

Court finds Murrays discriminated by failing to provide an accessible coach service

Haraksin v Murrays Australia Ltd (No 2) [2013] FCA 217 (14 March 2013)

Ms Haraksin has Osteogenesis Imperfecta (brittle bone disease) and uses a wheelchair. Ms Haraksin attempted to book a seat on a Murrays coach travelling from Sydney to Canberra. She was told that she could not book such a service because Murrays did not have any accessible coaches.

Ms Haraksin claimed that Murrays directly and indirectly discriminated against her in access to premises and in the provision of a service. Ms Haraksin also claimed that Murrays discriminated against her by breaching the Disability Standards for Accessible Public Transport 2002 (Transport Standards).

The Disability Discrimination Commissioner intervened to assist the Court with the interpretation of the Transport Standards.

Decision

The Disability Discrimination Act

Direct and Indirect discrimination

Nicholas J considered whether Murrays could have made reasonable adjustments to allow Ms Haraksin to travel. Nicholas J stated that the most obvious adjustment that Murrays could have made would have been to arrange for a wheelchair accessible vehicle to be deployed on the Sydney-Canberra route so Ms Haraksin could have travelled when she needed to.

Nicholas J stated that there is no evidence to indicate why, given that Murrays was able to acquire an accessible vehicle in 2010, Murrays could not have acquired and deployed accessible buses a year earlier. Nicholas J found that deployment of a wheelchair accessible vehicle was a reasonable adjustment, that Murrays failed to make this adjustment and as a result of the failure, Ms Haraksin was treated less favourably in breach of section 5(2) of the DDA.

Access to Premises

Nicholas J then considered whether Ms Haraksin has been refused access to premises. Murrays submitted that Ms Haraksin did not wish to access premises that it provided because Ms Haraksin wanted to travel on an accessible bus and Murrays had no accessible buses. Murrays also argued that because Ms Haraksin did not seek access to its service, there could be no refusal for the purpose of section 23(a) of the DDA.

Nicholas J stated that to approach what occurred in the manner suggested by Murrays would be to take 'an unduly narrow view of what actually occurred'. Nicholas J found that Ms Haraksin sought to make a booking on Murrays service and that Murrays refused to take Ms Haraksin's booking because it did not have accessible vehicles. Nicholas J found that Murrays had refused to allow Ms Haraksin access to premises with the meaning of section 23(a) of the DDA.

Nicholas J also found that Murrays had breached 23(b) of the DDA because it had imposed a condition, with which Ms Haraksin could not comply, that she must travel without a wheelchair if she was to utilise Murray's services.

Nicholas J also found a breach of section 23(c) of the DDA. Nicholas J found that the language of section 23(c) is particularly broad. Nicholas J stated that all that a person must show is that he or she has been discriminated against on the ground of his or her disability and that this has occurred in relation to the provision of means of access to premises. Nicholas J found that Murrays had discriminated against Ms Haraksin on the ground of her disability in relation to the provision of means of access to premises.

Provision of a service

Nicholas J also found that Murrays had breached section 24(a) of the DDA by refusing to provide Ms Haraksin with a service.

Unjustifiable Hardship

Nicholas J stated that there was no evidence before him to suggest that avoidance of the discrimination by Murrays would have imposed an unjustifiable hardship on Murrays.

The Transport Standards

Nicholas J found that Murrays was in breach of the Transport Standards in August 2009. Nicholas J stated that were this not so, Ms Haraksin might have been able to travel using Murrays service as she had planned.

Nicholas J noted that Ms Haraksin also claimed that the respondent breached sections 33.1 (post October 2002 buses must immediately comply with the Transport Standards) and 33.2 (pre October 2002 buses must comply to the Transport Standards in accordance with the compliance timeframe) of the Transport Standards with respect to its entire fleet.

Nicholas J found that, as a matter of fact, the act of alleged unlawful discrimination that was the subject matter of the complaint to the Commission was that Ms Haraksin needed a wheelchair accessible bus to travel to Canberra and back Murrays refused to provide this service because it did not have a wheelchair accessible bus.

Nicholas J stated that non-compliance with the Transport Standards does not of itself provide a sufficient basis for a person to lodge a complaint under section 46P or to commence proceedings under section 46PO(1). Nicholas J states that this is because non-compliance with the Standards does not of itself constitute unlawful discrimination.

Charter services

Nicholas J considered whether the requirements of the Transport Standards apply to charter services. The Transport Standards apply to public transport services. Nicholas J held that charter services are not public transport services.

Nicholas J made declarations that Murrays had breached sections 23 (a), (b), (c) and section 24(a) of the DDA. Nicholas J ordered that until 12 April 2015 Murrays is to

ensure that at least 55% of its fixed route services between Sydney and Canberra are to be provided with coaches fitted with a wheelchair lifter.

The decision is available on line at:

<http://www.austlii.edu.au/au/cases/cth/FCA/2013/217.html>

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