

High Court examines the meaning of “as a result of” in relation to reasonable administrative action under the SRC Act

Comcare v Martin [2016] HCA 43

Key Points

- The High Court of Australia had to consider the meaning of the phrase “as a result of” in the reasonable administrative action exclusion in section 5A(1) of the SRC Act.
- In relation to the applicant’s case, the High Court found that the causal connection could be met in circumstances where an employee suffered an aggravation of a mental condition in reaction to a perceived consequence of a failure to obtain a promotion.
- More broadly, the High Court held that reasonable administrative action will exclude an injury as being compensable if the administrative action is a cause in fact of the disease and an event without which the employee’s ailment or aggravation would not have been a disease.
- This does not mean that the reasonable administrative action must be the sole cause of the disease.

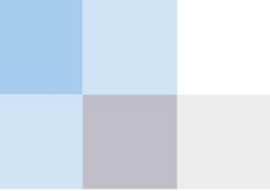
Background

Ms Martin was employed by the ABC. Ms Martin did not have a good relationship with her supervisor, who gave evidence that he was unhappy with aspects of Ms Martin’s work. At some point, Ms Martin lodged a grievance about the treatment of her by her supervisor, however her complaints of bullying and harassment were found to be unsubstantiated.

In an attempt to minimise her contact with the supervisor, Ms Martin applied for a number of other positions within the ABC. In 2012, she applied for a permanent position in a role which she had been acting in for some time. The selection panel for the role included her supervisor. Ms Martin was not successful in being appointed to the new role, and had to face returning to her substantive role as a result. She developed a psychological condition and lodged a workers’ compensation claim.

The Tribunal’s decision

The Tribunal made a finding of fact that Ms Martin had been suffering from a condition while acting in the new role, and that the condition had deteriorated, or been aggravated, by the news that she was not successful in securing the permanent appointment. The Tribunal accepted that the causative link existed between the administrative action, being the failure to be appointed to the new role, and the aggravation or deterioration of Ms Martin’s condition, which resulted in incapacity for work.



Counsel for Ms Martin argued that it was not her failure to obtain the new role that caused the deterioration of the condition, but instead it was her perception that, as a result of not obtaining the new role, she would need to return to the supervision of her previous supervisor. Counsel for Ms Martin contended that this did not satisfy the causative link.

The Tribunal found that the issue of whether Ms Martin's condition was caused by her disappointment in her failure to obtain the role because of its career advancement opportunities, or because it involved her returning to work under her supervisor, was irrelevant since both of these outcomes were direct and foreseeable consequences of the decision. The Tribunal found, however that inclusion of the supervisor on the recruitment panel meant that the administrative action was not taken in a reasonable manner.

The Federal Court decision

Comcare appealed the matter to the Federal Court on the issue of reasonableness. The Federal Court allowed the appeal.

The Full Federal Court decision

Ms Martin appealed the single judge decision to the Full Court. In the decision of the majority, the appeal was allowed insofar as it related to the interpretation of the phrase "as a result of". The majority did not accept that it was open to the Tribunal to find that Ms Martin returning to work under her supervisor was a direct and foreseeable consequence of failing to secure the new role, because there was no evidence to suggest that returning to her substantive role would be the effect of not securing the new role.

Comcare appealed the Full Court's decision to the High Court.

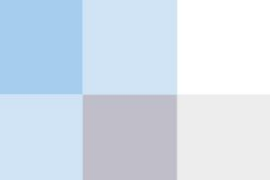
The Law

Section 5A of the SRC Act relevantly defines an injury as a disease, injury, or aggravation of a disease or injury, but does not include a disease, injury, or aggravation of an injury suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment. Section 5A(2) provides a non-exhaustive list of actions which can be reasonable administrative actions.

Various authorities over the years have attempted to clarify the meaning of the phrase "as a result of" in the reasonable administrative action exclusion. Until the release of this decision, the authorities were divided in terms of whether the administrative action contributed to a significant degree to the development of the condition, or whether there should be a less stringent test applied.

Conclusion

The High Court found that the Full Court of the Federal Court had erred in disturbing the finding of fact made by the Tribunal, particularly in respect of whether Ms Martin returning to her substantive role



under her new supervisor was a direct and foreseeable consequence of failing to secure the new role. The High Court found that the only issue of law to be considered was whether the Tribunal was correct in concluding that Ms Martin's condition was triggered by her contemplation of a perceived consequence of the decision.

The High Court rejected the "common sense" approach applied by the Full Court, and held that an employee has suffered a disease "as a result of" administrative action if the administrative action is a cause in fact of the disease. It need not be the sole cause. What is necessary is that the taking of the administrative action is an event without which the employee's ailment or aggravation would not have been a disease.

The High Court also noted that the exclusion applied where the condition was caused by an employee's reaction to the perceived consequences of the administrative action. The nature of those perceived consequences is not relevant to the application of the exclusion.

Lessons Learnt

The decision at the High Court provides the much needed clarity in respect of how the phrase "as a result of" should be interpreted by decision makers. It is clear from the High Court's decision that the significant contributing factor test does not apply in this instance. Instead, the High Court has stated that what is necessary is that the taking of the administrative action is an event without which the employee's ailment or aggravation would not have been a disease.

The other interesting aspect of the decision is the Tribunal's finding that the condition had been in existence prior to the administrative action occurring, but that the administrative action had essentially been a trigger for Ms Martin's incapacity. Notwithstanding the fact that the condition had been in existence prior to the administrative action being taken, the Tribunal, endorsed by the High Court, found that the exclusion could still apply.

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