

**RECENT DECISIONS**

## Injury related to former work colleague

*Michael West v Boom Logistics Limited* [2018] NSWCC 36 (8 February 2018)

[Link to decision](#)

### Summary

Even though the worker stopped to investigate an accident of a former work colleague, the Arbitrator found in favour of the worker on the issues of injury and substantial contributing factors.

### Background

The worker was employed as a mobile crane operator. He claimed to have suffered PTSD as a result of finding the decapitated body of a former worker colleague who had apparently committed suicide in his vehicle at the road side.

The Arbitrator dismissed the worker's contention that he was on a prescribed 'journey' within section 10, then focussed upon whether or not the worker was *in the course of his employment*, and if so, whether employment was a *substantial contributing factor*.

### Decision

After finding that the worker had reached the place of employment when he found the body, the Arbitrator had to then determine whether the worker's injury arose out of or in the course of employment.

At the time of the incident the worker was proceeding to the employer's depot to collect a work colleague and a work vehicle. This was done so as to arrive at the job site for the day at 7am. The Arbitrator found, based on these facts, that the worker was "on his employer's business" at the time he was travelling on the road. Therefore the worker was at least "in the course of employment".

The next issue was whether employment was a substantial contributing factor to the injury.

Counsel for the Respondent Employer made the following submissions:

*Mr McManamey submitted that there was nothing about Mr West's employment that exposed him to the injury and that it was "sheer coincidence" that the deceased was a former work colleague and that Mr West was travelling to work at the time. Mr McManamey noted that Mr West's attention was drawn to the car on the side of the road because it belonged to a friend he had known for several years. Mr McManamey submitted that there was nothing in the evidence to suggest that the former colleague's suicide was connected with his employment. Although Mr McManamey acknowledged that in his supplementary statement, Mr West had given evidence that he had stopped to render assistance because he was a First Aid Officer. Mr McManamey submitted that, given that the car belonged to a friend and because he had relevant skills, Mr West would have stopped to render assistance in any event. Although Mr West said he considered it his duty to stop, there was no evidence to suggest that this was a workplace duty imposed upon Mr West or that he had been directed by his employer to render assistance in such circumstances.*

The Arbitrator found that the worker was on the road for no reason other than that his employment required him to collect a work colleague and a work vehicle. Although the Arbitrator acknowledged that the deceased was a former colleague, he found significance in the fact that the deceased only stopped working for the employer 8 days before. The Arbitrator also noted the worker's position as a First Aid Officer at the employer site was

a real and substantial part of the worker's decision to stop and investigate. Furthermore, the Arbitrator noted the worker's first call was to his supervisor who directed another employee to attend the site. Accordingly, she found employment was a substantial contributing factor to the injury.

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