can assume that we've read your written submission.

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MR EDWARDS: Okay.

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VICE PRESIDENT ASBURY: So we've read that and you can speak to that submission and clarify any issues that you'd like to clarify and you can also say anything you'd like to say about the respondent's written submissions. Then we'll hear from Mr Greig, for the respondent, and then you'll get an opportunity to reply.

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MR EDWARDS: Okay. All right.

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VICE PRESIDENT ASBURY: Does that explain it?

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MR EDWARDS: Yes. Well, what I'll do then is I'll just try to make sure that I sort of rearticulate everything clearly, to the best of my abilities, to start.

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VICE PRESIDENT ASBURY: Thank you.

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MR EDWARDS: So my understanding is that in this application for appeal there's sort of two parts to it and one is the requirement for the appeal to be in the public interest and the second is the merit of the arguments of that appeal, in the first place.

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So, I guess, to address the first one about public interest, and, again, I'm not a lawyer and I don't have any legal training here but my argument is suggesting that it would be in the public interest to be able to appeal. This comes down to a couple of things.

PN22

One is that I work in the software industry as a software professional. Given the current situation, the way things are going, companies are actually going to be likely to be bigger and bigger companies with fewer employees and also there has been some changes recently, around the interpretation of the law, with regards to contactors, I believe. So I think it's something that's in the air and it's up for debate and what we're going to see is there's going to be more and more companies that might have thousands of workers and, you know, a very small number of employees, so I think the fact that we're talking about, particularly a

space where we have such a high impact on society, it's important that the people that are working feel safe to have a voice and raise their voice.

PN23

Certainly, it was a surprise to me to find that if it is found that, despite the number of workers, the number of employees, that Bamboo was within their rights to, well, terminate me, that would - I think it's relevant to have a discussion about it and it needs to be talked through is what I'm saying. It should be given the opportunity to be discussed because, first of all, it comes down to a decision was made on what largely seems to be based of the demeanour of one of the appellants, sorry, on the demeanour of one of the witnesses and my understanding that I should have had the right to speak to my submission or witness statement that I'd prepared and which I had raised multiple times. Also, given the fact that I was in a position that didn't have the opportunity to be represented, as I've outlined and I'm happy to give more input on. I just - I'm just asking for a fair deal is all I'm really saying.

PN24

The reasons being, at a hearing, given I wasn't represented, I felt like I should have had the opportunity to read my witness statement and add to it and work from it and also given the space. Given that we are going to see more and more of this stuff happen, larger and larger companies with fewer and fewer employees and in such a high impact part of society where, you know, if I'm not allowed to say that I don't agree with the ethics or practicality of something that I can just be let go, essentially, because I have a different voice.

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So a high level, unfortunately, it may be - - -

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DEPUTY PRESIDENT GOSTENCNIK: Mr Edwards?

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MR EDWARDS: Yes?

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DEPUTY PRESIDENT GOSTENCNIK: Mr Edwards, sorry. I'm going to try and help you focus a little bit, in terms of what the issues in this appeal are. So, firstly, it's not up for debate that the parliament has chosen to define a small business employer by reference to the number of employees that it employs at a particular time.

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MR EDWARDS: Could I ask a question?

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DEPUTY PRESIDENT GOSTENCNIK: Yes.

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MR EDWARDS: Sorry, my understanding is that that's actually laid out in the Small Business Code, which is a document put together by the Fair Work Commission.

PN32

DEPUTY PRESIDENT GOSTENCNIK: No. No, it's laid out in the Act. So the definition of a small business is set out in the Fair Work Act. And a small business employer is an employer who, at a relevant time, employed less than 15 employees.

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MR EDWARDS: Okay. Yes, I do actually understand that. And the next part of it would be, essentially - - -

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DEPUTY PRESIDENT GOSTENCNIK: Mr Edwards, just let me finish my (indistinct).

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MR EDWARDS: Sorry.

PN36

DEPUTY PRESIDENT GOSTENCNIK: That's all right.

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So having a debate about whether or not particular rights should be conferred upon employees of employers with less than 15 employees is not a matter that we can entertain, parliament has made its decisions and it's set out those in the statute.

PN38

Secondly - - -

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MR EDWARDS: All right, I - sorry.

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DEPUTY PRESIDENT GOSTENCNIK: Secondly, this whole decision turns on whether or not particular persons were employees of the respondent and, therefore, whether or not they were counted.

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Now, I think, as the respondent has correctly pointed out in its submissions, even if a number of the employees, whether you identify or whether you raise as being employees, even if the Deputy President was (audio malfunction).

PN42

MR EDWARDS: Sorry, You've cut out.

PN43

DEPUTY PRESIDENT GOSTENCNIK: I'm sorry. Even if the Deputy President was wrong, in relation to certain of the employees, the biggest hurdle that you have is that there's a group of employees who appear, at least on the face of the

material, to be employed by a foreign corporation which has a contractual arrangement, not with the respondent but with a parent of the respondent, or an associated entity, which provides services through its employees to the respondent.

PN44

Now, unless those people counted then, on no measure, did the employer, at the relevant time, employ more than 15 employees.

PN45

MR EDWARDS: Okay. So what I've heard you address there is the merits which I would like to have the opportunity to speak on the merit of my argument. But I guess what my thoughts are, are could I get an indication, perhaps, on whether or not - just where you stand on the appeal being in the public interest, as - - -

PN46

DEPUTY PRESIDENT GOSTENCNIK: Mr Edwards, you can be assured of this, that it is most unlikely that, at least speaking for myself, that unless you can show some error in the decision maker's decision, that is, to at least raise an arguable case that your appeal will likely succeed, then you're going to have a difficulty in persuading me that it's in the public interest and you should be granted permission.

PN47

So you should focus, for the purposes of the time that you have today, at least from my perspective, you should try and focus on the merits of the appeal because if there's some arguable case as to the merit, then it's more likely that permission to appeal will be granted. If you can't make out an arguable case about the merits, then it's most unlikely that permission to appeal, in the public interest, will be made.

PN48

MR EDWARDS: Yes, thanks for that. That makes a lot of sense and it gives me a certain amount of more confidence to be able to move on to the merits of the case.

PN49

So, ultimately, the case seemed to be decided based on a single document which was - that there's no evidential connection between the people that I'd put forward as employees and the company that's in question.

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So there was a document that was suggested was a timesheet - again, whether or not somebody is keeping track of time and - - -

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DEPUTY PRESIDENT GOSTENCNIK: Mr Edwards, so that we're able to follow you, are you able to refer to the document in the appeal book, is it in the appeal book?

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MR EDWARDS: Yes, just give me one moment, please. Sorry, could I please just ask for the email address that you feel the appeal on?

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DEPUTY PRESIDENT GOSTENCNIK: I don't need you to send us the appeal book, we've got a copy.

PN54

MR EDWARDS: No, sorry, sorry, sorry, it's just - yes, I know, I got thousands of pages of stuff and to see the book would be helpful, that's all. So let me just find -
- -

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VICE PRESIDENT ASBURY: I think you sent it to Chambers, that to Jay, at SWC, on 17 May, at 11.23 pm, if that's any help locating it.

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MR EDWARDS: Did you say 27 May?

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VICE PRESIDENT ASBURY: Yes. No, 17 May at 11.23 pm.

PN58

MR EDWARDS: Sorry. Thank you.

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DEPUTY PRESIDENT GOSTENCNIK: I think the document you're referring to, but I may be wrong, is at page 207 of the appeal book.

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MR EDWARDS: Yes, sorry, just one moment.

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MR GREIG: I thought it might have been page 260, where there's a corollary of accumulated time.

PN62

DEPUTY PRESIDENT GOSTENCNIK: I see, yes. In any event, the appellant can - - -

PN63

MR EDWARDS: Yes, I'm just looking through the index. It's labelled as - sorry, I'm just trying to find what it's labelled as. Okay. So it says it's on page 260, and it's labelled as 'Report from Tech Magic regarding work performed from Bamboo Holdings'.

PN64

So this document is labelled as being from Tech Magic. It doesn't contain any reference to Tech Magic within the document itself and it also does not lay out any - does not align with the other document that I believe the case is built on, which is the agreement between Tech Magic, which predates Blake Cassidy's time with the company, I believe.

PN65

VICE PRESIDENT ASBURY: So that starts on page 251.

PN66

MR EDWARDS: So that document starts on page 251 and, I guess, my thoughts there are a person can have multiple contracts with a party. If we are to assume that the document, provided on page 260, is, in fact, from Tech Magic, despite not containing any reference to Tech Magic within it, I believe, to the best of my knowledge, then the agreement, which clearly does not tend to align with what's laid out in that document, there is no reason just because an agreement has existed, that that agreement is relevant to the current arrangement. I mean people can have many agreements with many different people at different times or many agreements with the same people.

PN67

So to assume that that document, which does not align, has anything to do with the timesheet is based largely on Blake Cassidy's presentation of events, but Blake Cassidy wasn't actually involved with the company at the time.

PN68

So, just to be very, very clear, my submission is that Bamboo Holdings, or Bamboo, as a whole, does have more than 15 employees, that's the point.

PN69

VICE PRESIDENT ASBURY: But, Mr Edwards, as I understand it, this document, so starting on page 251, is a consulting agreement between Bamboo Holdings and Tech Magic.

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MR EDWARDS: Okay. And then what - - -

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VICE PRESIDENT ASBURY: And then appended is work that has been done by persons who are either employed by or contracted to Tech Magic, and the argument is that those persons are not employees of Bamboo Holdings, they are employees of Tech Magic, or contractors.

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MR EDWARDS: My question is, how do you draw the connection between the two documents?

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DEPUTY PRESIDENT GOSTENCNIK: Mr Edwards, Mr Cassidy gave evidence about these matters and made out certain contentions, including by reference to the contracts, that was his sworn evidence and the documents were produced to support that and you had an opportunity to cross-examine that. So the Deputy President who had (indistinct) got sworn evidence about the nature of the arrangements and nothing from you which would contradict that.

PN74

MR EDWARDS: So I guess my question was just - so I think that's what I'm saying is that the entirety of that connection comes down to the witness statement, is that - - -

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DEPUTY PRESIDENT GOSTENCNIK: Well, that's the evidence that the member had and you had an opportunity to test that evidence by asking, presumably, Mr Cassidy questions during the course of the proceeding.

PN76

MR EDWARDS: Well, so just to sort of bring you up to speed, I had prepared a fairly lengthy summary of facts, right, so I labelled that as a witness statement but it was, in fact, a summary of facts, from my perspective, all of which were facts that I only had reason to include because, at the time, I believed they were relevant.

PN77

Now, I understand that my more recent submission just says everything, and that was based on the few minutes of legal advice that I was able to get from people. So it's important that you guys at least know that there was bullying involved.

PN78

But, in any case, what I'm really trying to say here is that given that I had prepared something and had been disallowed from reading from those written notes multiple times, and given the fact that I was not able to be represented - - -

PN79

DEPUTY PRESIDENT GOSTENCNIK: Sorry, when you say 'disallowed', some of your witness statement, was it excluded by some decision that the Deputy President applied?

PN80

MR EDWARDS: So I - the President asked me, I believe it was the word - sorry, I'm not sure - I don't know the exact hierarchy of who I've been dealing with or the names and labels of everybody, sorry, I don't always hold those factors - - -

PN81

DEPUTY PRESIDENT GOSTENCNIK: Beaumont DP heard the matter below.

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MR EDWARDS: Beaumont DP had said something to me and then said we would move along. And then I realised that she meant that I wasn't going to have the opportunity to read from my written notes, my witness statement. So that was supposed to be my opportunity to read that. So I stopped and said, 'Sorry, actually I did want to be able to read from this', and then I believe she rephrased things and said, 'Did you have anything to add', and I was confused. Because, obviously, I'm raising it, that's what I wanted to do was read from my notes.

PN83

DEPUTY PRESIDENT GOSTENCNIK: Mr Edwards, sorry, can I just ask you this? The usual practice in the Commission is that the parties are required, before the hearing, to set out, in writing, and outline of their submissions, statements of evidence on which they intend to rely and a copy of - they're required to produce a copy of any documents on which they tend to rely.

PN84

It's usually the practice of members of the Commission, at a hearing, not to allow or require a person to give evidence repeating what is set out in writing. So what is set out in writing is before the member and she would have – the Deputy President would most likely have admitted your statement and given it an exhibit number. The difficulty here is we don't have a transcript so we don't actually know, but that's the usual course of events.

PN85

She wouldn't have required you to read out your statement again because it's there and she would have read it in advance so she would have then asked to say anything additional, which is your opportunity to add anything that you might have neglected in your witness statement, particularly as you were unrepresented. Then she would have asked the respondent if they had any questions for you, by way of cross-examination.

PN86

That's the usual course not only in this place but in other courts and tribunals because we don't want to be wasting time taking evidence-in-chief again, when it's all in writing. That's the purpose of the writing requirement in advance, so that we're not wasting time and that the other side is aware of what it is you're going to say.

PN87

I'm happy to be persuaded otherwise, but that's the normal course of events. Now, you can tell me that something different happened on this day and go ahead.

PN88

MR EDWARDS: So my first question would be, I'm not sure whether you guys have gone over the initial witness statement that I did put forward?

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VICE PRESIDENT ASBURY: Is that on page 71?

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MR EDWARDS: Sorry, just one moment.

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VICE PRESIDENT ASBURY: Is that on page 71 of the appeal book?

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MR EDWARDS: Yes, just give me one - sorry, can I just have a moment to find it?

PN93

DEPUTY PRESIDENT GOSTENCNIK: Sure.

PN94

MR EDWARDS: I believe it's on page 64. I'm just checking that.

PN95

DEPUTY PRESIDENT GOSTENCNIK: Sixty-four is the start of the Commission's template statement of evidence. The actual substance of your evidence seems to begin at 71.

PN96

MR EDWARDS: Sorry, just one moment. Yes, you might be right, sorry. I'm just wondered what I got wrong here because I looked at - I see. Okay, sorry. Thank you. Seventy-one. Yes, sorry, I apologise. So, yes, I'm talking about 71.

PN97

VICE PRESIDENT ASBURY: Yes?

PN98

MR EDWARDS: So you can see that what's written there is not - I mean if you look at it, it's single - they're points, right? They are points of fact. This is a fact that I am saying, right, to be challenged or not. There's no context or colour - there's no me telling how that came about or what the situation was, or anything like that, right?

PN99

So my understanding was, and I believe I possibly had this wrong, was that I thought, because it was a hearing, I would, if I wanted to, be able to read my evidence aloud and actively and freely speak about it, as I delivered it. Those were the facts and points that I was putting forward and I wanted - - -

PN100

DEPUTY PRESIDENT GOSTENCNIK: Mr Edwards, isn't that what the Deputy President invited you to do when she said, 'Do you have anything else to say, other than what's written?'.

PN101

MR EDWARDS: Unfortunately you don't have the transcript, but I'm saying that there was something in miscommunication because I tried multiple times to say that I want to be able to do this and somehow the miscommunication happened.

PN102

VICE PRESIDENT ASBURY: Mr Edwards, can I suggest this to you, that the hearing before Beaumont DP was about - the critical points in it were whether the respondent employed more than 15 employees. So you talking about what had happened, and while I understand that you are aggrieved about the fact that you were dismissed, the hearing was about the number of employees. So perhaps it was that the Deputy President was saying, 'Mr Edwards, we're not dealing with the rights and wrongs of what happened, we're dealing with the number of employees'. And quite a bit of this statement seems to be about what occurred and

what you're aggrieved about, rather than about how many employees the respondent had and what - that was what the point of the hearing was. It is only if the respondent had the requisite number of employees, it had more than 15, that you would have gone on to determine whether or not you were unfairly dismissed. So the issue might be that.

PN103

MR EDWARDS: Yes. Sorry. Yes, so what you're saying is the exact point that is the point that concerns me is that that list is not the list of facts about why I am aggrieved. Everything that appears there on that list is there for a reason that I believe is relevant to demonstrate why it was 15 employees.

PN104

So there's nothing on that list about the bullying. There's nothing on that list about the poor work practice. There's nothing on that list about how I was treated unfairly, or how I was treated unfairly after the case, or the fact that the appellants changed their story multiple times, for whatever reason.

PN105

Sorry to be enthusiastic about that, but what I'm saying is that if there's something there that for some reason someone believes is not relevant, I would like them to say, 'Well, I don't think that's relevant' and I can point out why it was relevant. Also, please do bear in mind that there was one other jurisdictional objection, and that was whether or not I'm an IT professional.

PN106

DEPUTY PRESIDENT GOSTENCNIK: Whether you were covered by the award. Whether you were covered by the relevant modern award was the other one, which the Deputy President didn't deal with.

PN107

MR EDWARDS: She has not dealt with that, no.

PN108

DEPUTY PRESIDENT GOSTENCNIK: Mr Edwards, just getting back to the one with which I began, unless you're able to show that some of the employees of the foreign corporation were also employees of the respondent, then whatever be the position, in relation to the other employees that you've named, the other employees by themselves, in number, are not enough to get you over the line.

PN109

So you need to persuade us why the Deputy President below was wrong in her conclusion that the other persons were employed by a foreign corporation and there is no employment relationship between the respondent and any of those employees.

PN110

MR EDWARDS: Could I just ask? I just want to clarify something though, is it not the purpose of the appeal to make that argument. Surely the bar is different between asking for permission to appeal and what needs to be proven in the appeal itself?

PN111

DEPUTY PRESIDENT GOSTENCNIK: As I explained to you earlier, unless you are able to persuade us that there's an arguable case that the Deputy President was wrong, on that issue, the prospect of you obtaining permission to appeal, in the public interest, absent an arguable case for error, is pretty remote.

PN112

MR EDWARDS: I see. So at this point I guess I just come back to, just to be clear, is it generally - can I get an indication, I guess, that it's generally agreed that the only thing tying the document that is keeping track of the times that those employees to that contract that's presented is Blake Cassidy's witness statement?

PN113

DEPUTY PRESIDENT GOSTENCNIK: What the Deputy President has determined was based on a combination of Mr Cassidy's witness statement and the documents that he advanced, in support of the propositions in that witness statement, in relation to the foreign corporation. The relationship between the foreign corporation and an associated entity of the respondent and the services provided by employees of the foreign corporation to the respondent.

PN114

MR EDWARDS: I don't believe there were any - there was any evidence that they were employees of the foreign corporation and I believe that, in the absence of that evidence, the decision seems to be made in absence of that evidence is - - -

PN115

DEPUTY PRESIDENT GOSTENCNIK: That they were employees of the foreign corporation or independent contractors to the foreign corporation is beside the point. The issue is, were they employees of the respondent? I can't see there being anything in the materials which would suggest that those employees were employees of the respondent.

PN116

MR EDWARDS: Sorry, I can speak to that, certainly. So given the absence of any documents laying out the relationship, I believe the general evidence was that Bamboo supplied their tools, Bamboo - they worked solely for Bamboo. They were working on Bamboo's business, not the - - -

PN117

DEPUTY PRESIDENT GOSTENCNIK: Mr Edwards, you better take us to the appeal book so you can point out the relevant evidence that supports each of the propositions you've just made.

PN118

MR EDWARDS: Well, it was accepted by - firstly, I believe it was accepted by the respondent, during the hearing, that the tools were provided. Then there's also a number of documents, let me find the next document. So let's have a look here. I just need to find - so - sorry, I'm just looking for the specific - I think there's a fairly large amount of evidence that's not referred to in the decision. Sorry, I do have something specific that I'm looking for here, which is the organisational chart for Bamboo. Okay, so on page 156.

PN119

DEPUTY PRESIDENT GOSTENCNIK: One-five-six, did you say?

PN120

MR EDWARDS: Yes. So it feels like we've lost people. Is everybody still there, I can only see two people on my screen now.

PN121

DEPUTY PRESIDENT GOSTENCNIK: Your place on the screen says, (indistinct), but we're all here.

PN122

VICE PRESIDENT ASBURY: We're all here.

PN123

MR EDWARDS: Okay. So on page 156 there's an organisational chart and while I do accept that the colour coding suggests that certain members of the team were being labelled as contractors, that if you refer to my evidence you'll see that there were contractors who were, in fact, what I'll use, for lack of a better term, true contractors who do not appear on this list, on this chart, are not a part of the organisation.

PN124

So in my statement I detail a number of people who worked as true contractors, including the team at Mechanical Rock, another developer I believe to be called Brian somebody and people, developers, that just don't appear on this organisational chart.

PN125

Now, on one hand you might say, 'Okay, they're labelled on the chart as contractors' but, again, a label is just a label. A contractor and an employee are a contractor or employee by virtue of who they are and what they do, not necessarily just based on the labels given to them. It's based on the legal rights and requirements between the people who have entered into the agreement.

PN126

So what I'm saying here is there's an absence of any - there's an absence of any contract between the people that are listed in this organisational chart as contractors. There is evidence to support other people that have obviously been excluded from this contract who were what I would consider to be true contractors. Then, along side that - so this is just one of the points here, right.

PN127

So there's an absence of any documentation saying that these people, these foreign workers are, in fact, contractors. There's no documentation to support that, other than this contract with Tech Magic that may or may not be related to the timesheet we've seen, right.

PN128

But what we do have is evidence to show that they were included as part of the team, expected to be part of the team. I can to - this is me just showing my first

point, in the absence of a contract between these foreign workers and Bamboo, they certainly are included in the team in the team's own organisational chart, right. So that's part one.

PN129

The second is the hours that they were working. The next, I guess, is the - you can see in the timesheet actually provided, or the timesheet that's referred to, that's being attempted to sort of be tacked on to this contract, that the people mentioned are managed by time alone and not by any particular project or a scope of work that they were associated with.

PN130

That's to say that they were working - the business is their business is working on Bamboo, it's not working on somebody else's - - -

PN131

DEPUTY PRESIDENT GOSTENCNIK: Mr Edwards, there are lots of contractor who charge by time, lawyers being a case in point.

PN132

MR EDWARDS: A lawyer will generally have more than one client, I believe, and generally it's - - -

PN133

DEPUTY PRESIDENT GOSTENCNIK: I understand that. But if you're making a point about that there's some significance behind the fact that these are time worked. There isn't any particular significance about that, given that there are lots of contractors who will charge by time, rather than (audio malfunction) fixed rate or whatever.

PN134

MR EDWARDS: Okay. Generally those people would supply their own tools probably.

PN135

VICE PRESIDENT ASBURY: But, Mr Edwards, can we come back to the earlier question that Gostencnik DP asked you, are you saying that the Tech Magic people should have been counted as employees of Bamboo, is that what you're saying?

PN136

MR EDWARDS: Yes.

PN137

VICE PRESIDENT ASBURY: Well, which of them, because Beaumont DP, in her decision, is very, for my part anyway, very carefully identified people by name and said, 'These people are not engaged by the respondent, they were provided by a third party at the relevant time', and listed people. Who do you say that the Deputy President has not counted that should have been counted?

PN138

MR EDWARDS: Sorry, I believe that - I thought that she had listed them out there as being part of the group that were considered to be foreign workers that were accounted for in the sort of record keeping that was presented and labelled as being presented by Tech Magic.

PN139

Also - - -

PN140

VICE PRESIDENT ASBURY: The Deputy President had evidence that said, 'These people are engaged by Tech Magic and they do work for Bamboo, and here's the evidence of it. Here's a contract with Tech Magic and here is a timesheet that says this number of hours were undertaken by these people'. That was the answer. They're not employed by Bamboo. And you say, in point 110 of your witness statement, 'To the best of my knowledge Bamboo has no contracts with any of the workers introduced by Tech Magic'.

PN141

MR EDWARDS: That's correct.

PN142

VICE PRESIDENT ASBURY: So how are any of those persons, do you say, employed by Bamboo?

PN143

MR EDWARDS: Well, they work for them daily, they attend regular meetings, they're in the organisational chart, Bamboo provides them tools.

PN144

DEPUTY PRESIDENT GOSTENCNIK: Mr Edwards, it's not uncommon for - sorry, it's not uncommon, putting aside the foreign corporation element here, it's not uncommon for corporations in Australia to engage another corporation to provide it with labour. Those labour hire employees work exclusively for the company which hired the labour hire company to supply labour and they do so, sometimes on a, in places like mining, in areas - in lots of retail outlets, particularly in warehousing, an external company provides the labour. The employees are employed by the external company, even though they perform all of their work for the company which engaged in the contract, but they don't become, thereby, employees of the hiring company. This arrangement seems to me to be the same. That is, Bamboo or the related entity of Bamboo, entered into a contractual arrangement with a foreign corporation to provide particular skilled labour, for which it was paid.

PN145

MR EDWARDS: Sorry, I think my question is, how do you draw the connection between that contract and the employees in question.

PN146

DEPUTY PRESIDENT GOSTENCNIK: That's the only evidence that the Deputy President had. She had a contract and she had evidence about how long they were engaged and she had sworn evidence from the CEO of Bamboo about

the arrangements. From that she deduced that they were not employees of Bamboo. What is the evidence to the contrary?

PN147

MR EDWARDS: Well, the record keeping does not align with the contract in any way, as far as I can tell. The record keeping is all sort of the - - -

PN148

DEPUTY PRESIDENT GOSTENCNIK: Did you put this - - -

PN149

MR EDWARDS: - - - as the tone in the general arrangement.

PN150

DEPUTY PRESIDENT GOSTENCNIK: Did you put any of this to the witness? You had an opportunity to ask the witness questions.

PN151

MR EDWARDS: Well, I was - as I said, I put quite a bit of time into my original statement which laid out a number of facts that would have allowed me to state my case and then multiple times, when attempting to read from my statement, I was not give the opportunity to do so. So - - -

PN152

DEPUTY PRESIDENT GOSTENCNIK: Were you given an opportunity to ask Mr Cassidy questions?

PN153

MR EDWARDS: Well, I was interrupted during that opportunity, yes.

PN154

DEPUTY PRESIDENT GOSTENCNIK: The answer to my question is yes, you were given an opportunity to ask Mr Cassidy questions?

PN155

MR EDWARDS: Yes, but then I was interrupted.

PN156

DEPUTY PRESIDENT GOSTENCNIK: Mr Edwards, if your case is about how often you were interrupted then perhaps you should have produced a transcript or produced the audio of the hearing, if that's what your complaint is about. But your complaint, it seems to me, to be about, ultimately, whether or not the Deputy President was right or wrong to exclude these particular workers to engage in what (audio malfunction).

PN157

So whether you were interrupted or not, you were given an opportunity to ask Mr Cassidy questions, yes?

PN158

MR EDWARDS: I was, in fact, not given the full opportunity to ask the questions that I wanted to ask him. I was interrupted and told that I could not ask the questions that I had prepared.

PN159

DEPUTY PRESIDENT GOSTENCNIK: All right. Did you have, as one of your questions, compared the inconsistency between what you say is the contract and the hours in the sheets? Is that one of the questions you had pre-prepared?

PN160

MR EDWARDS: Sorry, can you say that again?

PN161

DEPUTY PRESIDENT GOSTENCNIK: You just told me that there is a discrepancy between the daily time reports on the one hand and the arrangements in the contract between Bamboo Holdings Pty Ltd and Tech Magic.

PN162

MR EDWARDS: Sorry, it's not to do with the time that's different, I'm sorry if I gave you that impression. It's that the contract that was put forward was a project based contract and it talks about project based work.

PN163

DEPUTY PRESIDENT GOSTENCNIK: Yes.

PN164

MR EDWARDS: There's no evidence to suggest that any of the people were involved in project based work, I don't believe.

PN165

VICE PRESIDENT ASBURY: And, again, coming back to my earlier question, is that a question that you prepared to ask Mr Cassidy?

PN166

MR EDWARDS: Can I have a look to see which question or which facts that I would state?

PN167

DEPUTY PRESIDENT GOSTENCNIK: Yes.

PN168

MR EDWARDS: So one of the things that - let me just try and find what I have here. There was also a large sum of evidence that was presented, initially, that was too large - it was in the form of spreadsheets, to sort of provide a very clear picture. Sorry. I just need a moment here to find which of these would have addressed those specific differences.

PN169

It's difficult to find a single point, given that my entire - it's hard to find the one point, the one piece - okay, so let me find a couple. So in here I believe one of the points I put forward was - I'm not able to find it, but I'm still looking for it, was to do with the attendance of daily meetings. Now, that attendance of daily meetings,

I believe, in a discussion or conversation or had I been allowed to question that, would have shown the discrepancy between the project based work that was put forward, as what was suggested to be the contracts between those workers and not. So that's one thing.

PN170

I'm just - perhaps if I have a quick look at the contracts as well. So just so I understand your question clearly. Your question is, did I have a single, specific question prepared that said - - -

PN171

DEPUTY PRESIDENT GOSTENCNIK: Mr Edwards, they're your words.

PN172

MR EDWARDS: Sorry. I apologise, could - - -

PN173

DEPUTY PRESIDENT GOSTENCNIK: I asked you whether you had anything prepared to ask the witness about the discrepancy between the contract and the work performed, which you allege exists. Did you put that to the respondent's witness, so that he could deal with it? If you didn't put it and you say you were prevented from it, did you have it prepared? Did you have a note or something?

PN174

MR EDWARDS: I think if you have a - if you have a look through the notes that I had prepared, that I was hoping to work through - - -

PN175

DEPUTY PRESIDENT GOSTENCNIK: You mean your witness statement?

PN176

MR EDWARDS: So my original witness statement, which, again, was just a summary of facts that I believe was misinterpreted to be a summary of my grievance, not a summary of facts that I had carefully put together to address the relevant issues of the jurisdictional concerns.

PN177

Had I been able to work through those points, in my questioning with Blake Cassidy - - -

PN178

DEPUTY PRESIDENT GOSTENCNIK: Which one of the 112 paragraphs of those notes goes to that issue?

PN179

MR EDWARDS: Okay. So hang on a sec. Well, the first one would be paragraph 27, where I state, 'I developed tools to observe product implementation changes'.

PN180

VICE PRESIDENT ASBURY: Paragraph 27, yes, right.

PN181

MR EDWARDS: On page - - -

PN182

VICE PRESIDENT ASBURY: Seventy-three, yes. And what question - - -

PN183

MR EDWARDS: Seventy-three.

PN184

VICE PRESIDENT ASBURY: What question would you have asked about that, to Mr Cassidy?

PN185

MR EDWARDS: So I guess my first and most obvious question would be, 'Do you accept that the evidence put forward here is accurate?'.

PN186

VICE PRESIDENT ASBURY: But, Mr Edwards, let me put it this way. Mr Cassidy gave a detailed statement, it starts on page 224 of the court book. In that statement he went through, in detail, the commercial contracts that Bamboo 61 Pty Ltd had entered into and he said, 'We've got contracts with this entity, that entity. These are the people who supply the labour to us under those contracts'. One of them was he gave evidence that they have a commercial contract with Tech Magic LLP, based in the United Kingdom, who's not a director or shareholder and he has no interest in it, other than the commercial contract. Then he says, 'Here's our contract, it's R11 attached to my statement, and it employs 400 employees and contractors in the UK, we're one of its clients and around 7 December 2022 here's the employees that it provided to us and here are the timesheets'.

PN187

Now, did you put to that witness, to Mr Cassidy that, 'That's wrong, those people are not contractors they're employees of yours'?

PN188

MR EDWARDS: Sorry, I mean I thought that that was - for me that was just obvious as that's the whole case, I thought that was the whole argument, I thought that was everything that we're doing here. I thought it boiled down to that. So, specifically, with paragraph 27, I was first trying to establish that if you look at the working habits and the work that's being done, it's suggestive that that contract is not, in fact, the contract that's in effect, with regards to those employees.

PN189

VICE PRESIDENT ASBURY: Did you put that to Mr Cassidy?

PN190

MR EDWARDS: I was not allowed to.

PN191

VICE PRESIDENT ASBURY: Mr Edwards, it wasn't an opportunity to read out loud your witness statement, was it that you were meant to be questioning Mr Cassidy about his witness statement.

PN192

MR EDWARDS: Yes.

PN193

VICE PRESIDENT ASBURY: So you got an opportunity to ask Mr Cassidy questions.

PN194

MR EDWARDS: So question 27 on my list started to dig into - so just please understand here, and I want to be very clear about this, is that at no point in my mind has there been any confusion the entire crux of this argument rests on whether or not the foreign employees are employees, I understand that. So, for me, the whole thing is that that's all this is about. That's the only thing we're here to talk about, with the exception of - - -

PN195

VICE PRESIDENT ASBURY: Then were did you - did you ask - - -

PN196

MR EDWARDS: Where I say are they - - -

PN197

VICE PRESIDENT ASBURY: Sorry, go ahead.

PN198

MR EDWARDS: Sorry. No, sorry. What I'm saying is, I started to read through a series of questions that I had prepared, or a series of facts that laid out my perspective and, in fact, would have demonstrated the case that I was putting forward that, yes, they are, in fact, employees. And that is always been the only thing that I was - sorry. I was also putting forward facts that related to the other jurisdictional objection. But there is nothing that I included in this series of 100 or however many statements, that - - -

PN199

DEPUTY PRESIDENT GOSTENCNIK: Mr Edwards, if these people, if any of them are employees of Bamboo what are the terms of the employment relationships? What are they?

PN200

MR EDWARDS: Well, they turn up for daily meetings, they have tools provided, they work on all aspects of - - -

PN201

DEPUTY PRESIDENT GOSTENCNIK: No, no, that's what happened, but what are the terms, the contractual terms, that Bamboo agreed with these individual employees before the contract of employment?

PN202

MR EDWARDS: There's no contract that exists that names these employees and the terms.

PN203

DEPUTY PRESIDENT GOSTENCNIK: Mr Edwards, in every employment relationship there is a contract. It is either written or it is oral or it is partly written or partly oral. But an employment relationship cannot exist without a contract. So what are the terms of the contract as between each of these individual employees and Bamboo?

PN204

MR EDWARDS: Sorry, I'm not sure because I believe that if there was no contract present that it fell - that there was like a default contract that it fell back to.

PN205

DEPUTY PRESIDENT GOSTENCNIK: Well, it will be an oral contract.

PN206

MR EDWARDS: I guess it would be the standards of whatever is allowed by the
- - -

PN207

DEPUTY PRESIDENT GOSTENCNIK: Mr Edwards, guessing doesn't get you there.

PN208

MR EDWARDS: No, sorry, I'm not guessing, I'm just saying that there's been no contract provided. There's no contract that names the employees in question.

PN209

DEPUTY PRESIDENT GOSTENCNIK: You know those employees, do you?

PN210

MR EDWARDS: Yes, I worked with them. I worked with them daily.

PN211

DEPUTY PRESIDENT GOSTENCNIK: Did you ask any of them to come along and give evidence about their employment relationship with Bamboo?

PN212

MR EDWARDS: Is that what I should have done?

PN213

VICE PRESIDENT ASBURY: Mr Edwards, where are they? Where are they named in this decision? Are they the employees of Tech Magic, or the persons that Tech Magic supplied? So paragraph 36 of the decision, the Deputy President named people that were supplied by Tech Magic, whether they're employees of Tech Magic or contractors to Tech Magic and says, 'These people provided services, via Tech Magic'. So that's paragraph 36 of the decision. So you say those people should have been counted in the count?

PN214

MR EDWARDS: Yes, because there's no contract, sorry, between them.

PN215

VICE PRESIDENT ASBURY: Well, Mr Cassidy gave a statement that said they're in the UK and Europe and they supplied employees or contractors to perform work on behalf of Bamboo Holdings, and then he names those same people.

PN216

MR EDWARDS: M'mm.

PN217

VICE PRESIDENT ASBURY: So on what basis do you say those are employees of Bamboo?

PN218

MR EDWARDS: On the basis that there's no contracts that names them and all of the other evidence presented, which is the time, the detailed work reports that I provided, the accepted fact that Bamboo provided their tools, the fact that they appear in the organisational chart of Bamboo when other true contractors do not.

PN219

DEPUTY PRESIDENT GOSTENCNIK: Mr Edwards, when did Mr Hoberts(?) commence his employment, or her employment, his employment?

PN220

MR EDWARDS: I would need to check the records. I can check that, if you would like. He commenced his employment? I mean I can tell you when he began - I can tell you when he began to make the changes on the formwork on the products, I can tell you that.

PN221

DEPUTY PRESIDENT GOSTENCNIK: Can you tell me the terms on which Mr Hoberts agreed to perform work for Bamboo, with Bamboo? With whom did he have this conversation?

PN222

My point really is this, the Deputy President had some evidence about the relationship between these people and Bamboo. She concluded that these people were employees of a foreign corporation which contracted with Bamboo's related entity to provide services. On the basis of the material that's in the appeal book, that conclusion, it seems to me, to be more than open for the Deputy President. There is no evidence, not one skerrick of evidence about when these people started their so-called employment with Bamboo, the terms on which they agreed to become employed by Bamboo or anything else that would point to an employment relationship or a contract of employment between these people and Bamboo.

PN223

MR EDWARDS: So could I just go back to paragraph 27, where I lift the relevant evidence supplied that would demonstrate the period of engagement?

PN224

DEPUTY PRESIDENT GOSTENCNIK: Sorry, take me to one of those documents and tell me what it says.

PN225

MR EDWARDS: It's possible that you don't have access to those documents, sorry.

PN226

DEPUTY PRESIDENT GOSTENCNIK: Are they in the appeal book?

PN227

MR EDWARDS: They were excluded from the original hearing - so the original hearing book they were excluded from, because they were too large, they were spreadsheets. So there's thousands of pages of spreadsheets.

PN228

DEPUTY PRESIDENT GOSTENCNIK: So these are spreadsheets that you (audio malfunction)?

PN229

MR EDWARDS: It's an aggregation of logs.

PN230

DEPUTY PRESIDENT GOSTENCNIK: Spreadsheets that you prepared?

PN231

MR EDWARDS: Yes, sorry, spreadsheets I prepared that are - - -

PN232

DEPUTY PRESIDENT GOSTENCNIK: And the information in the spreadsheet, presumably, is derived from some document?

PN233

MR EDWARDS: Yes. I also provided the source material for that.

PN234

DEPUTY PRESIDENT GOSTENCNIK: Is the source material in the appeal book?

PN235

MR EDWARDS: It was listed as evidence for the initial appeal, sorry. Sorry, given that - and again I'm making an appeal to the fact that I'm not a lawyer here, they appeared - they were included as evidence in the initial hearing. They were referred to and were, I believe, deemed to be included by the member, so Beaumont DP. I was not sure how to include those documents in the appeal book, given that they were too large.

PN236

DEPUTY PRESIDENT GOSTENCNIK: If you - so you haven't included them in the appeal book, is that what you say?

PN237

MR EDWARDS: They're referred to, on page 27, sorry, in paragraph 27, they're referred to.

PN238

VICE PRESIDENT ASBURY: But it's a series of numbers and a statement where you say, 'I developed tools to observe product implementation changes', and then a series of numbers. So - - -

PN239

MR EDWARDS: So those are the exhibits. So it's exhibit CE17, exhibit CE18, exhibit CE19, for example.

PN240

VICE PRESIDENT ASBURY: Well, what does it show? Does it show hours that these people - these Tech Magic people performed work on Bamboo?

PN241

MR EDWARDS: It shows periods of time where they made active contributions to the code base of Bamboo, the Bamboo product.

PN242

VICE PRESIDENT ASBURY: If it only shows periods of time it - were they located overseas? Were they in Australia?

PN243

MR EDWARDS: Sorry, who? The other employees?

PN244

VICE PRESIDENT ASBURY: The people named in paragraph 36, Olexander Horobitz(?), Anastasia Companietz(?), Odana Miskioyika(?), were those people -
- -

PN245

MR EDWARDS: I don't believe they were in Australia.

PN246

VICE PRESIDENT ASBURY: Because Mr Cassidy gives evidence that they were all either employees or contractors of Tech Magic and the fact they performed hours of work for Bamboo is entirely normal, if they were employees or contractors. He explains that some contractors appear in the company organisational chart for public purposes, so that they could say, 'This person is responsible', but they were not employees of Bamboo.

PN247

MR EDWARDS: I guess, not to be - just to ask, would it not usually be prudent, if somebody is represented for them to present evidence that showed that, more than just a statement? So I just want to go back - - -

PN248

DEPUTY PRESIDENT GOSTENCNIK: It's not just a statement, this is the CEO of the respondent who, under oath, gave this evidence. Now, one way to contradict it would have been for you to call one or more of these people and they could have given evidence about the terms of their engagement with Bamboo; when they started, what was the agreed hourly rate, how was payment to be made, what was the work to be performed? The usual things that one would find in a contract of employment, albeit an old one. What was agreed? You could have called these people.

PN249

So all that was left for the Deputy President was she had this chief executive officer of the company, under oath, giving evidence that Bamboo's associate has a relationship with a foreign corporation which has various employees and contractors who, from time to time, provide services to Bamboo and none of them are employed by Bamboo. That was his evidence. You had a chance to challenge that but she (indistinct).

PN250

MR EDWARDS: Sorry, so this is what I'm saying, is that I was not given the opportunity to challenge that and certainly we would have discussed paragraph 27 if I had have been given that opportunity.

PN251

VICE PRESIDENT ASBURY: Mr Edwards, you would have shown a spreadsheet that had the number of hours that each of those people performed work, doing coding or whatever they did, is that the case?

PN252

MR EDWARDS: Something along those lines, yes, but it also demonstrated - - -

PN253

VICE PRESIDENT ASBURY: So it showed the hours that they spent doing it?

PN254

MR EDWARDS: It shows the work that they contributed.

PN255

VICE PRESIDENT ASBURY: Okay. How does it show they contributed work as an employee as opposed to they contributed work as - as an employee of Bamboo, as opposed they contributed work as an employee or a contractor to Tech Magic, that Tech Magic supplied to Bamboo?

PN256

MR EDWARDS: Well, it shows that the relationship is not the relationship that - the contract is just a contract that exists and just because a contract exists with a company doesn't mean that it's the contract. Whether or not those workers were supplied to Bamboo, sourced for Bamboo, whether or not Tech Magic may or may not have been time tracking for them, there's no evidence that shows that those employees that are named, other than the statement of Blake Cassidy. I'm

just saying that that statement may have been given less weight if I had been given the opportunity to run through what I prepared.

PN257

DEPUTY PRESIDENT GOSTENCNIK: Mr Edwards, can I just ask you to turn to page 299 of the appeal book?

PN258

MR EDWARDS: Which page, sorry?

PN259

DEPUTY PRESIDENT GOSTENCNIK: Two hundred and ninety-nine.

PN260

MR EDWARDS: Yes.

PN261

DEPUTY PRESIDENT GOSTENCNIK: Do you have that?

PN262

MR EDWARDS: No.

PN263

DEPUTY PRESIDENT GOSTENCNIK: It's an email from Deputy President - - -

PN264

MR EDWARDS: Sorry, can I just have a - sorry, I'm getting - - -

PN265

DEPUTY PRESIDENT GOSTENCNIK: Yes, go on. Just tell me when you have it. It's four pages from the end, so you might just go to the end and go backwards.

PN266

MR EDWARDS: Sorry, I don't know why but for some reason right now this thing is playing up. So one, two, three - the very last thing, so I can see the decision, sorry, the order.

PN267

DEPUTY PRESIDENT GOSTENCNIK: No, we're at page 299, is that an email from - - -

PN268

MR EDWARDS: Yes. Sorry, sorry, it's an email.

PN269

DEPUTY PRESIDENT GOSTENCNIK: Do you have that?

PN270

MR EDWARDS: Yes.

PN271

DEPUTY PRESIDENT GOSTENCNIK: So that's an email from the Chambers of the Deputy President to respondent and to you. Half way through that email, under the heading, 'Directions', the Deputy President sets out the directions that she makes.

PN272

The first direction is that she requires the respondent, that's Bamboo, to do certain things. File written submissions, written statements, et cetera. Now, one of the written statements, presumably, that was filed was that by the CEO. So that was filed and served on you, in accordance with the directions, on 27 March, if not before.

PN273

MR EDWARDS: M'mm.

PN274

DEPUTY PRESIDENT GOSTENCNIK: Now, at that point that's your opportunity to respond. So the choice that you have to make, at that stage, one of the choices you have to make is what witnesses do I need to challenge those things that the chief executive officer says. The thing that he says about the persons in issue is that they are not employees, 'Well, how am I going to challenge that', you may ask. Well, one way of doing that is invite, or ask the Commission to make an order that the persons who are named be called to give evidence and you could ask them directly about the (audio malfunction).

PN275

MR EDWARDS: Could I speak to that?

PN276

DEPUTY PRESIDENT GOSTENCNIK: Yes.

PN277

MR EDWARDS: So if you're asking why I didn't ask them to present evidence and instead I - - -

PN278

DEPUTY PRESIDENT GOSTENCNIK: I'm not asking you why, it doesn't matter why you didn't. My point is, that you were given an opportunity to do so, in those directions.

PN279

MR EDWARDS: I didn't believe that I could compel them to give evidence.

PN280

DEPUTY PRESIDENT GOSTENCNIK: You couldn't but the Commissioner could, the Deputy President could. Let's assume that assertion is correct, did you ask them?

PN281

MR EDWARDS: I did not ask them because I believed that the physical evidence that I provided, in the form of timesheets, demonstrations around facts that were relevant to the employment, the absence of any - well, at that stage there was - - -

PN282

DEPUTY PRESIDENT GOSTENCNIK: So that's a judgment call that you made about the way you would present your case.

PN283

MR EDWARDS: Well, again, I'm saying that when I went to present my case I was interrupted multiple times, that's - - -

PN284

DEPUTY PRESIDENT GOSTENCNIK: No, no, I'm talking about the preparation of the material before the hearing, in compliance with the second direction. So at that time you had to make a judgment about what you'd file. You made a judgment that the documents that you filed would be enough to make out your case. It's the judgment you made.

PN285

MR EDWARDS: I believed that I would be able to walk through those and, yes, together with me walking through them and with them being present that that would be enough, yes.

PN286

DEPUTY PRESIDENT GOSTENCNIK: So you didn't ask any of the people who are named by the CEO as not being employees to give evidence.

PN287

MR EDWARDS: I thought it would be unfair to do that. Unfair on them. In didn't think that would put them in a fair position.

PN288

DEPUTY PRESIDENT GOSTENCNIK: I understand there are lots of reasons, but you made a judgment about that.

PN289

MR EDWARDS: Yes, I did and whether or not they were present, I was still not allowed to walk through the evidence that I had provided.

PN290

DEPUTY PRESIDENT GOSTENCNIK: Well, you wouldn't have walked through the evidence, they would have walked through the evidence. You would have written, or helped to prepare a draft statement which would have set out when they commenced employment, what the terms of their engagement with Bamboo were, with whom they had the conversation, how the contract was formed, that would have all been in writing.

PN291

MR EDWARDS: Sorry, what I'm saying is that I made that judgment call, based on the idea that I would be allowed to construct an argument, that I would be

allowed to supply evidence and then I would be able to read through that argument.

PN292

DEPUTY PRESIDENT GOSTENCNIK: Yes, but unless you provide a witness statement from the employees, you can't read out that which doesn't exist.

PN293

MR EDWARDS: Well, I can demonstrate that there clearly - just to throw out the fact that I just want to hear yourself as the question is, why is there no document provided that outlines the contract between the workers in question and names the workers in question and Bamboo?

PN294

VICE PRESIDENT ASBURY: Because they're not workers that have a contract with Bamboo, they're workers that have a contract with Tech Magic, and that was the entire point that the respondent was making. It was saying, 'We don't have a contract with these people, we have a contract with Tech Magic and they either employ them or engage them as contractors, but we don't'.

PN295

MR EDWARDS: So, again, why is there no invoice for that?

PN296

VICE PRESIDENT ASBURY: They provided timesheets and they provided a contract and Mr Cassidy gave sworn evidence that that was the case. 'We have a contract with Tech Magic, they supply people to do work for us, here are the names of the people and here are the hours that they worked'.

PN297

MR EDWARDS: So could I just ask you to - so when you talk about the time, the record of hours, does that name Tech Magic on it?

PN298

VICE PRESIDENT ASBURY: You could have asked Mr Cassidy that, Mr Edwards, and the answer he would have given would have been of great interest. But, at this point, it's not because he swore that that was the case. These are workers that are either engaged or employed by Tech Magic. These are the hours that they did work for us and it was under this contract. Now, if you wanted to argue, 'Well, that proves nothing because Tech Magic's name isn't even on it', you could have asked Mr Cassidy that, at the hearing.

PN299

MR EDWARDS: Well, perhaps I would have, if I had been given the opportunity to run through and make questions.

PN300

VICE PRESIDENT ASBURY: That is not in your questions, Mr Edwards. That point is not in your questions and, arguably, they weren't questions they were statements and they were not relevant to cross-examination, where you could have asked Mr Cassidy, while he was under oath, 'How does this prove anything? You

could have manufactured this document yourself'. And absent you doing that, the Deputy President was entitled to accept Mr Cassidy's evidence, or for my part anyway, because he gave very clear sworn evidence, 'We have a contract with this company, these are the people that did the work under it, and here's some timesheets or some records of the hours that they worked'. If all you had were records of hours that people worked, doing work for Bamboo, all that proves is they did the work. It doesn't prove they did it as a contractor or an employee of Tech Magic, or as an employee of Bamboo, and that's what had to be proved. That's what had to be proven. They did it as employees of Bamboo.

PN301

MR EDWARDS: Sorry, I did a lot of reading and one of the things that I came across was the purpose of the Fair Work Commission and one of the things that it's there to do, to the best of my understanding, is to manage the disparity of power between an employee and employer. So given - - -

PN302

DEPUTY PRESIDENT CLANCY: Well, that's not a purpose of the Fair Work Commission. The Fair Work Commission has got objects in the Fair Work Act.

PN303

What I want to do is take you to your notice of appeal please, your form F7, could you go to that, please?

PN304

MR EDWARDS: Yes, sure thing. Would I be able to have a page number?

PN305

DEPUTY PRESIDENT CLANCY: I'm not sure what page number it is, it's - - -

PN306

MR EDWARDS: It's not - no I think I may not have even put it in.

PN307

DEPUTY PRESIDENT CLANCY: Yes, let me know when you get to your notice of appeal, please?

PN308

MR EDWARDS: I don't suppose you could tell me the date that that was submitted on?

PN309

MR GREIG: The document is dated 10 May.

PN310

DEPUTY PRESIDENT CLANCY: I think May 2023.

PN311

MR EDWARDS: Okay. Sorry, could you just tell me what that document is called?

PN312

DEPUTY PRESIDENT CLANCY: It's a form 7 notice of appeal. The document you prepared to get this appeal process underway.

PN313

MR EDWARDS: Yes, sorry, I - sorry. I've got the F7. Yes, and which page, sorry, of the - - -

PN314

DEPUTY PRESIDENT CLANCY: Well, if you've got it there, it's on the page that - which, at the bottom is referred to as 5 of 9, 5 slash 9.

PN315

MR EDWARDS: M'mm.

PN316

DEPUTY PRESIDENT CLANCY: And you'll see, on that page, half way down, it's got, 'Grounds for appeal', at 2, have you got that there?

PN317

MR EDWARDS: Yes.

PN318

DEPUTY PRESIDENT CLANCY: Then, when you look at the box under 2.1 and in paragraph 1 there, your proposition on appeal appears to be that there were 18 employees of Bamboo 61 Pty Ltd, at the time that you were dismissed, on 7 December 2022.

PN319

MR EDWARDS: Yes.

PN320

DEPUTY PRESIDENT CLANCY: So that's your proposition?

PN321

MR EDWARDS: Yes.

PN322

DEPUTY PRESIDENT CLANCY: And you understand the position, under the Fair Work Act is that at the time of your dismissal, 7 December 2022, in order to be a small business, under the Fair Work Act, Bamboo 61 Pty Ltd had to have less than 15 employees.

PN323

MR EDWARDS: That's correct.

PN324

DEPUTY PRESIDENT CLANCY: And you say it had 18?

PN325

MR EDWARDS: That's right.

PN326

DEPUTY PRESIDENT CLANCY: Then if I look at paragraph 2, you name six employees there, and those six employees were accepted the Deputy President as being employees, all right?

PN327

MR EDWARDS: M'mm.

PN328

DEPUTY PRESIDENT CLANCY: At paragraph 3 you then refer to Ken, Eloro, and Alicia Gascoyne(?).

PN329

MR EDWARDS: M'mm.

PN330

DEPUTY PRESIDENT CLANCY: And it was accepted by the Deputy President that they were employees.

PN331

MR EDWARDS: M'mm.

PN332

DEPUTY PRESIDENT CLANCY: So that gets you to eight.

PN333

MR EDWARDS: M'mm.

PN334

DEPUTY PRESIDENT CLANCY: You then say there's a Nicholas Baxter and a Craig Jackson, this is at paragraph 4 there.

PN335

MR EDWARDS: M'mm.

PN336

DEPUTY PRESIDENT CLANCY: Now, that was dealt with in the decision, at paragraph 13, there was some outlining of evidence given by Mr Cassidy, in relation to Nicholas Baxter and Craig Jackson.

PN337

MR EDWARDS: M'mm.

PN338

DEPUTY PRESIDENT CLANCY: The finding or the conclusion of the Deputy President appears to have been that they were contractors and not employees.

PN339

MR EDWARDS: Yes, that's my understanding of her determination.

PN340

DEPUTY PRESIDENT CLANCY: Then we go to paragraph 5, which is over the next page. At that point we've got these named employees, and there's eight of them I believe?

PN341

MR EDWARDS: M'mm.

PN342

DEPUTY PRESIDENT CLANCY: And that's how you get to your 18.

PN343

Now, of those eight individuals named at paragraph 5, the last two are individuals called Volodomyr Danylko and Anna Bilokur-Demchenko, right?

PN344

MR EDWARDS: M'mm.

PN345

DEPUTY PRESIDENT CLANCY: Now, the finding of the Deputy President, in relation to those two individuals was, in broad terms, that those two individuals were not engaged by Bamboo 61 Pty Ltd, as at 7 December 2022. In the case of Mr Danylko it's said that he had left by that time, had stopped doing work and in the case of Ms Bilokur-Demchenko, again, it was no longer working on the project as at 30 September 2022, right?

PN346

MR EDWARDS: M'mm. So - - -

PN347

DEPUTY PRESIDENT CLANCY: Just a moment. On your case, therefore, if we eliminate those two, based on the finding of the Deputy President, you're down to 16 and if the Deputy President's findings, in relation to Mr Baxter and Mr Jackson are accepted, you're down to 14. That's the highest your case is put. i.e., you can have all the discussion you want to have about the other six employees named at paragraph 5 there, on your notice of appeal on page 6, but if the Deputy President is correct, in relation to Mr Baxter, Mr Jackson, Mr Danylko and Ms Bilokur-Demchenko, you can't succeed on your appeal.

PN348

MR EDWARDS: Sorry. So it would be Anna - most significantly Anna, I know her as Anna, I only became aware later that she was actually still employed. So again - - -

PN349

DEPUTY PRESIDENT CLANCY: That doesn't make any difference to what the Deputy President has found, based on the evidence before her.

PN350

MR EDWARDS: Yes, sorry. To sum it up, what concerns me is that I believe that when people have read through my initial witness statement that I believe that I don't understand that points need to be relevant to what we're talking about but

somehow that's my outlining my grievance, rather than presenting points that I thought were relevant.

PN351

Now, for me the whole thing was always about whether or not these foreign workers would be included - - -

PN352

DEPUTY PRESIDENT CLANCY: I'm just asking you to focus on these four individuals because, on the case that you're bringing on appeal, if these four individuals are not employees you can't succeed on your appeal.

PN353

MR EDWARDS: Again, it comes down to, and I apologise. My claim is - you're correct and my claim does include those individuals and that my reasoning for the appeal comes down to the fact that had I been given the opportunity to work through the questions that I had prepared, I would have been able to present the case appropriately, that they were, in fact, employees.

PN354

Given some of the evidence that I sort of point out; the lack of any arrangements around tax, the lack of any, you know the - - -

PN355

DEPUTY PRESIDENT CLANCY: There was evidence put in relation to Mr Baxter and Mr Jackson, about their arrangements and it's dealt with in the decision.

PN356

MR EDWARDS: Can I ask, is that dealt with by the witness statement of the employee of Bamboo in terms of is that based on Blake Cassidy's - - -

PN357

DEPUTY PRESIDENT CLANCY: The evidence is outlined and there's nothing put to the contrary.

PN358

MR EDWARDS: Well, this is what I'm saying - - -

PN359

DEPUTY PRESIDENT CLANCY: You still haven't put anything to the contrary, in relation to Mr Baxter and Mr Jackson. And you are now simply saying, in relation to Ms Bilokur-Demchenko that you've now found out that she's has been doing some work but the material point is, was she or was she not doing some work on 7 December 2022. And you've got nothing to say to - - -

PN360

MR EDWARDS: Yes, sorry - - -

PN361

DEPUTY PRESIDENT CLANCY: - - - anything in relation to the work or not work being done by Mr Danylko.

PN362

MR EDWARDS: I mean I believe that that's outlined in the documents that I've provided previously. Then, again, with regards to - it was evidence, actually, submitted by Bamboo - - -

PN363

DEPUTY PRESIDENT CLANCY: I'm not answering those sort of questions. It's for you to present your case. You've put a notice of appeal in, making these assertions.

PN364

MR EDWARDS: Right. And I'm just asking for permission to be able to make an appeal, based on the fact that I wasn't given the opportunity to ask the questions or run through the material that I prepared.

PN365

DEPUTY PRESIDENT GOSTENCNIK: Mr Edwards, this matter was listed to deal with both the question of permission to appeal and the merits of the appeal.

PN366

MR EDWARDS: So this is the appeal?

PN367

DEPUTY PRESIDENT GOSTENCNIK: We are hearing whatever it is you wish to say, in relation to the substantive appeal. The point that I made to you early on, unless you can persuade us there's some sort of error, at least an arguable case of error below, you've got no prospect of getting permission. But the way in which this appeal - this matter is being conducted is that both the question of whether permission should be granted and the substantive merits of the appeal are matters that we will consider.

PN368

MR EDWARDS: Sorry, what I'm putting forward here is that given that I was not represented and given that I wasn't allowed to work from my notes, that's - that's - I mean that's my whole case. You're saying that there was no evidence put forward - - -

PN369

DEPUTY PRESIDENT GOSTENCNIK: You keep making that assertion. We have nothing before us which supports this assertion that you weren't allowed to do this or that or the other thing. If you wanted to make a case, you ought to have gotten to the trouble of getting the transcript of the proceedings which - - -

PN370

MR EDWARDS: I did request it.

PN371

DEPUTY PRESIDENT GOSTENCNIK: Sorry?

PN372

MR EDWARDS: I did request the transcript from the Fair Work Commission.

PN373

VICE PRESIDENT ASBURY: Mr Edwards, you could have gotten the audio and told us whereabouts, on the audio, you were denied these opportunities. Again, for my part, these things in your statement are not questions. They're statements that really are not cross-examination of a witness.

PN374

MR EDWARDS: I hear you.

PN375

VICE PRESIDENT ASBURY: I just don't know what - - -

PN376

MR EDWARDS: Sorry, I hear you and I understand that. They are statements from me to work from.

PN377

VICE PRESIDENT ASBURY: I don't know what you - sorry?

PN378

MR EDWARDS: They are statements for me to work from.

PN379

VICE PRESIDENT ASBURY: Sorry?

PN380

MR EDWARDS: Well, they are statements for me to work from. So if we go back to the first one that I pointed out, and I haven't gone through the rest of them. So the first one was 27, which pointed to quite a large body of documents.

PN381

VICE PRESIDENT ASBURY: We've already covered that. The large body of documents showed the hours that those people, particular people who I don't know who they are, but they showed the hours that those people had worked doing coding or whatever. They show nothing about the basis upon which those people were engaged to do the work. The company says, 'These people are employees or contractors to Tech Magic. Here is the contract we have with Tech Magic. Here is a record of hours that these people performed work', and Mr Cassidy swears to the truth of that and there is no contradiction of that. Mr Cassidy has given an explanation of every single person and what their role was and how they fitted in.

PN382

MR EDWARDS: Well, perhaps we move on from 27 to the next one we might see that there's some - there are further contradictions that would have shown contradictions in Mr Cassidy's statement.

PN383

VICE PRESIDENT ASBURY: Which you didn't put to Mr Cassidy.

PN384

MR EDWARDS: Well, like I said, I was not given the opportunity to do that, so we come back to whether or not I've go the transcript - - -

PN385

VICE PRESIDENT ASBURY: Mr Edwards, you're saying you did not get the opportunity to read your statement out loud. That's an entirely different complaint than, 'I didn't get an opportunity to question Mr Cassidy'.

PN386

MR EDWARDS: All I'm saying is that you can see I've put a lot of effort into preparing that statement and that was what I intended to work from. The three times that I tried to work from it I was prevented from doing so. I've also told you that I did request the transcript - - -

PN387

DEPUTY PRESIDENT GOSTENCNIK: I'm sorry. During your questioning of the CEO you were prevented from reading your statement, is that what you're saying?

PN388

MR EDWARDS: I started to work from my notes, in my questioning of the CEO.

PN389

DEPUTY PRESIDENT GOSTENCNIK: Which question to the CEO were you prevented from asking?

PN390

MR EDWARDS: Well, so at what number - at what number, as I worked through the questions, was I prevented? So I think I got to, let me just have a quick look. So I would have been saying - sorry, just one moment. Sorry, the page number is playing up on this thing.

PN391

So I believe that I started to work - so please also bear in mind that at this point in time there were two jurisdictional objections so I had started to work through - I wanted to know whether or not - yes, okay, so I wanted to know whether Mr Cassidy accepted the qualifications that I'd put forward as qualifications. And then I wanted to know, okay, 'Do you accept that this is the job that I was -', sorry, I believe I summarised, actually, the first five questions, probably, to roughly just say, 'Is there anything about this that you object to? Is there a general acceptance of this?'. I guess the case is probably that there was a general acceptance. I think it was probably around question 9 that I was stopped, but I'm not sure. Again, they're not questions, I understand, they'd be the points that I had intended to work from to present my case.

PN392

VICE PRESIDENT ASBURY: But, Mr Edwards, why did you need to ask Mr Cassidy did he agree that you enjoy to read books relating to your field of expertise and you enjoy spending your time listening to software engineering podcasts? Why did you need to ask Mr Cassidy that?

PN393

MR EDWARDS: So that comes down to professional development and that's relevant, with regards to the coverage by the award.

PN394

DEPUTY PRESIDENT CLANCY: Mr Edwards, I'm going to just return briefly to the four individuals that I was discussing with you before, and I'm going to refer to your witness statement. In relation to Mr Baxter, if you go to page 74 of the appeal book.

PN395

MR EDWARDS: Seventy-four. Sorry. Yes.

PN396

DEPUTY PRESIDENT CLANCY: Actually go to 73, at paragraph 33, or question 33, whichever it might be.

PN397

MR EDWARDS: Yes.

PN398

DEPUTY PRESIDENT CLANCY: 'I witnessed that all members of the tech team were expected to attend these daily meetings, with the exception of Nicholas Baxter', then you go to 34, 'To the best of my knowledge, Nicholas Baxter was the only part-time member of the tech team due to his study commitments'. That seems to me to be the only reference that you make, in your witness statement, to Mr Baxter.

PN399

MR EDWARDS: Okay.

PN400

DEPUTY PRESIDENT CLANCY: The Deputy President makes some findings, in relation to Mr Baxter, based on evidence from Mr Cassidy.

PN401

Now, in relation to Mr Jackson, 87, on page 77 of the appeal book, you make the statement, 'I was made aware that the relationship between Craig Jackson and Bamboo would become more casual'. In relation to Mr Danylko, if you go then to paragraph 88, 'I was made aware that Volodomyr Danylko and two other individuals would be reducing their hours'.

PN402

Then, in relation to Ms Bilokur-Demchenko, you say, at 83, on page 76 of the appeal book, 'I was made aware that the employment relationship between Anna Bilokur-Demchenko and Bamboo had been terminated', and at 94, 'I did not know when Anna Bilokur-Demchenko returned to work for Bamboo'. That's the extent of your evidence in relation to those four individuals and they are dealt with in the decision of the Deputy President.

PN403

For you to succeed in establishing or obtaining permission to appeal, you've got to establish that there was error in her decision.

PN404

Now, she's had your evidence, as you've put forward in your statement and then she's had the evidence of Mr Cassidy. She prefers the evidence of Mr Cassidy.

PN405

Now, on the strength of your evidence, I don't see how there's an arguable case that the Deputy President findings, in relation to those four individuals, were incorrect. If they're not counted in your group of 18, you're back to 14, that's the challenge for you.

PN406

MR EDWARDS: I hear you and so to speak to that, again - so in the absence of any contract between - sorry, if I'm wrong here, but my understanding is, in the absence of a contract with Anna Demchenko, I was under the impression that there was like a default contract that things fell back to, like a basic - like if there's no contract and you were doing work for someone and all you'd agreed on is the amount of money that I thought that there was like a contract became a standard default employment agreement.

PN407

DEPUTY PRESIDENT GOSTENCNIK: If she's employed by a foreign corporation there may be one with her and the foreign corporation but for her to perform work for Bamboo doesn't require there to be a contract.

PN408

MR EDWARDS: Sorry. I guess I'm just not sure because there hasn't been any - well, aside from the witness statement of Blake Cassidy I haven't seen any evidence that does suggest that she was employed by the foreign company.

PN409

DEPUTY PRESIDENT CLANCY: But the issue for you, Mr Edwards, is this; the Deputy President had, before her, your evidence in relation to these individuals. She had also the evidence of Mr Cassidy. She's made a finding, based on the evidence that's before her.

PN410

MR EDWARDS: M'mm.

PN411

DEPUTY PRESIDENT CLANCY: Now, that hasn't gone your way, at first instance, but you've got to establish she's in error.

PN412

MR EDWARDS: So I think that the error occurred by me not being able to present my evidence.

PN413

DEPUTY PRESIDENT CLANCY: Okay. Well, we've heard that submission multiple times, all right. Is there anything else you wish to say?

PN414

MR EDWARDS: All right, so with regards to, specifically, how she erred, in the case of, let's just say Anna, to start. So given there had been - I mean given that Anna had been working with the company for several years, my understanding is that a short absence of leave would not necessarily mean that she was not an employee at that time. I'm sorry if I'm wrong about that, but that's sort of the line of thinking that I think needed to be investigated then.

PN415

DEPUTY PRESIDENT GOSTENCNIK: Where's the evidence that she was on leave?

PN416

MR EDWARDS: Well, she's worked for them for several years and then she was only - - -

PN417

DEPUTY PRESIDENT GOSTENCNIK: And then she didn't and then she came back. Where's the evidence of the intervening period being leave?

PN418

MR EDWARDS: Well, I think that given that the question here, I believe, is still a case of contract for services or contract of service and given that there are some default - okay, I'm not a lawyer, I'm just - - -

PN419

VICE PRESIDENT ASBURY: Mr Edwards, the argument that was put is there's no contract at all, between Bamboo and any of those people named in paragraph 36, including Anna Bilokur-Demchenko. She has a contract with Tech Magic and then Tech Magic supplies labour to Bamboo. So there was - - -

PN420

MR EDWARDS: Why isn't there any - - -

PN421

VICE PRESIDENT ASBURY: That was the argument that was put. There was no challenge to that. Mr Cassidy said that.

PN422

MR EDWARDS: But the whole thing, my whole case is the challenge of that. That's the only thing we're arguing about.

PN423

DEPUTY PRESIDENT GOSTENCNIK: You've put nothing. Your case is, 'Well, there was no contract'. Well, that's consistent with there being no relationship.

PN424

MR EDWARDS: Sorry, what I meant was that there was no written contract, as the evidence shows. No written contract - - -

PN425

DEPUTY PRESIDENT GOSTENCNIK: And what's the evidence of an oral contract?

PN426

MR EDWARDS: Well, the fact that they were turning up to work everyday.

PN427

DEPUTY PRESIDENT GOSTENCNIK: Well, that's not the evidence of an oral contract.

PN428

MR EDWARDS: Sorry, I, again - - -

PN429

DEPUTY PRESIDENT GOSTENCNIK: And showing up to work every day is also consistent with her being employed by her foreign corporation supplying labour, you're expected to show up to work.

PN430

MR EDWARDS: Perhaps. I just haven't seen any evidence of that, other than the evidence presented by Mr Blake Cassidy. To have all of his evidence be trusted - - -

PN431

DEPUTY PRESIDENT GOSTENCNIK: And there's nothing to contradict it.

PN432

MR EDWARDS: Well, except for the mountains and mountains of documentation that I - - -

PN433

DEPUTY PRESIDENT GOSTENCNIK: You keep saying this, but the simplest way to clarify all of this would have been to call one or more of these employees, which you didn't do.

PN434

MR EDWARDS: I just don't know what - - -

PN435

DEPUTY PRESIDENT GOSTENCNIK: Just understand this, Mr Edwards, an appeal is not an opportunity to run a better case than the opportunity that you had to run below. The purpose of the appeal process, at first - the first part of it, is to show whether or not the decision maker made an appealable error. If she did so make an appealable error then you'll get a rehearing.

PN436

MR EDWARDS: Okay.

PN437

DEPUTY PRESIDENT GOSTENCNIK: But you've got to show that the member below made an error, in relation to one or more of these employees. Frankly, you've got, effectively, unchallenged evidence about the contractual arrangements by the CEO and nothing coming from you, other than speculation.

PN438

MR EDWARDS: So I'll just say something quickly. All I'll say is that yes, you're right but, in the absence of a transcript and given that I requested a transcript and was not able to get one and given the fact that I didn't know that I could get a video recording, it comes down to the fact that I haven't provided the transcript, my whole argument was that I wasn't allowed to give evidence and you guys are correct, and I withdraw my case.

PN439

DEPUTY PRESIDENT GOSTENCNIK: What did you just say?

PN440

MR EDWARDS: Sorry, I withdraw my case and I - - -

PN441

DEPUTY PRESIDENT GOSTENCNIK: What did you just say?

PN442

MR EDWARDS: Sorry, I will withdraw my application for appeal.

PN443

DEPUTY PRESIDENT GOSTENCNIK: No, no, the word before that.

PN444

MR EDWARDS: Sorry, 'Given the fact'. Sorry, 'Given the fact'. Is that what you - yes, no, sorry. Is that right? Is that - - -

PN445

VICE PRESIDENT ASBURY: I thought you said, 'You guys are something', and I'm just wondering what that was, Mr Edwards.

PN446

DEPUTY PRESIDENT CLANCY: I heard, 'You guys are pricks', is what I heard.

PN447

MR EDWARDS: No, sorry, no that's not - - -

PN448

DEPUTY PRESIDENT GOSTENCNIK: That's what I heard as well.

PN449

MR EDWARDS: Sorry, no, if you're talking more about the fact that I've just suddenly said, 'I'm going to withdraw my case'?

PN450

DEPUTY PRESIDENT GOSTENCNIK: No, we're talking about what you said immediately before you said that.

PN451

MR EDWARDS: I would ask that we get somebody to look at the footage now.

PN452

DEPUTY PRESIDENT GOSTENCNIK: We'll look at the footage, Mr Edwards. Do you want to finish your submissions?

PN453

MR EDWARDS: Sorry, can I - no, what I will say is that given the fact that I did write and ask for the Fair Work Commission to give me a transcript, right, given that fact and I accept that maybe there's more I could have done.

PN454

DEPUTY PRESIDENT GOSTENCNIK: When did you do this?

PN455

MR EDWARDS: Immediately after the decision was sent up.

PN456

DEPUTY PRESIDENT GOSTENCNIK: Who did you send the correspondence to?

PN457

MR EDWARDS: I believe I made the mistake of sending it directly to Beaumont VP.

PN458

DEPUTY PRESIDENT GOSTENCNIK: Well, that wasn't a mistake.

PN459

MR EDWARDS: I was not aware that I would be able to get an audio transcription.

PN460

DEPUTY PRESIDENT GOSTENCNIK: Did you send an email?

PN461

MR EDWARDS: Yes, and she told me that I would have to pay and get it from a third party. She did tell me that I would have to pay and get it from a third party.

PN462

DEPUTY PRESIDENT GOSTENCNIK: Yes, that's usually the case, yes, from the transcript providers.

PN463

MR EDWARDS: So given that I haven't done that and given that my whole case
- - -

PN464

DEPUTY PRESIDENT GOSTENCNIK: So just to be clear, it's not as though you asked for the transcript and your request was denied, you asked for the transcript and you were told that if you wanted a transcript you'd have to approach our transcript service providers and pay the fee?

PN465

MR EDWARDS: Yes. I believe that I might be incorrect, that I also let you guys know that I wasn't - I think - sorry, I can tell you what happened is I think that during the one week in the time that I had to submit the appeal book, that would have needed the transcript included in it then, I didn't have the ability to pay for that.

PN466

DEPUTY PRESIDENT GOSTENCNIK: Yes?

PN467

MR EDWARDS: So, yes, no, I'll withdraw. The fact of the matter is that I don't have that transcript and that my whole case is based on whether or not - - -

PN468

DEPUTY PRESIDENT GOSTENCNIK: Your other difficulty is - Mr Edwards, your other difficult is, you don't actually raise, do you, as a ground of appeal, that you were denied procedural fairness?

PN469

MR EDWARDS: Yes, sorry, I didn't know the words for it, and I understand that that's, yes.

PN470

VICE PRESIDENT ASBURY: Mr Edwards, even if you were prevented from doing something that you wanted to do, I guess the proposition I'm putting to you is showing mountains and mountains of documents, in spreadsheets, to a witness that show many hours somebody did work for doesn't assist in establishing whether that person was an employee or a contractor, or whether the person was employed or engaged as a contractor by a foreign corporation. It just shows the hours that they worked, doing work for Bamboo, which they do under a contract for service, (indistinct). You know, it doesn't show anything.

PN471

MR EDWARDS: Yes, sorry, I hear what you're saying there and I think, at the time, it was in response to the contract that was presented that suggested that all the work was project work. So it just went to show that, in fact, no, not all the work was project work.

PN472

VICE PRESIDENT ASBURY: Does the contract refer to project work? So did you ask Mr Cassidy what project they were working on and put it to him that they weren't working on projects?

PN473

MR EDWARDS: And I've already submitted that I was not able to ask the questions that I wanted to put to him.

PN474

VICE PRESIDENT ASBURY: Whereabouts, in your document, that you say that you were prevented - you say that you were prevented from asking questions because the Deputy President wouldn't let you go through the points in this document. Well, where, in this document, do you say, in your statement, anything about it's projects or something else?

PN475

MR EDWARDS: Well, that was why I had presented - so, again, at paragraph 27 I refer to a fairly large body of - I refer to a fairly large body of evidence and - - -

PN476

VICE PRESIDENT ASBURY: In the form of spreadsheets showing hours that various people spent doing something?

PN477

MR EDWARDS: They also show that it was diverse, miscellaneous work that was work on the product, not work on any project, which related directly to the contracts that had been put forwards by the respondent.

PN478

VICE PRESIDENT ASBURY: Is there anything else you wanted to say?

PN479

MR EDWARDS: I'd really hope that you guys do look back over that - I'm sorry if I seem rash, but I definitely did not - I'm not sure if it was a metaphor for me offending you or what, but I definitely - - -

PN480

DEPUTY PRESIDENT GOSTENCNIK: Mr Edwards, I've had my associate have a look at the recording, or at least those recording it and you say - I think you tried to use the word 'correct', 'You guys are correct', but you shorted it and it sounds, on the audio, like 'pricks', but I think you said, 'cricks'.

PN481

MR EDWARDS: Sorry. Sorry.

PN482

DEPUTY PRESIDENT GOSTENCNIK: That's all right.

PN483

MR EDWARDS: Thank you.

PN484

DEPUTY PRESIDENT GOSTENCNIK: Is there anything else you want to say, Mr Edwards, at this stage?

PN485

MR EDWARDS: No, sorry, I've got nothing more to add right now. I've got nothing - I've got nothing more to say.

PN486

VICE PRESIDENT ASBURY: Mr Greig, do you have anything you want to say?

PN487

MR GREIG: Vice President, I've put in some fairly brief and, hopefully, concise written submissions, which is, in essence, saying I don't believe there has been an error made. There has been no error of fact or law and therefore I submit that there's no grounds for permission to be granted for an appeal, in that context. And in the context of that, we would like to see, as made in the last two submissions for the Commission to consider in its exercise of its discretion in the award of costs.

PN488

DEPUTY PRESIDENT GOSTENCNIK: Mr Greig, it's usually polite to wait for a decision before one applies for costs.

PN489

MR GREIG: Noted. I was just trying to be expedient.

PN490

VICE PRESIDENT ASBURY: Mr Edwards, anything else in reply?

PN491

MR EDWARDS: I think it's - no, just regards to costs, it seems fair that they would make an application and it shows that I've got some skin in the game and I'm not just here to take - you know. So whether or not it was relevant to the application I don't know, but it is what it is.

PN492

VICE PRESIDENT ASBURY: Mr Edwards, you don't have to address us on cost, we're not considering costs at this point.

PN493

MR EDWARDS: Thanks.

PN494

VICE PRESIDENT ASBURY: Is there anything else you wanted to say about the respondent's submission?

PN495

MR EDWARDS: I believe - I don't believe they've added anything and I've had plenty of opportunity to read over what they've put forward. I just want to be very clear that if I was not clear in my initial submission that my belief was that there was an error made, a factual error made, about the number of employees that were working for - that were employed by Bamboo at the time and that my application is based on, I believe, a lack of - some kind of lack of - I forget what the phrasing was.

PN496

I'll leave it with you guys. Sorry, I'll leave it with I appreciate your time and thank you.

PN497

VICE PRESIDENT ASBURY: So do you still want us to determine the appeal, Mr Edwards?

PN498

MR EDWARDS: The thing is, see, I'm not a lawyer and I don't know what's going to - again, so my understanding is that I had two options, at the start of this, I'm sorry I'm still talking a lot, is that I had the option to submit for an application for unlawful termination or unfair dismissal and, at the time, I trusted the opinion of a representative and to me the whole thing probably would have been better put forward as an application for unlawful termination. So I don't know which is going to strengthen my case, in terms of the application for that, so just - - -

PN499

VICE PRESIDENT ASBURY: We'll just determine the appeal, Mr Edwards. We'll reserve our decision and issue it in due course.

PN500

MR EDWARDS: Thank you.

PN501

VICE PRESIDENT ASBURY: Thank you. Good afternoon.

PN502

MR EDWARDS: Thank you.

ADJOURNED INDEFINITELY

[3.55 PM]