

National Domestic and Family Violence Bench Book

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***Kassman v Dwyer & Anor* [2014] NTSC 60 (10 December 2014) – Northern Territory Supreme Court**

‘Domestic violence order’ – ‘Procedural fairness’

Procedure: Making of domestic violence order

Appeal type: Appeal against imposition of domestic violence order

Facts: The plaintiff, an Aboriginal Community Police Officer, was in a relationship with the victim. The victim made a number of allegations of domestic violence. As a result, a police domestic violence order was imposed against the plaintiff pursuant to s 41 of the *Domestic and Family Violence Act 2007* (NT). In relation to this order, the plaintiff received a notice ordering him to appear before the court on 8 August 2014 to show cause as to why the order should not be confirmed. After the victim expressed an intention to leave Darwin, the plaintiff was informed that the order would stay in force to ‘keep the peace’ and would be revoked once the victim moved. The victim informed the plaintiff she would be leaving Darwin on 13 August 2014. As a result of this and advice given by the officer who made the police order, the plaintiff did not attend court on 8 August 2014 as required. The magistrate refused a short adjournment to enable the legal counsel to obtain further information to explain the absence of the plaintiff and confirmed the order for 12 months.

Issue: Was the plaintiff denied natural justice?

Decision and reasoning: Through the ‘unfortunate combination of events’ the plaintiff was denied natural justice. His superiors in the Police Force left him with the understanding that he was not required to attend court on 8 August 2014. As a result, the plaintiff was not given the opportunity to show cause as to why the order should not be confirmed. The magistrate confirmed the order without providing reasons for refusing the adjournment or confirming the order for 12 months. Additionally, the magistrate failed to provide the plaintiff the opportunity to make submissions, contrary to s 82(2) *Domestic and Family Violence Act 2007* (NT). The decision was set aside and the matter was remitted to the Court of Summary Jurisdiction for determination.