

**Case Summary**  
**Office of the Judge Advocate General**

**DEFENDANT:** CPO Donald

**TYPE OF PROCEEDING:** Defence Force Magistrate (DFM)

**DATE OF TRIAL:** 26 – 27 September 2023 and 05 October 2023

**VENUE:** Court Martial Facility, Fyshwick, ACT

**Charges and plea**

	<b>Statement of Offence</b>	<b>Plea</b>
Charge 1	DFDA, s. 30(1) Assaulting a guard	Not Guilty
Alternative to Charge 1	DFDA, s. 34 Assaulting a subordinate	Not Guilty
Charge 2	DFDA, s. 30(1) Assaulting a guard	Not Guilty
Alternative to Charge 2	DFDA, s. 34 Assaulting a subordinate	Not Guilty

**Pre-Trial: Closed hearing and non-publication orders**

Application made:	No
Determination:	Not Applicable

**Trial: Facts legal principles**

The defendant was charged with two principal charges of assaulting a guard contrary to s. 30(1) of the DFDA.

The prosecution alleged that, while the defendant was serving on-board a RAN ship in June 2022, when alongside in a foreign port, he assaulted the complainant, a quartermaster on duty at the gangway of the ship. The complainant gave evidence that the defendant returned to the ship in the early hours of the morning, with two other sailors, and appeared to be under the influence of alcohol. She testified that, on two separate occasions within a short period of time, the defendant made flirtatious comments towards her, pulled her close to him with force, and kissed her on the cheek.

The DFM found that both of the charges had been proven beyond reasonable doubt.

**Findings**

	<b>Finding</b>
Charge 1	Guilty
Alternative to Charge 1	Not Applicable
Charge 2	Guilty
Alternative to Charge 2	Not Applicable

**Sentencing: Facts and legal principles**

- *This summary is not intended to be a substitute for the reasons of the Service tribunal or to be used in any later consideration of the tribunal's reasons.*

In determining the defendant's sentence, the DFM had regard to his background and service history.

The defendant called three of his superior officers to give evidence. Each described him in highly complementary terms.

The DFM had regard to the maximum sentence for the offences, as well as the sentencing principles in the *Crimes Act 1914*, and particularly the need to maintain discipline in a service environment.

Both the prosecution and the defending officer submitted that this offending fell within the low range of objective seriousness of this type of offence. The DFM also considered in mitigation the defendant's otherwise exemplary character and the detrimental financial consequences he had suffered as a result of his offending. As he pleaded not guilty to the charges, no discount was awarded for the utilitarian value of a guilty plea or the expression of remorse it carries.

The DFM considered that the need to achieve general deterrence and denounce the defendant's conduct to be the most important factors in this case. The high position of responsibility that the defendant occupied on board, and the wide rank disparity between him and the victim, rendered the offending more serious. The DFM determined that the defendant assaulting of a subordinate female sailor was entirely unacceptable, contrary to ADF values, and was liable to undermine the essential relationships of trust in a service environment.

The DFM imposed a fine of \$2000 (\$1000 for each offence) and a severe reprimand.

### **Punishments and orders**

Charge 1	\$1000 fine and severe reprimand
Alternative to Charge 1	Not Applicable
Charge 2	\$1000 fine and severe reprimand
Alternative to Charge 2	Not Applicable

### **Outcome on automatic review**

The Reviewing Authority's decision on automatic review was handed down on 03 November 2023.

	<b>Conviction</b>	<b>Punishments / Orders</b>
Charge 1	Upheld	Upheld
Alternative to Charge 1	Not Applicable	Not Applicable
Charge 2	Upheld	Upheld
Alternative to Charge 2	Not Applicable	Not Applicable

### **Outcome on petition**

The Reviewing Authority's decision on petition was handed down on 01 March 2024.

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	<b>Conviction</b>	<b>Punishments / Orders</b>
Charge 1	Upheld	Upheld
Alternative to Charge 1	Not Applicable	Not Applicable
Charge 2	Upheld	Upheld
Alternative to Charge 2	Not Applicable	Not Applicable

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