

**EQUAL OPPORTUNITY TRIBUNAL  
OF WESTERN AUSTRALIA**

Matter Number: 27 of 1995

IN THE MATTER OF A COMPLAINT BY:

LYN BRIDSON

Complainant

- against -

KALGOORLIE TAXI CAR OWNER'S  
ASSOCIATION INC

Respondent

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**JUDGMENT**

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BEFORE:            Mr N. Hasluck Q.C.            -    President  
                         Mrs R. Kean                        -    Member  
                         Mr K. Wyatt                       -    Deputy Member

                         Counsel for the Complainant -    Ms L. McComish  
                         Counsel for the Respondent -    Mr D. Johnston

HEARD:            24, 25 and 26 June 1996

REASONS FOR DECISION:            (Delivered:            8 August 1996)

The Complainant, Lyn Bridson, complains of discriminatory conduct on the ground of family status. The complaint arises out of an incident which occurred on 26 December 1993 at premises owned and used by the Respondent Association as a two-way radio base at Kalgoorlie.

### **Kalgoorlie Taxi Car Owners' Association Inc**

The Kalgoorlie Taxi Car Owners' Association Inc ("the Association") is an association incorporated in the State of Western Australia. The rules of the Association reveal that it was constituted to assist, support, maintain and protect the status conditions and interests of its members who are taxi drivers in Kalgoorlie. In accordance with its objects it has established premises at the corner of Dugan and Cassidy Streets, Kalgoorlie which are used as a two-way radio base from which radio operators, known as base operators, communicate with members and drivers via the two-way radio facility.

In the Kalgoorlie district licences to operate taxis are issued by the Department of Transport. The holder of a licence is not obliged to join the Association but the reality seems to be that in order to operate a taxi effectively it is necessary for an owner/driver to have access to the two-way radio facility. It follows that the Association is essentially comprised of those who have taxi licences for the Kalgoorlie district. Upon joining the Association an owner agrees to sign the roll of membership and be bound by the rules and by-laws of the Association. Some owners lease their cars to another person and most make arrangements for the car to be driven not only by the owner or lessee but also by drivers on an alternating shift basis.

The rules of the Association contain various provisions relating to management of the affairs of the Association. By Rule 18 *“Any member who shall be guilty of any practice or misconduct detrimental to the members of the Association can be suspended or expelled from the Association”* subject to observance of a prescribed procedure. There are also rules and regulations to be observed by drivers and operators. By Rule 1 *“All drivers must refrain from entering the waiting room or operators room unless on Association business”*. By Rule 24 *“Any driver using bad language or improper call sign over the air shall be liable to suspension from the radio for a period of up to seven days”*. By Rule 27 *“Any driver found or suspected of buttoning out or jamming out the radio operation shall be suspended from the radio for a period of up to seven days”*. When a penalty is required for any breach of the rules, it must be imposed within 24 hours of the breach.

### **The Complainant**

The Complainant was at all material times married to Robert Bridson. In the early years of their married life they had operated service stations but more recently Robert Bridson had acquired a taxi licence in Kalgoorlie and was a member of the Association. As a consequence of her husband’s involvement with the Association the Complainant had acted as a base operator and was skilled in the use of the two-way radio system. This employment had arisen in a casual way. The practice was for operators at the base to recruit prospective base operators as and when the need arose by informal enquiries as to who might be available to fill the position. The Complainant ceased working as a base operator in 1984 because her husband found it inconvenient for her to occupy such a position.

Mr Bridson came to hold the position of Treasurer of the Association and at all material times was a member of its governing committee. This caused a degree of friction on the home front because he was accustomed to bring home the books of the Association and spend many hours attending to the affairs of the Association which might otherwise have been devoted to his family. It was common ground at the hearing that relations between the Complainant and her husband progressively deteriorated, largely because of his excessive drinking which was accompanied by various physical altercations. In July 1993 the Complainant separated from her husband and for a period was living in a caravan park in the Kalgoorlie district. Her husband caused trouble at the caravan park where she was living and eventually she was obliged to apply for a restraining order pursuant to provisions of the Justices Act 1902. The order in question dated 31 August 1993, required that Mr Bridson be restrained from contacting or attempting to contact the Complainant, causing or attempting to cause damage to the Complainant's property, causing personal injury to the Complainant, behaving in a provocative or offensive manner towards the Complainant, entering upon any premises occupied by the Complainant, loitering in the vicinity of any premises occupied by the Complainant. He was also required to keep the peace towards the Complainant. As a consequence of these events the Complainant was in a constant state of anxiety and had sought advice and treatment from a local medical practitioner, Dr Duck. The medical practitioner had prescribed various sedatives.

### **The Christmas period**

The presence of the restraining order did not sever the relationship between the Complainant and her husband entirely. The taxi being driven by Mr Bridson was regarded as jointly owned by the parties and at his suggestion

arrangements were made for the Complainant to drive the taxi on weekends. The Complainant's evidence suggested that she drove the taxi on Saturdays and Sundays. Mr Bridson was uncertain in evidence whether she drove on Sundays but was not in a position to deny the assertion positively. The Tribunal is satisfied that in the period immediately preceding the incident which occurred on 26 December 1993, the Complainant was driving the car on both Saturdays and Sundays. This arrangement did not involve communication between the parties because the Complainant would simply turn up and collect the car from Mr Bridson's place of residence at 57 Addis Street, Kalgoorlie and return the car with petrol replenished at the end of the shift. According to the Complainant, the arrangement allowed her to keep what she had earned and her income from this work in the period immediately before the incident was at the rate of \$300 each weekend.

Shortly before Christmas the Complainant was invited by one of the base operators to do some casual work at the base during the Christmas/New Year period. She would be employed for up to 15 hours over 3 shifts, to fill in for operators who were travelling to Perth during that period. Such a request was consistent with the practice whereby the base operators, rather than office bearers of the Association, made arrangements to keep the radio base staffed on a regular basis.

The Complainant apparently had some doubts about the wisdom of this course because she mentioned the matter to one or two friends. According to her evidence, she also mentioned the matter to the President of the Association, Mr Robustellini, when she met him at work one day. He said that the casual work she was about to undertake should not present a problem because her husband had no occasion to visit the base. The Complainant also took steps to

ensure that her attendance at the base did not coincide with her husband's shifts as a driver.

There was a degree of controversy at the hearing as to whether Mr Bridson was informed that his wife would work as a base operator. According to him, she mentioned the matter to him outside his residence shortly before Christmas day. On Christmas day, notwithstanding the restraining order, both the Complainant and Mr Bridson agree that they went for a Christmas meal at their daughter's house. According to the Complainant, they kept their distance from each other and no words were exchanged. Mr Bridson said in evidence that while at their daughter's house he told his wife he objected to her working as a base operator and obtained a promise from her that she would not undertake the work. The Tribunal will return to this aspect of the matter later. It is common ground, however, that irrespective of what was said or not said at the daughter's house on Christmas day, on the following day the Complainant did commence an evening shift at the base as a two-way radio operator.

### **26 December 1993**

Mr Bridson said in evidence at the hearing that he first became aware that his wife was actually working at the base when he heard her on air. He agreed that he was not actually working a shift on that day. Nonetheless, on his evidence, he was annoyed by the breach of the promise that he claimed had been made to him. He agreed in answer to questions put to him that he was not necessarily upset simply because she was working at the base. What angered him was the fact that a promise had been made to him, and that promise had been breached. He agreed that he had been drinking on the day

in question and he also agreed that he made various abusive telephone calls to his wife. Eventually, he went to the base to confront her and to insist that she did not continue as an operator. He agreed in evidence that a scuffle ensued and in due course he departed. It was common ground at the hearing that his visit to the base and the commotion which followed represented an infringement of the Association's rules and amounted to a breach of the restraining order.

The evidence given by the Complainant put the matter more strongly. She said that on the way to commence her shift she noticed her husband's car at the RSL club where he was accustomed to drink. About an hour into the shift she began receiving abusive telephone calls from her husband in which foul language was used. He also interfered with her work on the two-way radio by "buttoning out" some of the calls. He eventually came down to the premises and physically assaulted her by dragging her out of the operator's chair into an adjoining room, pulling her hair and throwing her against the wall. The severity of the assault was such that she was left with bruises on her body. After he had departed, she returned to the microphone, determined to finish off the shift that had been assigned to her. Nonetheless, fearing for her safety, she put through a telephone call to another operator, Joy Nugent, and a short time later Mrs Nugent arrived at the premises to keep her company. The abusive calls and interference by her husband continued.

In the meantime, another driver, Robin Bowden, sensed that the Complainant was upset and was making mistakes in the calls she was giving to drivers. Robin Bowden was at Kalgoorlie airport at the time and happened to notice the President of the Association, Mr Robustellini, passing by. She called out to him that it seemed as though there was some trouble at the base. Mr

Robustellini confirmed in evidence that as a result of this information he went straight to the base where he found the Complainant operating the two-way system and with Mrs Nugent nearby. The Complainant told the President what had happened and at that moment another call came in from Mr Bridson. Mr Robustellini agreed in evidence that he took the telephone receiver and quickly concluded that Mr Bridson was misconducting himself. He therefore told the errant member of the Association to calm down. Mr Bridson agreed in evidence that he did have an exchange of this kind with the President. He also agreed in evidence that he had no lawful reason to visit or be at the base on the night in question.

According to Mr Robustellini, he then told the Complainant to leave the microphone as the best means of solving the situation but she refused to do so. According to him, she said "*I will not step out of the chair because if I do it will mean that he (meaning her husband) has won*". The Complainant denied making this statement.

The President said in evidence that he then advised the Complainant to telephone the Police but she refused to do so and went on working on the two-way radio system. The President himself proceeded to telephone the police and in due course they arrived at the taxi base premises. The President said in evidence that he gave the police officers a brief account of what had happened and left them to interview the Complainant. He expected her to complain of the assault and breach of the restraining order but apparently she did not do so.

The Complainant agreed in evidence that she spoke to the police officers and did not insist that her husband be charged with assault. After the police



officers left she went on working as the two-way base operator. It was a job she wanted to do and, on her view of the matter, because she had done nothing wrong, she was entitled to continue. She said in evidence that shortly before her shift ended the President brought in someone to replace her. By that time, as she had had enough for one night, she agreed to relinquish her place. The Tribunal pauses to note that the Complainant was not very clear in her evidence on this aspect of the matter and there was other evidence which suggested that the operator who was scheduled to take over at the end of her shift arrived earlier than expected and it was for that reason that she ceased work before the shift finished. It was common ground at the hearing, however, that she did go on working as base operator after having been interviewed by the police, and finished work shortly before her shift ended. She was certainly upset by what had happened.

### **The Committee Meeting**

On the morning of the next day, Monday 27 December 1993, the President of the Association convened a meeting of the governing committee to consider what should be done about the incident that had occurred. Mr Bridson, as Treasurer, would normally have been a member of that committee but, as a protagonist in the incident, he was not invited to the Committee meeting immediately.

There were differing accounts as to what took place at the committee meeting. According to the evidence of the President, discussion focused on the need to discipline Mr Bridson for his use of bad language and his abuse of the operator contrary to Rule 24 of the Association's rules. As a result of his exchange with the Complainant the previous night, the President apparently harboured a

suspicion that the Complainant was trying to 'get at' her husband by working at the base and may therefore have exaggerated the nature of the incident that had occurred. Certainly, the committee seems to have taken the view that the assault which had taken place should be viewed as a "domestic" and it was neither necessary nor appropriate for the committee to discipline Mr Bridson for that aspect of the matter. It was up to the Complainant to enforce the restraining order if she wished to do so.

Having formed the view that some disciplinary action was necessary, the President arranged for Mr Bridson to attend the meeting. According to the President, Mr Bridson arrived, promptly admitted his guilt, and was informed of the penalty which he accepted without demur. This version of events was not consistent with other evidence. According to Mr Bridson, he came before the members of the committee and outlined his version of the story, during the course of which he made reference to the undertaking given to him by his wife not to work at the base. The Committee was apparently told that the same thing might happen again. Against this background, the committee proceeded to impose a penalty pursuant to rule 24 that he be suspended from driving for a week, being the maximum allowable under that particular rule. The committee was of the view, however, that the sentence should not take effect until the first week of January because there was a need for all taxis in the Kalgoorlie area to be on the road during the busy Christmas and New Year period.

It was common ground at the hearing that no attempt was made to obtain information from the Complainant as to how she saw the matter. The committee came to the conclusion that she should not be allowed to continue to work at the base in view of the stance adopted by Mr Bridson that if she

continued to work as an operator further incidents might occur. The minutes of the meeting were put in evidence and reflected the determination to discipline Mr Bridson pursuant to rule 24 but there was no reference to the decision to terminate the employment of the Complainant. Later on that day the President telephoned the Complainant and advised her of the committee's decision. He told her that she would be paid for the 15 hours work she was to have performed, even though she had only completed the first of the proposed shifts. In effect, at that moment and by that call, he terminated her employment.

The Complainant was grievously upset by the news she had just received. It seemed to her, having regard to the lenient nature of the penalty imposed upon her husband, and the fact that her employment had been brought to an end, that she was being treated as the wrongdoer. She prepared a letter protesting the decision and on the following day consulted another driver, Mr Frank Regan to see whether he could offer any assistance. Mr Regan prepared an anonymous circular letter denouncing the governing committee's decision which he then circulated to various members of the Association together with a copy of the Complainant's letter of protest.

### **Subsequent events**

The Complainant was distressed by what had occurred and concluded that the Association was unlikely to take further action against her husband.

She conferred with solicitors and as a consequence the law firm McKenzie Lalor wrote to the Association on 5 January 1994 setting out the nature of her complaint against the Association. The solicitors submitted that their client

was entitled to an explanation as to whether she would be employed again as a relief radio operator and, if not, why not. She was also entitled to some compensation for loss of wages suffered by her in relation to the balance of shifts she was to perform as a radio operator and clarification and details of the penalties imposed. The solicitors went on to say:

*“Further, we consider that the Association has failed to discharge its obligation to our client as a radio operator, given that many of its rules are clearly designed to protect the safety and integrity of those operators. Our client was placed in a dangerous situation while at work.”*

There were further exchanges of correspondence which did not produce a result satisfactory to the Complainant and in due course by letter dated 14 February 1994 the Complainant lodged a complaint with the Equal Opportunity Commission.

The Commissioner wrote to the Association setting out particulars of the complaint and further exchanges took place concerning the circumstances of the matter. In that regard it is material to note a letter from the President of the Association to the Equal Opportunity Commissioner dated 25 May 1994 in which Mr Robustellini said:

*“At approx 7.55 p.m. I was at the airport and was made aware of a problem at our operations so I went straight into the base and told the Complainant that I would relieve so that in so doing it would diffuse the situation but her reply to me was, I quote “I will not step out the chair because if I do it will mean that he has won”. How you may interpret it may be different to me but in our opinion it became a personal vendetta...if she had heeded my request the unfortunate incident would not have taken place and as for the punching and shoving it is a matter of conjecture. If it really*

*happened it is her word against his because on my arrival at the base she was there and he was not and nothing was there to show that any scuffling had taken place and I believe that it takes two to make an argument”.*

At a later stage the solicitors for the Respondent Association wrote to the Commissioner by letter dated 30 November 1994 in these terms:

*“It had apparently been agreed between the Complainant and her husband that given the restraining order it would not be appropriate for her to work at the taxi base...by all accounts the breakdown of the Complainant’s marriage has been a particularly acrimonious affair and attended by various court applications. It is equally clear that the Complainant was fully conscious of her husband’s desire that she not work at the taxi base. Notwithstanding this knowledge and her promises and undertakings she commenced work in what could only be described as a highly provocative act directed towards her estranged husband in circumstances where the existence of the restraining order meant that he could not lawfully carry out his occupation.”*

At a later stage the same letter said of behalf of the Respondent Association:

*“With respect to the penalty imposed on the Complainant’s husband, we fail to see any relevance in that regard to this matter, however, for the Complainant’s information a meeting was convened to consider what action if any should be taken against him by the Association. He was afforded the right to be heard in his defence. The deliberations as to his (Mr Bridson’s) penalty were conducted in his absence and then a penalty was imposed.”*

The Tribunal pauses to note that these letters reflect a view of the matter which was evident in testimony given before the Tribunal by Mr Robustellini and Mr Bridson, namely, that a substantial degree of blame attached to the

Complainant - her actions being described as 'provocative' and 'a personal vendetta' - and that Mr Bridson was afforded an opportunity to present his side of the story to the disciplinary committee on the day following the incident.

In the meantime, while this correspondence was taking place, the Complainant was in a state of upset and decided not to continue driving the taxi she jointly owned with her husband on weekends as had been her previous practice. She considered that further altercations might occur and it now seemed to her that the Association was not likely to intervene on her behalf in order to give her any protection. Later, in May 1994, she eventually found alternative employment at a supermarket in Kalgoorlie. A schedule of financial loss was presented as part of her case before the Tribunal setting out a claim for loss of remuneration for 17 weeks at \$300 per week amounting to \$5100 in all representing the income she might otherwise have earned by continuing to drive the jointly owned taxi.

At the hearing, evidence was presented on behalf of the Complainant by Dr Duck who had treated her previously. His report dated 2 October 1994 said:

*This is to certify that I have had occasion to counsel Mrs Bridson in relation to her marital issues etc, and can attest that the events leading to and arising from her claim with the Equal Opportunities Commission have had a serious effect on her health: physical, psychological and social."*

This report was supplemented by a more recently written report which was produced at the hearing. Dr Duck said in evidence that he did not find it entirely surprising that she did not consult him immediately after the incident

because he was away during the month of January and, further, a consequence of her distressed state was likely to be that she would find it difficult to mingle socially and to obtain counselling in respect of her distressed state.

### **Statutory Provisions**

Section 35A of the Act provides that a person discriminates against another person on the ground of family responsibility or family status if, on the ground of the family responsibility or family status of the aggrieved person; the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person who does not have such a family responsibility or family status.

By Section 4 family responsibility or family status in relation to a person means having responsibility for the care of another person other than in the course of paid employment, the status of being a particular relative or the status of being a relative of a particular person.

By Section 35B it is unlawful for an employer to discriminate against a person on the ground of that person's family responsibility or family status in determining the terms and conditions of employment that the employer affords the employee or by Section 35(2)(c) in dismissing the employee. By Section 5 the discriminatory conduct need not be the sole or dominant reason underlying the act complained of.

The term "employment" includes part-time and temporary employment, work under a contract for services and work as a state or employee. Thus, clearly, in

the circumstances of the present case, notwithstanding that the Complainant was engaged on a casual basis, she was an employee.

Later provisions of the Action including Section 160, 161 and 162 make provision for vicarious liability whereby an employer can be responsible for the act of its servants and agents. In the present case, Counsel for the Association conceded at the hearing that the Association would accept responsibility for the liability, if any, arising from the acts of the servants and office bearers of the Association in relation to the matters complained. Accordingly, this aspect of the matter need not be considered further.

### **Principles**

The Act has contained a prohibition against discrimination on the grounds of a person's marital status since its inception in 1984. In the present case, however, the Complainant relies upon discrimination on the ground of family status contrary to Section 35A of the Act and related provisions which were introduced by amendments to the legislation carried into effect in 1992. It follows that there are comparatively few decided cases bearing upon the application of the new concept. Nonetheless, principles drawn from decided cases in other areas of infringement are of assistance to the Tribunal in reviewing the circumstances of the present case.

The decided cases show that the Complainant bears the burden of proving on the balance of probabilities that he or she has been the victim of unlawful discrimination. In the absence of direct evidence, inferences can be drawn from the primary facts, although discrimination cannot be inferred when more probably innocent explanations are available on the evidence. It is not necessary



to show a purpose or intent to discriminate, because the statutory provisions extend to conduct arising from thoughtlessness and neglect, although it is necessary to establish a causal connection between the alleged discriminatory conduct and the circumstances of the complaint. See Williams v Council of the Shire of Exmouth(1990) EOC 92-296; Waters v Public Transport Corporation (1991) 173 CLR 349.

The cases also indicate that a comparison can be drawn between the situation of the Complainant and the situation of a notional person in the same or a not materially different set of circumstances, although the notional person should be presumed to have characteristics of the kind actually associated with the Complainant. See Bear v Norwood Private Nursing Home (1984) EOC 92-019; City of Perth v People Living with Aids (WA) Inc (1996) unreported Full Court of WA.

It must also be kept in mind that the legislation reflects an underlying notion that every individual is entitled to exercise his or her rights and this extends to the exercise of rights at his or her place of employment. See Tully v Ceridale (1990) EOC 92-319 at 71,869.

### **Pleadings**

As a consequence of orders made prior to the hearing Points of Claim were filed and served on behalf of the Complainant and these were answered by Points of Defence filed and served on behalf of the Association.

The points of claim reflect the narrative set out above. In paragraph 7 it was pleaded that at a special meeting of the governing committee of the Respondent

on 26 December it was decided that the Complainant would not be provided with further work. The Complainant was also informed that Mr Bridson had threatened to repeat his behaviour of 26 December should the Complainant continue to be employed by the Respondent.

The Respondent by its points of defence pleaded, *inter alia*, that the invitation to the Complainant to be employed for up to fifteen hours over three shifts during the period in question “*was made without the members of the Respondent’s governing committee’s awareness or approval*”. In paragraph 6 one finds foreshadowed the evidence given by the President, Mr Robustellini, that when he asked the Complainant to leave the operator’s chair on the evening of 26 December 1993 she said that she would not step out of the chair because to do so would mean that her husband “*has won*” or words to that effect.

In paragraph 7, in regard to the events of the following day, it is said that the President advised the Complainant “*that she would be paid in full for fifteen hours work but they would not be able to offer any more work to avoid putting her in a position of conflict with her estranged husband*”. The Respondent pleads that the Complainant was paid for six hours work on 26 December 1993 and for a further nine hours on 16 January 1994. In other words, as emerged from the evidence, the Association finished up paying for work that was not actually performed in view of its decision to terminate the informal arrangements made with the Complainant.

The Respondent admits that Mr Bridson’s membership of the Association was not terminated and that the penalty imposed upon him was a seven day suspension for verbal abuse on the radio.

In paragraph 9 the Respondent goes on to say, in answer to the allegation that the Complainant was treated less favourably than it would treat a person who did not have the same family status as the Complainant, that as the Complainant was merely requested to substitute for a short period while operators were on holiday, there was no expectation that there would be any further work for the Complainant over and above the fifteen hours. The arrangement was not arranged nor approved by the Respondent. There was no other employment available at the time but the Complainant was informed that if she applied to the Respondent she would be considered in the same manner and on the same basis as any other applicant. The Respondent denied that the Complainant had suffered any loss or damage.

### **Findings**

In reviewing the pleadings it is material to note that the Respondent places an emphasis upon the informal and rather transient nature of the Complainant's employment as a two-way radio operator during the Christmas period. In answer to the central allegation that she was deprived of further work as a consequence of discriminatory conduct it was said, by implication, both in the pleading and at the hearing, that no further work was available. There is also a suggestion that because the governing committee had not approved the informal arrangements it was questionable whether the Complainant could be characterised as an employee.

It is undoubtedly the case that the transient nature of the working arrangements complicated the situation and quite possibly caused the Association to pursue a course of action which it would not have pursued had the operator involved in the incident at the base been a long standing employee. On any view of the

matter, put starkly, a person lawfully working at the Association's base was physically assaulted by a member of the Association who had no reason to be there, and a penalty was then imposed which related only to some earlier misconduct on the use of the radio system and did not purport to cover the circumstances of the assault. If a long standing employee without any connection to the driver in question had been involved in such an incident then there can be little doubt that the Association would have taken a far more serious view of the matter. As it happened, however, because the Complainant's employment was of a casual kind, an easy solution to the situation was available and quickly applied, namely, to terminate the services of the casual operator. Nonetheless, now that the matter has come before this Tribunal, it becomes necessary to determine what the nature of the employment was and whether the Complainant in question was entitled to carry out her duties free from molestation.

The Tribunal is satisfied that the Complainant was employed by the Association at the relevant time. The term "employment" as defined by the Act includes part-time and temporary employment and work under a contract for services. It was quite apparent from the evidence that the governing committee of the Association allowed the operators at the base to engage whatever operators were required to undertake the appointed task and the Complainant was employed in that manner for reward and was entitled to enjoy the same working conditions as the other operators, even though her employment was to be for a brief period only. This conclusion is reinforced by the fact that after the incident the Association obviously felt obliged to pay her for the full fifteen hours contracted for even though, because of the unfortunate incident at the base, the balance of the services were not provided.

The Tribunal generally found the Complainant to be a reliable witness. It is satisfied on the balance of probabilities that she spoke to the President prior to taking up the temporary position and that he did not make known any objection to what was proposed. The Tribunal is also satisfied that there was no discussion of the kind contended for by Mr Bridson prior to 26 December amounting to a promise that the Complainant would not work at the base as an operator. The Tribunal was not impressed by Mr Bridson's evidence on this aspect of the matter and in various respects considered that his recollection of subsequent events was faulty. The President, Mr Robustellini was obviously protective of the Association's best interests as he perceived them, and his view of events was clearly coloured by the opinion he formed at an early stage that the Complainant was acting in a provocative manner by wishing to work at the base and was therefore partly to blame for what occurred. Accordingly, where there is a conflict between the evidence of the Complainant and the President, the Tribunal prefers the evidence of the Complainant.

This brings the Tribunal to the evening of 26 December 1993. The Tribunal is satisfied that Mr Bridson misconducted himself on air in the manner outlined by the Complainant in her evidence and in due course, without forewarning, came to the premises where she was working and assaulted her. When the President of the Association attended at the premises subsequently it is apparent that he failed to treat the Complainant's protestation with sufficient gravity and, because of her refusal to relinquish the operator's chair at his suggestion, thereafter attributed part of the blame for what had occurred to her. The Tribunal has little doubt that the President's view of the matter was communicated to his fellow committee members at the disciplinary meeting the next morning.

At that meeting the thought seems to have taken root, which was echoed again in Counsel for the Respondent's closing address, that the presence of the restraining order relieved the committee of any obligation to investigate or pass judgment upon the circumstances of the assault, although it seems to have been accepted that an assault had occurred and that the untimely visit to the premises was contrary to the rules of the Association. If this line of thinking was pursued to its logical conclusion then employers generally could seek to be excused from failing to avert violence or unsafe practices at the workplace on the grounds that those at risk were at liberty to exercise a variety of civil remedies in order to protect themselves. This, of course, in the contemporary community is not a reasonable approach. Employers generally take steps to ensure that the workplace is not disrupted by physical altercation or arbitrary acts of violence and in the circumstances of the present case the Tribunal is satisfied that the Complainant was treated less favourably than another notional employee of the Association would have been because, on the assumption that another employee had not been acting in a provocative manner, the likelihood is that such an employee would not have been dismissed. As it happened, the Complainant lost the opportunity to have acquitted herself in a way which might have led to further work, simply because she was attacked by a visitor to the premises who had no lawful business to be there.

The Tribunal does not accept the notion conceived by the President, and subsequently acted upon by the governing committee, that the Complainant was acting in a provocative way or involved in some kind of "personal vendetta" directed towards her husband. She had separated from her husband and, being obliged to earn a living, was entitled to exercise such skills as she had, one of which was her experience as an operator at the base. Witnesses at the hearing generally agreed that she was competent to act as an operator and no one

doubted that had she been left alone on the night in question she would have carried out the task assigned to her with skill and assurance. On the Tribunal's earlier finding she had given no promise not to work at the base and in fact had taken steps to ensure that her shift would not overlap her husband's usual shift as a driver. She, like any other operator, was entitled to assume that drivers in the vicinity, including her husband would obey the law, and, in her case, one component of the situation, was the presence of a restraining order which was there to protect her. At a later stage it was for her alone to decide whether it would be politic, having regard to the full range of relevant factors, to enforce the order by laying a complaint against her husband on that ground. Her failure to lay a complaint with the police did not necessarily relieve the Association as an employer of its obligation to provide a secure workplace or to invoke the Association's own rules.

The Tribunal now turns to the question of whether there was a causal link between the family status of the Complainant and the principal act complained of, namely, the termination of employment. The most obvious case of discrimination on the ground of family status would be a decision to dismiss an employee if it came to light that the employee was a married woman with a responsibility for bringing up several children and this became the basis upon which the employer decided to bring the working relationship to an end. In the course of argument in the present case, it was put to the Tribunal that the recently introduced concept of "family status" would extend to a decision to dismiss a person because they were connected by family ties to a notorious criminal or a prominent politician associated with a particular political cause. The definition of "family responsibility" or "family status" in relation to a person means and includes "the status of being a relative of a particular person". In such a situation, so the argument ran, the affected employee would

not have been judged on his or her own merits, being a precept upon which the Equal Opportunity Act is based, but upon characteristics imputed to the employee in question.

The Tribunal has taken account of the submissions made in closing and is satisfied that in the present case the dismissal was effected essentially on the ground that the Complainant was a relative of a particular person, namely, Robert Bridson. Because of his position as a member and office bearer of the Association, and his propensity to be involved in physical altercations with his wife, the most convenient course was to terminate the Complainant's employment. The President of the Association argued that he, and by implication his fellow committee members, were principally concerned for the welfare and physical safety of the Complainant and it was for this reason that the dismissal was effected. The Tribunal was not convinced by this plea. The Tribunal was left with the clear impression that the Committee simply decided to take the line of least resistance, bearing in mind especially that there was an indication from Mr Bridson that the same thing might happen again, and decided to get rid of the Complainant. In short, because the assailant was the Complainant's husband her legitimate grievance as an employee was ignored. The Respondent Association capitulated to the bully.

The proposition was put strongly by Counsel for the Respondent in closing that the operative cause of the dismissal was the Complainant's failure to lay a complaint against her husband for breach of the restraining order and she was therefore the author of her own misfortune. It follows from earlier discussion, however, that the Tribunal does not accept this view of the matter. She was entitled to exercise her rights at the workplace as an employee on an



unconditional basis and on the assumption that the law and the rules of the association would be observed.

### **Relief**

Section 127 of the Act permits the Tribunal to award damages not exceeding a prescribed figure by way of compensation for any loss or damage suffered by reason of the Respondent's conduct. Various decided cases, including Hall v Sheiban (1989) EOC 92-250, have indicated that awards should not be nominal otherwise the importance of the legislation might be disregarded.

In the present case, the Complainant presented evidence to the Tribunal that she was severely upset by what had occurred. It was apparent that in recent years she had an ongoing history of anxiety as a consequence of the deteriorating relationship with her husband and this preceded the events the subject of the present complaint. Nonetheless, it was apparent from the evidence, and corroborated by the reports presented by Dr Duck, that notwithstanding a pre-existing state of anxiety, that the incident complained of and the termination of the employment had a significant impact upon the Complainant. Having been told by the President on the day after the incident that she was to be paid out and that no further work was available, it was immediately apparent to her that the Association was indifferent to her situation and would probably not protect her if any further altercation occurred. This not only had a profound effect upon her self-esteem but also caused her to give up driving the jointly owned taxi for several months thereafter. A friend of the Complainant, Lynette Scarlett, confirmed that the Complainant was badly affected by the incident and subsequent dismissal.

The Tribunal is satisfied that she felt degraded by the dismissal and this severely effected her self-confidence and led to a period of anguish. Against this background, the Tribunal awards to the Complainant by way of general damages the sum of \$5000 and also allows to her the sum of \$5100 by way of special damages in respect of the period 1 January 1994 to 30 April 1994 during which she would otherwise have received an estimated income of \$300 per week for seventeen weeks by driving the jointly owned taxi.