

FEDERAL CIRCUIT COURT OF AUSTRALIA

RIDD v JAMES COOK UNIVERSITY

[2019] FCCA 997

Catchwords:

INDUSTRIAL LAW –Enterprise Agreement – Code of Conduct – where Intellectual Freedom enshrined in Enterprise Agreement – where Code of Conduct inconsistent with Enterprise Agreement – primacy of Enterprise Agreement

Legislation:

Fair Work Act 2009 (Cth): s.50

James Cook University Act 1997 (Qld): s.5

Cases cited:

N/A

Applicant:	PETER VINCENT RIDD
Respondent:	JAMES COOK UNIVERSITY
File Number:	BRG 1148 of 2017
Judgment of:	Judge Vasta
Hearing dates:	26, 27 and 28 March 2019
Date of Last Submission:	28 March 2019
Delivered at:	Brisbane
Delivered on:	16 April 2019

301. It is only when behaviour is not covered by cl.14, that the Code of Conduct can apply. Clause 14 means that it is the right of Professor Ridd to say what he has said in any manner that he likes so long as he does not contravene the sanctions embedded in cl.14. That is at the heart of intellectual freedom.
302. That is why intellectual freedom is so important. It allows academics to express their opinions without fear of reprisals. It allows a Charles Darwin to break free of the constraints of creationism. It allows an Albert Einstein to break free of the constraints of Newtonian physics. It allows the human race to question conventional wisdom in the never-ending search for knowledge and truth. And that, at its core, is what higher learning is about. To suggest otherwise is to ignore why universities were created and why critically focussed academics remain central to all that university teaching claims to offer.
303. In light of the above, I make the following rulings:
- a) The first finding made by the University was unlawful because it breached the rights that Professor Ridd had pursuant to cl.14.
 - b) The censure given to Professor Ridd was unlawful as it contravened cl.14 of the EA.
 - c) The First Speech Direction was unlawful in that it sought to interfere with the rights that Professor Ridd had pursuant to cl.14.
 - d) The Second Finding made by the University was unlawful because it breached the rights that Professor Ridd had pursuant to cl.14.
 - e) The First Confidentiality Direction was unlawful because the University had no power to give that direction, and even if it did have the power, such a direction was in contravention of the rights that Professor Ridd had pursuant to cl.14.
 - f) The Third Finding made by the University was unlawful because it breached the rights that Professor Ridd had pursuant cl.14.
 - g) The Second Confidentiality Direction was unlawful because the University had no power to make such a direction, and even if it

did have the power, such a direction was in contravention of the rights conferred on Professor Ridd by virtue of cl.14.

- h) The Fourth Finding made by the University was **unlawful** because it breached the rights of Professor Ridd had pursuant to cl.14.
- i) The Fifth Finding made by the University was **unlawful** because it breached the rights of Professor Ridd given to him by cl.14.
- j) The Sixth Finding made by the University was **unlawful** because it breached the rights of Professor Ridd given to him by cl.14.
- k) The Seven Finding made by the University was **unlawful** because it breached the rights that Professor Ridd had pursuant to cl.14.
- l) The Eighth Finding made by the University was **unlawful** because it breached the rights that Professor Ridd had pursuant to cl.14.
- m) The Third Confidentiality Direction was **unlawful** because the University had no **power to make such a direction**, and even if it did, such a direction contravened the rights of Professor Ridd pursuant to cl.14.
- n) The Second Speech Direction was **unlawful** in that it sought to interfere with the rights Professor Ridd had pursuant to cl.14.
- o) The Fourth Confidentiality Directions was **unlawful** because the University had no **power to make such a direction**, and even if it did, such a direction contravened the rights of Professor Ridd pursuant to cl.14.
- p) The no satire direction was **unlawful** in that it sought to interfere with the rights Professor Ridd had pursuant to cl.14.
- q) The Fifth Confidentiality Direction was **unlawful** because the University had no power to make such a direction, and even if it did, such a direction contravened the rights of Professor Ridd pursuant to cl.14.
- r) The Second Censure was **unlawful** because it contravened cl.14 of the EA.

- s) The Ninth Finding made by the University was unlawful because it related to the breach of a direction which was of itself unlawful.
- t) The Tenth Finding made by the University was unlawful because it related to the breach of a direction which was of itself unlawful.
- u) The Eleventh Finding made by the University was unlawful because it related to the breach of a direction which was of itself unlawful.
- v) The Twelfth Finding made by the University was unlawful because it breached the rights that Professor Ridd had pursuant to cl.14.
- w) The Thirteenth Finding made by the University was unlawful because it breached the rights the Professor Ridd had pursuant to cl.14.
- x) The Fourteenth Finding made by the University was unlawful because it related to the breach of a direction which was of itself unlawful.
- y) The Fifteenth Finding made by the University was unlawful because of breached the rights that Professor Ridd had pursuant to cl.14.
- z) The Sixteenth Finding made by the University was unlawful because it breached the rights that Professor Ridd had pursuant to cl.14.
- aa) The Seventeenth Finding made by the University was unlawful because it had no substance whatsoever, and even if there were the slightest scintilla of evidence, it was contrary to the rights that Professor Ridd had pursuant to cl.14.
- bb) The termination of Professor Ridd's employment was unlawful because it punished Professor Ridd for conduct that was protected by cl.14 of the EA.

304. I invite the parties to make submissions as to the issue of declarations and penalty. I will adjourn the further hearing of the matter to a date to be fixed.

I certify that the preceding three hundred and four (304) paragraphs are a true copy of the reasons for judgment of Judge Vasta
Date:16 April 2019.