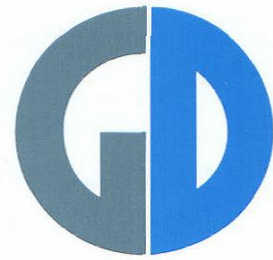


Gun & Davey

Covered



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COVERED CASES

WORKCOVER CORPORATION / MMI WORKERS COMPENSATION (SA) LTD
(STRATHALBYN RACING CLUB)
-v- NOLAN

Decision of the Full Bench of the Workers Compensation Tribunal

JD 20/1999

Catchwords:

Sections 4(2)(1) and (a) – interpretation of “earned for a week’s work” where worker was employed by more than one employer.

Facts:

The worker sustained an injury to his right knee on 6 September 1995 whilst moving a horse in the course of his employment with the Strathalbyn Racing Club.

At the time he was deriving income from a number of other sources including work as a self-employed farrier.

The worker submitted a claim for compensation and a dispute arose as to whether the earnings from other sources should be included in his average weekly earnings.

At first instance the WCT held that they should. On appeal to the Full Bench that decision was overturned.

Issue:

Should earnings from self-employment be included in the calculation of notional weekly earnings?

Held:

No. In the context of Section 4 and the definitions of “worker” and “employment”, the expression “a week’s work” appearing in Section 4(1) is based on the assumption that the earnings for a week’s work will be earned in the capacity as a worker pursuant to the Act.

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Section 4(2)(a) is only concerned with earnings from employment (be that employment at common law or as deemed pursuant to the Act) and does not include earnings from self-employment that are not otherwise specifically provided for by the Act.

The worker's income as a self-employed farrier should not have been taken into account in the calculation of his average weekly earnings.

Commentary:

The Full Bench of the WCT has left open the possibility that a worker whose second source of income is from self-employment of a type which falls within the deeming provisions in the Regulations may be entitled to have his or her earnings from this employment included in the calculation of notional weekly earnings.