

JUDGEMENT

**EQUAL OPPORTUNITY TRIBUNAL
OF WESTERN AUSTRALIA**

No. 9 of 1991

**ROGER BOLDRA
Complainant**

-against-

**METROPOLITAN
(PERTH) PASSENGER
TRANSPORT TRUST
Respondent**

BEFORE: Ms C O'Brien - Deputy President
Ms B Buick - Member
Ms K French - Deputy Member

Counsel for the Complainant - Ms H Andrews
Counsel for the Respondent - Ms L O'Connor

HEARD: 17th July, 1992.

REASONS FOR DECISION

(Delivered: 3rd September, 1992.)

JUDGEMENT

On 20 May 1992 the Tribunal handed down its decision in this matter, finding that the Respondent had unlawfully discriminated against Mr Boldra.

The question of any relief was adjourned pending further submissions by Counsel for each party. This decision should be read together with the Tribunal's decision of 20 May 1992. The power for the Tribunal to award compensation is contained in Section 127 of the Equal Opportunity Act.

On 17 July 1992 Counsel for the Complainant and for the Respondent presented helpful submissions to the Tribunal on this issue.

By way of summary, the Tribunal found that the Respondent discriminated against Mr Boldra on the ground of his physical impairment in determining who should be offered employment as a bus operator with Transperth. The Tribunal found that the Respondent had not proved on the balance of probabilities that its conclusion that Mr Boldra would not be able to carry out the work required to be performed in the course of employment as a bus operator was made reasonably on such grounds as having regard to the circumstances of the case and having taken all reasonable steps to obtain relevant and necessary information concerning the impairment.

The practical effect of the Respondent's refusal to allow Mr Boldra to continue with the selection process for a bus operator was that he was deprived of the chance of employment with Transperth as a bus operator.

The Tribunal considers that the Complainant should be compensated in relation to two "heads" of damage. One for the loss of the chance of employment with Transperth and the other for injury to his feelings. The Respondent appears not to dispute this.

However, Counsel for the Respondent submitted that Mr Boldra had not mitigated his loss by attempting to obtain employment as a truck driver in which activity he was experienced. However, the Tribunal agrees with Counsel for Mr Boldra that since being rejected by Transperth, he had made a great deal of effort to find appropriate employment. Indeed, the evidence was that he had received 24 group certificates in (what we take to be) the last financial year (1990-91). The Tribunal was told by Counsel for the Respondent that at the time of submissions on the issue of damages that Mr Boldra was in employment. In these difficult economic times, the fact that a man with a quite significant physical impairment was able to obtain temporary work and ultimately satisfactory employment indicates to us that he has made a real effort to become employed.

There is not much direct evidence of the injury to Mr Boldra's feelings and the humiliation he underwent. This was not explored to any great extent by either Counsel at the hearing.

The Respondent contended that the emotion expressed by Mr Boldra was one of anger not of hurt. However, human emotions cannot be compartmentalised and we consider that simply because Mr Boldra expressed anger does not necessarily mean that he was not also hurt and upset. The fact that he thought the refusal of Transperth to allow him to continue with the selection test was "the end of the story" and that he did not know what to do after that is an indication that he was in a state of distress. Mr Boldra told the Tribunal that he was upset and devastated by Transperth's decision. He had bought some land and was hoping to find steady employment as a bus operator so that he could meet his financial commitments.

The Tribunal appreciates how difficult it is for a person to adequately express and articulate feelings when discriminated against as in this case. Often it is necessary to read between the lines to some extent and often the Tribunal members must draw on their common experience and understanding of their fellow human beings in assessing the degree of injury to feelings and humiliation. However, there is a limit to this especially in this case given the relatively little evidence from the Complainant on this issue. We do consider, however, that the insensitive manner in which Mr Boldra was notified by the Respondent of its decision is also a factor to be weighed in the balance when assessing the amount of compensation.

We consider that in so far as the injury to Mr Boldra's feelings and the humiliation which he experienced as a result of the Respondent's unlawful discrimination should be compensated in the sum of \$650.00.

We now turn to the other aspect of compensation relating to the loss of the chance of employment. The Tribunal was not able to quantify the prospects of Mr Boldra obtaining employment with Transperth had he been permitted to carry on with the selection process as there was a number of factors which had not been addressed by Transperth and which needed to be investigated had Mr Boldra continued on with the selection process. Accordingly, direct economic loss is not in issue and this was conceded by Counsel for the Complainant.

The assessment of compensation for loss of a chance of employment especially when it is not possible to make a finding as to the prospects of actually being offered employment had the selection process not been prematurely terminated is difficult and incapable of assessment by reference to any formula. However, it is trite to say that in our society employment is not only desirable but necessary not only for the good of the community

as a whole and not only because it enable workers to provide a decent standard of living for themselves and their families. Employment is relevant to our sense of worth in the community. So in a real sense Mr Boldra was deprived of a chance of obtaining something which is prized and these days much sought after in our society. In the end, we have decided that the Respondent should pay to the Complainant the sum of \$750.00 to compensate him for the loss of the chance of employment.

Accordingly, our decision is that the Respondent should pay the Complainant a total of \$1,400.00, being \$650.00 for injury to feelings and humiliation and \$750.00 of the loss of the chance of employment with Transperth.