

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *19068 Yukon Inc. dba Sam N' Andy's v.
Yukon Liquor Corporation* 2003 YKSC 23

Date: May 22, 2003
Docket No.: 02-AP015
Registry: Whitehorse

Between:

19068 YUKON INC. dba SAM N' ANDY'S

Appellant

And:

YUKON LIQUOR CORPORATION

Respondent

Appearances:
James R. Tucker
Zeb Brown

Counsel for the Appellant
Counsel for the Respondent

Before: Mr. Justice R. Goodwin

REASONS FOR JUDGMENT

[1] On July 30, 2002, an order of suspension was issued to the Appellant by a liquor inspector.

[2] On or about August 20, 2002, a Notice of Appeal was served on the president of the Respondent.

[3] The appeal was heard on October 29, 2002 and counsel for the Appellant was verbally advised of the Board's decision. Written notification was received on November 4, 2002.

[4] The Appellant, pursuant to s. 106 of the Yukon *Liquor Act*, RSY 1986, c. 105, seeks an order setting aside the decision of the Board as appears in a letter from the Board of October 31, 2002 and directing that the matter be reheard. The Appellant also seeks costs.

[5] The decision of the Board is:

that the suspension order dated July 30, 2002 for Sam N' Andy's be upheld for three days. The reasons are based on the evidence indicating that Fred Stick, a minor, was consuming alcohol on the premises in contravention of ss. 85(2) and 85(5) of the *Liquor Act* and regulations.

[6] At the hearing on May 20, 2003, counsel for the Appellant claimed that the Board "acted in excess of its jurisdiction ... rendering a decision without reasons or without adequate reasons."

[7] Counsel for the Respondent replied that the decision was brief, but contained all necessary reasons, if read in conjunction with ss. 85(2) and 85(5) of the *Liquor Act*. The affidavits provided sufficient evidence.

[8] The Board could not provide a transcript of the hearing due to the failure of the recording process.

[9] This court considers that a decision requires at least some expression of the reason for the conclusion.

[10] In this instance, by reading the Act and the affidavits, one could pick and choose certain facts and do some guessing as to the reasons.

[11] However, a decision is not an exercise in speculation as to what might have motivated the Board: some of the Board's thought process should appear.

[12] This court refers to the principles expressed by Veale J. in *City Furniture (Y.T.) Ltd. v. Yukon Liquor Corporation*, [2000] Y.J. No. 62:

Written reasons are required by s. 31(2) of the Act. Written reasons are required of a tribunal not merely to effect formal notification to the parties of the tribunal's decision. Rather, written reasons are required to ensure that the tribunal has weighed the evidence before it, made findings of fact and then applied the applicable policy to those facts. This is necessary information for the party that is negatively affected by the decision and the court that may be called upon to review it.

...

S. Black put it well in her text, *Administrative Law in Canada*, 2nd ed. (Toronto: Butterworths, 1997). She makes it clear that reasons are not merely the statement of conclusion but should include finding of facts and the reasons why those facts justify the decision made.

...

As stated in *Boyle v. New Brunswick*, [1996] N.B.J. No. 291 (N.B.C.A.), failure to give reasons results in a loss of jurisdiction.

[13] Thus, the decision of the Board in the letter of October 31, 2002, reproduced at para. 5 above, is set aside under s. 106(1)(a). The matter is to be reheard.

[14] Costs are awarded to 19068 Yukon Inc., doing business as Sam N' Andy's.

GOODWIN J.