



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**COMMISSIONER MATHESON**

**B2023/1111 B2023/1112**

**s.236 - Application for a majority support determination**

**Health Services Union  
and  
Clinical Laboratories Pty Ltd T/A Australian Clinical Labs  
(B2023/1111)  
(B2023/1112)**

**Sydney**

**9.00 AM, TUESDAY, 16 JANUARY 2024**

**Continued from 15/01/2024**

PN1114

THE COMMISSIONER: All right. Good morning, parties. I can see that the appearances are as they were yesterday. So I have Ms Mohammad, Mr McDonald, Mr Berry and Ms Lai. Now, today we were going to hear from Mr Sharma. Is he available this morning?

PN1115

MS MOHAMMAD: I believe so.

PN1116

THE COMMISSIONER: Okay. All right. Mr Berry.

PN1117

MR BERRY: Commissioner, there is a preliminary matter that I wish to raise with the Commission.

PN1118

THE COMMISSIONER: Yes.

PN1119

MR BERRY: Now, I note - and indebted to your associate for preparing this common court bundle to assist the parties. Now, as Mr Sharma is appearing by audio visual link, a digital - it is anticipated that a digital copy will be sent to Mr Sharma. Now - - -

PN1120

THE COMMISSIONER: Okay. To the extent that you need to take them to materials outside of the statement, is that likely to be the case made?

PN1121

MR BERRY: I'm not intending to take him to any materials outside of his statement, and I've indicated that to the applicant prior to the commencement of the hearing today. There have been issues - there have been allegations made by the applicant in relation to this particular individual abusing the process of the Commission in relation to another matter.

PN1122

THE COMMISSIONER: Right.

PN1123

MR BERRY: That matter was not determined, and the substantive matter of which that abuse of process related to was discontinued by the applicant shortly thereafter. The position of the respondent is we do have concerns about material that has been prepared by the Commission for the benefit of the parties being provided to this individual digitally and how that material may be used thereafter. As you will note from the cross-examination of Mr Roberts, the respondent did put to him in cross-examination that he - that the applicant had told untruths digitally online, and that's a grave concern that we have that this material would be misused by the applicant. I'm not sure if Mr Sharma is even a member of the HSU still given that his employment has been terminated by the respondent,

and that's been elucidated into evidence in the cross-examination of Mr Roberts yesterday.

PN1124

THE COMMISSIONER: All right. Okay. Thank you, Mr Berry. Look, do you think that you would need to take him to anything other than his statement and the attachments to it?

PN1125

MS MOHAMMAD: Commissioner, I can't say at this point. It's going to depend - subject to the cross-examination and whether I need to take him to anything in that court book in re-examination.

PN1126

THE COMMISSIONER: Okay. Maybe we deal with that as we get to it, and if the materials are particular intense in nature (indistinct) take him to if we get to that junction, and we (indistinct) your point at that point. So let's not try and preempt. I take it he does have a copy of his statement with him this morning.

PN1127

MS MOHAMMAD: Yes.

PN1128

THE COMMISSIONER: All right. Okay. And let's proceed on that basis, and we'll see how we go. All right.

**<SANJEEV SHARMA, SWORN [9.11 AM]**

**EXAMINATION-IN-CHIEF BY MS MOHAMMAD [9.11 AM]**

PN1129

THE COMMISSIONER: Ms Mohammad.

PN1130

MS MOHAMMAD: Mr Sharma, can I please ask you to confirm your full name, address and occupation for the record?---My name is Sanjeev Sharma. My home address is (address supplied). Currently I'm not working.

PN1131

Thank you. Can I confirm that you have prepared a statement for the matter number B2023/1111, and it is 12 paragraphs long and was signed by you on 5 December 2023?---Yes. I can confirm that.

PN1132

Do you wish to make any changes to this statement?---No. I'm fine with the copy of the statement.

PN1133

Is this statement true and correct to the best of your knowledge and belief?---Yes, it is.

\*\*\* SANJEEV SHARMA

XN MS MOHAMMAD

PN1134

THE COMMISSIONER: Would you like me to mark that, Ms Mohammad?

PN1135

MS MOHAMMAD: Yes, Commissioner. I'll tender this statement.

PN1136

THE COMMISSIONER: Thank you.

**EXHIBIT #A3 STATEMENT OF SANJEEV SHARMA DATED  
05/12/2023**

PN1137

Mr Berry.

**CROSS-EXAMINATION BY MR BERRY**

**[9.13 AM]**

PN1138

MR BERRY: Thank you, Commissioner. Mr Sharma, you are a member of the HSU, aren't you?---Yes, I am.

PN1139

The HSU has filed two separate applications for majority support determinations, B2023/1112 which applies to customer service representatives and B2023/1111 which applies to employees of the respondent employed as couriers. You have no knowledge of application B2023/1112, the application that applies to customer service representatives, don't you?---I have no knowledge.

PN1140

Thank you, Mr Sharma. You were employed by the respondent as a casual employee, weren't you?---Yes, I was.

PN1141

On or about 31 March 2023, you were offered by the respondent to convert your employment status from casual to part time, weren't you?---Yes, I was.

PN1142

You did not respond to that offer, did you?---I declined that offer because the hours were not matching. I did not respond in writing.

PN1143

Thank you, Mr Sharma. Your employment was terminated by the respondent on or about 17 November 2023 because you committed misconduct, wasn't it?---It's partly correct and partly wrong. Yes. I was terminated, but it was misconduct is (indistinct). This is not the way I look at it. And (indistinct) the stage. And I didn't (indistinct) pertaining to the majority support, and I would like to tell the Commissioner that my (indistinct) and misconduct was linked because of the (indistinct) support. When it reaching the stage, I would like to (indistinct) on this, please.

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1144

You didn't disclose the Fair Work Commissioner in your witness statement that your employment was terminated for misconduct, did you, Mr Sharma?---No. I did not because this was about the majority support, and I have given the information about the majority support.

PN1145

You did not take the opportunity that Ms Mohammad gave you to make any corrections to your statement, did you, Mr Sharma?---Can you repeat the question, please?

PN1146

You did not take the opportunity to correct or amend your statement when you were given the opportunity to by Ms Mohammad, did you, Mr Sharma?---The statement is linked by pertaining to the majority support. This is nothing to do with the termination. So I don't need any - I don't believe there was any reason to make any amendment to this one.

PN1147

Okay. I put it to you, Mr Sharma, that your evidence lacks candour to this Commission. What do you say in relation to that?---My evidence relates - can you please explain what exactly do you mean? Can you elaborate on this question for me, please?

PN1148

I think a synonym for candour may be 'honest'?---And you're saying it is not honest. Is that what you're trying to say (indistinct)?

PN1149

I'm saying that - I put it to you, Mr Sharma, had not been forthcoming that your employment was terminated by the respondent and in finding a witness statement which did not disclose that fact - - -

PN1150

MS MOHAMMAD: Objection, Commissioner. This question is - - -

PN1151

THE WITNESS: I (indistinct), Your Honour. Commissioner, I don't agree with this.

PN1152

THE COMMISSIONER: All right. He's answered the question. Thank you. Go on, Mr Berry.

PN1153

MR BERRY: I ask that the witness be muted.

PN1154

THE WITNESS: I was (indistinct) my statement pertaining to the matter.

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1155

THE COMMISSIONER: All right. Okay. I'll - we're just going to mute you for a moment, Mr Sharma.

<THE WITNESS WITHDREW

[9.17 AM]

PN1156

MR BERRY: I disagree with the objection of my friend. The credibility of the witness is always a material issue in proceedings. The position of the respondent, as you've seen through the vain of the questioning, is that in failing to disclose a material matter - - -

PN1157

THE COMMISSIONER: Well, in any case, he's answered the question. (Indistinct) difference of views between you.

PN1158

MR BERRY: Okay. I'll move on.

PN1159

THE COMMISSIONER: Move on. Thank you.

PN1160

MR BERRY: Thank you.

<SANJEEV SHARMA, RECALLED

[9.18 AM]

CROSS-EXAMINATION BY MR BERRY, CONTINUING

[9.18 AM]

PN1161

MR BERRY: Mr Sharma, you were unhappy working for ACL, weren't you?---In the last six months.

PN1162

Thank you, Mr - - -?---Before that, I was very happy. It was a very good company to work for.

PN1163

Thank you, Mr Sharma?---And the work - I work with this company for five years and (indistinct) four and a half years - (indistinct) four and a half years because (indistinct) to work for this company.

PN1164

Thank you, Mr Sharma. You told other courier drivers that the union has to negotiate an enterprise agreement on behalf of employees, didn't you?---Not has to. (Indistinct) on behalf of the employees.

PN1165

So - - -?---There is a difference between 'has to' and 'should'. That's why I put the word 'should'. As to (indistinct) accept this, I'm (indistinct) there's an option.

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1166

Mr Sharma, I'm going to take you to paragraph 5(b) of your statement which is on page 263 of the materials prepared by the Commission?---Yes. I've got it in front of me.

PN1167

So in that paragraph, Mr Sharma, you say, 'I advised them that if anyone is interested in the union negotiating an enterprise agreement on our behalf, please come to see us and sign a statement', didn't you?---Yes.

PN1168

Who were you referencing when you said 'our'?---What has happened was we had - are you referring to the point number - to write the statement - record the meeting on Sunday with a group of (indistinct) presented there as mentioned in the statement, and the (indistinct) five of us or six of us made a reservations (indistinct) who were standing there expressing our views as a group, and this (indistinct) people who were (indistinct) on that day within the meeting that was held at the labs - in the labs at the (indistinct) head office (indistinct).

PN1169

So when you refer to 'our behalf', Mr Sharma, there, you're referring to on behalf of members, aren't you?---Yes.

PN1170

Thank you?---Employees, not members.

PN1171

Well, Mr Sharma, you have just stated in your statement on oath and also clarified for this honourable Commission that the meeting of 13 August 2023 - - -?---Yes.

PN1172

- - - was - involved Health Services Union members only, didn't you?---(Indistinct) reference.

PN1173

Mr - I'll withdraw. I'll approach it a different way. Mr Sharma, I'm taking you to paragraph 2 of your statement?---Yes, please.

PN1174

And it states, and I quote, 'On Sunday 13 August 2023, I went to a meeting involving Health Services Union members which was held in Bella Vista'?---That's right.

PN1175

Only Health Services Union members were present at that meeting, weren't they?---(Indistinct) that inference?

PN1176

It's a question, Mr Sharma?---No.

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1177

So, Mr Sharma, for clarity, your testimony is that at the meeting of 13 August 2023, that meeting involved both members of the union and other employees of the respondent?---I think you have rephrased the word 'only' with something else. I think the point is the - in the meeting with (indistinct) English. The point is that HSU members were there, and we had invited every other employee who was not a member to come to the meeting. So HSU members were there and a lot of other employees who could potentially be the members who were interested in listening to what this meeting is about, what is an EBA, also (indistinct).

PN1178

Thank you, Mr Sharma. I put it to you, Mr Sharma, that you characterised to other employees that only the HSU could negotiate an enterprise agreement on their behalf. What do you say in relation to that?---I did not say that, and I did not have any knowledge that all HSU members (indistinct).

PN1179

Thank you. I put it to you that an employee has a right to nominate their own bargaining representative to bargain on their behalf for an enterprise agreement. What do you say in relation to that?---Well, at that stage, I didn't have any knowledge. Even now, I don't have understanding that if HSU gain membership on behalf of employees, but that (indistinct) negotiate on their part.

PN1180

Thank you, Mr Sharma. What did you tell other drivers an enterprise agreement is, Mr Sharma?---I told them this is negotiating in between the employees and the management in which - in being able to negotiate, we will be - then we can get better pays and better work conditions which is in line with the - what the Victorian Employees Act called, and this was one of the biggest contention was or (indistinct) point was. We are a part of one company, and except (indistinct) those employees (indistinct) others, there is a (indistinct) EBA who also doesn't have an EBA. So we thought those employees were basically not benefitting from the fact that we didn't have an EBA. So we decided we should have an EBA.

PN1181

What did Mr Roberts tell you is the difference between a - the modern award and an enterprise agreement?---Modern agreement and - - -

PN1182

The modern award and an enterprise agreement?---Yes. My understanding from the learning I've had was that if we collectively bargain, then instead of a - we can get better work conditions and pays, if we collectively bargain instead of (indistinct) the modern award.

PN1183

And that bargaining, Mr Sharma, would be conducted by the HSU, wouldn't it?---If it was - I was a member of HSU, and we were present at the meeting on behalf of HSU as a group of (indistinct) members. So yes. We were expecting that HSU would negotiate on our behalf. Correct.

\*\*\* SANJEEV SHARMA

XXN MR BERRY



PN1184

And other employees were present at that meeting were present, weren't they, Mr Sharma? Yes or no?---Say again.

PN1185

Other employees were present at that meeting, weren't they, Mr Sharma, yes or no?---Which meetings are you referring again, please? (Indistinct).

PN1186

I'm referring to the meeting of 13 August 2023?---Yes. (Indistinct) employees were HSU members of (indistinct). Yes.

PN1187

So it was represented that the HSU would negotiate on their behalf, wasn't it?---Yes. That's correct.

PN1188

Thank you. And, Mr Sharma, given that you have stated that - sorry. Let me withdraw and rephrase. Mr Sharma, the issuing of a notice of representational rights was not discussed at that meeting, was it?---Can you restate the whole question in a simpler form for me, please?

PN1189

THE COMMISSIONER: You might need to explain the notice.

PN1190

MR BERRY: I've been - if I could ask that the witness be muted. Sorry.

PN1191

THE COMMISSIONER: Mr Sharma, just one moment. We're just going to mute you for a second?---Yes. That's fine.

PN1192

Thank you?---Yes. Thank you.

<THE WITNESS WITHDREW

[9.27 AM]

PN1193

MR BERRY: I've traversed the notice of representational rights already.

PN1194

THE COMMISSIONER: Yes.

PN1195

MR BERRY: And that - with respect, the respondent's material understanding of the previous answer given was that the witness does not have an understanding of the notice of representational rights. The point that I'm trying to make with this question is that it wasn't discussed at that meeting, and that dovetails into his lack of understanding of the notice of representational rights - - -

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1196

THE COMMISSIONER: Yes.

PN1197

MR BERRY: - - - which feeds then into a larger point.

PN1198

THE COMMISSIONER: Why don't you ask him just squarely does he understand what a notice of employer - - -

PN1199

MR BERRY: I've already asked him that question.

PN1200

THE COMMISSIONER: All right.

PN1201

MR BERRY: And I'm relying on that previous answer.

PN1202

THE COMMISSIONER: All right. Okay. All right. Proceed.

PN1203

MR BERRY: So I don't know how to put it more simply than, 'The notice of representational rights was not discussed at that meeting, was it?'

PN1204

THE COMMISSIONER: Okay. Put it and see what he says.

PN1205

MR BERRY: Okay. Thank you.

**<SANJEEV SHARMA, RECALLED** [9.28 AM]

**CROSS-EXAMINATION BY MR BERRY, CONTINUING** [9.28 AM]

PN1206

MR BERRY: Mr Sharma, the notice of representational rights was not discussed at that meeting, was it?---Notice of representational rights.

PN1207

That was not a topic of discussion at that meeting, was it?---So what I need to understand what is an employee representational rights. Then I can say that there's a notice or no - not a notice.

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1208

Okay?---The only - okay. The - I'll tell you everything, and you can make your own inferences over that - what had happened in that meeting. In that meeting, we represented a group of people that Victorian employees have got a EBA. Other states have got an EBA. They just putting us in a bad position, or in

a worse position as compared to other states about our - about the standards and benefits. So we would like to have an EBA. We are a group of people that who was standing here, and we, as a group, have decided that (indistinct) negotiate on our behalf. If you are interested, please come say yes. That's all it was discussed, and after that (indistinct).

PN1209

Thank you, Mr Sharma. That's - I appreciate your candour. I still need to put it to you that the notice of representational rights was not discussed in that meeting. What do you say in relation to that?---I have no - I'm not understanding the question. Representation rights, what does that means?

PN1210

Thank you, Mr Sharma. I'll move on. The HSU obtained 55 written statements in total in support of an enterprise agreement, didn't it, in relation to this application?---This is 55 altogether or 55 (indistinct) members only?

PN1211

Thank you, Mr Sharma. You signed one of those written statements, didn't you?---I didn't have all (indistinct).

PN1212

I'm not sure why the witness needs to make notes, Commissioner?---I would make some notes as well because I will be asking some questions. I'll be needing some final conclusion with the Commissioner for this so I want to make some notes. Thank you.

PN1213

THE COMMISSIONER: All right. Mr Sharma, when you say ask questions, the witness - so Ms Mohammad and Mr Gary will be asking the questions of you. You can answer their questions. That would be appreciated. Thank you?---Yes, Commissioner. Thank you.

PN1214

MR BERRY: So, Mr Sharma, you signed on of those written statements in support of bargaining, didn't you?---Yes. I did sign one, sir.

PN1215

You obtained seven to eight written statements in support of an enterprise agreement, didn't you?---I didn't say that in my statement.

PN1216

Thank you, Mr Sharma. I take you to paragraph - no. Withdraw?---Thank you.

PN1217

Mr Sharma, who obtained the other written statements in support of bargaining?---We were five of us collecting the paperwork. So as the members were approaching, they were approaching one of us who was (indistinct) the statements. They were (indistinct).

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1218

Who were the five people that were obtaining statements, Mr Sharma?---It was myself was there. Les was there. Tim was there, and there was a guy - I think Dean was also collecting. There were four people who were collecting, and Brendan was collecting as well.

PN1219

So, Mr Sharma, just for clarity, Mr Roberts was collecting written statements, wasn't he?---He was also collecting the - he was collecting the statements from us, from the best memory. So whatever he got signed, we gave to him. That's what we were doing.

PN1220

Okay. So Mr Roberts was never collecting statements personally, was he?---Just give me one second. Let me think. I'm trying to recall the scene on that - - -

PN1221

Take your time, Mr Sharma?---To the best of my memory, I did not see - I - the best of my memory, I did not see him getting involved in getting the statements because we were standing (indistinct) and whoever was standing, and once near a (indistinct) will hand over to him. I did not see him collecting them, to the best of my memory.

PN1222

Thank you, Mr Sharma. You've stated Mr West obtained statements, haven't you?---Yes. Mr West obtained some statements. Just one second. Let me think.

PN1223

Take your time, Mr Sharma?---Again, I can't recall on that day. We - four/five of us were collecting. So did he collect on that - it's - he need representation. He had the forms as well. He may have collected. I can't say.

PN1224

Okay?---I can't say. But there were group of people there, and we were just moving around and collecting the paperwork. So we all were giving forms, and we were giving them to the employees. They were signing and giving it back to us. (Indistinct) A collected, B not collect, C collected, D did not collect. This is more for technicality than the issue. This is how we look at it. The main (indistinct) and they were giving it - we were giving them the blank forms (indistinct).

PN1225

Thanks, Mr Sharma. If I may stop you there?---(Indistinct) back to us. So I (indistinct) do.

PN1226

Mr Sharma, is your evidence that you have no knowledge of who was collecting the other statements?---That's what I'm saying. I don't - I - this is not a game. It is (indistinct) use.

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1227

Okay?---I haven't (indistinct) collecting again (indistinct) A, B, C or D. If A, B or C is collecting or not, D is collecting, this is a game that (indistinct).

PN1228

Okay. Mr Sharma, let me rephrase my question. Mr Sharma, Mr Roberts - your evidence that - is, Mr Sharma, that Mr Roberts was collecting statements. Mr - sorry. Let me withdraw and rephrase again. Mr Sharma, your evidence is that Mr Roberts, Mitcher, West, McGilvray and yourself were collecting statements, isn't it?---Yes.

PN1229

Thank you. Mr Sharma, do you have any knowledge of who's filed witness statements in relation to these proceedings?---I - the Commission - it has - it was done by HSU member. I - HSU. I don't know what's happened.

PN1230

Thank you, Mr Sharma?---What members. It just was done. It was actually done in (indistinct).

PN1231

Mr Sharma, were there occasions shown to you before they were filed by the HSU?---The majority support application that was filed was presented to the WhatsApp group we are in, to the best of my knowledge.

PN1232

Sorry. Digital copy of the draft application was provided to you?---It was provided to us, yes.

PN1233

Thank you. And in that application - sorry. I'll withdraw it and rephrase. Mr Sharma, did you have any input as to how the employee group - sorry, the employee - did you have any input as to how the employees were chosen to be covered by this - by the proposed application?---If you were told that we as a courier group can make a majority support representation, that we as a group are ready for a - if we had enough numbers who want the (indistinct) out, it is possible.

PN1234

Okay. Mr Sharma, the only thing that you have in common with other employees who are proposed to be covered by this application other than working for the respondent is that you were courier drivers, isn't it?---Yes, courier drivers. That's right.

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1235

Yes. So the basis of occupation is how the employees have been chosen, isn't it?---The basis of the - anyone who was coming was handing the application. So it was not the basis. The basis was on that day, the collectors were also there. Other (indistinct) staff was also there, but it happened on that day that we were in (indistinct) numbers, and my understanding is the (indistinct) rate of

customer service numbers. The majority was done, and the other was in the process of getting done.

PN1236

So, Mr Sharma, the applicant canvassed prior to filing this application collectors employed by the respondent to ascertain whether they supported an application for a majority support determination, didn't they?---Can you rephrase the whole question? I'm not getting it, please.

PN1237

Mr Sharma, the applicant canvassed and - - -?---The applicant, who's that in this case?

PN1238

The HSU?---Okay. Yes.

PN1239

Yes, canvassed employees that were employed as collectors to ascertain whether they supported a majority support determination?---On the day of the meeting, the HSU was simply saying - or we were simply saying to all the people who were present in the meeting (indistinct) please come and sign. This was subsequent with the counting and the numbers. On that day, we did not canvass anything. We were saying the EBA has to be done and the EBA should be done - not has to be done, sorry - EBA should be done, and anyone (indistinct) EBA should come and sign that. That was the focus. It was not - on that, the focus was not (indistinct) collectors will do it, the laboratory staff will do it, all the collectors will do it.

PN1240

So at that meeting, Mr Sharma, collectors were present, weren't they?---There were some collectors present, yes.

PN1241

Thank you, Mr Sharma. And at that meeting, lab administration assistants were present, weren't they?---Some of them were working on the (indistinct) so yes.

PN1242

Thank you. Were any other employees who were employed as administration staff present, Mr Sharma?---I can't say.

PN1243

Okay?---I don't know.

PN1244

Okay?---Because I don't know all the employees of the company. So I don't - - -

PN1245

Okay. Can I - I'll put it to you, Mr Sharma, that there were other administration staff present at that meeting. What do you say in relation to that?---Well, like I said, I don't know what the previous (indistinct).

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1246

Okay. Thank you, Mr Sharma. Mr Sharma, in order for there to be a majority support for an enterprise agreement, how many employees need to be part of the majority?---My understanding was it is a simple 50 plus one majority.

PN1247

Thank you?---50 per cent plus one. That was my understanding.

PN1248

Thank you, Mr Sharma. Mr Sharma, what did Mr Roberts tell you is an enterprise agreement?---Mr Roberts told me what enterprise agreement (indistinct). At the meeting, everybody was discussing the things, but there was nothing specific that Mr Roberts told me or not told me. It was - everybody was sharing their knowledge and information about EBA. We had studied the EBA of Victoria in the - the (indistinct) Victorian EBA, and we were having a discussion about the EBA - what is an EBA. It was one of a - mutual discussion of understanding what EBA is. So when you are saying that what Roberts specifically told me about an EBA, I really can't say - answer that question.

PN1249

Did Mr Roberts tell you what an enterprise agreement was, Mr Sharma?---Yes. He was told by Robert and couple of other people also within the company that EBA is something if we are able to collectively bargain that we should be able to get better working conditions - a better pay and work conditions. And then I was - I've been also referred to the Victorian EBA where actually I was (indistinct) to it as well, and I agree to what they were saying on the basis of the pay structure in the EBA of the Victorian employees and the shift penalties of Victorian employees. I said yes. If this comes to us as well, this will make their life - the pay and work issues of the employee book and (indistinct) and I still also understand that why they - under the - they under the same umbrella, why we can't have the same or better pay and conditions than the Victorians and Western Australians or other Australians. Why can't we have that? Given that we're also representing the same company (indistinct) - - -

PN1250

Thank you, Mr Sharma?---Let - no, no. You're not letting me finish, please. (Indistinct) the company in Victoria or at work, completes his shift, comes back after five hours. I drive to the same work in Sydney, comes back after five hours. Why is he getting 40/45 dollars more than me (indistinct). Because I'm also (indistinct) higher in New South Wales. I'm still (indistinct) this. (Indistinct) explained how we have it. And I personally (indistinct) trying to cut me off (indistinct). And this is what I was (indistinct) Commissioner. And I request the Commissioner to please let me make my statement in the end so that you can also (indistinct).

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1251

THE COMMISSIONER: Okay, Mr Sharma. You have given a witness statement. So you have given evidence to the Commission, but you have to

answer Mr Berry's questions at this point. Thank you?---Thank you, Commissioner. I will do it.

PN1252

MR BERRY: So, Mr Sharma, in respect of the meeting held on 13 August 2023, you have stated that the meeting was attended by most courier drivers, haven't you?---Yes, and most of them signed on that day. So - - -

PN1253

Thank you. How many is 'most', Mr Sharma?---To the best of my memory, roughly around 40 people signed. Forty courier employees signed on that day. Plus or minus a couple of them. I can't exactly tell you the number, but within the range of 40 couriers on that day signed the document.

PN1254

Mr Sharma, my question was how many is most?---Around 40.

PN1255

Okay. Mr Sharma, how many couriers does the - did the respondent employer at the time of that meeting?---We had our rough numbers, and my understanding was in Sydney, there should be around (indistinct) and everything, there should be around 60/70 of them, 80 of them within the (indistinct) meeting. I don't know about the country, and I just want to tell the Commissioner as well we had couriers from Newcastle on Sunday driving to that place as well.

PN1256

So, Mr Sharma, the respondent employs couriers at a number of different locations, doesn't it?---Say again.

PN1257

The respondent employs couriers at a number of different locations, doesn't it? They operate from a number of different locations, don't they?---Yes.

PN1258

Thank you?---Different locations. Can you please - what do you mean by (indistinct) locations, please.

PN1259

Mr Sharma, you've answered my question. Thank you. I'll move on?---No, no, no. I want to - I retract my statement. I want a clarification on the locations, please. What do you mean by locations?

PN1260

If I may ask that the witness be excused, Commissioner.

PN1261

THE COMMISSIONER: We're just going to mute you for a moment, Mr Sharma?---Thank you, Commissioner.

<THE WITNESS WITHDREW

[9.45 AM]

\*\*\* SANJEEV SHARMA

XXN MR BERRY



PN1262

MR BERRY: Commissioner, given the demeanour of this witness, as a matter of procedure, he could be treated as a hostile witness.

PN1263

THE COMMISSIONER: Okay. All right. Well, look, he has - he's answered the question.

PN1264

MR BERRY: I'm attempting to move on, but the witness is arguing from the box.

PN1265

THE COMMISSIONER: Yes. He wants to clarify his earlier response. We could put the correction to him. I understand what you're seeking to elicit.

PN1266

MR BERRY: Okay.

PN1267

THE COMMISSIONER: He answered the question saying that they're based out of Newcastle, and you put the question to him they operate at multiple locations. I think he has answered it.

PN1268

MR BERRY: He has answered it, and now he's endeavouring to retract his answer.

PN1269

THE COMMISSIONER: Yes.

PN1270

MR BERRY: So I would have said asked and answered, and I'm endeavouring to move on.

PN1271

THE COMMISSIONER: Yes.

PN1272

MR BERRY: So with the permission of the Commission, I would move on, and I would not - and given that I think he's squarely answered that question - - -

PN1273

THE COMMISSIONER: Yes. I understand. I understand where you're going. I'm content to do so. All right.

**<SANJEEV SHARMA, RECALLED [9.46 AM]**

**CROSS-EXAMINATION BY MR BERRY, CONTINUING [9.46 AM]**

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1274

THE COMMISSIONER: Mr Sharma, can you hear me?---Yes.

PN1275

Mr Berry's going to continue to ask questions. You just need to answer them squarely. Okay. Thank you?---Thank you.

PN1276

MR BERRY: So, Mr Sharma, you've stated that the respondent employs anywhere between 60 to 80 couriers; is that correct?---This is my - this was my calculation. This was our calculations. Do they have (indistinct) we don't know.

PN1277

Okay. Thank you?---And only in Sydney.

PN1278

Thank you. If I may ask if the witness be muted.

PN1279

THE COMMISSIONER: We're just going to put you on mute, Mr Sharma. Can you hear me?---Yes. I think there was (indistinct). Please go ahead. I can hear you now.

PN1280

We're going to mute you. Thank you?---Thank you.

**<THE WITNESS WITHDREW**

**[9.47 AM]**

PN1281

MR BERRY: Does my friend and the Commissioner accept that the reference to Sydney is New South Wales, or do I need to put that to the witness?

PN1282

THE COMMISSIONER: I think you should clarify it for the record given - - -

PN1283

MR BERRY: Okay.

PN1284

THE COMMISSIONER: Yes.

PN1285

MR BERRY: Thank you.

**<SANJEEV SHARMA, RECALLED**

**[9.48 AM]**

**CROSS-EXAMINATION BY MR BERRY, CONTINUING**

**[9.48 AM]**

PN1286

MR BERRY: Mr Sharma, your reference to Sydney was, in fact, a reference to New South Wales, wasn't it?---Can you say that again for me?

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1287

Mr Sharma, your reference to Sydney was, in fact, a reference to the State of New South Wales, wasn't it?---No.

PN1288

I put it to you - - -?---Sydney means - - -

PN1289

I put it to you, Mr Sharma, that your reference to Sydney is a reference to New South Wales. What do you say in relation to that?---I said it already.

PN1290

Okay?---Maybe you didn't hear me because of the line disturbance. I said my understanding of Sydney is Sydney and New South Wales - Sydney is a part of New South Wales.

PN1291

So, Mr Sharma, you don't accept that the respondent employs other couriers in the State of New South Wales outside of Sydney?---No. I don't consider them as employees.

PN1292

Okay. I put it to you, Mr Sharma, that a majority of couriers don't wish to bargain. What do you say in relation to that?---When you say majority of couriers don't want to bargain, you are meaning by New South Wales or Sydney or Australia? What exactly do you mean by that?

PN1293

Mr Sharma, you've read the application filed by the applicant, haven't you?---Or have you as well. So silly you ask me what is the (indistinct) when I am putting it blankly to you.

PN1294

Thank you. And the application, Mr Sharma, is for - to cover all employees employed in the occupation of couriers and New South Wales, isn't it?---Yes, it is.

PN1295

So you accept, Mr Sharma, that the respondent employs employees in the occupation of courier outside of Sydney, don't you?---Again, I don't accept that.

PN1296

Okay?---And the (indistinct) between making (indistinct) as well.

PN1297

Okay. Mr Sharma, did Mr Roberts speak to you on or about 20 July 2023 in relation to a single enterprise agreement that would cover collectors, couriers, customer service representatives and administration staff?---I don't recollect that.

PN1298

Okay?---(Indistinct reply)

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1299

Mr Sharma, was it ever discussed by the applicant to yourself and other members that an application should be made by the applicant, which is the HSU, for an enterprise agreement that covered couriers, collectors, customer service representatives and laboratory staff?---We have lots of discussions during the process. We had two options. That is what this - that is what was discussed, to the best of my understanding. Option A was we have all of them included, or option B was if we have got a majority support for a particular group of employees, we (indistinct). So both options were discussed at several stages.

PN1300

Thank you, Mr Sharma. And the reason that you went for the option of - okay. Let me withdraw and rephrase. So, Mr Sharma, can we refer to everybody together as option A?---Everybody means all the employees of this - all the (indistinct).

PN1301

Okay. Let's approach this a different way, Mr Sharma. So did the applicant advise you that an application could be made to cover all employees?---I think that is the (indistinct) and I said I can't - I have told you my answer. You can rephrase it a number of times. We had two options. That is what we discussed. Option A was collecting (indistinct) the employees. Option B was both groups. And (indistinct) that's all it is. They keep rephrasing it ten times. My answer is the same.

PN1302

So at the meeting of 13 August where collectors were present and laboratory staff, there - was it ever suggested by - withdraw?---Actually, there was two (indistinct).

PN1303

No. I withdraw the question, Mr Sharma?---Thank you.

PN1304

Mr Sharma, did Mr Roberts ever communicate with you about communications that he was having or correspondence that he was writing to the respondent?---What sort of communication? Can you please be more specific?

PN1305

Did he communicate with you about correspondence that he was writing in respect of proposing an enterprise agreement for bargaining?---I think the point is when we were discussing the EBA, then naturally he was communicating with the management about the EBA and the employees, and of course he was informing us (indistinct).

PN1306

But he did not advise you about any communication that he sent on or about 20 July 2023?---I said the same thing. I can't recall.

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1307

Okay?---Whether he advised or he did not advise, I'm saying the same.

PN1308

Okay. Did the applicant communicate with you about any correspondence it sent on or about 15 September 2023?---From memory, that's really hard to recall.

PN1309

Mr Sharma, is your answer that you can't recollect?---Yes, it is.

PN1310

Mr Sharma, did the applicant communicate with you about correspondence that it sent to the respondent on or about 4 October 2023?---I can't recall.

PN1311

Thank you, Mr Sharma. Mr Sharma, are you aware that the respondent employs customer service representatives?---Please say again.

PN1312

Mr Sharma, are you aware that the respondent employs customer service representatives?---Yes. I'm aware that the customer service employees are also fighting for an EBA. Yes. I'm aware of that.

PN1313

And those customer service representatives work alongside you at 18 - at the campus style complex that the respondent has at 14, 18 and 20 Lexington Drive?---Yes. They work at the same place. That's right.

PN1314

Thank you, Mr Sharma. Mr Sharma, you worked alongside other employees at - who were employed by the respondent who worked in an integrated way with other employees to perform a pre-analytical/post-analytical function, didn't you?---Yes. We were working with any - it's like any (indistinct) company. Yes.

PN1315

Yes?---I worked with them.

PN1316

Yes?---We worked with the Victorian employees as well where in the EBA we don't have it. That's right. We are working (indistinct) company in which we do the same work as the employees of - as our counterparts in Victoria, too. That's right. It's (indistinct). Is ACL Australia (indistinct) talking? Do we have the same EBA number or a different EBA number? Mr Berry, are you presenting (indistinct) Australia, or is it (indistinct).

PN1317

THE COMMISSIONER: Thank you, Mr Sharma. Mr Berry's going to ask the questions?---Sorry, Commissioner. I was just answering his question (indistinct).

PN1318

That's okay. Thank you.

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1319

MR BERRY: Mr Sharma, you work alongside - sorry. You worked alongside other employees that perform storage and administration functions?---I work along every other employee of ACL Australia.

PN1320

Okay. Thank you?---I used to work with every (indistinct) reasons.

PN1321

Mr Sharma, employees of the respondent perform work in a manner that is highly integrated so that ACL can meet its operational purpose of providing pathology services including the collection, transport and testing of specimens and reporting of results for doctors, hospitals, patients and corporate clients, don't they?---All over Australia. Yes.

PN1322

Thank you?---In ACL Australia.

PN1323

Thank you. Mr Sharma, the respondent employs other staff that operate motor vehicles and follow a specific run to collect samples directly from patients via its home visit service, doesn't it?---Yes.

PN1324

Thank you. Mr Sharma, these staff fall under the same reporting line as couriers and collectors, don't they?---I have no (indistinct).

PN1325

Okay. Thank you. Mr Sharma, they also operate a motor vehicle, don't they?---They collect blood as well (indistinct).

PN1326

Thank you?---They don't deliver it (indistinct). Their job (indistinct) hours. You can't let them do this.

PN1327

Okay. But they operate a motor vehicle, don't they?---I've answered my question.

PN1328

Okay. Mr Sharma, they sometimes perform the same job packing up samples from clients' premises, don't they?---Collecting and packing. They don't pick up the samples. They collect the samples.

PN1329

Okay?---They're - I think they're trying to present them the same as couriers. I (indistinct) the Commission. Collectors who are working on home visits, they are not couriers. They have a different job (indistinct). That's the way I look at it. They are different people. They have different job provide than us. (Indistinct).

PN1330

If I may ask that the witness be excused from the witness box.

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1331

THE COMMISSIONER: All right. I'm just going to mute you for a moment, Mr Sharma?---Thank you, Commissioner.

<THE WITNESS WITHDREW

[10.01 AM]

PN1332

MR BERRY: Commissioner, the witness has accepted that there are other employees that operate a motor vehicle and pick up samples. Would you like me to labour this point?

PN1333

THE COMMISSIONER: I think - yes, look, he's trying to draw distinctions, obviously, for other aspects of their work, but you've answered the question, and he's answered it. So I think you can (indistinct).

PN1334

MR BERRY: Okay. Thank you.

<SANJEEV SHARMA, RECALLED

[10.02 AM]

**CROSS-EXAMINATION BY MR BERRY, CONTINUING**

[10.02 AM]

PN1335

MR BERRY: Mr Sharma, it would be unfair for employees employed in the occupation of courier to have an enterprise agreement when they work alongside other employees who work in an integrated way with those employed in the occupation of couriers to perform the pre-analytical and post-analytical functions of the respondent?---I explained, Mr Berry. It'll be - it is unfair the same way as ACL employees in the (indistinct) don't have the same EBA as the courier employees. If that is unfair, this is unfair. You can't have (indistinct). Yes. That's why it is unfair, but it is - if - see, it's very unfair, Mr Berry. You put your question, and when I go to complete my answer, you stopping me, please.

PN1336

THE COMMISSIONER: Okay. Mr Sharma, just listen very carefully what's being asked of you. Thank you.

PN1337

MR BERRY: I'm happy with the answer provided by the witness on the record.

PN1338

THE COMMISSIONER: Mr Sharma, if an enterprise agreement were granted, then employees who were not covered by that enterprise agreement would be worse off than other groups of employees who were not covered, wouldn't they?---And what do you mean by worse? Can you please specify?

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1339

Okay, Mr Sharma. So the application before this honourable commission is for a single enterprise agreement covering employees employed in the occupation of couriers, isn't it?---That's right.

PN1340

And if the application is granted by this honourable Commission, then that enterprise agreement would only cover couriers, wouldn't it?---That's right.

PN1341

Would it - - -?---If this application is granted - let me finish. I want to answer this question now. Dear Commissioner, if this application is granted, I'm pleased to (indistinct) taken care of.

PN1342

Okay. Thank you, Mr Sharma?---It would be completely (indistinct) but part of the unfair (indistinct) employees (indistinct) at least part of it will be taken care of.

PN1343

Thank you, Mr Sharma?---It won't fix the complete wrong, but it'll fix part - at least part of the wrong.

PN1344

THE COMMISSIONER: Thank you, Mr Sharma.

PN1345

MR BERRY: Mr Sharma, in your evidence today, you've stated that an enterprise agreement provides better terms and conditions than the modern award, haven't you?---Yes, yes.

PN1346

So, Mr - - -?---I prefer to call it (indistinct).

PN1347

Okay. Thank you, Mr Sharma. So - - -?---(Indistinct) difference than if (indistinct).

PN1348

So, Mr Sharma, you would accept, then, that employees who are not covered by the enterprise agreement would be worse off, wouldn't you?---Employees of New South Wales employed are worse off, and if Commission allows today, at least partly will be better.

PN1349

Thank you, Mr Sharma?---Worse off than the employees of Victoria.

PN1350

Mr Sharma, both couriers and collectors are - share the same reporting line, don't they?---Both couriers and collectors share the same - we all Australian - all (indistinct) share the same reporting (indistinct) CEO of the same company, and we have the one CEO. So they can have one.

\*\*\* SANJEEV SHARMA

XXN MR BERRY



PN1351

Thank you, Mr Sharma?---And, again, we all have the same reporting line. You, me, everyone in the company whether Victoria, New South Wales or South Australia or Western Australia (indistinct) report to the CEO. You have the same reporting line, but we have a different best practice. For the same (indistinct) different working in Victoria. We were working in different - same working Victoria, same working Western Australia and same working New South Wales. We all have the same reporting line.

PN1352

Thank you, Mr Sharma. I'm indebted to you. Mr Sharma, if you viewed the application of the applicant in relation to this matter, you would have seen that they filed with that application a copy of the Australian and Clinical Labs Victoria Pathology Agreement 2024, wouldn't you?---I'm not sure. I can't answer that. I'm not sure about what you're saying. I'm not very clear about that.

PN1353

I put it to you, Mr Sharma, that the Australian Clinical Labs (Victoria) Pathology Agreement 20-24 covers, amongst other things, pathology collectors, clerks, including customer service representatives, couriers, lab assistants, store persons, maintenance people and cleaners. What do you say in relation to that?---I have seen it in that and I agree with that.

PN1354

Thank you. Mr Sharma, if there were different enterprise agreements on the basis of occupation, that would create complexity, wouldn't it?---If we have different enterprise agreements in different states, it's the same thing. Whatever - whatever you're talking at macroscopic level, I'm talking about microscopic level.

PN1355

Yes?---That is yes.

PN1356

Your answer is, 'Yes, it would create complexity'?---No, that is not my answer. Sorry, please, you are putting words in my mouth, mate. I'm telling you the fact is if the answer to the will it create a complexity for the company as a whole if we have EBAs at different states, yes, so to say there (indistinct) complexity, (indistinct).

PN1357

I put it to you - - -?---What is the difference between the two?

PN1358

I put it to you, Mr Sharma, that it would also create complexity for employees. What do you say in relation to that?---It has already created a complexity. That's why we are here.

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1359

Thank you, Mr Sharma?---That fact that my (indistinct). You are responsible for this complexity, not me.

PN1360

Thank you, Mr Sharma. Mr Sharma, if the respondent were required to have different enterprise agreements for each occupation group, that would require the respondent to use further resources to bargain for each and every enterprise agreement, wouldn't it?---Why don't you do it for all in the one - if you (indistinct) discussions, you bargain for all of them. Why don't you do it? Simple as that. I think the answer to your question lies within your question, that you should, in good faith, bargain for all of them instead of getting them - instead of terminating them because they're asking for EBA.

PN1361

Mr Sharma - - -?---That's very good question actually, Mr Berry, a very good question, and I think the answer to the question lies within the question. You should stop terminating employees who are asking for an EBA for wrong reasons and bargain for all of them. That's a very good point.

PN1362

THE COMMISSIONER: Thank you, Mr Sharma, the point's been made.

PN1363

MR BERRY: Would the Commission like me to labour that point?

PN1364

THE COMMISSIONER: No, I don't think it's necessary.

PN1365

MR BERRY: Thank you.

PN1366

Mr Sharma, in relation to the discussions that you had with Mr Roberts and the applicant, the HSU, the intention disclosed to you by the applicant was to obtain further enterprise agreements for different occupations employed by the respondent, wasn't it?---State the question again, please. I'm being careful. I have to be very careful what (indistinct).

PN1367

Okay?---I need to understand everything what gets - because I've seen that sometimes another (indistinct) is presented. Please ask the question. I need to understand every question that is being put.

PN1368

Okay. Let me try a different way, Mr Sharma. You have had previous discussions with the applicant and its representatives about filing applications for majority support determinations, haven't you?---Yes.

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1369

Mr Sharma, in those discussions, the applicant, through its representative, Mr Roberts, disclosed to you that its intention was to apply for majority support determinations for each occupation group, didn't it?---We went to the - important question - let me answer it. See, you want the answer in your way; let me answer

my way. I understood your question, now please let me answer. When I start answering and you don't like the answer, you cut me off. My answer is my choice, please. When we started - and, please, Commissioner, I want to tell you everything - that's why I'm trying to understand everything thoroughly. I have my experience that things get misrepresented in the company. Now, when we started the discussions for an EBA, the whole process started some time early - very early last year. We started, okay, we keep working on this, we keep working on this. As the things will evolve and you keep working forward - other things we will positively work on it. So we started, yes, okay, we will start educating the employees about the EBA, Victorian EBA, we started that process. We reached a stage where customer service and couriers were (indistinct) the calculations and I believe the majority support was there. We can go ahead, and we went ahead with that, and as the collectors were (indistinct), as the lab staff (indistinct), and I (indistinct), with your permission, Commissioner, what is happening inside the company, how this process is getting hampered. This is very important for the Commission to understand what is going behind the scenes, but that is something, with your permission, I would like to make (indistinct).

PN1370

THE COMMISSIONER: Just stick to the questions for now, thank you, Mr Sharma?---Yes.

PN1371

But is that your response?---Yes, my response is that.

PN1372

Okay, thank you.

PN1373

MR BERRY: I ask that the witness be excused.

PN1374

THE COMMISSIONER: I am just going to mute you for one moment, Mr Sharma?---That's fine, Commissioner, thank you.

<THE WITNESS WITHDREW

[10.13 AM]

PN1375

MR BERRY: Commissioner, that was a response, but it was not an answer to my question.

PN1376

THE COMMISSIONER: If you want to just put it again. I must admit, throughout that course of dialogue, I lost sight of the question myself, so I'm happy for you to repeat it.

PN1377

MR BERRY: Thank you.

<SANJEEV SHARMA, RECALLED

[10.13 AM]

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1378

Mr Sharma, the applicant, through its representative, Mr Roberts, disclosed to you that its intention was to apply for enterprise agreements on the basis of occupation, or to bargain enterprise agreements on the basis of occupation?---Yes.

PN1379

Thank you?---Once we reached the majority support, we started working on that.

PN1380

Thank you. Mr Sharma, do you accept that if there are multiple enterprise agreements pertaining to different occupations, that that would increase the potential for clerical errors and interpretive mistakes for managers and payroll?---Please don't (indistinct) my answer partly. Instead of occupations, you put the worst case and I agreed. Repeat the question, the same question with the removal of the word 'occupations' and put the worst case and then you get what that answer. My answer will be that.

PN1381

I put it to you, Mr Sharma, that having multiple enterprise agreements on the basis of occupation would create the potential for clerical errors and interpretive mistakes for managers and payroll. What do you say in relation to that?---I don't agree with that.

PN1382

Thank you, Mr Sharma?---If there are mistakes, that can be handled.

PN1383

Thank you, Mr Sharma?---If the payroll can execute the payroll of Victoria differently and New South Wales differently, the same payroll can execute the payroll of collectors and - what is that - couriers (indistinct) also. It's a logistics matter; it can be handled.

PN1384

So Mr - - -?---Nothing wrong with that.

PN1385

Mr Sharma, has the respondent made any errors in calculating - in its payroll?---The respondent has made any errors in calculating payroll?

PN1386

Sorry?---Say again.

PN1387

Let me withdraw. Mr Sharma, the respondent, in administrating its payroll, has it ever made a mistake in your pay?---Respondent means ACL?

PN1388

Yes?---Yes, they have made mistakes.

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1389

If there were multiple agreements, Mr Sharma, relating to other employees solely on the basis of occupation, that potential would be expanded, wouldn't it?---(Indistinct). So you are trying to (indistinct) incompetence? So basically you believe because (indistinct) has made a mistake, so we should not go for it?

PN1390

MS MOHAMMAD: Commissioner, I - - -

PN1391

THE WITNESS: I want to say something.

PN1392

MR BERRY: I ask that the witness be excused from the box.

PN1393

THE COMMISSIONER: Yes, we will just mute you for one moment, Mr Sharma?---Thank you, Commissioner.

<THE WITNESS WITHDREW

[10.16 AM]

PN1394

THE COMMISSIONER: All right, Ms Mohammad.

PN1395

MS MOHAMMAD: Commissioner, I think these questions are inappropriate or not relevant to this witness.

PN1396

THE COMMISSIONER: They may be, but he's not - I don't understand that he's presenting as a payroll expert or anything of that nature.

PN1397

MS MOHAMMAD: That is correct.

PN1398

THE COMMISSIONER: I understand. And I do understand the point that you are trying to make, Mr Berry. A number of questions have been put to the witness along the lines - in seeking to make that point, but I do follow the submission, and it might be more appropriate as a matter for submissions at this point. It's going to be his view of that, in any case, we know for certain, Mr Berry.

PN1399

MR BERRY: I appreciate that, Commissioner. The witness has testified that mistakes have been made. Now I put it to him that those mistakes would be expanded.

PN1400

THE COMMISSIONER: He is just going to give his view.

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1401

MR BERRY: He is entitled to his view, but I have to put the case of the respondent to him.

PN1402

THE COMMISSIONER: I'm just wondering what value it holds in terms of probative evidence when you might make submissions on a similar point, but he's only one individual in a very large sort of workplace, in any case.

PN1403

MR BERRY: Yes.

PN1404

THE COMMISSIONER: I am not sure we need to labour it much more beyond where we have got to with that line of questioning, but it's a matter for you.

PN1405

MR BERRY: No, no, no, I take the point from the Bench and I am indebted to you for your observation.

PN1406

THE COMMISSIONER: Can you bring Mr Sharma back.

**<SANJEEV SHARMA, RECALLED [10.18 AM]**

**CROSS-EXAMINATION BY MR BERRY, CONTINUING [10.18 AM]**

PN1407

THE WITNESS: Commissioner, before Mr Berry goes ahead, I just want to say while you were having a discussion, it came to my mind I need to answer that question in a specific way. He said there is a potential of making a mistake. I am  
- - -

PN1408

MR BERRY: Commissioner, I'm happy - - -

PN1409

THE WITNESS: Mr Berry, please let me speak.

PN1410

MR BERRY: I'm happy with the answer already entered by the witness.

PN1411

THE WITNESS: No, I want to (indistinct) with my answer.

PN1412

THE COMMISSIONER: Clarify your answer. What do you wish to say?---Okay. What he said was there is a potential of making the mistakes.

\*\*\* SANJEEV SHARMA

XXN MR BERRY

PN1413

Yes?---And had the company made mistakes in the past and I said 'Yes'. I want to be correct. They were not mistakes, they were deliberate things done to underpay the employees.

PN1414

All right?---And I'm prepared to - I am prepared to provide evidence for that.

PN1415

Okay, thank you, Mr Sharma. That's your view, but we will move on now. Thank you, Mr Berry.

PN1416

MR BERRY: Again I ask the witness be excused from the box.

PN1417

THE COMMISSIONER: We are just going to mute you for one moment, Mr Sharma.

**<THE WITNESS WITHDREW**

**[10.18 AM]**

PN1418

MR BERRY: I ask that that evidence be stricken from the record. The witness has no direct knowledge of the intention of the respondent.

PN1419

THE COMMISSIONER: Much could be said about - anyway, I take the point. I will consider that, Mr Berry.

PN1420

MR BERRY: Thank you.

**<SANJEEV SHARMA, RECALLED**

**[10.19 AM]**

**CROSS-EXAMINATION BY MR BERRY, CONTINUING**

**[10.19 AM]**

PN1421

MR BERRY: I have no further questions.

PN1422

THE WITNESS: Commissioner, I was underpaid deliberately and when I asked for it, I was paid it immediately.

PN1423

THE COMMISSIONER: All right, thank you, Mr Sharma.

PN1424

MR BERRY: I have no further questions for this witness.

PN1425

THE COMMISSIONER: All right. Ms Mohammad.

\*\*\* SANJEEV SHARMA

XXN MR BERRY

**RE-EXAMINATION BY MS MOHAMMAD**

**[10.19 AM]**

PN1426

Mr Sharma, what was the address that you were based at whilst you were employed by ACL?---14-18 Lexington Drive, Bella Vista. We had two working places.

PN1427

And there were other offices or work sites in Bella Vista?---There are two work sites - - -

PN1428

MR BERRY: Objection.

PN1429

THE COMMISSIONER: Okay. Mr Sharma, I'm going to mute you.

**<THE WITNESS WITHDREW**

**[10.20 AM]**

PN1430

THE COMMISSIONER: What's the - just one second.

PN1431

MR BERRY: The premise of that question is that there are other offices. The respondent's premises are in a campus style shared between those addresses. It's not discrete, and he has already asked and answered that question.

PN1432

THE COMMISSIONER: Yes. You did go down that line of questioning, though, in terms of his work location. I will allow the question.

**<SANJEEV SHARMA, RECALLED**

**[10.21 AM]**

**RE-EXAMINATION BY MS MOHAMMAD, CONTINUING**

**[10.21 AM]**

PN1433

THE COMMISSIONER: Thank you, Ms Mohammad.

PN1434

MS MOHAMMAD: Mr Sharma, what other offices are there in Bella Vista that ACL have?

PN1435

MR BERRY: Again I must object.

PN1436

THE COMMISSIONER: Mr Sharma, I am just going to mute you one moment?---That is fine.

**<THE WITNESS WITHDREW**

**[10.21 AM]**

\*\*\* SANJEEV SHARMA

RXN MS MOHAMMAD



PN1437

MR BERRY: The premise of the question is that there are multiple offices.

PN1438

THE COMMISSIONER: All right. Okay. You might think about the way you frame the question, Ms Mohammad. If you're asking questions about the general working environment, that's the campus, however described, the location, and perhaps that might be a more appropriate way to get to where you need to be. Thank you.

**<SANJEEV SHARMA, RECALLED [10.22 AM]**

**RE-EXAMINATION BY MS MOHAMMAD, CONTINUING [10.22 AM]**

PN1439

Mr Sharma, were courier drivers all located at the same location in Sydney, and when I say that, I refer to their normal place of work.

PN1440

MR BERRY: Objection. That's leading the witness.

PN1441

THE COMMISSIONER: I'll allow the question.

PN1442

MR BERRY: Thank you.

PN1443

THE WITNESS: Ms Mohammad, when you say all courier drivers were based at one place in Sydney, what exactly - I'm trying to understand where are we heading, like what do you - - -

PN1444

THE COMMISSIONER: Yes. Just think about the question and answer it to the best of your knowledge, Mr Sharma?---I've answered the question to the best of my knowledge in making the answers. Now we, as courier drivers, majority of us based in Sydney start our shift from Bella Vista and finish at Bella Vista. Besides that, some courier drivers start their shifts from different locations and finish at different locations. If that answers the question, and I don't know what else should I say.

PN1445

MS MOHAMMAD: When you say that you start at Bella Vista, what location do you start at?

PN1446

MR BERRY: Again leading the witness.

PN1447

THE COMMISSIONER: I note the objection. I'll allow the question.

\*\*\* SANJEEV SHARMA

RXN MS MOHAMMAD

PN1448

THE WITNESS: It's a question where do I start from. Where is the leading part of it? I'm starting - I pick up my car from 14, I go to 18, pick up the - I pick up the - what's that - the reports and stuff and I move on. So I collect the car at 14 because cars are parked at 14.

PN1449

THE COMMISSIONER: He has answered the question.

PN1450

MR BERRY: I must object to this vein of questioning. Mr Sharma can only provide - if I may ask that the witness be excused.

PN1451

THE COMMISSIONER: Mr Sharma, we will mute you for the moment?---Thank you.

<THE WITNESS WITHDREW

[10.23 AM]

PN1452

MR BERRY: I object to this line of questioning. Mr Sharma can only provide direct evidence in relation to his run and where he started. I'm unsure as to the benefit that the applicant is trying to adduce into evidence as to other employees that may be employed as couriers.

PN1453

THE COMMISSIONER: He is entitled to provide a view on his overall working environment.

PN1454

MR BERRY: On his own.

PN1455

THE COMMISSIONER: His own, yes - - -

PN1456

MR BERRY: Because he has - - -

PN1457

THE COMMISSIONER: - - - based on his observations, yes.

PN1458

MR BERRY: Yes.

PN1459

THE COMMISSIONER: But I understand that his observations are his observations when giving his evidence.

\*\*\* SANJEEV SHARMA

RXN MS MOHAMMAD

PN1460

MR BERRY: The point of the objection, Commissioner, is if Ms Mohammad were to continue in this vein in eliciting potential evidence from this witness as to other employees employed by the respondent and the occupation of couriers, then Mr Sharma is not in a position to give direct evidence in relation to that.

PN1461

THE COMMISSIONER: Okay. I appreciate you need to be careful how you ask the question, but he's not working by himself, Mr Berry, there are other people in his environment, but I appreciate your concern. We have to be careful that we're not taking him to the answer, Ms Mohammad, in the way that you are putting the question to the witness.

PN1462

MR BERRY: And that would accord with the previous objections in relation to leading the witness. Mr Sharma, in effect, can only give evidence in relation to, as Ms Mohammad has elicited, other employees that operate from the premises at Bella Vista, the chemist-style premises. I'm unsure as to whether her vein of questioning will go further and I would like that objection on the record so it could be dealt with as a matter - - -

PN1463

THE COMMISSIONER: Yes, I understand, I understand. It's noted.

PN1464

MR BERRY: Thank you.

**<SANJEEV SHARMA, RECALLED [10.25 AM]**

**RE-EXAMINATION BY MS MOHAMMAD, CONTINUING [10.25 AM]**

PN1465

Mr Sharma, you said that the courier roles and collector roles are different?---Yes.

PN1466

You have given evidence to say that those roles are different and they shouldn't be mixed?---They are different.

PN1467

What are the key differences between the work of a courier and the work of a collector?

PN1468

MR BERRY: Objection.

PN1469

THE COMMISSIONER: Okay, Mr Sharma, I'm just going to mute you?---Not a problem.

**<THE WITNESS WITHDREW [10.25 AM]**

\*\*\* SANJEEV SHARMA

RXN MS MOHAMMAD

PN1470

THE COMMISSIONER: Mr Berry.

PN1471

MR BERRY: Mr Sharma is employed as a courier.

PN1472

THE COMMISSIONER: Yes, but he did seek to draw distinctions on his understanding, so - - -

PN1473

MR BERRY: But he would not have direct knowledge of the duties performed by a collector.

PN1474

THE COMMISSIONER: No, he may not, but I'll attach whatever weight I consider appropriate.

**<SANJEEV SHARMA, RECALLED [10.26 AM]**

**RE-EXAMINATION BY MS MOHAMMAD, CONTINUING [10.26 AM]**

PN1475

THE COMMISSIONER: Mr Sharma?---Yes, I can hear.

PN1476

Can you please answer the question. Do you need Ms Mohammad to repeat it?---Yes, (indistinct). Do you want me to continue answering that question, Commissioner?

PN1477

Mm-hm?---As a courier, we start our shift from the lab, collect the reports, collect the stores, drive, go to a location, deliver the reports, deliver the stores, pick up the specimens, do this at multiple locations - important - multiple locations - and come back to the base on an everyday basis. On every single day, we work at multiple locations, come back. Collector, on a single day, goes to one location, stays in the room, directly deals with the customer. We don't have any dealings with the customer. Customer means the persons who are giving the blood. We don't have any dealing with the doctors. Collectors meet with the doctors. We don't have any dealing with the medical centres. Collectors meet with the medical centre. We don't get involved in collecting the blood; collectors collect the blood. We don't get involved in doing all other work like (indistinct) of the blood, working there in one place. We simply bring the blood back to the lab. That's our job. And the job of collectors is to collect the blood from locations. I no see how the two roles are similar.

\*\*\* SANJEEV SHARMA

RXN MS MOHAMMAD

PN1478

Thank you, Mr Sharma?---To that extent, collectors have a different department and a function and different reporting structure, different supervisors, different managers. We have different supervisors, we have different managers. We have

nothing to do with the collectors; collectors have nothing to do with us. The only interaction we have is when we collect the blood and then we move on.

PN1479

Okay. Thank you?---Thank you. But, yes, Commissioner - sorry for interrupting - couriers in Victoria and couriers in New South Wales do the same job.

PN1480

Thank you, Mr Sharma?---They have the same work, but they have different pays.

PN1481

MS MOHAMMAD: Commissioner, I have no further questions for this witness.

PN1482

THE COMMISSIONER: Thank you for giving evidence to the Commission, Mr Sharma, you are now free to go about your day?---Commissioner, with your permission, I want to make a concluding statement, if I'm allowed to, please.

PN1483

Okay. That won't be necessary today, Mr Sharma. You have filed a statement of evidence before the Commission, but thank you for your responses today?---I respect that, Commissioner, thank you very much.

**<THE WITNESS WITHDREW**

**[10.29 AM]**

PN1484

THE COMMISSIONER: All right.

PN1485

MR BERRY: Commissioner, the respondent will be seeking to recall Mr Roberts as a witness. Material has been adduced in the evidence by Mr Sharma which is material.

PN1486

THE COMMISSIONER: What are you - - -

PN1487

MR BERRY: Specifically, 13 August 2023, Mr Roberts' evidence was that only couriers were present. Mr Sharma's evidence is that collectors and other employees, including lab and administration staff, were present at that meeting.

PN1488

THE COMMISSIONER: Let me just have a look at that. Just bear with me, I just want to have a look at the statement of Mr Roberts on that point. Bear with me, parties.

PN1489

MR BERRY: If I may assist the Commission, that's page 268 of the court bundle.

\*\*\* SANJEEV SHARMA

RXN MS MOHAMMAD

PN1490

THE COMMISSIONER: This is the August meeting you're referring to?

PN1491

MR BERRY: Yes. Sorry, I apologise. I withdraw. It's not 268. That's the statement filed in relation to the application pertaining to customer service representatives. It is 264. In fact - - -

PN1492

THE COMMISSIONER: Paragraph 10?

PN1493

MR BERRY: Yes, it's paragraph 10.

PN1494

THE COMMISSIONER: Well, you may not - - -

PN1495

MR BERRY: No, I withdraw the application. Thank you, Commissioner. The respondent will call Mr Brownlow.

PN1496

THE COMMISSIONER: Yes, okay. Thank you.

PN1497

MR BERRY: I call Mr Christopher Brownlow on behalf of the respondent to give evidence in relation to matter B2023/1111 and B2023/1112.

PN1498

THE COMMISSIONER: Thank you, Mr Berry.

PN1499

MR BERRY: Commissioner, we represented to this honourable Commission that Mr Brownlow would swear his statutory declarations as evidence. That is the intention of the witness.

PN1500

THE COMMISSIONER: Okay.

PN1501

MR BERRY: I seek leave not to tender physical documents to my friend and this honourable Commission.

PN1502

THE COMMISSIONER: Would you like them marked as a bundle?

PN1503

MR BERRY: They are going to have to be marked individually for each matter.

PN1504

THE COMMISSIONER: Yes, not necessarily but, yes.

PN1505

MR BERRY: I think for ease of reference.

PN1506

THE COMMISSIONER: All right.

PN1507

MR BERRY: Perhaps, Commissioner, may I ask that the matter be stood down for 10 minutes while we locate Mr Brownlow?

PN1508

THE COMMISSIONER: I'm happy to adjourn while you do that.

**SHORT ADJOURNMENT**

**[10.33 AM]**

**RESUMED**

**[10.54 AM]**

PN1509

THE COMMISSIONER: Okay.

PN1510

MR BERRY: Commissioner, the respondent calls Mr Christopher Luke Brownlow to the witness stand.

PN1511

THE COMMISSIONER: Okay, thank you. Mr Brownlow.

PN1512

THE ASSOCIATE: Please state your full name and address. A business address is fine.

PN1513

MR BROWNLOW: Christopher Luke Brownlow, 20 Lexington Drive, Bella Vista, New South Wales 2153.

**<CHRISTOPHER LUKE BROWNLOW, SWORN**

**[10.55 AM]**

**EXAMINATION-IN-CHIEF BY MR BERRY**

**[10.55 AM]**

PN1514

THE COMMISSIONER: Mr Berry.

PN1515

MR BERRY: Mr Brownlow, I will ask you to state your full name for the record?---Christopher Luke Brownlow.

PN1516

And, Mr Brownlow, I will ask you to state your occupation for the record?---I'm the Chief Executive Officer of New South Wales and ACT for Australian Clinical Labs.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XN MR BERRY

PN1517

And I will ask you to state your business address for the record?---20 Lexington Drive, Bella Vista, New South Wales 2153.

PN1518

Mr Brownlow, in front of you is a common court bundle prepared by this honourable Commission. If you'd like to take a moment to familiarise yourself with that. I would ask you to turn to page 268. I apologise, I would ask you to turn to page 490?---490?

PN1519

I will take you to 272 first, sorry. So, Mr Brownlow, in front of you is a witness statement prepared by you in relation to responding to application B2023/1111, isn't it?---Yes, it is.

PN1520

Are there any corrections that need to be made to that statement?---Yes, there are. I have a few corrections if I may. On paragraph 32 I'd like to change the last word of that paragraph from affidavit to statutory declaration. In regard to paragraph 33 I'd like to add the words 'I have not seen the in-camera evidence that has been submitted by the HSU.' And also in regard to paragraph 36 I'd like to change it to 'Mr Sharma denied causing the accident.' I also have some changes to  
- - -

PN1521

Mr Brownlow, is the statement otherwise true and correct to the best of your knowledge and belief?---Yes, it is.

PN1522

Thank you. I ask that the statement be tendered into evidence before this honourable Commission.

PN1523

THE COMMISSIONER: So that's a statutory declaration of Christopher Luke Brownlow in matter B2023/1111 as corrected. I will mark that as exhibit R1.

**EXHIBIT #R1 STATUTORY DECLARATION OF CHRISTOPHER BROWNLOW IN MATTER B2023/1111 AS CORRECTED**

PN1524

MR BERRY: Thank you. And just for completeness, Mr Brownlow, I do also need to ask you whether the attachments to that are true and correct to the best of your knowledge and belief?---Yes, they are to the best of my knowledge and belief.

PN1525

Thank you. I will ask you to turn to page 490 of the common bundle; that's 490. And, Mr Brownlow, in front of you there's a witness statement that you prepared in relation to matter B2023/1112, isn't it?---Yes, it is.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XN MR BERRY

PN1526



And that witness statement responds to the application and evidence filed by the applicant in this matter, isn't it?---Yes, it is.

PN1527

Thank you. Are there any corrections or amendments that need to be made to that statement?---Yes, there are. The first one is paragraph 32. The last word of that paragraph I'd like to change from affidavit to statutory declaration. And in regard to paragraph 33 I'd like to amend that to say 'I have not seen the in-camera evidence that has been submitted.' There's no further changes.

PN1528

Thank you, Mr Brownlow. So the statement before you is, save for those changes that you referenced, true, accurate and correct to the best of your knowledge and belief?---Yes, it is.

PN1529

And the attachments referenced herein are the same, that is true, correct and accurate to the best of your knowledge and belief?---Yes, they are.

PN1530

Thank you. I ask that that statement be tendered into evidence before this honourable Commission.

PN1531

THE COMMISSIONER: Okay, thank you. So that's the statutory declaration of Christopher Luke Brownlow in matter number B2023/1112 as corrected. I will mark that as R2.

**EXHIBIT #R2 STATUTORY DECLARATION OF CHRISTOPHER BROWNLOW IN MATTER B2023/1112 AS CORRECTED**

PN1532

Ms Mohammad, do you have any objections?

PN1533

MS MOHAMMAD: Commissioner, I do have some objections to both statements.

PN1534

THE COMMISSIONER: Okay.

PN1535

MS MOHAMMAD: I have prepared a list of objections of the applicant which I'd like to hand up.

PN1536

THE COMMISSIONER: All right. Do you have a copy for - - -

PN1537

MS MOHAMMAD: Sorry?

\*\*\* CHRISTOPHER LUKE BROWNLOW

XN MR BERRY

PN1538

THE COMMISSIONER: Did you have a copy for the respondent, Mr Berry?

PN1539

MS MOHAMMAD: Yes, I have a copy for everybody.

PN1540

THE COMMISSIONER: Okay. That means, Mr Brownlow, I am just going to get you to leave the room while we deal with those. Thank you very much.

<THE WITNESS WITHDREW

[11.02 AM]

PN1541

THE COMMISSIONER: (Off microphone) All right. Thank you, Ms Mohammad. All right, let's start - I am just going to go to the relevant page. Do you want to start with 1111. There's a couple of ways we can deal with this. What I can do is hear you both and then give (indistinct). Again (indistinct) respond to making the objections, Mr Berry, and then I will make (indistinct) later so that we're not still here at the end of the day. Are you both content to proceed with that course of action?

PN1542

MR BERRY: Sorry, that - - -

PN1543

THE COMMISSIONER: So I hear you both on the objections, but I will make a determination (indistinct).

PN1544

MR BERRY: If I may, Commissioner, the Commission is not a court of law. It may hear any evidence which it wishes. There is binding precedent from the Full Bench of the Fair Work Commission in relation to this matter. I am a little perturbed that Ms Mohammad is relying on the rules of evidence.

PN1545

THE COMMISSIONER: All right. Well, let's hear them and then I will hear a response, and then as I said I will reserve my decision to attach any weight to the evidence to the extent the objection is made.

PN1546

MR BERRY: If I may, Commissioner, although this honourable Commission is not bound by the rule it does have to follow precedent as set.

PN1547

THE COMMISSIONER: Yes. I understand it goes both ways too, Mr Berry.

PN1548

MR BERRY: I know. That's the uniqueness.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XN MR BERRY

PN1549

THE COMMISSIONER: All right. Thank you, Ms Mohammad.

PN1550

MS MOHAMMAD: Commissioner, the first objection is to paragraph 18 of statement B2023/1111. We say that this is an unqualified conclusion in reference to what Mr Brownlow has noted.

PN1551

THE COMMISSIONER: Okay. How do you want to best deal with it? Do you want to go through all your objections or do you want to do them one at a time? Up to you, Mr Berry. You may respond to them individually or at the end. As I said I won't be ruling on them, (indistinct) any way today.

PN1552

MR BERRY: I think that we will need to go through them one by one, because it does appear as though there's different ones.

PN1553

THE COMMISSIONER: All right.

PN1554

MR BERRY: In response to that Mr Brownlow is the overseeing Chief Executive Office of the State of New South Wales. He is entitled to make that statement as it pertains to the operations which he oversees.

PN1555

THE COMMISSIONER: All right. All right, the next one, Ms Mohammad?

PN1556

MS MOHAMMAD: The next objection is from paragraph 19 to 20, including the attachments, and we say there is no relevance of these two statements. This is something that is for the Commission to answer.

PN1557

MR BERRY: If I may that's direct evidence from the respondent.

PN1558

THE COMMISSIONER: Let me just read those two paragraphs. Okay. Mr Berry?

PN1559

MR BERRY: The submission of Ms Mohammad is that they are not relevant. They are directly relevant to the proceedings, and Ms Mohammad is trying to pull the wool over the eyes of this honourable Commission. Directly relevant in terms of first of all the fact that the applicant sought a single enterprise agreement capturing pathology couriers, pathology collectors, customer service. That was appended in the application and tendered into evidence by the applicant. Now they are resiling from that.

PN1560

THE COMMISSIONER: Anything to say in response to that, Ms Mohammad?

PN1561

MS MOHAMMAD: Commissioner, we say that when the legislation considers that the groups are fairly chosen we say that one potential group is not a reflection of the fairness of another chosen group.

PN1562

THE COMMISSIONER: All right. I might just leave that one in. It might be of apparent relevance now what is of apparent relevance. But I take your point, I note the objection. Let's go to the next one, Ms Mohammad.

PN1563

MS MOHAMMAD: We say paragraphs 23 to 27 - - -

PN1564

MR BERRY: Sorry - - -

PN1565

THE COMMISSIONER: Mr Berry?

PN1566

MR BERRY: Just for clarity is that paragraphs 20 and 21, both of them?

PN1567

THE COMMISSIONER: Nineteen and 20 are the paragraphs that Ms Mohammad - - -

PN1568

MR BERRY: Yes, sorry. Thank you.

PN1569

THE COMMISSIONER: Okay. Twenty-three we're up to.

PN1570

MS MOHAMMAD: So paragraphs 23 to 27 have no relevance as these discussions have no bearing on the question that is currently before the Fair Work Commission.

PN1571

THE COMMISSIONER: It's (indistinct). All right, Mr Berry, I will let you say something now in response to (indistinct) about some of the paragraphs.

PN1572

MR BERRY: Thank you, Commissioner. The objection is based on relevance. Tendered into evidence was discussion - sorry, in relation to Mr Roberts' evidence this was clearly traversed. The respondent has the opportunity to respond by way of tendering evidence. Mr Brownlow was directed involved in that meeting, and events stemmed from that meeting, particularly including the email that was tendered into evidence, and the applicant's application from Mr Josh Howarth.

PN1573

THE COMMISSIONER: I will just make sure I have got the right paragraphs that you're referring to. Just bear with me. I am going to read the whole (indistinct). So 23 all the way through to 27 you're saying, Ms Mohammad?

PN1574

MS MOHAMMAD: Yes.

PN1575

THE COMMISSIONER: Anything you wish to say in response, Mr Berry, to the point - - -

PN1576

MR BERRY: Sorry, if I can make a further point there, Commissioner. It seems to me that the applicant is tendering evidence and therefore saying that the respondent does not have a right of reply in relation to that evidence. Again I refer you to the application made by the applicant in which they tendered the email of 15 September from Mr Howarth in which there was a narrative in relation to the meeting of which they are saying is no longer relevant.

PN1577

THE COMMISSIONER: Ms Mohammad?

PN1578

MS MOHAMMAD: Commissioner, we still say that the discussions that took place on 13 September that pertain within paragraphs 23 to 27 bear no relevance to the application, the question before the Commission.

PN1579

MR BERRY: If I may respond to that, Commissioner. If there was no relevance then why would the applicant tender into evidence the email and narrative of Mr Howarth through its application?

PN1580

THE COMMISSIONER: Ms Mohammad, anything you wish to say in response to that?

PN1581

MR BERRY: On which Mr Roberts has already been cross-examined on.

PN1582

MS MOHAMMAD: I note that we objected to those questions being asked.

PN1583

THE COMMISSIONER: All right, fine, thank you. I note the objection. All right, let's keep going. Twenty-nine and 30.

PN1584

MS MOHAMMAD: Twenty-nine and 30, we object on the basis of relevance for the same reasons as provided earlier.

PN1585

MR BERRY: A response the respondent relies on, the same rationale as provided earlier.

PN1586

THE COMMISSIONER: Thank you. Thirty-one, Ms Mohammad. What do you wish to say about that?

PN1587

MS MOHAMMAD: Commissioner, once again for relevance for the same reasons as provided earlier.

PN1588

THE COMMISSIONER: Just bear with me, I just want to read that paragraph. Okay.

PN1589

MR BERRY: Directly relevant, Commissioner. I think obvious on the face of it, but if you wish me to labour the point I will.

PN1590

THE COMMISSIONER: All right. Thank you. I note the objection. Ms Mohammad, 32 we're up to. 'That's why ACL' - - -

PN1591

MS MOHAMMAD: We object to the last sentence of paragraph 32 based on relevance and it being an unqualified conclusion. We say that the total employees in New South Wales isn't relevant as the majority support determination application for a particular group of workers.

PN1592

THE COMMISSIONER: Mr Berry, anything you wish to say in response?

PN1593

MR BERRY: Yes, Commissioner. The number of employees employed by the respondent is directly relevant to this matter, and I'm unsure as to how Ms Mohammad expects this honourable Commission to make a determination about reference to the number of employees employed by the respondent, and I would ask Ms Mohammad to elucidate and illuminate for the honourable Commission as to how it may do so.

PN1594

THE COMMISSIONER: Why do you say it's not relevant, Ms Mohammad? Are you saying that 1165 employees in New South Wales to the questions of (indistinct)? It may be relevant. It's a matter for you if you wish to elaborate. Otherwise I'm minded to note the objection and form a view about that coming to my decision. Mr Berry?

PN1595

MR BERRY: If I may it will be the position of the respondent that there is not a majority of support.

PN1596

THE COMMISSIONER: I understand.

PN1597

MR BERRY: Thank you.

PN1598

THE COMMISSIONER: Thank you. All right, let's move on. Let's go to 33, Ms Mohammad.

PN1599

MS MOHAMMAD: So we object to the entire paragraph once again based on relevance as for the same reason earlier.

PN1600

THE COMMISSIONER: Okay. Mr Berry?

PN1601

MR BERRY: The same rationale, Commissioner, other than but additionally - I struggle to fathom why it's not relevant when Mr Brownlow in that paragraph has simply said, 'I have not seen the evidence provided in-camera to this honourable Commission.' I am not sure how that could be irrelevant to these proceedings. And furthermore I would have hoped that the applicant would have accepted that during the period between filing its application and the hearing date there have been comings and goings which have included Mr Sharma. Now, directly relevant to these proceedings is determining the number of employees - - -

PN1602

THE COMMISSIONER: I understand the time - whether there's majority at a particular time. I understand, Mr Berry. I note the objection. Ms Mohammad?

PN1603

MS MOHAMMAD: Commissioner, we say that the departures and arrivals of staff are not relevant for the Commission to consider in granting the majority support determination.

PN1604

MR BERRY: The respondent rejects that assertion on the basis that the date of which the majority is to be determined is still a live issue.

PN1605

THE COMMISSIONER: All right, Ms Mohammad, 34 to 39. Anything you wish to say further about - - -

PN1606

MS MOHAMMAD: Commissioner, we object to the paragraphs based on relevance as they are currently before the Commission in separate proceedings.

PN1607

THE COMMISSIONER: Just bear with me, I am just going to read through those paragraphs. (Indistinct) I'm not necessarily (indistinct) made any findings through the course of these proceedings on whether or not the individual has undertaken

acts of misconduct or not. (Indistinct) employee in that (indistinct) based on the evidence before the Commission.

PN1608

MR BERRY: There's also a further point that the respondent has made in its submissions and was put to Mr Sharma in cross-examination that he lacked candour with this Commission in not disclosing that his employment was terminated for misconduct. The position and the submission of the respondent will be that he should have had more candour with this honourable Commission.

PN1609

We note that Mr Sharma is the only delegate that has provided evidence in relation to the applicant's application. From the evidence that was elicited from Mr Roberts and Mr Sharma there were several other delegates that could have given evidence, but the applicant for whatever reason chose not to file evidence from those delegates.

PN1610

We see that this material is relevant to the proceedings, and it appears from the objections that Ms Mohammad has that she would prefer that the respondent file more evidence in these proceedings.

PN1611

THE COMMISSIONER: All right. There's a contest of views around the reasons for Mr Sharma's termination. I am not sure it assists the Commission to form any view about that.

PN1612

MR BERRY: We accept that the Commission is not going to form a view as to whether he was unjustified dismissed. As Ms Mohammad has elucidated that matter is before this honourable Commission in relation to another matter, but at the heart of it is the candour of Mr Sharma, and the respondent is perfectly entitled to make representations and respond to the evidence that has been filed.

PN1613

THE COMMISSIONER: I will take it into consideration. Thank you, Ms Mohammad. We're up to 42.

PN1614

MS MOHAMMAD: And once again paragraph 42 for the same reasons as mentioned earlier.

PN1615

MR BERRY: For the same reasons as mentioned earlier, Commissioner.

PN1616

THE COMMISSIONER: Yes. Forty-three. I will just read that one, that paragraph (indistinct). Do you have a submission, Ms Mohammad?

PN1617



MS MOHAMMAD: Commissioner, we say that this paragraph is hearsay and potentially speculation, that there are no particulars as to how Mr Brownlow is aware that his employees have complained about the HSU using their personal information without their consent.

PN1618

MR BERRY: We accept the strike out of that paragraph.

PN1619

THE COMMISSIONER: All right, 44 to 47. I just (indistinct) read, Ms Mohammad. (Indistinct) relationship between the two parties, but what do you say about that, Ms Mohammad?

PN1620

MS MOHAMMAD: Commissioner, we say that this is an unqualified conclusion. I mean these are allegations that were made, and this is subject to another dispute as well. We press that these paragraphs be struck out.

PN1621

MR BERRY: Ms Mohammad is slightly misleading this Commission. It was subject of - no, it wasn't actually. There was no dispute raised, and I would ask Ms Mohammad to elucidate and I would ask her to turn to the annexure.

PN1622

THE COMMISSIONER: The Facebook post, is that the one you're after?

PN1623

MR BERRY: No, Commissioner, if I can find it. 287 of the common bundle. I would be indebted if Ms Mohammad could assist me by identifying for me the paragraphs on which she refers to and what's the dispute about the use of personal information, before I respond further.

PN1624

THE COMMISSIONER: Okay. Ms Mohammad, anything you wish to say about that?

PN1625

MS MOHAMMAD: Commissioner, this was a separate application before the Commission. Mr Brownlow claims in his statement that the HSU refused to cooperate with ACL.

PN1626

MR BERRY: Again I would be indebted if Ms Mohammad would point to a paragraph on which she is relying in this application which she has referred to as the basis for striking out identifying the dispute about personal information.

PN1627

THE COMMISSIONER: I understand the point you're making of relevance, you rely on that. Is there anything else you wish to say other than that?

PN1628

MS MOHAMMAD: No, other than it was a separate matter that was dealt before the Commission. We see no relevance in the Commission taking this into consideration when granting a majority support determination.

PN1629

THE COMMISSIONER: All right. I will note the objection. All right, we get to 48 to 52. Just bear with me, parties, I just want to read that again.

PN1630

MR BERRY: Commissioner, in relation to the previous objection of the applicant can the respondent note that the respondent objects to the objection on the basis of the factual premise put forward by the applicant?

PN1631

THE COMMISSIONER: All right. Thank you, Mr Berry. What do you say about this, Mr Mohammad?

PN1632

MS MOHAMMAD: Commissioner, once again we say that these paragraphs have no relevance to the question before the Commission. It's merely stating that the HSU exercised its right of entry provisions under the Fair Work Act.

PN1633

THE COMMISSIONER: To the extent that there are issues surrounding the validity of the permit (indistinct) it's not a matter I take (indistinct), I will be making (indistinct) determinations about, Mr Berry.

PN1634

MR BERRY: I accept that, Commissioner, but a central tenet of the respondent's argument is that - the thrust of the submissions is that, and if I may be so candid, the applicant started off seeking a single enterprise agreement for couriers, collectors, customer service representatives and administration staff, pivoted (indistinct) all employees, then deviated based on occupation. The applicant has filed no direct evidence as to how it actually chose the employees.

PN1635

We have the submissions of Ms Mohammad and what has been elicited in evidence from their witnesses, which was not necessarily forthcoming. But the thrust of the respondent's argument is that these entry notices related to collecting further signatures and support from collectors who would be a group that would be organisationally distinct as the applicant first recognised on 20 July 2023.

PN1636

THE COMMISSIONER: All right. I will note the objection, thank you. Fifty-three, 'The collectors are the additional cohort.'

PN1637

MR BERRY: I don't believe that's a matter that's actually disputed between the parties.

PN1638

THE COMMISSIONER: Ms Mohammad, what do you say on that one?

PN1639

MS MOHAMMAD: We say that this once again doesn't have any relevance to this particular application that is before the Commission.

PN1640

MR BERRY: Again I do not understand how Ms Mohammad can stand here and tell this honourable Commission that when she has filed with the application the email of 20 July.

PN1641

THE COMMISSIONER: Thank you, Mr Berry. I note the objection.

PN1642

MS MOHAMMAD: Commissioner, the two applications that are before the Commission relates to customer service call centre employees, and courier staff.

PN1643

THE COMMISSIONER: All right, 54 and 56. Just bear with me, I will just reread that. All right, Ms Mohammad?

PN1644

MS MOHAMMAD: Commissioner, we say that these paragraphs be struck out based on relevance for being an unqualified conclusion, on the basis that the union isn't required to disclose our reasoning to the respondent.

PN1645

MR BERRY: If I may, a central tenet of 237 there's this honourable Commission being satisfied that the employees have been fairly chosen. That is a central issue.

PN1646

THE COMMISSIONER: (Indistinct) accept that the basis for (indistinct) there will need to be a ground to establish that (indistinct) fairly chosen. I accept that, Mr Berry. (Indistinct) advancing their grounds in their submissions. Anything else you wish to say about that, Mr Berry?

PN1647

MR BERRY: Yes, I do. I ask that my friend here assist me by clarifying for me whether the position of the applicant is not to provide any direct evidence in relation to how it chose it, but it's simply relying on its submissions. If so I would ask that Ms Mohammad be called to the witness box to be cross-examined.

PN1648

THE COMMISSIONER: I am not minded to go down that path (indistinct) question. There's a difference, distinction potentially between reason. In any case, Ms Mohammad, do you wish to say anything about that?

PN1649

MS MOHAMMAD: Nothing further.

PN1650

THE COMMISSIONER: I will note the objection. All right, let's go to 60 to 62. Some of this might be a matter for submissions, but, Ms Mohammad?

PN1651

MS MOHAMMAD: Commissioner, we say once again these paragraphs are not relevant in the unqualified conclusion. There's nothing to sort of say that workers that are not covered by the enterprise agreement would be worse off.

PN1652

MR BERRY: I am uncertain how Ms Mohammad can make that submission when her own witness gave evidence that they would be worse off.

PN1653

THE COMMISSIONER: Anything you wish to say about that? In terms of the statutory (indistinct) I might take (indistinct) submissions, Mr Berry. This notion of unfairness has been raised. What do you wish to say about that in terms of the statutory considerations that I need to have regard to?

PN1654

MR BERRY: It is directly relevant. There is precedent certainly in the authorities that have been referenced by both the applicant and the respondent. It is an other matter that needs to be taken into consideration under the catchall provided within the statutory section.

PN1655

THE COMMISSIONER: I understand. All right. Anything further you wish to say, Ms Mohammad?

PN1656

MS MOHAMMAD: Nothing further.

PN1657

THE COMMISSIONER: All right, we will go to 67. What do you say about that, Ms Mohammad?

PN1658

MS MOHAMMAD: Once again, Commissioner, based on relevance we object to this paragraph. We say that it doesn't affect whether the group is in fact fairly chosen.

PN1659

THE COMMISSIONER: I note, Mr Berry, there's an attachment as to (indistinct). What do you wish to say about that? It might be a matter that's best reserved for submissions, Mr Berry, but - - -

PN1660

MR BERRY: I'm absolutely baffled by the position of the applicant. The central thrust of the applicant's applications is, and as has been adduced in evidence, that it is based on the occupation of the employees. It would appear with Ms Mohammad's objection that she's denying the respondent the opportunity to tender evidence in response to that. Ms Mohammad is essentially endeavouring to tie

both hands behind the respondent and not enabling it to respond to the applications as it would wish.

PN1661

THE COMMISSIONER: All right. Thank you, Ms Mohammad, I will note that objection. We will turn to 69, 'HSU has made it clear to me.' What do you say about that?

PN1662

MS MOHAMMAD: Commissioner, we object on the basis of relevance and it being an unqualified conclusion. There is no evidence of further majority support determinations at this point in time. The HSU is purely working on the information that it has before it.

PN1663

MR BERRY: If I may, Commissioner, that's clearly traversed in the cross-examination of Mr Sharma, in which he conceded that the basis of the applications were on occupation and that further applications would be made, and that was communicated to him by the applicant.

PN1664

THE COMMISSIONER: All right, thank you. Anything further you wish to say about this?

PN1665

MS MOHAMMAD: We say it's speculation at this point.

PN1666

MR BERRY: Ms Mohammad did not object at the time on the basis of speculation, and Mr Sharma gave direct evidence based on the communications that he had with representatives of the applicant.

PN1667

THE COMMISSIONER: All right. I will consider that objection when I refer to the transcript. Thank you, parties. All right, let's bring him in.

PN1668

MR BERRY: If I may, Commissioner, I believe my friend has objections in relation to statement 1112.

PN1669

THE COMMISSIONER: Sorry. Sorry, I'm being a bit enthusiastic. All right, thank you, Ms Mohammad, we might deal with the 1112 (indistinct). I assume that some of these are going to be of similar - - -

PN1670

MS MOHAMMAD: That's correct.

PN1671

THE COMMISSIONER: Once again I'm minded to adopt the same approach.

PN1672

MR BERRY: If I may ask for the benefit of efficiency Ms Mohammad identify those that are dissimilar so that we may turn our attention to those as a matter of precedence.

PN1673

THE COMMISSIONER: That might be (indistinct) course of action. I will let you say anything now that you wish to say about your objections, Ms Mohammad. Any particular parts of the statement that you want to bring my attention to?

PN1674

MR BERRY: We would be amenable by consent to the same responses being entered in relation to the same paragraphs for the interests of efficiency.

PN1675

MS MOHAMMAD: Yes, we're happy to - as long as the paragraphs are identical we're happy for the same responses, the same objections to be taken into consideration.

PN1676

THE COMMISSIONER: All right. Shall we bring him in?

PN1677

MR BERRY: I'm just seeking clarification from my friend that there are no further objections in relation - because I do know that some of these paragraphs are different, based on the numbering, and also the content.

PN1678

MS MOHAMMAD: Commissioner, I don't believe that there are any further objections to the application number 2023/1112.

PN1679

THE COMMISSIONER: (Indistinct) on the basis on your objection. All right, Mr Berry, anything further you wish to say?

PN1680

MR BERRY: Again this is the applicant's objections. My understanding is that she has no further objections in relation to the evidence tendered by 1112. But again the respondent does not wish to be prejudiced with not having the opportunity to respond to particular objections, noting that if the objections were accepted in their entirety in effect the respondent would be providing no evidence in response. And I would also like the Commission to note that Ms Mohammad is objecting on the basis of relevance, which is questionable.

PN1681

THE COMMISSIONER: For some of them, not all of them. (Indistinct). It should be 18 and paragraph 34.

PN1682

MR BERRY: So would it assist the Commission if Ms Mohammad took us to those paragraphs and elucidated her objections?

PN1683

THE COMMISSIONER: Did you wish to say anything about those two? With 18, (indistinct) I will find conclusion on the basis of paragraph 18. Anything further you wish to elaborate on that? So the same - 'Essentially we operate as one integrated team.' It talks about the structure.

PN1684

MS MOHAMMAD: I rely on my previous submissions, Commissioner.

PN1685

MR BERRY: And we rely on ours, Commissioner.

PN1686

THE COMMISSIONER: Can we turn to 34, which is aware - he says (indistinct) that employees have complained about the HSU. It's the same objection you raised in relation to the same - you rely on the same reasons?

PN1687

MS MOHAMMAD: Yes, that's right.

PN1688

MR BERRY: We rely on the same.

PN1689

THE COMMISSIONER: All right. For the record what I am going to say is that the objections that HSU raised are in relation to paragraph 18 on the basis of unqualified conclusion; 19 to 20 are based on relevance; 23 to 27 on the basis of relevance; 29 to 30 on the basis of relevance; 31 on the basis of relevance; 32 on the basis of relevance and unqualified conclusion; 33 on the basis of relevance. We have dealt with 34. Thirty-five to 38 on the basis of relevance and (indistinct) assertion or speculation; 39 to 34, the same reasons, relevance and (indistinct) assertion; 45, relevance (indistinct) assertion; 47, relevance, unqualified conclusion, are the same; 51 to 53, relevance, unqualified conclusion; 59, relevance, and 69 relevance, unqualified conclusion. Anything further you wish to say about those objections at this point, Ms Mohammad?

PN1690

MS MOHAMMAD: Nothing further at this stage.

PN1691

THE COMMISSIONER: Anything further from you?

PN1692

MR BERRY: I'm uncertain as to how you wish me to respond.

PN1693

THE COMMISSIONER: It's a matter for you.

PN1694

MR BERRY: We refute the objections on the basis that has already been proffered to this honourable Commission, and we note that Ms Mohammad has not referenced any other paragraph which may be unique or distinct in this

statutory declaration as opposed to the one that we previously traversed. We do ask that a ruling be made, because obviously the respondent will be prejudiced if it's not able to re-examine Mr Brownlow based on the - - -

PN1695

THE COMMISSIONER: I am not minded to do that today. So I will note the objection and I will consider what weight, if any, to attach - to the extent that most of them are based on issues of relevance what weight, if any, to give to them (indistinct) in my conclusion. All right.

PN1696

MR BERRY: And we would also note again that this honourable Commission is not bound by the rules of evidence.

PN1697

THE COMMISSIONER: All right. Let's bring him in. Thank you.

**<CHRISTOPHER LUKE BROWNLOW, RECALLED [11.41 AM]**

**CROSS-EXAMINATION BY MS MOHAMMAD [11.41 AM]**

PN1698

THE COMMISSIONER: All right. Thank you for your patience, Mr Brownlow. (Indistinct). I believe we did?---Yes, we did.

PN1699

I remind you that you are still under oath. You may be asked some questions. (Indistinct) take him to the relevant statement, (indistinct) take him to the paragraphs (indistinct). It's a complexity that you're going to be going between potentially two different documents, Ms Mohammad.

PN1700

MS MOHAMMAD: I'm happy to guide you to the relevant statement and the relevant paragraph?---Thank you.

PN1701

Okay. Mr Brownlow, have you read the respondent's submissions in both matters?---Yes, I have.

PN1702

Did you read those submissions prior to finalising both of your statutory declarations?---Yes, I did.

PN1703

And do you agree with the respondent's submissions for both of the applications?---Yes, I do.

PN1704

Is it correct that you are also the instructing officer in these matters?---Yes, I am.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD



PN1705

Did you instruct Mr Berry to assert that the increase in entry permits were all at the location that collectors are based?---I'm sorry, can you repeat the question?

PN1706

So did you instruct Mr Berry to assert that the increase in union entry permits were all at the location that collectors are based?---That was part of my statutory declaration.

PN1707

How did you come to know of that information?---Because all of the entry permits are sent to me by the HSU. They come to me via email.

PN1708

And how did you identify that all of those locations have collectors based at them?---Each of the entry permit states the address that HSU wants to visit, and I instructed Ms Lai to review all of those entries, and then on reviewing the list I was aware that they were collection locations where we provide collection services, in the main.

PN1709

And what other information did you rely on other than the increase in entry permits to make this conclusion?

PN1710

MR BERRY: Objection. What conclusion is she - - -

PN1711

THE COMMISSIONER: It just may be - - -

PN1712

MS MOHAMMAD: That all of the collectors are based at the sites based on the entry permits?---I reviewed the list, and from getting a request for entry permits it seemed to me that they were majority collection sites.

PN1713

Did you go through the list individually, or how were you aware that they're all collection sites?---I scanned the list. I wouldn't say I went through it one by one. There are a lot of entries on the list, but I can review it if you would like me to now.

PN1714

How many locations does ACL have in New South Wales?---So we - in New South Wales we operate seven laboratories, and around 420 collection centres.

PN1715

Mr Brownlow, do you support collective bargaining?---I'm aware of its existence.

PN1716

Do you understand what collective bargaining involves?

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN1717

MR BERRY: Objection.

PN1718

THE COMMISSIONER: All right, bear with me. I might just get you to leave the room for one moment?---Sure.

<THE WITNESS WITHDREW

[11.46 AM]

PN1719

THE COMMISSIONER: So the two questions there.

PN1720

MR BERRY: What relevance does - whether Mr Brownlow supports collective bargaining is irrelevant to this matter. That's a personal belief held by the witness.

PN1721

THE COMMISSIONER: Okay. Ms Mohammad? I mean it's not in contention that the employer has not agreed to bargain in this case.

PN1722

MS MOHAMMAD: And I guess we're trying to explore the other reasons that Mr Brownlow has relied upon when rejecting the request to bargain.

PN1723

THE COMMISSIONER: That might be a question that might be better put. You both put in submissions turning to the reasons for bargaining or not bargaining.

PN1724

MR BERRY: So there are two simple questions that need to be answered by this honourable Commission. First, whether there's a majority. Secondly, whether those employees have been fairly chosen, which the applicant is required to adduce evidence of how it chose, for which the respondent may respond. And thirdly, any other relevant consideration. I am unsure as to how Mr Brownlow's personal belief in relation to collective bargaining has any bearing on the matter.

PN1725

THE COMMISSIONER: Okay. Sorry, Ms Mohammad? I'm minded - go on.

PN1726

MS MOHAMMAD: Sorry, you go ahead.

PN1727

THE COMMISSIONER: I was going to say I'm minded to allow the question on the basis that you've got a position here that there's no majority or the cohort is not fairly chosen. Is that correct, Mr Berry?

PN1728

MR BERRY: Yes, that's correct.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN1729

THE COMMISSIONER: And so it is an employer, but there are controlling minds. Are you saying that he is or is not one of those?

PN1730

MR BERRY: Well, I mean he would be one of the 1165 employees.

PN1731

THE COMMISSIONER: All right. I am minded to allow the question to be answered at this point, but how are we going to ask it, just so I can be clear, so Mr Berry can raise any concern with it.

PN1732

MS MOHAMMAD: Would you like me to rephrase it in a way - - -

PN1733

THE COMMISSIONER: You can ask it more directly. What's the question you're going to ask, noting the point that you're trying to make? Can I assist you maybe; is it a question of why has the employer not agreed to bargain? Is that where you're - - -

PN1734

MS MOHAMMAD: Yes, and I think we're relying on the correspondence between Mr Brownlow and Mr Roberts on I believe 20 July when Mr Brownlow rejects the HSU's request to bargain.

PN1735

THE COMMISSIONER: Mr Berry?

PN1736

MR BERRY: I would just take the opportunity to correct my friend, it's 26 July 2023, and if that's what she's relying on I'm somewhat baffled by her earlier objections as to relevance. So she can't have her cake and eat it too.

PN1737

THE COMMISSIONER: All right. I am minded to allow the question.

PN1738

MS MOHAMMAD: Commissioner, I will just note in response to Mr Berry's submissions, we're unaware as to whether or not those objections have been granted yet.

PN1739

THE COMMISSIONER: Yes. I am going to allow the question. To be clear what are you going to ask him when he comes back in the room, assuming I think I know what you're going to ask?

PN1740

MR BERRY: I think for the benefit of all parties it would be - - -

PN1741

MS MOHAMMAD: I'm happy to start off by asking him whether he understands collective bargaining.

PN1742

MR BERRY: Again I have to object. What is the relevance of whether Mr Brownlow accepts collective bargaining. He's simply responding as to whether the respondent has acquiesced to bargaining, which again is not a matter that is in dispute. It's a position of consent between the parties that the respondent has not agreed to bargain.

PN1743

THE COMMISSIONER: All right.

PN1744

MS MOHAMMAD: Commissioner, we are relying on Mr Brownlow's evidence. He is the respondent's representative.

PN1745

THE COMMISSIONER: Yes.

PN1746

MR BERRY: May I ask my friend whether the position of the applicant is that the respondent has agreed to bargain, and if so why are we here today?

PN1747

THE COMMISSIONER: I thought I asked that question quite squarely. I believe it's not in contest that the employer has not agreed to bargain; is that right?

PN1748

MS MOHAMMAD: Yes.

PN1749

THE COMMISSIONER: And so in my mind in understanding that you're trying to get the (indistinct) of one.

PN1750

MS MOHAMMAD: Yes.

PN1751

MR BERRY: Mr Brownlow's personal beliefs in relation to collective bargaining are irrelevant.

PN1752

THE COMMISSIONER: There might be other employees that have express views throughout the course of these proceedings about bargaining and what they understand that to be - - -

PN1753

MR BERRY: That was on the basis of evidence provided that Mr Roberts explained to his delegates who then became representatives of the applicant and the workplace. Now, the submission of the respondent will be that most delegates, certainly Mr Sharma, did not have a clear understanding of bargaining.

PN1754

THE COMMISSIONER: If that's the line of question that you're going to go now I am going to allow it in the context of Mr Brownlow. He is giving evidence in proceedings, and as a senior mind in the organisation in relation to these matters, Mr Berry.

PN1755

MS MOHAMMAD: I would assume that Mr Brownlow would be a key decision-maker when it comes to collective bargaining.

PN1756

MR BERRY: Of course he would, but his personal beliefs are entirely irrelevant, and we strenuously object on that basis.

PN1757

THE COMMISSIONER: I note the objection. Let's bring him back in.

**<CHRISTOPHER LUKE BROWNLOW, RECALLED [11.52 AM]**

**CROSS-EXAMINATION BY MS MOHAMMAD, CONTINUING [11.52 AM]**

PN1758

MS MOHAMMAD: Mr Brownlow, do you understand what collective bargaining involves?---I wouldn't know all the intricacies of the process, but, yes, I have a general understanding.

PN1759

So in the correspondence that was sent to you on 26 July 2023 - - -

PN1760

MR BERRY: Objection. No correspondence was sent on that day.

PN1761

THE COMMISSIONER: I think the date might be out. I think I know the correspondence. You might take Mr Brownlow to the correspondence you're referring to for clarity, Ms Mohammad.

PN1762

MR BERRY: May I ask that the Commission note that Ms Mohammad is taking the witness to correspondence that she has objected to on the basis of - - -

PN1763

MS MOHAMMAD: Mr Brownlow, I take you to page 50 of the digital court book.

PN1764

THE COMMISSIONER: It's an email of Mr Roberts to Mr Brownlow dated 20 July 2023. Is that the one you're looking at, Ms Mohammad?

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN1765

MS MOHAMMAD: Yes, that's correct. So this is a request made by Mr Brendan Roberts to enter into good faith bargaining negotiations. Your response to that email was:

PN1766

*We advise that ACL declines your request, and ACL does not wish to bargain and negotiate an enterprise agreement for the specified employees.*

PN1767

On what basis did you decline Mr Roberts' request if you did not know what collective bargaining was?

PN1768

MR BERRY: Objection to the premise of that question. I ask that the witness be excused.

PN1769

THE COMMISSIONER: Mr Brownlow, just step out for a moment.

**<THE WITNESS WITHDREW**

**[11.55 AM]**

PN1770

THE COMMISSIONER: I'm not sure that was precisely the (indistinct) of it, Mr Berry. What do you - - -

PN1771

MR BERRY: I object. That was not his answer.

PN1772

THE COMMISSIONER: I think he said something along the lines of not aware of all the entries (indistinct) or something. I'm not sure, I will have to familiarise myself with the transcript.

PN1773

MR BERRY: 'But I have a general understanding.'

PN1774

THE COMMISSIONER: General understanding. Yes. Are you happy to reframe the question so you can - the first part of the question might be unhelpful is what I am suggesting, Ms Mohammad. Let's bring him back.

**<CHRISTOPHER LUKE BROWNLOW, RECALLED**

**[11.56 AM]**

**CROSS-EXAMINATION BY MS MOHAMMAD, CONTINUING [11.56 AM]**

PN1775

THE COMMISSIONER: It was on what basis (indistinct).

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN1776

MS MOHAMMAD: So on what basis did you request to refuse to enter into negotiating an enterprise agreement for specified employees?---First on reflection and looking at my response I probably could have chosen my words better, but from my point of view if we were to enter bargaining I'd rather have one agreement, and what was requested didn't cover all of our employees.

PN1777

And why would you want to have just one agreement?---To have multiple agreements would be complex and I don't think would be fair.

PN1778

And did you specify those reasons to Mr Roberts as to why you didn't want to bargain at a later point?---No.

PN1779

MR BERRY: Objection.

PN1780

THE COMMISSIONER: You might just break the questions up into stages there. There's two parts I think to that question potentially.

PN1781

MS MOHAMMAD: So did you just assume that Mr Roberts was going to - - -

PN1782

MR BERRY: Again objection.

PN1783

MS MOHAMMAD: - - - to bargain?

PN1784

THE COMMISSIONER: Mr Brownlow, I will just get you to - - -

**<THE WITNESS WITHDREW**

**[11.58 AM]**

PN1785

THE COMMISSIONER: All right, Mr Berry?

PN1786

MR BERRY: Mr Brownlow's assumptions are not relevant. I mean you can't - - -

PN1787

THE COMMISSIONER: All right. What are we trying to get at? What's the point that's trying to be made through the question?

PN1788

MS MOHAMMAD: We're trying to narrow down on what basis did he refuse to enter into good faith negotiations.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN1789

MR BERRY: Asked and answered.

PN1790

THE COMMISSIONER: I'm sorry, he has answered that question. So are you looking at (indistinct) it at a later point? Is that where you're going with this?

PN1791

MS MOHAMMAD: Sort of.

PN1792

MR BERRY: I'm slightly confused by this vein of questioning here, Commissioner, because on one hand Ms Mohammad has objected on the basis that all previous - - -

PN1793

THE COMMISSIONER: She may or may not be right about that - - -

PN1794

MR BERRY: - - - representations - yes, she may or may not be right, I accept that, but again at the heart of this matter to be considered is these applications.

PN1795

THE COMMISSIONER: It goes to both ways.

PN1796

MR BERRY: I'm unsure as to where this vein of questioning will take us.

PN1797

THE COMMISSIONER: Okay. That's what we're trying to establish. Ms Mohammad, give me the question you're going to put that was objected to. So you're asking about an assumption.

PN1798

MS MOHAMMAD: Assumption, and Mr Brownlow's views as to whether he thinks the only way to bargain would be through an order by the Fair Work Commission as well.

PN1799

MR BERRY: I'm not sure if that (indistinct), but perhaps Ms Mohammad can directly put that to the witness. The reality is that multiple requests have been made and declined, or he hasn't responded.

PN1800

THE COMMISSIONER: And I know you're seeking to establish reasons for that.

PN1801

MR BERRY: So on one hand, Commissioner, we have the first request which has been asked and answered, that is 26 July. The evidence quite clearly shows that Mr Brownlow has not responded to the other requests, and he's provided reasons albeit that Ms Mohammad may want struck out on the basis of relevance ironically - - -



PN1802

THE COMMISSIONER: Mr Roberts has provided evidence to that extent as well about further requests (indistinct) to my recollection. I could be wrong.

PN1803

MR BERRY: And Mr Brownlow has entered into evidence, which may or may not be subject to objection on the basis of relevance, that he did not respond to the later request to bargain from Mr Howarth. So I don't believe that's contested, or is Ms Mohammad suggesting that Mr Brownlow did respond?

PN1804

MS MOHAMMAD: Commissioner, I'm happy to ask the question around whether Mr Brownlow believes that the only way to commence bargaining would be through an order made - - -

PN1805

THE COMMISSIONER: You can put the proposition to him. Yes, I am happy for you to do that. Bring him in.

PN1806

MR BERRY: Again I must object on the basis of relevance, but I will ask that that be noted.

**<CHRISTOPHER LUKE BROWNLOW, RECALLED [12.01 PM]**

**CROSS-EXAMINATION BY MS MOHAMMAD, CONTINUING [12.01 PM]**

PN1807

MS MOHAMMAD: Mr Brownlow, do you believe that the only - - -

PN1808

MR BERRY: Again objection on the basis of belief.

PN1809

MS MOHAMMAD: Mr Brownlow, is the only way to bargain for an enterprise agreement through an order made by the Fair Work Commission?---Not to my knowledge, no.

PN1810

How else can parties bargain for an enterprise agreement?

PN1811

MR BERRY: Objection on the basis of speculation I think.

PN1812

THE COMMISSIONER: (Indistinct) provided (indistinct).

PN1813

THE WITNESS: I think two parties can agree to bargain.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN1814

MS MOHAMMAD: When was the first time that you told the HSU your reasons for not wanting to bargain, because you weren't satisfied that a majority of your staff did not - - -

PN1815

MR BERRY: Again Ms Mohammad is suggesting the answer to the witness.

PN1816

THE COMMISSIONER: Yes, (indistinct) to that. Maybe I can ask the question. How this (indistinct) ability to ask a question?

PN1817

MR BERRY: Of course, Commissioner, you're always entitled to ask - - -

PN1818

THE COMMISSIONER: Did you give the reasons for not wanting to bargain to the HSU?---At the time of the emails, no, but at the same time the HSU was making submissions to bargain. So from my point of view I thought it was going to go to Fair Work, so it could just play out in front of Fair Work.

PN1819

All right. Ms Mohammad?

PN1820

MS MOHAMMAD: How were you informed of the majority of your staff not being interested in bargaining?---I'm not informed of the majority not being interested, but I wasn't provided evidence that the majority were interested.

PN1821

Are you aware of the relevant classifications that courier staff fall under the Health Professionals and Support Services Award?

PN1822

MR BERRY: Again relevance.

PN1823

THE COMMISSIONER: I will allow the question.

PN1824

THE WITNESS: Off the top of my head I wouldn't be able to say the exact classification, no, but I do - I'm aware they come under the Health Professionals and Support Services Award.

PN1825

MS MOHAMMAD: But you're not familiar with what classification they fall under?---I think it's either classification 2 or 3. I don't recall off the top of my head.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN1826

I put it to you that courier staff are classified as support services level 2 under Health Professionals and Support Services Award.

PN1827

MR BERRY: Objection. I don't know why Ms Mohammad is putting that to the witness when he's already agreed that they do fall within that.

PN1828

THE COMMISSIONER: He answered the question.

PN1829

MS MOHAMMAD: At the time that the Victorian enterprise agreement was made were the rates of pay in the enterprise agreement higher than the award rates of pay?

PN1830

MR BERRY: Objection. Mr Brownlow would have no direct knowledge in relation to the - - -

PN1831

THE COMMISSIONER: It's a matter for him. (Indistinct) answer the question, Mr Brownlow.

PN1832

MS MOHAMMAD: Commissioner, if I may assist I have some pay - - -

PN1833

MR BERRY: Objection to the introduction of extraneous evidence.

PN1834

THE COMMISSIONER: Mr Brownlow, please leave the room for a moment.

<THE WITNESS WITHDREW

[12.06 PM]

PN1835

THE COMMISSIONER: All right, what is it? If we can have a look at it.

PN1836

MR BERRY: Commissioner, on one hand Ms Mohammad is objecting based on the rules of evidence. On the other hand she's asking that this honourable Commission disregard the rules of evidence. Which is it, Ms Mohammad?

PN1837

THE COMMISSIONER: Okay, I understand. All right, let me have a look at what we're seeking to hand up, Ms Mohammad. Maybe that's not contentious, Mr Berry, in any case. Let's have a look at it first.

PN1838

MR BERRY: I would be indebted if Ms Mohammad could elucidate as to the value of this extraneous material.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN1839

THE COMMISSIONER: It's the pay rates under Health Professional and Support Services Award as at 19 December 2023.

PN1840

MR BERRY: And how that is relevant to the central - - -

PN1841

MS MOHAMMAD: It should be - - -

PN1842

MR BERRY: - - - questions that need to be decided by this honourable Commission.

PN1843

MS MOHAMMAD: Commissioner, these rates of pay apply from the first full pay period on or after 18 June 2020. The purpose of these questions is to establish the rates of pay being higher in the enterprise agreement at the time that the enterprise agreement was made, and therefore having an enterprise agreement in the workplace is beneficial to HSU members and employees in the workplace.

PN1844

MR BERRY: Where would you like me to begin with my objections there, Commissioner?

PN1845

THE COMMISSIONER: It's up to you, Mr Berry.

PN1846

MR BERRY: First of all there's the introduction of extraneous material which was not tendered by the applicant into evidence. She's effectively trying to ambush Mr Brownlow here. Secondly, this material has no relevance to the questions that need to be decided under section 237. And thirdly, the negotiations in Victoria, or the previous enterprise agreement in Victoria which Ms Mohammad is relying on is again irrelevant to this matter, and that sets terms and conditions for employees employed in Victoria.

PN1847

THE COMMISSIONER: Yes. Ms Mohammad?

PN1848

MS MOHAMMAD: Commissioner, the respondent has tendered in its evidence the Victorian enterprise agreement. The respondent also had the chance to cross-examine our witnesses on whether rates of pay are better or worse under the enterprise agreement for the award.

PN1849

THE COMMISSIONER: Well, I think there's a natural conclusion to that potential question given the broader statutory framework, Ms Mohammad, and the requirements for enterprise agreements. I won't be reassessing the Victorian agreement. We're not talking about (indistinct) remuneration or anything of that

nature to these proceedings. Why are you seeking specifically to take (indistinct) the award rates, Mr Brownlow to the award rates, just so I can follow the logic?

PN1850

MR BERRY: And if I may, although we introduced the award into Mr Brownlow's evidence the modern award and the rates were not.

PN1851

THE COMMISSIONER: Okay. Continue, Ms Mohammad.

PN1852

MS MOHAMMAD: Commissioner, it really is to establish the benefits of having an enterprise agreement in the workplace.

PN1853

THE COMMISSIONER: Is that contentious though? An enterprise agreement by its nature employees should be better off under it compared to the award as at the test time.

PN1854

MR BERRY: Just on the note that the better off overall test is a global test.

PN1855

THE COMMISSIONER: Yes, I understand. But you can't have rates in an agreement below the award at the same time. I get the questioning - - -

PN1856

MR BERRY: Of course not, and that is a matter of law, which is not disputed between the parties.

PN1857

THE COMMISSIONER: Yes. All right. So you can take the pay rates to him. What are you seeking to establish there really? What's the point that's being made, because it may be that it's a point already made.

PN1858

MS MOHAMMAD: Commissioner, it really is to establish that the employees do want to bargain and they do want an enterprise agreement in the workplace.

PN1859

MR BERRY: The pay rates have no relation to employees wanting to bargain. They are objective information prescribed by law.

PN1860

THE COMMISSIONER: Go back, parties, to this; one of the matters that have come out potentially in evidence is some motivation, employee motivation behind bargaining, being the Victorian enterprise agreement the parties are suggesting is in place. There's not one in New South Wales. That's not a matter in contest.

PN1861

MR BERRY: It's not in contest as that there is an enterprise agreement in Victoria, and I don't know how the applicant could dispute the classification

structures in relation to that enterprise agreement, because that's been reviewed and approved by the Fair Work Commission.

PN1862

THE COMMISSIONER: Yes. I'm not sure that you're seeking to do that.

PN1863

MS MOHAMMAD: No, we're not disputing the classifications, or we're not disputing the enterprise agreement. Mr Brownlow in his statement and his evidence says that he believes that his employees, the majority of his employees do not wish to bargain. We're trying to establish that - - -

PN1864

MR BERRY: Well, again relevance, relevance of the pay tables to whether employees want to bargain. There's no direct evidence from the applicant that employees are motivated by the modern award pay tables. The modern award pay tables prescribe in law the minimum rates of pay.

PN1865

THE COMMISSIONER: All right. So for the sake of provisions here it's not in contest that if employees have an enterprise agreement in New South Wales as a matter of law they would be required to be better off under that enterprise agreement.

PN1866

MR BERRY: Proposition accepted.

PN1867

THE COMMISSIONER: Okay. Are you happy for Ms Mohammad to put something along those lines to confirm his understanding of that?

PN1868

MR BERRY: If Ms Mohammad wished to do so we would have no objection to that.

PN1869

THE COMMISSIONER: All right. What do you think about (indistinct) given it's in contention, Ms Mohammad? Because if there is a valid point the rate statements lead to a conclusion, and it's more it might be what wraps around the rates that get you across the line on a BOOT test assessment, and I understand the point you're trying to elicit through the evidence. Maybe that's a proposition you can put to him. What do you think?

PN1870

MS MOHAMMAD: Commissioner, I would be guided as to how you would like me to ask that.

PN1871

THE COMMISSIONER: Yes. You put a proposition squarely that if there was -  
- -

PN1872

MS MOHAMMAD: An enterprise agreement in New South Wales.

PN1873

THE COMMISSIONER: Yes. Whether it would be better off compared to the enterprise agreement under the award (indistinct) to approve on. See if he agrees with that proposition, or think it's contentious, but you never know. Happy to bring him in?

PN1874

MS MOHAMMAD: Yes.

PN1875

THE COMMISSIONER: All right, let's do that.

**<CHRISTOPHER LUKE BROWNLOW, RECALLED [12.14 PM]**

**CROSS-EXAMINATION BY MS MOHAMMAD, CONTINUING [12.14 PM]**

PN1876

MS MOHAMMAD: Mr Brownlow, if there was an enterprise agreement in New South Wales do you believe that your - - -

PN1877

MR BERRY: Again objection as to belief.

PN1878

THE COMMISSIONER: I will allow the question. Go on.

PN1879

MS MOHAMMAD: Would your employees be better off?---My understanding is that the modern award forms a base. So any enterprise agreement can't fall below the modern award.

PN1880

So is it your belief that your employees don't want - - -

PN1881

MR BERRY: Again objection as to belief.

PN1882

MS MOHAMMAD: - - - don't want a rate of pay higher than the award rates that are currently - - -

PN1883

MR BERRY: Objection as to speculation. These are matters that Mr Brownlow cannot give direct evidence on.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN1884

THE COMMISSIONER: He may be able to. All right. Just bear with me, Mr Brownlow, I am just going to ask you to leave again. I just want to make a comment (indistinct).

<THE WITNESS WITHDREW

[12.15 PM]

PN1885

MR BERRY: So the first objection relates to the belief, it's premised as a belief, not - - -

PN1886

THE COMMISSIONER: Yes, I understand.

PN1887

MR BERRY: Thank you. And then secondly she's asking Mr Brownlow to speculate.

PN1888

THE COMMISSIONER: Yes. There might be a reason for that. Ms Mohammad - - -

PN1889

MR BERRY: It's purely speculative and could not provide any assistance to this honourable Commission.

PN1890

THE COMMISSIONER: All right. I won't put words in your mouth, Ms Mohammad, but what do you say is the relevance of the response now?

PN1891

MS MOHAMMAD: Commissioner, I want to identify how Mr Brownlow knows that his staff do not wish to bargain.

PN1892

MR BERRY: I think that's been traversed in the evidence, introduced in-chief.

PN1893

THE COMMISSIONER: Just bear with me, I'm just contemplating something. So the inference to be drawn is - well, I notice (indistinct) your lead on taking the question (indistinct). That might turn to the motivation. Is that what you're saying, they're better off?

PN1894

MS MOHAMMAD: Yes.

PN1895

MR BERRY: Again Mr Brownlow cannot provide evidence as to the motivation of - - -

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN1896



THE COMMISSIONER: Others.

PN1897

MR BERRY: - - - others.

PN1898

THE COMMISSIONER: He might be able to, to the extent that it's relevant to his consideration as to whether he wants to bargain them or not.

PN1899

MR BERRY: I don't believe - sorry, and I believe that's already canvassed in the evidence-in-chief in terms of him not being satisfied that a majority of employees wish to bargain, and no evidence has been provided by the applicant.

PN1900

THE COMMISSIONER: The question put to him though was whether they're better off.

PN1901

MR BERRY: He's asked and answered that.

PN1902

THE COMMISSIONER: Okay. So what's the question you want to ask him?

PN1903

MS MOHAMMAD: Commissioner, so what I'm trying to establish is what has he relied on to determine that his staff do not wish to bargain.

PN1904

THE COMMISSIONER: Okay.

PN1905

MR BERRY: And that's asked and answered already.

PN1906

THE COMMISSIONER: I will allow you to put the question again for clarification if you want to go down that path. Yes, I'm going to allow the question. Let's bring him back in.

**<CHRISTOPHER LUKE BROWNLOW, RECALLED [12.18 PM]**

**CROSS-EXAMINATION BY MS MOHAMMAD, CONTINUING [12.18 PM]**

PN1907

THE COMMISSIONER: Mr Brownlow, you were asked a question. Please answer.

PN1908

MR BERRY: I'd ask that - sorry, I misheard you.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN1909

THE WITNESS: Would you be able to repeat the question, please.

PN1910

MS MOHAMMAD: So the question is what have you relied on to determine that your staff do not wish to bargain?---I'm not aware of the majority of our staff wishing to bargain.

PN1911

What information have you used to draw to that conclusion?

PN1912

THE COMMISSIONER: I will allow the question.

PN1913

MR BERRY: It's a misleading question, Commissioner. It's a misleading question. The premise is that there is information present.

PN1914

THE COMMISSIONER: What was the question again, Ms Mohammad?

PN1915

MS MOHAMMAD: What information have you relied on - - -

PN1916

THE COMMISSIONER: If any.

PN1917

MS MOHAMMAD: - - - if any, to determine or come to the outcome that your staff do not wish to bargain?---My answer was the majority of the staff I believe haven't requested to bargain, and the only evidence I've seen is what's been submitted by the applicant, which doesn't represent all my staff.

PN1918

THE COMMISSIONER: Do you want to elaborate on that, what evidence you're referring to there?---There's evidence submitted by the applicant of staff in certain work groups requesting to bargain. I believe there was 55 in courier group, but I have 1165 employees.

PN1919

MS MOHAMMAD: So the first that you've come to know of your staff wanting to bargain is based on the information that the applicant has put in its applications concerning specific work groups; is that correct?---I haven't had requests sent to me by my staff, providing evidence that the majority of staff want to bargain. I'm aware of the email that came from Mr Roberts, and also Mr Howarth, which I put in my statutory declaration.

PN1920

So you only came to know that your staff wanted to bargain, staff meaning the groups of employees being HSU members - - -

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN1921

MR BERRY: Again object to - - -

PN1922

MS MOHAMMAD: - - - through correspondence by Mr Roberts and Mr Howarth?

PN1923

THE COMMISSIONER: There's an objection to that one. I think I understand the basis for it. Mr Brownlow, just leave the room for a moment.

<THE WITNESS WITHDREW

[12.20 PM]

PN1924

THE COMMISSIONER: All right, Mr Berry, I foreshadow what you're going to say. There's an inference. You might - just for the record.

PN1925

MR BERRY: There are multiple premises to that question. It's confusing as well.

PN1926

THE COMMISSIONER: All right.

PN1927

MR BERRY: And the basis of the applicant's application is in relation to certain employees employed and occupations.

PN1928

THE COMMISSIONER: So maybe two things I might add. The inference that I took from it was that he has of his own knowledge that the majority of employees have agreed to bargain. So we just have to be careful there.

PN1929

MR BERRY: No, he hasn't.

PN1930

THE COMMISSIONER: No, no, but in the question I'm talking about, rather than the response. So it might be - maybe the best way to tackle this would be to clarify when you talk about employees, Ms Mohammad, which ones are you talking about, and to ask him whether based on the evidence (indistinct) agree to bargain or not. Just thinking how you might deal with that.

PN1931

MR BERRY: It wouldn't be an agreement, it would be a request. And again I think the evidence of Mr Brownlow is that he has not received any request from staff. The only request that he has received is from the applicant and he referenced three requests that had been made, which I understand is not in contention; 20 July, 15 September, 4 October.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN1932

THE COMMISSIONER: Okay. As I understand I think the point, Ms Mohammad, you're trying to make, correct me if I'm mischaracterising you in any way, is that the first he might have become aware of the assertion there's a majority by the applicant, but aware of the majority in the factual sense is through these proceedings. Is that the point you're trying to get at?

PN1933

MS MOHAMMAD: Yes.

PN1934

THE COMMISSIONER: Yes.

PN1935

MR BERRY: That would be a fair characterisation that there's an assertion.

PN1936

THE COMMISSIONER: Yes, okay. So I think that is a matter that's in dispute between the parties. So just be careful the way you're presenting it to him, taking him to a conclusion that he may not have reached in his own evidence. Take (indistinct) on board, Ms Mohammad. All right, let's bring him back in and tackle it that way. Thank you.

**<CHRISTOPHER LUKE BROWNLOW, RECALLED [12.23 PM]**

**CROSS-EXAMINATION BY MS MOHAMMAD, CONTINUING [12.23 PM]**

PN1937

MS MOHAMMAD: So, Mr Brownlow, to clarify the first you came to know of the employees wanting to bargain, the employees being HSU members that are part of couriers and customer service employees, was through correspondence sent to you by Mr Howarth and Mr Roberts?---My recollection from those specific work groups that you've outlined, one of the first times I would have become aware was when the HSU filed with Fair Work to enter into bargaining, which they subsequently withdrew on or around September.

PN1938

Were you aware of the particular groups wanting to bargain prior to that?---I think I just answered that question.

PN1939

MR BERRY: I will object on the basis of asked and answered.

PN1940

MS MOHAMMAD: So you weren't aware of your staff wanting to bargain?---Your question before was specifically to those work groups.

PN1941

MR BERRY: Objection on the basis of the premise of the question. Again Ms Mohammad is characterising it as all staff when there's particular employees employed in occupations.

PN1942

THE COMMISSIONER: (Indistinct) be clear on that, Ms Mohammad, please.

PN1943

MS MOHAMMAD: So to confirm you were first aware of the particular work groups of customer service and courier staff wanting to bargain through correspondence between Mr Howarth and Mr Roberts, and also - - -

PN1944

MR BERRY: Objection.

PN1945

THE COMMISSIONER: All right. Mr Brownlow, just one moment, we will hear the objection. I'm going to ask you to leave the room?---Sure.

<THE WITNESS WITHDREW

[12.25 PM]

PN1946

THE COMMISSIONER: Mr Berry?

PN1947

MR BERRY: Apologies, Commissioner, but Mr Brownlow has already provided evidence that he became aware that those groups wanted to bargain when the applications were filed. Ms Mohammad is contradicting the witness in not putting anything to him. She's mischaracterising his evidence.

PN1948

THE COMMISSIONER: Okay. Well, I don't know that it goes that far. Ms Mohammad, I understand the question you're asking is the particular work groups the subject of this application.

PN1949

MS MOHAMMAD: Yes.

PN1950

THE COMMISSIONER: You're seeking to understand the first time it was asserted that they want to bargain?

PN1951

MR BERRY: And that has already been asked and answered.

PN1952

THE COMMISSIONER: He did answer the question. What are you seeking to draw out there? He's indicated that just through the filing of the application before the Commission, the application that was subsequently withdrawn. That's my understanding of his evidence.

PN1953

MR BERRY: And there's a real risk that Ms Mohammad in her questioning may confuse the witness, which is not fair to the witness or this honourable Commission.

PN1954

THE COMMISSIONER: What if you clarify his response, seek to clarify his response (indistinct) on the record, so (indistinct) of my understanding of the response he gave is the correct one.

PN1955

MS MOHAMMAD: Yes.

PN1956

THE COMMISSIONER: And then we can proceed from there.

PN1957

MS MOHAMMAD: Okay.

PN1958

THE COMMISSIONER: Let's bring him back in. Just be specific about the - - -

PN1959

MS MOHAMMAD: The group.

PN1960

THE COMMISSIONER: Yes.

**<CHRISTOPHER LUKE BROWNLOW, RECALLED [12.27 PM]**

**CROSS-EXAMINATION BY MS MOHAMMAD, CONTINUING [12.27 PM]**

PN1961

MS MOHAMMAD: So, Mr Brownlow, I confirm that your response is that the first that you came to know that these particular work groups of customer service and courier employees wished to bargain was from the date that the application was made to the Fair Work Commission?---The original application, yes, that's my recollection.

PN1962

Okay. And were you aware of any other employees wanting to bargain prior to that?---From the email I received from Mr Roberts on 20 July potentially there were some staff in other work groups, but I wasn't provided any evidence of such.

PN1963

Mr Brownlow, I will take you to paragraph 22 of both of your statements, page 274, and 492 of the second statement.

PN1964

MR BERRY: I just ask that we take the witness through each statement individually, and if I could have the paragraph reference again it would be helpful.

PN1965

MS MOHAMMAD: Paragraph 22. They are identical in both statements. Mr Brownlow, you refer to a representative from your largest shareholder who was in a meeting which took place on 13 September. Present was Mr Howarth, Mr Hutchins from the HSU, your manager Ms Melinda McGrath and yourself; is that correct?---That I refer to the largest shareholder or that those people were in attendance?

PN1966

Those people were in attendance?---Yes, that's my recollection.

PN1967

And who was the representative from your largest shareholder?---Mr Sam Dastyari.

PN1968

And in what capacity was Mr Dastyari, a representative of your largest shareholder, attending this meeting?---I think the best way to describe his capacity is an intermediary.

PN1969

So what was his role in this meeting?

PN1970

MR BERRY: Again asked and answered.

PN1971

THE COMMISSIONER: I'm happy for you to clarify what that means?---So as per my declaration he works for our shareholder, our largest shareholder, and due to his background he was there as an intermediary because the union had stated that there were some issues, and also had previously filed for an EBA. And we also wanted to discuss some other opportunities to talk to the union about in regard to funding and working with government.

PN1972

MS MOHAMMAD: So prior to attending the meeting were you aware that bargaining was going to be a topic of the discussion?---Yes, I was.

PN1973

And did you have conversations with Mr Dastyari about what ACL's position would be on bargaining?---Prior to the meeting?

PN1974

Yes.

PN1975

MR BERRY: Objection. What is the relevance of this vein of questioning given that the applicant has filed applications seeking majority support determinations?

PN1976

THE COMMISSIONER: The meeting has come up in the context of other evidence before the Commission. I will allow the question.

PN1977

THE WITNESS: Can you restate the question, because you're talking about what was discussed prior to a meeting.

PN1978

MS MOHAMMAD: So prior to the meeting that took place on 13 September - - - ?---Right.

PN1979

- - - did you have any discussions with Mr Dastyari on ACL's position to bargain?---Not to my recollection, no.

PN1980

In the meeting did Mr Dastyari make any comments to the effect that ACL would commence bargaining an EA with the HSU?---Not to my recollection, no.

PN1981

So what was discussed about bargaining in this meeting?---My recollection was the HSU restated that they would like to bargain, and I think it was actually my boss, not Sam Dastyari, who said - Ms Melinda McGrath said perhaps as a follow up they could outline what that would entail; they being the union. That was only one of the key purposes of the meeting, or purposes of the meeting. So we discussed other things.

PN1982

So in paragraph 28 of your statement you refer to an email that was sent to you on or about 15 September 2023, which was sent to you by Mr Howarth. Why would Mr Howarth send you an email proposing a timeline to bargain for an enterprise agreement - - -

PN1983

MR BERRY: Objection on the premise there is no timeline in that email.

PN1984

THE COMMISSIONER: This is D, the email marked D? Is that the one, 15 September?

PN1985

MR BERRY: I withdraw my objection.

PN1986

THE WITNESS: Are you waiting on an answer from me?

PN1987

MR BERRY: Perhaps it would assist the witness if she took him to the email.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD



PN1988

THE WITNESS: I'm looking at the email just to (indistinct) the question you asked. I think it was something along the lines of why did Mr Howarth send me this email?

PN1989

MR BERRY: Again I must object if that's the question because Mr Brownlow has no direct knowledge as to why Mr Howarth sent that email.

PN1990

THE COMMISSIONER: What's the question?

PN1991

MS MOHAMMAD: The question is why would Mr Howarth send an email - - -

PN1992

MR BERRY: Objection on the basis of speculation.

PN1993

THE COMMISSIONER: Okay. Characterised as a view or a belief it will (indistinct) whatever weight I consider necessary to attach to it, or appropriate to attach to it. Ask the question, it might be context. Go on.

PN1994

MS MOHAMMAD: Why would Mr Howarth send you an email proposing a timeline to bargain for a proposed enterprise agreement if ACL did not want to bargain at this point?---I don't know why Mr Howarth sent an email proposing a timeline. Perhaps you should ask Mr Howarth.

PN1995

So you said on the meeting that took place on 13 September there were some discussions regarding an enterprise agreement.

PN1996

MR BERRY: Objection. There's no question there.

PN1997

THE COMMISSIONER: You're putting something in opposition to Mr Brownlow?

PN1998

MS MOHAMMAD: Yes. Would that be correct?---There were some discussions in regard to the union indicating their wish to bargain. So, yes, there were some discussions.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN1999

And what did that discussion involve?---That the union wished to bargain, and as per my evidence the majority of the meeting was taken up with Clinical Labs talking about some of the challenges of the industry and how the union and Clinical Labs work together. And the follow up of the meeting was for the HSU

to outline if there was to be bargaining what that could look like. But I don't recall it being specified, any specifics to that. That's why he sent - I'm assuming he sent the email. He's following up with me.

PN2000

I take you to paragraph 40 of the statement for matter number 1111. So that's on page 276 of the bundle?---Yes.

PN2001

So you talk about regularly meeting with employees at other events such as Diwali or a recent staff Christmas function, 'And no employee had approached me directly to express a desire to bargain for an enterprise agreement.'

PN2002

MR BERRY: Objection. No question.

PN2003

MS MOHAMMAD: Is that how you - - -

PN2004

MR BERRY: Withdrawn.

PN2005

THE COMMISSIONER: Thank you. Continue, Ms Mohammad.

PN2006

MS MOHAMMAD: Is that how you wish to be informed that the staff want to bargain through attending events and functions?---I think you've taken that statement out of context of my declaration. This was in - the context of my declaration is that the HSU provided a witness, which was Mr Sharma, who is the one person that you produced. He was a former employee of ours wishing to bargain, and I was making the point that he was actually disgruntled, and that as part of my role I meet with many staff, and not only are they not disgruntled but also have raised with me they wish to bargain, and I think it's to be looked at in context, the other paragraphs, not in isolation.

PN2007

Why would an employee raise to you, say to you that they're disgruntled and then also say that they do not wish to bargain?

PN2008

MR BERRY: Objection. Speculation.

PN2009

THE COMMISSIONER: What was the question? Why would - - -

PN2010

MS MOHAMMAD: Whether an employee would raise - why would a disgruntled employee raise that they wish to bargain.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN2011

THE COMMISSIONER: I think that might be speculation. Everyone's motivations might be different there, Ms Mohammad.

PN2012

MS MOHAMMAD: In paragraph 41 of your statement you say that you regularly attend inductions for new employees, and they advise you that they are happy to be working for ACL. How do you know that they're happy to be working for ACL when they have just been inducted and just started employment?---Sometimes people can't make - we schedule the inductions once or twice a month. Sometimes new employees can't make an induction. So they may have been working - so they will be inducted in procedural matters, but not necessarily my company overview induction. So there may be employees who have worked there for more than one month. Also at the beginning of the induction I introduce myself and also ask them to introduce themselves and what they know about Clinical Labs, why they like to work at Clinical Labs. So I give the staff the opportunity to talk about business, and many of them do say how much they enjoy working there, including couriers by the way.

PN2013

Do you think it's reasonable to expect employees to express their desire to bargain for an EA to you personally?---I've got a fairly open door policy, so staff at all levels get the opportunity to speak to me, or could make an appointment to speak - to speak to me. The security of my office is a lot less than HSU's office.

PN2014

Do you think it's reasonable to expect employees to express their desire to bargain for an enterprise agreement to you personally whilst being inducted into an organisation right at the start of their employment?---Can you restate the question?

PN2015

Do you think it's reasonable to expect employees to express their desire to bargain for an enterprise agreement whilst being inducted into the organisation at the start of their employment?

PN2016

MR BERRY: Objection on the basis of speculation. Mr Brownlow - - -

PN2017

THE COMMISSIONER: I understand. I follow the point you're trying to make.

PN2018

MR BERRY: Mr Brownlow cannot give direct evidence on the beliefs of others.

PN2019

THE COMMISSIONER: Mr Brownlow, I will get you to go outside.

<THE WITNESS WITHDREW

[12.44 PM]

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN2020

THE COMMISSIONER: Correct me if I am mischaracterising you, but you're drawing an inference that because there hasn't been a view expressed during induction they wish to bargain that the conclusion no one wants to, or these persons don't want to. Is that right?

PN2021

MS MOHAMMAD: Yes, and, Commissioner, I guess we're trying to establish the reasonableness to wanting to bargain, whether it's reasonable for an employee to approach him to bargain.

PN2022

THE COMMISSIONER: Yes. I am not so sure the reasonableness of his belief or otherwise is of terrible relevance, unless you convince me otherwise. But, Mr Berry, what do you say to that?

PN2023

MR BERRY: I say that Mr Brownlow was already asked and answered that question in his previous answer. He said, 'I have an open door policy. There's a lot of less security.' There seems to be - - -

PN2024

THE COMMISSIONER: All right. Well, look, it's a matter for you whether you wish to persist with that line of questioning, Ms Mohammad, but I think the point - I will put it this way. If the submission is to the effect that people may not raise their desire to bargain at an induction I'm not sure - they may or may not - I'm not sure that's a matter in contention. Is it, Mr Berry?

PN2025

MR BERRY: Very astute of you, Commissioner. It's not directly relevant to section 237 and the decision you're required to make.

PN2026

THE COMMISSIONER: I take the point. To the extent though that you're going to ask him questions that, you know, follow the line of questioning around - that are seeking to test why he believed that employees did or did not want to bargain, you might ask some questions there. It shouldn't be controversial that (indistinct) point is one made.

PN2027

MS MOHAMMAD: If the Commission pleases.

PN2028

THE COMMISSIONER: Okay. All right, thank you, we will bring him back in.

**<CHRISTOPHER LUKE BROWNLOW, RECALLED [12.46 PM]**

**CROSS-EXAMINATION BY MS MOHAMMAD, CONTINUING [12.46 PM]**

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN2029

MS MOHAMMAD: Mr Brownlow, the list of employees that you provided to the Commission, does this contain any other employees other than those employed in customer service call centre areas and courier drivers?

PN2030

MR BERRY: Objection. I ask that my friend rephrase the question based on each application, because these are separate and distinct applications.

PN2031

MS MOHAMMAD: Does the list of employees that you provided to the Commission regarding the courier drivers contain employees other than those employed in that area?---To the best of my knowledge the list we provided for couriers work as couriers. It doesn't necessarily mean we don't have other staff that might do courier functions if they weren't classified as a courier. I don't believe we supplied them in the list.

PN2032

And does the list that you provided to the Commission regarding the application for customer service call centre employees contain any other employees other than those employed in that group?

PN2033

MR BERRY: I must object to that question on the premise that it is a group, not an occupation. The application has been filed based on occupation, not group, and I believe that Ms Mohammad may have confused the witness in relation to the previous question with the word 'group'.

PN2034

THE COMMISSIONER: You might have differences of views about that. The cohort subject to the application. Are you happy with the characterisation of it in that way?

PN2035

MR BERRY: Yes, the cohort subject to - yes.

PN2036

THE COMMISSIONER: However described.

PN2037

MR BERRY: In the application.

PN2038

THE COMMISSIONER: Yes.

PN2039

THE WITNESS: So my understanding is the names of the people we provided are classified as customer service representatives in our payroll system.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN2040

MS MOHAMMAD: What address are the customer service call centre employees located at?---They are located within 18 Lexington Drive. Our main lab is spread across a number of adjacent facilities.

PN2041

What do you mean when you say that they're spread across adjacent facilities?---The staff within different work groups work together, but not all of the leases are within the same address, even though the buildings are adjacent. So we operate as one integrated organisation with multiple different work groups, but it's not one single address. They're all within walking distances, like a campus style.

PN2042

So are customer service call centre employees based at those other locations that are within walking distance?---People classified in our payroll as customer service are all at 18 Lexington Drive.

PN2043

Thank you?---There may be staff at some of those other addresses who do similar duties.

PN2044

And what is the normal place of work for courier staff?---Courier staff - if I'm understanding your question properly some courier staff may be based at 18 Lexington Drive. Some are based at 14 Lexington Drive. Some are based at our sites in Newcastle and Erina on the Central Coast. Some don't necessarily even start their work at one of those locations, and they visit one of our 400-plus sites, one or any of our 400-plus sites.

PN2045

So in your statement you refer to ACL having a highly integrated structure. What do you mean by that?---Can you refer which paragraph you are specifically referring to?

PN2046

So for statement 1111, paragraph 17. You say, 'The organisation also operates a highly integrated matrix structure.'

PN2047

THE COMMISSIONER: Paragraph 17, I think just taking - - -?---Yes, I've got that.

PN2048

Seeking some clarification on what you mean by that statement?---So we have some operations that might report through to my line of reporting, but we also have some nationally based - nationally managed, but locally based in operational responsible functions such as customer service and courier despatch. But they work closely with their colleagues in New South Wales.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN2049

MS MOHAMMAD: So what do you mean when you say that ACL is a highly integrated structure?---What I was trying to say was that we wouldn't operate - all work groups are required to meet the operational purpose that we have, which is to collect samples, transport samples, test them and provide a report to our doctors, hospitals, corporate clients and patients. I actually think my paragraph 18 is a good summary of answer to your question, 'We essentially operate as one integrated team to provide an (indistinct) service to the doctor and patient.' The service (indistinct) in any one area will have an upstream impact to another area. That's what I mean as integrated.

PN2050

Okay. And what is your understanding of the work that courier drivers perform?---Courier drivers may pick up samples. They may deliver samples to other laboratories. They may deliver reports, hard copy reports to doctors. They may deliver collection consumables to doctors. I would also point out that we have other staff that do some of those tasks as well. Sometimes sales staff deliver collection consumables to doctors. Sometimes collectors pick up samples.

PN2051

What is your understanding of the work that customer service call centre staff perform?---They have various responsibilities. They may take calls from doctors or patients. They may call out results to doctors. But so do other staff take calls from doctors. We have lab assistant staff within hospitals that take calls from doctors. We have scientific staff and lab assistant staff who also call out results to doctors. We also have collection staff that sometimes can give out results to doctors if they're aware of the results within their centre. As I said we are highly integrated to (indistinct) our purpose.

PN2052

THE COMMISSIONER: Ms Mohammad, I am just conscious of the time. When we get an appropriate segue for your cross or a natural break in the line of questioning you might suggest an appropriate time for an adjournment.

PN2053

MS MOHAMMAD: I'm happy to aim for 1 o'clock, or now.

PN2054

THE COMMISSIONER: It's a matter for you. If the next line of questioning is relevant to that sequence I am happy for you to continue for a time, but if you prefer to adjourn at this juncture it's a matter for you.

PN2055

MS MOHAMMAD: I'm happy to adjourn now, that's fine.

PN2056

THE COMMISSIONER: Happy to do that. We have been going a while.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN2057

MR BERRY: Yes, we have. I just ask you to remind the witness that he cannot discuss the case while he's in the witness box.

PN2058

THE COMMISSIONER: Yes. You do remain under oath and please do not discuss the evidence with (indistinct). All right. Thank you, parties, I will now adjourn.

**<THE WITNESS WITHDREW [12.57 PM]**

**LUNCHEON ADJOURNMENT [12.57 PM]**

**RESUMED [2.08 PM]**

PN2059

THE COMMISSIONER: Ms Mohammad, do you wish to continue your cross-examination?

PN2060

MS MOHAMMAD: Yes, please, Commissioner.

PN2061

THE COMMISSIONER: All right.

**<CHRISTOPHER LUKE BROWNLOW, RECALLED [2.08 PM]**

**CROSS-EXAMINATION BY MS MOHAMMAD, CONTINUING [2.08 PM]**

PN2062

THE COMMISSIONER: Just a reminder, Mr Brownlow, that you remain under oath?---Yes.

PN2063

MS MOHAMMAD: Mr Brownlow, you say in your statement that Australian Clinical Labs is a medical practice that specialises in pathology; is this correct?---Yes, it is.

PN2064

So would it be fair to say that Australian Clinical Labs is an employer that operates in the health care sector?

PN2065

MR BERRY: Objection. My friend is asking the witness to make a - it's - - -

PN2066

MS MOHAMMAD: I can rephrase the question.

PN2067

THE COMMISSIONER: I'm not sure what the basis of the objection is.

PN2068

MR BERRY: Speculation. It goes to the fairness.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN2069



THE COMMISSIONER: I am going to allow the question. It pertains to what you say the respondent is doing, so, yes, ask the question, please.

PN2070

MS MOHAMMAD: Would you like me to rephrase the question?

PN2071

THE COMMISSIONER: Yes, please, or rephrase it.

PN2072

MS MOHAMMAD: I put it to you that Australian Clinical Labs is an employer that operates in the health care sector?---It operates in the pathology sector and the pathology sector may be characterised as part of the health care sector.

PN2073

Commissioner, I seek your leave to hand up some documents which I wish the  
- - -

PN2074

THE COMMISSIONER: Show Mr Berry and myself and then Mr Berry can comment.

PN2075

MR BERRY: Objection as to relevance.

PN2076

THE COMMISSIONER: All right, let's have a look at it.

PN2077

Mr Brownlow, I just might get you to duck out for a moment, if that's okay, while I have a look at it.

**<THE WITNESS WITHDREW**

**[2.10 PM]**

PN2078

THE COMMISSIONER: So what is the document before me, Ms Mohammad?

PN2079

MS MOHAMMAD: Commissioner, it is a screenshot of the respondent's website and what I'm proposing to do is take this for the witness to identify that it provides a courier service.

PN2080

THE COMMISSIONER: All right.

PN2081

MS MOHAMMAD: So there is a box in the centre there which refers to a click to collect online courier service.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN2082

MR BERRY: Objection on the basis of extraneous evidence being - - -

PN2083

THE COMMISSIONER: Is it in contention that it operates such a service?

PN2084

MR BERRY: Pardon me?

PN2085

THE COMMISSIONER: Is it in contention that it operates such a service?

PN2086

MR BERRY: It is contentious because the applicant's application seems to suggest that the respondent operates a bespoke courier service and that is the basis for operational distinctiveness. The position of the respondent, as has been clearly canvassed in all evidence, is that it does not operate a bespoke courier service, it operates an integrated function, but irrespective of the relevance, we also object to extraneous evidence being entered in by the applicant. The applicant has had sufficient time to file relevant evidence, including, we note, attached to their application, as well as the evidence that was filed on 5 December. Mr Brownlow is clearly being ambushed here.

PN2087

THE COMMISSIONER: Mr Berry does make a point around tendering documents from the Bar table, Ms Mohammad, on the day of you intending to take the witness to them. Is there a way that you can pursue your line of questioning without having the document? Is it necessary?

PN2088

MS MOHAMMAD: It is. It would probably support the proposition that I'm going to make.

PN2089

THE COMMISSIONER: Was the evidence available prior to the time for your filing submissions, or is this something - what's the date of this extract?

PN2090

MS MOHAMMAD: It was available. However, noting that the applicant didn't have an opportunity to file reply submissions - - -

PN2091

THE COMMISSIONER: All right.

PN2092

MR BERRY: My objection still stands that Mr Brownlow is being ambushed.

PN2093

THE COMMISSIONER: I understand, yes.

PN2094

MR BERRY: And it's the applicant's case to make.

PN2095

THE COMMISSIONER: Yes.

PN2096

MR BERRY: Now the applicant's case is that it operates a bespoke courier - sorry, the applicant's case is that the respondent operates a bespoke courier service, therefore, it should have been filed in the evidence of 5 December.

PN2097

THE COMMISSIONER: How does it arise out of the respondent's materials, Ms Mohammad? (Indistinct) saying that.

PN2098

MS MOHAMMAD: Well, Mr Brownlow claims that the business is a highly integrated matrix structure and everyone is working together towards one goal.

PN2099

THE COMMISSIONER: Okay. All right, I'm going to allow it. I will allow you to put the document in front of him and ask any relevant questions and we'll see where it goes. All right, let's bring him back. I note your objection, though, to that, Mr Berry.

PN2100

MR BERRY: Thank you.

**<CHRISTOPHER LUKE BROWNLOW, RECALLED [2.14 PM]**

**CROSS-EXAMINATION BY MS MOHAMMAD, CONTINUING [2.14 PM]**

PN2101

THE COMMISSIONER: Ms Mohammad.

PN2102

MS MOHAMMAD: Mr Brownlow, can I confirm that you have got a copy of the document in front of you?

PN2103

THE COMMISSIONER: No, not at this point in time.

PN2104

MR BERRY: It hasn't been handed up.

PN2105

THE WITNESS: Thanks.

PN2106

THE COMMISSIONER: Can you describe for the record what that document is that has just been presented to Mr Brownlow, Ms Mohammad.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN2107

MS MOHAMMAD: Mr Brownlow, the document that you have before you is a screenshot of the respondent's website; is this correct?---Yes, it is. It's a page of the website.

PN2108

Do you confirm, the document that you have before you is the landing page of your website?---If you're telling me it is then - - -

PN2109

THE COMMISSIONER: If you don't know, that's okay, you can answer that way. It's a matter of 'Yes', 'No' or 'I don't know'?---I don't know.

PN2110

MS MOHAMMAD: The document that you have in front of you is a home page or a landing page that has certain tabs in the centre of it.

PN2111

THE COMMISSIONER: Is that a proposition you're putting, Ms Mohammad?

PN2112

MS MOHAMMAD: Can you confirm that it's got a tab in the centre there that refers to antenatal testing, click to collect, eResults doctor login, CPD education programs?---Yes, I can confirm that.

PN2113

THE COMMISSIONER: That's on the document that we're looking at?---Yes, it's on the document.

PN2114

MS MOHAMMAD: Mr Brownlow, can you confirm that this is the respondent's website?

PN2115

MR BERRY: Objection. Asked and answered.

PN2116

THE COMMISSIONER: It has been asked and answered.

PN2117

MS MOHAMMAD: Mr Brownlow, where it refers to click and collect and it has a picture of a car, is that a courier service advertised on the front page of your website?---It's a service for our referring doctors to get samples picked up if they're not on a set run.

PN2118

Mr Brownlow, I put it to you that ACL organises its business in a way to conduct its operations and provide a courier service and therefore courier staff in New South Wales are employed in a distinct part of the business.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN2119

MR BERRY: Objection. Multiple propositions in that question.

PN2120

THE COMMISSIONER: Okay. Now break the question up.

PN2121

MS MOHAMMAD: Mr Brownlow, I put it to you that ACL organises its business in a way to conduct its operations to provide a courier service?---No, I disagree.

PN2122

I put it to you that courier staff in New South Wales are employed in a distinct part of the business?---I disagree. I think the courier staff are employed in the business as part of group of employees doing pre-analytical functions, and it includes collections, courier staff, data entry staff and store staff.

PN2123

You haven't provided any evidence of this highly integrated structure, have you?---I supplied the organisational structure which had my direct reports, and I've given evidence of what reports through to those direct reports in paragraph 15.

PN2124

THE COMMISSIONER: Which statement are you referring to there?---Sorry, paragraph 15 in both 1111 and 1112.

PN2125

I have it, thank you. That's a duplicated paragraph; yes?---Yes.

PN2126

Thank you.

PN2127

MS MOHAMMAD: Mr Brownlow, you have attached a copy of the New South Wales management structure; is this correct?---Yes, that's correct.

PN2128

Mr Brownlow, you have provided a very simple, one-step flow chart, haven't you?---I've supplied the reporting structure that reports directly to me.

PN2129

THE COMMISSIONER: You are talking about attachment A to your statement now? Is that the document you are talking about?

PN2130

MR BERRY: If I may ask that the applicant guide the witness to the materials that she is referring to?

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN2131

THE COMMISSIONER: I think it actually comes from Mr Brownlow's response, that one, but - - -

PN2132

THE WITNESS: Yes, it's attachment A.

PN2133

MS MOHAMMAD: Attachment A at page 281.

PN2134

THE COMMISSIONER: It is duplicated in both statements.

PN2135

MS MOHAMMAD: Mr Brownlow, why have you not provided any further evidence to demonstrate the full New South Wales management structure?---When I was preparing the statement, I believed that helped support what I was saying in paragraph 14 and paragraph 15.

PN2136

But the flow chart doesn't show how the couriers are organised.

PN2137

MR BERRY: Objection. Argumentative.

PN2138

THE COMMISSIONER: I don't think it's argumentative. Are you asking a question about what the flow chart shows?

PN2139

MS MOHAMMAD: It's a clarifying question.

PN2140

THE COMMISSIONER: Okay. Thank you.

PN2141

MS MOHAMMAD: So the flow chart does not show how the couriers are organised within your business, does it?---It's actually a management structure, so it's just showing report lines to me.

PN2142

So you haven't provided any documents to show the structure of where couriers sit within your organisation?---I refer you to paragraph 15 of both submissions. I said that couriers report through to our head of pre-analytical, which incorporates couriers, collections, stores, warehousing and data entry.

PN2143

THE COMMISSIONER: Pre-analytical business, can you just be specific about that on the structure? Where do you say they sit?---So couriers sit under the pre-analytics and business improvement.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN2144

Okay.

PN2145

MS MOHAMMAD: Where do customer service call centre representatives sit within this flow chart?---So within that flow chart, and mine is a little bit truncated, but they sit under the national - it's just cut off on 281, on page 281, but they sit under a supporting national line.

PN2146

Thank you, Mr Brownlow?---But, as I've said in paragraph 17, they may be nationally managed, but they are locally responsible for operations and they work alongside our state-based operational staff.

PN2147

Thank you, Mr Brownlow. Mr Brownlow, would it be your preference to have a single industrial instrument covering all of your employees?

PN2148

MR BERRY: Objection. Asked and answered.

PN2149

THE COMMISSIONER: I will allow the question.

PN2150

THE WITNESS: We currently do have a single industrial instrument covering our employees. It's the modern award.

PN2151

THE COMMISSIONER: There might be a nuance in the question there. Are you seeking to draw a distinction between coverage and application? I might just ask a question to clarify that.

PN2152

Do you say there is only one instrument that applies across your workforce?---In regard to staff who would be covered by the modern award, the instrument we have is, yes, the Health Professionals Support Services.

PN2153

Okay. I was talking about application, though. Does that award apply to everyone?---Not the staff the award wouldn't apply to, such as pathologists.

PN2154

All right?---I didn't include that in the employee numbers that I provided in my evidence, though, so I only included in my evidence employees who the instrument would cover

PN2155

All right. For my benefit, I understood the question - are you talking about employees across the whole organisation, so, in other words, the entire employer?

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN2156

MS MOHAMMAD: What I was asking in essence - - -

PN2157

THE COMMISSIONER: You need to clarify.

PN2158

MS MOHAMMAD: - - - was if it was Mr Brownlow's preference to have a single industrial instrument.

PN2159

MR BERRY: And the objection of the respondent was that that was asked and answered earlier.

PN2160

THE COMMISSIONER: The response is not clear to me. Is there another way to ask the question, perhaps? My understanding is what is being asked is, 'Do you want one instrument across the whole of the workforce?' Is that right?

PN2161

MS MOHAMMAD: Yes.

PN2162

THE WITNESS: It would be my preference.

PN2163

THE COMMISSIONER: That's what I thought. Okay. Thank you.

PN2164

MS MOHAMMAD: So then why did you reject the offer to bargain?

PN2165

MR BERRY: Again objection. Which offer is my friend referring to?

PN2166

THE COMMISSIONER: Yes, let's be - - -

PN2167

MS MOHAMMAD: We refer to the offer that was made in good faith?---By Mr Roberts on 20 July?

PN2168

MS MOHAMMAD: By Mr Roberts on 20 July 2023.

PN2169

MR BERRY: That may assist.

PN2170

THE WITNESS: So, for amongst other reasons, I wasn't satisfied the majority of staff within this cohort were interested in bargaining.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD



PN2171

MS MOHAMMAD: Would you oppose having multiple industrial instruments within the business?---I don't think it's my position to oppose it.

PN2172

Mr Brownlow, I take you to paragraph 66 of matter number - of your statutory declaration for matter number B2023/1111, and the same paragraph is replicated in paragraph 57 of matter number - of your statutory declaration in matter number 1112. You say that ACL's operations in New South Wales are similar to its Victorian operations. Why wouldn't your staff employed in New South Wales also be able to have multiple industrial instruments covering it?---I didn't say they weren't able to. I said it was my preference that we have a single. My understanding is there's other states where we have a single.

PN2173

So you wouldn't oppose having multiple industrial instruments covering your employees?

PN2174

MR BERRY: Objection. Asked and answered.

PN2175

THE COMMISSIONER: Let him clarify the response.

PN2176

THE WITNESS: As I stated previously, my preference would be to have a single one.

PN2177

MS MOHAMMAD: In paragraph 62, you say that:

PN2178

*A multitude of agreements would cause unnecessary complexity and administration costs.*

PN2179

But don't multiple agreements already exist across ACL?---Did you say paragraph 62?

PN2180

I believe so.

PN2181

THE COMMISSIONER: Still on the same:

PN2182

*And often these employees do the same or similar work.*

PN2183

MS MOHAMMAD: In paragraph 1112 - the statement in 1112 - - -

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN2184

MR BERRY: If I may ask, for the benefit of all, for a reference in the common bundle.

PN2185

THE COMMISSIONER: A page reference might be helpful. I think it's 278 where you're seeking to take Mr Brownlow.

PN2186

MS MOHAMMAD: 279, paragraph 70.

PN2187

THE COMMISSIONER: 70. Okay. Reput the question.

PN2188

MS MOHAMMAD: So you say there:

PN2189

*A multitude of agreements would cause unnecessary complexity and administration costs.*

PN2190

But don't multiple agreements already exist within ACL across Australia?---I was referring to within New South Wales and ACT.

PN2191

How exactly would it cause unnecessary complexity and administration costs only in New South Wales but not across other states across Australia?---Because the managers and payroll who administer the staff and instrument for that state and applicable to that state are responsible within New South Wales, so they don't have to talk to the staff in other states about what instrument's applicable to them, and we would have the situation where staff doing the same or similar duties alongside each other would be covered - potentially be covered by different instruments, and that's the complexity I'm talking about - was referring to

PN2192

But if payroll staff can manage - - -

PN2193

MR BERRY: Objection. Argumentative.

PN2194

- - - multiple industrial instruments across other states, for example Victoria, why can't they do the same in New South Wales?

PN2195

MR BERRY: Objection. Speculation.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN2196

THE COMMISSIONER: Okay. Just be careful how you frame the question, but I understand it's - do you want to repeat that without perhaps the 'But'.

PN2197

MS MOHAMMAD: I put it to you that if payroll staff are able to administer and manage multiple industrial instruments in other states, why would they not be able to do that in New South Wales?

PN2198

MR BERRY: Objection. Speculation. The question is premised on 'if'.

PN2199

THE COMMISSIONER: I will allow the question. The proposition - I will allow the question.

PN2200

THE WITNESS: So to answer your question, firstly, I didn't say they wouldn't be able to. I said it would have complexity. The other aspect of that is we are a complex business and the way we're currently structured, we have payroll staff who focus just on New South Wales. The other answer to that question is it's not just payroll who interpret or apply the award, it's also managers, and the point I was making previously is that it would be complex for the managers to have to be across multiple instruments.

PN2201

MS MOHAMMAD: Would that be ACL's obligation to inform and educate its managers as to what industrial instruments apply to its staff?

PN2202

MR BERRY: Objection. There's no question there.

PN2203

MS MOHAMMAD: Do you agree or disagree?

PN2204

THE COMMISSIONER: She is putting a proposition to him. I will allow it.

PN2205

THE WITNESS: It's important that managers do understand the instrument or aspects of the instrument that apply to their staff, but they're supported by payroll and human resource personnel to do that.

PN2206

MS MOHAMMAD: Mr Brownlow, I put it to you that there would not be any unnecessary complexity or additional administration costs if there were multiple industrial instruments covering employees across New South Wales?---No, I disagree.

PN2207

MR BERRY: There was no question there, your Honour.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN2208

THE COMMISSIONER: It's a proposition that's been put and he has disagreed with that. All right, continue.

PN2209

MR BERRY: It was not put.

PN2210

THE COMMISSIONER: I understand and note your objection.

PN2211

MR BERRY: Thank you.

PN2212

MS MOHAMMAD: Mr Brownlow, why do you believe that the result of these proceedings would lead to multiple enterprise agreements?

PN2213

MR BERRY: Objection. Speculation.

PN2214

THE COMMISSIONER: I will allow the question. It's relevant to other evidence that was adduced a minute ago.

PN2215

THE WITNESS: It depends on your definition of multiple, but the fact that you've put proceedings in for two is at least two, and previously your question suggested that multiple was anything from two or above. So if you define multiple differently in this question to your previous question, that's okay.

PN2216

MS MOHAMMAD: Are you of the understanding that each application would result in the outcome of an enterprise agreement?

PN2217

MR BERRY: Objection.

PN2218

THE COMMISSIONER: I will allow the question.

PN2219

I want to understand your understanding of the application and its consequences, yes, please?---My thought process was they would potentially be different agreements, but also the union had indicated previously that it was looking for a broader coverage, so if one or both of these agreements commenced, it's possible that another one would be requested.

PN2220

MS MOHAMMAD: Mr Brownlow, I take you to paragraph 3 of the respondent's submissions, which is on page - - -

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN2221

THE COMMISSIONER: The submissions in respect of 1111 start on page 236, if it's of assistance, and I think paragraph 3 appears at 237.

PN2222

MS MOHAMMAD: So paragraph 3 at the bottom states:

PN2223

*The role of the Commission is not to determine the scope of the agreement but rather to guard it against unfairness by being satisfied that the group can be described in all the circumstances as fairly chosen.*

PN2224

Mr Brownlow, scope is determined during bargaining. Wouldn't it remain completely open to the parties to negotiate a single EA if both or either of these applications are approved?

PN2225

MR BERRY: Objection. Ms Mohammad is canvassing a point of law with the witness. The witness is not trained in law.

PN2226

THE COMMISSIONER: I will allow the question (indistinct).

PN2227

THE WITNESS: So are you referring to page 237, paragraph 3?

PN2228

MS MOHAMMAD: Yes, that's correct, so right at the bottom of paragraph 3, so the sentence starting, 'The role of the Commission'?---Right.

PN2229

Mr Brownlow, you did read the respondent's submissions, didn't you?---Yes.

PN2230

MR BERRY: Asked and answered.

PN2231

THE WITNESS: Can you repeat the question, please?

PN2232

MR BERRY: Objection. Badgering the witness.

PN2233

THE COMMISSIONER: Let's just get to the question - again, please. Thank you, Ms Mohammad.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN2234

MS MOHAMMAD: Mr Brownlow, the scope is determined during bargaining. Therefore, wouldn't it remain completely open to the parties to

negotiate a single enterprise agreement if both or either of those applications were approved?

PN2235

MR BERRY: Objection. If I may ask that the witness be excused?

PN2236

THE COMMISSIONER: Okay. All right, Mr Brownlow.

<THE WITNESS WITHDREW

[2.38 PM]

PN2237

THE COMMISSIONER: Mr Berry?

PN2238

MR BERRY: The scope of the agreement is the subject of these very proceedings.

PN2239

THE COMMISSIONER: But I think your suggestion - - -

PN2240

MR BERRY: That's why we're here today.

PN2241

THE COMMISSIONER: - - - is that a scope order - hang on.

PN2242

MR BERRY: No, no - - -

PN2243

THE COMMISSIONER: Anyway, I don't want to mischaracterise anything, but - - -

PN2244

MS MOHAMMAD: What I was trying to canvass, Commissioner, was that the scope of the agreement can be determined during bargaining or at a later stage.

PN2245

THE COMMISSIONER: (Indistinct.)

PN2246

MR BERRY: But the applicant has filed applications not for a conjoint application with the two occupations, but separate, which is why we are hearing them conjointly, but separate applications.

PN2247

THE COMMISSIONER: What's your problem with the proposition that's being put, though, to the witness?

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN2248

MR BERRY: The proposition that Ms Mohammad is seeking to advance is that it's open to the respondent to enlarge the scope of the agreement.

PN2249

THE COMMISSIONER: It may be that you don't agree with that proposition, but she is seeking to test Mr Brownlow's understanding of the consequence of these applications. Would that be a fair assessment? Look, I will allow the question. I also say that it may be that Mr Brownlow doesn't (indistinct), but we are drifting into some technical territory and I appreciate (indistinct). We will bring him back in.

PN2250

MS MOHAMMAD: Thank you.

**<CHRISTOPHER LUKE BROWNLOW, RECALLED [2.40 PM]**

**CROSS-EXAMINATION BY MS MOHAMMAD, CONTINUING [2.40 PM]**

PN2251

Mr Brownlow, I will repeat the question. Scope is determined during bargaining and, therefore, wouldn't it remain completely open to the parties to negotiate a single enterprise agreement if both or either of these applications were approved?

PN2252

THE COMMISSIONER: Maybe break that question up into two distinct sections. I'm not sure that the first part of the question (indistinct) because I would expect Mr Berry is going to object on the basis there's two propositions there.

PN2253

MS MOHAMMAD: Wouldn't it remain completely open to the parties to negotiate a single enterprise agreement if both or either of these applications were approved?---I haven't given that consideration. The HSU could have submitted it as a single application and then you'd have your answer, but it was HSU that determined to submit two applications.

PN2254

Mr Brownlow, I put it to you that the role of the Commission isn't to determine or confirm the scope of the agreement?---I think that's what it says here in our response.

PN2255

So do you agree with that?---That it's not the role of the Commission to determine scope, yes, I agree.

PN2256

Okay. Thank you.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD

PN2257

THE COMMISSIONER: It's a matter you can address in submission, in any event, parties.

PN2258

MS MOHAMMAD: Mr Brownlow, have you read the statements and submissions filed by the applicant?---Yes, I have.

PN2259

Is there anything in those statements that you feel that you need to correct?

PN2260

MR BERRY: Objection on the basis that we're not here to have evidence as to Mr Brownlow's feelings.

PN2261

THE COMMISSIONER: I understand that.

PN2262

MS MOHAMMAD: I can rephrase the question.

PN2263

THE COMMISSIONER: Thank you.

PN2264

THE WITNESS: That I want to correct - - -

PN2265

MS MOHAMMAD: Is there anything - - -?--- - - - statements made by other people?

PN2266

Is there anything in those statements - at the time of reading those statements, is there anything in those statements that you disagree to?---In the applicant's statements?

PN2267

Yes.

PN2268

THE COMMISSIONER: Is there anything in particular you want to take Mr Brownlow to, rather than have him peruse - - -

PN2269

MS MOHAMMAD: I can rephrase the question. I withdraw the question.

PN2270

THE COMMISSIONER: Thank you.

PN2271

MS MOHAMMAD: I have no further questions for this witness.

\*\*\* CHRISTOPHER LUKE BROWNLOW

XXN MS MOHAMMAD



PN2272

THE COMMISSIONER: All right. Mr Berry, anything in re-examination?

PN2273

MR BERRY: Yes, Commissioner.

PN2274

THE COMMISSIONER: And that might take - just to give us an indication, Mr Berry?

PN2275

MR BERRY: I have approximately 13 questions, Commissioner.

PN2276

THE COMMISSIONER: Okay.

PN2277

THE WITNESS: Can I object to his questions?

PN2278

THE COMMISSIONER: You must answer a question, unless Ms Mohammad objects, so you are required to answer it or ask for intervention from the Commission?---Okay.

**RE-EXAMINATION BY MR BERRY**

**[2.44 PM]**

PN2279

Mr Brownlow, I am going to take you to page 49 and 50 of the common bundle?---Yes.

PN2280

Mr Brownlow, which employees, if any, did Mr Roberts request that the respondent enter bargaining for a single enterprise agreement for?---He requested a single enterprise agreement capturing pathology couriers, pathology collectors, customer service and administration staff.

PN2281

Thank you, Mr Brownlow. Mr Brownlow, in your evidence, you expressed a preference for a single enterprise agreement for all employees. Why do you prefer to have a single enterprise agreement for all employees?---A few reasons. One is I think it would be fairer because if there is an agreement for some and not others - they work in a highly integrated environment alongside each other, so it may be unfair to ones not covered - any staff not covered by an agreement. Also it would add complexity to the administration of those agreements and the managers who have to work with those agreements and apply them to the staff.

\*\*\* CHRISTOPHER LUKE BROWNLOW

RXN MR BERRY

PN2282

Okay. Thank you, Mr Brownlow. Mr Brownlow, what evidence, if any, did the applicant provide to you on or about 20 July 2023 that a majority of employees

wished to bargain?---I don't recall any evidence being provided, certainly not in the attached request email.

PN2283

Mr Brownlow, what evidence, if any, did the applicant provide to you on 15 September 2023 that a majority of employees wished to bargain?---No evidence was provided.

PN2284

Thank you, Mr Brownlow. What evidence, if any, did the applicant provide to you on 4 October 2023 that a majority of employees wished to bargain?---No evidence.

PN2285

Thank you, Mr Brownlow. Mr Brownlow, I am going to ask you to turn to page 6 of the common bundle. What employees, if any, does the application B2023/1111 pertain to? Sorry, Mr Brownlow, do you have my reference? It's page 6?---Courier staff.

PN2286

Thank you, Mr Brownlow. Mr Brownlow, can I ask you to turn to page 24 of the common bundle. What employees, if any, does the application B2023/1112 pertain to?---Customer service staff.

PN2287

Thank you, Mr Brownlow. At the meeting of 13 September 2023, Mr Brownlow, was there any agreement between the applicant and the respondent to bargain?---No, there wasn't.

PN2288

Thank you, Mr Brownlow. Mr Brownlow, in your evidence, you stated that there were a collection of leases relating to addresses at 14, 18 and 20 Lexington Drive. What structures, if any, are located at those addresses?---Our core laboratory for the state is located at that address. Our - - -

PN2289

If I may stop you there, Mr Brownlow. I will repeat the question. In your evidence, you stated that there were a collection of leases relating to addresses. What structures, if any, are located at those addresses?---They're buildings that have multiple tenants.

PN2290

Thank you, Mr Brownlow. Mr Brownlow, how many, if any, structures cover addresses 14 and 16?---One structure.

PN2291

Thank you, Mr Brownlow. Mr Brownlow, can you explain what a campus is?---A campus would include multiple structures where people from one organisation may reside.

\*\*\* CHRISTOPHER LUKE BROWNLOW

RXN MR BERRY

PN2292

Mr Brownlow, in relation to the business operations, do employees work across that campus?---Yes, they do.

PN2293

Mr Brownlow, I am going to ask you to turn to pages 309 and 310 of the common bundle?---Yes.

PN2294

In your evidence, it was canvassed with you as to the reasonableness of employees approaching you directly to bargain for an enterprise agreement. Who, if anybody, did the applicant ask people to send a message to?---The Australian Clinical Labs Board.

PN2295

Thank you, Mr Brownlow. Mr Brownlow, why do you disagree that the respondent does not operate a courier service?---Because we operate a medical practice specialising in pathology that has the operational purpose of collecting samples, transporting those samples, testing those samples and providing a report to doctors, hospitals and patients and commercial clients.

PN2296

Thank you, Mr Brownlow. Mr Brownlow, what sector is the respondent operating in?---The pathology sector.

PN2297

The industrial instrument that applies - sorry, let me withdraw and rephrase. What industrial instrument applies to the operations of the respondent?---The Health Professionals and Support Services Award of 2020.

PN2298

What aspects of health does that award cover?---Typically, medical practices, which may include medical centres, dental practices, pathology companies.

PN2299

Thank you, Mr Brownlow. Mr Brownlow, are you aware of any other industrial instruments that may apply to an organisation that operated a courier service?---I think that - - -

PN2300

MS MOHAMMAD: Commissioner, I object. I don't believe this question - - -

PN2301

THE COMMISSIONER: No. Does this arise out of the cross-examination, Mr Berry?

PN2302

MS MOHAMMAD: I was just concerned - I don't believe this was traversed in the cross-examination.

\*\*\* CHRISTOPHER LUKE BROWNLOW

RXN MR BERRY

PN2303

THE COMMISSIONER: I will just get you to leave for a moment, thanks, Mr Brownlow.

**<THE WITNESS WITHDREW**

**[2.54 PM]**

PN2304

MR BERRY: With respect, Commissioner, I think these matters literally arise when a witness is ambushed.

PN2305

THE COMMISSIONER: I'm not aware, Mr Berry, that courier services external to the respondent here have been the subject of any form of cross-examination. To the extent that you say the HSU is pressing that there is a courier service of a sort in its business, although you are not aligned on that matter either  
- - -

PN2306

MR BERRY: I can withdraw the question and make that the subject of submissions.

PN2307

THE COMMISSIONER: All right. I think that is probably more appropriate. Thank you, Mr Berry. We will get Mr Brownlow back in.

PN2308

MR BERRY: I have no further questions for this witness.

PN2309

THE COMMISSIONER: All right, thank you. There is just one question I might ask, if that's okay, Mr Berry, just by way of clarification.

PN2310

MR BERRY: Certainly.

PN2311

THE COMMISSIONER: Are you happy for me to do that now?

PN2312

MR BERRY: Yes.

**<CHRISTOPHER LUKE BROWNLOW, RECALLED**

**[2.55 PM]**

**RE-EXAMINATION BY THE COMMISSIONER**

**[2.55 PM]**

PN2313

You were asked, Mr Brownlow, what industrial instrument applied to the respondent's employees or workforce and you indicated that it was the relevant award that you pointed to there. Is that the only instrument you say has application?---To our employees, yes.

\*\*\* CHRISTOPHER LUKE BROWNLOW

RXN THE COMMISSIONER

PN2314

Okay. All right. That has answered the question.

PN2315

MR BERRY: I have no further questions for this witness, Commissioner.

PN2316

THE COMMISSIONER: All right, thank you.

PN2317

All right, so you are excused. Thank you for giving witness evidence today, Mr Brownlow, to the Commission.

<THE WITNESS WITHDREW

[2.56 PM]

PN2318

THE COMMISSIONER: What I am proposing to do - you may stay, Mr Brownlow, now that you have given your evidence. What I am proposing to do is give you - I was proposing a short adjournment so you can gather your thoughts in relation to the evidence and then deliver your closings. It might depend on how long you take. I mean, you're all here. Are you happy to push on? I am conscious that you have also travelled, Mr Berry, so I'm happy to push on this evening.

PN2319

MR BERRY: Yes.

PN2320

THE COMMISSIONER: Are you happy to do the same, Ms Mohammad?

PN2321

MS MOHAMMAD: With a short adjournment, preferably.

PN2322

THE COMMISSIONER: Yes, after a short adjournment.

PN2323

MS MOHAMMAD: Yes.

PN2324

THE COMMISSIONER: All right, so how long do you think you might need to gather your thoughts, parties? Ms Mohammad?

PN2325

MS MOHAMMAD: Fifteen to half an hour.

PN2326

MR BERRY: We would be looking to press on, Commissioner. The parties have had the benefit of filing written submissions in advance.

\*\*\* CHRISTOPHER LUKE BROWNLOW

RXN THE COMMISSIONER

PN2327

THE COMMISSIONER: Yes.

PN2328

MR BERRY: I don't think that there is too much difference from the material that has been - - -

PN2329

THE COMMISSIONER: A short adjournment I don't think would hurt. Do you have any - I guess the reason I was asking is do you have a flight or anything that I should be aware of, Mr Berry?

PN2330

MR BERRY: No, not tonight, no, Commissioner.

PN2331

THE COMMISSIONER: Not tonight, okay.

PN2332

MR BERRY: I would be indebted to you if you could provide a steer, perhaps, in relation to how you would like to hear submissions, given that there are two matters afoot.

PN2333

THE COMMISSIONER: Yes. It's a good question. I am happy to hear from the parties on that point. How are you proposing to deal with that in your closing, Ms Mohammad?

PN2334

MS MOHAMMAD: Commissioner, I was proposing to summarise the evidence provided by the HSU.

PN2335

THE COMMISSIONER: Yes.

PN2336

MS MOHAMMAD: I was proposing to do it similar to the style that I did my opening submissions - - -

PN2337

THE COMMISSIONER: Yes.

PN2338

MS MOHAMMAD: - - - in terms of canvassing both applications separately and then the evidence and submissions for each application.

PN2339

THE COMMISSIONER: Yes, I think that might be appropriate, Mr Berry. To the extent that there are points of - I mean there's some common submissions that might apply to both, potentially, applications - I accept that - but to the extent that you want to draw particular distinctions on each of those matters, you might just - you might take me to the application you are referring to in making that

submission so I can ensure I'm not drawing inferences in relation to the wrong application, and we will go from there. All right?

PN2340

So what I'm thinking, parties, is a 20-minute adjournment at this point, so I will bring you back at 3.20 and we will go from there.

PN2341

How long do you think you might take, just to give me an indication so I can manage expectations elsewhere?

PN2342

MS MOHAMMAD: I think at least 20 to 25 minutes.

PN2343

THE COMMISSIONER: What do you think, Mr Berry? Roughly the same?

PN2344

MR BERRY: No worries.

PN2345

THE COMMISSIONER: Okay. We will adjourn and I will see you back here at 20-past-3. Thank you, parties.

**SHORT ADJOURNMENT**

**[2.58 PM]**

**RESUMED**

**[3.47 PM]**

PN2346

THE COMMISSIONER: Who will be going first?

PN2347

MS MOHAMMAD: The HSU submits that the Fair Work Commission should grant the majority support determination for both applications. It is a not a matter of controversy between the parties that the requirements of section 236 of the Fair Work Act have been met. Nor is it in contention for either matter that the requirements of section 237(1)(a) have been met with regard to both applications.

PN2348

Much has been made by the respondents about whether the applicant's witnesses knew or believed that a majority of its employees wanted to (indistinct). Ultimately, all of this evidence is relevant to section 237(2)(a) which states that:

PN2349

*The Fair Work Commission must be satisfied that a majority of the employees who are employed by the employer or employers at the time determined by the Fair Work Commission and who will be covered by the agreement what to bargain.*

PN2350

Subsection (3) further provides that for the purposes of paragraph (2)(a) the Fair Work Commission may work out whether a majority of the employees want to bargain using any method the Fair Work Commission considers appropriate.

PN2351

The subjective beliefs of any given witness do not matter in this determination. The Commission has, in further cases, received signed statements of employees who are to be covered by the proposed enterprise agreement expressing their wish to bargain for an enterprise agreement. The Commission also has a list of employees from the respondent who would be covered by the proposed enterprise agreements. Determining a majority is a matter of simple arithmetic.

PN2352

The respondent has adduced evidence that over the months preceding this hearing a number of staff members have either resigned or been dismissed. The Commission can competently discount the relevance of this submission and any submission that such employees who have given a signed statement expressing a desire to bargain should be excluded from consideration.

PN2353

The Commission has previously held that such employees can still be included in the consideration, for the purposes of section 237.

PN2354

Section 237(2)(b) is not in contention. The parties have not agreed to bargain or initiate bargaining.

PN2355

Section 327(2)(c) requires that the group of employees who will be covered by the agreement was fairly chosen, having regard to whether the group of employees who will be covered was fairly chosen, taking into account whether the group is geographically, operationally or organisationally distinct.

PN2356

The evidence of - Christopher Brownlow gave evidence as to the organisational structure of ACL. Under cross-examination he was asked what he meant when he described ACL as having a highly integrated matrix doctrine. The answer given was that whilst many work groups report through the New South Wales management structure, back to the New South Wales CEO, some work groups, specifically couriers and customer service representatives, are managed nationally.

PN2357

The only groups that Mr Brownlow described as being managed nationally were the couriers and customer service representatives. That is, the two work groups, each subject to their own majority support determination application, have a different managing structure and different reporting lines to the rest of the New South Wales employees. The conclusion can be drawn, from the evidence of Mr Brownlow, that these work groups are organisationally distinct.



PN2358

When asked why he hadn't provided a management structure that showed how the couriers and customer services representatives are managed, Mr Brownlow stated, 'It's omission would help support what I was saying in my statutory declarations'.

PN2359

MR BERRY: I do not wish to interrupt my friend here while she's giving her closing submissions, but there are some gross inaccuracies that are being put forward, by the applicant, in relation to the evidence given. We do not have the benefit of a transcript but - - -

PN2360

THE COMMISSIONER: Do you want to put those inaccuracies now and give Ms Mohammad - - -

PN2361

MR BERRY: Particularly in relation to the courier group reporting to (audio malfunction). That was never indicated in the evidence, as well as the previous statement just made.

PN2362

THE COMMISSIONER: All right. Maybe refer to that in your response, if you don't wish to, otherwise you might (audio malfunction) about that now, Ms Mohammad. (Audio malfunction) reporting line. (Audio malfunction) taken from the evidence before the Commission (audio malfunction).

PN2363

MS MOHAMMAD: Thank you.

PN2364

The Commission can go beyond a *Jones v Dunkel* inference that the inclusion of such a management structure would not have assisted the respondent's case. The only conclusion to be drawn from the respondent's own evidence, is that the inclusion of such a structure would have been adverse to the respondent's case, in particular I refer to customer service and call centre employees.

PN2365

THE COMMISSIONER: Mr Berry?

PN2366

MR BERRY: No - it was put to the witness - - -

PN2367

THE COMMISSIONER: Okay, I might just start, the benefit of (audio malfunction) you might respond to those in your closing, thank you, Mr Berry.

PN2368

MS MOHAMMAD: The respondent spent much time questioning the applicant's witnesses regarding previous discussions for an enterprise agreement with the respondent and the various proposed scopes of those proposed agreements. While it was never put to the applicant's witnesses, the implications of these questions

seem to be that the work group subject to the present application is not fairly chosen because the HSU has previously sought to negotiate an enterprise agreement that would have covered more work groups. Any such submission is erroneous.

PN2369

In the decision of *United Firefighters Union of Australia v Metropolitan Fire and Emergency Services Board*, the Full Bench held that it may be a number of groupings might be fair. What this criterion requires is that the group which is included in the scope order is fairly chosen. The Commission has applied this principle in other cases.

PN2370

All that is required in this matter is to determine whether the work groups, which are subject to the current applications, are fairly chosen, not that they are more or less fairly chosen than any other possible group, even groups previously negotiated for. The inclusion of other work in previous negotiations for an enterprise agreement cannot have any bearing on the question of whether or not the current group is fairly chosen.

PN2371

The entirety of the evidence related to all enterprise agreement discussions outside of the current application cannot form the basis of any consideration of the question of whether the current groups are fairly chosen, within the meaning of the Fair Work Act.

PN2372

The respondent also sought answers as to whether the HSU had established that a majority of the employees of the employer wished to bargain for an enterprise agreement, at the respective times of the various other negotiations. We say that this is, again, an irrelevant consideration to the current proceedings.

PN2373

The respondent submits, in its evidence, that the relevant time for determining a majority exists at the time - at the date of the hearing. The applicant submits that the relevant time is the time the current applications were made.

PN2374

THE COMMISSIONER: Just on that point, is it a relevant time for the purposes of (2)(a) - relevant time for what purpose?

PN2375

MS MOHAMMAD: Determining whether a majority exists.

PN2376

THE COMMISSIONER: Okay, we might come back to that (audio malfunction), thank you.

PN2377

MS MOHAMMAD: The respondent repeatedly put to the applicant's witnesses that the only common feature between the workers covered by each application

was their occupation. Despite the numerous times and various ways this question was put to the applicant's witnesses, their answers were steadfast. The groups are subject to the - the group subject to the current applications were chosen by employees of the respondent themselves.

PN2378

In the decision of *Australian Workers' Union v BP Refinery Pty Ltd*, the Full Bench had held that the views of the workers are a paramount consideration and, prima facie, carry greater weight than the subjective views of the employer.

PN2379

The rights of employees to bargain collectively is a right recognised in the ILO Convention 87, freedom of association and protection of the right to organise, and the ILO Convention 89, right to organise and collective bargaining 1949, both of which have been ratified by Australia.

PN2380

It is a right that was foundational to the enterprise bargaining regime first introduced to the federal legislation in 1993. It is implicit in the right to bargain collectively that the preferences of employees as to the appropriate collective should be respected unless there is some good reason, under the legislation, to decide otherwise. A reason that relates to the conduct and efficiency of bargaining or to the efficient operation of the employer's business. It is, after all, the employees who are in the best position to determine the collective that best suits their legitimate interests.

PN2381

A decision by the Commission that the groups that workers have chosen to collectively organise themselves into is not fairly chosen and should not be made lightly. The Commission can be satisfied that the groups were fairly chosen.

PN2382

Section 237D requires that the Commission be satisfied that:

PN2383

*It is reasonable, in all circumstances, to make the determination.*

PN2384

The surrounding circumstances are that the applicant and the respondent have been in various discussions around enterprise bargaining for a significant period of time, with the respondent steadfast in its objection to bargaining. The respondent has been presented with and rejected various different scopes of enterprise agreements.

PN2385

It is unlikely, in the circumstances, that the respondent would ever agree to bargaining for an enterprise agreement without the order of the Commission inviting them to do so. This factor weighs in favour of granting the determination.

PN2386

The respondent spent significant time in the proceedings putting questions to the applicant's witnesses regarding the complexity, the duplication of resources that the respondent would face if the result of these proceedings were that the respondent would have to bargain multiple enterprise agreements. The respondent also led evidence to this effect. These questions rest on a false premise and the respondent is well aware.

PN2387

The respondent's own submissions, to which the applicant agrees, are that the Commission cannot determine the scope of any enterprise agreement through these proceedings. Any consideration that the making of the determination sought by the applicant would lead to increased complexity or costs or resources of the respondent can be disposed on this basis.

PN2388

The making of a majority support determination does not oblige the respondent to agree to any particular content of an enterprise agreement. It does not determine the scope of the enterprise agreement. It does not even mean that an enterprise agreement will ultimately be made or agreed to. It simply allows the workers, subject to the application, to have the opportunity to exercise a fundamental right recognised in both domestic and international law. This is agreed to by the respondent, in paragraph 3 of its opening submissions. For this reason it is reasonable, in all the circumstances, to grant the determinations.

PN2389

We submit that a majority of the employees employed in the courier group within New South Wales want to bargain with their employer and have been fairly chosen, based on being operationally, organisationally and geographically distinct. A majority of 55 out of a total of 96 courier employees have signed statements demonstrating that they wish to bargain.

PN2390

We also say that the customer service call centre employees are geographically, operationally and organisationally distinct and a majority of 12 out of a total group of 16 have signed statements demonstrating that they wish to bargain with their employer.

PN2391

Those are my submissions, Commissioner.

PN2392

THE COMMISSIONER: All right, thank you. I have a few questions, but I'll hear from Mr Berry first. Thank you.

PN2393

MR BERRY: Commissioner, it may be easier, the respondent has prepared written submissions, appearing on pages 236 and 249 of the common bundle. I anticipate that the Commissioner will have had the opportunity to read those submissions in advance.

PN2394

I'd like to take the Commission to page 238 of the common bundle, paragraph 8. That needs to be amended. If the Commission could delete the word 'as' in the first sentence, so, 'The respondent also submits Mr Sharma was not forthright'. Also delete, from 'and his evidence as was sworn', to the balance of that paragraph and substitute it with, 'The position of the respondent is that it should place great weight on the evidence of Mr Sharma', who has admitted, in evidence, that granting this application would be unfair and would lead to greater complexity and administrative costs for the respondent, as well as other employees.

PN2395

In that regard, Mr Sharma is the only witness that has been called, by the respondent, who gave direct evidence as to how the employees were chosen. Mr Sharma's evidence was that those employees that are covered by application B2023/1112 and B2023/1111 is occupation and is the sole basis on which the application is put forward.

PN2396

There is no suggestion of operational, organisational or geographical distinctness and this was traversed with Mr Sharma.

PN2397

Mr Sharma also provided evidence that the applicant was meeting with other employees at or about the same time as himself and other employees employed within these occupations and canvassing their support for a majority support determination.

PN2398

Mr Sharma also gave evidence that the intention of the applicant was to file further applications on the basis of occupation alone, which would result in a (indistinct) of enterprise agreements for the respondent.

PN2399

Now, the evidence of Mr Brownlow is that multiple agreements would also create complexity, given that the administration of payroll is administered from New South Wales for New South Wales. It would also create complexity for managers. So not only is there complexity for payroll, managers and, as Mr Sharma accepted, employees we say that that's a reason that should be taken into consideration by this honourable Commission in declining to grant the application.

PN2400

There are a couple of matters also that Ms Mohammad has stated in her opening statement, and unfortunately I didn't quite catch them all. But particularly in relation to couriers, that reporting line, as evidenced and uncontested, was through to Mr Brownlow.

PN2401

Mr Sharma also accepted, in evidence, that ultimately all the reporting lines went through to the group CEO. So any basis on the distinction of reporting line is absolutely rejected by the respondent.

PN2402

Ms Mohammad also asked this honourable Commission to draw an inference, based on *Jones v Dunkel*, no inference was put, as a matter of procedure, to this honourable Commission, nor was that put to the witness at the time that they were being cross-examined by Ms Mohammad, even though she had the opportunity to do so. We say that you can totally disregard that request.

PN2403

In relation to *UFU v Metropolitan Firefighters*, I do not have the benefit of the case cited by my friend and she has not passed that to the Bench or myself. But from memory, that case dealt with an application as to whether there should be one or two agreements. On that occasion the honourable Commission decided that there should be one enterprise agreement, not two.

PN2404

Ms Mohammad has made much, or put it to Mr Brownlow that the respondent operates a courier business. If I ask this honourable Commission to turn to page 6 of the common bundle you'll see that the application or the applicant clearly states that the industry that the respondent is an employer for is health care. If the respondent operated a courier business it would be covered by the Road Transport Award of 2020. It does not operate a courier business, it operates, in accordance with the evidence of Mr Brownlow, a medical practice specialising in pathology services. An integrated business which has many facets. And we rely on the evidence of Mr Brownlow in that regard.

PN2405

Save for the change and the submissions made orally, the respondent relies on the submissions already filed. If the Commissioner has any concerns in relation to the submissions filed and would like me to answer any questions, I'll be more than happy to do so.

PN2406

THE COMMISSIONER: Okay. All right. I might start with you, Ms Mohammad, I just want to clarify a response to an earlier question. The purposes of 237(2)(a) of the Act, if I can take you there, there is a time I need to determine, for the purposes of - or the question of which employees are employed at that time. I was trying go - we were trying to discuss this a little bit earlier, but I wasn't 100 per cent clear on your response. But do you mind taking me to that consideration now? What do you say about that? Given the complexity associated with this matter, and the history to it, is there anything further you wish to say? It is a discretionary decision but I'm keen to hear from you on that question.

PN2407

Do you want to, Mr Berry? (Audio malfunction).

PN2408

MR BERRY: As stated, Commissioner, our view is that the date should be the date of hearing. I believe there may be some law that supports that but I'm uncertain and can't quite (indistinct). I apologise to the Commission for not being

- - -

PN2409

THE COMMISSIONER: Maybe the date of the decision - I put it to you that maybe the date of the decision, based on the information (audio malfunction).

PN2410

MR BERRY: At the date of hearing. We would acquiesce to that.

PN2411

THE COMMISSIONER: What do you say about opposition (indistinct).

PN2412

MS MOHAMMAD: Commissioner, we maintain our original submissions that we made in the opening submissions around this question arising. We say that it should be decided - the majority should be decided at the time that the application is - - -

PN2413

THE COMMISSIONER: All right. As long as you got the opportunity, I thought you might have reflected on that. All right.

PN2414

Anything you wish to say in response to some of the matters raised by Mr Berry?

PN2415

MS MOHAMMAD: Mr Berry makes reference to - Commissioner I just have some observations I'd like to make, regarding the submissions that Mr Berry made.

PN2416

It refers to the cross-examination of Mr Brownlow and Mr Brownlow mentions that the report into him - so he said they report into a national structure, whereas Mr Brownlow had mentioned that they reported to him.

PN2417

THE COMMISSIONER: I think you did take issue with that. I will have a look at the transcript on that point. I know it's a matter of contention between the parties as to what the evidence is.

PN2418

MS MOHAMMAD: I'd just like to raise that there may have been a discrepancy there.

PN2419

THE COMMISSIONER: All right. I'll have a look, I'll pay some attention to that.

PN2420

MS MOHAMMAD: Thank you.

PN2421

THE COMMISSIONER: I think that (indistinct).

PN2422

MR BERRY: Yes, there is one further point that I'm afraid slipped my mind earlier, Commissioner. That is in relation to the witness statements that have been gathered by the applicant, in relation to this matter.

PN2423

Mr Sharma couldn't recall how many witness statement he obtained. Mr Roberts said he had obtained - - -

PN2424

THE COMMISSIONER: When you say 'witness statements' you mean statements in - - -

PN2425

MR BERRY: Sorry, yes. Yes, I withdraw and apologise. Yes, statements in support of bargaining.

PN2426

THE COMMISSIONER: Yes.

PN2427

MR BERRY: Mr Roberts, again, couldn't recall. He thought that he obtained approximately 30. So there are some 10 to 25 statements in support of bargaining that have no provenance. The applicant was entitled to file evidence from the delegates. Again, there appears to be confusion of evidence between the witnesses of the applicant.

PN2428

Mr Sharma indicated that five people were obtaining statements. Mr Roberts was resolute that it was only three. So there is a live issue there, in terms of the provenance of those statements and a broken chain of custody and we say that this honourable Commission cannot make this decision lightly and given that there is a broken chain of custody it does need to take that into consideration in making its decision. We also note that the evidence put forward by the applicant indicates that there were a lower number of employees employed by the respondent. Even at the time that it filed its application, on 5 December, given that Mr Sharma was terminated on 17 November. So that's a further matter that we ask that you take into consideration.

PN2429

THE COMMISSIONER: Okay. What do you say about that, Ms Mohammad?

PN2430

MS MOHAMMAD: Thank you, Commissioner.

PN2431

In response to some of the submissions that Mr Berry has made, I reiterate Mr Berry's earlier submissions that the Commission isn't bound to the rules of evidence. We're definitely not in a criminal jurisdiction here where we need to rely on the chain of custody. I'd just like to make those observations.



PN2432

THE COMMISSIONER: Okay. Thank you.

PN2433

MR BERRY: If I may also make the observation, Ms Mohammad did rely on the rules of evidence to seek to strike out most of Mr Brownlow's statement, on the grounds of relevance. So Ms Mohammad has once again changed her position in respect of evidence tendered to this honourable Commission and whether it should adhere to the rules of evidence or whether it should not.

PN2434

THE COMMISSIONER: Look, I take the point, parties, it does go both ways.

PN2435

All right. I haven't any further questions - I don't think it's of utility to ask any further questions at this particular point in time, parties. I don't think - I don't foreshadow that I'll require anything further from you at this stage. In the unlikely event that I do, I will contact each of you separately. But I think, at this point, it's appropriate to adjourn and I'll reserve my decision, unless there's anything further either of you wishes to say before I do so. Mr Berry?

PN2436

MR BERRY: Sorry, there is one further point, Commissioner, in relation to application B2023/1112, the point was made by Mr Brownlow, in re-examination, that 14 to 16 - no, sorry, 14 - let me put it plainly. On paper, legally, those addresses, 14 to 16 - no, 14, 18 and 20 and legally there is a 16 but, for the benefit of addresses, that's why that 16 has dropped out and they do operate in that (indistinct) complex.

PN2437

THE COMMISSIONER: All right. I understand your submission on that respect.

PN2438

MR BERRY: Thank you.

PN2439

THE COMMISSIONER: Anything further from you, Ms Mohammad?

PN2440

MS MOHAMMAD: Nothing further. Thank you for your assistance, Commissioner.

PN2441

THE COMMISSIONER: All right. Thank you for your patience and assistance, parties. I will now adjourn and reserve my decision.

**ADJOURNED INDEFINITELY**

**[4.16 PM]**

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