RECENT DECISIONS

Staying down to earth with 'place of employment' and journey claims

Green v Secretary, Department of Education and Communities [2014] NSWWCCPD 71 - 27 October 2014

Link to decision

Summary

In this case, DP Roche affirmed the general principle established in ***Chawla v Transgrid, Burke ACCJ, unreported, Compensation Court of NSW, 11 June 2002 (Chawla).***

He determined that once a worker who is going to work has crossed the boundary of the land upon which his or her workplace is situated, an Arbitrator is bound to apply ***Chawla*** and find that the worker is no longer on a journey. The fact that the worker fell in the courtyard/foyer of an office building that was not wholly owned or occupied by the employer, did not justify departure from the general principle identified in *Chawla*.

Legislation

Section 10 of the 1987 Act

(1) A personal injury received by a worker on any journey to which this section applies is, for the purposes of this Act, an injury arising out of or in the course of employment, and compensation is payable accordingly.

(3) The journeys to which this section applies are as follows:

(a) the daily or other periodic journeys between the worker's place of abode and **place of employment,**

(3A) A journey referred to in subsection (3) to or from the worker's place of abode is a journey to which this section applies only if there is a real and substantial connection between the employment and the accident or incident out of which the personal injury arose.

Background

The applicant, Ms Green, sustained injuries to her right wrist and ribs on 4 October 2013 when she tripped and fell in the courtyard/foyer of the Bankstown Civic Centre, located at 66 Richard Road. The applicant worked on the 9th floor of the building that was not wholly owned or occupied by the employer.

The insurer declined the claim on the basis that Ms Green had not reached her 'place of employment' and pursuant to section 10(3A) there was no real and substantial connection between employment and the incident out of which the injury arose.

Before Arbitrator Josephine Snell, Ms Green argued that the area where she fell was within her 'place of employment' therefore section 10 had no application. She submitted that the test for 'place of employment' was whether she had crossed the boundary of the land on which her workplace was situated.

It was not disputed that Ms Green was injured inside the boundaries of the land of 66 Richard Road. However, the Arbitrator was not satisfied that the boundary of the land on which the workplace was situated was determinative of the 'place of employment' where the employer did not occupy the whole of the land.

The Arbitrator considered that evidence of ownership, control and management of the land were also relevant factors in determining place of employment, where the boundary of the land was just one factor that may or may not be determinative. On the balance of the evidence, the Arbitrator determined that the worker had not discharged her onus of proof in this regard, therefore her application was unsuccessful.

Decision

On appeal, DP Roche revoked the determination of Arbitrator Josephine Snell.

He considered that Arbitrator Snell's decision was based on a misreading of ***Chawla*** as she was wrong to draw a distinction between the 'legal boundaries of their property' and the 'boundary of the land'. DP Roche asserted that when read in context, ***Chawla*** identified the boundary of the land to be the same as the boundary of the property.

DP Roche stated that once it was determined that Ms Green received her injury after crossing the boundary of the land upon which her workplace was situated, the Arbitrator was bound to apply ***Chawla***. That led to only one conclusion that the worker was no longer on a journey. DP Roche did not consider that the factual discrepancies in the present case could justify a departure from the general principle identified in ***Chawla***.

He went on to state that, applying the ***Chawla*** test, the issues of ownership, control and management of the land where the worker fell was irrelevant in this case.

Comment

This decision establishes that where a worker has a specific and identifiable place of employment, the boundaries of the land will determine the 'place of employment' for the purpose of section 10. Therefore, once a worker has crossed the boundary of the land upon which his or her workplace is situated, their journey will end for the purposes of section 10.

The fact that a worker sustains injury in the courtyard/foyer of an office building that is not wholly owned or occupied by the employer, will not be sufficient to justify a departure from the general principle identified in ***Chawla***.

As highlighted by DP Roche, this provides a simpler and more definitive approach in cases where the worker has a specific and identifiable place of employment.

For more information, please contact:

Craig Bell
Partner
T: 02 8257 5737
M: 0418 673 112
craig.bell@turkslegal.com.au

Emma Johnson
Lawyer