

## FAIR WORK COMMISSION

Commission Matter No.:AM2015/6

### **4 yearly review of modern awards – Education group** *Higher Education Industry - Academic Staff - Award 2010*

#### STATEMENT OF JONATHAN (JAY) FORDER

I, Jonathan Forder (known as Jay Forder), an Associate Professor in the Law Faculty at Bond University, state as follows:

1. I commenced employment on a continuing appointment as an Assistant Professor at Bond University in January 1991. I remain employed by Bond University on a permanent employment contract.
2. I hold a Masters' degree in Law, but have never completed a PhD.
3. I have reviewed the statement of Christopher Andrews dated 30 August 2016 and filed in these proceedings (**the Andrews statement**).

#### **Background**

4. I have taken an active part in university affairs during my employment at Bond. My roles have included:
  - (a) a term as elected staff representative on the University Council from 2001 to 2004;
  - (b) an elected member of Bond University Ltd from 2004 to 2007;
  - (c) a number of terms as the Law Faculty representative on the Executive Committee of the Bond University Academic Staff Association (**BUASA**); and
  - (d) a term as President of BUASA from October 2008 to September 2009.
5. When I was elected President of BUASA in 2008, I set about trying to develop a positive relationship between University management and BUASA so that academic staff could be more involved in the making of significant decisions which affected them.
6. By September 2009 I had become disillusioned with the University's willingness to consult in any meaningful way with BUASA. At the Annual General Meeting that year I refused nomination to serve another term as President. Professor Jim Corkery was elected as the new president but I remained involved in BUASA as the Law Faculty representative on the committee.

#### **Development of the Memorandum of Understanding (MOU)**

7. At some stage in or about 2010, [REDACTED] notified BUASA that management was not planning to involve BUASA in the negotiation of employment conditions for academic staff.
8. The BUASA Executive Committee sought legal advice as to whether, as a consequence of the provisions of the *Bond University Act 1987*, management was obliged to negotiate with it.

9. Based on the opinion received, the Executive Committee resolved to pursue litigation against the University.
10. The University proposed setting up a negotiating team consisting of two members of senior management, [REDACTED]; and two members of the BUASA Executive Committee, namely Professor Ben Shaw, Business Faculty, and me.
11. The negotiating team's role was to resolve the impasse and to develop a more satisfactory approach to employment conditions for academic staff.
12. The negotiating team met regularly throughout the period from November 2010 until July 2012. Every meeting was attended by all four participants either in person or through video conference facilities.
13. By November 2011, a series of template Bond Employment Contracts (BECs) had been agreed for the various categories of staff. They were approved by the University Council, subject to further agreement on a number of relevant employment policies.
14. Through early 2012, gradual progress was made on the selected employment policies, but the final package, including the Memorandum of Understanding referred to in paragraph 27 of the Andrews statement (**the MOU**), was not finalised and signed until August 2012.

#### **The 'no new claims' claim**

15. Throughout the MOU negotiations it was BUASA's position that the university's over-reliance on fixed term contracts was inappropriate. In particular the BUASA representatives, including myself, pointed out that many members of academic staff had been on rolling fixed term contracts for excessive periods (in some instances – identified by Professor Shaw – for more than 10 years). While management remedied these more extreme cases immediately (by engaging some fixed-term academics on permanent employment contracts), conversations continued throughout the first half of 2012 about how this general issue could be addressed.
16. In the course of those discussions, Professor Shaw and I suggested that there be an agreed *"maximum proportion of 30% fixed term contracts compared with continuing appointments"*; and that the parties agree to a guideline that *"after three rolling one-year fixed term contracts an employee should be considered for a longer appointment"*, and that *"after two rolling three-year fixed term contracts, an employee should be considered for continuing appointment"*.
17. The management representatives rejected these suggestions. Ultimately, no formula could be agreed that would satisfy both sides and the issue of the appropriate use and number of fixed-term contracts had to be put to one side and remain unresolved. Instead, [REDACTED] informed us that, as an informal measure, management would:
  - (a) "on a case-by-case basis, look at instances identified by BUASA where employees had been engaged on rolling fixed term contracts for long periods with a view to making them continuing appointments"; and
  - (b) "be more cognisant of BUASA's concern and try to keep fixed term contracts to a minimum".

18. We did not include any reference in the MOU about restrictions on the use of fixed term contracts, as acknowledged in paragraph 32 of the Andrews statement, because we could not reach any agreement with the University representatives on that issue, and it was left by the parties as a matter to be pursued and resolved at another time after the MOU had been signed.
19. The template contracts referred to in the Andrews statement were intended to standardise some basic terms of employment for all categories of employees, but were not meant to be an exhaustive or comprehensive agreement on all conditions of employment. It was agreed that there should be sufficient flexibility for the terms of individual contracts to be varied as long as there was no overall disadvantage to the employee.

**The 'adverse impact on fixed term staff' argument in the Andrews statement**

20. The promotions policy referred to in paragraph 9 of the Andrews statement was developed and implemented without any consultation or negotiation with BUASA. The lack of consultation in the development of this policy was one of the factors motivating my decision to stand for election as President of BUASA in 2008 with the aims described in paragraph 5 above.
21. This policy, and subsequent iterations of it, 'raised the bar' for promotions and appointments to levels which, in the opinion of the BUASA Executive Committee at the time, made it unreasonably difficult for staff to achieve.
22. During the MOU negotiations, the onerous nature of this policy was raised by the BUASA side, but ██████████ refused to countenance changes to the policy, pointing out that such changes would "never meet the approval of ██████████, ██████████ ██████████". As a result, this policy was not included in the list of policies which were the subject of the MOU.

This statement is to the best of my knowledge true and correct.

Dated this 25<sup>th</sup> day of October 2016.

  
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Jay Forder

  
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Witness