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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

HC.102/96

MEDIUM PRIORITY

UNDER the Human Rights Act 1993
A N D
IN THE MATTER of an appeal against a determination of the Complaints Review Tribunal established under the Human Rights Act 1993

BETWEEN: ALI HATEM of Auckland, service station proprietor,
a n d
ALI HATEM and ALI ARABI in partnership trading as A & A MOTORS OTAHUHU

Appellants

A N D: THE PROCEEDINGS COMMISSIONER appointed under the Human Rights Act 1993 s 7(1)(d)

Respondent

Coram: Williams J
Hon Mrs Margaret Shields) Additional members of the High Court appointed pursuant to Human Rights Act 1993 s.126
Mr William Abbiss)

Hearing: 25 March 1997

Judgment: 19 May 1997

Counsel: *George Howley* for appellants
Chris Lawrence (Proceedings Commissioner) and *Ms Frances Joychild* for respondent

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RESERVED JUDGMENT OF THE COURT

Solicitors:
P M Khouri, P O Box 8905 Symonds Street, Auckland
Human Rights Commission, P O Box 6751 Wellesley Street, Auckland

On 12 July 1994 the Proceedings Commissioner applied to the Complaints Review Tribunal for remedies pursuant to the Human Rights Act 1993 against Mr Ali Hatem and against Mr Ali Hatem and his brother, Mr Ali Arabi, trading in partnership as A & A Motors. The remedies sought were declarations that Mr Ali Hatem, acting on behalf of the partnership, and the partnership itself breached the Human Rights Commission Act 1977 in dismissing a female employee, a Ms M., and causing her to suffer detriment by reason of her sex. In addition, a restraining order was sought against Mr Ali Hatem to prevent a repetition of the conduct about which the complaint was brought, and an order requiring him to undertake education or counselling as to employers' responsibilities. The Commissioner also sought $2452.00 being the net loss of wages incurred by the employee for six months, $10,000 for humiliation, loss of dignity and injury to feelings, plus costs.

The defended applications were heard on 2-4 May 1995. The decision was delivered on 5 July 1996. The Complaints Review Tribunal made a declaration that Mr Ali Hatem had breached the Human Rights Commission 1977 s.15(1)(c) in relation to Ms M. and also in relation to a further employee, a Ms P. of subjecting her as an employer to sexual harassment. The Tribunal made an order restraining Mr Ali Hatem from engaging in further conduct of that kind. The Tribunal's file lodged in this Court does not appear to contain a formal

complaint relating to Ms P. but that point was not taken on behalf of the appellants in this Court. It may be that the file is incomplete.

As far as Mr Ali Arabi was concerned, the Complaints Review Tribunal made a declaration that :

> "... the defendant Ali Arabi has committed a breach of section 15(i)(c) of the Human Rights commission Act 1977 in that the breaches committed by ... Ali Hatem ... were committed by Ali Hatem acting as his agent"

Both Messrs Ali Hatem and Ali Arabi were ordered to pay damages of $2750.00 for humiliation, loss of dignity and injury to the feelings of each if Ms M. and Ms P. plus costs of $2,500.00.

From the form of the orders, it seems likely that the monetary penalties were visited on the appellants individually and not in their capacity as partners.

There is a general right of appeal to this Court from decisions of the Complaints Review Tribunal pursuant to the Human Rights Act 1993 s.123, but counsel advised that this was only the second appeal ever brought. On appeal, this Court has power to confirm, modify or reverse the decision appealed from or any part and may exercise any of the Complaints Review Tribunal's powers. The appeal was mounted on the grounds of inherent unfairness arising out of the 14 months delay in delivery of the decision; that the finding against Mr Ali Arabi could not stand as he could not be vicariously liable for the acts of Mr Ali

Hatem in the circumstances of this matter; and that the defence for Mr Ali Hatem was not properly considered, particularly that relating to his claimed difficulty in understanding English.

The appeal was originally heard on 25 November 1996. However, before the decision was delivered, it was discovered that the Court had been incorrectly constituted under the Human Rights Act 1993 s.126 as a question of fact was involved and accordingly the matter was reheard before a correctly constituted Court. At the earlier hearing an application by counsel for the appellants to file an affidavit by a translator as to Mr Ali Hatem's facility with English was opposed. The application was granted in part. That matter did not arise again at the second hearing.

Further, the delay in delivery of the Tribunal's decision bulked somewhat larger at the first hearing than at the second. In those circumstances, the Court merely records that the chronology provided by Mr Lawrence shows that the complaints were laid in early 1993. Following investigation an opinion was given in September 1993 that the complaints appeared to have substance. There was then an unsuccessful attempt at conciliation. The complaints were referred to the Proceedings Commissioner in March 1994 and proceedings were filed in July of that year. They were set down in March 1995 and heard and determined as earlier noted.

Mr Lawrence advised the Court that both he and his predecessor as Proceedings Commissioner had done everything possible following the decision being reserved to have it - and others in a similar position - delivered without further delay. It is only fair to record Mr Lawrence's acknowledgement that the Complaints Review Tribunal, now differently constituted, conducts its business with much greater despatch.

Turning to the facts, the Tribunal's decision is incontestably a carefully considered one. Some 39 pages in length, it commences with 26 pages summarising the issues and the evidence, including reproducing sizeable sections of the briefs and details of the cross-examination. An analysis of the relevant law then follows. That was then followed by some seven pages of factual findings, following which the Tribunal considered the question of damages and set out its formal orders.

In the factual findings, the Tribunal described Ms M. as a "particularly impressive witness", taking "care not to overstate Mr Ali Hatem's behaviour and to be ready to give him the benefit of the doubt when interpreting his actions". They described Ms P. as being "essentially a truthful witness" although "prone to exaggerate and may also have been liable to put the worst possible construction on Mr Ali Hatem's behaviour and the best on her own". They were critical of Mr Ali Hatem saying that they did not find him to be a reliable witness. They continued (p.29) in relation to one of the issues at the

hearing, whether he knew of the English word "virgin" which Ms M. claimed he had used to her, that :

> "In particular we do not accept that he was still unaware of the meaning of the word *"virgin"* at the time of the hearing. Whether or not there is an equivalent word in his language the concept is easy to understand and in cross-examination he initially accepted that he made the comments already referred to ... through the aid of an interpreter. We do not accept his later suggestion in re-examination that these comments were made by the interpreter on his own account rather than as a translation of what Mr Ali Hatem was saying. In addition to that we are satisfied that Mr Ali Hatem was untruthful in the earlier part of his evidence when he claimed that he never drank and that he did not visit night clubs. That was made plain by his later evidence and also by the evidence of [another woman witness] whom we found to be a truthful and reliable witness.
>
> While we accept that Mr Ali Hatem's spoken English was imperfect at the time of the alleged incidents we are satisfied that he was quite able to make his meaning clear when discussing sexual matters.
>
> Mr Ali Arabi's credibility was undermined by [the other woman witness'] account of his behaviour towards her."

They went on to say they preferred Ms M.'s evidence to that of Mr Ali Hatem and dismissed some of the incidents described in her evidence but said (p.30) that:

> "we accept his behaviour in initiating a discussion about his own sexuality and subsequently forcing a discussion about her own sexual behaviour on her, did constitute unwelcome and offensive attention of a sexual nature."

One of the issues in the case was whether Mr Ali Hatem showed a magazine photograph of a naked woman to Ms M. and the other woman witness. The Tribunal held that such occurred and that the display of a magazine containing the picture of a naked woman was offensive in the context of a young woman

during her second day at work. They accepted Mr Ali Hatem made verbal and physical advances to Ms M. as alleged but dismissed other complaints she had made as evidence of no more than the actions of a "big-hearted and jovial man and a generous employer". After discussing the terms on which Ms M. left her employment the Tribunal found that they amounted to constructive dismissal and that she was subjected to detriment under the Act as a result.

As far as Ms P. was concerned, the Tribunal discussed allegations of dishonesty made against her. They expressly accepted her evidence that during her second week of employment Mr Ali Hatem held up a picture of a nude woman despite her distaste but dismissed other allegations she had made against him. They summed up their findings relating to her case by saying that (p.35) the "misconduct which we have found proved against the defendant Mr Ali Hatem had the effect of poisoning Ms P.'s working environment and that she was thereby subjected to detriment."

As far as Mr Ali Arabi was concerned, the Tribunal took the view that (p.33) "... we must be satisfied that when Mr Ali Hatem subjected Ms M to the treatment we described he was acting as Mr Ali Arabi's agent". They then correctly directed themselves on the onus and standard of proof but, without further discussion, went directly on to say that (p 33) "the Tribunal was satisfied that Mr Ali Hatem was acting as Mr Ali Arabi's agent" because "at all relevant times Mr Ali Hatem was Mr Ali Arabi's partner and .. he was acting as Mr Ali Arabi's agent in respect of the running of the business."

The Tribunal then referred to s.33(2) which exempts a principal from liability if the agent's act is done without express or implied authority and s.39 which provides that where conduct is excepted from unlawful conduct under the Act the onus of proving the exception lies on the defendant.

The Tribunal then correctly directed itself that the onus of proving the exception under s 33(2) lay on Mr Ali Arabi and held (pp.33-34) :

> "We are satisfied on the evidence that it is more likely than not that Mr Ali Arabi was unaware of Mr Ali Hatem's behaviour at the time that it was occurring. He was not at the service station on Sunday 13th December, there was no evidence that he was present when Mr Ali Hatem showed Ms M. the offensive picture on Tuesday 15th December and her recollection is that he was not present when she worked late that evening. If the evidence had stopped there we would have been satisfied that Mr Ali Arabi had established a defence. However, [the other woman witness] gave evidence that Mr Ali Arabi subjected her to conduct in the nature of sexual harassment to the extent that ultimately she abruptly left her employment at the service station and did not return. We accept that evidence. Given that Mr Ali Arabi felt free to subject another female employee to such attention, we cannot be satisfied that Mr Ali Hatem did not have his implied authority to treat other female employees in a similar way."

The incident with the other woman witness referred to in that passage was not the subject of a complaint before the Tribunal.

As far as Ms P's complaint was concerned, the Tribunal said no more than that for the same reasons as related to Ms M's complaint they were satisfied (p.36) "that at all material times Mr Ali Hatem was acting as Mr Ali Arabi's agent".

The first ground of appeal advanced at the original hearing was that the delay in the delivery of judgment was unfair to the appellants, but counsel had difficulty in formulating any basis on which such might have been the case. In any event, as the matter was not disputed at the second hearing, it is necessary to refer to it only briefly.

The periods which elapsed between the laying of the complaints and the hearing and during which the judgment was reserved both appear to be lengthy, but this Court has no evidence before it as to the reasons for the delay. With a three-person Tribunal, not all living in Auckland, and the necessity to transcribe over 230 pages of evidence, it is not difficult to understand how delays in delivery of the decision occurred, even though a delay of 14 months seems considerable.

The cases dealing with delay prior to a hearing fall into a completely different category from delay in delivery of a decision following a hearing, and, the appellants being unable to point to any prejudice which they suffered as a result of the delay, the only conclusion to which the Court can come is that that ground of the appeal should be dismissed, assuming it was not abandoned at the second hearing.

The Court next turns to the appeal by Mr Ali Arabi.

As earlier noted the application to the Complaints Review Tribunal in respect of Mr Ali Arabi was brought against both brothers as the A & A Motors partnership.

Despite that, the Tribunal's orders suggest that it may have been under the misapprehension that the proceedings, so far as they related to Mr Ali Arabi, were brought against him personally. It found both complaints proved on the basis that his brother was acting as Mr Ali Arabi's agent in carrying out the actions in respect of which the Tribunal found against him.

In the passage from p.33-34 of the judgment earlier recounted, the Tribunal found that Mr Ali Arabi was not present when the offending actions were committed by his brother in respect of Ms M. It made no finding in respect of Ms P's complaints but it must be assumed that the Tribunal proceeded on the same basis in that regard as well.

However, having found as a fact that Mr Ali Arabi was absent when the offending behaviour took place and that, had the matter stopped there, Mr Ali Arabi would have satisfied the onus on him under s.39 to establish a defence, the Tribunal went on to recount evidence of offensive behaviour by Mr Ali Arabi which was not the subject of a complaint and then made what can only be described as a logical leap that the defence was not made out because Mr Ali Arabi's behaviour on that occasion implied that his brother may have had his authority to behave similarly to the complainants.

With respect to the Tribunal, in this Court's view of the facts, the logic of that conclusion is so suspect as to make the conclusion itself unsustainable. The fact that Mr Ali Arabi may have subjected one woman to sexual harassment which led to her resigning though it was not the subject of complaint does not, in this Court's view, support a finding that that meant that Mr Ali Arabi's brother had his authority to subject the complainants to cognate but different behaviour.

For that reason, this Court reaches the conclusion on the facts that the appeal by Mr Ali Arabi or by the partnership should be upheld and the finding of the Complaints Review Tribunal against him or them set aside.

There is an additional reason for the Court coming to that view.

Proceedings before the Complaints Review Tribunal are defined as civil proceedings by the Human Rights Commission Act 1977 s.38(1) and the Human Rights Act 1993 s.83(1).

That brings into consideration the Partnership Act 1908 ss 8 and 13. The former makes every partner an "agent of the firm and his other partners for the purpose of the business of the partnership" and the latter binds the firm for wrongful acts of any partner "acting in the ordinary course of the business of the firm or with the authority of his co-partners".

In Webb & Malloy **Principles of the Law of Partnership** 6th ed. (1996) para. 3.59 p.129ff. the learned authors, after saying that the partner's act must be for carrying on business in the usual way, say that that matter is "fairly simple where the act in question is obviously one foreign to the usual business of the firm". They then go on to discuss acts which are not so obviously done in the usual course of the firm's business. Amongst the authorities discussed are two which have some relevance to the present case.

Bowden v The King [1921] NZLR 249 dealt with a garage where a partner put a motor car into the business as his contribution to the partnership assets. The other partner signed a bill of sale over the car in favour of the Crown with the contributor's consent and later paid the contributor for his interest in the car when the partnership was dissolved. The remaining partner sold the car to the appellant who took it in good faith without notice of the security in favour of the Crown. The Crown later unsuccessfully sought possession of the vehicle following default in the security, Sim J. holding that although the business of the partnership was, (at 252) "to buy and sell all the other motor cars in the Dominion and to sell all the other chattels acquired in connection" with the business, the remaining partner had no implied authority to sell the car contributed by the former partner as partnership capital and accordingly the purchaser did not acquire good title against the Crown.

In *Mercantile Credit Co Ltd v Garrod* [1962] 3 All ER 1103, the defendant and another were partners in a business letting garages and repairing cars.

The partnership terms excluded trading in cars. On a number of occasions the active partner sold the plaintiff finance company a car to which he had no title for sale on hire purchase. The finance company was ignorant of the terms of the partnership deed. The Court held that the sale of the car was (at 1107) "an act of a like kind to the business carried on by persons trading as a garage" invoking the test of what a reasonable person dealing with the firm would have thought in those circumstances.

Counsel referred to several other authorities which they submitted bore on the point. The first was *British Homes Assurance Corp Ltd v Paterson* [1902] 2 Ch 404 where an innocent partner was exonerated from liability to the lender plaintiff for funds misappropriated by a fraudulent partner taken into partnership during the transaction which was the subject of the case. But as the case revolved around the question of election, it is of little assistance.

In *Hamlyn v John Houston & Co* [1903] 1 KB 81 it was held that both partners in a grain merchant firm were liable for one of them bribing a competitor's clerk to obtain information relating to the competitor's business. At first instance, it was found that part of the business of a grain merchant was to obtain information about competitors by legitimate means. The Court of Appeal held that a principal is liable for the fraud or wrongful act of an agent if that act is within the scope of his employment and, the jury's verdict having so found, that finding could not be disturbed on appeal. Mathew LJ held (at 86) :

> "It being within the scope of his authority to procure the information, it is immaterial for the present purpose whether the acts which he committed in order to procure it were fraudulent or even criminal or not, and his partner is responsible for those acts."

Considerable reliance was also placed on the decision of Mr Stephen Kein, a member of the Queensland Anti-Discrimination Tribunal, in the case of *Alexander & Ors v Aoun & Ors* (16/9/96 H 16-19 of 1995). Counsel advised that the Anti-Discrimination Act 1991 (Qld) is for all material purposes identical with the Human Rights Commission Act 1977 and the Human Rights Act 1993 provisions which related to this matter. The facts were somewhat similar in that claims of sexual harassment were brought by a number of complainants against Mr Aoun and against a number of members of the Aoun family, including Mr Aoun, trading in partnership. Following a lengthy consideration of complaints which led to findings against Mr Aoun personally, Mr Kein then turned to vicarious liability and held (p 46) that the partners "are only able to be made the subject of adverse orders if ... it is appropriate to hold them responsible for what Mr Aoun has done." Mr Kein recited the statutory provisions as to vicarious liability which made a person liable if his or her workers or agents contravened the act in the course of their work. He also cited the Queensland equivalent of our Partnership Act 1908 ss 8 and 13. Mr Kein then recorded a concession by counsel for the partnership that s 13 applied to Mr Aoun's actions in the shop which constituted sexual harassment. Mr Kein held (p 47-48) that :

> "... the actions of Mr Aoun which took place in the shop are properly considered as being actions of Mr Aoun while acting in the ordinary course of the business of his firm which was to run that shop. ... Mr Aoun's actions in the shop were carried out by

> him and involved his carrying on in the usual way business carried on by the firm. Therefore, Mr Aoun was, in respect of the incidents which took place in the shop, an agent. ... Therefore, Mr Aoun's other partners were jointly and severally liable for Mr Aoun's acts of unlawful sexual harassment."

Whilst this Court has no reason to doubt Mr Kein's conclusion in relation to the facts of the *Alexander* case, it would appear that his finding just recounted may well have been tempered by counsel's concession in that, whilst Mr Aoun's action in relation to the complainants for which the partners were found liable may have occurred in the shop and as part of the running of that enterprise, it is difficult to conclude that sexually harassing employees amounts to "carrying on in the usual way business carried on by the firm" of shopkeepers.

In this case, the business of A & A Motors partnership, was that of carrying on a garage and service station. In the New Zealand context, the ordinary course of that business may well extend beyond the automotive. Many service stations and garages in New Zealand, of course, have shops attached selling a variety of food and other items. The business of a garage and service station would also include discussions between partners and staff necessary to carry on those diverse businesses. But, without proof of direct knowledge by one partner of the other's sexual harassment of the complainants, to conclude that a partner involved in the sexual harassment of staff had the express or implied authority of the absent partners so to behave seems well beyond the ordinary business of the partnership, even despite the provisions of ss.33(2) and 39. Even if such actions were done at the garage premises and to employees of the

partnership, they were acts far removed, in this Court's view, from the business of a garage and service station. Actions likely to involve a partnership in liability such as that imposed by the Tribunal's decision could scarcely be said to be in the ordinary course of the partnership's business and if the business of a firm is the running of a service station, it is difficult to conclude that that business necessarily includes all actions undertaken by all partners in that regard, legitimate or not. A reasonable person dealing with A & A Motors would be unlikely to take the view that sexual harassment of its employees was part of the ordinary course of the business of a garage and service station.

It follows, therefore, in this Court's view that the actions of Mr Ali Hatem which gave rise to the liability imposed by the Complaints Review Tribunal were not acts in the ordinary course of the business of the A & A Garage Partnership and accordingly, as a matter of law, the liability of Mr Ali Arabi and the partnership itself cannot be sustained and the order against them or it is accordingly set aside.

The Court turns finally to the grounds of appeal advanced by Mr Ali Hatem.

The specific findings against which Mr Ali Hatem principally appealed were the Tribunal's conclusions concerning his lack of facility in English and its acceptance of part of the evidence of the former woman employee but its rejection without reasons on other aspects including that which Mr Ali Hatem saw as one of the principal issues in the case.

The affidavit presented at the first hearing from the interpreter said that Mr Ali Hatem did not know the meaning of words such as "virgin". The interpreter made the point that someone who is not fluent in a language can often understand more than they can express.

When Mr Ali Hatem was giving evidence he professed not to know words and phrases such as "one night stand" and "suck", those being words which the complainants said he used to them and although he knew the word "hootch" he said that in his language it was called hashish. The implication, of course, was that he could not or would not therefore have used those words or phrases to the complainants.

The Tribunal carefully recounted both Ms M's evidence and that of Mr Ali Hatem on these issues and then commented (p.18)

> "Both Mr Ali Hatem and Mr Ali Arabi gave evidence. An interpreter was used for both witnesses. During the first part of his evidence Mr Ali Hatem responded readily to his counsel's questions, having no apparent difficulty in understanding him. Also the Tribunal had no difficulty in understanding Mr Ali Hatem. For the first part of the hearing the Tribunal felt that the interpreter was virtually redundant. While Mr Ali Hatem began to speak through the interpreter later in his evidence, the way in which he had earlier given his evidence made us confident that we would have had no difficulty in understanding him without the services of the interpreter."

It then set out verbatim the evidence about Mr Ali Hatem's understanding of the word "suck" and concluded (p.20)

> "Before Mr Ali Hatem commenced his evidence Mr Howley had informed the Tribunal that he wished to ask Mr Ali Hatem some questions directly to demonstrate the difficulty which he had with

> the English language and the fact that he did not understand some words.
>
> We are afraid that we regarded this part of the evidence as a bit of theatre which left us far from persuaded of Mr Ali Hatem's inability to understand the meaning of the word *"suck"*."

The Tribunal then continued with its review of the evidence noting that (p.23)

> "After maintaining that he first learned the meaning of the word *"virgin"* on the day of the hearing, he then agreed that when he was being questioned by an officer of the Human Rights Commission on an earlier occasion, he had told her, through an interpreter, that in his country if a woman was a virgin that was okay but if [s]he was not that her husband could throw her out. In re-examination he said that the translator has not translated the word *"virgin"* for him or told him what it meant."

The Tribunal then proceeded as earlier noted with its review of the law and its factual findings, including that earlier noted as to his facility with English and his understanding of particular words including the word *"virgin"*.

That review of the evidence makes plain, in this Court's view, that Mr Ali Hatem's facility with English, and thus his ability to make the comments about which the complaints were made, was essentially a matter for the Tribunal, a specialist one accustomed to dealing with matters such as those which formed the basis of the complaints before it. It had the advantage of seeing and hearing the witnesses. It had full opportunity to evaluate their reliability and credibility. There was an evidential basis for the Tribunal's findings in the sense that it had evidence before it which it could accept and on which it could reach the conclusions it did. In all those circumstances, this Court sees no basis for interfering with the conclusions reached by a body which had those opportunities in relation to the witnesses.

The remaining matter relates to the evidence of the woman witness called by the appellants who had worked at the garage on a casual basis after Ms P. left. She had been subjected to behaviour somewhat similar to that of which Ms M. and Ms P complained but had not found it consistent with her view of Mr Ali Hatem's personality and not offensive in its context although, ultimately, she left her employment at A & A Motors abruptly and refused to return.

The Tribunal summarised the evidence given by this witness on pp.25 and 26 and in its factual findings it referred to her evidence on a number of occasions, setting what she said against the evidence of one or other complainant, and sometimes declining to accept the complainants' evidence about a particular matter as a result. Examples are in the middle of p.30 and the top of p.32 and in particular the second paragraph on p.35. On p.34 the Tribunal used that witness' evidence concerning Mr Ali Arabi as a major factor in reaching its decision concerning him or the partnership already discussed.

Viewing this aspect of the appeal as a whole, the Court concludes that the Tribunal's treatment of the evidence given by this witness is pre-eminently a matter with which a tribunal of fact, seeing and hearing the witnesses, is expected to deal. Questions of weight and credibility are entirely for a tribunal of fact providing there is some evidential foundation for its findings. Here, the Tribunal's findings do not show any evidence of it having acted capriciously or

on a wrong principle or reaching findings for which there was no evidential basis.

As earlier noted, the Court has power to vary the findings of the Tribunal and in view of the conclusion which this Court has reached in relation to Mr Ali Arabi and the partnership it is appropriate that it do so. The damages ordered by the Tribunal in favour of each of the complainants seem modest given the removal of the cap of $2,000 damages for humiliation, loss of dignity and injury of feelings which came into force on 1 April 1992. Certainly, in the climate of 1996, it could not be suggested that the damages were excessive. Although both the Complaints Review Tribunal and others involved in this field are still feeling their way as to the appropriate level of damages in cases such as these, this does not appear to this Court to be a matter where the Court has sufficient material before it to endeavour to lay down guidelines. However, whilst the amounts awarded are both appropriate and modest, the Tribunal's orders should be varied so as to ensure that Mr Ali Hatem meets the whole of the sums awarded.

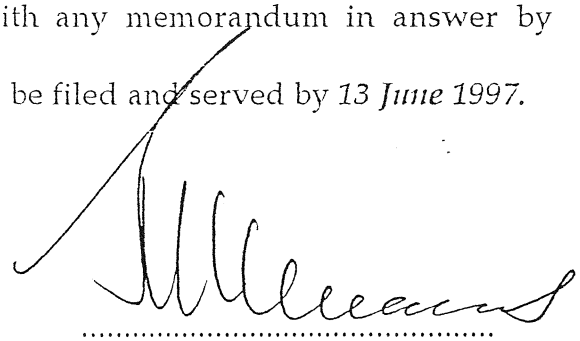
In those circumstances the Court's formal orders are:

1. That the appeal by Mr Ali Arabi or by the partnership of A & A Motors is allowed and the findings and orders against them set aside.

2. The appeal by Mr Ali Hatem is dismissed.

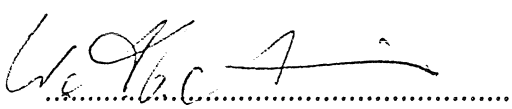
3. By way of variation of the decision of the Complaints Review Authority delivered on 5 July 1996 the damages and costs ordered by the Tribunal to be paid by both appellants are to be paid by Mr Ali Hatem.

4. If costs are to be pursued and counsel are unable to agree, they may file memoranda signifying in those memoranda, if they think it appropriate, that the question of costs may be determined by this Court without a further hearing. In that event, any memorandum from counsel for the respondent is to be filed and served by *30 May 1997* with any memorandum in answer by counsel for the appellants to be filed and served by *13 June 1997.*



WILLIAMS J.

HON. MARGARET SHIELDS



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