

**IN THE ANTI-DISCRIMINATION
TRIBUNAL QUEENSLAND**

HEA632/07

BETWEEN: **Tom Thumb**
Complainant

AND: **Robinson Carusoe Pty Ltd trading as Stowaways**
First Respondent

AND: **Jack Horner**
Second Respondent

COMPLAINANT'S CONTENTIONS

1. At all material times:
 - (a) The First Respondent was a company duly incorporated according to law;
 - (b) The First Respondent carried on business under the name or style of "Stowaways" at 1 Island Street, Fortitude Valley, Queensland; and
 - (c) The second Respondent was employed by the First Respondent.
2. In or about the month of March 2007 the First Respondent advertised a position available for a storeman/labourer to work at Stowaways.
3. On or about the 1st day of April 2007 the Complainant applied for the advertised position.
4. The application form required the Complainant to provide, amongst other things:
 - (a) His date of birth;
 - (b) His marital status;
 - (c) His medical history; and
 - (d) His consent to Stowaways obtaining his worker's compensation history.

5. On or about the 1st day of May 2007 the Complainant attended an interview conducted by the Second Respondent.
6. During the interview:
 - (a) The Second Respondent asked the Complainant about a past back injury;
 - (b) The Second Respondent offered the position to the Complainant;
 - (c) The Complainant and the Second Respondent agreed the Complainant would start work on Monday the 4th day of June 2007; and
 - (d) The Complainant agreed to undergo a medical examination by a doctor nominated by the First Respondent.
7. On or about the 3rd day of May 2007 the Complainant resigned from his current job and underwent the medical examination arranged by the First Respondent.
8. On or about the 8th day of May 2007 the Complainant was notified in writing that he had been unsuccessful in obtaining the position.
9. The Complainant was subsequently verbally informed by the Second Respondent that he was not offered the position because the doctor's report was unfavourable.
10. The Second Respondent later verbally informed the Complainant that he was not offered the position because he was not honest on his application form.
11. In the circumstances, the First and Second Respondents directly discriminated against the Complainant in breach of section 14 of the *Anti-Discrimination Act 1991*(the Act), particulars of which are as follows:
 - (a) The First and Second Respondents decided not to employ the Complainant;
 - (b) The decision was made because of the Complainant's past back injury;
 - (c) The past back injury is an impairment as defined in the Act; and
 - (d) The decision would not have been made about a person without the impairment with the same or similar qualifications for the position

12. Further, or in the alternative, the First and Second Respondents indirectly discriminated against the Complainant in breach of s14 of the Act, particulars of which are as follows:
 - (a) By implication, the First and Second Respondents imposed a term or condition that prospective employees must be able to lift weights of up to 10 kilograms without risk of injury to themselves or others;
 - (b) The Complainant is unable to comply with that term because he has a past back injury;
 - (c) Most people who do not have past back injuries are able to comply with the term or condition; and
 - (d) In all of the circumstances, the term or condition is not reasonable.
13. Further, the Second Respondent asked the Complainant for information on which unlawful discrimination might be based in breach of s124 of the Act.
14. The information is described in paragraph 4 of these Points of Claim.
15. The First Respondent is vicariously liable for the contraventions of the Act by the Second Respondent by virtue of section 133 of the Act.
16. As a result of the contraventions of the Act by the First and Second Respondents the Complainant has suffered:
 - (a) Hurt, embarrassment and humiliation; and
 - (b) Loss of income.
17. The Complainant was unable to find another job for six months.
18. Before resigning from his job he was earning \$47,000 per annum.
19. If he had been employed by the First Respondent he would have been earning \$53,000 per annum.

AND THE COMPLAINANT SEEKS THE FOLLOWING ORDERS:

1. That the First and Second Respondents pay to the Complainant an amount the Tribunal considers appropriate as general damages
2. That the First and Second Respondents pay to the Complainant an amount for loss of income

3. That the First and Second Respondents pay interest on the compensation awarded; and
4. That the First and Second Respondents pay the Complainant's costs.

Dated this day of 2007.

The Advocates
Solicitors for the Complainant