



Telecommunications
Industry
Ombudsman

John Pinnock
Ombudsman

21 March, 1997

Mr Ted Benjamin
Director, Consumer Affairs
Regulatory & External Affairs
Telstra Corporation
37 Floor/242 Exhibition Street
MELBOURNE 3000

Dear Ted

Mr Alan Smith

I enclose a copy of a letter received from Mr Smith.

I would appreciate your advice concerning the matters raised by Mr Smith, in particular and arising out of your letter of 23 December 1994 to Dr Hughes:

1. any explanation for the apparent discrepancy in the attestation of the witness statement of Ian Joblin
2. were there any changes made to the Joblin statement originally sent to Dr Hughes, compared to the signed statement?
3. the nature of the queries raised by Ferrier Hodgson
4. are you aware whether the Ferrier Hodgson letter was sent to Mr Smith?

Yours sincerely

JOHN PINNOCK
OMBUDSMAN

1. A

"... providing independent, just, informal, speedy resolution of complaints."



6 May, 1997

Regulatory & External Affairs

Mr John Pinnock
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Dear John

Re: Mr Alan Smith

I refer to your letter of 21st March 1997 and apologise for the delay in replying.

I note that you seek information from Telstra in relation to allegations made by Mr Smith arising out of the arbitration process between Telstra and Mr Smith. I note that that arbitration process concluded nearly two years ago in May 1995, when the award was delivered. In the circumstances, I am not aware of any basis upon which Telstra is required to provide information in relation to that arbitration process as that process has well and truly concluded. Nevertheless, Telstra is prepared to provide the information sought by you in order to rebut the allegations made by Mr Smith.

Dr Joblin's Statement

Enclosed is a copy of a letter from Ferrier Hodgson to Dr Gordon Hughes, dated 16 December 1994 (Attachment 1). As you will see, in that letter Ferrier Hodgson acknowledge receipt of Telstra's defence document from Dr Hughes. At paragraph (vi) Ferrier Hodgson note that "*Appendix 18 being a Witness Statement of Ian Joblin (consulting Forensic Psychologist) is undated and not signed and the attachments "IAJ-1" and "IAJ-2" have been omitted.*"

.../ 2

1-B

Paragraph (vi) of Telstra's letter to Dr Hughes, dated 23 December 1994, (Attachment 2) responds to that notation. As is apparent from that correspondence, it would appear that the copy of the witness statement of Ian Joblin contained in the set of Telstra's defence documents provided to Dr Hughes was not a copy of the declared witness statement and did not include the attachments to that statement. As Telstra's letter to Dr Hughes of 23 December 1994 noted, the copy of Dr Joblin's statement in Telstra's set of the defence documents was signed and complete and Telstra could not understand how an unsigned copy went to Dr Hughes. Clearly a mistake was made when assembling the five sets of Telstra's defence documents provided to Dr Hughes on 12 December 1994, in that a copy of an unsigned, rather than a copy of the signed witness statement of Dr Joblin was included in one of those sets. This apparently occurred given the bulk of the defence documents and the number of sets which were produced.

Consequently, in answer to your request for any explanation for the apparent discrepancy in the attestation of the witness statement of Ian Joblin, it appears that a mistake was made in the compilation of the sets of defence documents.

You have also asked whether there were any changes made to the Joblin statement originally sent to Dr Hughes compared to the signed statement. Telstra cannot say with any certainty whether it has retained a copy of the unsigned statement sent to Dr Hughes, and consequently it is unable to compare the signed statement to that unsigned statement. In any event, I am unsure as to the relevance of this enquiry. Copies of the same signed statement of Joblin were provided to and used by all the relevant persons in this arbitration.

Mr Smith, in his letter to you of 12 March 1997, alleges that "it seems that Dr Hughes received a different set of so called defence documents" and that "Apparently Dr Hughes, Telstra and the Resource Unit had their own charter; a charter that I was not privy to". These allegations by Mr Smith are absurd and Telstra rejects them outright. The fact that a copy of an unsigned witness statement was inadvertently included in one set of the defence documents and that that mistake was rectified shortly thereafter cannot possibly support the contentions put by Mr Smith.

The Ferrier Hodgson Letter

You have asked the nature of the queries raised by Ferrier Hodgson in its letter to Dr Hughes dated 16 December 1994. As note above, a copy of Ferrier Hodgson's letter is Attachment 1 to this letter. The queries raised are set out in that letter.

I note that that letter was copied by Ferrier Hodgson to Telstra, Warwick Smith (the then TIO) and Peter Bartlett. I am not aware as to whether the Ferrier Hodgson letter was sent to Mr Smith. I do not believe that Telstra sent a copy of that letter to Mr Smith. I am unaware as to whether any of the other recipients or Ferrier Hodgson forwarded a copy of that letter to Mr Smith.

I reiterate that Telstra regards this arbitration as well and truly complete. There appears little point in canvassing allegations made by Mr Smith which are, on their face, completely without foundation. Nevertheless, Telstra has provided a response as requested by you, but I trust that this now brings this matter, and the matter of Mr Smith's arbitration generally, to a close.

Yours faithfully



Ted Benjamin
Director Consumer Affairs

- Enclosures
1. Letter dated 16 December 1994
 2. Letter dated 23 December 1994

1-B

FAX FROM: ALAN SMITH Cape Bridgewater Holiday Camp Portland 3305	FAX TO: MR JOHN PINNOCK TELECOMMUNICATIONS INDUSTRY OMBUDSMAN MELBOURNE
FAX NO: (03) 5526 7230	DATE: 12.3.97
PHONE NO: 1800 816 522	NUMBER OF PAGES (including this page)

If you have received this document in error, please phone us on 008 816 522.

Dear Mr Pinnock,

Copy follows of a letter dated 23 December 1994, from Ted Benjamin to Dr Hughes. This document is marked as A63860 (FOI). In this letter, at point (vi), Ted Benjamin states:

"I enclose a copy of the witness statement of Ian Joblin together with the attachments "LAJ-1" and "LAJ-2". This copy is signed and dated. I note that the copy in Telecom's set of the defence documents is signed and complete and cannot understand how an unsigned copy went to you. Please accept my apologies for this."

Mr Pinnock, it is clear from this statement that there were two different sets of Telstra defence documents.

I have attached a copy of Ian Joblin's signed witness statement. This document has been taken from a bound set of 14 witness statements which was supplied to me by Dr Hughes, along with 8 other bound sets of Telstra documents, as Telstra's defence. I received these documents, complete, on 13 December 1994. From Ted Benjamin's comments (noted above) it seems that Dr Hughes received a different set of so-called defence documents and his set included an unsigned witness statement. Since Telstra (via Ted Benjamin) has admitted that they sent Dr Hughes a set of defence documents which was different from what they sent to me, doubts are raised regarding how many other differing sets of defence documents were received by Dr Hughes.

In paragraph one of Ted Benjamin's letter (referred to above) he states:

"I refer to Ferrier Hodgeson's letter of 16 December 1994, addressed to you, which was copied to me."

This is further evidence of the unethical practices of those associated with my arbitration since, I assure you, I never saw a copy of this letter from Ferrier Hodgeson which was subsequently copied to Ted Benjamin at Telstra. How is it that Telstra was given the opportunity to respond to issues raised by Ferrier Hodgeson when, as a claimant in this matter, I was not given the same opportunity? For that matter, what issues had Ferrier Hodgeson raised?

1-C

Since the Arbitrator was obviously receiving at least some documents which were different to my copies, this is probably why he only awarded me 5 cents in the dollar against the amount arrived at by two independent chartered accountants when they assessed how much I had lost over the previous six and a half years (as a result of the faulty phone service).

Senator Richard Alston, Minister for Communications and the Arts, has stated in Parliament that I have an impressive amount of information and that my situation was not assessed according to the law.

Freedom of Information (FOI) documents that I have at hand clearly show, without any doubt, that Telstra wanted a legalistic Arbitration, not one of natural justice. The FOI documents which were drip fed to me show that Telstra were aware that we, as non-legal people, were "LAWYER FODDER" (Telstra's wording, not mine) and unable to defend ourselves in a protracted legal battle. We were at the mercy of Telstra with their unlimited financial resources and with their own lawyers, highly paid from the public purse. Even so, all this was not enough for Telstra: to support their network, they still resorted to using a report which was known to be fabricated and flawed. When, in my Arbitration, they were challenged to produce information and records to support these flawed reports, they apparently had no FOI documents. Once the Arbitrator had delivered his findings however, these 'missing' FOI documents miraculously appeared - too late for me to use them in my Arbitration and too late for me to challenge Telstra's lawyers through through the Arbitration.

For this reason I believe that this letter, and the information which I have regarding these matters, should be read by Mr Tony Morgan of GAB Robins who is currently assessing my claim regarding Telstra's defective administration of Freedom of Information requests. I have therefore copied this letter to Mr Armstrong (Telstra's Legal Department) and Mr Morgan.

Last Wednesday evening (26/3/97) while speaking to an acquaintance of mine, a representative of J B Were (one of the companies underwriting the Telstra float), stated that he believed all the COT issues were now finalised. Apparently he was not aware of the extent of the incorrect charging occurring through Telstra's Network, nor was he aware of my evidence regarding this incorrect charging. This leads me to wonder if the corporations who are to underwrite the value of Telstra in the forthcoming public float have been correctly advised by the Coalition Government regarding the incorrect charging discrepancies through the Telstra network.

Surely I am not the only person in Australia to suffer from this incorrect charging? Even if I am the only one, my evidence should still have been addressed by Telstra in their defence of my claims. If I am NOT the only one, then this is an even more serious matter. Will this situation ever be made known to the underwriters of the Telstra float?

84

Apparently Dr Hughes, Telstra and the Resource Unit had their own charter; a charter that I was not privy to.

Again I place on record the unethical and illegal commercial practices which transpired during the arbitration of my claim against Telstra and which your office has so far failed to address and, again, I ask:

- (a) Why were there two different sets of Telstra defence documents used in my arbitration?
- (b) Ted Benjamin's letter shows that a further copy of Ian Joblin's witness statement (this time a signed copy) was forwarded to Dr Hughes around 23/12/94, approximately ten days after I received my copy of Telstra's defence documents. I now seek, from your office, as per the rules of the FTAP (which state that all correspondence sent to the Arbitrator by one party must be forwarded to the other party) a copy of this second version of Ian Joblin's witness statement. I believe that, as administrator to the FTAP, you are obliged to forward a copy of this document to me.
- (c) Why were Ferrier Hodgeson allowed to continue to liaise with Telstra during my Arbitration when your office was clearly aware that this type of conduct contravened the agreed rules.

I await your immediate response to these matters.

Sincerely,



A Smith

copies to:

The Hon John Howard, Prime Minister, Parliament House, Canberra
Senator Richard Alston, Minister for Communications and the Arts, Canberra
Mr John Wynack, Commonwealth Ombudsman's Office, Canberra
Ms Caitlin English, Public Interest Law Clearing House, Melbourne