

Appeal against the refusal of an import permit EM Marais

The appellant worked in the UK for two years as a fitter. On 12 June 2005 he returned to the Republic of South Africa permanently. Whilst staying in UK he acquired lawfully, a 12 Bore shotgun and a .243 Winchester Rifle. He had previously in June and December 2004, temporarily imported these firearms in terms of Regulation 62(7)(f) for personal use whilst he was in the Republic of South Africa. It would be correct to assume that the South African Police Service had captured the particulars of the firearms concerned and the particulars of their owner.

The appellant asked the Police Service's Designated Firearms Officer to enlighten him on the correct procedures to bring the said firearms into South Africa and to have them licenced. He was advised that a temporary import permit would be issued to him on his arrival at OR Tambo airport. The Appellant made a telephonic contact with one Matilda of the South African Central Firearms Registry and he was advised that upon arrival at the airport in Johannesburg he should apply for a temporary permit. The impression which any person would be left with is that at the least he would be allowed to bring the weapons to the entry point where he would be issued with a temporary import permit.

The appellant appears to have made strenuous effort to gain the correct facts concerning the correct procedure. He enlisted the help of his father to confirm the correct procedure to be followed. He was told that the official concerned had resigned. His father's enquiries from the Central Firearms registry elicited a reply from Violet Phuti that a temporary import permit may be applied for on arrival at the airport in Johannesburg. From the above it is clear that the appellant at all times wanted to comply with the provisions of the Act.

The members of the Firearms Registry advised the wrong procedure which resulted in the appellant arriving with the firearms and applying at the airport. The application was refused. The affidavit of officer Du Randt bears testimony to what the appellant says he was advised to do. He was never informed of the provisions of Section 73 that he is prohibited from importing the firearms before he has been issued a permit. The causal factor to the arrival of the firearms at OR Tambo airport without a licence is the wrong procedure that was given to the appellant. It is small wonder that he was not prosecuted although a threat had been made to that effect. In the case of Union Government v Union Steel Corporation, 1928 AD 220 at 234 the court explained the position as follows:

"If a discretion is conferred by statute upon an individual and he fails to appreciate the nature of that discretion through misreading of the Act which confers it, he cannot and does not properly exercise that discretion. In such a case a court of law will correct him and order him to direct his mind to the true question which has been left to his discretion."

The correction required can in this case be done by the Firearms Appeal Board acting in terms of Section 133(2) of the Firearms Control Act 60 of 2000. The fact that a wrong procedure was advised to the appellant created a legitimate expectation on the part of the appellant that he could apply at OR Tambo airport and obtain a temporary permit. That expectation was frustrated by the refusal of the temporary permit and that a wrong procedure had been followed. See in this respect the letter signed by Captain de

Waal addressed to appellant. Legitimate expectation is part of our law. See the case of Administrator of the Transvaal v Traube, 1989(4) SA 731 (A).

The advice of wrong procedure also resulted in a denial of administrative justice in terms of Section 33(1) of the Constitution Act 108 of 1996. The appellant has suffered prejudice which the Board can only remedy by varying the decision of the registrar by granting a permanent import permit. The Firearms Appeal Board orders accordingly.