

CITATION: *RP v Alcohol Mandatory Treatment Tribunal of the Northern Territory*
[2013] NTMC 34

PARTIES: RP

v

ALCOHOL MANDATORY TREATMENT
TRIBUNAL OF THE NORTHERN
TERRITORY

TITLE OF COURT: Appeal

JURISDICTION: Local Court – Alice Springs

FILE NO(s): 21340021

DELIVERED ON: 20 December 2013

DELIVERED AT: Alice Springs

HEARING DATE(s): 4 December 2013

JUDGMENT OF: D Bamber SM

CATCHWORDS:

REPRESENTATION:

Counsel:

Appellant:	Ms Morrisroe
Respondent:	Ms Brownhill

Solicitors:

Appellant:	CAALAS
Respondent:	Solicitor for the Northern Territory

Judgment category classification: C

Judgment ID number: [2013] NTMC 34

Number of paragraphs: 32

IN THE LOCAL COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 21340021

BETWEEN:

RP
Appellant

AND:

**ALCOHOL MANDATORY
TREATMENT TRIBUNAL OF THE
NORTHERN TERRITORY**
Respondent

REASONS FOR JUDGMENT

(Delivered 20 December 2013)

Mr D BAMBER SM:

1. RP is a 31 year old indigenous woman from Tjirrkarli in the cross border region of Western Australia. She appeals orders of the Alcohol Mandatory Treatment Tribunal (the Tribunal) – a Mandatory Residential Treatment order and Income Management Order – 16th August 2013.
2. The hearing was in Darwin. RP, the Senior Assessment Clinician and one Tribunal member were linked by video connection from Alice Springs. RP appeared on her own, was not legally represented nor had the aid of an interpreter.

IS THE MANDATORY INCOME ORDER INVALID

3. As at the 16th of August 2013 there was no legislative instrument signed by the responsible Commonwealth Minister as required by s.123TGAA and 123UFAA of the Social Security (Administration) Act recognising the Tribunal as an authority that may make an Income Management Order. It has since been duly recognised.

4. RP argues that at the time of making the order the Tribunal wasn't authorised to make the order and the Income Management Order is invalid.
5. Section 34 of the Alcohol Mandatory Treatment Act 2013 states:

Income management order must be made for eligible welfare payment recipient

If the Tribunal makes a mandatory treatment order in relation to the affected person, it must also make an income management order in relation to the affected person if the affected person is an eligible welfare payment recipient.

6. RP was an eligible welfare payment recipient at the time of the making of the order. She argues that if no valid Income Management Order could be made, the Mandatory Treatment Order is also invalid.
7. The respondent argues that in determining the question of the validity of the order it is necessary to look at the purpose of the Act. It does not refer to the Tribunal being a recognised State Territory authority but does require the Tribunal to make a Mandatory Income Order in the case of welfare recipients who are placed on Mandatory Treatment Orders. It would seem the Tribunal was set up and commenced operation in anticipation of it becoming recognised as a Territory authority.
8. The respondent argues that the legislature would not have intended to invalidate the orders of the Tribunal but instead intended to give it power to make Income Management Orders that would become operable when the requisite Commonwealth instrument was issued.
9. There is efficacy in getting those in need of treatment into treatment as soon as possible even where the mandatory requirement of income management could not occur until the Commonwealth Minister enabled it to come in affect by issue of the necessary instrument.
10. Considering the purpose of the Act I find the orders are not invalidated because the Tribunal was not as at the 16th of August 2013 a Territory authority.

CONSTITUTION OF THE TRIBUNAL

11. RP argues that the orders made by the Tribunal were made by a single member. The decision, it was argued, was made without deliberation between members.
12. Section 109(1) of the Alcohol Mandatory Treatment Act 2013 states:

Composition of Tribunal

- (1) When the Tribunal is to exercise any of its powers or perform any of its functions, the President must, subject to this Act, nominate 3 members of the Tribunal to exercise the power or perform the function.
13. It is argued an audio-visual recording of the proceeding shows that the decision making was made by the Chair alone without any consultation with other Tribunal members.
14. The respondent argues the recording shows all members actively took part in the process of deliberation by asking questions and otherwise engaging with RP during the hearing.
15. Although there was no obvious conferencing between members before the Chair made orders in terms of the application, all members took part in the process. There is nothing to support a finding any member was excluded from or failed to concur with the making of the orders. I find no basis for finding the orders invalid on the basis of the constitution of the Tribunal.

PROCEDURAL FAIRNESS

113 Right of appearance and representation

- (1) An affected person:
 - (a) may represent himself or herself at a hearing; or
 - (b) may appoint a legal practitioner to represent the affected person at the proceeding.
- (2) If the affected person is unrepresented, the President may appoint an advocate for the affected person:
 - (a) to represent the best interests of, and assist, the affected person

in a proceeding; and

- (b) to perform any other functions conferred on the advocate by the Tribunal or under this or any other Act.
- (3) The advocate must be:
 - (a) a legal practitioner; or
 - (b) a person who is approved by the CEO and has expertise in the general care, health care, rehabilitation or treatment of persons who are misusing alcohol.
- (4) The advocate must be provided at no cost to the affected person.
- (5) To avoid doubt, the Tribunal may conduct the hearing in the absence of the affected person or the affected person's representative if the affected person or the representative was given reasonable notice of the hearing and refused or failed to attend.

114 Conduct of proceeding generally

- (1) In a proceeding, the Tribunal is bound by the rules of natural justice.

115 Conduct of hearing

- (2) The hearing of an application must be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the subject matter of the proceeding permits.

116 Interpreter

- (1) If an affected person is unable to communicate adequately in English but is able to communicate adequately in another language, the Tribunal must, to the extent that is reasonably practicable, permit the person to have access to an interpreter to assist the person:
 - (a) to prepare for the hearing; and
 - (b) when appearing at the hearing.
- (2) The interpreter must be provided at no cost to the person.

WAS RP DENIED PROCEDURAL FAIRNESS IN THAT THE HEARING WAS CONDUCTED WITHOUT AN INTERPRETER OR AN ADVOCATE? DID THIS LEAD TO THE TRIBUNAL FAILING TO TAKE ACCOUNT OF LESS RESTRICTIVE OPTIONS?

- 16. The respondent presented to the Court an affidavit of Gregory Scott Lanyon dated the 15th of November 2013. It states when the Senior Assessment Clinician makes

an assessment of an affected person under the Alcohol Mandatory Treatment Act he or she completes that part of the assessment form which indicates whether the affected person requires an interpreter and their language or dialect. The Clinician does so on the basis of their discussions and interactions with the affected person during the assessment.

17. RP was assessed as requiring an interpreter. A request was made through the AIS booking service for RP for the hearing. At the start of the hearing the Senior Assessment Clinician Ms Davis informed the Tribunal that an interpreter was requested but none was available.
18. RP appeared before the Tribunal without an interpreter or an advocate. It would appear she also was similarly unassisted at the time of assessment or in preparation for the hearing.
19. The Tribunal interaction with RP regarding the issue of an interpreter and legal representation was recorded and transcript produced:

MR BONEHAM (Tribunal member, Darwin): Hi, R.

MS NOBBS-CARCURO (Chair): And Louise is with you in Alice Springs.

RP: Yes

MS NOBBS-CARCURO: Do you understand me ok?

RP: Yes

MS SAMWAYS (Tribunal member, Alice Springs): You don't need an interpreter? Your English okay? If you want us to say something again, you let us know.

MS DAVIS (Clinician): Just to inform the tribunal, an interpreter was requested, but none was available.

MR BONEHAM: Okay.

MS NOBBS-CARCURO: So, let me know if you don't understand anything that I say. Also if you don't understand anything that Fiona, John or Louise say, and we can repeat it, or maybe say it a different way. Okay? All right. Now, you're at the centre. When you arrived at the centre, did you get – has Fiona shown you your rights statement? Gone through about what your rights are?

MS DAVIS: That's the piece of paper that's on the wall, and we told you that you can make phone calls, and ask for your lawyer, and those things. That's what that's talking about.

RP: Yeah.

MS NOBBS-CARCURO: And are you aware that Fiona has made an application to the Tribunal about you?

MS DAVIS: So that's the white envelope, big white envelope, with these papers we talked about.

RP: Yep.

MS DAVIS: Yep.

MS NOBBS-CARCURO: And has Fiona told you, or are you able to read? Can you read English?

RP: Yeah, she told me.

MS NOBBS-CARCURO: Okay. So she's told you what's in the paper?

RP: Yeah.

20. During the hearing RP appeared to adequately understand the simple questions and inquiry regarding her location in Alice Springs. She was able to make it clear that she did not want to go to CAAPU (residential treatment centre) but instead wished to go home to Tjirrkarli.

21. The respondent argues that hearings are supposed to be informal and the rules of evidence don't apply. RP appearing without an advocate did not suffer any special disadvantage. The proceedings were not complex thus failure to appoint an advocate did not result in procedural unfairness. It was further argued there was no evidence that RP was unaware she could appoint a legal advocate or wished to do so.
22. It was further argued that RP could communicate adequately in English and it was not reasonably practical to provide an interpreter. It was argued the video evidence did show the appellant understood the nature of the case against her.
23. The appellant argues that failure to appoint an advocate under s.113(2) was a denial of procedural fairness having regard to:
 - the appellant's special disadvantage
 - the significant impact of the Tribunal proceedings on the appellant's liberty and welfare
 - the complexity of the issues raised in the proceedings and
 - the absence of a merits review mechanism to correct any factual errors at first instance.
24. It was argued that failure to provide an interpreter meant RP was at a special disadvantage throughout the proceedings.
25. RP's English proficiency was difficult to judge from the limited interactions she had with the Tribunal members. Under the Tribunal's own procedure it was for the Senior Assessment Clinician to assess the affected person's need for an interpreter. She did assess the need in this case. The inquiry by the Chair into RP's understanding of English was deficient.
26. The Tribunal's inquiry into RP's knowledge of her rights was also deficient. It was never made clear by appropriate questioning whether RP understood her rights and wished to avail herself of them.

27. The Senior Clinician began her presentation to the Tribunal by stating “this has been a complex case for us, because what RP is reporting is quite different from what the documents are showing. An audit score was low where evidence from other source suggests high, dangerous alcohol use.”
28. There was also a Mental Health assessment. Technical terms like AOD risk, RUDAS scores and other terms were referred to that RP surely didn’t understand. There was an apparent contradiction in these scores and a police report of an interrupted suicide attempt that RP denied. There were issues about how much time she had spent in her home community as opposed to time spent in Alice Springs. Also issues relating to RP’s children and their care.
29. Criteria for making a Mandatory Treatment Order are set out in s.10 of the Act:
 - (a) the person is an adult;
 - (b) the person is misusing alcohol;
 - (c) as a result of the person’s alcohol misuse, the person has lost the capacity to make appropriate decisions about his or her alcohol use or personal welfare;
 - (d) the person’s alcohol misuse is a risk to the health, safety or welfare of the person or other (including children and other dependants);
 - (e) the person would benefit from a mandatory treatment order;
 - (f) there are no less restrictive interventions reasonably available for dealing with the risk mentioned in paragraph (d).
30. Although there was evidence that RP was misusing alcohol there were issues as to her level and pattern of use.
31. There were real issues in regard to (c), (d), (e) and (f). Without an appropriate advocate, given her disadvantage, RP was not able to adequately respond to all the issues raised. If any one of the criteria was not substantiated the Tribunal would not have been able to make the orders they did. RP was unable to address

the contradictions and other issues raised by the Clinician. Without an advocate she was effectively not being heard on factors crucial to the Tribunals determination and as such I find that failure to appoint an advocate was a denial of natural justice.

32. This failure is an error of law that vitiates the Tribunal's decision. The orders of the Tribunal are set aside and RP is released.

Dated this 20th day of December 2013.

David Bamber
STIPENDIARY MAGISTRATE