

**SNAPSHOTS**

## Appeal against inferences and findings against host employer and labour hire employer

*Rail Corporation New South Wales v Donald; Staff Innovations Pty Ltd t/as Bamford Family Trust*

[Link to decision](#)

The worker sued Railcorp (host employer) and Staff Innovations (labour hire employer) for damages in respect of a back injury sustained due to the nature and conditions of his employment as a labourer. The worker's duties included a substantial amount of jack hammering work. The worker alleged that the defendants were negligent by their failure to rotate tasks and ensure adequate rest breaks.

The trial judge found in favour of the worker awarding damages against Railcorp under the *Civil Liability Act 2002* (\$1,236,913) and against Staff Innovations under the *Workers Compensation Act 1987* (\$861,108).

The defendants appealed claiming that the trial judge had erred by drawing certain inferences regarding the work undertaken and whether the worker received adequate rest breaks.

The Court of Appeal reviewed the evidence on each of the grounds of appeal noting that inferences drawn must be supported on the evidence, finding that some of the inferences were not supported. The worker's injury was attributed to nature and conditions of employment with a specific occurrence of pain on a given date (rather than a specific incident of injury). The Court found that Railcorp had permitted an ad hoc system of work to operate by which the worker did all of the jackhammering work. A worker in his position was unlikely to ask for help – affirming trial judge's finding of no contributory negligence.

Breach of duty of care by the labour hire employer – non-delegable duty, failure to undertake adequate inspections or to make enquiries (possibly by speaking to the worker) to ascertain the system of work in place.

Although the appellant was partly successful on appeal, it was not successful in displacing the trial judge's determination.

Appeal dismissed.

Decision Number: [2018] NSWCA 82

Decision date: 24 April 2018

Matter No: 2017/51509

Decision maker: NSW Court of Appeal