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IN THE HIGH COURT OF NEW ZEALAND  
(ADMINISTRATIVE DIVISION)  
WELLINGTON REGISTRY

M.271/83

322

IN THE MATTER of a Case Stated  
pursuant to Section 22E  
of the Immigration Act  
1964

A N D

IN THE MATTER of an Appeal by GLENN  
ROBERT MARTIN

Hearing 5 April 1984  
Counsel P H Surridge for Appellant  
C J Thompson for Crown  
Judgment 6 April 1984

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JUDGMENT OF DAVISON C.J.

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On 25 September 1981 the Minister of Immigration signed a Deportation Order pursuant to s 22(1)(a) of the Immigration Act 1964 ("the Act") ordering Glenn Robert Martin ("the appellant") to leave New Zealand.

On 29 October 1981 written notice of the making of the Deportation Order was served upon the appellant at the Taranaki Street Police Station Wellington by Police Constable Farrell. The notice contained the information set out in s 22 (1) of the Act, namely:

- (a) The provision pursuant to which the order was made.
- (b) The grounds on which the order was made.
- (c) Notice of the right of appeal and the manner in which it is to be exercised.

The appellant took no steps to lodge an appeal with the Deportation Review Tribunal ("the Tribunal") pursuant to s 22C(2) of the Act within the 28 day period allowed from 29 October 1981.

Then on 16 December 1982 the appellant at the District Court was served with a copy of the actual Deportation

Order dated 25 September 1981 and was also served with a copy of the notice of the making of the Deportation Order which had been earlier served upon him by Police Constable Farrell on 29 October 1981.

He then lodged an appeal with the Tribunal on the fifth day of January 1983 within a period of 28 days of his receiving the copy Deportation Order and copy of the notice of the making of the order on 29 October 1981.

The question upon which the Tribunal seeks the opinion of this Court is -

" Does the Deportation Review Tribunal have jurisdiction to hear the appeal purportedly brought before it by the appellant on the 5th day of January 1983? "

#### DECISION

The right of a person ordered by the Minister to leave New Zealand under s 22 of the Act to appeal against the order is given by s 22C of the Act. It provides:

- "(1) Any person who is ordered to leave New Zealand under section 22(1) of this Act may appeal to the Tribunal for an order quashing the deportation order.
- (2) Every such appeal shall be brought within 28 days after the day on which the order or a copy thereof or written notice of the making thereof (including the information required by section 22(1) of this Act) is served on him (whichever is the first).
- (3) The provisions of the Fifth Schedule to this Act shall have effect with respect to the procedure to be followed on appeals under this section. "

The appellant was served with a written notice of the making of the order at the Taranaki Street Police Station on 29 October 1981. He was not served with the actual order or a copy thereof but such was not required.

Service of a notice of the making of the order which included the information required by s 22(11) of the Act as this notice did was sufficient. The 28 days allowed for lodging an appeal against that order expired on 26 November 1981.

However, Mr Surridge for the appellant has submitted that the 28 days for lodging an appeal should not be calculated from the date of service of the notice of making of the order on 29 October 1981 but from the date when the copy of the actual order and further copy of notice of the making of the order were served upon the appellant on 16 December 1982. He bases that argument on three grounds:

1. That service of the Notice of making of the order upon the appellant on 29 November 1981 was defective in that Police Constable Farrell had no authority or power to effect such service.
2. That the Notice was not "served" upon the appellant in that there is no evidence to show that the nature of the document was brought to his attention.
3. That service on the appellant of the copy Order and further copy Notice on 16 December 1982 effectively prevents the respondent from relying on the Notice of making of order served on 29 October 1981 and revives the appellant's right to appeal to the Tribunal within 28 days of 16 December 1982.

I now deal with these three matters:

NO POWER TO SERVE

The Act nowhere makes reference to service by any particular person of an order or a notice of the making of an order. It simply refers in s 22A to an

offence being committed by a person who remains in New Zealand for 28 days after the order or copy of the order "is served" on him, and in s 22C to a right of appeal within 28 days after the day the order or copy thereof or written notice "is served" on him. Anyone can serve a document upon another unless service by a particular person is specified in a statute or unless service by specified classes of persons is prohibited. Such conditions do not exist here. It was said that the Police Act 1958 s 38 authorises a Police Officer to execute processes for Courts but not for the Immigration Department. That section, however, has no relevance here as it in no way limits the powers of a Police Constable to serve documents.

#### DEFECTIVE SERVICE

This argument was based on para 3 of the case which states:

" The appellant has no recollection of being so served although he concedes he was so served. The appellant has no recollection of the nature and effect of the notice being explained to him, nor has he any recollection of his appeal rights being explained to him. There is no evidence before the Tribunal that his appeal rights or the nature and effect of the notice were explained to the appellant. "

The service of the notice of making of order on the appellant by Police Constable Farrell on 29 October 1981 is proved by the affidavit of the Constable on the file, and in any event the appellant concedes he was served. The fact that the appellant has no recollection of the nature and effect of the notice being explained to him nor of his appeal rights being explained to him does not affect the validity of the service.

The requirements of s 22(11) and 22C of the Act are that the Order and the Notice shall state -

- (a) The provision pursuant to which the order was made.
- (b) The grounds on which it was made.
- (c) Notice of the right of appeal and the manner in which it is to be exercised.

The notice served on the appellant did that.

There was no obligation upon anyone to explain those matters further. Reference was made by Mr Surridge to Macfarlane v Kidd (1886) 4 NZLR 445, but that case has no relevance here. The notice served upon the appellant contained all such information as the appellant was entitled to and there is no evidence he could not read it or understand it.

#### SUBSEQUENT SERVICE

Section 22C of the Act relating to appeals contemplates that there may be successive services of documents.

Subsection (2) envisages cases where there may be service of an order or copy of an order and of a notice of making of an order. It provides in such a case that the period of 28 days for appeal is to run from the date on which the first document is served.

The reason why successive documents may be served is illustrated by reference to s 22A which is an enforcement provision which makes it an offence for a person to remain in New Zealand for 28 days after the day on which "The order or a copy of the order is served on him".

If therefore the first document served is a notice of making of an order, before a person can be charged with an offence the actual order or a copy thereof must be served on him.

In the present case such was the position except that at the time the copy of the order was served on

16 December 1982 the appellant was also given a copy of the notice with which he had been served on 29 November 1981. The giving of the copy notice, however, in no way gave rise to any fresh right of appeal any more than service of the copy of the order did.

Section 22C specifically provides that the time for appeal runs from the date of service of the first document. The giving of the further copy of the notice was no doubt just for the appellant's information to show when such was given and served upon him.

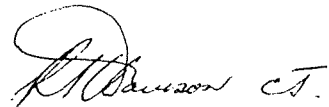
#### EXTENSION OF TIME

No power is given in the Act to enable the Tribunal to extend the time for appealing to the Tribunal under s 22C of the Act. The Tribunal has no inherent power to do so: Johnsonville Licensing Trust v Johnsonville Gospel Hall Trust Board [1972] NZLR 655.

An appeal to the Tribunal under s 22C is similar in this respect to appeals to the Minister under s 20A which are required to be brought within 14 days. Time under that section has been held not to be extendable: see Faleafa (High Court Auckland, A.293/79, 18 September 1979, Barker J.); Tongia (High Court Auckland, A.655/79, 2 July 1979, Barker J.); and Nauci (High Court, Dunedin, M.55/79, 9 September 1980, Holland J.).

#### ANSWER

The answer to the question posed in the case stated is NO.



Solicitor for the appellant: P H Surridge (Wellington)  
 Solicitor for the respondent: Crown Law Office (Wellington)