Full Federal Court makes finding on late night out for Telstra worker

Dring v Telstra Corporation Limited [2021] FCAFC 50

Key Points

- The Full Federal Court was asked to consider whether a Telstra employee sustained an injury arising out of, or in the course of, her employment.
- The Full Court considered the principles in *Hatzimanolis, PVYW,* and *Westrupp*, and whether there was a sufficient *connection* between the injury and the course of employment.
- The Full Federal Court found that the nexus between the employment and the injury had been broken and found in favour of Telstra.

Background

Ms Dring was attending a workshop in Melbourne, organised by her employer, Telstra, in April 2016. The workshop took place over a number of days and Telstra organised hotel accommodation for Ms Dring. Ms Dring slipped over on wet tiles in the foyer of a hotel at 2:30am, after a night out socialising.

Ms Dring submitted a claim for workers' compensation in respect of an injury to her hip. Telstra denied liability for Ms Dring's claim pursuant to section 14 of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**the SRC Act**), on the basis that the injury did not arise out of, or in the course of her employment. Ms Dring sought review of the decision in the Administrative Appeals Tribunal. The Tribunal affirmed the decision under review and Ms Dring appealed that decision to the Federal Court.

The Federal Court found that the central question of law raised was whether the Tribunal correctly applied the statutory expression "*arising out of, or in the course of, the employee's employment*" to the facts as it found them. The Federal Court resolved that question against Ms Dring by finding, in effect, that the Tribunal's finding that the injury did not arise out of, or in the course of, her employment was correct. Ms Dring appealed that decision to the Full Federal Court.

The Law

Section 14 of the SRC Act provides that the employer is liable to pay compensation in respect of an injury suffered by an employee if the injury results in death, incapacity for work, or impairment.

An injury is defined under section 5A of the SRC Act as an injury arising out of, or in the course of, an employee's employment.

In *Hatzimanolis v ANI Corporation Ltd* (1992) 173 CLR 473, the High Court found that an interval or interlude in an overall period or episode of work will ordinarily be seen as being in the course of employment if the employer expressly or impliedly induced or encouraged the employee to spend the interval or interlude at a particular place or in a particular way.

The decision in *Comcare v PVYW* (2013) 250 CLR 246 is authority for the proposition that for an injury to have occurred in an interval in a period of work to be in the course of employment, the circumstances in which the employee is injured must have resulted from the inducement or encouragement of the employer.

In *Westrupp v Bis Industries Limited* [2015] FCAFC 173 the Full Federal Court found that there are two streams of analysis having their origins in two different circumstances – activity and place.

Conclusion

Ms Dring argued that she sustained the hip injury at a place where her employer had encouraged and induced her to be. She argued that the time at which the injury was suffered (2.30am) was irrelevant.

The Full Federal Court found considered the issue was not as simple or straightforward as Ms Dring would have it. It was considered necessary to have regard to the activity Ms Dring was engaged in at the time the injury was suffered in order to determine whether the injury was sufficiently connected with her employment.

The Full Federal Court rejected the argument advanced on behalf of Ms Dring for the following reasons:

1. The observations in *Hatzimanolis*, *PVYW* and *Westrupp* cannot be unquestioningly transported from the context in which those observations were made and the reasons for those observations given, it forever remains the terms of section 14 which are to be applied to the facts of any given case;
2. The above decisions do not support a proposition that any injury suffered by an employee at a place which the employee is required to be necessarily attracts compensation. There must be a "*connection*" between the injury and the employment;
3. The reasons of the Tribunal, properly construed, proceed from a proper understanding of those decisions and do not seek to apply the terms of section 14 to the facts; and
4. Notwithstanding any defect in the reasons of the Tribunal, the ultimate conclusion of the Tribunal was in any event one of fact from which no appeal lay to the primary judge.

Flick J concluded that "*the extent and duration of [Ms Dring's] personal activity resulted in a broken nexus with her employment*". There was broad agreement with Flick J's reasoning by Wigney J and Rangiah J.

Lessons Learnt

The Full Federal Court's decision confirms that for an injury to in the course of employment, it must be sufficiently connected to the employee's employment. It is not enough that an employee was merely at a place at the request of their employer. The courts will also have regard to the activity the employee was engaged in at the time the injury was sustained.

We understand that Ms Dring has filed an application to the High Court for special leave to appeal the Full Federal Court Decision so watch this space!

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