

FEDERAL APPEALS PANEL Case 39

IN THE MATTER OF AN APPLICATION BETWEEN:

JOSEPHINE HAYES

Appellant

-AND

D PAUL YOUNG, ADJUDICATOR FOR COMPLAINTS CASE 1014

Respondent

PRELIMINARY RULING

CAROLE FORD
MEMBER of the FAP (Case Manager)
13 AUGUST 2022

Introduction

I have been designated Case Manager by David Graham, Chair of the Federal Appeals Panel, in respect of this matter.

The Appellant challenges a Decision Notice dated 5 December 2021 in which her complaint against Dominic Skinner was dismissed by the Respondent.

Ruling on permission to proceed to a Case Panel

Permission is not granted to proceed to a Case Panel hearing in respect of FAP case 39.

Reasons

For an appeal to proceed to a Case Panel the arguments presented by the Appellant must satisfy at least one of the following criteria:

- (a) there was a serious failure of process or reasoning that was likely to render the determination of the complaint unsafe or unsatisfactory in all the circumstances
- (b) relevant evidence, which could not have been adduced at the time of the determination of the complaint, has since come to light which is likely to render the determination of complaint unsafe or unsatisfactory in all the circumstances
- (c) the sanction determined was manifestly excessive or manifestly lenient in all the circumstances.

Arguability is a low threshold. I am conscious that there is no appeal from a refusal of permission to proceed (FAP published procedures 3.6c).

Nevertheless, in all the circumstances, I have reached the judgement that the Applicant's grounds for appeal do not meet any of the criteria listed above.

Specific grounds for appeal

- 1 In the Decision Notice the Respondent refers to the Appellant's removal from a Facebook group rather than a WhatsApp group. This is a nomenclature error which makes no material difference to the substance of the complaint or to the decision making process in determining the outcome. On both platforms, Facebook and WhatsApp, groups are independently created and run by an administrator who has the power to invite and remove members. The Applicant's complaint could refer equally well to either platform and, similarly, the Respondent's reasoning could apply to either. The error in referring to 'Facebook' rather than 'WhatsApp' does not therefore constitute a serious failure of process or reasoning.
- 2 The Appellant considers her removal from the group to be unfair and unreasonable. Since the Respondent to the original complaint 1014, Dominic Skinner, did not reply to a request for his reasons for the removal of the Appellant from the WhatsApp group, she infers that Mr Skinner had no reason to do so. In a further argument, she concludes that the only reason for his actions is that he received defamatory information about her. The Appellant is entitled to hold an opinion on Mr Skinner's reasons but there is no evidence to substantiate her claims. There can therefore be no expectation that the Respondent should have based his decision on her assumptions. The fact that he did not do so does not represent a serious failure of reasoning.
- 3 The Appellant questions the appointment of the Respondent to determine the outcome of her complaint, claiming it should have been the Lead Adjudicator who made the determination. However, the complaints process specifically empowers the Lead Adjudicator to assign cases therefore there was no failure of process in this case.
- 4 The Respondent indicated in the Decision Notice that the type of group from which the Appellant was removed is not part of the Party and therefore the Party complaints process does not apply. The Appellant does not accept this. This is a difficult issue given that the use of social media or communication websites may present a challenge to many processes which were not specifically designed for that situation. In the case of inappropriate behaviour *on* a public site, defamation or disinformation for example, it may be possible to apply conduct rules fairly straightforwardly. However, in this specific complaint, it is the membership of the group which is the focus. Given the ad hoc nature of groups created on social media or communication sites, the administrative powers assigned to the group creators to admit or remove members, and the sheer number of such groups, it is not an unreasonable position to consider that the Party complaints process does not apply. Membership of such groups is by invitation; would a failure to receive an invitation be grounds for formal complaint? Removal from a group is simply a rescinding of the invitation to join. It is difficult to see what role the Party should play in determining membership of any given group set up by any individual member of the Party. While the Applicant may not agree with the Respondent, his judgement that membership of any given group falls outside the complaints process cannot be regarded as a serious failure of reasoning.
- 5 The Appellant states that the Respondent should have determined that she be readmitted to the group. In the Decision Notice the Respondent refers to the fact that in the original

complaint the Appellant did not ask to be re-instated. She requested an apology and training for Mr Skinner. This ground for appeal pertains to criterion (c) on sanction. However, given that the Respondent reached the decision to dismiss the complaint, the issue of sanction is rendered moot.

I therefore conclude that none of the grounds for appeal meet any of the criteria (a), (b) or (c).