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## Metro Trains wins order for sacked delegate's medical history

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A court has granted the private operator of Sydney's newly-opened metro rail line access to an RTBU delegate's medical records after he was sacked for allegedly lying when completing a health assessment.

In acceding to Metro Trains Sydney Pty Ltd's application to issue subpoenas to medical providers for the journey coordinator's health records, Justice Wendy Abraham said the employer's interest in obtaining the documents outweighed any intrusion on the employee's privacy.

The judge heard that Metro Trains intends to limit the scope of the records requested to information relating to sleep apnoea or any precursors leading to that diagnosis, dating back five years.

She agreed with Metro Trains that the information sought directly from medical providers is "likely to shed light" on matters related to the proceedings, including when he first experienced a sleep condition and received a diagnosis; the cost of any medical treatment and the nature and extent of any medical treatment.

"They have an apparent relevance in relation to the issues in the proceedings," Justice Abraham said.

"In those circumstances, there is no basis to confine any challenge to the medical material already before the court."

### Records relevant to reinstatement claim

Justice Abraham also noted that because the coordinator is seeking reinstatement, the court will have to consider whether trust and confidence can be restored within the employment relationship.

In an affidavit, the coordinator and the union accepted that any question of dishonesty might be relevant to reinstatement but didn't justify "carte blanche to seek documents".

They contended that medical material before the court from third-party providers, which is "employment-generated" and includes a specialist assessment, is sufficient to establish whether the assessment discrepancy was a mistake or an act of dishonesty.

However, Justice Abraham rejected the employee's argument.

"Whether [the employee] had been dishonest is relevant to that issue.

"In fairness, [the employee and union] accepted that was so but again contended the medical material from the third parties is sufficient to test that.

"I disagree."

**The latest development follows** the Federal Court's refusal to grant the union an interlocutory injunction in April to render "null and void" the March 27 dismissal of the coordinator and order his reinstatement until his adverse action claim is determined (see [Related Article](#)).

However, Metro Trains agreed to continue paying the coordinator pending the expedited trial this month of allegations that it dismissed him because he helped prepare for a majority support determination application.

The RTBU claims the employer took unlawful adverse action by dismissing the coordinator because of his engagement in, or to stop his engagement in, industrial activity, in the form of conducting preparatory work for the union's planned application for a majority support determination.

It further claims that Metro Trains dismissed its sole union delegate because he exercised his workplace rights when he participated in the process of developing the majority support application, collecting his colleague's signatures on petitions that he circulated.

However, Metro Trains maintains that its chief staff officer – the decision maker who dismissed the coordinator – was motivated solely by his belief that the coordinator had dishonestly failed to disclose his sleep apnoea when completing a health assessment during his probationary period.

The employer also maintains that the decision maker had no knowledge of the coordinator's union activities.

The worker now admits he suffers from sleep apnoea and claims the health assessment discrepancy was a mistake.

[Australian Rail, Tram and Bus Industry Union v Metro Trains Sydney Pty Ltd \[2019\] FCA 1008 \(27 June 2019\)](#)

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