

**IN THE MATTER OF** A complaint against **DM** and **SW** and **BF** made under ss 44, 45(2) & 75(2) of the Private Security Personnel and Private Investigators Act 2010

**DECISION**

- [1] A member of the public laid a complaint against DM and SW and BF in September 2023. He alleged the following:
- [i] Mr DM was providing crowd control, personal security and/or property security guard services without a valid certificate of approval (COA).
  - [ii] SW and BF were employing Mr DM to provide those security services with the knowledge that he does not have a COA.
  - [iii] Both companies employ other security staff who do not hold valid COAs.
- [2] The complaint was referred to the Complaints, Investigation and Prosecution Unit (CIPU) for investigation and possible prosecution. CIPU's findings are as follows:
- (a) Mr DM has contravened the Private Security Personnel and Private Investigators Act 2010 (the Act) by working as a crowd controller without the required certificate or licence.
  - (b) SW and/or BF have employed Mr DM to provide security services whilst knowing he does not hold a COA.
  - (c) There is no evidence that SW and/or BF have employed or engaged any other security workers who do not hold the required COAs.
- [3] CIPU recommends the following outcomes:
- [i] That Mr DM be issued with a written warning for carrying out restricted security work without a COA pursuant to section 44(1)(g) of the Act.
  - [ii] That the directors of SW and BF be provided with an education and awareness letter.
- [4] The reason that CIPU found that Mr DM's duties involved aspects of crowd controlling (a restricted form of security work) were that he was involved to an extent in screening entry into the premise when he was preventing people from entering through the fire door. He also performed aspects of keeping order in the venue by ensuring patrons did not touch the fire alarm switch and male patrons did not enter the female bathrooms. They also found that he was not a volunteer as he did receive forms of payment for his work. CIPU reported that neither Mr DM nor the directors were of the view that Mr DM was providing such services which is why they did not ensure he had a COA.

[5] As there has been a misunderstanding regarding the functions and responsibilities of a crowd controller I provide some guidance here.

[6] The Act sets out the definition as follows:

### **11 Meaning of crowd controller**

- (1) In this Act, **crowd controller** means a person who for valuable consideration, either by himself or herself or in partnership with any other person, carries on a business doing all or any of the following:
  - (a) screening entry to a place (other than simply ensuring that admission has been paid or that those entering have appropriate invitations or passes);
  - (b) keeping order in a place (more than merely being expected to draw the attention of others to behaviour that is inappropriate or threatens to become inappropriate);
  - (c) removing any person from a place.
- (2) A person is not a crowd controller solely because he or she does the work described in [section 10](#).

[7] The definition of a crowd controller employee is:

### **19 Meaning of crowd controller employee**

- (1) In this Act, **crowd controller employee** means an individual who in the course of his or her employment, or engagement as a contractor, by a crowd controller or other person—
  - (a) screens entry to a place (other than simply ensuring that admission has been paid or that those entering have appropriate invitations or passes);
  - (b) keeps order in a place (more than merely being expected to draw the attention of others to behaviour that is inappropriate or threatens to become inappropriate);
  - (c) removes any person from a place.
- (2) A person is not a crowd controller employee if—
  - (a) he or she is not employed or engaged primarily to do work of a kind specified in subsection (1)(a), (b), or (c), but performs that work incidentally to the principal work he or she performs; or
  - (b) he or she does the work specified in [section 18\(b\)](#) and no other work of a kind specified in subsection (1)(a), (b), or (c).

[8] Although Mr DM's work was not wholly providing crowd controlling services, i.e. he collected glasses, there were some primary elements of his role that fell into this definition. The Act specifically notes that any of the functions listed (screening, keeping order or removing a person) are functions of a crowd controller. I am satisfied that Parliament intended when drafting this Act, that if a job involves undertaking to a large extent any of these functions (screening, keeping order or removing a person) at any time whilst conducting their role, then the job would be classified as a crowd controller.

[9] I note section 19(2) of the Act which states that a person is not a crowd controller employee if they are not engaged primarily to undertake crowd controlling tasks (screening, keeping order or removing a person), but performs them incidentally. I do not find that Mr DM was performing these functions incidentally. I make this finding on the basis of the following comments from CIPU's report:

- (a) He was asked to watch the back door exit to make sure no one could enter it. He also kept an eye on the bar area and female toilet.<sup>1</sup>
- (b) In 2023, he wore an earpiece that connected him with other security staff at the venue. Prior to this, he would use hand signals. He says he requested an earpiece in 2023 to communicate more quickly and to look the part.<sup>2</sup>

- (c) A typical shift would include checking wrist bands and understanding which doors patrons were able to access.<sup>3</sup>
- (d) Although Mr DM accepts that he may have screened entry to an exit door, he believes he was not keeping order at the venue. However, he says that he was monitoring the female toilets to ensure males did not enter.<sup>4</sup>

[10] I am satisfied on the evidence I have that any other functions Mr DM undertook such as cleaning glasses, were incidental to his primary functions which were to be a part of the security team. Accordingly, his position should have been classified as a crowd controller.

[11] I also note for absolute clarity, that a person is not a volunteer if they are being paid in kind, e.g. bar and meal tab, cash under the table, or beverages. Further, a volunteer must not carry out restricted security work which would otherwise require a certificate of approval or licence or be dressed in clothes identifying them as security.

[12] It is an offence pursuant to s44 of the Act to provide specific security services without holding the appropriate COA to do so. It is also an offence pursuant to s45(2) of the Act to employ, engage as a contractor, or permit to act as a crowd controller employee any individual who does not hold a certificate of approval as a crowd controller employee whilst not holding a license to do so. Despite this, I accept CIPU's recommended outcomes.

[13] Accordingly, I request CIPU to provide Mr DM with a written warning and provide the directors of SW and BF with an education and awareness letter and/or a copy of this decision. A copy of this decision should also be provided to [redacted].

[14] I consider it in the public interest for this decision to be published, however given the misunderstanding of the law by the parties involved, I direct that their identifying details be suppressed.

**DATED** at Wellington this 2<sup>nd</sup> Day of April 2024



K A Lash  
Deputy Private Security Personnel Licensing Authority

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