

Gun & Davey

Covered



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COVERED CASES

CASEY v WORKCOVER COPORATION
(MINCIN CONTRUCTION PTY LTD)

JD110/1999

This decision resulted from an Application for Directions filed by WorkCover seeking a stay of a decision of an Arbitration Officer (“AO”) pending the outcome of an Application for Judicial Determination. The AO had, after hearing evidence and submissions from the parties, made orders in relation to the fixing of the worker’s notional weekly earnings. Following that decision, WorkCover, through it’s solicitors, filed a Form 8 Request for Judicial Determination within time. The argument that fell for hearing before the Acting Deputy President was whether the AO’s calculation of the worker’s notional weekly earnings as contained in his decision should be applied and hence, paid to the worker pending the hearing.

His Honour held that the orders of the AO were not, and had not been since the filing of the Form 8, enforceable orders of the Tribunal. His Honour stated that once a Form 8 is lodged within time the status of the dispute is *unresolved*.

His Honour continued that should he be wrong about the enforcibility of the AO’s orders it was appropriate to make a stay order suspending the operation of those orders pending the resolution of the matter at Judicial Determination. He did so on the basis of the potential injustice if the payment had to be made when Judicial Determination may produce a quite different outcome.

His Honour’s observation of the status of an Arbitration Hearing and decision is similar to the approach taken by Deputy President Judge Parsons in Armiento -v- WorkCover JD6/1999.