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▶▶ Worker faces record costs bill after pursuing untenable dismissal case

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A Telstra worker sacked for allegedly damaging and stealing a security camera will have to pay costs that might exceed \$50,000, after the AIRC found his unfair dismissal case was “manifestly untenable or groundless”.

The telco dismissed the worker for allegedly damaging the camera when he removed it from its position in a telephone exchange in Northcote (Victoria) on December 1 last year. Telstra also alleged that he stole or attempted to steal the camera.

The Commission unsuccessfully conciliated the matter and it proceeded to hearing in May, but the worker abandoned the case less than two days into the hearings.

The company made a settlement offer on May 1, before the hearing started, which would have involved the worker paying \$15,000 of its costs (Telstra said in the offer that the amount would be “a small contribution” to what it had spent at that stage), but he rejected it.

Commissioner Jim Simmonds found the worker wilfully damaged the camera, rendering it useless by hitting it with a broom.

But he wasn't prepared to find the worker stole the camera, after taking into account the seriousness of the allegation and “the need for clear and cogent evidence”.

Commissioner Simmonds said it was clear the case was manifestly untenable or groundless on the facts known by the employee when he lodged the claim.

It should have been “readily apparent” to the worker, for the purposes of the Workplace Relations Act's [s658](#) costs provision, that his case had no reasonable prospect of success.

Commissioner Simmonds [ordered](#) that the worker pay Telstra's reasonable legal and professional costs and disbursements between January 22 and May 11 this year.

Telstra refused to disclose its costs, but sources in the legal profession told *Workplace Express* they would have been likely to exceed \$50,000.

The case is a reminder of the risks involved in pursuing a claim to arbitration against a large and well-resourced company, according to Flinders University Professor of Law, Andrew Stewart.

He said it was significant that the Commission made the costs order despite the employee's counsel claiming that the conciliation certificate was “a neutral one containing nothing to suggest that he should not proceed to have the matter arbitrated”.

Stewart said that “what you would normally expect when a costs order is made is for the conciliation commissioner to have given a clear indication that it is a hopeless case”.

“But it seems this was not a case where the Commission had clearly indicated to the applicant that the case was hopeless, and yet it was still ultimately found to be untenable.”

He said Telstra contended successfully that once the full weight of its evidence became clear, the applicant should have withdrawn.

[Draganovic v Telstra Corporation Limited \[2007\] AIRC 710 \(24 August 2007\)](#)

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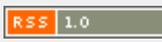
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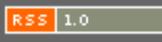
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