

RECENT DECISIONS

Riding rodeo for reward

Gajkowski v The Camden Show Society Inc and Australian Bushman's Campdraft & Rodeo Association Ltd [2017] NSWCC 124 (31 May 2017)

[Link to decision](#)

Summary

On 31 May 2017, an Arbitrator of the Workers Compensation Commission ('WCC') found that a young rodeo rider was a 'deemed worker' for the purposes of the workers compensation legislation allowing him to receive compensation for severe injuries. The Arbitrator also found that both respondents were equally liable for the claim.

Background

The applicant was an 18 year old rodeo rider who was also undertaking a butchers apprenticeship. He was an established rodeo rider from a young age and had ambitions of moving to the USA after completing his apprenticeship to progress his career on the Professional Bull Riders circuit.

On 4 April 2014, the applicant fell from a bull that he was riding during a rodeo at the Camden Show and suffered a severe brain injury. The applicant made a claim for workers compensation that was denied on the basis that he was not a 'worker' for the purposes of the Acts at the time of the injury.

An Application to Resolve a Dispute was filed on 9 February 2017 claiming weekly compensation payments and medical expenses. The parties agreed the issues in dispute before the WCC were:

1. Whether the applicant was a 'deemed worker' pursuant to Schedule 1, Clause 15 of the *Workplace Injury Management and Workers Compensation Act 1998* (1998 Act);
2. If so, whether either of the first or second respondent is liable for the claim; or whether both respondents are liable; and if so, to what extent; and
3. The applicant's entitlement, if any, to weekly compensation and medical expenses.

Decision

Issue 1 (deemed worker)

Section 4 of the 1998 Act defines 'worker' as a person who has entered into or works under a contract of service or training contract with an employer. Schedule 1 of the 1998 Act provides a wide variety of definitions for 'deemed workers' that do not otherwise fall under the definition contained in section 4.

The applicant argued that he was an entertainer engaged for fee or reward in a contest or public performance that charged an admission fee such that Schedule 1, Clause 15 applied. He also argued that he received substantial remuneration from the rodeo circuit.

The first respondent, The Camden Show Society, argued that the entry fee to the show was not a fee or reward, and that the potential for prize money fell short

of satisfying Clause 15. The second respondent, the Australian Bushman's Campdraft & Rodeo Association Limited (ABCRA), argued that the 'fee or reward' must be guaranteed and not just represent a mere possibility.

The Arbitrator looked at Schedule 1 of Clause 15 to determine the first issue. Clause 15 provides that:

"15 Boxers, wrestlers, referees and entertainers (cf former Sch 1 cl 15)

- (1) A person engaged for fee or reward to take part:
...
(c) as an entertainer in any public performance in a place of public entertainment to which the public is admitted on payment of a fee or charge,
...

is, for the purposes of this Act, taken to be a worker employed by the person conducting or holding the contest or public or other performance.
...

- (4) If 2 or more persons conduct or hold a contest or public or other performance, those persons are liable to contribute to any compensation payable under this Act for the injury in such proportion as, in default of agreement, the Commission determines."

When considering 'engaged for fee or reward' the Arbitrator considered that the opportunities for the applicant to win substantial prize money and to further his career by exposure at the rodeo, gave substance to the argument that he was seeking 'reward'. Although there was no guarantee of receiving such rewards, the evidence was that the applicant earned substantial amounts from the rodeo circuit. The Arbitrator found that there was a 'well-established' agreement between the applicant and the organisers of the event to perform his rodeo skills for the entertainment of the crowd and in return he was afforded the opportunity to win prize money and progress towards his goal of making a career on the lucrative US circuit.

The Arbitrator also considered the applicant's status 'as an entertainer'. He accepted that the rodeo was a 'public performance in a place of public entertainment to which the public was admitted on payment of a fee or charge'. The Camden Show Society and the ABCRA had engaged the applicant to ride bulls 'affording diversion or amusement' for the show crowds in a public performance and in return, he was given the opportunity to accumulate

prize money and advance his career in Australia and work towards his goal to progress to the professional US circuit.

The Arbitrator ultimately found that the applicant was a 'deemed worker' under Schedule 1 Clause 15, of the 1998 Act.

Issue 2 (respondents' liability)

The applicant submitted that both respondents were liable under Clause 15 relying on the authorities of *Murphy v North Sydney Leagues Club Ltd* [1969] WCR 59 and *Bushby v Morris* [1980] 1 NSWLR 81 in which it was held there were two entities co-operating to put on the event; in the present case, one entity (Camden Show) was "holding" the event; while another (ABCRA) was "conducting" it. The respondents argued that each other was liable.

The Arbitrator considered extensive evidence from both respondents, as well as additional parties before ultimately finding that both respondents were involved in holding and conducting the rodeo and that 'it was an integrated joint process developed over many years. While it was not a clear-cut case of one "holding" the event, and the other "conducting" it', he believed that both respondents were significantly involved in conducting or holding the event and as such were liable for any compensation payable. The highly organised mutual contributions by the respondents indicated that they should be equally liable with each respondent paying half.

Issue 3 (compensation entitlement)

The Arbitrator accepted that the applicant was totally incapacitated for any employment and by satisfying his status as a 'worker' was entitled to an award of weekly compensation.

Outcome

The decision exemplifies the process required when considering the definition of 'entertainer' and the circumstances where a person who competes for fee or reward will be a 'deemed worker' under Schedule 1 Clause 15 of the 1998 Act.

The interpretation of 'fee or reward' may be seen to be relatively broad, indicating that when an entertainer competes for prize money at an event where members of the public pay for admission, they are likely to be a 'deemed worker'.

In this case, the applicant was a young successful bull rider who was able to give evidence of his consistent career winnings and desire to extend this career to the professional circuit in the USA that assisted the Arbitrator in finding this constituted a 'reward'. In circumstances involving more casual participation by a rider without any aspirations of pursuing a rodeo career or a history of earnings from such activities, this may have led to a different outcome.

Event organisers, and participants who compete for prize money on a public stage, should be aware of the possible ramifications of this decision.

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