

Dr Chris Lewis

My adverse employment experience, still ongoing given my intention to return to the Fair Work Commission (FWC) and later to the Federal Court should the matter not be resolved adequately, involves being removed from my employment (as part of the casual pool of research assistants) for making a workplace complaint after commencing a FWC action.

I had worked for the employer for around 5 years from October 2008 to September 2013, averaging around 30 hours per week both as casual and permanent worker, before I was told in September 2013 by my supervisor that the employer had agreed to keep me on contract while we waited for more funding.

Another email from my supervisor indicated that 2014 was the earliest date for future work, although I was always available to work for other supervisors as I had done so since 2008.

I continued to conduct research as a staff member from September 2013 until August 2014.

During April 2014, I made a workplace complaint about a colleague who had made improper comments to the CEO about my scholarship and supposed bias as “a critic of the Labor government”.

During the complaint process, as noted in my initial FWC application, my supervisor rang to pressure me to give up complaint, and indicated his working relationship was over when I refused to back down.

A document to Comcare indicates that my supervisor rang me to express his disappointment that I had used an email he forwarded to me, despite the fact that I had informed him earlier that I intended to make a workplace complaint.

During July 2014, on the same day my workplace complaint was dismissed by Human Resources, despite being given no opportunity to present my email and witness evidence by either the initial investigator and reviewer, and shortly after I received no response from my supervisor with regard to future work, I lodged a s372 General Protections non-dismissal FWC application.

In early August 2014, in preparation for mediation, I learned that my contract had been terminated during July 2014. I would have not known if I had not asked for my employment record, despite my contract stipulating that I was to be given one hour's notice.

And, after being informed by the employer during early September 2014 that I had to re-apply to be part of the causal pool, I commenced an s365 General Protections dismissal application with the FWC.

During March 2015, the FWC ruled my s365 application was out of date and agreed with the employer that my employment ended when I was last paid in September 2013, despite my efforts at a FWC hearing during October 2014.

However, I never gave up. I persisted in getting documents from the employer though FOI, a request that persists to this day given that some 63 documents are heavily redacted and virtually unreadable.

What is already evident from FOI documents obtained in 2015 and 2016, however, is strong support for all of my argument made at the FWC hearing.

A 16 April 2014 email shows that the officer investigating my complaint was told by a senior Human Resources official that I indeed had 'active' casual sessional status after being asked if I was an employee, but that she would terminate the "active" status of my contract.

The Fair Work Ombudsman (FWO), on observing the document in 2017, states that this document indicates I was an employee, and that I was entitled to details of my termination under Fair Work Regulations 2009 about why and by whom I was terminated.

To this day, and since August 2014 with regard to my preparation for the FWC hearing, the employer has denied this request despite numerous applications by myself and a letter from FWO prior to the hearing.

Staff records also shows that I was still conducting research and receiving staff emails until early August 2014, shortly after my 'active' contract record was terminated during July 2014.

2016 FOI documents also show that the employer's only HR witness at the FWC hearing, taking instructions from the employer's lawyer, initially knew nothing of the reasons to why my contract record was terminated, but was later involved in the story that my contract record was terminated for being "inactive" as part of a clean up of 800 inactive employee records. This story was part of evidence presented to the FWC under oath.

However, 2016 FOI documents show that a senior HR official, the same one who had indicated in April 2016 that she would terminate my "active" contract record status, again states that she will immediately terminate my still "active" casual contract record after learning I had commenced a s372 General Protections application.

A 2017 email from the employer also admits that my contract record was terminated on 25 July 2014, although the termination date is recorded at a much earlier date prior to the FWC application.

In addition, on the day of the FWC hearing, the employer's witness receives an email from another staff member which states that just 205 contract records in 2014 (including October), with just one record closed on the same date as mine.

Currently I am waiting on the Office of the Information Commissioner (OIC) to make its ruling with regard to my allegation that the employer altered my personal information with inaccurate information.

In addition, I am waiting for the OIC Commissioner to make his ruling with regard to my ability to read 63 documents on the basis that they are heavily redacted and virtually unreadable, albeit that the employer claims protection for a variety of reasons.

After that, given recent discussions with a FWC manager, I will be returning to the FWC to lodge a new s372 General Protections application given that my employer removed myself from the casual pool after learning I had commenced a FWC action.

For example, the head of HR, who had offered myself employee counselling services on the day she rejected my complaint, as I had already utilised during April 2014, thanks the HR staff member who states her intention to terminate my active record and later ignores my request about why I cannot access the counselling services.

The moral of the story of my experience is never give up when you feel you have been wronged, no matter how powerful your employer is in terms of its considerable resources.

I had offered to settle this matter in 2014 before the FWC hearing, but in the end I argue my employer had no regard for my workplace rights.

Chris Lewis can be contacted at c11lewis@yahoo.com.au in case of any interest in his story, which is backed by many documents.