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False assurances of employer lead to adverse decision

Voss and Comcare [2016] AATA 515

Key Points

- Meetings pertaining to matters of general administration, management and the implementation of policy may not be considered to be "reasonable administrative action" pursuant to section 5A(2) of the SRC Act.

Background

Mr Voss was working in Brisbane as a regional manager with the Department of Defence. The Department established a new division which would assume the functions of his area within the Department. Mr Voss attended a meeting at which he was advised that a decision had been made to relocate his position to Canberra. Mr Voss stated that as a result of this meeting he suffered a depressive condition because, during the consultation process, he had received a number of assurances that his position would remain in Brisbane. Mr Voss lodged a claim for workers' compensation in relation to the major depressive episode.

Comcare denied liability for the claim on the basis of the reasonable administrative action exclusion in section 5A(2) of the SRC Act. Mr Voss sought further review at the Tribunal.

The Law

An injury under section 14 of the SRC Act may be established if the employee suffers from a physical or mental injury arising out of or in the course of their employment in accordance with section 5A of the SRC Act. Section 5A gives the definition of 'injury' as a disease, injury or aggravation of a physical or mental injury arising out of the employee's employment. Section 5B of the SRC Act defines disease to be an ailment or an aggravation of an ailment suffered by an employee, that was contributed to, to a significant degree by the employee's employment.

Where a disease, injury or aggravation is suffered as a result of reasonable administrative action, taken in a reasonable manner, in respect of an employee's employment it will not constitute an injury under the SRC Act.

According to the authority in *Commonwealth Bank of Australia v Reeve*, matters of general administration, management and the implementation of policy do not fall within the reasonable administrative action, as they are not specific to the employee's employment.

Conclusion

The Tribunal held that the meetings did not amount to reasonable administrative action taken in a reasonable manner in respect of Mr Voss' employment. This was because the evidence showed that during the consultation process, Mr Voss was assured that his position would not be moved to Canberra. The Tribunal found that the decision to relocate teams to Canberra was not a decision with respect to Mr Voss's employment, rather it was a matter that was in respect of, but apart from ordinary duties or tasks. Therefore, the action was not in contemplation of section 5A.

In addition, the Tribunal found that the meeting was not conducted in a reasonable manner. This was because the decision was contrary to advice the employer had been given that the position was not under consideration for relocation and the assurances it gave the employee.

Lessons Learnt

Meetings regarding operational decisions, such as the relocation of an employee's position in circumstances where greater reorganisation is occurring, are unlikely to fall within the reasonable administrative action conclusions as they are not specifically in respect of that employee's employment. In addition, where important operational decisions come up in regards to an employee's employment, it is important that the employer provide notification of the decision as soon as possible.

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