Steadfast librarians win sweet discrimination victory

Phil Teece

Advisor,
personnel &
industrial relations
phil.teece@alia.org.au

When five tenacious librarians approached ALIA in 1995 for help with a workplace dispute, none of us could have known what a marathon we were embarking on. Last month, and six long years later, it ended with a ruling by the New South Wales Administrative Decisions Tribunal that their employer had unlawfully discriminated against them in allocation of employment benefits. The employer has been ordered to pay each of the complainants $7500 and to introduce non-discriminatory policies. The librarians have been granted leave to make further application to the Tribunal if this does not occur within sixteen weeks.

The five senior librarians are employed as assistant managers in the Wollongong City Library Service. 'Assistant manager' is a generic title covering about fifty employees in various occupations across the organisation. To its credit, the Council some years ago adopted a formal points-factor job evaluation process allowing all jobs to be formally rated in work-value terms. This reduces subjectivity and establishes clear relativities between different jobs. But for the process to be fair, it must also ensure that pay levels are strictly aligned with those relativities. This is where the dispute with management arose.

The Council granted some assistant managers private-use vehicle benefits. This meant they had full use of a motor vehicle for personal use, including during holiday periods, subject to payment of a small lease-back fee. A conservative estimate of the net value of this benefit would be at least $6500 per annum. Other assistant managers, including the five librarians, did not receive private-use vehicle benefits, nor did they receive any alternative benefit of equivalent value. The effect of this is quite obvious: relativities established by the formal job evaluation process were destroyed by the Council's policy on non-cash benefits. The five librarians made this point and sought reconsideration by the Council. When they were rejected, they sought help from ALIA.

After reviewing all the paperwork, we saw this case as an excellent example of the way in which pay inequity — already evident in cash salaries paid to librarians under formal industrial awards, agreements and employment contracts — was often made much worse by highly selective allocation of other, non-cash benefits. The effect of this is to take an inequitable set of cash salary relativities and widen them still further in a total remuneration sense. ALIA does not automatically involve itself directly in enterprise-level disputation [especially where a trade union has coverage of the workforce], but it was decided that on this occasion we should provide the strongest possible support to the members concerned by directly challenging the employer's stance. I then wrote to the Council's general manager expressing serious concerns about the legality of the position taken by his organisation.

Shortly after, I went to Wollongong for discussions with the general manager and members of his senior staff. I re-emphasised ALIA's concerns and told them bluntly that, in my view, they were breaking the law. I urged Council to soften its stance, to enter discussions with the five librarians and to reach a sensible compromise. When this was clearly not acceptable I told the general manager that if no change was made, I would have to advise the librarians to pursue the matter through anti-discrimination provisions conferred under the *NSW Anti-Discrimination Act of 1977*. I said very directly that if this occurred ALIA would support its members and, in my view, the Council would eventually lose, because their position was legally unsustainable.

The general manager was not impressed by this advice and negotiations broke down. I then wrote to the Council again, confirming our view that its stance was unlawful. Soon after this, at their request I drafted a formal complaint and application for relief to the Anti-Discrimination Board for the five librarians. So began the long legal saga, which reached its conclusion with the Tribunal's recent judgement. Even now there could yet be a post-script — the judgement is of course subject to appeal.

The Tribunal has held that the Council's general manager unlawfully discriminated against all five ALIA members. The Tribunal has fully upheld ALIA's original argument that this was in effect 'an equal remuneration case'. The provision of private use of vehicles has been confirmed in law as an employment benefit, and thus as part of remuneration. In that regard, the Tribunal has totally rejected the Council's proposition that private use of a motor vehicle 'is not to be seen as part of a remuneration package of an employee of Council'. The Tribunal found that 'any reasonable person' would take the counter view. Private use was found to form part of the remuneration of some assistant managers, but not of others. In the Tribunal's judgement, the Council had 'consistently shown itself to be unwilling, or unable, to confront this fact'.

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It is important to recognise that the law does not require private use vehicle rights to be granted to every assistant manager. But it does mean that where such benefits have been conferred on some, those without them are entitled to have their remuneration adjusted to maintain relativity with others doing work of equal value. There is no suggestion that Councils have to relinquish control over how they allocate vehicles. But they do need to recognise that such benefits are fundamentally an element of total remuneration.

This judgement has important implications for broader pay equity strategies. It confirms the view put consistently by ALIA in a range of settings that pay equity must be assessed in respect of *total* remuneration and not just cash salaries conferred by industrial awards, enterprise agreements or individual contracts. In this regard, as I told the employer at the very outset of these proceedings in 1995, the proper definition of remuneration is that emanating from the International Labour Organisation's Equal Remuneration Convention 100 and now incorporated into NSW labour law:

> *'The ordinary basic or minimum wage or salary and any additional emoluments whatsoever, payable directly or indirectly, whether in cash or kind, by the employer to the worker arising out of the worker's employment'.*

There are five heroes in this story. They are the librarians who stuck to their guns through a long and stressful struggle. They remained loyal to the Council and dedicated to their work, as the professionals they are. But they were also determined to assert their rights under the law. Their hard-earned and richly deserved victory is more than a tribute to their own determination. It is also a very important development in the pay equity story. Perhaps above all, it is an object lesson to those wanting greater recognition for librarians in Australian workplaces. The lesson is: you can do it, but nothing comes easily; you have to fight for it. ■

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