

Gun & Davey

Covered



Vol 1, Issue 13 – December 1998

COVERED CASES

CARBONE -v- MMI WORKERS COMPENSATION (SA) LIMITED
(AUSTRALIAN TIMBERS P/L)

Decision of the Workers Compensation Tribunal
DP Thompson

JD 65/1998

Catchwords:

Average Weekly Earnings – inclusion of bonus.

Facts:

The worker was employed by the employer on 7/7/88 as a storeman / truck driver. Each year a “bonus” was paid to employees. The amount of the bonus differed from year to year depending upon the profitability of the company and the worker’s performance. The bonus was normally paid in September or October.

It was subsequently found that the bonus was a true gratuity. Employees did not have the *right* to receive the bonus or if they did receive one, did not have the right to receive a particular amount.

The worker suffered a compensable disability on 14/3/96. He was not paid a bonus in September or October 1996 as his productivity had decreased due to the disability. The employer conceded that had he not been injured, then, on the balance of probabilities, a bonus would have been paid.

The worker’s claim for compensation was accepted and his average weekly earnings (awe’s) were set at \$500.00 per week. The bonus was *not* factored in.

Issue:

Was the worker was entitled to have the bonus included in his awe’s or at one of the Section 38, 39 reviews?

Held:

No. The Deputy President decided that as the bonus was gratuitous and linked to variables such as the profitability of the company and a subjective estimation of the worker's performance, it did not fall within the ambit of Section 4(1). The Deputy President was also persuaded by the fact that the bonus was an annual payment made months after the end of the financial year.

Commentary:

The finding that the bonus was *gratuitous* was decisive. The outcome may well have been different if the bonus was linked solely to productivity!