



HIGH COURT OF AUSTRALIA

13 October 2021

RIDD v JAMES COOK UNIVERSITY
[2021] HCA 32

Today, the High Court unanimously dismissed an appeal from a judgment of the Full Court of the Federal Court of Australia. The appeal concerned the scope of the intellectual freedom protected by a clause of an enterprise agreement of a university.

Dr Ridd was employed by James Cook University for 27 years. From 2016, the University took various disciplinary actions against Dr Ridd for conduct that it concluded breached the University Code of Conduct and constituted misconduct and serious misconduct under the University's Enterprise Agreement. Dr Ridd was issued with two censures ("the 2016 Censure" and "the Final Censure") and, on 2 May 2018, his employment was terminated for serious misconduct under the Enterprise Agreement. Dr Ridd brought proceedings against the University alleging that its actions and the termination of his employment contravened the Enterprise Agreement and s 50 of the *Fair Work Act 2009* (Cth) ("the Act"). Dr Ridd did not dispute that the conduct occurred and that it would be misconduct or serious misconduct. He submitted that all of his conduct was an exercise of the intellectual freedom protected by cl 14 of the Enterprise Agreement and could not be a serious breach of the Code of Conduct. The primary judge: concluded that 13 actions taken by the University were contrary to cl 14 of the Enterprise Agreement; made a declaration of 13 contraventions of s 50 of the Act; and ordered the payment of compensation and pecuniary penalties. A majority of the Full Court allowed an appeal and concluded that none of the actions of the University were contrary to the Enterprise Agreement.

The High Court unanimously dismissed the appeal. The Court held that the intellectual freedom protected by cl 14 of the Enterprise Agreement was not a general freedom of speech. The exercise of intellectual freedom was subject to constraints contained in cl 14, including some adopted from the Code of Conduct. These constraints upon exercise included respect for the legal rights of others, and required that an expression of disagreement with University decision-making be in accordance with applicable processes, including confidentiality obligations. The exercise of intellectual freedom was not constrained by other Code of Conduct undertakings, such as respect or courtesy.

The 2016 Censure and part of the basis of the Final Censure were unjustified because they related to the expression of honestly held views by Dr Ridd within his academic expertise. The Final Censure was justified only insofar as it relied upon expressions of opinion unrelated to Dr Ridd's academic expertise, and findings that he repeatedly failed to comply with his confidentiality obligations. Since Dr Ridd ran his case on an all-or-nothing basis, the termination decision was justified in its reliance upon conduct of Dr Ridd which was the subject of 18 findings of serious misconduct which were not protected by cl 14.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*