

IN THE MATTER OF an arbitration pursuant to  
the Fast Track Arbitration Procedure dated 21  
April 1994

Between

**ALAN SMITH**

Claimant

and

**TELSTRA CORPORATION LTD trading as  
TELECOM AUSTRALIA**

Telecom

**WITNESS STATEMENT OF** ~~\_\_\_\_\_~~

I, ~~\_\_\_\_\_~~ General Manager Customer Sales and Service  
Vic/Tas of Telecom Australia's Commercial and Consumer Business Unit of 540  
Springvale Road, Glen Waverley in the State of Victoria, solemnly and sincerely declare  
and affirm as follows:

**EMPLOYMENT DETAILS**

1. I have been employed by Telecom for approximately 20 years. I have been in my current position as described above for approximately 1 year.
2. I have held General Manager positions within various areas of Telecom for approximately 4 years with line control for customer sales and service. Prior to this I held a variety of positions in business planning, marketing, strategic planning and quality control. In total, I have held an executive position in Telecom for approximately 7 years.

**SMITH'S COMPLAINTS**

3. On December 1992 I had a meeting in my office with Mr Smith at which settlement of Mr Smith's claim against Telecom was reached. The meeting commenced in the morning and was concluded in the afternoon. The negotiations were conducted in an amicable way. He determined of his own volition to accept an ex gratia offer of \$80,000 and a 008 telephone service for his business with a \$5000 credit in full and final satisfaction of all his claims to the date of settlement. During the negotiations Mr Smith provided various letters and documents in support of his position and made claims as to the extent of the financial loss which he had allegedly suffered to his business. Although my own opinion was that the claims Mr Smith was asserting against Telecom and the effect on his business were exaggerated it was determined to resolve all matters involving Mr Smith on the basis of the offer made to and accepted by him. Mr Smith left my office at lunch time and later returned to recommence our negotiations. During our settlement discussions Mr Smith had unlimited use of the telephone so that he could speak to his advisers if he required. I am aware

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that in my absence Mr Smith made several telephone conversations during the negotiation period.

- 4. Attached hereto and marked "RNP-1" is a copy of the letter recording the settlement agreement which was signed by Mr Smith and myself.
- 5. The settlement was arrived at after discussions between myself and Mr Smith over the period between September and December 1992 and reflected the free and voluntary consent of Mr Smith and T to the resolution of all claims and matters concerning Mr Smith in the settlement and release of T given by Mr Smith.

AND I MAKE this solemn declaration conscientiously believing the same to be true and correct.

DECLARED at Glen Waverley )  
 in the State of Victoria )  
 this 12th day of December 1994. )

Before me:

12/12/94.

*Emma Zipper*

**EMMA ZIPPER**  
*Freehill Hollingdale & Page*  
 101 Collins Street, Melbourne  
 A Solicitor holding a current  
 Practising Certificate pursuant  
 to the Legal Profession  
 Practice Act 1958.



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**Issues Involved During the Resolution - Factors Considered**

1. Alan requested \$150k
2. Chances of legal action - high
3. Chances of media action - 100%
4. Poor performance of Telecom:
  - historically *not*
  - March *2nd* problem
  - Local Portland problem fixed in October
  - wiring and cabling issues
  - RVA on congestion
5. Slow resolution of past problems both technical and claims
6. COT involvement:
  - chances of class action
  - chances of mass media action
  - chances of membership growth
    - Adelaide Pizza
    - Mt Gambia
    - Portland
7. Evidence of problems:
  - Many letters stating the problem of not getting through to Alan Smith
  - People prepared to make statements of problems
  - Claims that Alan had rung himself from his Goldphone and not got through
  - Austel and Ombudsman both had trouble getting through
  - Many claims which might be difficult to substantiate in court but would be credible in the media
  - Viability of business for the future - increased bookings since the service Period of time
8. Costs incurred:
  - Additional phone calls to chase up business - about \$1000
  - Legal costs - about \$1000
  - Camps prepared but not run
  - Advertising
  - Time
9. Alan's time and other consequential costs - health, stress, etc

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10. Loss of business:
  - Camps lost because party could not contact Alan (evidence in letters - \$10,000 loss of profit)
  - Extrapolating - about \$40,000 over a period
11. Loss of partnership:
  - Alan claims \$100,000 loss because he had an opportunity to sell a share in his business but this opportunity was lost because the potential partner stated he could not contact Alan Smith initially and lost faith in the telephone service available - hence withdrew his offer
12. Possible legal costs:
  - If Alan took legal action Telecom would incur significant legal costs to defend it - about ?
  - If Telecom lost, we could also incur Alan Smith's costs
  - Estimated what possible bill?
13. Inquiry costs - both Austel and Ombudsman's Office has been actively involved. Enquiries are ongoing. Cost of <sup>seeing</sup> ? - about
14. Cost of arbitration - Mr Smith wanted to use an independent arbitrator to resolve the dispute - cost in a case in Sydney \$25k
15. Management time - I have spoken to Alan Smith regularly (daily) over a period. I began making appointments for when I would ring him - he nearly always rings me prior to the call. When I did not ring him daily (even if I was not scheduled to) he wrote to Frank Blount and Doug Campbell or both. He had regularly rung Doug Campbell's office (Judy Lanstrom) several times a week and Austel and others in Telecom. This was despite my setting up a regular contact point (Mark Ross in Ballarat) for him and a specialist diagnostic technical manager (Bruce Pendlebury). Mark spoke with Alan Smith once a week at least. Bruce averaged 5-6 calls a week to and from Alan Smith. He also contacted the Area Manager, Don Lucas, on a regular basis. Don also visited Alan Smith at Cape Bridgewater. This was going to continue forever if all matters were not resolved.
16. Legal position - Mr Smith's service problems were network related and spanned a period of 3-4 years. Hence Telecom's position of legal liability was covered by a number of different acts and regulations. The immunity claimed has never been tested in court and the current immunity from paying loss of business compensation depends upon Section 8 of the BCS Tariffs lodged with Austel. This is probably the least clear of the immunities. In my opinion Alan Smith's case was not a good one to test Section 8 for any previous immunities - given his



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evidence and claims. I do not believe it would be in Telecom's interest to have this case go to court.

↘ Overall, Mr Smith's telephone service had suffered from poor grade of network performance over a period of several years; with some difficulty to detect exchange problems in the last 8 months.

In the media Telecom would not have looked good at a time when we are working hard to improve general customer perceptions.

In a legal battle, Telecom's chance of winning would have to be about 50/50. The bad publicity for Telecom would have been significant.

In my view were Alan Smith to win a legal battle he could have been awarded payment as high as \$40,000. If we went to arbitration a payout of the order of \$80,000 would not be out of the question; with costs of setting up the arbitration extra.

In the interests of expediency and Commercial judgement I considered it better to reach a commercial settlement.

Mr Smith's communication arrangement is questionable:

- other ways eg second line, fax, 008, etc of contacting him not set up
- use of answering machine improper or incorrect
- answering arrangements when Mr Smith was not there *not satisfactory*
- Telecom's defence in some doubt on causality

*These are the reasons not recalled at the time of settlement. Alan Smith did win not payment & hence both substantiated of his claim.*

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