

Christmas party season: if it isn't official, it isn't compensable

Mozsny and Comcare [2018] AATA 1966

Key Points

- The question was: whether an injury suffered at an unofficial Christmas party (attended by work colleagues) happened during the course of employment.
- The injury occurred outside of the normal place of employment at an event that was not officially approved or endorsed by the employer.
- The Tribunal found that Comcare was not liable

Background

Ms Fiona Mozsny was a public servant who had been employed at a Service Centre within the Department of Human Services.

On 10 December 2016, Ms Mozsny suffered a left knee injury when she was pulled over by a drunk co-worker at a Christmas party organised and attended by a group of public servants. Ms Mozsny made a claim for the injury. Comcare denied liability on the grounds that the injury had not arisen out of, or in the course of, Ms Mozsny's employment given the Christmas party was not a Department-approved or Department-organised function.

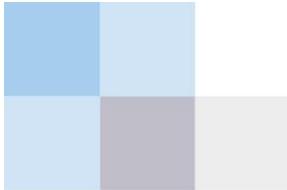
The Department had previously published a document entitled *Managing Events Involving Alcohol Consumption* (the Event Policy document), which provided, among other things, that managers approval was required if alcohol was to be served at a social event. This process had not been followed, however Ms Mozsny contended that approval was granted at a local level for the function to take place and had been organised on Department time. Further, Ms Mozsny contended that staff attendance was expected as the event took place each year and was highly anticipated by staff.

The Christmas party was arranged by one of Ms Mozsny's co-workers, who was not in a management position, on a voluntary basis and took the form of a lunch on Saturday, 10 December 2016 at a local winery followed by ongoing festivities at another venue, with community transport being arranged to facilitate this. Each person who chose to attend paid for themselves (a fixed amount) prior to the event day.

The event was discussed in staff-wide work emails sent by the organiser and at three team meetings, however approval was not provided for the function in accordance with the requirements of the Event Policy document. Further, there was no obligation for staff members to attend the function and they were required to arrange their own travel arrangements to and from the event.

The Decision

The principles set out in the High Court decision in *Hatzimanolis v ANI Corporation Limited* [1992] HCA 21 informed Deputy President Constance's decision to affirm the decision under review. Deputy President Constance concluded that the event:

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- occurred between discrete periods of Ms Mozsny's employment and outside Ms Mozsny's usual place of employment;
 - was not at a place or at a time directed by the Department;
 - was voluntarily organised and attended;
 - was open to people outside of the Service Centre, including family members and partners;
 - was not financially contributed to by the Department; and
 - was not mandatory to attend, with staff members not being "induced or encouraged" to do so.

The Deputy President determined that allowing a discussion of the event as part of team meetings, and the use of Department time and emails to arrange the event, did not make it a Department approved event or amount to inducement or encouragement by the Department.

Lessons Learnt

This decision affirms that when an employer has a clear policy stating what needs to be done for approval of a social event and this policy is not followed, the Tribunal will not be quick to interfere. This is an important consideration for employers during the Christmas period when end of year parties are common. It is useful for employers to understand when an injury at an event will be taken to be employment-related or not.

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