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Flight attendant's injury following Los Angeles arrest for sexual assault 'arose out of employment' – *Colin Harvey v Simon Blackwood (Workers' Compensation Regulator) & Qantas Airways Limited* [2016] ICQ 014

Key Points

The Claimant succeeded in his claim for workers' compensation against Qantas after he developed Post Traumatic Stress Disorder (PTSD) following his arrest for an alleged sexual assault on a co-worker.

This decision confirms Queensland's test of when a work injury "arises out of, or in the course of, the worker's employment" only requires that the worker be at a "place" at the behest of the employer.

Any injury which occurs at the "place" is compensable so long as the injury was not caused by the worker's "gross misbehaviour".

Background

The Claimant was a Qantas flight attendant working on the Brisbane to Los Angeles route.

On 22 May 2013 he flew in the course of his employment from Brisbane to Los Angeles. He was due to return to Australia during the evening of 23 May 2013.

In the early hours of 23 May 2013, after socialising with co-workers, the Claimant found one of his colleagues in a state of collapse in the corridor of the hotel they were staying at.

The colleague subsequently made an allegation of sexual assault against the Claimant.

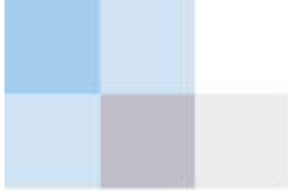
The Claimant was arrested but released the next day. Qantas' investigation found that the allegations of sexual assault were unsubstantiated.

However, the Claimant developed PTSD and a major depressive disorder.

The Claimant claimed that his injury was caused by 11 various stressors arising from the process of being arrested, being told of the allegations of sexual assault, and being held in custody.

At first instance in the Queensland Industrial Relations Commission, the Commissioner found that the Claimant's injury did not arise out of his employment as a direct consequence of him being at the hotel in Los Angeles.

The Law



The appeal turned upon whether such seemingly non-work related stressors "arose out of, or in the course of employment".

The President of the Industrial Court, Martin J, found that the applicable test was set out in *Hatzimanolis v ANI Corporation Limited* (1992) 173 CLR 473 as considered by the High Court of Australia in *Comcare v PVYW* (2013) 250 CLR 246. That is, the injury must have occurred at and by reference to the "particular place" where it was sustained because the employer induced or encouraged the Claimant to be there.

Neither the Queensland Workers' Compensation Regulator or Qantas alleged that the Claimant had engaged in gross misbehaviour. Nevertheless, the Commissioner concluded that the Claimant had engaged in some "activity" (without saying what the activity was) which resulted in the Claimant's arrest, and that "activity" was not been encouraged by Qantas.

In allowing the Claimant's appeal, Martin J found that there was no evidence that the Claimant was engaged in any "activity" which was the cause of his injury. Rather the Claimant's injury was sustained because his employer required him to be at a "particular place".

Conclusion

This decision confirms Queensland's test of when a work injury "arises out of, or in the course of, the worker's employment" only requires that the worker be at a "place" at the behest of the employer.

Lessons Learned

For employers to minimise the risk of injury in these circumstances, thought should be given to the risks surrounding the arrangements for workers who are required to be away from home. Considerations should include more stringent policies and training about alcohol consumption, possible imposition of curfews etc.

Not only should such arrangements minimise the risk of injury, any breach of the policies would give the employer some prospect showing the injury did not arise out of the course of employment.

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