

2015 SUMMER TRIBUNAL CASES UPDATE

Introduction

On behalf of all of us at KJK Legal, we would like to wish everyone a safe and happy Christmas and New Year. Attached is our summer update of cases – there have been some recent SAET decisions which many of you may have already seen plus some WCT matters.

We look forward to dealing with you all in the New Year and thank all of you for your support during 2015.

Workers Compensation Tribunal Cases

Hourigan [2015] SAWCT 34

In this case, a worker's stress claim was rejected on the grounds that the injury was attributable to serious and wilful misconduct, and therefore not compensable. The Workers Compensation Tribunal found that although the worker's misconduct was grossly negligent, it was not wilful. Accordingly the injury was deemed compensable and the rejection set aside. Imperative to determining whether the worker's actions were intentional was the question as to whether he acted in the knowledge of, or with reckless indifference to the consequences of his actions. The worker was involved in a serious safety incident at work and his employment was terminated on the grounds that the breach constituted serious and wilful misconduct.

Unfortunately this type of case demonstrates that the standards applied to safety breaches where they lead to workers compensation claims are quite different to those applied if an employer is prosecuted for a breach of the WHS laws. It seems to be an unfortunate double standard.

Samandari [2015] SAWCT 35

This decision emphasises the obligation of the parties to ensure that once a trial date has been set by the Tribunal, they adhere to the timeframes stipulated by the trial orders and are ready to proceed on the day. An application to adjourn the trial for the apparent 'inaction' of the worker's representatives was denied.

The case demonstrates that the Tribunal takes a dim view of legal practitioners who "don't get their act together".

Buckettt [2015] SAWCT 39

This decision involves an appeal from an earlier judgment, where the worker established compensability of injuries sustained in a motor vehicle accident on his journey to work. Upon dismissing the appeal the Tribunal said the journey must be viewed in context of its purpose and its timing as to whether the worker is carrying out their duties of employment. The practicality of the inherent requirements of the worker's duties and profession were also relevant factors.

Brown v State of SA (SA Police) [2015] SAWCT 45

This lengthy decision encompasses all manner of issues arising upon determination of a death claim. Causal connection between the worker's compensable injuries and his subsequent death was established, despite the death being some five years after his employment had ceased and after the worker had accepted a redemption payment. The claimant was the divorced wife of the worker, who on factual grounds was still considered to be a domestic partner although not dependant on the worker's earnings. One important takeaway from the decision is the ruling that the claimant was not entitled to weekly payments in any case as the worker had previously received a considerable sum by way of a redemption prior to his death.

Ms A v WorkCover (Adtrans Automotive Group Pty Ltd) [2015] SAWCT 50

This case dealt with the issue of whether a worker who had suffered a psychiatric injury had ceased to be incapacitated for work. An important distinction was made by the WCT between an incapacity of a worker being relevant to employment in the labour market and limitations which are considered non-occupational. The injury in this case was an illness or disorder of the mind arising from employment, namely a lack of self-confidence rather than what the worker can do at work. The Tribunal also said the worker's eagerness to return to work meant she had overcome any potential limitations her injury could have placed on her employability. A lesson is that while a worker may have significant vulnerabilities and a decreased ability to handle certain situations, this does not necessarily amount to an incapacity for work.

James v The State of SA (DCSI) [2015] SAWCT 52

Again, this was a case involving the question of whether a worker was in the course of her duties when delivering goods to her place of work outside of working hours. The Tribunal found that the employer had encouraged the worker to attend the place where she sustained injury and further, that injury was a result of a defect at the premises. A reminder to all that a worker being injured outside of their working hours does not automatically eliminate the real or substantial connection to work requirement to establish compensability.

South Australian Employment Tribunal Cases

Harrison v RTW SA (National Pharmacies) [2015] SAET 2

In one of the first cases before the South Australian Employment Tribunal, quite fittingly, the Tribunal was asked to determine what law applies to a review of a determination of lump sum compensation for non-economic loss made pursuant to the Workers Rehabilitation and Compensation Act 1986, but not challenged until after the enactment of the Return to Work Act 2014. Upon interpreting the Transitional Provisions in the 2014 Act, the Tribunal found the worker's rights are preserved and are still able to be exercised in accordance with section 43 of the 1986 Act. Lesson – it does not follow that a worker whose entitlement for non-economic loss has been determined under the 1986 Act who has not challenged the determination before the designated day is incapable of challenging it!

Harden v RTW SA (Caroma Industries) [2015] SAET 3

This decision again deals with the interplay between the two pieces of legislation, this time in relation to a discontinuance of a worker's weekly payments. The worker's weekly payments were discontinued under the Workers Rehabilitation and Compensation Act 1986, with an application to review the decision being lodged after the commencement of the Return to Work Act 2014 and thereby determined by the transitional provisions. The worker was not able to seek weekly payments by reference to the WorkCover Ombudsman and argued that he could seek reinstatement of those payments under the newly enacted section 48(9) of the 2014 Act.

In this case, the worker had already exceeded 104 weeks of incapacity and under section 48(10) of the 2014 Act would not be entitled to continuing weekly payments whilst his application for review was on foot. The worker argued that he was still entitled to the benefit of section 48(9) despite that. The majority of the Tribunal disagreed with the worker and found that he was not entitled to the benefit of having his payments reinstated under section 48(9) whilst the dispute was on foot, due to the provisions of section 48(10).

Copies of the Workers Compensation Tribunal Decisions discussed above can be accessed at www.industrialcourt.sa.gov.au, while South Australian Employment Tribunal Decisions can be accessed at www.saet.sa.gov.au.

As always, representatives from KJK Legal are available to answer any queries that you might have in relation to issues that rise out of the cases discussed above. Please feel free to contact us at your convenience.

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