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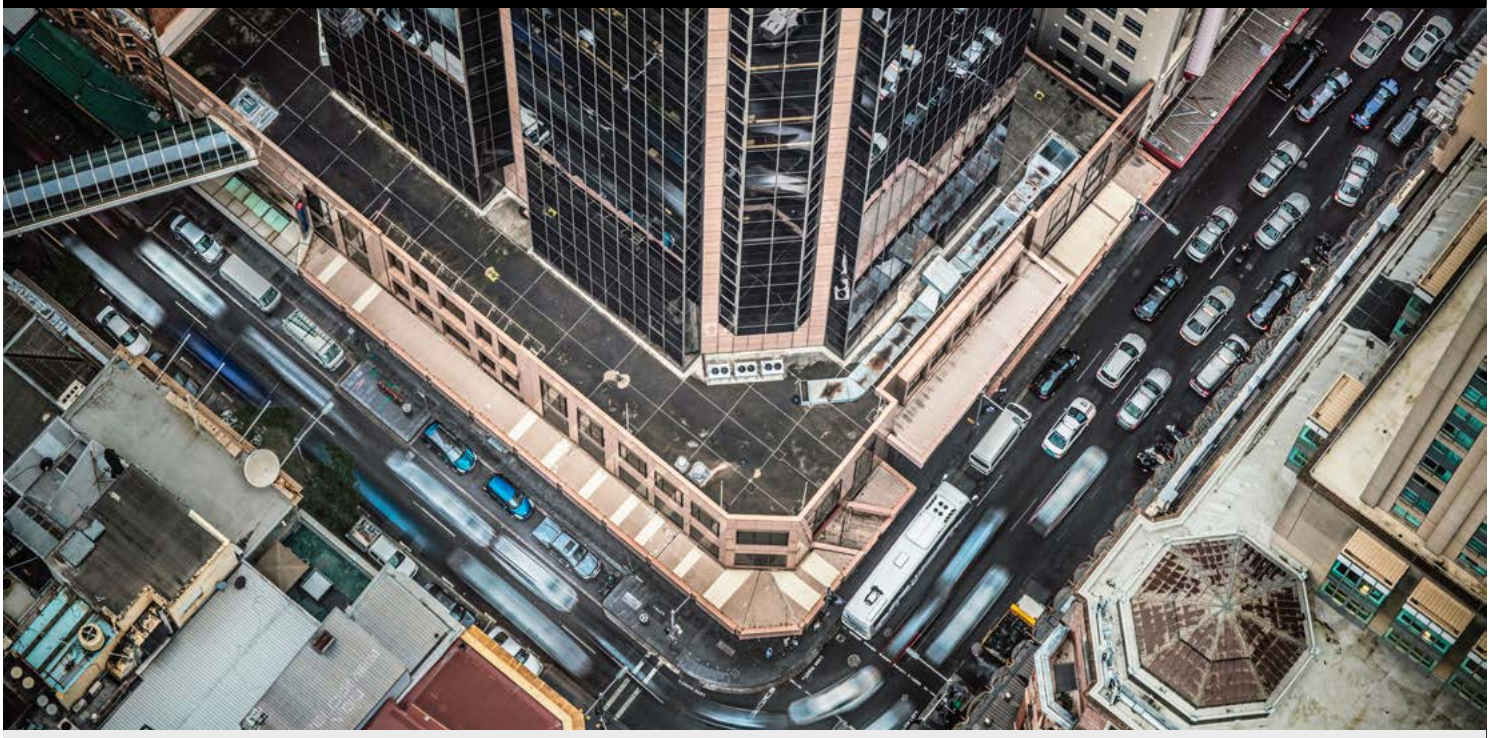

LEGISLATIVE DEVELOPMENTS

- Indexation of benefits from 1 April 2017

- The *Motor Accidents Injuries Bill* 2017 was passed by the NSW state parliament on 30 March 2017 with the stated objective being to replace the current compulsory third-party motor accidents scheme in NSW with a new scheme.

RECENT DECISIONS

- **It's not the employer's fault**
  The Workers Compensation Nominal Insurer v Avopiling Pty Ltd [2016] NSWSC 1893 (29 March 2017)
- **The role of medical evidence in assessing the whole or predominant cause in section 11A cases**
  Hamad v Q Catering Limited [2017] NSWWCCPD 6 (15 March 2017)
- **Forklift locomotion and questions of causation**
  Toll Pty Ltd v Harradine [2016] NSWCA 374 (21 December 2016)

SHORT SHOTS

Brief case notes. Read more.

LEGISLATIVE DEVELOPMENTS

Indexation of benefits from 1 April 2017 - Workers compensation benefits were increased on 1 April 2017 in accordance with the Workers Compensation Regulation 2016. See the SIRA Workers compensation benefits guide April 2017 link here

The *Motor Accidents Injuries Bill* 2017 was passed by the NSW state parliament on 30 March 2017 with the stated objective being to replace the current compulsory third-party motor accidents scheme in NSW with a new scheme. Some interesting features of the new scheme are:

- Statutory benefits will be payable for loss of earnings or for medical treatment and care for up to 6 months after the accident, regardless of fault;
- Ongoing statutory benefits payable for other than minor injuries where the injured person was not 'most at fault or under the age of 16 year at the time of the accident ' for up to 2 years (and in some cases, up to 5 years);
- Common law damages will be recoverable only for specified categories of economic loss, including past and future economic loss and non-economic loss (where permanent impairment is greater than 10%). No common law damages will be recoverable for minor injuries;
- The process for resolution of disputes about statutory benefits will generally require internal review by an insurer before a dispute can be referred to the Dispute Resolution Service for determination;
- Regulations will fix maximum costs for legal services provided in motor accidents matters;
- An injured person will not be entitled to statutory benefits if compensation under the *Workers Compensation Act 1987* is payable to the injured person in respect of the injury concerned (or would be payable if the liability for workers compensation had not been commuted).

Many of these new provisions will sound strangely familiar to those dealing with claims within the NSW workers compensation scheme. The bill is presently awaiting assent and is expected to commence in December 2017.

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RECENT DECISIONS

It's not the employer's fault

The Workers Compensation Nominal Insurer v Avopiling Pty Ltd [2016] NSWSC 1893 (29 March 2017)

Link to decision

Summary

An employer has been found not liable in negligence for an injury sustained by one of its employees.

Background

Mr Riste Bosevski was employed by Professional Contracting (NSW) Pty Ltd. At the time of his injury, Mr Bosevski was working at the site of Cringila Public School, where a mast on a piling rig was being erected. The provider of the pile driver was Soilmec. Mr Bosevski was responsible for keeping the drilling area clear. Employees of a third party, Avopiling Pty Ltd, were responsible for erecting the mast on the piling rig.

Whilst the mast was being erected, a cable snapped. There was no dispute that the snap occurred as the cable was under extreme tension. In fact, two employees of Avopiling heard 'a tension noise' but nevertheless continued to erect the mast. The snapping resulted in metal objects weighing approximately 25 kilograms being released and striking Mr Bosevski, who was standing about 6 metres away.

Claims of negligence were made against Professional Contracting; Avopiling and Soilmec.

Decision

Justice Rothman of the Supreme Court found that there was insufficient evidence to establish that Soilmec was negligent in supplying the pile driver.

In respect of Avopiling, however, his Honour held that the risk of 'the explosive failure arising from tension was… foreseeable, being a risk that Avopiling and its employees knew or ought to have known.'

Justice Rothman further held that Avopiling failed to take the precautions a reasonable person in its position would have taken to prevent or minimise that foreseeable risk – namely, by taking steps such as 'paying out' sufficient slack in the cable during the erection of the mast, and continuously observing the cable during the process. His Honour noted that these steps were 'without cost and not a burden' to Avopiling.

In relation to Mr Bosevski's employer, Professional Contracting, Justice Rothman noted (at paragraph 277):

> There can be little doubt that an employer owes a non-delegable duty of care to an employee for whom the employer has exclusive responsibility for the provision of appliances, the premises in which work is performed and the system of work to which the employer subjects the employee…

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However, Justice Rothman accepted that an employer such as Professional Contracting 'must be in a position to know the risks that are occurring or are likely to occur'. In the current case, the employer was unaware that the work would be carried out without 'due care' by Avopiling. His Honour held that Professional Contracting could not have foreseen 'a failure of this magnitude' on behalf of Avopiling that would lead to an injury to one of its employees in such circumstances.

Accordingly, his Honour held that the employer did not have 'the requisite knowledge to amount to negligence'.

Implications

This Decision highlights the importance of employers making appropriate enquiries when placing their employees at premises or work sites involving third parties. In this case, Justice Rothman found that there was no indication to the employer that the requisite works would not have been conducted without due diligence and skill by the third party. Accordingly, the employer was able to avoid a finding of negligence.

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RECENT DECISIONS

The role of medical evidence in assessing the whole or predominant cause in section 11A cases

Hamad v Q Catering Limited [2017] NSWWCCPD 6 (15 March 2017)

Link to decision

Summary

The decision in Hamad demonstrates the importance of reviewing the available evidence in determining liability in matters involving section 11A. Particular importance should be given to a worker's statement as to the causes of their psychological injury and the necessity to obtain expert medical evidence to comment on the whole or predominant cause.

In the present case, DP Snell noted that there was a relative paucity of medical evidence dealing specifically with what aspects of the history contributed to the worker's psychological injury. The Deputy President also considered to what extent the arbitrator had dealt with the causation issue largely by reference to the lay evidence and his conclusions drawn from that evidence.

DP Snell concluded that there were a number of conclusions relevant to the causation issue which could not be appropriately made in the absence of medical evidence. Whilst DP Snell accepted that the arbitrator was entitled to have regard to the sequence of events and to his common knowledge and experience of ordinary life, "a series of events can have a cumulative effect, and may be causative of a psychiatric condition which does not manifest itself until a later time".

Background

The worker (the appellant) was employed by the insured as a leading hand, level 5, in the 'consolidation' of aircraft meals. The worker took responsibility for the assembly of aircraft meals and leading hands in transport took responsibility for transferring food to the aircraft. From 2013, the employer amalgamated the two activities. The worker signed an agreement on 1 July 2013 to participate in this process. An issue subsequently arose whether workers performing the combined roles were entitled to be paid as level 6 rather than level 5. Shortly before Christmas 2014, the transport leading hands declined to continue to participate in the combined roles. Similarly, in February 2015, the consolidation leading hands also declined to participate in the two roles. The members of these groups were only prepared to carry out the role they had initially performed.

The employees' refusal to perform the combined roles led to the employer issuing a letter of direction to perform the combined roles. In the worker's case, a meeting was held on 19 February 2015 when the worker refused to take the letter issued by the employer. The letter was sent to his home by express post. On 20 February 2015, the

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worker attended work and again refused to carry out the combined role. He was given other tasks and at 12:36 was called to a meeting with his immediate manager and with the business manager. The worker had a support person with him from the union. He was given a "letter of warning" for failure to follow a "reasonable and lawful direction". At 3:15pm, the worker was asked to complete the meals for a flight which was due out in 2 hours. The worker ceased work at the end of his shift and came under the care of his ntd and treating psychiatrist. The worker returned to suitable duties for the period 3 April 2015 to 16 March 2016 when he again ceased work. The worker has not resumed employment.

The worker submitted a claim for compensation which was declined by his employer.

The worker filed an Application to Resolve a Dispute (ARD) in which he stated that he sustained a psychological injury with a deemed date of 20 February 2015 as a result of "mistreatment, bullying and intimidation" he was subjected to by his employer. At the initial hearing, the employer conceded the occurrence of a psychological injury but pleaded a defence to the claim on the basis of section 11A(1) of the *Workers Compensation Act 1987* (the '1987 Act'), relying on its reasonable action with respect to performance appraisal and discipline.

Arbitrator's Decision

The arbitrator issued a reserved decision dated 6 October 2016 in which he accepted that a section 11A defence had been made out. The arbitrator found that the letter and meeting on 20 February 2015 came within discipline. The arbitrator also accepted that the disciplinary action was the whole or predominant cause of the psychological injury. The arbitrator referred to five other matters raised in the worker's submissions which arguably contributed to the worker's injury in a causal sense, namely; failure to accede to worker's request for extra pay; the employer's request to undertake combined duties; the employer's failure to allow the worker to go home after he had been given the warning letter; the direction to perform work which "fell below his usual classification" and, the level 1 work the worker was requested to perform on the afternoon of 20 February 2015 after being given the warning letter. It was the worker's view that the direction to perform this work was punitive and deliberately intended to specifically target the worker.

The arbitrator was satisfied on the balance of probabilities that the worker's psychological injury was predominantly caused by the disciplinary action taken by the employer in meeting with and handing him a warning letter. The arbitrator in coming to this view referred to the worker's evidence, the worker's medical histories and the statement of Mr Festa, the airline services co-ordinator. The arbitrator stated that this documentation was consistent with receipt of the warning letter having a significant effect of the worker's psyche. The extent to which the "direction to undertake level 1 duties was also causative was due to the worker's "erroneous" perception, which was itself directly caused by the disciplinary action and the worker's psychological reaction to it."

The arbitrator lastly dealt with the issue of reasonableness, specifically, whether it was reasonable to issue the warning letters to the worker and other workers and, whether that action was carried out in a reasonable way. The arbitrator concluded that it was reasonable for the employer to take disciplinary action in the circumstances.

Appeal decision

The appeal filed by the worker centred on the arbitrator's finding that the injury was wholly or predominantly caused by disciplinary action, when there was no such medical evidence.

DP Snell stated that the issue was whether the arbitrator erred in deciding the whole or predominant cause issue without expert evidence or against the weight of the evidence and/or whether the arbitrator misdirected himself as to the relevant test.

In assessing the evidence DP Snell stated that it was clear that the level 1 duties assigned to the worker were assigned in the morning prior to the disciplinary interview and letter and therefore the arbitrator's reasoning with

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respect to the misperception of these duties could not stand. In short, the worker's perception of the duties when they were assigned could not have been due to the psychological effect of the disciplinary interview which occurred later that day.

DP Snell cited the High Court decision of *Stead v State Government Insurance Commission* [1986] HCA 54;161 CLR 141

> "All that the appellant needed to show was that the denial of natural justice deprived him of the possibility of a successful outcome. In order to negate that possibility, it was, as we have said, necessary for the Full Court to find that a properly conducted trial could not possibly have produced a different result."

DP Snell concluded that the arbitrator's factual error regarding what time the level 1 duties were conducted and his conclusions, affected the overall result and was an appealable error.

DP Snell stated that the need for medical evidence dealing with the causation issue in section 11A(1) of the 1987 Act, will depend on the facts and the circumstances of the individual case. In the current case, as in most, there are a number of potentially causative factors raised in the worker's statement and the medical histories. Proof of whether those factors, which potentially provide a defence under section 11A(1) were the whole or predominant cause of the psychological injury, required medical evidence on that topic. The extent of any causal contribution, from matters not constituting actions or proposed actions by the employer with respect to discipline could not be resolved on the basis of the arbitrator's common knowledge and experience.

DP Snell concluded that the employer could not on the available evidence, in the absence of any medical evidence dealing appropriately with the topic, discharge its onus of proving that the worker's psychological injury resulted wholly or predominantly from its " reasonable action taken or proposed to be taken" with respect to discipline.

Implications

The worker's statement and the history taken by medical examiners must be carefully reviewed to ascertain the basis or the reasons for a worker's claim for psychological injury as there can be a number of potentially causative factors.

Expert medical evidence should be obtained to comment on what factors/issues were the whole or predominant cause of injury.

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RECENT DECISIONS

Forklift locomotion and questions of causation

Toll Pty Ltd v Harradine [2016] NSWCA 374 (21 December 2016)

Link to decision

Summary

The NSW Court of Appeal recently upheld an appeal by an employer against a finding that an injury involving the use of a forklift occurred 'during the driving of a vehicle' within the meaning of section 3A(1)(a) of the *Motor Accidents Compensation Act 1999* ('MACA').

The decision on this point in forklift cases is critical to determining which damages regime will apply in assessing the damages payable to the injured worker, being either the MACA which may include allowance for non-economic loss or the more restrictive *Workers Compensation Act 1987* ('WCA') under which damages are limited to past and future economic loss.

Background

Jay Harradine was employed by Toll and on the day in question (16 February 2010) was injured while unloading packages containing cushions from a stillage onto the upper level of a trailer.

A stillage is a rectangular metal stand that has a solid base with wire barriers on two sides and open ends.

Goods for transportation are loaded onto the stillage and attached to the forklift. The forklift is then driven to the waiting trailer where the goods are unloaded from the stillage and then loaded onto the trailer in readiness for departure.

In the present case, the forklift had two tines that were about 10cms wide. The stillage had two clips or sleeves at the base that enabled the stillage to be securely attached to the tines protruding from the forklift.

The forklift driver (Bournes) had conveyed several loads of packaged cushions from the warehouse to the trailer where the worker unloaded them. Bournes used the same stillage on each occasion and had observed that one of the sleeves at the base of the stillage was either missing or broken. He nonetheless decided to proceed using the defective stillage and did so by simply placing the two tines under the stillage so that it rested on the tines by its own weight.

Bournes and Toll accepted that it was dangerous to move the stillage or use it to unload goods if it was not properly attached to the forklift in the correct manner.

On about the fourth or fifth trip back to the trailer, the stillage slipped while the worker was unloading the goods. The stillage struck the worker who was injured.

In giving his evidence, the worker described the operation being undertaken at the time and how the forklift was used to carry the stillage to the trailer where the tines would then be raised or lowered to a position from which he would then unload the goods.

The worker said that while unloading the goods, the stillage had moved off the tines and struck him on the left arm. There was some conflict on the evidence as to whether Bournes had raised and lowered the tines and if the forklift was stationary. The worker said in his evidence that the forklift had started to reverse back to bring the stillage down to the ground so he could go and it was

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upon this evidence that the primary judge relied to determine that the forklift was being 'driven' at the time.

Legislation

Section 3A of the MACA relevantly provides that the Act only applies "in respect of the death of or injury to a person that is caused by the **fault** of the owner or driver of a motor vehicle in the **use or operation** of the vehicle and only if the death or **injury is a result of and is caused** (whether or not as a result of the defect in the vehicle) during:

(a) The **driving of the vehicle,** or

(b) A collision, or action taken to avoid a collision, with the vehicle, or

(c) The vehicle's running out of control, or

(d) A dangerous situation caused by the driving of the vehicle, a collision or action taken to avoid a collision, or the vehicle's running out of control.

This section does not define 'driving' although there was no dispute that the forklift was a 'motor vehicle' for the purpose of the Act and that Toll by the actions of the forklift driver had breached the duty of care that it owed to the worker.

Appeal

Toll appealed from the decision of the primary judge. The appeal was heard in the Court of Appeal on 15 November 2016 and judgment delivered on 21 December 2016. In the leading judgment, Justice Sackville acknowledged the cogent reason behind determining the appropriate regime under which the damages are required to be assessed before going on to consider the reasoning of the primary judge in reaching his decision.

In particular, the primary judge made findings:

'that Mr Bournes, in driving the vehicle in the manner he did, that is, driving it to where the stillages were kept, picking up a stillage which he knew to be dangerous, in that it was lacking in security and was likely to be unstable, and to be used in circumstances where a person would probably put their foot upon it, contributing to its lack of stability was negligent driving and, in addition, created a situation of danger. To drive any vehicle with such an unstable and insecure load is negligent driving of that vehicle. The question is whether that negligent driving is a contributing factor to the accident that occurred here.'

The reference to the circumstances where a person would probably put their foot upon it was directed to the evidence that the most likely predominant and immediate cause of the injury was the worker's action of stepping onto the base of the stillage and causing it to tilt.

Justice Sackville referred to a number of previous cases that were required to deal with the difficulty with questions of construction that arise from the words of the section and in particular, that the injury must be caused by the fault of the … driver of a motor vehicle in the use or operation of the vehicle and that the injury must be sustained during one of the events specified in the sub section i.e. the driving of the vehicle.

The driving of the vehicle is the so called 'temporal criterion' so that it is not enough for an injured person to simply establish that his or her injuries were caused by the fault of the owner or driver in the use or operation of the vehicle.

His Honour also noted that a forklift may be used either as a means of locomotion and transportation or as a device for loading and unloading. The use or operation of the forklift exclusively as a loading or unloading device does not normally involve 'driving' of the forklift. Generally, a forklift is being driven when it is subject to actual control and management while it is in locomotion.

His Honour commented that there was not necessarily any 'bright line' separating the locomotion and loading functions of a vehicle such as a forklift.

Relevantly, in the present case, Justice Sackville observed that even a slight movement of the forklift either forwards or backwards while the unloading was continuing would not change the 'exclusive non driving character' of the process. That was, however, to be distinguished

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from the situation where the unloading operation had been competed and the forklift was being reversed in preparation to move away from the trailer, in which case, he would be driving the vehicle.

The finding by the primary judge on this point i.e. that the forklift "moved backwards and forwards at the time of the accident, as described by the ['the Worker'] did not involve a finding that Bournes had commenced to reverse the forklift in order to move it away from the trailer.

The more likely interpretation was that the primary judge intended to accept the worker's evidence that Bournes had started to reverse back to bring the stillage down to the ground so that he could go meant that the backwards movement of the forklift occurred as Bournes began the process of moving the forklift away from the trailer (and was therefore being driven at that point).

The court considered the conflict between the evidence of the worker and Bournes and the failure by Toll to produce CCTV footage of the incident. To that extent, His Honour felt that the primary judge's reasons for preferring the worker's account on a crucial issue of fact did not adequately explain why he reached the conclusion that he did. His Honour determined the result was not that the court should find that the forklift was stationary at the relevant time or that any slight movement occurred in the course of the unloading operation. That would involve an assessment of the reliability of the evidence given, an exercise which the court could not undertake without the opportunity of seeing the witnesses and evaluating their evidence.

His Honour observed that in the absence of any further issues in the case, there would be no alternative but to order a new trial, however, it was first necessary to consider the employer's argument that even if the accident occurred during the driving of the forklift, the worker's injury did not occur as a result of the driving of the forklift and did not come within section 3A.

In dealing with this aspect of the appeal, the evidence suggested that the stillage had slipped when the worker placed his foot and his weight upon the base of the stillage as he was unloading the last of the bags. This posed a difficulty for the worker in establishing the predominant and proximate cause of his injury. The court stated that even if there was considered to be more than one proximate cause there was nothing in the worker's evidence to indicate that the slight backwards movement of the forklift, which marked the commencement of its locomotion function, contributed in any material way to the displacement of the stillage from the tines.

In the absence of any further evidence as to the proximate cause, the evidence did not establish on the balance of probabilities that the worker's injuries were a result of the driving of the forklift.

The worker's damages had been determined by the primary judge for a sum totalling $1,070,499. That sum was required to be reassessed (by the parties) as damages payable under the WCA with a substantial reduction expected to follow as a result.

Implications

Detailed analysis of the precise circumstances of a worker's injury broken down step by step can often be critical to any subsequent judicial determination of liability as well as the appropriate regime for the assessment of damages to which the worker is entitled.

Parties must fully consider the requirements of the legislation and whether these are satisfied in light of the evidence adduced by the parties at the hearing given the potential for this to dramatically affect the outcome in terms of the quantum of any award of damages.

POSTSCRIPT:

On 10 April 2017, the court handed down a further decision 'on the papers' in *Toll Pty Ltd v Harradine (No 2)* [2017] NSWCA 75. Link here.

In lieu of orders made by the primary judge, the court entered judgment for the plaintiff (worker) for $660,898 with the defendant given credit for payments made. The adjustment took account of the calculation of damages under the workers compensation regime and a reduction

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of the worker's net weekly earnings from $1,661 to $1,350 per week. The end result was an overall reduction of the damages payable to the worker by $409,601!

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SHORT SHOTS

***State of NSW v Stockwell* [2017] NSWCA 30 (1 March 2017)**

The worker disputed a section 54 notice informing him that he was no longer entitled to weekly compensation payments based on the assumption that the 2012 Amendments (which came into force from 27.06.12) applied to him. The worker asserted that the amendments didn't apply to him as he was an exempt worker within the meaning of Cl 5 Part 19H Schedule 6 of the WCA and was at all material times a paramedic.

The Court of Appeal dismissed the employer's appeal on the basis that the worker had retained the status of a paramedic at the relevant time and that the 2006 Award that applied did not specify that any failure by him to comply with the proviso to undertake fresh courses and examinations would affect his status as a paramedic.

***Spence v Roof Safe Services Pty Ltd* [2017] NSWCCA 27 (3 February 2017)**

The worker suffered an injury to his left knee in January 2015 when he slipped on a ladder. The worker sought approval to undergo a total knee replacement. The insurer accepted that the procedure was reasonably necessary but disputed that the need resulted from the injury. The issue on causation was required to be determined by an Arbitrator who observed that the work injury did not have to be the only or even the substantial cause of the need for the relevant treatment. He found that the injury had materially contributed to the need for surgery being the result of both the worker's pre-existing disease and aggravation as a result of the work injury contributing to the need for surgery so as to be reasonably necessary medical treatment.

***Hill v SL Hill and Associates Pty Ltd (Deregistered)* [2017] NSWWCC 11 (12 January 2017)**

The worker initially commenced proceedings in the Workers Compensation Commission that was listed for four teleconferences but on each occasion was not ready to proceed and was eventually discontinued at an arbitration hearing. The worker commenced new proceedings that were listed for two teleconferences and the matter was still not ready to proceed at a conciliation/arbitration. At a third teleconference, the worker's representatives advised they were waiting for further information and evidence. The Arbitrator determined that the matter had been poorly prepared and taking account of the history with there being little or no prospect of the matter being advanced, determined the proceedings to be a nullity and struck the matter out for want of prosecution.

***Jaffari v Quality Castings Pty Ltd* [2017] NSWWCCPD 2 (28 February 2017)**

This case involved the determination of an appeal from the decision of an arbitrator by Acting President Michael Snell in a matter that was previously the subject of an earlier determination by a presidential member and appeal to the NSW Court of Appeal with the matter being remitted for re-determination by a different Arbitrator.
On this occasion, the determination by the Senior Arbitrator was the subject of an application for re-consideration (declined) and a further appeal to the presidential member who upheld the Senior Arbitrator's determination.

***Johnson v Oztag Merchandise Pty Ltd* [2017] NSWWCC 77 (21 March 2017)**

The Arbitrator determined that the employer had failed to establish the worker's psychological injury was wholly or predominantly caused by its action with respect to demotion so that the defence under section 11A(1) failed accordingly.

The worker was informed at a meeting that there would be a number of operational changes due to a restructure of the business and that she was to be demoted and her wage reduced. The worker was upset and distressed following the meeting and ceased work the next day and sought medical attention.

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The Arbitrator noted that the employer has the onus of establishing that on the balance of probabilities, both the action was at least the predominant cause of the worker's injury and that the action was reasonable. The Arbitrator had regard to the worker's evidence of how she had been treated from the time that she was informed that a consultant had been appointed to oversee the operation of the business and that she was required to report to him.

The worker described feeling ostracised and uncertain about her position as well as being humiliated and embarrassed by what other staff might think.

The meeting was then held approximately four months after the consultant was engaged and the worker stated that this was "the final incident that pushed me over the edge."

The Arbitrator had regard to witness statements and took account of the events occurring prior to the meeting that the employer argued unsuccessfully formed part of the action taken or proposed to be taken with respect to the demotion before finding that the meeting that day was the first time that the worker was made aware of any such action.

***Jande v Broad Spectrum (Australia) Pty Ltd* [2017] NSWWCC 79 (3 April 2017)**

A decision by an Arbitrator who held that the worker had suffered a consequential condition to her left shoulder arising from an injury to her right shoulder and that proposed surgery was reasonably necessary as a result.

The worker was employed by Transfield as a permanent part time cleaner and as part of her duties was required to use a long handle above shoulder height to remove cobwebs on ceilings and cornices. The worker was performing these duties one day when she felt immediate severe pain in her right shoulder, it felt as if something had ripped. The worker subsequently underwent surgery on her right shoulder and returned to work some months later in a restricted capacity.

The worker's evidence was that she had started to notice pain in her left shoulder particularly when she was unable to use her right arm. She had sought physiotherapy and received injections of steroid and local anaesthetic none of which afforded her long term relief. The worker claimed that she had overused her left shoulder due to the injury to her right shoulder and sustained a consequential injury.

The arbitrator accepted the worker's evidence and determined that the further surgery proposed was reasonably necessary. In doing so, the Arbitrator rejected the respondent's medical evidence that attributed the worker's complaints to adhesive capsulitis being an entirely different diagnosis from the treating surgeon. Instead, she preferred the opinion of the treating surgeon who considered the worker to suffer subacromial impingement and bursitis in her left shoulder that supported the applicant's claim for a consequential condition.

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