



## Case reallocated despite recusal refusal

28 March 2024 6:32am

FWC member Bernie Riordan has dismissed a recusal bid, denying that he is biased towards tradespeople and against women, but will reallocate the case to preserve the tribunal's "scarce" resources.

Defend Fire Services Pty Ltd applied for the member to recuse himself from an upcoming arbitration hearing after an unsuccessful preliminary telephone conference last month.

The employer said it had lost confidence in the commissioner's ability to be "impartial, fair and just" because he "made an abrupt and unilateral decision to either drop [the business owner] from the call or have her silenced in the background" during the conference when she experienced technical difficulties.

It claimed that Commissioner Riordan told the business owner "now you just be quiet", in a very disrespectful manner" and then continued the conference, while "excluding" her.

"There is a reasonable concern that these actions and disrespectful behaviour towards [the business owner] reflect a discriminatory attitude to and a bias against females, which would be fatal to a fair hearing where [the business owner] will again be the main spokesperson for Defend Fire," it said.

The employer also complained that the commissioner "identified" with the worker by commenting on the fact that they were both tradespeople, and sympathising with the worker's comments about the Darwin heat.

"By these comments and by advocating for him afterwards, the commissioner created a perception of solidarity with the [worker], which served to affirm and embolden [him] to proceed with his unrealistic compensation claim and prevented the possibility of a settlement during this conference," Defend Fire alleged.

It said that Commissioner Riordan gave more weight to the worker's submissions and failed to acknowledge his conduct issues and substance use.

**Defend Fire alleged that** after his dismissal, the worker threatened the business owner and the employer had to call emergency services due to his "aggressive and fight provoking behaviour" when he visited its office.

He allegedly said he will "throw the fat bitch out of the window" and "he will see how smart the SA slut is when he visits her in the office".

"In context of this threatening behaviour, it is a concern if the commissioner appeared to identify with the [worker], side with him during the proceedings and, like the [worker], acted in a disrespectful manner to [the business owner]," Defendant Fire said.

### Commissioner denies all bias allegations

Commissioner Riordan said that during private conferences with each party, he encouraged them both to come to an agreement, but they were "too far apart".

He alleged that when he issued directions for an arbitration hearing, the business owner "interrupted me in an aggressive tone" and she said "this is ridiculous", before advising that Defend Fire intended to "make a new application in a different jurisdiction".

The commissioner claimed he told her such issues lay outside of the Fair Work Act's powers and advised her not to interrupt him again.

"It would appear that [Defend Fire] expected me to simply dismiss the [worker's] application based on their submissions at the conference," he said, adding that while it may be "frustrating" for Defend Fire, the worker had a right to be heard.

Commissioner Riordan rejected Defend Fire's accusation that he "rudely or forcefully" told the business owner to stay quiet.

He said that he told the business owner to remain silent because her technical difficulties meant he could not clearly hear or understand her, and the employer's managing director had taken over as Defend Fire's principal advocate.

The commissioner said that if the business owner had fixed her technical issues she would have been welcome to "fully participate" in the conference.

He "totally" rejected Defend Fire's accusations of sex bias and partiality to tradespeople, saying that "just because a party is a tradesperson does not give them a 'head start' in any arbitration before me".

The commissioner said that based on the submissions thus far, the worker "is faced with some serious allegations" and if he did threaten the business owner, Defend Fire can rely on his threats as valid reasons for dismissal.

**Dismissing the recusal application**, Commissioner Riordan nevertheless agreed to return his file to the FWC to reallocate it to a different member because Defend Fire indicated that it would appeal if he knocked back its application and "the resources of the Commission are scarce".

"For a full bench to be convened to deal with a matter such as this, would be an absolute waste of the Commission's resources and further delay the substantive proceeding," he said.

"I cannot allow such a flagrant waste of taxpayers' funds to occur, simply due to my reticence to hand back the file."

[Mr Oliver Doherty v Defend Fire Services Pty Ltd T/A Defend Fire \[2024\] FWC 417 \(20 March 2024\)](#)

## Related links

- Related Article : [No recusal after worker calls member a "dip-sh-t"](#)
- Related Article : ["Subconscious bias" research not enough for recusal: FWC](#)
- Related Article : [FWC rebuffs alleged bully's bias claim](#)
- Related Article : [FWC member stands aside from hearing vax dispute](#)
- Related Article : [FWC rejects "evil purpose" behind lawyer's role](#)