



COVERED CASES

COCKRUM v WORKCOVER (N & A BIANCO PTY LTD)

[2000] SAWCT 127

In this decision His Honour Deputy President Gilchrist was required to consider when interest becomes payable upon the resolution of disputes involving arrears of income maintenance. Is interest pursuant to Section 47(1)(b) payable from:

- The occurrence of a compensable disability?
- The date the Claim for Compensation is made?
- The date the disputed decision is made?
- The date on which a Notice of Dispute is lodged?

In reaching his decision, His Honour acknowledged that the prime purpose of Section 47 is to:

“Encourage the prompt and accurate determination of claims by compensating authorities by providing a penalty for delay”.

Using this rationale His Honour concluded that interest is not payable for periods before the lodging of the Claim for Compensation as before that the compensating authority could not have done anything to expedite payment.

He then considered each of the alternatives in turn:

1. Is interest payable from the date the Claim for Compensation is made?

His Honour stated that the Act contemplates a reasonable time within which to investigate claims before making a determination. He acknowledged that the Corporation owes a duty not only to the worker but also to the employer and to the Scheme. It should not be pressured into making hasty determinations and should feel

permitted to make proper use of the powers conferred by Section 53 without being penalised for having done so.

2. Is interest payable from the date upon which the erroneous determination is made?

His Honour held that to decide that interest is payable only from this date might unfairly prejudice workers who feel there has been undue delay between the lodgement of the claim and the making of the erroneous determination. He states that a compensating authority should not be able to profit from undue delay.

Deputy President Gilchrist concluded that:

“Interest should run from the day upon which a compensating authority should have determined the claim for weekly payments”

in the worker’s favour.

On occasion, this will be the date of the erroneous determination but not necessarily so. Occasionally it may be earlier than this if there has been undue delay by the compensating authority.