

BETWEEN:

(1) JOSEPHINE HAYES
(2) ROGER SEABOURNE
(3) NICK HOLLINGHURST

Appellant

-and-

ADJUDICATOR

Respondent

RULING

Harry Samuels

Member of the Federal Appeals Panel

Case Manager

1. The Appellants all make multiple allegations of misconduct against a member. Their complaints were all summarily dismissed by the Original Adjudicator. Following appeals to this Panel, the Chair of the Panel (in the case of Roger Seabourne) and I (in the cases of Jo Hayes and Nick Hollinghurst) remitted those dismissal decisions for further consideration.
2. Following those rulings, an investigation was completed and a recommendation of no further action made to the Original Adjudicator. The Original Adjudicator agreed with this recommendation and dismissed the complaints.
3. The Appellants now appeal against this decision.

4. The original complaints in this matter were filed in March 2021 and were therefore subject to the Complaints Procedures then in force. These were (and remain) freely available on the party's website. These Complaints Procedures are those made by the Federal Board pursuant to the Federal Constitution, and are therefore of binding effect upon members of the party.
5. These Complaints Procedures provide at **r. 5.2.2.4** that *“either Complainants or Respondents may appeal to the Lead Adjudicator against any decision made under paragraphs 5.2.2.1-5.2.2.3 within three days of the decision being notified to them. In such cases, the Lead Adjudicator shall appoint a second Adjudicator who shall also review the Investigator's report. The second Adjudicator may also make any of the determinations under 5.2.2.1-5.2.2.3. The decision of the second Adjudicator shall be final.”*
6. Dismissal of the complaint by the Original Adjudicator following the report of the investigator was a decision made under paragraph 5.2.2.1. It was accordingly subject to this appeal provision.
7. The Appellants therefore had an alternative remedy which, on the evidence I have seen, was not used. I note that the decision of the adjudicator was communicated to the Appellants on 8 March, and the applications for permission to appeal were not received until 21/22 March – well in excess of the three-day window for appealing to the second adjudicator. The delay in processing these applications for permission (caused by the Panel being far below its full complement of panellists) is therefore not responsible for the Appellants' failure to comply.
8. There is a possible question of whether, since the three-day window had already elapsed when the applications for permission to appeal were made, reconsideration was not a remedy 'open' to the Appellants. In these circumstances, the Appellants may argue that they did exhaust all then-available remedies, and that the Federal Appeals Panel is the only remedy remaining.
9. I find this argument wholly unconvincing, however. It would enable parties to engage in forum shopping by waiting for the shorter deadline to elapse: a putative appellant

could simply bypass the second opinion procedure by waiting four days and claiming a subsequent right of appeal to the Federal Appeals Panel. And when the policy underlying the Panel's jurisdictional rules is precisely to encourage parties to resolve their disputes at the lowest possible level, it would also be contrary to that policy to permit this course of action. On their proper construction, therefore, I find that the Federal Appeals Panel Procedures must mean that the Panel will lack jurisdiction when other remedies have not been exhausted or when a remedy previously open to the Appellants was not used, and now is *prima facie* unavailable due to lapse of time. I note (without comment either way) that paragraph 3 of the Interpretations section of the Complaints Procedures permits time limits under those procedures to be extended in exceptional circumstances.

10. In the result, I am minded to refuse permission to appeal on the basis that the Federal Appeals Panel lacks jurisdiction. However, to ensure that nothing has been missed, I will give the parties seven days from the date of dissemination of this ruling to draw to my attention any evidence that an appeal to a second adjudicator was made under the Complaints Procedure. Evidently, if such an appeal was made, I will reconsider the matter afresh.
11. If, however, as appears to be the case, no such appeal was made, this application for permission to appeal to the Federal Appeals Panel will be dismissed on the ground that the Panel lacks jurisdiction to hear it.

27 September 2022