

**CITATION:** Aleksic v Commonwealth Bank of Australia  
[2011] QCAT 78

**Applicant:** Dusanka Aleksic  
**Respondent:** v  
Commonwealth Bank of Australia

**APPLICATION NUMBER:** ADL097-10

**MATTER TYPE:** Anti-discrimination matters

**HEARING DATE:** 25 March 2011

**HEARD AT:** Brisbane

**DECISION OF:** C Endicott, Senior Member

**DELIVERED ON:** 25 March 2011

**DELIVERED AT:** Brisbane

**ORDERS MADE:**

- a) The contentions filed by Ms Aleksic on 6 December 2010 are struck out;
- b) If she wants to seek an order to amend the complaint to include new matters, Ms Aleksic must file in the tribunal an application to amend supported by written submissions and send a copy of the application and submissions to the bank by 15 April 2011;
- c) In the event that an application to amend is made, the bank must file in the tribunal a response to that application and send a copy of the response to Ms Aleksic by 6 May 2011;
- d) A determination on any such application will be made by a member of the tribunal on the papers, if appropriate, not before 13 May 2011;
- e) In the event that Ms Aleksic does not file an application to amend by 15 April 2011, she must file two copies of fresh contentions based only on the referred complaint in the tribunal and send another copy of her fresh contentions to the bank by 21 April 2011;
- f) In the event that Ms Aleksic fails to file

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fresh contentions based only on the referred complaint by 21 April 2011, she must file an explanation for that failure in the tribunal and make submissions as to why her complaint should not be dismissed under section 48 of the *Queensland Civil and Administrative Tribunal Act 2009* by 6 May 2011;

- g) In the event that Ms Aleksic does file fresh contentions based only on the referred complaint by 21 April 2011, the bank must then file two copies of its response to the fresh contentions in the tribunal and send another copy to Ms Aleksic by 20 May 2011;
- h) The compulsory conference scheduled for 12 April 2011 will not proceed and another date for the conference will be set and the parties advised in May 2011.

**CATCHWORDS :**

ANTI-DISCRIMINATION – early end to proceedings sought – contentions at variance with referred complaint – party given opportunity to file fresh contentions or seek to amend complaint

**APPEARANCES and REPRESENTATION (if any):**

The hearing took place on the papers in the absence of the parties.

**REASONS FOR DECISION**

1. On 28 September 2010 the Anti-Discrimination Commission of Queensland referred a complaint made by Dusanka Aleksic against the Commonwealth Bank of Australia to the tribunal. The complaint referred to the tribunal alleged that the bank as employer of Ms Aleksic was vicariously liable for the actions of Michelle Patterson who allegedly made a comment in October or November 2008 to Ms Aleksic in the following terms: “speak English you bloody wog”.
2. Ms Aleksic’s original complaint to the Commission was based on a much wider complaint against the bank and against specified employees of the bank. On 1 December 2009 a representative of Ms Aleksic gave notice to the Commission that her complaint was against the bank only and not against individual persons. On 26 March 2010 the Commission accepted only that part of the complaint about conduct that had occurred after 3 May 2008.
3. On 25 October 2010 Ms Aleksic appeared at a directions hearing at the tribunal and was directed to file contentions by 6 December 2010. Ms Aleksic filed contentions on 6 December 2010 which were based on

general allegations of bullying, a workplace injury and action alleged to have been taken by the bank about her personal bank account.

4. The bank applied to the tribunal for orders to strike out the complaint. The bank submitted that the contentions filed by Ms Aleksic should not be accepted in their current form as they are vague and do not disclose sufficient particulars of the acts of discrimination alleged against the bank. The bank submitted further that the contentions included complaints that were not accepted by the Commission and as such those particular complaints have lapsed.
5. The tribunal subsequently held a second directions hearing on 17 January 2011 which was attended by Ms Aleksic. At that hearing, it was explained to Ms Aleksic that the only matter that the tribunal was considering in these proceedings was the referred complaint and not the wider complaint that she had originally made to the Commission.
6. Directions were made requiring Ms Aleksic to file and serve a response to the strike out application. On 14 February 2011 she filed a response in the following terms: "The applicant has suffered racial discrimination, bullying and harassment from a number of staff members and supervisors from the Commonwealth Bank of Australia for a number of years. These complaints were reported to the Commonwealth Bank as they occurred and diary entries have been preserved as evidence. The complaints which were made to the Commonwealth Bank of Australia were recorded by the bank and provided in a summary Allegations Matrix by the bank."
7. In addition Ms Aleksic submitted that the complaints provided the background of the ongoing harassment and discrimination claims made by her.
8. The response by Ms Aleksic filed on 14 February 2011 did not properly address the issues raised in the strike out application. She made no attempt to particularise the contentions in terms of the referred complaint. She left the tribunal in the position where it has to effectively glean what her case may be from documents lodged by her without specific linkage back to the facts of the referred complaint. The tribunal will not permit the matter to proceed on this basis.
9. Under section 47 of the *Queensland Civil and Administrative Tribunal Act 2009* the tribunal can bring an early end to proceedings if the proceeding or part of a proceeding lacks substance or is an abuse of process. The bank has applied for the dismissal of the entire proceeding on the basis that the complaint as contended lacks substance or is an abuse of process. In the alternative the bank has sought dismissal of those parts of the proceedings that fall outside the referred complaint.
10. While the submissions made by the bank are not wholly without merit, the tribunal considers that in the interests of justice it is premature to consider striking out the entire proceedings. Ms Aleksic should have another opportunity to present her case on the basis of the complaint as referred to the tribunal by the Commission. Ms Aleksic is not represented. Notwithstanding her attendance at the directions hearings when she was given an explanation of what she had to do, Ms Aleksic has not apparently understood adequately that her case is limited to the complaint referred by the Commission. She does not appear to have understood that she must

actively particularise her case in her contentions at this stage rather than merely making vague general statements and attaching documents of doubtful relevance to the referred complaint.

11. She can apply for an order that the complaint is amended to include new matters but the tribunal does not interpret the contentions or recent submissions from Ms Aleksic as amounting to an application to amend her complaint. She should be given an opportunity to make such an application supported by relevant submissions if she intends to persist in raising matters outside the scope of the current referred complaint.
12. The tribunal has a positive obligation under section 29(1) of the *Queensland Civil and Administrative Tribunal Act 2009* to take all reasonable steps to ensure that a party understands the nature of assertions made in a proceeding and the legal implications of the assertions. The tribunal is not satisfied that Ms Aleksic understood that she faced the risk of her complaint being struck out if she did not contain her contentions to the referred complaint only i.e. that the bank as employer of Ms Aleksic was vicariously liable for the actions of Michelle Patterson who allegedly made a comment in October or November 2008 to Ms Aleksic in the following terms: "speak English you bloody wog".
13. The tribunal will provide Ms Aleksic with another opportunity to file contentions that are in terms of the referred complaint. Alternatively Ms Aleksic can make an application to amend the complaint to include matters wider than those matters in the referred complaint if she chooses to do so.
14. The orders of the tribunal are:
  - a) The contentions filed by Ms Aleksic on 6 December 2010 are struck out;
  - b) If she wants to seek an order to amend the complaint to include new matters, Ms Aleksic must file in the tribunal an application to amend supported by written submissions and send a copy of the application and submissions to the bank by 15 April 2011;
  - c) In the event that an application to amend is made, the bank must file in the tribunal a response to that application and send a copy of the response to Ms Aleksic by 6 May 2011;
  - d) A determination on any such application will be made by a member of the tribunal on the papers, if appropriate, not before 13 May 2011;
  - e) In the event that Ms Aleksic does not file an application to amend by 15 April 2011, she must file two copies of fresh contentions based only on the referred complaint in the tribunal and send another copy of her fresh contentions to the bank by 21 April 2011;
  - f) In the event that Ms Aleksic fails to file fresh contentions based only on the referred complaint by 21 April 2011, she must file an explanation for that failure in the tribunal and make submissions as to why her complaint should not be dismissed under section 48 of the *Queensland Civil and Administrative Tribunal Act 2009* by 6 May 2011;
  - g) In the event that Ms Aleksic does file fresh contentions based only on the referred complaint by 21 April 2011, the bank must then file two

copies of its response to the fresh contentions in the tribunal and send another copy to Ms Aleksic by 20 May 2011;

h) The compulsory conference scheduled for 12 April 2011 will not proceed and another date for the conference will be set and the parties advised in May 2011.

15. To remove any doubt, if contentions are filed by Ms Aleksic under subparagraph (e) they must be restricted to the referred complaint that alleges the bank as employer of Ms Aleksic was vicariously liable for the actions of Michelle Patterson who allegedly made a comment in October or November 2008 to Ms Aleksic in the following terms: "speak English you bloody wog". If the contentions do not at least particularise that case, the contentions will not be accepted by the tribunal, she will have failed to comply with the order of this tribunal and the tribunal will consider a dismissal of her complaint after 6 May 2011.