

FEDERAL APPEALS PANEL

**APPEALS BY
ROGER SEABOURNE
AGAINST
DECISIONS OF A FEDERAL PARTY ADJUDICATOR**

RULING

12 November 2021

David Graham (FAP Chair)

Case Manager

Ruling

1. The appeal in Case 820 is dismissed.
2. The Appellant's application in respect of Case 845 is allowed, and the matter shall be remitted to the adjudicator for reconsideration.
3. If any party wishes to object to publication of this ruling in whole or part, they shall have until 4pm on Tuesday 23 November 2021 to submit representations, failing which it may be published on the Party website.

Reasons

1. I am satisfied that this matter does not require a hearing, insofar as Mr Curtis does not wish to contest the appeal, and the Lead Adjudicator was content for the matter to be dealt with in writing.

Case 820

1. The appeal in respect of Case 820 relates to Adjudicators' decisions issued on the same

day to respectively take an informal resolution route and investigate the complaint against the Appellant under the Standard Formal Process. The Appellant also alleges that documents have been withheld from him, contrary to natural justice and to the Complaints Procedure. Various other complaints are made about the merits of the case against the Appellant.

2. There is no right of appeal to the FAP in respect of an Adjudicator's initial decision. The Complaints Procedure (at paragraphs 5.1.5 and 5.2.2) provides for appeals within 3 days to another Adjudicator whose decision "shall be final". The decision-making at this stage does not determine any contested factual matters, but simply determines which procedure is to be followed to resolve or investigate the complaint. The matters raised are therefore outside our jurisdiction.
3. He has an alternative remedy at this stage insofar as he can appeal and/or object to the procedure, procedural failings can be remedied within the ongoing disciplinary process, and he will have an opportunity to make his own case and make submissions on the complainant's case. This appeal is accordingly also untimely, being premature. Where a case is untimely or there is an alternative remedy, a case will be outside our jurisdiction (paragraph 3.5(a) of the FAP's Published Procedures).
4. The Appellant is entitled as a matter of fairness to insist on receiving representations by other parties that will be considered by the Complaints Panel (subject to any reasonable redactions that may be required which do not affect the fairness of the procedure), and of material that would assist his case or undermine the case against him. If there are any further procedural defects, they should be cured by the Adjudicators or they will risk any eventual decision by a Complaints Panel being overturned by the FAP.

Case 845

5. The appeal in Case 845 likewise relates to an initial adjudicator's decision, this time to

dismiss complaints made by the Appellant against the complainant in Case 820.

6. There is no right of appeal for complainants where a complaint is dismissed under paragraph 4.3 of the Complaints Procedures.

7. However, a complainant has an implied right to have their complaint considered fairly, conscientiously and reasonably, in accordance with the published Complaints Procedures, pursuant to article 23.3 of the Federal Constitution. My colleague has so ruled in relation to 2 other complaints about the same person, relating to the same underlying issues. Accordingly, an unreasonable or logically flawed adjudicator's decision engages the FAP's jurisdiction under article 22.3(b) of the Federal Constitution. Unlike where a case is ongoing, following a dismissal without finding any facts, there is no alternative remedy except reconsideration of a resubmitted complaint, and so the application would be within jurisdiction.

8. There is force in the Appellant's criticisms of the reasoning insofar as he alleges deliberate dishonesty by the person complained of (which is not addressed in the reasoning at paras 9-10); his motives have been condemned (para 11) without giving him a hearing, and they are irrelevant to the gravity of the alleged misconduct - only potentially relevant to his credibility and hence whether the allegations will eventually be found proved. For these reasons, the matter should be remitted back for reconsideration.