

Gun & Davey

Covered



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“JOURNEY” CLAIMS REVISITED

The Workers Compensation Tribunal recently revisited the journey provisions of the Act in [Nebi -v- WorkCover Corporation \(D V & D M Stribing\) \[2000\] SAWCT 27](#).

The worker, an apprentice mechanic who worked and lived in Strathalbyn, was required by the terms of his employment to attend the O’Halloran Hill TAFE Trade School.

In the week the worker was injured, the employer, who was ill, had provided the worker with a key to his premises and asked the worker to attend there daily to check security, answering machine, facsimile and mail and report as to anything requiring attention.

The worker attended the employer’s premises on 2nd and 3rd August 1999 and intended to do so on the way home from TAFE on Wednesday 4th August 1999. However he was involved in a motor vehicle accident and rendered paraplegic.

It was submitted by the Corporation that the journey from TAFE to Strathalbyn was more properly characterised as a journey to the residential home of the worker and that anything else was incidental thereto and therefore non-compensable.

Acting Deputy President Thompson however held that by going to the employer’s premises as requested, the worker was carrying out the duties of employment. The worker was doing something he was specifically required to do.

Quite importantly for “journey” cases generally, Acting Deputy President Thompson stated there is no warrant for reading down the words of the Act to require that there must be a “primary” purpose to the journey. He stated *“it is sufficient that a purpose of the journey is to carry out the duties of employment”*.

Acting Deputy President Thompson rejected the process of distinguishing between a “primary” end or a “secondary” end to determine the purpose of the journey. In this case, common sense dictated that the worker could not fulfil the duties of his employment without going to Strathalbyn. The fact that he would have gone there anyway (to go home) was irrelevant.

In [WorkCover Corporation \(S K & A Savas\) -v- Russo \[2000\] SAWCT 23](#) the Full Bench had reason to consider what constitutes a journey.

In this case the worker, a taxi driver, left his cab to buy lunch with the intention of returning to his cab and attending a call within 10 minutes. While the worker was out of his cab he sustained injury.

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The issue was whether the worker had embarked on a journey for the purposes of Section 30(5) when he left his cab to buy lunch.

The Full Bench confirmed the decision of the Deputy President at first instance who had held that it is very much a matter of fact in each case. The learned Deputy President had held that on a common sense and practical approach, this could not be regarded as a journey. The worker had intended to traverse the distance of approximately 80 metres believing that he would be able to complete the purchase in sufficient time to then drive and collect a customer in under 10 minutes. It was held that the worker was in the course of his employment when his injury was sustained.

As always, it is important to remember that each case must be looked at on its merits. Simply because a worker has left his “place of employment” is not sufficient to establish that the worker was involved in a journey. Common sense should be used to determine whether the worker remains in the course of his employment or alternatively is involved in a journey.