

*Gun & Davey*

***Covered***



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## **COVERED CASES**

### **O'CONNOR -v- WORKCOVER CORPORATION**

#### **Decision of the Worker Compensation Tribunal**

**JD 69/1998**

In O'Connor -v- WorkCover Corporation the worker was an interstate trucker driver. He suffered disability to his lower back on 28/12/92 during a trip to Perth. He underwent two surgical procedures and was advised that he should not return to his previous occupation as a truck driver. Eventually, he agreed to redeem his future entitlement to weekly payments and Section 32 expenses.

Following the redemption the worker sought and obtained employment as an interstate truck driver with another employer. In the course of his employment whilst approximately 1000kms east of Perth both front steering tyres required changing. In the course of so doing he suffered a further disability to his lower back whilst lifting tyres.

The worker claimed compensation but his claim was rejected. At Judicial Determination it was argued that the worker's conduct in undertaking the activities that led to the further injury constituted serious and wilful misconduct.

The Corporation argued that the worker's undertaking of the heavy duties of truck driving knowing that he had a serious injury to his back and against the advice of his treating neurosurgeon constituted misconduct. The Corporation further argued that the worker must have known that truck driving carried with it a significant risk of injury and that misconduct was both serious and wilful.

The Deputy President expressed the view that had the worker deliberately embarked upon this activity in the knowledge that it would cause him injury then the resultant disability could be said to have been attributable to his serious and wilful misconduct. The same would be true if he had embarked upon the activity with a reckless indifference to the possibility of further injury. However, the Deputy President found that the worker genuinely believed that he could perform the duties of a truck driver despite his medical advice and that the injury was not a result that he had either planned or expected. His Honour then made further useful comments too involved to elaborate on here.

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The Deputy President also dealt with Section 30B(3) which states that subsection (2)(b) does not apply in the case of death or serious and permanent disability. He found that the worker's disability was worse as a result of the further disability. He found that the further disability constituted a serious and permanent disablement. As a consequence, even if the further injury had been attributable to the serious and wilful misconduct, Section 30B(3) prevented that from barring the worker's claim.