



Failure of Investigation Fatal to Disciplinary Action

Date: Wednesday June 17, 2015

The Northern Territory Police, Fire and Emergency Services (NTPFES) purported to demote a senior officer (the “Appellant”) on the basis of multiple breaches of the Northern Territory Public Sector Employment and Management Act (the “NT PSEMA”). In a historic win for the Appellant, the NT Public Sector Appeals Board (the “Board”) set aside the decision, the findings on which it was based, and re-instated him to his substantive position.

United Voice (UV) and James Burke of Hall Payne Lawyers (HPL) acted for the Appellant.

The first breach related to a single incident involving the Appellant and a superior officer. This led the NTPFES to suspend the Appellant and the Appellant to lodge a grievance against the superior. The NTPFES then engaged an independent investigator who compiled a lengthy report. The report was lengthy and seemingly comprehensive. However, from the outset, the appellant disputed many of the “findings of fact” in the report. These complaints were never addressed.

The report's findings led the CEO, NTPFES to allege and ultimately find even more breaches of the NT PSEMA. These additional findings were based solely on the report's findings that included that the Appellant routinely questioned directives, was querulous with the superior and made derogatory comments about the NT Fire and Rescue Service.

A Disciplinary Appeal was made to the NT Public Sector Appeals Board (the “Board”). Submissions were made on the papers without the need to appear or call witnesses. The Appellant submitted statements from 3 subordinate officers within the Appellant's command. The Respondent did not provide any additional evidence.

The Appellant argued that the CEO's decision had to meet the test in *Briginshaw v. Briginshaw*. He argued that the CEO's decision was so reliant on the investigator's report that if it failed the *Briginshaw* test so did the CEO's decision. The Appellant submitted that the report was riddled with “inexact proofs, indefinite testimony or indirect references”. The board agreed.

The Appellant argued that in a career spanning almost 30 years, the Appellant's personal record did not contain a single reprimand, complaint or negative comment. For much of the period where he was alleged to have been disparaging of management and the service generally, he was not in fact present. The allegations were all general and did not make any reference to specific incidents even by way of example.

The Respondent submitted that "...the CEO relied on evidence in the investigation report and 'staff comments' made by unidentified witnesses interviewed by the investigator". The Board found, "...neither of these sources are sufficient evidence for the CEO...".

The Board preferred every one of the Appellant's substantive submissions and attached them to its decision.

The Board's decision reinforces the importance of union membership for workers in the Northern Territory. UV and HPL both have significant experience in dealing with public sector disciplinary matters, in the Northern Territory and elsewhere.

If you have any queries in relation to this matter please contact James Burke of HPL on (08) 8942 0384.
