

Maintenance of Fire Systems - False Alarm - Who Pays?

Metropolitan Fire Brigades Board v St Catherine's School,
Full Court of the Supreme Court of Victoria, September, 1992.

In September last year, a decision of the Full Court of the Supreme Court of Victoria left the way open for building owners and occupiers to dispute payment of the fee imposed by the Metropolitan Fire Brigades Board for attending a false alarm. The ground relied upon by the owner was that it had done everything a reasonable owner or occupier could have done in relying upon a reputable contractor to service its fire alarm system.

The decision is of considerable importance because as many building owners no doubt will be well aware, the cost of the exercise for the building owner or occupier is substantial.

The Legislation

The right of the Board to impose this fee arises pursuant to section 32D of the Metropolitan Fire Brigade's Act 1958. The effect of this section is that where the fire brigade responds to a false alarm given by an automatic fire alarm system, the Board may, by notice in writing, require the owner or occupier to pay a fee for the attendance of the fire brigade if the Board, after considering a report relating to the false alarm, determines that the owner or occupier of the property did not have a reasonable excuse.

The section applies only to automatic fire alarm systems and a fee can only be imposed where the Board has made a positive determination that the owner or occupier did not have a reasonable excuse. If the person receiving the notice to pay wishes to dispute the decision of the Board, appeal to the Administrative Appeals Tribunal ('AAT') must be made within 30 days of receipt of the notice to pay.

Reliance on a Reputable Contractor

In *Metropolitan Fire Brigades Board v St Catherine's School*, the first occasion on which the AAT had had to determine an application for review of a decision of the Board under s 32D, the School argued successfully before the AAT that it had a reasonable excuse because it had done everything a reasonable owner or occupier could have done in relation to specialist equipment about which it knew nothing by retaining a competent and reputable maintenance company to service and maintain the equipment.

The Board contended that the cost of the attendance of the brigade should be borne by the owner or occupier where the false alarm "was the result of an act or omission of itself or some other person for whom it was responsible". The evidence before the AAT in this case was that the

false alarm had been caused by the malfunction of a detector which had been cleaned by the service company following a genuine fire.

The AAT considered that although this gave rise to a strong suspicion that the contractor may not have acted reasonably, it would be wrong to make a finding on this point because the contractor was not present and therefore no blame was to be attributed to the contractor for the false alarm.

However, the AAT found that even if the contractor had no reasonable excuse, this did not mean that the School was to be held responsible. The section merely requires that the owner or occupier have a reasonable excuse. Therefore, even if the contractor had no reasonable excuse, it was possible that the School did.

On appeal by the Board, the Court held that it had been open to the AAT to determine that the School did have a reasonable excuse and therefore the decision of the AAT was upheld.

It is important to note that the Court did not decide that the School's reliance on a reputable contractor to service its fire alarms **constituted** a reasonable excuse but rather that it was **capable** of constituting a reasonable excuse.

What Will Constitute a Reasonable Excuse?

The Court held that what constitutes a reasonable excuse is a question of fact to be determined by the Board and, if disputed, subsequently by the AAT in the Board's place. The Court noted that section 32D does not attempt to define what constitutes a reasonable excuse nor the types of excuse which might be considered in making a determination. The section does not require that the age of the system or frequency of malfunction be taken into account. However, Nathan J suggested that the mechanics of automatic fire alarm systems and the difficulty in maintaining them may well be relevant issues in deciding whether an excuse for a 'false alarm' is to be considered reasonable.

Burden of Proof

The School argued before the AAT that the Board had failed to show that it did not have a reasonable excuse for the alarm. The AAT considered instead whether the School **held a reasonable excuse**. The former interpretation would be more consistent with the words of the section. The Court made no decision on this point in *St Catherine's* as the AAT had nevertheless decided in favour of the School. However, in the *Mercy* case (below) the same judges applied the former test.

What If the Cause of the Alarm Cannot be Identified?

This question was considered by the Full Court in *Metropolitan Fire Brigades Board v Mercy Private Hospital* which was heard immediately after the appeal by the Board in the *St Catherine's* case.

The distinguishing feature of this case is that the AAT finding was that the cause of the alarm could not be identified. The only evidence was that the fault most probably occurred in the alarm indicator panel. The Hospital argued along similar lines to the argument put forward by the School in the *St Catherine's* case that it did all that it reasonably could to ensure that the system was properly maintained and that any failure was due to unavoidable causes.

Although the appeal was successful and the case remitted to the AAT, which as at the date of writing has not been re-heard, the issue as to whether the Hospital did all it reasonably could to ensure the system was properly maintained was not considered by the Court as this issue was never dealt with by the AAT. The AAT had concluded that where, as in this case, the cause of the false alarm could not be identified, it was unable to determine that the Hospital "did not have a reasonable excuse for the false alarm being given". As the section requires a positive determination before payment of the fee can be required, the AAT found that no fee was payable.

On appeal, the Court held that before the Board can exercise its discretion to issue a notice to pay, it is required under s.32D to make a positive determination even if no explanation is given. If the Board reaches a determination that there is a reasonable excuse or if it is unable to reach any determination then the further step may not be taken.

The Court also held, however, that even where the cause of the false alarm could not be determined, this did not, as a matter of logic, mean that the question of reasonable excuse could not be resolved.

Consequently, if there are a number of possible causes to which the alarm is to be attributed but any one of them leads to the conclusion that the owner did not have a reasonable excuse, then a determination against the owner can be made by the Board. Alternatively, it is possible for the Board to properly reject an explanation by the owner or occupier without necessarily knowing the actual cause.

The Court considered that the AAT had also made an error of law in requiring that the fault had to be able to be identified before a determination could be made. The section required the Board to determine whether the owner or occupier had no reasonable excuse, not for the fault but for the alarm being given. A subtle distinction but one which may prove to be important in the right set of circumstances. Byrne J considered that in a given case, this may be an easier test to determine than the test applied by the AAT.

The effect of this distinction was put in clear terms by Byrne J. The essential question for the Board is not whether the owner or occupier had a reasonable explanation for the false alarm, nor whether the alarm was properly installed and maintained, but rather whether the owner or

occupier had no reasonable excuse for that false alarm which may include these matters.

Conclusion

As a result of the *St Catherine's* decision, it is clear that a building owner or occupier may be able to succeed on an argument that it relied on the services of a reputable contractor to maintain its fire alarm system in good repair to avoid payment of the fee. However, the question is whether *St Catherine's* goes far enough? What if the system is old and/or there are a large number of false alarms? Will it still appear reasonable for the building owner or occupier to have relied on a reputable contractor to service the alarm system? As explained by Nathan J, the difficulty lies in that what constitutes 'a reasonable excuse' is not amenable to precise definition. In any given case, this will be a question of fact for the Board or AAT to determine.

Further, on the basis of the *Mercy* case, a building owner or occupier will not be able to rely upon the fact that the cause of the alarm cannot be identified to escape payment of the fee. It will still be necessary either for the Board to determine that there is a reasonable excuse or for the Board to decide that it is unable to reach any determination. The Board and the AAT will have regard to these two cases when making determinations.

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