

Gun & Davey

Covered



Vol 1, Issue 14 – February 1999

CASE SNIPPETS

FALIDIS -v- UNISURE (No. 2)

JD 5/1999

Here the Deputy President was asked to summarily set aside a disputed re-determination of a previous re-determination on the basis that as a matter of law, there cannot be a re-determination of a re-determination!!

Unisure had issued a determination accepting the worker's claim for a closed period and setting AWE's. A Notice of Dispute was lodged in respect of the closed period acceptance and following reconsideration at a Compulsory Conciliation Conference, the parties agreed that the worker was entitled to weekly payments on an ongoing basis. Rather than requesting the Tribunal to issue an order to reflect this agreement, Unisure made a re-determination of the claim pursuant to Section 53(7a)(c) and the Notice of Dispute was presumably dismissed. Subsequent to this however, Unisure determined that the AWE's stipulated in the original determination *and* its re-determination were wrong as they included a component of overtime which did not satisfy the criteria of Section 4(8). So, in purported reliance upon Section 53(7a)(d), i.e. re-determination on account of administrative error, Unisure re-determined the re-determination, setting AWE's at a lower amount.

The Deputy President held that the time limit prescribed by Section 53(7a)(d) (two weeks) runs from the date of the first determination which is the subject of a re-determination. As a consequence, Unisure could not rely upon Section 53(7a)(d) outside the two week period following the making of the first determination (which had been made 10 months prior).

As with *Falidis No.1 (JD67/1998)* appearing in Volume 1 Issue 13 of ***Gun & Davey – Covered*** (p5), the Deputy President expressed reservation as to whether Section 53(7a) can be invoked in respect of a matter pending in the Tribunal. However he found that he

did not need to resolve that issue here because even if the earlier re-determination was validly made, the subsequent one was not.