

New Zealand Van Lines Ltd v Proceedings Commissioner [1995] 1 NZLR 100

1) Reference Details

Jurisdiction: High Court Rotorua, New Zealand
Date of Decision: 3 August 1994
Case Status: Concluded

2) Facts

The sole female employee of the appellant was subjected to sexual harassment by two male employees over a three month period before eventually resigning. The Branch manager was aware of the situation but did nothing to prevent the offensive behaviour.

The Equal Opportunities Tribunal found a breach by the appellant of s15(1)(c) of the Human Rights Commission Act 1977 (HRCA) and made orders under ss38, 40 and 54 of the HRCA. The appellant accepted the order to pay damages to the complainant and the payment of costs, but appealed under s63 of the HRCA against the other three orders: an order restraining if from subjecting women employed at the branch in question to detriment in the nature of sexual harassment; an order that the appellant implement an anti-sexual harassment policy; and an order prohibiting the publication of any part of the evidence or decision which could lead to the identification of the complainant.

3) Law

- Human Rights Commission Act 1977

4) Legal Arguments

The appellant argued that the restraining order was wider than the form of order the section in question authorised, that the Tribunal had no jurisdiction to make the second order, and that as the complainant had been criticised in the Tribunal's decision it was a wrongful exercise of their discretion to protect her identity but not that of the appellant.

In respect of the order to implement an anti-sexual harassment policy, the appellants argued that this order was outside the scope of the act in that it did not address the loss or damage suffered by the complainant. Furthermore other references in that act including s5(1)(b) and s28(1) indicated that this area was voluntary in nature and could only form part of negotiated settlements.

5) Decision

The Court stated at the outset that "legislation of this kind is to be accorded a liberal and enabling interpretation" in line with international standards (p. 103). Which is also in line with the conclusions of other New Zealand judgments in relation to human rights legislation: *Coburn v Human Rights Commission* [1994] 3 NZLR 323.

The appellant argued that the restraining order implied unfairly that harassment of a much more generalised nature occurred, and that it went beyond the permitted limits of the Tribunal's competence under the HRCA. The Court however, found that the provisions of the

HRCA allowed for restraining orders to be made against permitting others to engage in any similar conduct.

The Court found in favour of the appellants with regard to the second order they contested, concerning the injunction to implement a sexual harassment policy programme. The Court declared that the provisions in the act which related to education and prevention did not form part of the coercive orders that the Tribunal could make. The Parliament therefore conferred the power to restrain action but did not allow the imposition of mandatory injunctions without limitations on content, duration or cost. The Court concluded that it was not for the Equal Opportunities Tribunal or the Court to usurp Parliament's functions even if such powers would be beneficial to the cause of human rights.

Concerning the concealment of the complainant's identity, the Court noted that the section of the HRCA permitting the Tribunal to prohibit the publication of any report or evidence of proceedings was within the discretion of the Tribunal, it was therefore inappropriate for the appellate Court to interfere in the exercise of that discretion unless it was clearly in error.

In sexual harassment cases it has been stated as in *Z v A* [1993] 2 ERNZ 469 at p 494 that concealing the name of the complainant serves a general purpose of encouraging women to come forward without the fear of added punishment or stigma. On the other hand, in relation to the defendant, especially when the case is proven, publicity serves the purpose of demonstrating that such behaviour is unacceptable and compels them to take steps to ensure that the conduct is not repeated. The Court in this instance agreed with these general aims and upheld the order as made concerning the concealment of the complainant's identity.