

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES:	TIWI SUPERMARKET
LICENSEE:	Ms Jannie Grau Mathers
LICENCE NUMBER:	80203294
NOMINEE:	(Not applicable)
PROCEEDING:	Complaint pursuant to Section 48(2) of the Liquor Act arising out of the conduct of the business at the licensed premises.
COMPLAINANT:	Snr Sgt Mark Coffey, NT Police
HEARD BEFORE:	Mr John Withnall Ms Shirley McKerrow Ms Annette Milikins
DATE OF HEARING:	07 March 2002
DATE OF DECISION:	07 March 2002
APPEARANCES:	Mr David De Silva for the Licensee Mr Peter Wilson assisting the Commission

This was a complaint by the police of a sale of liquor to an intoxicated person. By agreement between Counsel for the Licensee and Counsel Assisting the Commission, the hearing proceeded by way of a statement of agreed facts in the following terms:

At approximately 4.30pm on Saturday 27 October 2001, Jeremiah Johnson ("Johnson") purchased a 4 Litre cask of moselle from the licensed premises known as "Tiwi Supermarket". At the time of purchasing the liquor, Johnson was intoxicated and was served by Ian Mathers ("Mathers"), an employee of the licensed premises.

After the sale was concluded, Johnson staggered out of the doorway of the Tiwi Supermarket carrying the 4 Litre cask of moselle. Mathers then called Johnson back and retrieved the cask. Johnson exited the Tiwi Supermarket seconds later without the cask.

This incident was observed by members of the NT Police who then spoke with Johnson about the purchase of the liquor. When spoken to by NT Police, Johnson stated that he bought the 4 Litre cask of moselle from the Tiwi Supermarket and that Mathers sold it to him. The various indicia of Johnson's state of intoxication observed by members of the NT Police at that time included walking unsteadily, slurred speech, bloodshot eyes, difficulty standing upright and a strong smell of liquor on his breath.

When spoken to by NT Police, Mathers initially denied having sold the liquor to Johnson. However, after being informed of the events observed by NT Police, Mathers agreed to having sold the liquor and then also stated that when he noticed Johnson stagger out of the licensed premises, he immediately realised Johnson was intoxicated and thereafter retrieved the liquor.

After hearing submissions from both Counsel, the Commission delivered the following decision *ex tempore*. Some non-substantive editing has occurred.

“Mr. De Silva, we have been considering everything you have put to us. It has left us in somewhat of a dilemma. We are unanimous in feeling that the situation is deserving of something more than just a reprimand, but having said that, something less than the very real pain of a full suspension of licence for any duration.

The explanation you put to us as to the circumstances of the consumer being called back in, as being an attempt to reverse the sale, is the only explanation which is before us, and in that situation we accept it as being so. Credit is therefore to be given for that effort.

There is the worrying aspect of it being in tandem with bookup. I hasten to confirm that your client is not to be penalised twice for the same general situation in relation to bookup, but it does add yet another layer to our concern for the way in which intoxicated patrons may have been dealt with, and as I say we are left somewhere in the middle in all the circumstances. Basically we think it was indicative of a potentially serious situation but that credit must be given for the effort on the particular occasion, and we have taken into account and noted what you tell us about changes made to your clients life in order now to be more hands on and able to be more dedicated to managing the licence.

All in all the outcome is this. We have determined that for the duration of Saturday the 16th of March this year, 2002, the licence will in effect be partly suspended in that there will be no sales of liquor for that day in containers greater than two litres. That will apply for only that day, Saturday 16th March. No sale of liquor in containers greater than two

litres. Now obviously the main target of that measure, not to be too coy about it, is the cheap wine in the large casks, but to keep an appropriately even hand it will be a restriction on all liquor in containers greater than two litres.

The restriction does not apply to cartons of beer. We are talking about individual containers. It will not affect beer sales unless of course your client wants to sell a keg or individual container of beer greater than two litres.

We have taken this course as being just the very faintest touch of the lash, if I might use that expression. We do regard the incident as indicative of a culpable slackness of management at that time, but we have had to factor into our deliberations that the particular transaction complained of did involve what we have accepted as having been an attempted reversal of the sale, certainly of *supply* at the time, and we have accepted what you say as to the outlook for the future.

The partial suspension will be achieved by way of a temporary variation of licence conditions for the nominated day, pursuant to the power found in sec.49(4)(a) of the Act. This will require a further written notice I would think, and your client can take it as a given that as a consequence of this decision she will be receiving the appropriate detailed notification in the immediate future”.

John Withnall
(Presiding member)