

## Can a meeting to discuss carer's leave be administrative action?

*Comcare v Stewart* [2019] FCA 365

### Key Points

- The Federal Court was asked to consider the meaning of the phrase “administrative action”.
- The Federal Court found in favour of the employee and decided that he was entitled to compensation in respect to his adjustment disorder with anxious mood.

### Background

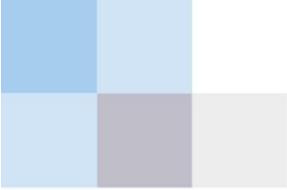
Mr Stewart was the Director of Human Resources at the National Library of Australia in Canberra (**the Library**). Mr Stewart submitted a claim for workers' compensation in respect to an adjustment disorder with anxious mood following a meeting with his supervisor, to discuss, among other things, Mr Stewart taking carer's leave and working flexibly after his mother became unwell. An important part of this meeting was Mr Stewart's supervisor's fixation on how Mr Stewart notified his employer of this need: ie sending an email rather than picking up the phone and having a conversation.

Comcare denied liability for the claim on the basis that the exclusionary provision in s 5A of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**SRC Act**) applied as the meeting fell within the definition of reasonable administrative action. The Tribunal set aside this decision and found that Comcare was liable to compensate Mr Stewart in accordance with s 14 of the SRC Act. Comcare appealed the Tribunal's decision to the Federal Court and argued that the Tribunal had erred in his decision as it:

- misconstrued the phrase “administrative action in respect of the employee's employment”;
- failed to take into account a relevant consideration or otherwise erred in law in its handling of whether “administrative action in respect of” the employment of Mr Stewart was reasonable; and
- took into account an irrelevant consideration in handling the question of whether “reasonable administrative action” was taken in a “reasonable” manner.

### The Decision

Central to determining liability in this case was whether or not Mr Stewart's meeting with his supervisor was an “administrative action”. The Tribunal in considering whether the meeting was administrative action found that the primary focus of the meeting was the management of staff and resources during Mr Stewart's absence. The Tribunal said such operational matters



are not administrative issues specific to the applicant's employment and do not meet the requirements of an administrative action.<sup>1</sup> The Federal Court found that the Tribunal had taken a too narrow view of the concept of "administrative action". The Tribunal's approach of considering the primary purpose of the meeting led it into error and caused it to fail to take into account the part of the meeting that did concern the employee's employment, namely the carer's leave arrangements which were discussed. The Federal Court said that this was an "administrative action".

The Tribunal found that Mr Stewart's supervisor's refusal to consider the flexible working arrangements, his fixation on the use of email as a method of communication, that Mr Stewart had been told the meeting was to discuss a handover, which was not in fact the case, meant the meeting was not undertaken in a reasonable manner. The Federal Court agreed with the Tribunal's reasoning and found that although there was an "administrative action" it was not taken in a reasonable manner and the exclusion under s 5A of the SRC Act did not apply. On this basis the appeal was dismissed and the Tribunal's decision that Mr Stewart was entitled to compensation was upheld.

Comcare argued in the Federal Court that the Tribunal had erred in making its finding on reasonableness by referring to incorrect authority in *Weigand*.<sup>2</sup> However, on appeal the Federal Court found that despite this, the Tribunal had "stated accurate principles from other decisions and authorities" and applied the correct test.<sup>3</sup> As a result, the Tribunal's decision was upheld and the appeal was dismissed.

## Lessons Learnt

The meaning of "administrative action" should not be too narrowly construed. It is enough that part of a meeting is for the purpose of "administrative action", for the exclusionary provisions to apply.

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<sup>1</sup> *Stewart and Comcare* [2018] AATA 3685 at [52].

<sup>2</sup> *Weigand v Comcare Australia* [2002] FCA 1464.

<sup>3</sup> *Comcare v Stewart* [2019] FCA 365, [59].

