



COMMONWEALTH & DEFENCE FORCE
OMBUDSMAN

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10 November 1994

C/94/225

Mr Frank Blount
Chief Executive Officer
Telstra Corporation Ltd
38th floor, 242 Exhibition Street
MELBOURNE VIC 3000

Attention Ms Joy Geary

Dear Mr Blount

At the request of Ms Geary, I am notifying you of the details of the complaints made to the Ombudsman by Mr Alan Smith.

20.1.94 Telecom unreasonably has decided to apply charges to his FOI request and has stated that the charges will be considerable.

2.3.94 Telecom has delayed providing access to documents.

2.3.94 Deletions from documents provided and exemptions were not explained.

24.3.94 Telecom claimed that documents given to Telecom by Mr Smith in 1992 had been destroyed or lost.

Telecom unreasonably refused to give any further documents to Mr Smith.

Telecom has lost or destroyed a number of files relating to his contacts with Telecom prior to 1991.

14.4.94 Telecom unreasonably refused to provide documents allegedly referring to discussions Mr Smith had with three Telecom officers concerning a discussion Mr Smith had with Mr Malcolm Fraser.

Telecom unreasonably deleted information from documents released.

Telecom unreasonably denied Mr Smith access to 460 documents. (letters of 14.4.94 and 15.4.94 from Mr Smith to Mr Black refer)

5.5.94 Telecom unreasonably delaying providing access to many documents.

57-A

Telecom denied access to ELMF tapes for 21, 22, and 23 October 1992.

Telecom imposed unreasonable charges for access to documents sought under the FOI Act.

25.5.94 Telecom failed to provide fault reports for the period after 22/6/93, particularly from 9/8/93 to November 1993.

14.9.94 Telecom refused access to documents relating to voice monitoring for fault finding during 1993.

18.9.94 Telecom acting unreasonably in refusing to provide access to 'Bell Canada Raw Data'.

2.10.94 Telecom delayed providing access to documents under the FOI Act while Telecom's solicitors examined the documents.

23.10.94 Telecom unreasonably refused access to 'ELMF Smart 10 tapes' for the period May to July 1993. (Mr Smith's letter to Mr Benjamin on 23.10.94 refers).

27.10.94 Telecom unreasonably refused access to CCS7 Call Statistics documents dated 4/11/93, 5/11/93, 6/11/93 and 9/11/93. (Mr Smith's letter to Mr Benjamin dated 27.10.94 refers).

26.10.94 Telecom incorrectly informed Mr Smith that Telecom did not have in their possession 'any of the raw data and working papers to do with the Bell Canada testing and report.'

7.11.94 Telecom unreasonably refused to provide the 'Portland/Cape Bridgewater Log Book associated with the RCM at Cape Bridgewater' for the period 2 June 1993 to 6 March 1994.

I think the above is comprehensive; but I have sent a copy of this letter to Mr Smith and invited him to apprise me of any complaints he has made which I may have omitted inadvertently.

Yours sincerely


John Wynack
Director of Investigations

57A

FAX FROM: ALAN SMITH
C. O. T.

DATE: 11.11.94

FAX NO: 055 267 230

PHONE NO: 008 816 522

NUMBER OF PAGES (including this page)

FAX TO: DR GORDON HUGHES
HUNT & HUNT
LAWYERS
MELBOURNE

FAST TRACK ARBITRATOR

Dear Dr Hughes,

I believe the following fax from the Commonwealth Ombudsman's Office, is relevant to my claim, and not contrary to the instructions outlined in your letter dated 10th November, 1994.

In defence of these letters and faxes I would like to state that I believed at the time of writing that I was showing both the reluctance of Telecom to assist me with the Arbitration Procedure and their efforts to inconvenience me in this Procedure. However, I understand the legal reasons you have put forward as to the inappropriateness of forwarding literature back and forth where it may be seen by parties as compromising the confidential undertakings I agreed to abide by.

At no stage did I, or will I in the future, intend to embarrass Hunt & Hunt; neither will I undermine the Arbitration Procedure. I respect your views and judgement and will leave any grievances that I may or may not have with Telstra to be viewed only in the Arbitration Procedure and within the guidelines of the process.

Respectfully,

Alan Smith.

57-B

in understanding the bases for dispute between the parties on a range of issues;

- (1) both parties were provided with an opportunity to comment on the contents of the reports I received from the Resource Unit.

2.2 In all, I have read in excess of 5,000 pages of documentary evidence submitted by the parties.

2.3 Although the time taken for completion of the arbitration may have been longer than initially anticipated, I hold neither party and no other person responsible. Indeed, I consider the matter has proceeded expeditiously in all the circumstances. Both parties have co-operated fully.

It was really worth it to say that

3. Overview

3.1 I do not intend summarising all the evidence submitted in connection with this claim. Any omission in these Reasons of a reference to any facts or evidence should not be interpreted as a failure on my part to take those facts or evidence into account. This part sets out an overview of the dispute only.

3.2 Overview of Claim

- (a) The claimant alleges that defective telecommunications services provided by Telecom have damaged his business and caused his health to suffer.
- (b) The claimant, a chef by occupation and now 51 years of age, purchased as a going concern the Cape Bridgewater Holiday Camp in February 1988. The camp included a homestead, old church and a number of cabins which had a combined capacity to sleep in excess of 100 people.
- (c) Cape Bridgewater is 20 miles from Portland. The claimant regarded the area as a significant tourist attraction and says there was no documented evidence of any decline or predicted decline in tourism at the time of the purchase.
- (d) The former owner of the business now lives in India and has not provided evidence on behalf of either party in these proceedings. I know relatively little about the state of the business or the state of the telephone system used by the business as at the time of the purchase or beforehand. In any event, the claimant says he contemplated improving the existing facilities and hence the quality of clientele, thereby increasing revenue and profits.
- (e) The claimant asserts that the ongoing viability of the business was to a significant extent dependent upon his ability to take telephone bookings. He states that he first became aware of a problem with his telephone system about two months after he moved in. He was alerted to the problem by the poor response he received to a vigorous