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Redefining the workplace

Demasi v Comcare (Compensation) [2016] AATA 644 (26 August 2016)

Key Points

The AAT was required to consider the scope of the term 'in the course of employment' and in particular, the meaning given to the phrases 'place of work' and 'ordinary recess', in the context of flexible working arrangements.

Background

Maryanne Demasi (Demasi), an ABC journalist for Catalyst, broke her hip on 15 January 2014, and made a claim for workers' compensation.

She was working from home, when she decided to go for a run after a scheduled interview was pushed back. During her run, she tripped on an uneven surface.

Her claim for workers' compensation was denied by Comcare on the basis that her injury was not sustained at a place of work. Comcare affirmed their decision on review and Demasi applied to the Tribunal for review of that decision.

The Tribunal was required to consider two separate issues:

- whether Demasi's home was a place of work; and
- whether Demasi was 'temporarily absent' during an 'ordinary recess' in her employment.

The Law

The Tribunal was required to consider the meaning of the phrases contained in section 6(1)(b) of the *Safety, Rehabilitation and Compensation Act* 1988 (SRC Act).

Pursuant to section 6(1)(b) of the SRC Act, an injury is considered to have been sustained in the course of one's employment if it was sustained while the employee was at the employee's place of work, for the purposes of the employment, or was temporarily absent from that place during an ordinary recess in that employment.

Whether an employee is at a 'place of work' will largely depend on matters of fact and degree, and while the phrase should be given its ordinary meaning, it is not limited to the office where

the employee performs duties (*Comcare v Australia (Defence) v O'Dea* (1997) 150 ALR 318 at 326).

While the phrase 'ordinary recess' is not defined in the SRC Act, it has been considered at length by the Courts. 'Recess' has been referred to as a relatively brief interruption in an otherwise continuous period of work and has been associated with rest, refreshment or relaxation (*Drummond v Drummond* [1960] VR 462 at 463).

The Courts have considered that the phrase 'ordinary' in the context of the above phrase may mean 'usual' in the employment of that particular employee (*Drummond* at 464). It has also been interpreted to mean a "break or interruption of limited duration in the continuity of a normal working day" (*Landers v Dawson* (1964) 110 CLR 644).

The Tribunal considered the above when reaching its decision to disallow Ms Demasi's compensation claim.

Conclusion

At the hearing, it was accepted by both parties that Demasi was performing work within the scope of her employment at her home on 15 January 2014, and that it was an accepted practice for ABC employees to work from home on occasions.

The parties did not agree however, that Demasi's home was her place of employment. Comcare contended that such a broad reach of the expression 'place of work' as proposed by Demasi could mean that almost anywhere in the world would be a place of work, and would deprive the phrase of any real meaning.

While the Tribunal did not accept the broad concept of place of work as contended by Demasi, it did find that on the day in question, she carried out work duties at her home before going for a run and that her manager was aware of, and had approved her working in that way. The Tribunal also found that Demasi's place of work was not restricted to the ABC studios.

The Tribunal confirmed that it is only when an employee is temporarily absent from work during an ordinary recess in the person's employment that the benefit of section 6(1)(b) is attracted.

The Tribunal considered that while going for a run during a lunch break would be considered as occurring in an 'ordinary recess', going for a run at any time of the day falls within a different category.

The Tribunal found that while Demasi was going for a run during work hours, the break did not take place in an ordinary recess, and it was on this basis that Demasi's claim was denied.

Lessons Learnt

We are all acutely aware that the nature of the physical workplace is changing. With advances in technology, an employee can perform their work duties well and truly outside of the confines

of a normal office environment and arguably, anywhere in the world as Demasi contended at hearing.
While this case provides employers with some guidance as to when an employee may or may not be temporarily absent from the workplace during an ordinary recess in the context of a flexible working arrangement, with such arrangements becoming increasingly common place, in time we may see an evolution of the meaning of this phrase.

If anything, this case is a timely reminder for employers to consider the consequences of redefining the workplace in the context of flexible working arrangements.

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