Supreme Court Notes

WORK HEALTH COURT APPEAL

Castrol Australia PTY Ltd. v Veronica Mary Mitchell

Judgement of Mildren J delivered at Alice Springs on 31 August 1995.

This was an appeal from the Work Health Court, in which the respondent was the dependent spouse of the deceased worker. The worker had died in a motor vehicle accident, which occured as the worker was returning to Alice Springs with his supervisor from a "familiarisation tour" of the region for which the worker was responsible.

The evidence accepted by the magistrate was that, before returning to his own home in Alice Springs, the worker would have been required to convey his supervisor, who was visiting from Interstate, to suitable accomodation in Alice Springs.

On appeal, the question was one of construction of the journey provisions under section 4 of the *Work Health Act* ("the Act"). It was the appellant's contention that the worker's fatal injuries were sustained in the "accident" as defined in the *Motor Accidents (Compensation) Act* ("MACA Act") and that the worker was travelling in circumstances referred to in section 4 (1)(b) of the Act, that is "between his place of residence and his work place", such that pursuant to Section 4(2A)(b) of the Act his injury must be taken not to have arisen out of or in the course of his employment, so as not to be compensable under the Act.

Justice Mildren held that, although the magistrates finding that the accident occured whilst the worker was still in the course of his employment (such that the respondent need not rely on upon the extended meaning given to the expression "arising out of or in the course of employment by Section 4(1)(b) to come within the Act) was clearly open to his Worship, his Worship had erred in holding that Section 4(2A)applied only where the injured worker or his dependents needed to rely on the section 4(1)(b). His Honor said "the proper question ought to have been whether the deceased had been travelling by the shortest convienient route between his place of residence and his work place" (at page 8). The worker in this case not having been working at a fixed work place, reference was made to the expansive definition of workplace in section 4(7) of the Act, to determine whether the deceased was at this work place or in fact travelling from that workplace to his place of residence when the accident occured. His Honor cited the correct test as being whether the deceased was "at the place where the accident occured pursuant to his contract of employment" and held that the Magistrates finding that the worker was "still at work at the time of the accident leads to the conclusion that at the time he was at the place of the accident pursuant to his contract of employment and therefore had not left his work place" (at page 9). That being so, the deceased was not travelling in circumstances referred to in section 4(1)(b), so that section 4(2A) did not apply. The appeal was dismissed.

Justice Mildren also drew the attention of the legislature to "the prospect of a multiplicity of litigation in different jurisdictions" (being the Work Health Court and the Tribunal under the MACA Act) and "the risk of losing altogether" (due to there being no single procedure to enable a Court to decide which of those jurisdictions is the correct forum and bind the relevant parties in both jurisdictions to that decision) faced by a worker to whom section 4(2A) of the Act has potential application.

Appellant Counsel: Walsh
Solicitors: Elston & Gilchrist
Respondent Counsel: Riley
Solicitors: Morgan Buckley

JUDGMENT UNDER LIMITATIONS ACT

NT Gas Pty Ltd v Eric Newman Holdings Pty Ltd and Others (S.C. of NT 84 of 1994, unreported 18 August 1995).

Judgment delivered by Martin CJ.

Several defendants in the action applied under Rule 47.04 to have questions of law concerning the Limitation Act and a contractual limitation determined before the trial of the proceedings.

The material filed in support of the applications indicated that if the trial were to proceed it would be lengthy and expensive. A trial of the limitations issues, on the other hand, would take but two days.

The plaintiff opposed the applications on the grounds that the preliminary trial of the issues would be more complex, costly and time-consuming than indicated by the defendents and would result in duplication of costs of the trial.

It was held that preliminary issues sought to be determined involved a number of issues of fact and law. The discretion of the court to entertain applications of this nature will be influenced by a number of considerations.

These range from going to expense, the probabilities that the trial of the issue will put an end to the action, the simplicity of the issues and whether there is a clear line of demarcation between the issues in question and the rest of the case.

It should also be borne in mind that determination of preliminary issues is not necessarily final given the appellate process.

Thus, if the ultimate outcome is that the trial is to be had, it may be significantly delayed.

Supreme Court Notes

(from page 16).

NT Gas Pty Ltd v Eric Newman Holdings and Others (Unreported 18 August 1995 cont.)

It was held that the applicants, at this stage, had not satisfied the burden upon them of showing that determination of the preliminary issues could be achieved without major expense and the possiblity of undue delay in the pre-trial process, nor could it be confidently said that a determiniation of the issues would put an end to the action.

In addition to the authorities referred to by Martin CJ, the reader might wish to consider *Harris v Western Australian Exim Corporation* (1994) 129 ALR 387 (Fed Ct of Aust, Hill J) and *Rocklea Spinning Mills Pty Ltd v Anti Dumping Authority* (1995) 129 ALR 401 (Fed Ct of Aust FC).

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