



Higher Edu

Judge savages sacking rationale

Patrick Lawnham

WOLLONGONG University's administration has dug in deeper in defence of its claimed right to dismiss academics summarily, enduring a humiliating hearing of its appeal over dissident don Ted Steele.

During the full-bench appeal hearing in Sydney last week, presiding judge Justice Murray Wilcox was scathing about the university's claim that its academic enterprise agreement gave it the right in "extreme cases" to ignore serious misconduct disciplinary procedures.

Justice Wilcox said Wollongong's proposition was "shocking": "Even murderers are entitled to be heard in defence," he said.

Wollongong is appealing against Justice Catherine Branson's ruling last July that it had illegally dismissed Dr Steele by not following procedures in the agreement's section 61 covering misconduct.

Dr Steele was dismissed by vice-chancellor Gerard Sutton on February 26 last year and has been without a salary since.

Professor Sutton said the scientist had put "at serious risk the good name of the university" after Dr Steele refused to back down on his reported claim that he had been told to upgrade the marks of two honours students — a claim the university found to be unsubstantiated.

The university lost an illegal dismissal case brought by Dr Steele and the National Tertiary Education Union in the Federal Court last year.

The NTEU has sought orders for reinstatement and compensation, while conceding formal disciplinary proceedings would then be likely, but these will be ruled on separately.

Last week's appeal hearing reserved its decision.

During the hearing, Justice Wilcox complained the university was wrongly arguing it did not have to give "notice" of impending dismissal in serious cases where it could dismiss someone without having to pay them out in lieu of termination "notice" as it is usually understood. Notification and notice were different, he said.

"We're brought up to regard universities as open, liberal and fair," he said. It was "extraordinary" that a university, "of all employers", was prepared to dismiss employees without giving them a chance to respond.

Wollongong has argued a two-pronged defence before the Federal Court.

In the trial case before Justice Branson last year, it claimed the disciplinary procedures for serious



Seeking justice: Dr Steele outside the Federal Court

Picture: Chris Pavlich

misconduct in section 61 of its enterprise agreement for academics applied only in performance of work duties.

It could therefore rely solely on the federal Workplace Relations Act in dismissing an academic "without notice" for other, serious offences.

The university's appeal counsel, Geoffrey Flick, concentrated on the "alternative power" to dismiss summarily in "extreme cases" as decided by the vice-chancellor.

Justice Branson rejected this argument last year partly because she said it would render unworkable the agreement's section 61 disciplinary provision, which requires a committee inquiry and report to the vice-chancellor if an offence is not admitted within 10 days of notification.

Wollongong appealed after failing to agree on a formula for reinstatement and an inquiry under the agreement's provisions

with the NTEU, for whom the summary sacking was an assault on academic freedom.

In the appeal, the university is relying on the agreement's section 59.2, part of a preamble on "performance management" including misconduct. This says the university "may terminate without notice the employment of an academic found to have engaged in conduct of a kind envisaged in section 170CM(1c) of the Australian Workplace Relations Act such that it would be unreasonable to require the university to continue employment during a period of notice".

Dr Flick told the full bench it would have been "a bit of a farce" to have a committee inquiry when the facts were "not disputed".

Former NSW attorney-general Jeff Shaw, for the NTEU and Dr Steele, argued the agreement had to be read as a whole, and it included the power of suspension.