



COVERED CASES

Case Snippet

HORNHARDT v WORKCOVER CORPORATION **(NTP PTY LTD)**

Decision of WCT

[2000] SAWCT 157

Here, Deputy President Gilchrist takes the decisions of Petric [2000] SAWCT 108 and Adderton [2000] SAWCT 119 one step further.

The worker sustained an injury in the course of his employment on 18th April 1997. Although his claim had originally been rejected it was subsequently held by His Honour that his disability was compensable and that the worker had an entitlement to weekly payments of income maintenance from the date of the termination of his employment being 20th September 1997. The parties were left to determine quantum.

The worker's entitlement during the first and second years of incapacity were agreed by the parties. The matter was brought back before Deputy President Gilchrist to determine his entitlement thereafter.

It was the Corporation's assertion that His Honour should take into account the worker's residual earning capacity and his ability to perform suitable employment having regard to the nature and extent of his disability, his age, his level of education and skills, his experience in employment and his ability to adapt to new employment, ie to take into account the provisions of Section 35(2).

The worker disagreed with this assertion stating that if the Corporation wished to embark upon a review of weekly payments it should follow the procedures provided for by Section 38.

His Honour stated that the effect of the lodging of a Notice of Dispute within time is to render the disputed decision unenforceable and this remains so until the Tribunal makes

an order either by consent or after an adjudication on the merits. The status quo remains, in that the position is as it was before the disputed decision was made.

Given the status of the disputed decision the nature of the hearing must be a hearing *de novo* at which the Tribunal must arrive at its own decision based upon the evidence presented to it and the law as it is at the time of the hearing. The Tribunal is not constrained by the grounds upon which the determination was made nor is it limited in making its decision to the facts and evidence available at the time when the disputed determination was made.

His Honour went on to state that subject to the rules of natural justice he must base his decision upon the evidence placed before him and if this indicates that the worker's entitlement to weekly payments of income maintenance has ceased then in principle there can be no reason why the Tribunal should not give effect to that evidence and rule accordingly.

His Honour stated with respect to the application of Section 38 that, as no weekly payments were being made, weekly payments themselves are not being reviewed.

What is occurring is an identification of the period of incapacity with a realisation that the period extends beyond two years and an assertion that without the benefit of the deeming provision contained in Section 35(2)(b), no entitlement to weekly payments exists.

His Honour held that given that the worker's incapacity for work extended beyond two years, if the compensating authority is, through evidence, able to persuade the Tribunal that for the period beyond that date the worker has a capacity to earn in suitable employment an amount equal to or greater than his or her notional weekly earnings, the Tribunal is obliged to determine that the liability for weekly payments has ceased as at that date. This is no different than if it determined that the liability to make weekly payments should be limited for a closed period because it was satisfied that the worker's incapacity for work had ceased or that he had returned to work.