

10th Feb, 2022
Public Transport Authority
PO Box 8125
Perth Business Centre
Perth WA 6849
Attention: Tim Woolerson (General Manager)

Tim.Woolerson@transwa.wa.gov.au

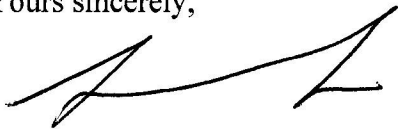
Dear Mr Woolerson

RESPONSE TO ALLEGATION OF BREACH OF DISCIPLINE

1. I refer to your letter dated 19 January 2022 (**Allegation Notice**) and say as follows.
2. I have worked as a train driver for approximately 16 years and for the Public Transport Authority (WA) (**PTA**) for approximately 14 years.
3. Until the issue of the Allegation Notice, I have not been the subject of any formal disciplinary proceeding and am an employee in good standing.
4. In the Allegation Notice, you stated: *‘As you have not provided approved evidence of vaccination you are unable to attend work and are not being paid.’*
5. I am ready, willing, and able to continue to work as a train driver under my terms of employment for the PTA.
6. However, as is clear from the Allegation Notice, I have been prevented from working because I have not provided the PTA with approved evidence of vaccination.
7. The so-called Lawful Direction dated 13 December 2021 and issued by the PTA (**Directions**) stated (among other things): *‘If you do not comply with these directions, disciplinary action may be taken against you. The outcomes of disciplinary action can range from a reprimand to dismissal. Further, if you do not comply with these directions, you will be unable to attend work and will not be paid for the period you remain unvaccinated.’*
8. It is clear that the discipline process and foreshadowed disciplinary actions are directed at forcing or pressuring me to be vaccinated and to provide evidence of vaccination.

9. First, in my view, the Directions and the declarations referred to in the Directions were unlawful because they were acts *ultra vires* or beyond power. Thus, the Directions were not lawful and a failure to follow them does not form the proper basis for disciplinary actions.
10. Second, in all of the circumstances, the Directions are unreasonable and thus a failure to follow them does not form the proper basis for disciplinary actions.
11. Third, given my length of service and ability and willingness to continue to work, the PTA's course of action is unfair.
12. Thus, the discipline process should be discontinued and I should be permitted to return to work. In all of the circumstances, dismissal on this basis would be unconscionable.
13. At a minimum, in light of the decision in *Falconer v Commissioner of Police* [2021] WASC 481, no disciplinary action should be taken until the matters I have raised above have been resolved.
14. While I will continue to engage in the discipline process, I do not consider that it is authorised and reserve all of my rights under the terms of my employment, at law, and in equity.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Anna Mutzenich', written in a cursive style.

Anna Mutzenich (17083)