

Spotless Group Limited v Piggott [2015] WADC 13

Key Points

- The onus of proof is on the worker to produce evidence to establish his case on the balance of probabilities.
- Given the significant underlying conditions, it was not open for the Arbitrator to find that the injuries were work-related on the mere basis of the timing of the onset of symptoms.
- There was no medical evidence to support the Arbitrator's conclusion that the cause of the worker's injuries was the flight from Perth to Tom Price.
- It was not open for the Arbitrator to make her own findings on matters that required supportive expert medical evidence.

Background

Mr Piggott was employed by Spotless as an electrical maintenance worker at Tom Price, Western Australia, on a fly-in fly-out basis. On 15 December 2013, Mr Piggott flew to Tom Price from Perth. During the flight he slept leaning against a window on his right side. He awoke just prior to landing and immediately felt severe pain in his neck.

The next day, Mr Piggott was experiencing severe neck pain, but managed to complete his normal 10 hour shift. The following day, Mr Piggott sought medical treatment for his neck. On 13 January 2014, Mr Piggott had scans which revealed bursitis, chronic subacromial impingement and a tear of his insertional supraspinatus tendon in his left shoulder.

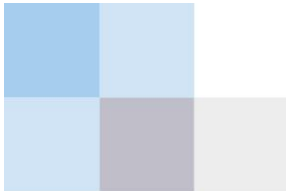
Mr Piggott claimed worker's compensation for a neck and left shoulder injury. The claim form alleged that the shoulder injury resulted from 'sitting in a plane/lifting a bag'. In his statement of evidence, Mr Piggott attributed the shoulder injury to the work duties on 16 December.

Arbitration Hearing

At Arbitration, Mr Piggott claimed workers' compensation for neck and left shoulder injuries which he sustained during the flight. He did not allege that he had sustained any injuries at work. Expert evidence was given by two orthopaedic surgeons, Dr Hardcastle and Dr Hurworth.

In Dr Hardcastle's opinion it was unlikely that the flight had caused the aetiology of the shoulder injury. In his opinion Mr Piggott's work activities on 16 December were the likely cause of the shoulder symptoms. As to the neck, Dr Hardcastle said that 'the evidence does not support the neck as being aggravated by his work to any significant extent' but rather, related to the development of natural degenerative stiffness and some mild mechanical pain.

Dr Hurworth's opinion was that Mr Piggott's shoulder had been degenerative for some time. He did not consider whether the flight had caused the onset of symptoms, observing that it



could have become symptomatic at any time. Dr Hurworth did not address the neck injury.

Arbitrator's Findings

The Arbitrator held that Mr Piggott 'had one strain injury extending from the neck to the left shoulder'.

Mr Piggott had suffered a personal injury by accident with respect to a 'strain' type injury to his neck. With respect to the left shoulder, Mr Piggott had underlying age related issues which were asymptomatic prior to the flight. The Arbitrator held that the flight, coupled with the overhead work the following day, contributed to a significant degree to the aggravation of the pre-existing shoulder condition. The shoulder injury had occurred in the course of the employment, since the air travel was an incident of the employment.

The District Court Appeal

The District Court appeal was heard by His Honour McCann DCJ. His Honour held that given Mr Piggott's pre-existing conditions, it was not open to the Arbitrator to find in favour of Mr Piggott on the mere basis of the timing of the onset of symptoms.

His Honour observed that an Arbitrator is entitled to accept all, none or parts of the expert's evidence and findings can be drawn from the opinions of more than one expert. The Arbitrator was not bound to accept all of Dr Hardcastle's evidence nor did there need to be a correlation between the facts as found by the Arbitrator and those relied on by Dr Hardcastle.

However, it was not permissible for the Arbitrator to "fill in the gaps" or to "extrapolate from" the expert evidence. The Arbitrator's reasoning that Dr Hardcastle' opinion on the relevance of Mr Piggott's activities on 16 December held good for 15 December also, was erroneous, and there was no evidence to support that conclusion.

His Honour was of the same opinion in respect of Mr Piggott's neck injury. There was no evidence to support a finding that the neck injury was anything other than ephemeral. The Arbitrator did not explain why the flight was a factor in initiating or prolonging Mr Piggott's neck injury. In fact, the Arbitrator found that there was no specific injury on the flight. It followed that the neck symptoms arose in the ordinary course of the disease.

Contact

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