# Notable Case

**Recording workplace conversations**

Date of Decision: 2 August 2016

## Overview

## An employee appealed the disciplinary action taken against him under s187 of the *Public Service Act* following a determination that they had failed to demonstrate respect for co-workers by making unauthorised notes of overheard conversations. The employee argued that they were maintaining the notes for their own protection given the work environment, which was described as one in which the employees demonstrated a lack of respect for each other. Further, the employee argued that they had not used the notes in any malicious or untoward way.

## Decision

The Appeals Officer dismissed the appeal and confirmed the disciplinary decision.

The Appeals Officer considered Fair Work Commission decisions that making audio records of manager-employee conversations undermined trust and honesty in work relationships. These decisions supported the principle that secretly documenting conversations to which the employee was not a party and did not concern the employee is outside the bounds of ordinary conduct in working relationships.

The employee’s argument that the notes were for their personal protection may have carried more weight if the conversations recorded were hostile to or about them. Instead, the notes were predominately of overheard conversations relating to staff gripes and unrelated to staff relationships.

## Implications for agencies and employees

The decision of the Appeals Officer indicates that whilst in certain circumstances, such as harassment and bullying, it may be permissible to record conversations (either with an audio recording device or with written notes), “the gravity and the cause would have to be significant to override the general requirement of dealing honestly and openly with the employer and work colleagues.”[[1]](#footnote-1) This is likely to apply in equal part to an employer making similar recordings of employee conversations that are not relevant to the work environment.

1. *Wayne Schwenke v Silcar Pty Ltd T/ASilcar Energy Solutions* 2013 FWC 4513, [70]. [↑](#footnote-ref-1)