Amaltal Fishing Company Ltd v Nelson Polytechnic [1996] NZAR 97

1) Reference Details

Jurisdiction: Complaints Review Tribunal, New Zealand
Date of Decision: 1 December 1996
Case Status: Concluded

2) Facts

The defendant, Nelson Polytechnic, ran fishing cadet courses as part of its contract with the Education and Training Support Agency (ETSA). Nelson Polytechnic would reserve exclusively 4 of the 14 places in the first fishing cadet course, to start in January 1994, and the entire 14 places in the June 1994 course for persons of Maori and Pacific Island descent. The ETSA would in turn pay the fees for such persons, which were identical to those fees paid by non-quota trainees. The plaintiff, Amaltal Fishing Co, sometimes sponsored candidates for the courses. One of its employees applied for and was turned down for the course beginning in June. A further 9 candidates for the course beginning in January were turned down. The defendant had published an information sheet which stated clearly that ETSA funded places were reserved for Maori or Pacific Islanders in the first course as were all places in the second course.

3) Law

- Race Relations Act 1971
- Human Rights Commission Act 1977
- Human Rights Act 1993
- Education Act 1989

4) Legal Arguments

Amaltal Fishing Co alleged that the quota's were a breach of s4 of the Race Relations Act 1971 (RRA), s22 of the Human Rights Commission Act 1977 (HRCA) and the Human Rights Act 1993 (HRA). The plaintiff also alleged that the published information sheet breached s7 of the RRA and s32 of the HRCA, which were subsumed within the Human Rights Act as of February 1994. Those sections made it unlawful to publish an advertisement which declared an intention to commit a breach of the Acts.

The defendant argued that as a body established under the Education Act 1989, the Tribunal could not apply the Human Rights legislation to it. The Race Relations Conciliator had also formed the view that the complaint did not have substance for this reason.

5) Decision

The Tribunal determined that the defendant (who did not appear at the hearing and restricted itself to a written submission) did fall within ss67 and 44 of the HRA Act 1993, s24 of the HRCA 1977 and s4 of the RRA 1971, as a person who supplies goods and services to the public or a section of the public. It supplied training or facilities to help persons become fit for employment

as defined in s40 of the HRA and s22 of the HRCA. It was also an educational establishment within the meaning of s 57 of the HRA and s 26 of the HRCA.

Race Relations Act

Regarding the first fishing course, where nine candidates were refused a place, the plaintiff argued that were it not for the reservation of places to Maori or Pacific Islanders, and if all candidates were competing on an equal basis, at least 1 of the nine would have won a place.

The Tribunal found that this was a hypothesis that it was unwilling to make without evidence that one of the nine was better qualified than the three Maori/Pacific Islander candidates who won places. However the Tribunal did accept that the reason the three were admitted was race, and the nine other candidates were never considered for those places due to race. Race was therefore the criterion upon which acceptance or rejection was based. It is therefore true that had race not been an issue, at least three, although possibly none, of the nine unsuccessful applicants may have successfully won a place. The Tribunal stated that the RRA is designed to make race irrelevant in cases where it has been the principal factor in the decision. They affirmed that it is of no matter that the same decision may have been made in any event. Therefore there had been a breach of s4 of the RRA.

With respect to the differences in fees paid, the Tribunal however decided that the defendant required the same fees to be paid by all. It did not matter that, in the case of Maori or Pacific Islander cadets, their fees were being paid by the ETSA, as the defendant also accepted fees from the plaintiff on behalf of cadets it sponsored.

With respect to the information sheet, it was published before the changes brought in by the HRA and indeed one of the employees of Amaltal applied for the second course and was refused a place before the HRA took effect. The Tribunal therefore applied s7 of the RRA, concerning publication of intention to breach the act, and found the defendant to be in breach of the RRA on this point.

Human Rights Commission Act

The Tribunal also accepted that the defendant was an educational establishment within the meaning of s22 of the HRCA, and that the terms of that provision do not differ significantly from those of s4 of the RRA. Therefore, on the same reasoning, there had also been a breach of s22 (1)(a) and (b) of the HRCA 1977. The defendant failed to provide education to one of the employees of Amaltal on the second course due entirely to his race and as such it had also committed a breach of s 26(1) HRCA.

Similar to s7 RRA, s32 of the HRCA prohibits advertising an intention to commit breaches of the act. The Tribunal found that the HRCA and the RRA were identical save that each referred to its own provisions. As there had been a breach of the relevant sections of the RRA, it also concluded on the same reasoning there had been a breach of s32 of the HRCA.

Human Rights Act

In relation to the alleged breaches of the Human Rights Act, which came into effect on the 1 February 1994, the Tribunal decided that, in order to prove any breach of these provisions, the plaintiff had to provide evidence that after that date the defendant actually omitted to enrol persons on the course due entirely to their race. The Tribunal noted that no such evidence had been entered. Although the Tribunal accepted that persons not of applicable descent were likely to have been dissuaded from applying by the advertisement, it found that there needed to at least be evidence that some identifiable person had been so dissuaded. On this point the Tribunal found that there had not been extensive enough argument and decided that the plaintiff's claim under the HRA failed.

Defence of Good Faith

In order to establish a defence to the breaches found, the Tribunal ruled that under s9 of the RRA and s29 of the HRCA the defendant has to show that what was done was done in good faith, for the advancement of persons or groups of a particular race, who need or may be supposed to need such assistance or advancement to achieve equality.

The Tribunal accepted that the defendants were acting in good faith to reserve the places for persons of Maori or Pacific Island race. However, the question is whether these persons needed or may be supposed to need assistance or advancement to help them achieve equality. The Tribunal decided that the sections required them to consider the aspirations of the groups the actions were intended to assist, in this case young people of Maori or Pacific Island descent who aspire to undertake the fishing cadet course or make careers for themselves in the fishing industry. They had to answer whether or not these persons needed assistance to achieve an equal position with regard to other members of the community with the same aspirations.

The Tribunal had difficulty in determining this in the absence of any evidence on the part of the defendant. On the evidence that was submitted, it declared that it was not satisfied that the defendant had fulfilled this third element. Therefore the Tribunal ruled that the defence was not established and the defendant was declared in breach of the relevant provisions as stated above.