

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: TENNANT CREEK HOTEL

DATE OF DECISION: 1 November 2000

DATE OF HEARING: 31 October 2000

Complaint: Pursuant to Section 48 102

Complainant: Chris McIntyre Licensing
Inspector
Sergeant Steve Edgington
Northern Territory Police

Licensee: Davidson (NT) Pty Ltd

Nominee: Mr Gregory Target

Heard Before: Mr John Withnall
(Presiding Member)
Mr Brian Rees (Member)
Mrs Mary Ridsdale (Member)

Appearances: Mr John Stirk Counsel Assisting
the Commission
Mr Gregory Target (Nominee)

The Commission travelled to Tennant Creek to hear two complaints against the Tennant Creek Hotel ("the hotel"), the first concerning observations of a patron in the Shaft on 22 June 2000 and the second arising out of a complaint by police as to trading in Jackson's Bar before opening time on 25 August 2000.

Nominee Mr Greg Targett appeared before the Commission and at the outset requested an adjournment of the proceedings on the ground that the NT branch of the AHA had not been able to provide any representation for him at this time, and he was hopeful that the AHA could be of more assistance to him if another date was set for the hearing.

Mr Targett acknowledged that he had received a little over a fortnight's written notice of the hearing date, perhaps not all that generous a period of notice but the Liquor Act allows for a minimum notice of only seven days, and he had the advantage of the Commission coming to him in Tennant Creek for the notified hearing rather than he having to make arrangements to absent himself from the business to travel to the Commission elsewhere. However, what dissuaded the Commission from granting an adjournment was Mr Targett's general inaction in relation to the notice. He conceded that apart from telephoning the AHA office eight days ago, he had taken no other steps at all in relation to the notice. He had not attempted to obtain any legal advice or representation, and he had not contacted the Commission to advise of any problems with the date.

After a multiplicity of travel arrangements for Commission members, support staff, complainants and witnesses had been completed in order to convene the hearing, the only ground for not then proceeding with the hearing was that Mr Targett had not been able to have the AHA respond to what had been his sole telephone call for assistance of any kind. Knowing eight days ago that the telephone call had not been productive, he did nothing about the situation in the eight days that then ensued before the hearing was to take place.

In view of such a casual approach to the hearing on the part of the licensee, the Commission was not prepared to accede to the application for an adjournment.

Mr Targett then indicated that he admitted the facts of both complaints, and confirmed that the licensee admitted all factual allegations in the hearing briefs, Exhibits 1 and 2, relating to the circumstances of both complaints. He then addressed the Commission on matters in mitigation, not only in relation to the two complaints particularised in Exhibits 1 and 2 but also in relation to another matter which by then had been raised by Counsel Assisting the Commission, Mr Stirk, by his tender of the Certificate of Conviction that comprises Exhibit 3.

The Certificate witnesses the conviction in the Tennant Creek Court of Summary Jurisdiction on 16 May 2000 of a barman of the Tennant Creek

Hotel for selling liquor to an intoxicated patron on 17 November 1999, the offence having occurred during a period of “good behaviour” for which the Chairman of the Commission, Mr Peter Allen, had on 27 August 1999 suspended the implementation of a day’s suspension of the hotel’s licence imposed in relation to an earlier incident of serving an intoxicated person.

Mr Targett acknowledged during this present proceeding that he had been served with a copy of that original order before 17 November 1999, that the barman concerned, one John Fuller, committed the offence on 17 November 1999 as an employee of the hotel, and that he had been notified by Mr Stirk that application would be made during these proceedings that the day’s suspension imposed by the Chairman on 27 August 1999 be now served by the Licensee for breach of the Chairman’s conditions of suspension (colloquially, for breach of the “good behaviour bond”).

(The following decision in the present matter was delivered ex tempore by the Presiding Member to the Licensee’s nominated manager, Mr Greg Targett, on the morning of 25 October 2000. Some non-substantive editing has taken place).

As already intimated to you yesterday, you will have to serve the one day suspension imposed by Mr Peter Allen and which has been hanging over you for a period of twelve months from 27 August last year. For completeness of the record, we reproduce the relevant part of the Chairman’s order:

Licence number 80102044 will be suspended for one (1) day, but notification and designation of the date and time of such suspension will be deferred in the following manner.

If at the end of a period of twelve (12) months from the date of the Hearing the Licensee has not been found by the Commission to have been in breach of the licence or the Liquor Act in relation to any further incident or occurrence during that time, and if no such Complaint is then outstanding, then the suspension hereby imposed shall not thereafter be notified, and shall stand revoked.

If however the Commission were to find at any future time that a further transgression by the Licensee against the licence conditions or the Liquor Act had taken place with the said period of twelve (12) months, then in addition to whatever further penalty may be imposed in relation to such further breach, the licensee may then also be notified under Section 66 (1) of the Act as to the one day’s suspension to be served for the breach found in these proceedings.

Condition No.1 of your licence conditions provides that a breach of the Liquor Act by an employee shall constitute a breach of licence conditions by the licensee, and the Commission formally finds you in breach in respect of the employee's breach of the Act on 17 November 1999 for which he was convicted on 16 May 2000.

You may feel somewhat hardly done by in this regard, considering that this suspension has been precipitated by the actions of an employee whom you tell us you dismissed as soon as you discovered what sort of "ratbag" he was, to use your term, but in terms of effective management the breach committed by the employee was precisely the sort of infraction that the hanging suspension was meant to prevent.

Further, on the basis of the admissions you have made in relation to the two new complaints, we are about to formalise findings of further breaches of the Liquor Act and the conditions of your licence, **all** of which were within the twelve month "good behaviour" period so the one day's closure ordered by Mr Allen in the event of any **one** of such breaches is really to be seen as unavoidable. In the circumstance of the multiple breaches, we are of the view that the day's suspension imposed by the Chairman must be served.

You will therefore be notified pursuant to Section 66(1) of the date of a Sunday on which the premises will be closed by way of the suspension for that day of the whole of licence No. 80102044.

Moving on to the first of the specific complaints presently before us, the one relating to the Shaft, on the facts it is obvious that a breach of Section 121(1) of the *Liquor Act* (failure to exclude an intoxicated person)) has been committed. We have the gravest suspicion that a breach of Section 102 almost certainly also took place, but in the absence of any specific evidence in that regard we formally find a breach of Section 121(1) only. In all candour, however, it has to be said that it is probably one of the worst examples one could expect of such a breach, viz. an Aboriginal person slumped at a table and obviously out cold to the extent that Mr Targett, when alerted to the scene by the inspectors, was unable to wake the patron after an effort of five to eight minutes, it took several friends to manage to get him to stagger to the toilet, he was unable to stand unsupported and needed three police officers to put him into the police van even though he was offering no resistance. It is appalling to the Commission that a patron in that condition had not come under notice and been removed long before he lapsed into sleep or stupor, and certainly as soon as he had slumped forward on to the table.

You assure us that you do not deliberately breach the Act, so we are dealing with a case of either managerial incompetence or managerial indifference, all the more surprising bearing in mind the one day suspension which at that time was still hanging over the Licensee. We accept what you tell us in relation to the event being the result of slack performance on the part of contracted security on the night while you personally were busy otherwise, but the unavoidable bottom line is that it was your management

that is to be found wanting. This was by this time your third breach of the Act and/or your licence conditions.

Looking at what we said generally about penalties in the recent Queen of the Desert decision (10 June 2000), you should have expected not less than a further suspension of several days for a lapse of this nature, but we accept Mr Stirk's reminder that some credit should be given for you having admitting the relevant facts. It is a pity that such admission was not indicated before the full hearing had been fully organised, but nevertheless credit is to be given for not putting the Commission and the complainants, and more importantly the witnesses who have been summonsed, to the aggravation of a fully contested hearing on the facts. You also ask us not to include the Margo Myles Steakhouse in any suspension, and we do take into account the widely acknowledged reputation of the steakhouse and its place in the local community as a valued restaurant.

For those reasons the additional suspension of the whole premises that should have been expected, will apply only to the Shaft. The dates of two consecutive Thursdays will be notified to the Licensee as the days on which that part of the licence as covers the Shaft will be suspended, with the Shaft to be closed on those days.

The second of the complaints currently before us relates to the opening of the licensed premises prior to opening times specified in the licence, which you tell us was to accommodate TAB betting at the time. It was while the doors were open only for this purpose, you tell us, that Mr Hale came in expecting to purchase a beer and was given a beer by yourself "on the house".

There are two ways to look at this situation. Either it was a breach of the licence conditions in relation to the times permitted for "trading", or a breach of Section 115 of the Act because the transaction was caught by the extended definition of "sale" in the Act.

Looking at whether or not you were "trading", it is to be noted that the front doors were open, with the public on your own admission invited in to use facilities and spend money on products, admittedly not alcohol products, you tell us, but nevertheless products on offer within the licensed premises. It is difficult for us not to see that situation as being "trading" and in need of an exemption authority under section 104(3)(g) of the Act in order to be permitted.

Persons coming in for the purpose of such trade on the particular occasion which has given rise to this complaint would have seen Mr Hale standing at the bar drinking. You tell us that this has resulted from your perception of an obligation to buy Mr Hale a drink for a past favour. However, we find that the transaction is caught by the extended definition of sale in the Act. It was a supply of liquor to a person for a benefit you had already received, and puts you in breach of section 115 of the Liquor Act.

Again, we can see that you may feel hardly done by because of what you might see as a technical breach only, given the nature of the transaction discovered by the Police on the particular morning, but again it comes back to management: you had actually been warned just a few days before by a Licensing Inspector that it was a breach of the Act to be open outside of the specified trading hours, and the only reason you have given us for ignoring the warning was that you overlooked it. It is an unavoidable adverse comment on management that such a warning could be overlooked with the day's suspension still hanging over the licence at that time.

Added to that, you did not have your licence available for inspection, nor was the notice required by condition number 2 of the licence displayed in the premises. Such notice was not displayed anywhere, much less "prominently" as required. In themselves, these latter matters are possibly able to be characterised as comparatively minor infractions, but in conjunction with the early opening in the face of a specific warning the whole situation was indicative of an attitude to proper authority either far too casual or possibly even contemptuous. You assure us that it was not the latter situation, which again leaves us with managerial indifference. You also admit that you *still* have not displayed the required notice, a recalcitrance that we find quite unexplainable in your current situation.

Had we acted on our suspicion that the situation in relation to the opening hours and lack of notices was borne of contempt for the regulatory regime in which you operate, you could reasonably have expected several further days suspension of the licence. As it is, the degree of apathy which we find evidenced by the situation will result in the suspension of the licence in its application to Jackson's Bar for a Friday to be notified. You should note that this penalty is imposed on the basis that, as you tell us, the Shaft is not open on a Friday. For that reason, such suspension will also cover the Shaft for the time that Jacksons will be closed, albeit it may not have been necessary to cover that base in such way.

There is a further issue we see as having arisen from your having told us that the Shaft is normally only open on Thursdays. Your licence encompasses the Shaft being open seven days a week, and while of course this is not obligatory, it must be obvious to all in Tennant Creek why you have chosen to only open on Thursdays. Such an initiative is surely designed to catch that element of the Thursday trade which has otherwise been excluded from front bars.

The Commission is therefore considering amending the conditions of your licence to reflect our view that the Shaft should be seen to be a front bar in relation to its Thursday operation.

On 15 January 1999 the Commission published a warning for you in this regard, as part of its decision on the 1998 review of the Tennant Creek restrictions. The relevant part of that decision is as follows:

The Commission will continue to monitor the trading practices that are applied or allowed by the licensee of the Shaft Nightclub.

A previous owner of the "Tennant Creek Hotel" modified his premises so that the nightclub opened onto the front street.

It is the view of the Commission that the word or term "front" in relation to a bar is not exclusively a matter of location but can be a descriptor of a particular manner of trade, a set of licence conditions or even a derogatory description of the premises.

Indeed, the same conditions or manner of trade or derogatory perceptions could be applied with equal effect and or relevance to a so-called "back bar".

In the Commission's view, the determining factors are the licence conditions prescribed for a particular bar or premises and the manner in which the premises are conducted in relation to those conditions.

The Shaft Nightclub is required to trade in accordance with the licence conditions applicable to lounge bars as distinct from front bars. The Police and Commission Inspectors will continue to monitor trading practices in the Nightclub in accordance with their standard procedures.

We emphasise this previously published guideline for determining what is to be deemed to be a front bar for the purpose of the restrictions, and its specific reference to the Shaft. What is to be looked at is the actual manner of operation in the light of the prescribed licence conditions.

It seems clear from what you put to us that apart from the irregular function or entertainment event, the Shaft does not open for regular trade other than on Thursdays. That is, although it is able to trade as a lounge or "back" bar seven days and nights a week, it does not; its only regular opening day is Thursday. The Commission is of the preliminary view that a bar that is open to the main street of Tennant Creek and trades *only* on Thursdays cannot claim to be a lounge bar with that operation. There is no normal lounge bar trading pattern of the Shaft with which to compare the Thursday operation.

We appreciate that the raising of this issue at this particular time takes the licensee by surprise. You have not had the opportunity to consider your position in this regard, and of course you must be given a reasonable opportunity to be heard, to put to us any relevant matter you see fit. What we therefore propose to do is to adjourn further consideration of this matter pursuant to section 49(4)(c) of the Liquor Act to a date to be fixed after 30th November 2000. Up until 30th November 2000 we will accept from or on behalf of the licensee any written submission you wish to put before us on the issue of the operation of the Shaft.

For instance, you may wish to submit that this issue should be left to the forthcoming further general review of the Tennant Creek restrictions, or you may have operational plans for the Shaft which are presently unknown to us. Again, you may advise us that you wish to be further heard in person or to call evidence at a continuation of the hearing. Whatever you have to say

to us as to the further course of this matter, it must be in by 30th November 2000.

Should you overlook the matter, or choose to make no submission, then after 30th November you will be at risk of having this present hearing panel of the Commission amend the conditions of the licence, pursuant to section 49(4)(a) of the Act, to reflect the actuality of the operation of the Shaft.

To summarise your present position as a result of this hearing, the whole premises are to close for one Sunday, the Shaft will close for two consecutive Thursdays, and Jacksons Bar will close for a Friday (with the Shaft to be unavailable as an alternative on the day). Specific closure dates will be advised by written notices of suspension.

Further, you have until the end of November to show cause why the Commission should not amend your licence conditions to prevent the Shaft from trading on Thursdays. You are entitled to be fully heard on this issue, but if you wish to be further heard you will need to advise us to that effect by 30th November 2000.

Further consideration of this matter is adjourned to a date and place to be fixed after 30th November 2000.

JOHN WITHNALL

(Presiding Member)

Date of Decision: 25 October 2000