

NORTHERN TERRITORY LICENSING COMMISSION

Licensee: Ford Dynasty Pty Ltd

Premises: LASSETERS CASINO (the Casino)

Nominee: Michael Lucas

Licence Number: 80103004

Hearing: Complaints pursuant to section 48(2) of the *Liquor Act* re sale of heavy beer before 11.30am and service of liquor to a Minor.

Member: Brenda Monaghan (Presiding)
Helen Kilgariff
John Brears

Hearing Date: 22 March 2006

Representation: Wayne Sanderson for the Director of Licensing
John Stirk for the Licensee

- 1) There are two complaints against the Casino and both are admitted. The circumstances of each and questions of penalty will be dealt with separately.
- 2) The first complaint is that on the morning of Friday 26 August 2005, heavy beer was sold to a patron of the Casino prior to 11.30am. This breaches the licence condition which provides that no liquor other than light beer may be sold or supplied prior to 11.30am Monday to Friday inclusive (except public holidays) for consumption on or within any part of the licensed premises.
- 3) Before considering the specific breach, we intend to comment on two preliminary issues as follows:
 - a) The special condition restricting sales to light beer before 11.30am weekdays was part of a package of liquor restrictions introduced to licensed premises throughout Alice Springs some years ago. Mr Stirk has submitted that the restriction was never meant to apply to in-house guests. He acknowledges however that this distinction between

in-house guests and other patrons is not the way the 11.30am restriction has been interpreted to date by either licensees and the Director of Licensing. In any event, the Commission is not persuaded that Counsel's submission on this issue is correct. We do accept however, that there is a slight ambiguity between two of the Special Conditions in the Casino licence. One condition advises that bona fide lodgers and their invited guests may be sold liquor for consumption on premises "*at any time*" and yet an earlier Special Condition advises that no liquor other than light beer can be sold prior to 11.30 am on weekdays. The use of the words "*Notwithstanding anything contained elsewhere in these licence conditions*" before this particular condition was no doubt intended to ensure that any ambiguity would be interpreted so as to protect the strength of this special condition and we intend to follow that line of reasoning. The impact of this is that even bona fide lodgers (ie in-house guests) or their guests cannot be served anything but light beer before 11.30am for consumption on or within any part of the licensed premises.

- b) Mr Stirk as Counsel also raised the concern that an interpretation such as we have given in paragraph 3a) leads to a situation where the licensee is in breach of its liquor licence by allowing bar fridges in guest rooms to remain stocked (or to be restocked) with heavy beer prior to 11.30am. We accept that this is true and that the "supply" of liquor other than light beer in bar fridges is in fact a technical breach. It is quite clear however that the liquor restrictions were never intended to cause such a consequence and that it would be impractical and an over-reaction to expect the Licensee to remedy the situation by only stocking the fridges with light beer prior to 11.30am. It is far better to simply vary the licence conditions of this licence and similar licences to exempt bar fridges from the 11.30am liquor restriction. We understand that the Deputy Director of Licensing (Sth) is currently checking all affected licences and will shortly place a recommendation before the Commission to remedy this situation.

SERVING HEAVY BEER BEFORE 11.30AM

- 4) The evidence before us at the hearing supported a finding that some eight (8) alcoholic drinks were served between 10.51 and 11.16 in five (5) separate incidents. The same barman, Roger Destacamento was involved in each incident of supply and he gave evidence at the hearing. Our comments on the circumstances of each incident is as follows:
- a) **10.51 am- The video footage showed two glasses of 4X Gold were sold to two (2) men as "Shandies"- ie mixed with what appeared to be lemonade.** "Light Beer" is defined in the licence as any brewed beverage containing not more than 3% alcohol the proof of which lies on the Licensee. (See Special Condition re *On Premises Consumption*). The drinks provided were charged at the same rate as a full strength 4X Gold but that is of little significance. Undiluted 4X Gold has an alcohol content of 3.5% but we have no way of knowing what

the alcohol content of the shandies was. As the onus is on the Licensee to prove that what was sold was *not* “a brewed beverage containing not more than 3% alcohol”, have they done so? We do not consider that they have but, whilst finding that there was a breach, we intend to treat it as a technical breach rather than a blatant one when considering penalty.

- b) **11.07am – The video footage shows two (2) pots of 4X Gold sold. The sale is confirmed by the till tape printout-** this sale is admitted.
 - c) **11.09 am- One Crown lager and one (1) VB were sold to a Mr and Mrs Colbert, in-house guests at the Casino** - There appears to be no dispute that a Crown Lager was sold to Mr Colbert. He admitted the same to the licensing inspector. Mrs Colbert also had a beer in her possession when approached by Licensing Inspectors. A perusal of the till-tape confirms that a VB beer and a Crown Lager were purchased at 11.09. After considering all of the evidence before us, there is sufficient evidence to find both sales of a brewed beer containing more than 3% alcohol proved on the balance of probabilities.
 - d) **11.10 am- One (1) VB beer was supplied to an unknown person. The sale is confirmed by the till tape printout** - the video footage shows that the beer is placed on the counter on a tray and remains there awaiting collection. We have no idea quite where within the premises the liquor was to be delivered to but its destiny is irrelevant. The special condition restricting liquor sales before 11.30am makes it clear that the condition relates to liquor sold or supplied for consumption “on or within any part of the licensed premises”. This supply is proved.
 - e) **11.16 am- One (1) VB beer supplied to an unknown person. The sale is confirmed by the till tape printout** – For the same reasons given in paragraph 4d) above, this breach is also proved.
- 5) The barman who was responsible for the service of these drinks before 11.30am gave rather confusing evidence that was on some issues in conflict with earlier statements made by him. It appears likely that he was most anxious to protect his employment and his relationship with the employer and this concern is understandable. We reached the conclusion that the barman’s actions were not deliberate but were most likely inadvertent. The evidence suggested that he was working long hours at the time and there appeared no good reason why he would deliberately breach the licence restrictions.
- 6) When considering the penalty to impose for these breaches, we take account of the following matters:

- a) The breaches appear to have been caused by the inadvertent actions of one employee on one particular day and after hearing the evidence of Mr Lucas, General Manager, there is no evidence that this day is an example of a pattern of behaviour suggestive of a blatant disregard for the community-wide liquor restrictions
 - b) Prior to these complaints being laid, all staff were required to attend an induction course and all had access to a staff handbook. The barman in question had in the previous four (4) or five (5) years attended an induction course and a further Responsible Service of Alcohol course organised by the employer;
 - c) Following the complaints being made, the management of the Casino have:
 - i) met with all staff to discuss and highlight this particular liquor restriction;
 - ii) amended Staff Handbook to include this particular restriction;
 - iii) placed clear signs in the bar areas to warn and remind staff of the 11.30am restriction;
 - iv) made surveillance aware that they should be checking between 10.00 and 11.30 am to ensure that staff are complying with the restriction;
 - v) arranged for the Operations Manager to conduct a daily audit of the till tape transactions before 11.30am to ensure compliance.
 - vi) Served upon the barman a first and final warning regarding the impact of a further breach on his continued employment at the Casino.
 - d) The Casino is generally considered by the Director of Licensing to be a responsible Licensee. It has no proven breaches of the *Liquor Act* or liquor licence conditions in its history.
- 7) We consider that an appropriate penalty in these circumstances is a twenty-four (24) hour suspension of the Casino's liquor licence on a Friday (being the day that the breach occurred). The suspension is suspended however for a period of twelve (12) months from the date of this decision. Should the Casino be found to have again breached this particular licence condition (or one of an equal or more serious nature) or its obligations under Part 1X of the *Liquor Act* during the twelve (12) month period, then the twenty-four (24) hour suspension will be imposed together with any other penalty for the further breach. Should there be no further proven breach against the Casino committed during the twelve (12) month period, then the suspended suspension will lapse.

SERVING A MINOR

- 8) The second complaint against the Casino relates to an incident on 10 December 2006 when an underage drinker was supplied with liquor on four (4) occasions in breach of s106C of the *Liquor Act*. The instances of supply were caught on video and the Casino has fully admitted the breach. The minor in question was seventeen (17) years of age at the time and was attending the Casino with friends. She had no proof of identification in her possession and was not asked for proof of age either when entering the licensed premises or at any time during her stay. She appears from the evidence before us to have spent her time in the Beer Garden and Limericks Bar.
- 9) The only question for us is one of penalty. In considering this issue, we have taken into account the following :
 - a) The Licensee has a clear record with no prior breaches proved before the Commission. The Casino has also won awards recently for its excellence in the area of staff training.
 - b) Before the breach occurred, the Licensee had taken steps to ensure that minors were not served on premises. His staff and security staff were trained and aware of the relevant law in this area and responsible service of alcohol is something that is positively promoted by management and senior staff. Some 5600 identification checks had been undertaken and some 98 minors had been evicted in the previous eighteen (18) months. Security staff maintain an incident log and the photos of some underage drinkers who have been evicted. Signs are placed at all external entries detailing the restrictions on minors entering.
 - c) Since the breach, management have reviewed and increased their level of security personnel at times of risk and have implemented a system of banning which has seen two (2) minors who attempted entry using false identification banned for two years. They have also advised that they intend to impose a 6-month ban on those persons who enter the premises in the company of a minor.
 - d) The senior management were clearly gravely concerned to find themselves facing the Commission on these complaints and as a result they were well prepared and fully informed about their security and staff practices. We appreciate this fact and take full note of the Casino's good track record and good name when considering penalty.
 - e) The Casino is a large and open building with a number of external points of entry. We accept that this makes the task for the Casino staff quite challenging when it comes to preventing minors from entering their premises. Also, we are all well aware that some minors will attempt repeatedly to enter the same licensed premises if they see a weakness in the security or management practices. These are the

realities that the Casino in this instance must accept and find practical solutions to. Many recent publications on liquor consumption within Australia identify youth drinking patterns as an issue of real concern. Further, the *Liquor Act* makes the offence of serving a minor one of the serious offences. This is clear when one looks to s124AAA where specific offences of a more serious nature potentially attract an extra penalty.

- f) It appears to the Commission that the Casino has two options to prevent further breaches in this area. It must either employ security at every external door at times of high risk (such as Friday and Saturday nights) so as to ensure that no minors are allowed entry. If this is uneconomic, the Casino must “up-skill” all of their staff to be absolutely vigilant when it comes to checking and rechecking proof of age of those who remain on premises. It is completely unacceptable that a minor can remain on premises throughout the evening, buying drinks and appearing to circulate freely without once being asked for proof of age. The Licensing Inspector who gave evidence spoke of her training that required her to check proof of age of anyone who appeared to be under twenty-five (25). In order to prevent unnecessary annoyance of a patron who looks young by repeatedly asking for proof of age, the Casino could utilise extra measures such as a stamp on the skin, for example, to confirm that proof of age had been checked. They also spoke of enquiries they are making to introduce software that has a facial recognition capacity to assist in identifying problem or repeat offenders.
- 10) As regards the level of penalty to be imposed, Mr Sanderson submitted that there was no more serious breach than serving a minor and that the “ultimate” penalty should be imposed. By contrast, Mr Stirk submitted that we should adjourn this matter for further consideration of penalty at a later stage or, at worst, a suspended suspension should be imposed.
- 11) We have spent some time considering penalty. We are of the view that despite the Casino’s unblemished record to date, a suspended suspension or some lesser penalty is not appropriate. It simply does not adequately reflect the seriousness of this breach in that a minor with no proof of age remained on licensed premises and was served liquor on multiple occasions without challenge.
- 12) We considered suspending the liquor licence for the whole of the Casino for one (1) day but have taken note of the Casino’s good record and have elected instead to suspend part of the licence as follows:
- a) No liquor to be sold or supplied to patrons in either the Limericks Bar or the Beer Garden for THREE (3) days with the first day of suspension to commence at 10am on Friday 12 May 2006 and to conclude at 10am the following day. The second (2nd) and third (3rd) days of suspension to be suspended for a period of twelve (12) months from the date of this decision. Should the Casino be found to have again breached this

particular licence condition (or one of an equal or more serious nature) or its obligations under Part 1X of the *Liquor Act* during the twelve (12) month period, then the suspended suspension will be imposed together with any other penalty for the further breach. Should there be no such further proven breach against the Casino committed during the twelve (12) month period, then the suspended suspension will lapse.

- b) On 12 May 2006, reasonable signage in wording approved by the Deputy Director of Licensing (South) to be displayed in a prominent place at the entry(ies) to the Beer Garden and to Limericks Bar advising the public that the suspension results from the upheld complaint regarding service of liquor to a minor.

Brenda Monaghan
Presiding Member

28 April 2006