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27 February, 1996

Telecommunications
Industry
Ombudsman

[redacted]
Ombudsman

Mr L E James
President
Institute of Arbitrators Australia
Level 1, 22 William Street
MELBOURNE 3000

Dear Mr James

Complaint By Mr Alan Smith against Dr [redacted]

Mr Smith has copied to me his letters to you of 15 and 18 January 1996, and your response to him of 16 January 1996, as well as his letter to you of 9 February 1996. [redacted] has also copied to me his letter to you of 16 February 1996.

As Administrator of the Fast Track Arbitration Procedure, I wish to comment on the allegations put to you by Mr Smith, subject to certain constraints due to the confidential nature of the arbitration procedure.

At the outset, I advise that Mr Smith's allegations concerning [redacted]' conduct of the Arbitration are unwarranted.

Mr Smith is one of the so-called 'COT Cases' (formerly 'Casualties of Telecom', now 'Casualties of Telstra') for whom a unique arbitration procedure was established in April 1994. This arbitration procedure was negotiated between the four original COT Claimants (which included Mr Smith), Telecom (now Telstra), AUSTEL and the TIO. The TIO is the Administrator of the arbitration procedure, responsible for administrative arrangements the arbitrators require. The procedure provides for an independent expert Resource Unit, comprising telecommunications and financial arms, to assist the Arbitrator by conducting its own independent investigation and analysis of the evidence and submissions presented by the parties.

[redacted] was appointed to arbitrate the four separate claims, as all the parties involved (that is each claimant and Telstra) agreed he had the necessary integrity and expertise that the task required. I enclose for your information a copy of a letter from Mr Smith and another COT Claimant, [name deleted], to the TIO dated 3 August 1994, in which they both confirm their confidence in the integrity of [redacted].

49

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However, since receiving [redacted] Award in May 1995, Mr Smith has made a series of surprising allegations concerning the conduct of the Arbitrator, the Arbitrator's Resource Unit ([redacted]), and the TIO. These allegations have ranged from assertions of incompetence and conflict of interest, to bias and outright corruption and collusion; on one occasion Mr Smith alleged that the TIO was "as bad as the rest of these swines who conducted this Fast-Track Arbitration Procedure". Despite Mr Smith's claims that he has proof to substantiate the allegations, any such 'proof' which he has so far provided to me is in fact nothing of the sort.

The arbitration procedure was designed to be informal and flexible, and it explicitly lowered the standard of proof required from claimants. It has been very disappointing that this informality and flexibility may have contributed to Mr Smith's sense that the arbitration procedure and those involved in it were less professional or deserving of his respect and confidence than the Supreme Court.

Over the last 9 months I have received many letters of complaint from Mr Smith (on average over that period two to three letters per week; in one month over 25 letters). Mr Smith has also written directly to [redacted] on a number of occasions. These letters have largely consisted of expressions of great discontent with the outcome of the arbitration.

This discontent seems to have had an adverse impact on the high regard which Mr Smith had previously held for [redacted], with the consequence that his allegations began to also be directed towards [redacted]' integrity.

In a circular fashion, Mr Smith has then attempted to substantiate his allegations that Dr Hughes lacked integrity and independence, and that he had been denied natural justice by [redacted], with examples of instances in which he believed [redacted] erred in his assessment of the evidence and submissions presented by the parties during the course of his arbitration.

Mr Smith continues, effectively, to seek a review, by all and sundry, including the TIO, of [redacted]' Award by impugning his character, integrity and independence. This is not a legitimate means of appealing the Arbitrator's Award, and I have written to Mr Smith on numerous occasions advising him that I am not in a position to investigate the manner in which [redacted] reached his decision, and that he should seek legal advice if he feels the circumstances warrant an appeal to the Supreme Court.

Mr Smith has admitted to me in writing that late last year he rang [redacted]' home phone number (apparently in the middle of the night, at approximately 2.00am) and spoke to [redacted] wife, impersonating a member of the Resource Unit. Mr Smith gave me the following explanation of this incident:

> *"Once I had made sure that it was [redacted]' residence I felt that I might upset [redacted] if I told her who I was and so I said "No worries, I'll contact [redacted] when he gets back." I gave her [name deleted]'s name instead of my own - it seemed more appropriate at the time."*

This explanation does not convince me that his behaviour was at all appropriate.

In his letter to you of 9 February 1996 Mr Smith refers to a letter I sent to him in November 1995. For your information I enclose a copy of that letter. You will see that I do not make any statement in that letter remotely resembling that which he has attributed to me. Mr Smith has a tendency to purport to refer specifically to correspondence, when recourse to the correspondence itself proves that his memory deceives him.

No evidence produced to me by any claimant, but particularly by Mr Smith, has affected my utmost confidence in [redacted]' integrity and independence.

Mr Smith does not seem capable of accepting the decision of the independent arbitrator, or alternatively, pursuing a challenge of that decision through the proper channels. Undeniably, he has undergone a difficult experience in his prolonged dispute with Telstra. However, in my view, Mr Smith cannot or will not put this episode behind him, and is desperately clutching at straws. He is now widely circulating serious allegations which are completely without foundation.

Yours sincerely

[redacted]

Ombudsman

cc ARBITRATOR [redacted]

49

Office Use

Itemised Call Details *continued*

STD calls *continued*

	Date	Time	Place	Number	Rate	Min:Sec	$
Telephone Service 055-26 7230 *continued*							
117-9	28 Nov	03:19 pm	Sydney	0299652913	Day	0:14	0.23
117-10	28 Nov	03:48 pm	Melbourne	0396022266	Day	12:08	4.32
117-11	28 Nov	04:10 pm	Melbourne	0396903322	Day	1:59	0.81
117-12	28 Nov	04:26 pm	Canberra	062822051	Day	9:14	4.52
117-13	28 Nov	04:37 pm	[illegible]ne	039277679	Day	1:00	0.47
118-1	28 Nov	05:25 pm	Sydney	0299652919	Day	1:18	0.74
118-2	28 Nov	05:44 pm	Melbourne	0392778777	Day	3:30	1.33
118-3	28 Nov	05:49 pm	Brisbane	0732780341	Day	0:52	0.53
118-4	28 Nov	07:06 pm	Brisbane	0732780341	Night	2:30	0.95
118-5	28 Nov	08:02 pm	Melbourne	0395722836	Night	0:28	0.23
118-6	29 Nov	08:37 am	Brisbane	0732780341	Day	11:25	5.55
118-7	29 Nov	09:22 am	Melbourne	0396298361	Day	0:47	0.39
118-8	29 Nov	10:03 am	Melbourne	0398761254	Day	1:23	0.60
118-9	29 Nov	10:12 am	Canberra	062773614	Day	1:34	0.87
118-10	29 Nov	10:14 am	Canberra	062773177	Day	1:41	0.92
118-11	29 Nov	10:16 am	Canberra	062778464	Day	1:34	0.87
118-12	29 Nov	10:19 am	Canberra	062497829	Day	1:30	0.8[illegible]
118-13	29 Nov	10:22 am	Brisbane	0732780341	Day	1:21	0.7[illegible]
119-1	29 Nov	11:47 am	Melbourne	0392778797	Day	1:06	0.50
119-2	29 Nov	11:53 am	Canberra	062773308	Day	1:33	0.86