

EQUAL OPPORTUNITY TRIBUNAL  
OF WESTERN AUSTRALIA

Matter Number 28 of 1995

IN THE MATTER OF A COMPLAINT BY:

ARTHUR REGAN

Complainant

against

KALGOORLIE TAXI CAR OWNERS  
ASSOCIATION INC

Respondent

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JUDGMENT

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Before:

Mr N P Hasluck, QC

President

Mrs R Kean

Member

Mr K Wyatt

Deputy Member

Counsel for Complainants

Mr D McManus

Counsel for Respondent

Mr J Johnston

Heard:

25-26 February 1997

REASONS FOR DECISION (delivered: 11 March 1997)

The Complainant, Arthur Regan, complains of discrimination by the Respondent Association contrary to the provisions of the Equal Opportunity Act 1984 ("the Act") on the ground of family status. The inquiry was closely related to complaints brought against the Association by Lyn Bridson (No 27/95), Frank Regan (No 27/95) and Minda Regan (No 26/95). The full history of the matter is set out in the Bridson judgment and the Frank and Minda Regan matters. Accordingly, with a view to avoiding repetition, the Tribunal in this judgment will adopt the reasoning and findings in the preceding judgments and proceed quickly to the findings required to complete the inquiry concerning the complaint of Arthur Regan.

### Overview

The Bridson complaint arose 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. Mrs Bridson was involved in an altercation with her husband at the base and was subsequently dismissed. She brought a complaint of discriminatory conduct against the Respondent Association on the ground of family status and eventually obtained an award of damages.

Frank Regan lodged a complaint pursuant to provisions of the Act in which he alleged that he had been victimised by the Association as a consequence of circulating a letter in support of Mr Bridson's grievance. Minda Regan lodged a complaint alleging that she was subjected to various detriments because she was Frank Regan's wife. A central issue in each of the three complaints was whether the incident involving Mrs Bridson brought about the matters complained of or whether the events surrounding this incident should be regarded as part of a broader commercial dispute between the three Regan complainants and the Respondent Association.

It is apparent from the earlier judgments that in August 1994, after a period of disagreement with the Association, the Regan group, including Arthur Regan, applied for additional part-time taxi licences in the Kalgoorlie district, and soon afterwards were expelled by the Association. It is against this background that Arthur Regan's claim for relief has to be determined. The

Tribunal has previously observed in relation to the Minda Regan matter that the application of section 5 will afford relief in circumstances where the conduct complained of includes a sufficient element of discriminatory conduct as one of several matters. Unlike the situation in regard to victimisation (as in the Frank Regan case) it is not necessary to establish that the discriminatory conduct complained of was the dominant or substantial reason for the doing of the act.

### Arthur Regan

Arthur Regan was the brother of Frank Regan. He was employed for a period of six to seven years as a taxi driver by various members of the Respondent Association and was in July 1994 employed by Eric Lockyer (a member of the Association) as a taxi driver driving night shift. Arthur was part of the Regan group that applied to the Department of Transport for the issue of additional taxi plates in the Kalgoorlie district in August 1994. According to him, when he mentioned this to Eric Lockyer the latter said that he did not think it was a good idea for Arthur Regan to keep working for him because the Association would put pressure on him (Lockyer) if Arthur Regan continued to work for him.

It formed part of the Complainant's case that after the events in August the Respondent Association said that it did not want either Frank Regan or Arthur Regan to drive car 24. On or about 16 October 1994 the Association suspended Arthur Regan from receiving radio work. On his case he was not able to obtain employment as a taxi driver with any member of the Association after that time. In January 1995 the committee voted to allow him to drive if he paid \$1,800 in legal fees incurred by Lockyer and abandoned all claims against the Association but Arthur Regan was not willing to comply with their conditions. He contended that he was treated less favourably on the ground of his family status than a driver of different family status would have been treated, that is to say he was allegedly treated less favourably because he was the brother of Frank Regan and brother in law of Minda Regan.

His case at trial included reference to conversations with two members of the Association, Mr Wolowicz and Mr McDonald, which suggested the

Association was acting against him because of his family connections. He also drew attention to the resolution passed by the Association on 11 September 1994 whereby any person who gained the control of taxi plates from outside the Association was liable to a joining fee of \$100,000. The size of the fee, he contended, was further evidence that the Association was hostile to those connected to Frank Regan.

The Association denied liability in respect of these matters. It admitted that a resolution of the kind just mentioned was passed on 11 September 1994 but contended that the joining fee of \$100,000 was reasonable in the circumstances given that the current market rate for a taxi licence was between \$50-150,000. It also said that Arthur Regan and his family members were not the only applicants for new taxi licences. The Respondent contended that Arthur Regan purported to drive and use the facilities of the Association while at the same time actively participating in conduct prejudicial to the Association and its members and this was the reason the Association eventually expelled him.

Counsel for the Respondent cross examined Arthur Regan about letters he wrote to the Equal Opportunity Commission in August 1994 which made no mention of being discriminated against on the ground of family status and referred in essence to his being treated unfairly because he was an applicant for one of the additional licences.

### Findings

In the Tribunal's view, Arthur Regan was a reliable and credible witness. In the small taxi community he was known to be Frank Regan's brother and this fact is conceded on the pleadings and was conceded at the hearing. It emerges from the evidence that he had been driving for many years and prior to August 1994 was in good standing with the Association and the owner of the car he drove, Eric Lockyer. The Tribunal is satisfied that when Arthur Regan identified himself to Eric Lockyer as an applicant for an additional licence and as a member of the Regan Group he was told he could not go on driving. The various detriments that followed leading eventually to the expulsion on 16 October 1994, were a consequence of his family link to Frank Regan. It is significant that due process was not accorded to Arthur

Regan prior to his expulsion. This also suggests that the Association was determined to exclude him. After the expulsion, without access to the radio network, and given the Association's attitude, he was virtually rendered unemployable.

The Tribunal accepts that in moving against Arthur Regan the Association may have been motivated to some extent by commercial considerations - the perception that Arthur Regan, as an applicant for a part-time licence was a threat to the status quo. Nonetheless, the Tribunal finds that he was treated less favourably than other drivers linked to the Association by the convention concerning observance of the Association's rules principally because his brother and sister in law were involved in a dispute with the Association. In these circumstances the effect of section 5 is to provide an avenue of relief.

### Relief

Arthur Regan had been a reliable driver for many years, and was then excluded. This had an effect on his family life and sense of self esteem. The decided cases show that awards must be of sufficient size to underline the importance of the Act. Accordingly, the Tribunal will award \$1,000 by way of general damages.

As to loss of earnings, in this case also the Tribunal is confronted by a lack of compelling evidence. At the hearing Counsel for the Complainant contended for the figure of \$5,531 being the difference between Arthur Regan's net income in 1993/94 when he had an uninterrupted year of taxi driving and his net income in 1994/95 when he was effectively unemployed in the period between his expulsion and the end of the financial year. It became apparent, however, that income from other sources had to be brought to account. Further, Arthur Regan himself seemed to be unable to present effective verbal testimony as to what he had arguably lost because, as it was conveyed to the Tribunal by him and by Counsel, this would depend on the arrangements made with various owners and lessees. In the final analysis, after bringing to account income from other sources, the only figures the Tribunal can sensibly rely on are the figures disclosed in Arthur Regan's tax returns for taxi driving which show a net income of \$12,995 for 1993/94 as compared with \$11,835 for 1994/95 being the period during

which he was unemployed for a substantial period - a loss of \$1,160. The Tribunal has a sense that Arthur Regan's loss of earnings may actually be larger than the amount representing the difference but in the absence of cogent evidence is obliged to adopt this figure. It does not accept that there was a failure to mitigate. Accordingly, Arthur Regan will be awarded \$1,000 general damages and \$1,160 for loss of earnings making a total award of \$2,160. There will be no order as to costs.