INDUSTRIAL COURT OF QUEENSLAND

Industrial Relations Act 1999 – s. 341(2) – appeal against the decision of industrial magistrate

Stephen James Williams AND WorkCover Queensland (No. C72 of 1999)

PRESIDENT HALL 24 May 2000

DECISION

On 22 October 1999 at Rockhampton in the State of Queensland the appellant was convicted of defrauding WorkCover Queensland between 30 April 1999 and 15 May 1999 by making false representations to a medical practitioner which caused the medical practitioner to issue certificates to the effect that the appellant was partially incapacitated for work. Before the industrial magistrate, the case had been defended by the appellant on the basis that though he had made false representations to the medical practitioner, the medical practitioner had not believed him and had not been misled. On the appeal the case was conducted on the basis that on the evidence the industrial magistrate could not have been satisfied beyond reasonable doubt that the medical practitioner had been misled. To aid understanding, I should perhaps interpolate that prior to the critical consultation with the medical practitioner on 30 April 1999, the medical practitioner had been made aware that WorkCover Queensland were investigating the continuing claims of the appellant and had been shown a video which raised some doubt as to whether the appellant was malingering.

The appeal cannot be sustained. There was evidence upon which the industrial magistrate could be satisfied beyond a reasonable doubt that the medical practitioner had been misled. The medical practitioner said that he was misled. It was the evidence of the medical practitioner that after viewing the video, he was uncertain whether the appellant was malingering/exaggerating or suffering from a psychological overlay. It was his evidence that after the consultation with the appellant he adhered to his previous view that the problem was psychological overlay. It was the industrial magistrate who had the advantage of hearing and observing the witness. The decision to accept the medical practitioner as a credible witness and to act upon his evidence was one for the industrial magistrate, not for this court.

The submission was made that the industrial magistrate had given insufficient weight to the evidence of another medical practitioner. The short answer is that the appeal is not by way of a re-hearing. It is an appeal on the ground of error of law. It is not an appeal on which weight may be reassessed.

Counsel for WorkCover Queensland has sought costs. He does not seek costs pursuant to s. 335 of the *Industrial Relations Act 1999*. He does not seek costs under s. 335 out of apprehension that, because the section refers to parties to an "application" rather than parties to "an appeal" and is not contained in the chapter of the Act dealing with appeals, s. 335 is not a relevant source of power. It is then put that the Industrial Court of Queensland has an inherent power to award costs and that in the exercise of that power, costs should follow the event. I do not accept the latter proposition. The Industrial Court of Queensland is a Court created by statute. It has no inherent powers. It has only such power as is vested in it expressly by necessary implication. In the absence of a proper argument I express no view as to whether s. 335 is applicable to an appeal in this Court.

I dismiss the appeal.

Dated this twenty-fourth day of May, 2000.

D.R. HALL, President.

Appearances:–
Mr S. B. Whitten instructed by Thompson Redhead Solicitors as Town Agents for Kerry Connolly and Howard for the appellant.
Mr G.C. Rhead instructed by WorkCover Queensland for the respondent.

Released: 24 May 2000

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INDUSTRIAL COURT OF QUEENSLAND

WorkCover Queensland Act 1996 – s. 509 – appeal against the decision of industrial magistrate

WorkCover Queensland AND Susan Ann Heit (No. C7 of 2000)

PRESIDENT HALL 24 May 2000

DECISION

This is an appeal from a decision of an Industrial Magistrate that Susan Ann Heit suffered an injury within the meaning of s. 34 of the *WorkCover Queensland Act 1996*.

That Ms Heit suffered an acute and quite severe psychiatric decompensation leading to an involuntary admission to the psychiatric unit at Townsville General Hospital between 25 and 28 September 1998 was not disputed before the Industrial Magistrate and was not disputed in this court. What was an issue before the Industrial Magistrate was whether, as was required by s. 34(1) of the *WorkCover Queensland Act 1996*, Ms Heit's employment was the major significant factor causing the psychiatric disorder. Notwithstanding what has been said upon the appeal, it seems to me that His Worship's finding that the employment was the major significant factor causing the injury was uncontroversial enough. There was the evidence of Ms Heit about the conduct towards her of a Ms Debbie James which, if believed, could rationally lead one to believe that Ms James's conduct had been the cause of the disorder. There was the evidence of Ms Heit's husband that as time had gone on, Ms Heit's employment, and in particular the conduct of Ms James, had become the topic of conversation. There was evidence that immediately before Ms Heit's admission to hospital, she had begun to confuse her husband with Ms James and to refer to him as "Debbie". Mr Rhead of Counsel who appears for WorkCover Queensland points to a variety of other stresses, eg the death of Ms Heit's father, the death of her mother, and the departure of a daughter to Townsville. However, there was medical evidence that Ms Heit had grieved appropriately both at the death of her father and at the death of her mother, and that the lack of temporal connection, (her father died in 1991, her mother in 1996) suggested that those stresses were not relevant to a psychiatric condition. There was medical evidence that Ms Heit had not appeared emotional when discussing the departure of her daughter. In those circumstances it seems to me that the Industrial Magistrate was right to put those stresses aside.

There was medical evidence to the contrary. It was bland and platitudinous. His Worship was right not to prefer it.

It was an inevitable consequence of Ms Heit's claim that Ms James had been bullying her, belittling and cutting her down and "riding her" day after day, that she was asked when, where and what about? Once evidence of examples were given, attention focussed on s. 34(4)(a). In short form s. 34(4)(a) withdraws from the concept of "injury" a psychiatric or psychological disorder arising out of, or in the course of, reasonable management action taken in a reasonable way by the employer in connection with the worker's employment. With the benefit of hindsight, the question whether the action taken by Ms James on the various occasions was reasonable management action displaced from the prominence which they should otherwise have had, the issues relating to Ms James's language, tone of voice and demeanour. All of those matters were of course relevant to whether the action was taken "in a reasonable way", and to the broader issue whether over a period of time Ms James had engaged in a course of conduct more likely than not to have caused Ms Heit's disorder. At times the argument on appeal threatened to take the same path. In fairness to Counsel for the appellant I can understand why that approach was adopted, particularly in relation to Ms Heit's first example. It is apparent that His Worship wrongly thought that Ms James had committed an offence under the criminal code. However, what had occurred was "potentially" serious enough. She had taken money from a till to pay to a person and replaced it with a personal IOU. I can well understand why a person in Ms Heit's then position – Ms Heit was the assistant manager and Ms James was the manager – would have been concerned to raise the matter with a superior. But undue debate about the reasonableness of taking action in the specific instances was distraction. The Industrial Magistrate was not distracted. In the course of his decision he observed:–

> "On the evidence, I accept that James behaved towards the applicant generally in the manner described by her, without determining each and every individual allegation.".

His Worship had the very great advantage of seeing and hearing the witnesses. It was His Worship who had the opportunity to form an opinion of Ms Heit and of Ms James. It is apparent from His Worship's decision that he did form an adverse view of Ms James observing:

> ". . . She is an overpowering witness who is not likely to take a backward step. She is certainly assertive. She may well be good management material, but I indicate I believe there was shortcomings displayed on the evidence.".

His Worship expressly based that finding on demeanour. It would be wrong for this Court on an appeal by way of a re-hearing to go behind an Industrial Magistrate's advantage and reverse a finding such as that. (In fairness to the Industrial Magistrate I should add further that a perusal of Ms James's evidence shows such belligerence as to suggest that His Worship was correct.)

Both before the Industrial Magistrate and on the appeal an attempt was made to rely upon s. 34(4)(d) which withdraws from the concept of injury a psychiatric or psychological disorder arising out of, or in the course of, circumstances in which a reasonable person, in the same employment as the worker, would not have been expected to sustain the injury. Reliance was placed on the decision in *Priddle and WorkCover Queensland* (1999) 162 QGIG 170 for the proposition that s. 34(1)(d) will operate to withdraw a psychiatric or psychological disorder from the concept of injury where a reasonable worker would have taken steps to seek assistance to relieve the pressure being placed upon the worker. In part, the Industrial Magistrate sought to distinguish the decision in *Priddle* on the basis that Ms Heit had made a complaint to her successor as assistant manager. His Worship erred in that. The woman to whom Ms Heit had made the complaint did become assistant manager, but she became assistant manager after Ms Heit's departure. However, Mr Lafferty of Counsel who appears for Ms Heit, and who of course can defend the decision on any basis, rightly points out that –

(a) Ms Heit had at an earlier stage complained to the area manager about Ms James's conduct towards her; and

(b) in *Priddle*, a case within Education Queensland, there was a formal system to which persons in the position Mr Priddle might resort if in need of assistance whilst here, Ms Heit was required to find her own protector in circumstances where the area manager had been unhelpful.

I accept those submissions. *Priddle* is distinguishable and s. 34(1)(d) has no application.

Some complaint was made that the Industrial Magistrate had wrongly rejected an application by the appellant to re-open its case to tender a document. On reading the transcript, it seems to me that the application was not pressed, and that the document was to be put in out of fullness since the (now) appellant's counsel had based cross-examination upon it. The respondent's counsel did not require the document be tendered. In those circumstances, the Industrial Magistrate's decision to refuse the re-opening is understandable and causes no prejudice.

In all the circumstances, I dismiss the appeal. The appellant is to pay the respondent's costs of and incidental to the appeal, taxed as costs are taxed in the Supreme Court of Queensland.

Dated this twenty-fourth day of May, 2000.

D.R. HALL, President.

Appearances:–
Mr G.C. Rhead instructed by WorkCover Queensland for the appellant.
Mr P. Lafferty instructed by Barrett Wherry Solicitors for the respondent.

Released: 24 May 2000

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QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s. 58 – review of general employment conditions

Review of Long Service Leave Entitlements Pursuant to section 58(2) of the Industrial Relations Act 1999 (No. B1404 of 1999)

PRESIDENT HALL
COMMISSIONERS BALDWIN AND BROWN

27 April 2000

REPORT ON DECISION (as edited)

In giving their decision from the Bench on 27 April, 2000, the Full Bench stated:–

> "We are of the view that it is a consequence of the use of the word 'must' which is defined in the *Acts Interpretation Act 1954*, section 33CA, that a review under s. 58(2) may commence without the need for an application by the Minister, an organisation or a State Peak Council. It follows that we are satisfied that the matter which was listed for today is a matter which is properly before us.