

IN THE HIGH COURT OF AUSTRALIA

EDWARDS

V.

OVERSEAS TELECOMMUNICATIONS
COMMISSION (AUSTRALIA)

REASONS FOR JUDGMENT

Judgment delivered at Sydney

on 22nd April 1954

EDWARDS

v.

OVERSEAS TELECOMMUNICATIONS COMMISSION (AUSTRALIA)

JUDGMENT (ORAL)

FULLAGAR J.

EDWARDS

V.

OVERSEAS TELECOMMUNICATIONS COMMISSION (AUSTRALIA)

JUDGMENT (ORAL)

FULLAGAR J.

I am of opinion that this motion for an interlocutory injunction should be refused. I propose to express my reasons only very shortly. Before I do so there are three things I desire to say. The first is that it is, of course, distinctly understood by everybody that I am not deciding anything in the action, I am merely dealing with an interlocutory motion.

The next thing I think I should say is that the matter has been argued before me on behalf of the plaintiff with great earnestness and care and I was impressed with the argument in chief of counsel for the plaintiff, though I think that Mr. Macfarlan has provided reasons for declining to give effect to it.

The third thing is that the affidavit read to me this morning, which suggested bias, or something of the kind, on the part of the Disciplinary Appeals Board under the Overseas Telecommunications Act, was, in my opinion, inadmissible.

Coming now to the application itself, I think we start with this. If the Commission were threatening to exclude the plaintiff from a place actually in fact occupied by him and were threatening to do so in pursuance of an ultra vires decision, or a decision which there was reasonable ground for thinking was beyond power, there would certainly be a great deal to be said for the view that there was good ground for an interlocutory

injunction to restrain the Commission from carrying out its threat. But here the position is that for some weeks the plaintiff has not been in occupation of his position, and the injunction which I am asked to make would amount practically to a mandatory injunction to the Commission to reinstate him, and the point of view of the Court in such a case must be somewhat different from its attitude when it is merely asked to restrain the carrying out of a threat.

But it seems to me, however all that may be, that there is so much force in the argument that Mr. Macfarlan put to me that it would be wrong to make the Order sought.

I say nothing about any question of jurisdiction, because Mr. Macfarlan expressly said that he did not wish to argue that the Commission was not a person being sued on behalf of the Commonwealth. At the same time, there is a serious question of jurisdiction.

What I think, however, is the decisive point is this. An argument which may very well succeed at the trial is that, whether this dismissal, or purported dismissal, was ultra vires or not, there has been a de facto exclusion of the plaintiff from office, which may give rise to an action for damages. But the remedy which the plaintiff seeks would have the practical effect of specifically enforcing a duty to employ him or re-employ him and that is not at any rate generally a remedy granted by a court of equity.

I am also by no means convinced - and I do not think that I ought to grant an interlocutory injunction unless I feel fairly sure - that the resolution or decision of the Commission to dismiss the plaintiff was ultra vires. Of course, it is not sufficient to show that it was unlawful in the sense that it was not justified.

It must be shown on any view, if the plaintiff is to succeed, that it was ultra vires, and I do not feel as sure as I think I ought to be that the plaintiff is likely to succeed on this matter at the trial.

For those reasons I dismiss the application.

MR. MACFARLAN : I am instructed to ask that Your Honour would see fit to dismiss the application with the usual Order for costs.

HIS HONOUR : Yes, if you ask for costs, the motion is dismissed with costs.

*I certify that this and the preceding
two pages are a true copy of the reasons
for judgment of the Honourable Mr Justice
Duggan given on this motion.*

C. H. Doyle

Associate to Mr Justice Duggan.