

CITATION: *Director of Licensing for the Northern Territory v J&L Investments (NT) Pty Ltd* [2011] NTMC 035

PARTIES: DIRECTOR OF LICENSING FOR THE  
NORTHERN TERRITORY

v

J&L INVESTMENTS (NT) PTY LTD

TITLE OF COURT: COURT OF SUMMARY JURISDICTION

JURISDICTION: Criminal

FILE NO(s): 21106039

DELIVERED ON: 15 August 2011

DELIVERED AT: Darwin

HEARING DATE(s): 8 July 2011

JUDGMENT OF: Ms Sue Oliver SM

**CATCHWORDS:**

CRIMINAL LAW – *Liquor Act* – meaning of “employ”  
*Liquor Act* Ss 3,4, 116A

**REPRESENTATION:**

*Counsel:*

Complainant: Mr O’Connor  
Defendant: Mr Elliott

*Solicitors:*

Complainant: Solicitor for the Northern Territory  
Defendant: Mr Elliott

Judgment category classification: A  
Judgment ID number: [2011] NTMC 035  
Number of paragraphs: 18

IN THE COURT OF SUMMARY JURISDICTION  
AT DARWIN IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 21106039

[2011] NTMC 035

BETWEEN:

**DIRECTOR OF LICENSING FOR THE  
NORTHERN TERRITORY**

Complainant

AND:

**J&L INVESTMENTSS (NT) PTY LTD**

Defendant

REASONS FOR DECISION

(Delivered 15 August 2011)

Ms Sue Oliver SM:

1. The Defendant is charged with a single count that it did, as the Licensee of Squires Tavern, employ a person who had not attained the age of 18 years to serve liquor on such licensed premises contrary to section 116A of the *Liquor Act*.
2. The parties tended a statement of agreed facts. In summary, on the 30<sup>th</sup> of September 2010, the 10 year old daughter of the nominee of the licensed premises, made an impromptu visit to the licensed premises. Two licensing inspectors had attended the premises. One of the inspectors approached the bar and asked the child for a bottle of Cascade beer. The child removed a bottle from a fridge, removed the top, placed it in the stubby cooler and placed in onto the bar in front of the Inspector. The Inspector then asked the child for a Vodka Cruiser, and her mother, the nominee of the Licensed Premises, removed a bottle of Vodka Cruiser from the fridge, handed it to the child who then removed the top, placed it in the stubby cooler and

placed it on the bar in front of the Inspector. It is not a condition of the licence that a minor could sell, supply or serve liquor.

3. Section 116A is in the following terms

“116A Minors not to sell, &c., liquor

(1) Except in accordance with a condition of his licence or as permitted under subsection (2) by the Commission, a licensee shall not employ a person who has not attained the age of 18 years to sell, supply or serve liquor on licensed premises.

(2) For the purposes of subsection (1), the Commission may in writing, either generally or, on the application of a licensee, in relation to a particular person, permit a licensee to employ a person who has not attained the age of 18 years to sell, supply or serve liquor on licensed premises where the Commission is satisfied that the person is a genuine employee of the licensee or is undergoing employment training at the licensed premises.”

4. The issue is whether the Defendant employed the child to serve liquor within the meaning of Section 116A of the *Liquor Act*. The defendant says that the child was not employed within the meaning of the Act because she was not working under any contract of employment nor receiving any salary.

5. Section 4 is the interpretation provision of the Act. Section 4(1) provides a definition of employee as

“**employee**, of a licensee, means a person engaged by the licensee (whether or not under a contract of employment) to perform work in relation to the conduct of the licensee's business.

6. Section 4(2) of the Act is in the following terms

“Unless the contrary intention appears, a reference in this Act to a person employed by a licensee includes a reference to a person whose services are provided to a licensee under a contract with the person or another person.”

7. The Defendant says that the word “employ” used in s116A should be given its normal meaning and consistent with the cardinal rule of construction that similar words within an Act should have a similar meaning, must take its meaning from section 4(2). That it is argued, requires that there must be a contract in place either between the Licensee and the person who provides service, or by way of a contract with a third party who contracts with the Licensee to provide that person’s services. The Defendant says that outside of these circumstances, the licensee does not “employ” a person who provides service of liquor.
8. The first difficulty with this argument is that the definition provided in section 4(2) is an inclusive one. In other words, the meaning of the word “employment” is not by section 4(2) confined to either a contract of employment, contract for services or a third party contract for services, but is simply defined to include each of those circumstances. That being the case it follows that the term employment can include, if the context permits, circumstances outside of each of those contractual situations.
9. Although a common dictionary meaning of the word “employ” is “to use the services of (a person) in return for payment: keep (a person) in ones service”<sup>1</sup>, other meanings are also given, for example the word can mean “use (a thing time energy, etcetera) esp. to good effect”<sup>2</sup> or “keep (a person) occupied”. The Merriam Webster Dictionary<sup>3</sup> gives a meaning “1a: to make use of (someone of something inactive)” in addition to “1c : to use or engage the services of (2) : to provide with a job that pays wages or salary”.
10. The second problem with the argument that the meaning of “employ” in s116A(1) is confined to contractual circumstances is section 116A(2). That sub-section provides for an exception to the restriction in section 116A(1) that a licensee cannot employ a person under the age of 18 years by allowing

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<sup>1</sup> See for example, Concise Oxford Dictionary 8<sup>th</sup> Edition 1990

<sup>2</sup> Concise Oxford Dictionary 8<sup>th</sup> Edition 1990

<sup>3</sup> [www.merriam-webster.com](http://www.merriam-webster.com)

a person under the age of 18 years to sell, supply or serve liquor on licensed premises but only where the Liquor Commission has, following an application permitted a licensee, in writing, to employ a person where the Commission is satisfied “that the person is a genuine employee of the licensee or is undergoing employment training at the licensed premises”.

11. It seems to me that the words “genuine employee” are likely to be intended to refer to someone working under a contract of service (i.e. an employment contract) in order to distinguish that status from either a contract for services (i.e. an independent contractor) or someone providing services via a third party contract. A person however who is undergoing “employment training at the licensed premises”, the second exception, may be doing so outside any contractual arrangement with the licensee. For example, a licensee may simply be willing to allow a young person who is undergoing hospitality training with an educational or training organisation to be placed in the licensed premises to gain experience, subject to permission from the Commission. No contract of service or contract for services would exist in a voluntary arrangement of that nature.
12. Section 116A was inserted by an amendment in 1990<sup>4</sup>. Prior to that amendment, it appears that the Act did not contain express provision preventing persons under the age of 18 years from being involved in the service of alcohol, although other sections, for example, the then section 106, prevented supply of liquor to a minor, which by extension would appear to have precluded a trainee being given work experience.
13. In his second reading speech to the Bill<sup>5</sup> the Leader of the Opposition said  

“South Australia has an anachronistic provision stating that it is an offence for a person under the age of 18 to sell or serve liquor unless that person is a child of the licensee. It does not matter if the child is

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<sup>4</sup> *Liquor Amendment Act 1990 (Act No. 62, 1990)*

<sup>5</sup> The Bill was a Private Members Bill supported by the government

5 years old – provided his father is the publican, he can be in the bar serving liquor. I do not think we want to follow that.”

14. In my view it is very clear from the second reading speech that the Legislature in passing the proposed Bill intended to ensure that persons under the age of 18 years should not be involved in the sale, supply or service of liquor other than under strictly controlled circumstances where permission has been given by the Commission. To suggest that in addition to these exceptions in s116A(2), the Legislature intended that persons under the age of 18 years, subject to no regulation or oversight, even by way of a contract of some sort that might protect their personal rights, seems unlikely in the extreme. It would create an absurdity that a child old enough to enter contractual arrangements could only work on application to and permission being granted the Commission, yet a child too young to enter contractual arrangements could undertake that work.
15. In addition, if the meaning of “employ” urged by the defendant were to be accepted, that would, in my view, be inconsistent with the purpose and object of the Act. The objects of the Act are set out in section 3.

“Objects

(1) The primary object of this Act is to regulate the sale, provision, promotion and consumption of liquor:

(a) so as to minimise the harm associated with the consumption of liquor; and

(b) in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor.

(2) The further objects of this Act are:

(a) to protect and enhance community amenity, social harmony and wellbeing through the responsible sale, provision, promotion and consumption of liquor;

(b) to regulate the sale of liquor in a way that contributes to the responsible development of the liquor and associated industries in the Territory; and

(c) to facilitate a diversity of licensed premises and associated services for the benefit of the community.

16. The construction urged by the defendant would allow for a licensee to utilise the services of a person under the age of 18 years in circumstances where there was no scrutiny of that young person's ability to provide "**responsible** sale, provision, promotion and consumption of liquor" (emphasis added). A young person such as the 10 year old child in this case is unlikely to have the skills and/or ability to identify under age drinkers or refuse service to intoxicated patrons. Both are aspects of "responsible" service.
17. I am satisfied that the word "employ" is to be broadly interpreted to include the use of any person under the age of 18 years in the sale, supply or service of liquor on licensed premises, subject to the exceptions provided in section 116A(2).
18. On the agreed facts I find the defendant company, J & L Investments guilty of the offence.

Dated this 15<sup>th</sup> day of August 2011.

**Sue Oliver**  
STIPENDIARY MAGISTRATE