

Gun & Davey

Covered



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HANDY HINTS

*JEBB v WORKCOVER CORPORATION
(CONROY SMALLGOODS PTY LTD)*

JD 13/1999

A recent case of *Jebb -v- WorkCover Corporation (Conroy's Smallgoods Pty Ltd) JD13/1999* suggests that the trend towards granting workers extensions of time may be easing.

Some 12 months after the worker was dismissed for serious and wilful misconduct and had his payments discontinued he lodged a Notice of Dispute against the discontinuance seeking an extension of time.

While it was suggested that the dismissal was inappropriate which may in turn have invalidated the discontinuance, the WCT nevertheless found that the Corporation would suffer prejudice if an extension of time were granted. It held that the Corporation's prejudice results from the fact that because it was not given prompt notice of the worker's challenge to the determination it was deprived of an opportunity to avail itself of strategies that may enable it to reduce its liability to pay compensation to the worker. Had it known of the worker's challenge to the determination the Corporation may well have formed the view that there was some risk in maintaining the determination and would have prevailed upon the employer to reinstate the worker or otherwise have taken steps to facilitate his rehabilitation.

The WCT further noted that while the refusal to grant the extension of time will preclude his right to challenge the determination he would not be permanently precluded from pursuing a claim for weekly payments of income maintenance if at some stage he can establish that he has a relevant incapacity for work.

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Another important aspect of this decision is the approach taken by the Tribunal in respect of discontinuances pursuant to Section 36(1)(e) where a worker is dismissed for serious and wilful misconduct. The Tribunal will not simply accept on face value the existence of a dismissal for serious and wilful misconduct but must satisfy itself that the industrial standard for dismissal on those grounds is met.