

BETWEEN:

COMMONWEALTH BANK OF AUSTRALIA
(ACN 123 123 124)

Appellant

and

STEPHEN JOHN BARKER
Respondent



APPELLANT'S CHRONOLOGY

Part I:

I certify that this chronology is in a form suitable for publication on the internet.

Part II:

Date	Event	Supporting document
November 1981	Mr Stephen Barker (Barker) commenced employment with the Commonwealth Bank of Australia (CBA).	Exhibit A3, paragraph [8] Reasons for Judgment of Justice Besanko, 3 September 2012 (FCA) [32]
June 2004	Barker obtained a position as Executive Manager (EM) of Corporate Banking (later to be re-named as Corporate Financial Services (CFS)), in Adelaide. Barker's employment was subject to a written employment agreement executed by Barker on 6 August 2004 and by CBA on 10 August 2004. At that time, CBA had in place a HR Reference Manual which contained an express statement that it was not incorporated as part of any industrial award or agreement entered into by CBA, nor did it form any part of an employee's contract of employment.	Exhibit A1, tab 5 Exhibit R1, tab 151, section 1.1 FCA [38]-[42], [283], [316] Reasons for Judgment of Full Court, 6 August 2013 (FCAFC) [1], [23] (Jacobson, Lander JJ (Majority)); [166], [168] (Jessup J)

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Date	Event	Supporting document
Mid 2006	Mr De Luca commenced employment with CBA as Executive General Manager of CFS, which included Barker and the team he managed. In his role, Mr De Luca managed CFS for CBA nationwide. Mr De Luca was Barker's manager once removed. Barker reported directly to Mr Tim Chilvers, General Manager (GM) of CFS Victoria, Tasmania, South Australia and Western Australia.	Exhibit R14, paragraphs [1] – [2], [6] FCA [50], [55]
July 2006	Mr Joe Formichella was appointed as GM of South Australia and Northern Territory following a change in reporting lines brought about by Mr De Luca. Barker reported directly to Mr Formichella.	Exhibit R14, paragraph [11] FCA [57]
May 2008 – 22 August 2008	CBA transferred the HR Reference Manual to its intranet site, which transfer was completed on 22 August 2008. For an unknown reason, the express statement that the HR Reference Manual was not incorporated as part of any industrial award or agreement entered into by CBA, nor did it form any part of an employee's contract of employment, was not included on the CBA intranet.	Exhibit R4, paragraphs [9] – [10] FCA [286] - [288] FCAFC [168] (Jessup J)
June 2008	Top Tier team created in CFS Adelaide. Mr Neville Wiles was appointed as EM of this team.	Exhibit R9, paragraph [68] FCA [171]
Late 2008 – February 2009	The nationwide restructure of CFS called the 'segmentation exercise' commenced. This restructure involved standardising portfolio size. At this time, there were five teams in CFS South Australia/Northern Territory: Top Tier (Mr Wiles' team), Team 1 (Barker's team), Team 2 (Mrs Allen's team), Darwin (managed by Mr Robert Annis-Brown, an EM) and Mawson Lakes (managed by Mr Greg Morris). Mr Morris was an Area Manager, which is one step below an EM. The result of the segmentation process was that Barker's team was collapsed and one of the five team managers' positions needed to be made redundant.	Exhibit R9, paragraphs [77] – [84] FCA [181] – [197] FCAFC [174] (Jessup J)

Date	Event	Supporting document
February 2009	<p>Mr De Luca and Mr Formichella decided to make Barker's position redundant. Mr Annis-Brown was excluded from consideration due to his geographical location. Mr Morris was excluded from consideration as making him redundant would result in one of the EMs being demoted to an Area Manager position.</p> <p>Mr Wiles was ruled out as he was a high performer. Barker was chosen as his team was most affected by the segmentation exercise and Mrs Allen exhibited better behaviours.</p>	<p>Exhibit R9, paragraphs [84] – [93] Exhibit R14, paragraphs [25] – [32] FCA [187] – [197] FCAFC [174] (Jessup J)</p>
Early 2009	<p>Mr De Luca decided that each CFS region would employ an employee in the position of EM – Service Excellence.</p>	<p>Exhibit R14, paragraph [40] FCA [255] FCAFC [182] (Jessup J)</p>
2 March 2009	<p>Barker met with Mr Formichella and Mr Glen Davis, CBA Executive Manager – Strategic Human Resources, and informed that his position was redundant. Barker was told that CBA's preference was to redeploy him. Mr Davis told Barker words to the effect that the onus was as much on Barker as on CBA to make efforts to redeploy Barker.</p> <p>Barker was told on 2 March 2009 that if he was not redeployed within CBA his employment would be terminated on 2 April 2009.</p> <p>Mr Davis told Barker to work out the day, clear out his desk, hand in his keys and mobile telephone and go. Barker's access to work emails and telephone ended.</p> <p>Barker left the meeting and spoke with Mr Graham Andrewartha, an outplacement consultant from Audrey Page and Associates.</p>	<p>Exhibit R9, paragraphs [94] – [97] Exhibit R12, paragraphs [18] – [30] FCA [199] – [200], [207] – [213] FCAFC [3], [36] – [37] (Majority); [175], [177] – [178] (Jessup J)</p>
3 March 2009	<p>Mr Formichella received a letter from Ms Julia Adlem, Barker's solicitor, which asked that CBA provide documents relevant to the selection of Barker to lose his position and noting CBA's preference to redeploy Barker.</p>	<p>Exhibit A1, tab 50 FCA [216] FCAFC [181] (Jessup J)</p>

Date	Event	Supporting document
4 March 2009	<p>Mr De Luca sent an email to numerous recipients, including Ms Jade Baines, CBA Recruitment Consultant, asking that they proceed with the recruitment of the EM – Service Excellence roles. Mr De Luca identified Mr Michael van Lierop as a potential candidate for the position in South Australia/Northern Territory.</p> <p>Ms Baines sent an email to Mr Formichella asking whether Barker would be suitable for this role.</p>	<p>Exhibit A1, tab 55 Exhibit R6, paragraphs [3], [7] FCA [257] FCAFC [182] (Jessup J)</p>
5 March 2009	<p>Ms Breccia, CBA Manager Career Support, sent an email to Barker's CBA email address. The email stated that Ms Breccia had tried to contact Barker on his work telephone. She asked Barker to contact her.</p>	<p>Exhibit R1, tab 155 Exhibit R13, paragraph [7] FCA [217] FCAFC [38] (Majority); [183] (Jessup J)</p>
6 March 2009	<p>Ms Amelia Peters, a solicitor employed by CBA, wrote to Ms Adlem indicating that she had received Ms Adlem's letter to Mr Formichella and that she would provide a formal response shortly.</p>	<p>Exhibit A1, tab 53 FCA [219] FCAFC [184] (Jessup J)</p>
7 March 2009	<p>Mr Davis sent an email to Barker at his personal email address asking that he return his mobile telephone and sim card by early the following week. The email also invited Barker to call Mr Davis if he required additional assistance.</p>	<p>Exhibit A1, tab 54 FCA [218] FCAFC [185] (Jessup J)</p>
9 March 2009	<p>Mr Formichella sent an email to Ms Baines indicating that he did not consider that Barker would be appropriate for the EM – Service Excellence role in South Australia/Northern Territory and that he and Ms Sinead Taylor, a CFS GM, had met with Mr van Lierop, who was an ideal candidate for the role.</p>	<p>Exhibit A1, tab 55 FCA [257] FCAFC [186] (Jessup J)</p>
9 March to 26 March 2009	<p>Recruitment for the EM – Service Excellence roles was put on hold to allow time for managers to consider whether redundant employees would be suitable for these roles.</p>	<p>Exhibit A1, tab 55 FCA [257], [264] FCAFC [186] (Jessup J)</p>
11 March 2009	<p>Ms Adlem wrote to CBA returning, among other things, various sim cards.</p> <p>Ms Peters wrote to Ms Adlem refusing the request for documents made on 3 March 2009.</p>	<p>Exhibit A1, tabs 56 and 57 FCA [220] – [221] FCAFC [188] (Jessup J)</p>

Date	Event	Supporting document
20 March 2009	Mr Davis sent an email to Barker at his CBA email address indicating an exit date of 30 March 2009 if Barker was not redeployed. The email encouraged Barker to take proactive steps to seek redeployment opportunities.	Exhibit A1, tab 58 FCA [224] – [225] FCAFC [190] (Jessup J)
23 March 2009	Ms Fiona Pashley, Mr Formichella's Executive Assistant, sent an email to Mr Davis which stated that Barker no longer had access to his CBA email and asking if he wanted the email sent on 20 March 2009 sent to legal or Barker's home email. Mr Davis responded by asking that it be sent to Barker's home email address. Mr Davis sent an email to Ms Breccia asking that she email Barker to inform him of a role, EM – Service Excellence.	Exhibit A1, tabs 58 and 59 FCA [224], [243] FCAFC [190] – [191]
On or about 23 March 2009	Mr Davis, in consultation with Mr De Luca or Mr Formichella, decided to extend Barker's exit date from CBA to 9 April 2009 and the closing date for the EM – Service Excellence position.	Exhibit R12, paragraph [36] FCA [244] FCAFC [3], [41] (Majority); [191] (Jessup J)
24 March 2009	Ms Breccia was given a telephone number for Barker and attempted to contact Barker on that number. Barker did not answer. There were "incoming call restrictions"	Exhibit R1, tab 156 FCA [245] FCAFC [193] (Jessup J)

Date	Event	Supporting document
26 March 2009	<p>Ms Breccia sent an email to Barker at his personal email address which stated that she had been attempting to contact him for some weeks regarding redeployment but had been unable to reach him by phone or his CBA email. The email offered the opportunity to apply for a role, 'EM – Service Excellence' and attached the Position Description for that role and the Career Circular dated 20 March 2009. The email asked that if Barker was interested in applying for any role, he advise Ms Breccia and email his CV to her.</p> <p>Ms Breccia received an email from Mr Davis advising, among other things, that CBA was extending Barker's redeployment final date to 9 April 2009.</p> <p>Ms Adlem responded by letter to Ms Peters, indicating that there had been impropriety in the process whereby Barker was selected for redundancy. Ms Adlem said that absent satisfactory resolution of the matter, she had instructions to issue proceedings within 14 days.</p>	<p>Exhibit A1, tabs 60 and 62</p> <p>Exhibit R1, tab 157</p> <p>FCA [227] - [228], [246]</p> <p>FCAFC [194] - [195], [198] (Jessup J)</p>
27 March 2009	<p>Ms Breccia sent an email to Mr Davis in which she attached the results of her check of the recruitment system for outstanding opportunities. The note for Barker provided that there had been nil contact from Barker to date.</p>	<p>Exhibit A26</p> <p>FCA [249]</p>
30 March 2009	<p>Ms Adlem sent an email to Ms Breccia asking that she contact Ms Adlem to discuss Barker's redeployment options.</p>	<p>Exhibit A1, tab 63</p> <p>FCA [231]</p> <p>FCAFC [199] (Jessup J)</p>
31 March 2009	<p>Ms Breccia sent an email to Ms Adlem advising of a time when she was available.</p> <p>Ms Adlem spoke with Ms Breccia. Ms Breccia advised Ms Adlem that she had been attempting to contact Barker on his CBA phone and email for several weeks without response. Ms Adlem asked questions about CBA's redeployment policy and the EM – Service Excellence role but was not able to elicit any information. Ms Breccia told Ms Adlem that if Barker was interested in any roles in the Careers circular then to let her know</p>	<p>Exhibit A1, tab 63</p> <p>Exhibit R13, paragraph [16]</p> <p>FCA [231] – [232]</p> <p>FCAFC [200] – [201] (Jessup J)</p>

Date	Event	Supporting document
3 April 2009	Ms Baines forwarded the five or six applications for the EM – Service Excellence positions that she had received to Ms Taylor. Ms Taylor responded later that day indicating that none of the applications was successful.	Exhibit A1, tab 55 FCA [264] FCAFC [203] (Jessup J)
6 April 2009	Ms Baines forwarded additional applications for the EM – Service Excellence positions to Ms Taylor. Ms Taylor responded that day, indicating that none of the applications was successful.	Exhibit A1, tab 55 FCA [264] FCAFC [203] (Jessup J)
8 April 2009	Ms Taylor emailed Ms Baines asking how quickly CBA could get an offer to Mr van Lierop.	Exhibit A1, tab 55 FCA [264] FCAFC [203]
9 April 2009	Barker notified by letter from CBA that his employment with CBA was terminated by reason of redundancy effective that day.	Exhibit A1, tab 71 FCA [215] FCAFC [42] (Majority); [204] (Jessup J)
27 July 2009	The express statement that CBA's policies were not incorporated as part of any industrial award or agreement entered into by CBA, nor did they form any part of an employee's contract of employment, was re-introduced into the HR policies on the intranet.	Exhibit R4, paragraph [10] FCA [288] FCAFC [168] (Jessup J)

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