



**COVERED CASES**

**Case Snippet**

**PORCARO v BHP INTEGRATED STEEL**

**Decision of WCT**

**[2000] SAWCT 113**

This decision concerns the rejection of the worker's Claim for Compensation on the grounds that the worker's disability was attributable to serious and wilful misconduct pursuant to Section 30(B)(2)(b)(i) of the Act – a "brave" approach by the decision maker in these circumstances.

The worker suffered a crush injury to his hand when using a guillotine. As a steel plate he was cutting would not fit the worker had removed a section of the guard causing the plate to fling up, crushing his hand. Later it was suggested that a more appropriate method would have been to use an oxyacetylene torch however the worker did not turn his mind to this. It was the worker's assertion that in his role as a maintenance fitter he was regularly required to operate the machinery without guards and believed the safety procedure existed only in relation to production work.

The worker's employment was terminated for breach of safety procedure. The worker's Claim for Compensation was also rejected on the abovementioned basis and on the grounds that the worker had attempted to use the guillotine for a job for which it was not designed.

The Tribunal considered that pursuant to Section 30B(2)(b)(i) the worker's misconduct must be wilful and that the worker's awareness of, or reckless indifference to, the consequences of his action was an ingredient of that "wilful misconduct". The worker's violation of the safety rule therefore needed to demonstrate that he appreciated or was recklessly indifferent to the seriousness of the consequences of his actions.

Deputy President McCouaig noted that the worker had previously been considered a suitable employee producing good quality work in a safe manner. He found that the

worse that could be said was that the worker had made an error of judgement, as at the time of the injury, he did not consider that his action presented an undue risk, or that he was acting in contravention of the safety rules.

It was therefore held that the worker's actions fell short of *wilful misconduct* nor did it constitute *serious misconduct*. It was also noted that the worker's disability was not wholly or predominantly attributable to his alleged (serious and wilful) misconduct as there were deficiencies evident with the guillotine that were not attributable to the worker's actions. The worker's error of judgement was therefore a contributing factor but not the predominant cause.

The worker's disability was held to be compensable.