

Don't fall for a smoko: compo for fast food worker injured while smoking before shift

Mandep Sarkaria v Workers' Compensation Regulator [2019] ICQ 001

Key Points

- The entire premises of a workplace won't necessarily be considered a worker's "place of employment."
- A "place of employment" can change depending on the work performed at that time.
- "Ordinary recess" includes the pre-start time a worker is at the place of employment.

Background

The worker arrived at her employer's premises (a well-known fast food outlet) at 8:50 pm, 10 minutes prior to the start of her shift at 9pm, in accordance with her employer's policy. During the 10 minute period before her shift, the worker climbed a three metre ladder inside the storeroom to enable her to then climb up to the roof of the premises to smoke a cigarette. As the worker descended the ladder, she fell and broke her right leg.

The roof was not a designated staff smoking area. The ladder was only to be used to clean the roof. There was a warning sign present warning staff from accessing the roof. The worker had not sought permission to go onto the roof. The worker had not actually commenced her shift. As part of her work duties, the worker was required to clean the roof on a monthly, two-monthly or three-monthly basis.

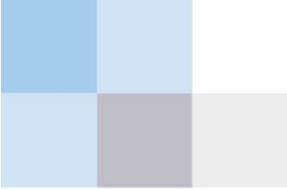
At first instance, the worker argued that under section 34(1)(c) of the *Workers' Compensation and Rehabilitation Act 2003* (Qld) ('the Act') her injury occurred out of, or in the course of her employment as the injury occurred while she was temporarily absent from her place of employment during an ordinary recess.

Section 34(1)(c) of the Act provides:

An injury to a worker is taken to arise out of, or in the course of, the worker's employment if the event happens on a day which the worker has attended at the place of employment as required under the terms of the worker's employment while the worker is temporarily absent from the place of employment during an ordinary recess if the event is not due to the worker voluntarily subjecting themselves to an abnormal risk of injury during the recess.

The Queensland Industrial Relations Commission rejected the worker's arguments and found that the roof and the ladder were part of the worker's "place of employment" because she used the ladder to access the roof to perform a part of her duties to clean the roof on a monthly, two-monthly or three-monthly basis.

The Commission also found that the 10 minute pre-start period she was required to be at work was not an "ordinary recess." This is because the worker had not started her shift and there



was no interruption to the worker's continuous period of work.

On appeal, President Martin of the Industrial Court found that the worker was temporarily absent from her place of employment because:

- The ladder was only supposed to be used to access the roof to perform cleaning duties and only if she was authorised and accompanied by a manager.
- The roof and ladder would only become her place of employment at that time if she was going to the roof to perform cleaning duties and only if she was authorised to and accompanied by a manager.
- At the time of the incident, the roof and ladder were restricted to the worker because there was no need for the worker to clean the roof and she was not authorised to and accompanied by a manager.

President Martin found that the worker sustained a work injury because her pre-start smoke "break" meant she was temporarily absent during an ordinary recess because:

- The worker was required to be at her place of employment, by her employer, 10 minutes before her shift commenced.
- During this 10 minute period the worker and other staff would not perform any work until their shift commenced.
- If this 10 minute period was not regarded as an "ordinary recess" it would be "inconsistent with the purposes of the Act."

The appeal was allowed and compensation paid.

Lessons Learned

Whether an area of the premises of an employer is considered a "place of employment" for a worker depends on the work duties of the worker at that time.

Any period of time before a shift that a worker is required, by the employer, to be at the premises of the employer will be considered to be an "ordinary recess."

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