

## CASES AND TRIBUNAL DECISIONS

# Large dogs traumatise fire-ant eradicator

*Edington v Board of Trustees of the State Public Sector Superannuation Scheme* [2015] QSC 245

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The plaintiff was a member of the Queensland State Public Sector Superannuation fund known as QSuper.

In 2004, the fund's Board declined a claim which the plaintiff made for a TPD benefit because his disablement was related to a pre-existing medical condition which should have been disclosed by him at the time he applied to join the fund under its rules.

The member disputed this decision but by 2010 had exhausted his rights under the *Superannuation (Resolution of Complaints) Act (1993)* after a complex series of appeals to the Federal Court which ultimately found in favour of the fund.

In 2011, he started fresh proceedings in the Supreme Court of Queensland by bringing a claim under section 8 of the *Trusts Act 1973 (Qld)* as a person who was "aggrieved by any act, omission or decision of a trustee..."

This is a provision of general trust law in Queensland and the Court first had to consider whether it had jurisdiction to hear the plaintiff's claim under the section and whether section 8 applied to the Board because it was properly considered a trustee under the Act of the Queensland Parliament which created it.

Having satisfied himself of this, Justice Bond began to examine the relevant "insurance terms"<sup>1</sup> which applied to the plaintiff. Critically, these included, at clause 6.2, a provision that if the plaintiff had been a member for less than ten years;

*"No insurance benefit will be paid for a claim unless:  
...*

6.2 (b)...

*(iii) the board is of the opinion that the total and permanent disablement... was not related to a condition that was disclosed on the personal medical statement or which in the opinion of the board should reasonably to have been disclosed on the personal medical statement;..."*

The Court then examined whether the formation of this opinion by the Board could be reviewed under section 8 and if so, on what grounds.

In doing so, it was necessary to consider if the limited grounds of review that applied to discretionary decisions were relevant, or whether more recent case law<sup>2</sup> had widened the grounds when a court could intervene with the decision of a trustee.

Justice Bond affirmed that the Board was not deciding a "discretionary matter" and also noted the more stringent duty that was placed on superannuation trustees in determining entitlements that members were entitled to as a consequence of their employment.

The Court also recounted that the High Court had made the observation in *Finch v Telstra* that "the decision of a trustee may be reviewable for want of "properly informed consideration".

However, Justice Bond also concluded that there had been no decision since *Finch* to suggest a decision could be overturned simply because it was not "fair and reasonable", or simply because it was not correct, even though the High Court had speculated subsequent cases might possibly go in this direction in *Finch*<sup>3</sup>.

Hence, any possible expansion of the grounds upon which a trustee's decision can be reopened based on *Finch* has once more been deferred for a future occasion and the Court concluded that it could only intervene if the Board's decision –

- a) *“was not made in good faith; or*
- b) *was not made upon a real and genuine consideration of the material before the trustee; or*
- c) *was not made in accordance with the purposes for which the power to make the decision was conferred.”*

The plaintiff had been employed by the Queensland Department of Primary Industries as a field assistant in a program for the eradication of fire ants. He suffered a series of injuries to his right foot in the course of his work in the first half of 2002, one of which occurred when he was chased off a property by a pack of large dogs.

His treating doctors eventually concluded that apart from the foot injury, the plaintiff may also have been *“suffering from the effects of “post-traumatic syndrome”* in connection with this attack.<sup>4</sup>

Essentially, the problem the Board had to resolve was a dispute in the evidence of two consultant psychiatrists, one of whom concluded the plaintiff was TPD due to post-traumatic stress disorder stemming from the dog attack.

The other considered that the dog incident was not a severely traumatic event and thought the plaintiff was disabled by a pre-existing schizophrenic condition which he should have disclosed at the time he joined the fund.

The Board preferred the latter opinion because it was more consistent with the plaintiff's medical history and it stated that decision clearly in its minutes.

The Court reviewed the medical evidence in depth finding that the conclusion drawn by the Board was reasonably open to it on the available evidence. Justice Bond also dismissed the related complaints that the Board had denied the plaintiff procedural fairness.

<sup>1</sup>There was found to be no intention to create a contract of insurance. The relationship of the parties was purely one of trustee and beneficiary. The judgment contains a detailed review of the differences between the position of a trustee and that of an insurer.

<sup>2</sup>*Finch v Telstra Super Pty Ltd* (2010) 242 CLR 254 as considered in *Alcoa of Australia Retirement Plan Pty Ltd v Frost* (2012) 36 VR 618.

<sup>3</sup>Judgment paragraph 55.

<sup>4</sup>Judgment paragraph 68.