

Alan Smith
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22 July 1998

Phone: 03 55 267 267

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Mr Wally Rothwell
Deputy Ombudsman
Telecommunications Industry Ombudsman's Office
Melbourne

Dear Wally,

I believe I have now demonstrated to you, in telephone discussions and through the material I have recently forwarded to your office, that it was quite a common occurrence for faxes I have sent in the past to end up as blank sheets of paper at their destination. One example of the stresses that this problem caused, not only to me but also to others, relates to Caroline, Dr Hughes's secretary. Sometime in August or September 1994 I became very angry because I believed Caroline had not been collecting my faxes from their receptionist and, after venting this anger on Caroline, she told me that there were no faxes at reception for her to collect and, anyway, she had already dealt with all the correspondence for the day. This particular episode cost me \$50 in 'apology' flowers sent as an 'olive branch'.

After Dr Hughes had handed down his award I did not receive all of my claim documents back from his office. Mr Pinnock, TIO, is also aware of the number of occasions I have asked him for copies because, as administrator of my Arbitration, he should have retained copies of all my claim documents. The TIO responded, on a number of occasions, by stating that he will not supply these documents. I am at a loss to understand this response particularly since the documents I am asking for are only copies of my own correspondence during the Arbitration, or copies of my own claim material. One of Mr Pinnock's replies is attached. This letter, dated 10/1/96, states: "I do not propose to provide you with copies of any documents held by this office."

Since the TIO's office is funded in part by Telstra I can see why the TIO may feel he has an obligation to defend Telstra against my allegations of corruption but, since the TIO was appointed as an 'impartial' administrator I would expect Mr Pinnock to go out of his way to provide me with assistance, particularly since he is fully aware that I am not in any position to begin a Supreme Court challenge against his 'employer' (Telstra) regarding their unethical practices during my Arbitration.

I have also asked Dr Hughes for a chronological listing of all the correspondence and claim documents he received from me during my Arbitration but, like Mr Pinnock, he has not obliged. I have further sought this same information from Peter Bartlett of Minter Ellison, the Legal Counsel for the TIO's office and, once again, the door has been shut in my face — no response has been forthcoming.

All three of these people, the TIO, the TIO's Legal Counsel and the Arbitrator are fully aware of the ten year battle I have been in, just to have a phone service which would enable me to survive in the business world, and yet they have all refused to supply me with copies of my own documents and they won't even supply me with a LIST of my own documents. Is it any wonder I have no faith left in the legal fraternity? I believe that, because they are aware of my limited education and limited finances, they use this knowledge and simply flaunt their power over me, leaving me unable to challenge them regarding their bias towards Telstra.

Four pages, taken from some of the material that I have so far received back from the Arbitrator's office, are enclosed. They are:

1. A one-page document dated 19/10/94, received at 11.43, sent from my business to 03 614 8730, the Arbitrator's office and marked page 11 - but blank.
2. A two-page document, one showing my fax information, upside down, with a notation stating 'extended page 1.1' and the following page of the same letter, marked as 'extended page 2.1 - total page 2' but which is blank. (I am sure a forensic search of the partially hidden markings on this document will show that this is a number associated with Dr Hughes's office).
3. Another document marked as 'extended page 4.1 - total p.04' but also blank.

I believe this latest material will be of some interest to you as it seems that your office is now investigating some of my complaints.

Regards,



Alan Smith

*Alan Smith
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0306 hrs
21 July 1998

*Phone: 03 55 267 267
Fax: 03 55 267 230*

Mr Wally Rothwell
Deputy Ombudsman
Telecommunications Industry Ombudsman's Office
Melbourne

Dear Wally,

At 0306 hours one would think I was back on the 12 to 4 watch however, as much as I wish I actually was, the fact is that I am here at Cape Bridgewater, not back in our sea-faring days.

For your interest only I have attached a number of Telstra documents (and I have thought twice about attaching even more). My caretaker at the camp has written a short letter regarding complaints from her friends that her telephone line (55 267 284) was engaged most of the day even though both she and her husband were out until late afternoon. Her phone line is on the same system that my business uses.

You will understand when you read the letter to the Commissioner of the Federal Police that this letter would have taken a number of drafts and some considerable time to put together over Sunday 19 July 1998. My Solicitor ended up sending me a fax from his home at 13.31 saying that he had been trying to contact me by phone all morning but to no avail. It so happens that I was inside all morning and all afternoon preparing the letter to the Federal Police Commissioner and while the phone did not actually ring, I was aware, on two occasions, that the phone made a clicking noise. When I picked up the receiver however there was only a short silence followed by the normal dial tone.

With regard to the attached Telstra documents, which I have brought to your attention before: although this material was all included in my letter of claim, it was not addressed by either the Arbitrator, or by Telstra in their defence.

Document No. 1 consists of two pages titled "Telstra (Protocol Monitor)"
The hand-written notes on this document were added by Tony Lope at the Facsimile Xerox Answering Base at Graham Shorer's office (Graham being another member of COT). Telstra were, at the time, testing between Graham's business and mine on 28/10/93. Graham quite clearly remembers the blank white sheets of paper that were received at his office. As document B16c states:

"Mitsubishi to my Xerox received a piece of paper 4 cm long (blank). Although the page was error free, it did not terminate correctly and did not have any information on it."

(I wonder how many blank sheets of white paper show an error?)

When FOI document K03751 (Protocol Monitor) is compared with the time shown on B16c it is clear that there is a 24 minute time difference. The hand-written note from Telstra states: *"Mitsubishi machine failed to respond to valid EOP. Mitsubishi machine locked up for 2 minutes instead of timing out after 9 seconds."*

FOI document C10 has been forwarded to your office before: this shows again an error regarding a time when I could not send a fax to the Arbitrator on 23/5/94. Telstra's CCAS data and Telstra's phone account confirm this situation. I have drawn a small arrow on the C10 document at the time of 08:11:41. This is the international number for my Arbitrator's fax line (61-6136148730). That call is timed at 39 seconds (highlighted in orange). My Telstra account for this same call shows that it took 08.12 to go to the Arbitrator but the CCAS data on my account shows it went to Warrnambool (055 613614) and was charged as taking 52 seconds. Still confused? Then read on

The number after the Warrnambool number is 07 443 4022. This is the phone number for my Advisor, an ex-NCA officer, in Maroochydore. This call was timed at 2 minutes and 10 seconds however, when we check document C10, Telstra's CCAS data for this call at 08.17 to 07 443 4022 shows, at 08.16.25, only a 35 second call. Where did the different time span vanish to? I asked my Arbitrator to source this information from Telstra during my Arbitration so as to put the matter to rest but this did not happen. Because these matters were not addressed I continue to bear the cost of preparing my claim, even though the COT four were assured these costs would be re-imbursed. These costs are currently more than \$170,000, excluding consequential and resultant losses which also continue to accumulate.

The following example is included for good measure: Documents A and B are Telstra accounts for 10/11/12 June 1994, during my Arbitration Procedure. Document C1 is a Telstra CCAS record for 11/12 June 1994, i.e. this the data for accounts A and B. Six lost calls cannot be accounted for on documents A and B; these calls have been marked with an asterisk (*) and orange highlighter.

Document C23 is another Telstra FOI document dated 12 June 1994 which also matches the billing record already used for 11 June 1994. This document includes 7 lost calls which are not on Telstra's account: some of these lost calls were to COT members in Queensland, some to my technical advisor, George Close on 07 445 3198 and five to my other advisor, Garry Ellicot on 07 443 3442 (his fax line). Since all the lost calls are related to the COT Arbitrations, do you think this indicates that there was some sort of device on our lines that intercepted these calls and faxes?

My costs and resultant losses now amount to hundreds of thousands of dollars because these issues were not addressed in my Arbitration. I am now placing my requests on record: I demand answers from Telstra.

I am sure you understand my concerns when blank pages are still arriving through my fax, even as recently as 29 June 1998. According to my telephone account, my Solicitor received faxes from my office but according to him they were blank, except for a small symbol on each page. This is the same Solicitor who had so much trouble trying to reach me by phone last Sunday.

I now wait for Telstra's response to the requests made by your office.

Regards,



Alan Smith

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24 July 1998

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Mr Wally Rothwell
Deputy Ombudsman
Telecommunications Industry Ombudsman's Office
Melbourne

Dear Wally,

Another chronological list of faxes which have been lost in transit to Dr Hughes is enclosed. Please note my signature on the covering letter which I wrote to Dr Hughes on 13/10/94 and which was sent at 14.20 to fax number 03 6148730. The page which followed this covering letter states "Extended page 1.1" in the top right hand corner but since I signed off on the covering letter it is clear that there was no extended page. Further, page 14, timed at 14.27, is a letter from the Commonwealth Bank which was also signed off, indicating that this document was complete. It is clear that the following document however, which is marked "Extended page 14.1", was not an extension of page 14 but should have been another page altogether. So the same fault occurred on page 1 and page 14.

As you know, the very reason I was in Arbitration in the first place was because of ongoing problems with my phone lines and because my technical advisor and I had proved that these phone faults had adversely affected my business. Did it not occur to the Arbitrator, at any time during my Arbitration, that these blank fax pages provided even more proof that my original complaints were founded on fact? I am aware that the Arbitrator was often overseas during the time of my Arbitration and therefore not available to directly supervise the running of his office but surely this should not have affected the quality of the attention he paid to my case. At no time did Dr Hughes or his staff ask me to re-fax pages which had come out blank at their end.

The TIO's Legal Counsel for the COT Arbitrations, Minter Ellison Morris Fletcher, rang me twice when they couldn't fax a ten page document to me on 21 March 1994. Their records will no doubt show that they finally succeeded in sending this fax on 22nd March. This was one of many similar incidents which I included in my claim for the Arbitrator's attention during the FTSP / FTAP. At least the TIO's Legal Counsel followed-up to make sure that these legal documents were received properly.

During my Arbitration, Dr Hughes's office was provided with a letter from Austel dated 20 June 1994, outlining my concerns regarding the ability of my fax machine to receive and/or send documents during my Arbitration. Perhaps this Austel letter also arrived at Dr Hughes's office as a blank page because I certainly never received a directive from Dr Hughes to re-send my claim documents because he hadn't received some pages correctly.

I have been told that during the time that Dr Hughes was Arbitrating on the COT matters he also sat for exams with the Institute of Arbitrators, Australia, to be admitted into the Institute as a graded arbitrator. I have also been told that he failed these exams. I believe there is no stigma to be attached to failing exams; I have failed myself, only receiving my diploma in hotel/motel management on my second attempt. The difference is that I went back and worked out where I had gone wrong the first time, before I sat for the exam the second time. Perhaps Dr Hughes should have gone back over the process of my Arbitration: perhaps he would then have noticed that he had not received all my claim documents leading to a situation where Telstra could not properly assess my claim.

My previous correspondence to your office, together with this letter, clearly shows that not all my claim documents were defended by Telstra. The flow-on result of this omission was that when I prepared my written response to their Defence, under the rules of the Arbitration, I was responding to an incomplete defence. Since the Arbitrator reached his final award as a result of assessing Telstra's documents as well as mine, this meant the errors were compounded all along the way.

Further, as Legal Counsel to the TIO, Minter Ellison were supposed to be supplied with copies of all correspondence between myself, Telstra and the Arbitrator, so the Legal Counsel missed out on seeing some claim documents too.

One example of a possible missing document: At one point during the Arbitration procedure I advised the Arbitrator that the rate of tourism in the South Western Region had increased over the 6½ year period of my claim. I supported this information with statistics supplied from a number of different sources yet in his 'award' of 11 May 1995, Dr Hughes stated that the rate of tourism had declined during this same period and he had to take that into account when he assessed my losses. I can only assume that this was one of the claim documents that never arrived at Dr Hughes's office and so here is an example of where the lost taxes contributed to a further loss for me (in the Arbitrator's findings). Since then I have provided to the TIO's office and my local Federal Member of Parliament, David Hawker MP, with copies of the Lands & Parks assessment regarding this increase in tourism.

Over the years, in an attempt to uncover the reason for the Arbitrator and his technical evaluation resource unit (DMR & Lanes) only managing to locate 26 faults for assessment, over my claim period of 6½ years, I have written some 600 or more letters to a number of different Cabinet Ministers and compiled three individual submissions which were also provided to various Government Ministers.

The pieces of the puzzle are beginning to fit together now that it appears that neither the Arbitrator or the resource team actually saw all the claim documents I believed I had submitted and which I intended Telstra to address in their defence of my claims. Now, 3½ years later, we know that many of these claim documents never reached their intended destination. This situation raises the following questions:

- A. Were these blank pages caused by Telstra's faulty network? or
- B. Were the documents intercepted (as shown by the symbols that appeared on a number of the blank pages)?

The following documents are also enclosed for your perusal:

1. A copy of page 36 from my reply to Telstra's defence: please note the comments which have been underlined.
2. Three pages regarding George Close and Assoc. and their assessment of my fax service line. This is the service line that Telstra covered in a 29 page report which they submitted as part of their defence. In this report Telstra technicians alleged that they had found beer inside the fax/phone. They also alleged that the beer was *still wet and sticky to the touch* when it was received at Telstra's laboratories, *10 days after it had been collected from my office (28 April 1994, thereby causing the faults on this service line, 267 230. These faults continued at least until October 1994 as records show. Perhaps it was the service line that was continually drunk and not the hand set connected to the fax machine?*
3. A copy of a letter sent to Jim Holmes, Telstra's Corporate Secretary from Fay Holthuyzen, assistant secretary to the Minister for Communications and the Arts.

I am now asking that the TIO's office be directed to ask their Legal Counsel to provide a full and comprehensive list of all my claim documents and correspondence which they received from Dr Hughes during my Arbitration. I look forward to advice regarding what the TIO and his Legal Counsel intend to do regarding all the matters I have raised over these past two weeks.

Regards,



Alan Smith

copies to:

The Commissioner, Federal Police, Canberra
The President, The Institute of Arbitrators, Australia
The President, The Law Institute of Australia, Melbourne

Mr A. Smith,
Cape Bridgewater Camp,
PORTLAND. 3305.
Ph: 03 5526 7267

27th July 1998

Mr. Wally Rothwell,
Deputy Ombudsman,
T.I.O.'s Office,
MELBOURNE. 3000.

Dear Wally,

During the Fast Track arbitration oral hearing on 11/10/94, as the transcript from this hearing shows, I advised both the Arbitrator, Telsira and Ferrier Hodgson Corporate Advisory (FHCA) that somehow a number of my business documents, bank statements, deposit books and booking details had gone missing between the period I signed for arbitration April 21 1994 until around June/July 1994

The cost to have a copy of these bank statements re-supplied from the Commonwealth Bank (those which were lost) was just another added consequential loss associated with the arbitration - but I did supply most of the information previously lost.

For obvious reasons I will not fax all my bank statements, however, I am faxing one which will be used as a guide (marked A).

Amongst those bank statements, I have found four blank sheets of paper with the Commonwealth Bank logo and details as shown on top of those four documents.

However, the first of these four pages as can be seen from the marked document B is a hand written notation which states 'Smiths Bank Statements' not in my hand.

This material was supplied back to me from Ferrier Hodgson Corporate Advisory, the financial resource unit attached to my arbitration.

We have already proved Ferrier Hodgson Corporate Advisory as an independent financial company cannot be trusted (to complete a report, before changing the report to favour the other side in my case Telstra).

Ferrier Hodgson Corporate Advisory have admitted to changing / withdrawing their true findings from their financial report on the Cape Bridgewater Holiday Camp losses under instruction of Dr. Hughes my alleged independent arbitrator.

In the case of these four blank bank statements, if one looks closely it can be seen markings were originally on these statements.

The fax may not show this, but rest assure I speak the truth.

My question for the T.I.O.'s Office to ask FHCA:

1. Whose hand writing is on document marked B (Commonwealth Bank Statement)
2. How could FHCA determine a profit or loss statement - debit/credit if the documents they worked from in a number of instances were blank?

Maybe this is why Ferrier Hodgson Corporate Advisory are known as Liquidators as it appears they use blank bank statements when determining the viability of a company's future.

One would only hope Ferrier Hodgson Corporate Advisory are not using blank bank statements when assessing the losses to those investors who lost their life savings in the Pyramid Building Society crash. Who can tell?

If by some miracle my matters are investigated by the Federal Police, I can provide them with documents which were given to me inadvertently by the Arbitrator's Secretary. This material consists of a number of working notes/draft documents that when compared with both the FIICA and DMR & Lancs reports to which were made public, do not coincide with those reports.

It is clear from reading this draft material that a conspiracy did occur during my arbitration by a number of persons. The truth of my known communication problems / faults and the result that these faults had on my financial viability to run my business was kept hidden from the Arbitrator's true findings.

I await your response to what the T.I.O.'s office intends doing with all my evidence which supports my allegations.

Yours sincerely,



ALAN SMITH

- c.c. Amanda Vanstone Minister for Justice
- c.c. Daryl Williams Attorney General
- c.c. President of Institute Arbitrators Australia
- c.c. President of the Law Institute Melbourne

Commonwealth Bank

Commonwealth Bank of Australia
A.C.N. 123 123 124



B



Smiths
bank
statements

