

**EQUAL OPPORTUNITY TRIBUNAL  
OF WESTERN AUSTRALIA**

Matter Number: 6 of 1996

IN THE MATTER OF A COMPLAINT BY:

WAYNE ARCHER

Complainant

- against -

WESTERN AUSTRALIAN DEPARTMENT OF TRAINING

Respondent

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**DECISION**

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BEFORE:

Ms C (Kate) O'Brien

Deputy President

Counsel for Complainant  
Counsel for Respondent

No Appearance  
Crown Solicitor's Office

PRELIMINARY HEARINGS:

29/3/96, 7/3/97, 24/3/97

REASONS FOR DECISION:

(Delivered: 24 March 1997)

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EQUAL OPPORTUNITY TRIBUNAL

BEFORE : MS C. O'BRIEN (Deputy President)

B E T W E E N :

WAYNE ARCHER

Complainant

- and -

WESTERN AUSTRALIAN DEPARTMENT OF TRAINING

Respondent

DATE : 24TH MARCH 1997

TIME : 9.00 am

VENUE : 2ND FLOOR  
'WESTRALIA SQUARE'  
141 ST GEORGES TERRACE  
PERTH W.A. 6000

No appearance for the complainant.

MR RIGG appeared for the respondent.

6/96  
24.3.97  
(kr)

D/PRESIDENT: Mr Rigg; good morning. This is number 6 of; 1996, Wayne Archer and the West Australian Department of Training, being the respondent.

Mr Rigg is appearing as counsel for the respondent, and is there no appearance by Mr Archer?

BENCH CLERK: No.

D/PRESIDENT: No appearance by Mr Archer. All right. Now, Mr Rigg, the Registrar tells me that you're not pursuing your application for cost.

MR RIGG: That's correct.

D/PRESIDENT: All right. So what is the application today?

MR RIGG: The application is, I understand, an affidavit has been filed by the Process Servers. I haven't seen the affidavit, but orders were made on those terms on the 7th of March - -

D/PRESIDENT: Yes.

MR RIGG: - - and in light of difficulties in serving, the applicant, with the Notice of Hearing - - or Notice of Preliminary Hearing, we would seek an order that the complaint be dismissed under section 125(1) - -

D/PRESIDENT: Yes.

MR RIGG: - - of the Act.

D/PRESIDENT: What particular thing do you rely on there?

MR RIGG: Well, really, that section refers to a complaint being frivolous, vexatious, misconceived - -

D/PRESIDENT: Yes.

MR RIGG: - - lacking in substance, or for any other reason.

D/PRESIDENT: So - - would fit under that category.

MR RIGG: Really, perhaps the catch-all for any other reason - this has been dragging on for a long period of time - -

D/PRESIDENT: Mm.

MR RIGG: No points of claim have ever been filed; no address for service has been filed. In the circumstances, we would really just seek that the complaint be dismissed on those grounds - -

D/PRESIDENT: Okay.

MR RIGG: - - and the difficulties in locating the applicant, make - - an order for costs perhaps not a practical option - -

D/PRESIDENT: No.

MR RIGG: - - that's why.

D/PRESIDENT: All right. This matter was referred to the Equal Opportunity Tribunal by the Commissioner for Equal Opportunity, by letter dated the 27th of February 1996. In that letter, the Commissioner advised the Registrar of the Tribunal that on 7 April 1994, she received correspondence from the complainant, Mr Wayne Archer, alleging discrimination on the ground of political discrimination in the area of education.

The complaint was brought against the respondent, namely the Western Australian Department of Training. On the 21st of December 1995, the Commissioner dismissed the complaint as lacking sufficient substance, pursuant to section 89 of the Equal Opportunity Act.

On the 7th of February 1996, the complainant gave the Commission a written notice pursuant to section 90 subsection (2) of the Equal Opportunity Act, requiring the Commissioner to refer his complaint to the Equal Opportunity Tribunal, and that is what the Commissioner did, as I've said, by letter dated 27 February 1996.

On the 29th of March 1996, there was a preliminary hearing where the respondent was represented, but there was no appearance by the complainant.

MR RIGG: Ma'am, I believe that it was the other way round at that - -

D/PRESIDENT: I beg your pardon?

MR RIGG: - - at that hearing, it was the complainant who was represented, but there was no appearance by the respondent.

D/PRESIDENT: All right. I beg your pardon. Thank you, Mr Rigg. The complainant was represented by Mr Sadlier<sup>7</sup>, a solicitor from the firm Dwyer Durack. You're right; and there was no appearance by the respondent, and the matter came on before the President, Mr Hasluck, who made the usual programming orders relating to filing and serving points of claim, and the usual consequential orders.

One of the orders made by the President was that the complainant file a Notice of Address for service within 14 days. Now, I'm sorry, I'm going to have to go through the file here - there's no handy summary of what has occurred and I think it's important that the chronology of events is outlined.

Following that preliminary hearing on the 29th of March 1996, the Registrar wrote to Dwyer Durack enclosing copies of the proceedings of 29 March 1996. That letter from the Registrar to Dwyer Durack was dated 9 April 1996, and the Chief Executive of the West Australian Department of Training, was also written to in the same terms.

By letter dated 31 May 1996, the Registrar again wrote to Dwyer Durack observing that the points of claim had not been filed in accordance with the direction of the President on the 29th of March 1996.

On 18 June 1996, the Registrar was contacted by Ms Penelope Giles, an employee solicitor - - well, maybe - - I think she might be a partner, but anyway, a lawyer with Dwyer Durack, advising that Dwyer Durack were no longer acting for the complainant.

By letter dated 28 August 1996, the Registrar wrote to the Chief Executive of West Australian Department of Training, outlining the chronology of events to that date, and letter of the same date, 28 August 1996, was written to the complainant, Mr Archer. It would appear that Legal Process Servers were instructed by the Registrar to serve that letter on the complainant. There is a note on the file, dated 16 September 1996, from the Registrar, advising that Legal Process Servers telephoned to say that Mr Archer now resided in Broome, and the Registrar instructed the Legal Process Servers to post that letter, dated 28 August 1996, to Mr Archer, by Certified Mail, and provide an Affidavit of Service.

Dwyer Durack wrote to the Registrar on 20 September 1996, advising that they no longer acted for Mr Archer.

It would appear that an employee of Legal Process Services swore an affidavit on 4 October 1996.

The next thing, the Certified Mail posting receipt, and I gather that obviously it was posted, but no response was heard from Mr Archer.

A further report was received from the Legal Process Services on 3 - - well, it was received on 4 October 1996, dated 3 October 1996, outlining the efforts that have been made to contact Mr Archer, which have been fruitless, but providing an address in Broome, at 67 Guy' Street, Broome. Accordingly, the Registrar sent a letter to the complainant at that address, on 25 October 1996, advising that the points of claim had not been filed as directed.

Again, the Registrar wrote to the complainant on 26 November 1996, advising that unless some firm indication was received from Mr Archer that he is ready to proceed, the matter would be listed for a further preliminary hearing, and it would appear that that was sent by registered post, and the information on the file is to the effect that that letter came back unopened.

The chronology of things isn't quite right on the file, but - - sorry, it would appear that, on the - - I'm just surmising from the file that's in front of me. It would seem, on the 25th of October 1996, a letter was sent to the complainant at the address in Broome, advising that the points of claim had not been filed. That letter was returned unopened.

A further letter was sent on 26 November 1996 by Registered Post. There is no indication as to what happened to that letter - whether it was opened, or received by the complainant.

A Notice of Preliminary Hearing set for 21 February 1997 was sent to the complainant by the Legal Process Service, but they were unable to locate him.

Accordingly, the President made a decision that the preliminary hearing for 21 February 1997 should be postponed until 7 March.

On 7 March, the matter was listed for a preliminary hearing before me, and Mr Rigg appeared, in effect making application that the matter be dismissed under section 125, subsection (1) of Equal Opportunity Act. However, I made an order that the Process Servers file an affidavit, outlining their efforts to locate the complainant by 14 March 1997.

Then, where is that affidavit? There is an affidavit, filed by Legal Process Service -, have you got a copy of that somewhere? No; that's from Michelle - that's the other one.

BENCH CLERK: It should be - - file.

D/PRESIDENT: Yes. Thanks. By affidavit dated 14 March 1997, the Manager of Legal Process Services WA swore an affidavit advising that efforts had been made to re-locate Mr Archer, including electoral roll searches, credit file searches, inquiries with Telstra and other confidential sources, which had proved fruitless in locating Mr Archer.

So I am satisfied that since at least October 1995, efforts have been made to locate Mr Archer, and have proved fruitless.

Accordingly, Mr Rigg today, for the respondent makes an application pursuant to section 125, subsection (1) of the Equal Opportunity Act, that the complaint be dismissed.

Given the outline of the chronology of events, since at least October 1995, I am satisfied that Mr Archer is no longer interested in pursuing the matter, and accordingly I am prepared to dismiss the complaint for want of prosecution, and I so do that - - complaint is dismissed, and I note that Mr Rigg no longer wishes to make application for costs, and accordingly there shall be no such order.

Right. Thank you, Mr Rigg.

MR RIGG: Thank you, ma'am.

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