



HIGH COURT OF AUSTRALIA

Public Information Officer

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SZBEL v MINISTER FOR IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS AND REFUGEE REVIEW TRIBUNAL

SZBEL was denied procedural fairness by the Refugee Review Tribunal when it found aspects of his story to be implausible, the High Court of Australia held today.

SZBEL, an Iranian seaman, jumped ship in Port Kembla in April 2001. He applied for a protection visa, saying he feared for his safety because the ship's captain knew of his attraction to Christianity. The Immigration Department refused him a visa and he sought review of that decision by the RRT. It told SZBEL it was unable to make a decision in his favour on the information supplied, and invited him to appear before it to give evidence. During questioning, the RRT member did not challenge what SZBEL said, express any reaction, or invite him to amplify any of the three particular aspects of his original account which the RRT later deemed implausible.

In his visa application SZBEL said he had attended Christian services as often as possible since 1996 in various countries. In December 2000 fellow crew members spotted him coming out of a church in Argentina and took him back to the ship where an officer warned him that displaying interest in Christianity would cost him his job. At home SZBEL told friends about his activities. They urged him to renounce his heresy. He received threatening phone calls. The captain heard from a crew member of rumours circulating in SZBEL's home town and of the ostracism he experienced there. The captain told SZBEL he would be dealt with when the ship returned to Iran and he would be closely supervised until then. SZBEL said he became increasingly afraid of the crew who thought the captain should lock him up. On 6 April 2001 he was allowed to visit a doctor in Port Kembla as he was ill from the constant harassment. The next day SZBEL jumped ship. The RRT held that his claim that he did so because he feared punishment when the captain handed him to authorities in Iran was not credible. The RRT was sceptical about how the captain came to hear of SZBEL's conversation with his friends in a town hundreds of kilometres from the ship, that the captain would accuse him of apostasy on the strength of a crew member's comments, and allowed him to consult a doctor if the captain was intending to hand to Iranian authorities. SZBEL explained that another crew member escorted to and from the doctor.

The Federal Magistrates Court dismissed SZBEL's application for relief, and the Federal Court of Australia dismissed an appeal. He appealed to the High Court, which unanimously allowed his appeal. The Court held that the RRT had not accorded SZBEL procedural fairness. Under the *Migration Act*, an applicant is to be invited to give evidence and present arguments relating to the issues arising in relation to the decision under review. SZBEL complained that he was not put on notice that his account of how the captain came to know of his interest in Christianity, and the captain's reaction, were issues arising in relation to the decision under review. Nothing in the department's decision indicated that these aspects were in issue and the RRT did not challenge what SZBEL said of them. Based on the department's decision SZBEL would have understood that the determinative question was the nature and extent of his Christian commitment. The Court held that the RRT did not give SZBEL sufficient opportunity to give evidence or make submissions about what turned out to be the decisive issues. It remitted the case to the RRT for rehearing in accordance with the Court's reasons.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*