

WorkCover statutory benefits case law: 2024, the year so far

Megan Cameron, Barrister, Dever's List

18 May 2024

McQuade v Jolina Pty Ltd, 22 January 2024, Magistrate Richards: termination of compensation entitlements in respect of injuries sustained when Plaintiff fell off the roof of his mother's house. Claim initially accepted, but terminated approximately 2 years later following a review of the claim, and a determination that the Plaintiff was not a worker within the meaning of s 3 of the WIRC Act (in the primary/common law sense, no claim made that he was a deemed worker). Plaintiff unsuccessful.

Reynolds v Rokon Pty Ltd, 29 January 2024, Magistrate Richards: termination of compensation entitlements in respect of right finger injury when using a hammer drill, on the basis that the Plaintiff was not a worker within the meaning of the WIRC Act. Question whether Plaintiff was a deemed worker pursuant to schedule 1, clause 9 of the WIRC Act. Determined that Plaintiff was carrying on an independent trade or business. He was not subject to Defendant's control and didn't depend on the Defendant for his existence during the relevant period. Plaintiff unsuccessful.

Piper v Department of Transport [2024] VMC 1, 8 March 2024, Magistrate Hoare: rejected claim in respect of mental injury alleged by safety adviser returning to work after several months of parental leave, allegation of bullying and unreasonable management action, whether mental injury arose wholly or predominantly as a result of management action taken on reasonable grounds and in a reasonable manner (s 40 of the WIRC Act). Plaintiff successful.

Swanston v M & T Reeves Pty Ltd, 20 March 2024, Magistrate Richards: pre-injury average weekly earnings – question whether worker was promoted or appointed to a different position in the 52 weeks prior to injury (s 154(3) of the WIRC Act). Defendant offered Plaintiff increase in hourly rate to prevent him from accepting a job with another company. Plaintiff's role did not change. Determined that Plaintiff was not promoted and was not appointed to a different position. Plaintiff unsuccessful.

Salafia v Barkers Burke Pty Ltd, 5 April 2024, Magistrate Hoare: rejected claim in respect of head injury sustained from fall from ladder when doing carpentry work, on basis that the Plaintiff was not a worker within the meaning of the WIRC Act. Question whether Plaintiff was a worker within the meaning of s 3 (in the primary/common law sense, it was agreed he was not a deemed worker). Plaintiff working pursuant to oral arrangement with builder. Central issue when there is an unwritten contract is whether person is an employee or a person who carries on trade or business of his own. This depends on control and extent to which they can be seen to be working in their own business. *Jones v Dunkell* inference drawn for failure to call accountant. Determined Plaintiff and Defendant were in casual employment relationship. Plaintiff successful.

Saari v VWA, 9 April 2024, Magistrate Richards: termination of weekly payments on post-130 week grounds, in respect of heart attack injury sustained in the course of his employment as an air conditioning service technician. Surveillance footage relied on by Defendant. Alleged that Plaintiff had not been candid with doctors about his daily activities. Factual dispute about whether Plaintiff told his psychologist about particular activities.

Plaintiff's credit determinative of the proceeding. Evidence corroborated by Plaintiff's friend and wife. Plaintiff successful.

Rossington v Hungry Hampers Catering, 11 April 2014, Magistrate Hoare: Medical Panel opinion finding whole person impairment of 7% for right shoulder injury sustained in 2018, but monetary entitlement reduced to \$0 due to deduction by agent of previous impairment benefit compensation received for a right shoulder injury sustained in 2011 (s 217(4) of the WIRC Act). Failure of the agent to adopt and apply the Medical Panel opinion as required by s 313(4) of the Act. Not open to agent to reduce the monetary entitlement pursuant to s 217(4) because doing so was based on the premise that the 2018 impairment was a recurrence of the 2013 injury, but that was inconsistent with the Medical Panel's opinion. Plaintiff successful.

Rossington v Hungry Hampers Catering (ruling on interest), 29 April 2014, Magistrate Hoare: claim by Plaintiff for increase in lump sum impairment benefit compensation (following success in the substantive issue in the proceeding on 11 April 2014), pursuant to s 94 of the WIRC Act. No provision in WIRC Act for payment of interest except on weekly payments, but s 94 permits the Court to award increase in compensation where the insurer is responsible for unreasonable delay (up to 10% of the lump sum awarded in respect of impairment benefit compensation). Determined that agent acted promptly throughout course of the matter. Plaintiff unsuccessful.

Al-Najle v KM Logistics & Services Pty Ltd, 23 April 2014, Magistrate Hoare: pre-injury average weekly earnings – determination of what the worker could reasonably have been expected to have earned over 52 weeks post-injury (s 153(2)(a) of the WIRC Act). Plaintiff was self-represented litigant. Factual dispute regarding expectations for employment hours between Plaintiff and Defendant. Plaintiff unsuccessful.

Toublis v Signature Proprietary Limited, 3 May 2014, Magistrate Richards: rejected claim for spine, left lower limb, left hip and psychological injuries sustained throughout course of employment as massage therapist. Accepted Plaintiff's allegation that two falls at work occurred, due to corroborating evidence of co-worker. However, failure to make contemporaneous complaint of injury to any doctors. Plaintiff was not a credible or reliable witness. *Jones v Dunkell* inference for failure to call husband, but decision not made on that basis. Plaintiff unsuccessful.