

Appendix A



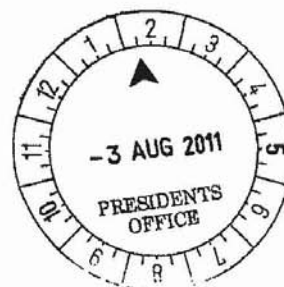
AUSTRALIAN SENATE

STANDING COMMITTEE ON RURAL AFFAIRS AND TRANSPORT

REFERENCES COMMITTEE

1 August 2011

Senator the Hon. John Hogg
President of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600



Dear Mr President

Privilege matter relating to the protection of witnesses

I write to you to formally raise a matter of privilege under Standing Order 81.

The matter relates to the protection of a witness who may have been subjected to a penalty in respect of evidence given before the Rural Affairs and Transport References Committee (the committee), and the question of whether a contempt may have been committed in that regard.

Background

On 18 March 2011, the committee conducted an in camera hearing in Canberra in connection with its inquiry into pilot training and airline safety (including consideration of the Transport Safety Investigation Amendment (Incident Reports) Bill 2010).

At this hearing, Mr Brian Wilson appeared as the nominated representative of the Flight Attendants Association of Australia (FAAA), in the position of Government and Regulatory Affairs Delegate.

Following his appearance, Mr Wilson wrote to the committee on 4 April 2011 advising that, as a result of his evidence, he had been removed from his role in the FAAA as Government and Regulatory Affairs Delegate by Mr Michael Mijatov, FAAA Secretary. Mr Wilson advised that Mr Mijatov's decision had been subsequently considered by the FAAA Divisional Council on 6 April 2011.

Mr Wilson advised that, as a consequence of his removal from the position of Government and Regulatory Affairs Delegate with the FAAA, he lost associated remuneration and entitlements, and was also removed from associated OH&S appointments.

The committee considered Mr Wilson's letter at a private meeting on 7 April 2011, and concluded that there was reason to believe that Mr Wilson may have been subjected to a penalty in respect of the evidence he provided at the hearing on 18 March 2011. In accordance with Privilege Resolution 1(18), the committee therefore agreed that it would take all reasonable steps to ascertain the facts of the matter. To this end, the committee instructed the secretariat to write to Mr Wilson, Mr Mijatov and all members of the FAAA Divisional Council seeking statements and documents relevant to Mr Wilson's removal from his position in the FAAA.

Relevant facts

At a private meeting on 11 May 2011, the committee considered a number of statements and documents received in response to its requests for further information, in order to determine the question of whether the facts disclosed that Mr Wilson may have been subjected to a penalty or injury in respect of his evidence to the committee on 18 March 2011.

On the basis of the information provided in those statements, the following facts were identified as relevant to this question:

- On or about Friday, 10 December 2010, Mr Mijatov expressed his dissatisfaction to the FAAA Divisional Council regarding Mr Wilson's work performance.
- On Tuesday, 8 February 2011, Mr Wilson was counselled by Mr Mijatov regarding the concerns about Mr Wilson's work performance, and was warned that if any further performance issues occurred, he would be removed from his role in the FAAA.
- On Friday, 18 March 2011, Mr Wilson appeared as the nominated representative of the FAAA at an in camera hearing of the committee's inquiry into pilot training and airline safety.
- On Tuesday, 29 March 2011, Mr Wilson sent an email to a work colleague, Mr Simon Efron, regarding work issues unrelated to the committee's inquiry.
- On Thursday, 31 March 2011, Mr Mijatov was, in error, provided with the transcript of Mr Wilson's in camera appearance. This error was due to Mr Mijatov being nominated as the person to whom the transcript should be sent on Mr Wilson's Hansard witness form.
- On Friday, 1 April 2011, Mr Mijatov emailed certain colleagues, drawing their attention to Mr Wilson's evidence, and stating that he intended to remove Mr Wilson from his role in the FAAA.
- On Monday, 4 April 2011, Mr Wilson was removed from his role as FAAA Government and Regulatory Affairs Delegate by Mr Mijatov.
- On Tuesday, 5 April 2011, the committee received a supplementary confidential submission from Mr Mijatov (dated 4 April 2011), which clarified that certain aspects of the evidence given previously by Mr Wilson 'should not be taken to be FAAA policy'.
- On Wednesday, 6 April 2011, the Divisional Council of the FAAA considered Mr Wilson's removal.

Evidence as to whether Mr Wilson may have been subjected to a penalty on the basis of his evidence to the committee

The central issue considered by the committee in determining whether Mr Wilson may have been subjected to a penalty on the basis of his evidence to the committee was whether his removal was, wholly or in part, motivated by the evidence he provided to the committee on 18 March 2011.

Mr Mijatov's position

Mr Mijatov's statement asserts that his decision to remove Mr Wilson was on the basis of an 'extensive and troubled history' which had demonstrated that Mr Wilson was unfit to act in any capacity for the FAAA due to a 'lack of common sense and judgement'.

Mr Mijatov cited a number of previous incidents on which this conclusion was based, including, for example:

- the making of unsubstantiated allegations about a major employer of union members;
- acting with discourtesy; and
- purporting to represent the views of the FAAA without Mr Mijatov's approval.

Mr Mijatov noted that he had raised the prospect of Mr Wilson's dismissal at a Divisional Council meeting on or around 10 December 2010; and that Mr Wilson was subsequently formally counselled on 8 February 2011, and warned that:

...his behaviour was unacceptable...[with particular reference to] his attitude and hostility towards [a major employer of union members and]...his constant aggressive and unacceptable emails to FAAA officials and the fact that he had made contact with external bodies purporting to speak for the FAAA without reference to [Mr Mijatov]'.

Further, Mr Mijatov stated that Mr Wilson was told that 'if there were any more issues of this kind...[Mr Mijatov] was authorised to cease...[Mr Wilson's] involvement in FAAA activities forthwith'.

Mr Mijatov identified as the direct catalyst for the decision to remove Mr Wilson on 4 April 2011 an email sent by Mr Wilson to another FAAA official, Mr Efron, on 29 March 2011. Mr Mijatov described this email as 'involving appalling attitude and language, including erroneous allegations...about another official'.

Mr Wilson's position

Mr Wilson's statement asserts that, on 4 April 2011, he was advised by Mr Mijatov that his role with the FAAA as Government and Regulatory Affairs Delegate and associated appointments to [a major employer of union members]...were 'immediately terminated arising from [Mr Wilson's]...responses to the committee'.

Mr Mijatov had allegedly stated that Mr Wilson's answers in relation to:

...a variety of safety, reporting and regulatory matters and especially fatigue, were contrary to his instructions not to inform the committee of any matters that may embarrass or bring scrutiny to [a major employer of union members]'.

In his later statement to the committee (dated 14 May 2011), Mr Wilson stated that he had responded to Mr Mijatov by pointing out that evidence given to the committee was protected by parliamentary privilege, and that Mr Mijatov's actions could constitute an 'abuse of this privilege'. At this point, Mr Mijatov allegedly stated that Mr Wilson's evidence 'was not the only reason [for his removal]', and had then raised the issue of Mr Wilson's email to Mr Efron on 29 March 2011.

Mr Wilson noted that he was aware that Mr Mijatov had, prior to this discussion, sent an email to certain colleagues, drawing their attention to Mr Wilson's evidence, and stating that he intended to remove Mr Wilson from his roles in the FAAA.

Other statements and documents

The committee has assessed the claims of Mr Mijatov and Mr Wilson in light of the statements and documents received from FAAA Divisional Council members. A number of these statements provided information that informed the committee's conclusions.

Committee's conclusions

On the basis of the information received through its investigation of this matter, the committee believes that Mr Wilson may have been removed from his positions in the FAAA due to the evidence he gave to the committee on 18 March 2011.

The committee therefore believes that Mr Wilson may have been subject to a penalty in respect of his evidence to the committee.

The committee wrote to Mr Mijatov on 16 June 2011 to advise him of the committee's conclusions and to invite him to provide the committee with further comment regarding the committee's conclusions. The committee also invited Mr Mijatov to advise it of any action or remedy taken, or proposed to be taken, which may be relevant to the committee's conclusions.

Mr Mijatov replied to the committee on 15 July 2011 and reiterated his earlier statement "that Mr Wilson has not suffered any 'penalty or injury', or been deprived of any benefit." Mr Mijatov invited the committee to reconsider his earlier advice to the committee and to give further consideration to its provisional conclusion.

The committee has reconsidered Mr Mijatov's advice to the committee and has not varied its conclusion that Mr Wilson may have been subject to a penalty or injury in respect of evidence he gave to the committee on 18 March 2011.

Accordingly, the committee requests that you give precedence to a notice of motion to refer this matter to the Committee of Privileges. The committee would of course be happy to provide the Committee of Privileges with any supporting documentation.

Yours sincerely



Senator the Hon. Bill Heffernan
Chair
Senate Rural Affairs and Transport References Committee