

Change of position: Federal Court sets aside Tribunal's decision that Comcare was not excluded from paying worker's compensation

Comcare v Drinkwater [2018] FCAFC 62

Key Points

- Mr Drinkwater suffered a psychological injury as a result of being moved into a new position in the Department of Immigration.
- Comcare's decision to deny liability to pay compensation to Mr Drinkwater on the basis of the "reasonable administrative action" exclusions were set aside by the Tribunal.
- The Federal Court overturned the Tribunal's decision, finding that the Tribunal had misinterpreted the principles of *Commonwealth Bank of Australia v Reeve* and that the reasonable administrative action provisions applied in this case.

Background

Mr Drinkwater worked for the Department of Immigration (**the Department**) as a Customs Officer in the International Terminal at Sydney Airport. His employment was subject to a mobility policy. However, in applying the policy the Department was required to take into account an employee's personal circumstances and preferences.


Mr Drinkwater developed a psychological injury in response to a proposed transfer to Client Services. Following confirmation of the transfer, his condition significantly deteriorated, and he became incapacitated for work. He then lodged a claim for workers' compensation.

Comcare did not dispute that Mr Drinkwater suffered a work related injury, but relied on the reasonable administrative action provisions under section 5A(1) of the SRC Act (**the RAA provisions**) to deny liability to pay compensation.

The Decision

At first instance, the Tribunal found that Comcare was liable to pay compensation in respect of Mr Drinkwater's psychological condition.

The Tribunal found that although the mobility policy which caused the Mr Drinkwater's psychological condition was "*reasonable administrative action taken in a reasonable manner*", the administrative action was **not** taken "*in respect of [Mr Drinkwater's] employment*". Drawing on the principles of *CBA v Reeve*,



the Tribunal considered the administrative action taken by Comcare was not specifically directed to Mr Drinkwater, rather, it was part of a policy applicable to **all** employees and hence the exclusion did not apply.

However, the Federal Court overturned the Tribunal's decision and found that the Department's decision to transfer Mr Drinkwater to a different position was a form of administrative action directed specifically towards Mr Drinkwater. It was not a case where the performance of his ordinary work duties caused his psychological condition.

Lessons Learnt

The reasonable administrative action provisions only apply when the administrative action is directed specifically to the employee. However, this is not a narrowly applied test. Even if administrative action is taken pursuant to a policy applicable to all employees, if such action is directed specifically to a particular employee, it constitutes administrative action *"in respect of the employee's employment"* pursuant to section 5A(1) of the SRC Act.

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