

19/01/21

Dear Mark, (Complaint Resolution Officer of the Commonwealth Ombudsman Office.)

In this correspondence, I am referring only to the direction from the CASA Region Manager to my Employer at the time, that my continuing employment as the Head of Operations for APTA was "*no longer tenable*", and my subsequent termination from that employment.

I have received your advice that you feel, "*further investigation of the complaint is not warranted*." I also respectfully acknowledge the matter is not closed and you have left me the opportunity to respond.

I will write to you on other matters under investigation separately, after I can gain some clarity on this matter first.

I appreciate that these are complicated matters, and I am seeking the opportunity to ensure I have adequately presented my perspective before a final outcome is determined by your Office, regarding the direction from a Region Manager at CASA to my Employer, that my position was '*no longer tenable*'.

You are aware of the background to this matter, and that CASA had reversed my business's approval to operate with no prior notice and placed significant restrictions on its ability to trade. After 8 months with those restrictions placed on the business, and my parents having already contributed \$300,000 to meet the salaries for my staff in order to avoid redundancies, I could ask them for no more financial support.

I could not meet my upcoming payroll obligations and the business was sold under duress, for 5% of its agreed value due to the CASA trade restrictions, and limited date of approval that CASA had placed on the business. A condition of the transfer of the business to the new owners was that I remain with the Organisation, as an Employee. I can supply correspondence in support each of those contentions.

Could I respectfully put forward the following considerations as my final submission before you make a finding on this specific matter.

#### Consideration One- Power imbalance

There was a significant power imbalance between the sender of the correspondence i.e. CASA, and the recipient of that correspondence i.e. the new owners of APTA. CASA management was in a position to exert significant influence over the new owners of APTA, and both sides would have been fully aware of that power imbalance.

You will recall that CASA had issued APTA an interim approval for the business to trade only until July 1st, 2019 with no surety of operations after that date. In fact, future operations were significantly in doubt as, after 8 months, the matter was still no closer to being resolved.

The new owners were to take over the business one day prior to the expiration of the business's interim CASA approval, being the last day of the financial year June 30th, 2019.

The new owners were taking a significant risk, and their investment was solely dependent on CASAs' decisions over the coming days and months. There can be no doubt that CASA potentially carried significant influence in any directives or directions that were sent to APTA, and understandably the new owners of APTA would feel somewhat compelled to comply with CASA preferences, directives, and

directions, in order to protect their investment. CASA Executive Management were fully aware of the significant influence they exerted.

#### Consideration Two- The "intent" of the email

The email from the CASA Region Manager to the new owner of APTA was sent at approximately 2.15PM on 27<sup>th</sup> August 2019 and stated:

*"Hi (new owner of APTA), I understand that Mr. Buckley remains as APTA deputy HOO. This is no longer tenable with the comments that Mr. Buckley is making publicly. Please confirm APTA's intentions in relation to Mr. Buckley as deputy HOO and whether Mr. Buckley is authorized to speak on behalf of APTA. Thanks again, Jason."*

The "intent" of that correspondence is noticeably clear and cannot be disputed. I was terminated slightly over 3 hours later at approximately 5.30 PM, in the presence of an industry colleague.

If that email had NOT been sent, I am fully satisfied, I would not have been terminated from employment at 5.30 PM on 27<sup>th</sup> August 2019.

The use of the phrase "*not tenable*" implies that my position as the CASA approved Head of Operations (HOO) was not able to be maintained, justified or defended. The use of that word to an Employer in the private sector from a CASA Regional Manager is significant and carries significant weight.

#### Consideration Three- The emails in chronological order

CASA claim that they contacted the new owners of APTA later that afternoon to clarify the matter. I find that assertion unlikely, as had that have occurred the termination of my employment would not have occurred a few hours later. I simply do not believe that assertion by CASA, that they clarified the matter on the same day.

The truth is that later that night, in fact at 1.45AM, I wrote to the CASA Region Manager that made the direction to my Employer.

*"Dear Jason, May I respectfully request if you make any determination regarding my continuing employment with my current employer, or have any concerns that may have an impact on my families welfare, or my ability to derive an income. that I be involved in that correspondence. Respectfully, Glen"*

At approximately 8AM of that morning the Region Manager responded.

*"Glen, I acknowledge your email. I have asked the accountable manager (new APTA owner) to clarify whether you continue to operate as Deputy HOO, and whether you are authorised to speak on behalf of APTA. I will leave it to Mr XXXXXXX, as the accountable manager, to communicate his decisions to you. Regards. Jason McHeyzer Region Manager."*

I responded almost immediately with the following correspondence, noting that I had already been terminated and was now unemployed.

*"Hi Jason, sorry my inquiry isn't actually specifically regarding APTA or my role within APTA. I'm trying to plan for my family going forward. I am simply asking for you to consider my reputation when*

*contacting any employers or potential employers. Can you clarify if CASA has concerns about me in a Key Personnel role only? I was about to get my instructor rating active but will change my plans if you are opposed to me having a wider involvement in the industry. I don't think the question really needs to involve (New Business Owner), because it's a query about my wider employability. Thankfully, Glen*

Understandably I was quite anxious and sent a follow up email at approximately 4PM on Wednesday 28/08, approximately 24 hours after I was terminated, hoping to get a response as soon as practical.

*"Hi Jason, just after an acknowledgement of the previous email regarding my wider employability, cheers. Glen".*

Mr McHeyzer responded approximately 1 hour later with the following:

*"Hi Glen, I have been in a meeting all day. I acknowledge your email and I am not aware of any concerns in relation to your flight crew licence, instructor privileges or employment in the industry. Regards Jason"*

At approximately 5AM the following day, Thursday 29/08/19, I sent the following to Mr McHeyzer. It is important to understand that at this stage Mr McHeyzer most likely has no knowledge that I had seen his email directing my Employer that my employment was untenable as I was not an intended recipient.

*Dear Jason, Can you please advise or confirm that during the last 3 days you have not sent any correspondence to any Employer or potential employer that could potentially impact on any current or future employment for myself. Please advise by 5PM today, to assist me with future plans for me and my family. I call on you to provide that, rather than require me to make a request under FOI. Glen.*

On Thursday 29<sup>th</sup> August at approximately 6PM, the CASA Executive Manager Mr Craig Martin inserted himself into the situation with the following email to the new owner of APTA. This is now 48 hours after I have been terminated, and CASA has had the opportunity to craft a response to minimise their liability in this matter.

*Dear Mr (new owner of APTA), refer to your email exchange with Jason Mc Heyzer on Tuesday afternoon 27th August 2019, and in particular to Mr Mc Heyzers email to you of 2.14PM on that day. I understand that Mr McHeyzer spoke to you in a telephone conversation later in the afternoon of 27 August 2019 to clarify his intentions.*

*I confirm here that Mr Mc Heyzer sought to ensure that APTA was aware that Mr Buckley was representing his views as the views of APTA. The proprietary or impropriety of this was and is entirely a matter between you and Mr Buckley.*

*Please be assured CASA has no issue with Mr Buckley being or remaining an employee of APTA, and it is a question for you to decide whether he should be or remain so. Mr Mc Heyzer also sought your advice in relation to Mr Buckley's role. In the event Mr Buckley, or anyone else for that matter, should be nominated by you as a person to hold a position in APTA for which CASAs approval would be required, we would consider any such nomination fairly, on the merits and according to the applicable requirements at that time, having regard to the relevant considerations. For now, I apologise for any confusion Mr Mc Heyzers email may have created, and I trust his follow up telephone advice of 27 August 2019 coupled with his message clarifies CASAs position. Yours sincerely, Craig"*

#### Consideration Four- Breach of Procedural Fairness/ Administrative Law/ Natural Justice

I had occupied the position of CASA approved Head of Operations for over a decade. If CASA deem that an individual is not a "fit and proper person" to hold the CASA approved position of Head of Operations (HOO), there is a clearly stipulated CASA procedure to be followed and that can be found by accessing the following link to CASAs Enforcement Manual. [Enforcement Manual \(casa.gov.au\)](https://www.casa.gov.au/enforcement-manual) By following these procedures it ensures that obligations placed on CASA by Administrative law/Natural Justice and Procedural Fairness are adhered to. In my case they clearly were not.

Chapter Two outlines CASAs Enforcement Philosophy is and is pertinent to this matter. Of more significance perhaps is the procedural fairness afforded me by Appendix Four where it deals specifically with the "fit and proper" person.

#### Consideration Five- Direction was not based on safety or compliance considerations.

The direction by the Region Manager to my Employer could not be substantiated on the grounds of safety or regulatory compliance. If the direction was not based on safety and not based on regulatory compliance, then it was highly inappropriate to send such a direction to an Employer. The CASA Employee demonstrated misconduct and can only be assumed to have acted vindictively or vexatiously. The motivation and intent of Mr McHeyzers email should be considered. It cannot be defended with integrity.

#### Consideration Six

I do respect that in exceptional circumstances a CASA Officer may be able to directly contact an Employer and direct that one of their employees holding a CASA approved position is not tenable in light of comments that a person is making publicly.

My reasonable expectation is that those comments would have to pose a "grave and imminent risk to aviation safety, i.e. flagrant breaches of safety regulations or suggesting to fly an aircraft into a building for example. In my particular situation and acknowledging that Mr McHeyzer identified that his action was based on comments that I was making publicly, and noting that I was only making comments on Pprune.

I feel that it is reasonable that CASA specifically identify the comments that lead to Mr McHeyzers direction. The fact is that it was sent on the basis of comments that I was making publicly and it appears entirely fair that those comments are identified, and I anticipate that this has already been done as it is likely the starting point of any investigation i.e. what were the comments that Mr Buckley made to initiate Mr McHeyzers direction, and in what context could CASA take exception to those comments.

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#### Consideration Seven

CASA has given a commitment that it will comply with the Public Service Code of Conduct. This requires that an Employee must:

1. behave honestly and with integrity in connection with APS employment.
2. act with care and diligence in connection with APS employment.
3. when acting in connection with APS employment, treat everyone with respect and courtesy, and without harassment.
4. when acting in connection with APS employment, comply with all applicable Australian laws.
5. use Commonwealth resources in a proper manner and for a proper purpose.
6. not improperly use inside information or the employee's duties, status, power, or authority:
  1. to gain, or seek to gain, a benefit or an advantage for the employee or any other person; or
  2. to cause, or to seek to cause, a detriment to the employee's Agency, the Commonwealth, or any other person.
7. at all times behave in a way that upholds the APS Values and Employment Principles, and the integrity and good reputation of the employee's Agency and the APS.
8. comply with any other conduct requirement that is prescribed by the regulations ([regulations available on the ComLaw website](#)).

Employees are also required to comply with APS Values

- Impartial: The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.
- Committed to service: The APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government.
- Accountable: The APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility.
- Respectful: The APS respects all people, including their rights and their heritage.
- Ethical: The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.

CASA Employees are also obligated to conduct themselves in accordance with CASAs Regulatory Philosophy [Our regulatory philosophy | Civil Aviation Safety Authority \(casa.gov.au\)](#)

Considering these obligations, and in light of the direction sent by Mr. McHeyzer to my Employer, I am fully satisfied that he has displayed misconduct in his role with CASA, and most especially because of the the senior position that he held within the organisation.

Consideration Seven

There is no dispute that CASA sent the email at approximately 2.15PM on 27/08/21 and approximately 3 hours later, I had been terminated.

This caused financial, and reputational damage to me. For Australia's aviation safety regulator to send an email that led to my termination makes it extremely difficult to remain in the industry and obtain employment. The reasonable assumption by any potential employer is that the CASA direction would be based on safety or compliance considerations. After my termination, it soon became apparent that I was going to have difficulty obtaining employment in the industry. CASA had closed down my two businesses, APTA and MFT after more than a decade of operations. After a period of 8 months of unemployment, I returned to work outside of the aviation industry, an industry that I had been involved in since the early 80s and with my own business for 13 years.

### My expected outcome

I acknowledge in your correspondence that you noted; *"one of the only outcomes we could potentially obtain from you would be an apology from CASA and advice that it did not direct APTA to end your employment. Please let me know if you are still interested in obtaining a written apology and formal advice from CASA that it did not give a direction to your Employer in relation to your continuing employment. I can contact CASA to arrange for this if you would like."*

I will refer to your offer of obtaining *"formal advice from CASA that they did not give a direction to my Employer in relation to my continuing employment."* As CASA clearly did send that correspondence, I feel there is little value in them making a statement that they did not, never the less I will avail myself of the opportunity you have presented.

I do however have a reasonable expectation that CASA does issue an apology, and that be a public apology. This matter has gained significant interest from the wider industry, and there can be no dispute that I have had reputational damage that extends across Australia. A simple letter addressed to me, will have a negligible impact on restoring any reputational damage throughout the industry.

That apology would need to clearly state that the CASA direction was not based on matters of safety and that there were never any allegations of regulatory breach. Regarding anything else that CASA chooses to write I have no requirement other than the expectation that they will confirm that the direction was not based on safety or regulatory concerns. That will go a significant way towards me being able to protect my reputation, and perhaps ease the pathway for me to re-enter the industry, that I worked in for over 25 years. My expectation is that CASA would post that apology in Australian Flying Magazine and also Friday's edition of the Australian which traditionally carries an aviation supplement on Fridays. Alternatively, it could be an apology placed prominently on the CASA website. I would remain open to a well-intentioned discussion with CASA on this matter.

I note your comments that *"It is open for you to consider taking action against APTA if you believe you were unfairly dismissed or there are unpaid wages or leave entitlements."*

My legal firm has estimated my entitlements by way of annual leave, long service, and termination entitlements after 15 years with the Company as an employee to be slightly under \$200,000. I understand that I cannot expect the Ombudsman's Office to make a determination regarding that.

A claim for the monies owed to me, would most likely cause significant cash flow challenges and affect the personnel that depend on APTA to derive their livelihood. This is a difficult ethical decision that I will deal with at a later point in time.

Thank you for accepting my submission on my matter, and I hope that in your final finding you can identify if Mr McHeyzers actions and decisions were wrong, unjust, unlawful, discriminatory, or just plain unfair as stated on the Ombudsman's website.

#### Suggested Improvements

Prior to me departing the industry on the direction to my Employer I had spent over 30 years in the industry with the last 13 years as a business owner, and CASA Approved Head of Operations, I would occasionally be on the receiving end of verbal "guidance" from CASA personnel that a potential employee I was considering were not suitable and that I should continue looking. On those occasions I was concerned that CASA employees would make such comments and potentially affect an individual's livelihood. In my case, CASA erred and rather than restrict it to a verbal direction they made it in writing. I feel that CASA should have a policy or procedure that CASA Employees are not to interfere in matters relating to an individual's career, unless that directive can be supported by a demonstrable safety case.

Thank you for your consideration of this matter, and I will anxiously await your determination.

Respectfully, Glen Buckley