RECENT DECISIONS

When is a "Roadie" a worker?

Kochmanz v Rekani Pty Ltd t/a Entertainment Installations (2019) NSWWCC64

Link to decision

Background

The employer was making arrangements for a band to perform in Melbourne.

The employer contacted the claimant to engage him to assist in setting up sound equipment for the band called "Yes" at the Palais Theatre in Melbourne. In other words, the claimant was working as a "roadie" for the band.

The contractual communications were fairly casual: text messages followed up by phone calls and emails. There was no written contract.

The claimant suffered injury to his right lower leg while performing his work on 18 November 2014. The insurer disputed the claim on the basis that the claimant was not a 'worker' under section 4 of the 1998 Act or a deemed worker under Schedule 1 Clause 2 of the 1998 Act.

Determination of the Dispute

The claimant issued invoices to the employer under a business name "Trust in Passion Touring" that included an ABN. Although the ABN had lapsed prior to the injury, it was current at the time that the arrangement was entered into. The existence of the ABN at this time and the lack of any provision for holiday pay, sick pay or superannuation were factors that would favour the claimant being found to be an independent contractor rather than a worker under a contract of service.

However, the Arbitrator considered these factors were far outweighed by other factors in support of the claimant being found to be under a contract of service, including:

- The rate of pay was determined by the employer.
- The employer arranged and paid for the claimant's air travel to Melbourne.
- When the claimant arrived on the site, the employer told the worker what equipment was to be used and where and when to use it.
- There was a supervisor on site.
- The claimant's invoices had no GST component and the ABN was allowed to lapse before the injury.

On balance, the Arbitrator found that the claimant was working within the business of the employer subject to overall direction and control of the employer as to how the work was to be carried out. He was not acting as a representative of his own business.

The alternative argument put by the claimant was that if he was not a worker under a contract of service, then he was a deemed worker. In other words, at the time of the injury, he was not carrying out work that was incidental to a trade or business that he regularly carried on. The Arbitrator observed that the claimant had not worked for three months prior to the engagement and so it was difficult to conclude that he was regularly carrying on a business. The Arbitrator thereby determined that in the alternative, the claimant was also deemed worker.

Implications

The use of an ABN number is not necessarily determinative of whether work being performed was incidental to a trade or business regularly carried on by a claimant under his own name or business.

The various 'indicia' of employment must be weighed up when considering the total relationship with the control test being just one factor to consider.

For more information, please contact:

Craig Bell
Partner
craig.bell@turkslegal.com.au