



COVERED CASES

Case Snippet

TEBBEY -v- WORKCOVER (IRONS ENGINEERING PTY LTD)

[2001] SAWCT 25

(Section 6)

This involved a consideration of the territorial application of the Act – Section 6.

The rather complicated facts of this case were not in dispute but are relevant to determining whether a “nexus” existed between the worker’s employment and South Australia.

The worker initially commenced employment in Adelaide with Irons Engineering Pty Ltd (“Irons”) but resigned in 1965. He was then employed by another Adelaide firm until 1985. After 1985 due to his friendship with the owner of Irons, and at the request of Irons, he once again began to assist that company on special projects.

In 1993 he was asked to re-join the company on a full-time basis as a factory manager, which he did. He then retired in June 1994 undertaking intermittent casual work for Irons over the next four years.

In mid-1998, as a favour to the company, the worker accompanied the owner of Irons and his son on a trip to Melbourne to inspect a cray fishing boat which they were interested in purchasing. The worker was not paid for this time. The boat was bought by interests associated with Irons and sailed to Cairns QLD. The worker agreed to go to Cairns, modify the boat and go to sea on the boat to undertake maintenance, engineering and cooking.

The worker remained subject to the directions of Irons whilst working. Irons paid the worker \$500.00 a week plus expenses. This arrangement was confirmed in a handwritten note by the worker, signed by both the worker and Irons. The owner of Irons maintained the associated Queensland company was not paying the worker.

Once the worker was working in Cairns he forwarded weekly invoices to Irons in Adelaide together with receipts for his expenses. Irons would reimburse these amounts direct to his credit union account. No tax was deducted.

The worker was injured on the 23rd November 1998 whilst working on the boat and lodged a CCF against Irons. On the 7th June 1999 his claim was rejected by the Corporation pursuant to Section 6 of the Act ie, outside of jurisdiction.

The worker maintained that there was a nexus between his employment and the State, that he was based in the State - Section 6(2)(b), and/or that he worked from a base in the State - Section 6(2)(c).

Deputy President McCouaig agreed the Act could only apply if there was a nexus between the worker's employment and SA - Section 6(1).

He stated that the "employment" refers to the work he performed and was to perform in Queensland pursuant to the agreement. None of the work was intended to be performed in SA.

He therefore found that the worker was "usually employed" in Queensland, and not SA (ie, 10% or more of the time the worker was working in Queensland) and the claim was properly denied. The fact that the worker worked 100% of the time in Queensland was relevant to the definition of "usually employed".

In the alternative the worker had submitted that his entire employment history with Irons should be taken into account, and that Section 6(1) should be interpreted broadly. As his work in Queensland was "relatively brief in the overall scheme of things", he should be regarded as employed in SA.

This alternative proposition was also rejected by His Honour on the basis that

the worker's employment is a reference to work that the worker has done, or is to do, pursuant to a contract of service with the employer. This was an agreement for the worker to work in Queensland.

He considered that Section 6(2)(b) and Section 6(3) did not apply and that the worker had not shown that the Act had any application to his employment in Queensland.