

RECENT DECISIONS

Payment under deed does not damage claim for workers compensation benefits

Neuroscience Research Australia v de Rome [2019] NSWCCPD 13 (11 April 2019)

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Summary

A recent decision by Deputy President Wood considered the circumstances in which an earlier payment to a worker would prevent a claim for workers compensation benefits due to the provisions of s151A.

Background

The worker made a claim for payment of weekly benefits and lump sum compensation based on an allegation of a psychological injury due to bullying and harassment at work.

Prior to commencing proceedings in the Workers Compensation Commission the worker had lodged a general protections application with the Fair Work Commission. That application was settled by way of a deed pursuant to which the worker was paid \$20,000. The deed indicated that this was for general damages due to the worker's pain and suffering. The deed also provided for a contribution of \$15,000 to be made towards the worker's legal costs.

In response to the claim for compensation, the employer argued that pursuant to section 151A the worker was not entitled to workers compensation benefits as she had received damages and as such had no entitlement to compensation under the *Workers Compensation Act 1987*.

Decision

The Arbitrator initially found that there was no exclusion to the worker receiving workers compensation benefits and entered an award in her favour.

An appeal to Deputy President Elizabeth Wood primarily focused on the question of whether the worker had received damages and was thereby disentitled to workers compensation benefits.

The Deputy President noted that "damages" are defined in section 149 of the 1987 Act to include any form of monetary compensation and any amount paid under a compromise or settlement of a claim for damages (whether or not legal proceedings had been instituted).

Section 151A in turn provides that if a person recovers damages in respect of an injury from the employer liable to pay compensation under the Act then that person ceases to be entitled to any further compensation in respect of the injury.

In referring to previous authorities on the exclusion of compensation by virtue of the payment of damages, Deputy President Wood commented that it is not the execution of a deed that invokes section 151A but the actual recovery of damages. For the section to apply it is also necessary that the damages have been paid in respect of the same injury that is relied on in seeking workers compensation.

Deputy President Wood held that in the present case the application in the Fair Work Commission had not sought damages in respect of the same grievances for which compensation was claimed in the Workers Compensation Commission. This distinguished the matter from the decision of President Keating J in *Super R IP Pty Ltd v Mijatovic*. In that matter the President found the damages paid under a deed were in respect of the work injury.

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In passing, Deputy President Wood also noted that the deed entered into following the proceedings in the Fair Work Commission did not contravene section 234 of the 1998 Act, which prevents contracting out, as the deed specifically provided that workers compensation claims were excluded from the matters resolved.

Implications

If a defence under section 151A is to succeed it is necessary to show that any monetary sum paid to a worker was damages as defined in section 149 and that those damages relate to the same injury for which compensation is claimed.

It will be necessary to consider in detail the document or arrangement pursuant to which the monetary sum was paid in order to determine whether section 151A will apply.

For more information,
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