

**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

POINTS OF DEFENCE OF FIRST AND SECOND RESPONDENTS

1. The Respondents admit the allegations in paragraphs 1, 2, 3, 4 & 5 of the Points of Claim.
2. The Respondents do not have knowledge about, and therefore do not admit the allegations in paragraphs 7, 17 & 18 of the Points of Claim.
3. The Respondents deny the allegations in paragraphs 9, 11, 12 13, 16
4. As regards the allegations in paragraph 6 of the Points of Claim, the Respondents admit that during the interview the Complainant agreed to undergo a medical examination by a doctor nominated by the First Respondent, but deny the allegations in the rest of that paragraph.
5. As regards paragraph 8 of the Points of Claim, the Respondents admit that the First Respondent sent to the Complainant a letter dated 8 May 2007 informing him that he had been unsuccessful in obtaining the position, but the Respondents do not know the date it was received by the Complainant.
6. On or about the 30th May 2007 informed the Complainant he was not offered a position for reasons, including that the Complainant had not been truthful in his application and interview.
7. All people who apply for work with the First Respondent are required to provide accurate information. A notice appears at the foot of all application forms as follows:

Honesty is important to Stowaways. If you lie you will not be offered a position.

8. The Complainant did not disclose his past back injury on the application form or at any time in the interview.
9. The Complainant indicated on his application form that he was working as a foreman of a warehouse and that he was performing the duties of a storeman/labourer.
10. On or about the 4th day of May 2007 the Second Respondent learned that the Complainant was employed in an administrative position.
11. The duties of a storeman/labourer involve a lot of lifting and stacking of heavy goods.
12. If the Respondents decided not to employ the Complainant because of his past back injury, which is denied, it would not be unlawful discrimination under the *Anti-Discrimination Act 1991* (the Act) because it is a genuine occupational requirement that storeman/labourers do not have back problems or a history or any back problems.
13. It is necessary for the Respondents to ask job applicants about their medical history and worker's compensation history so that they do not employ a person who is unable to perform the duties of the position.
14. It is necessary for the Respondents to ask job applicants for their date of birth and their marital status so that they can verify the identity of the applicant.
15. The people who are employed by the First Respondent as storeman/labourers are paid between \$35,000 and \$37,000 per annum.
16. In the circumstances the Respondents have not contravened the Act.

Dated this day of 2007.

Queensland Storage Association
Agents for the First and Second Respondents