Rupe v Beta Frozen Products [2000] NTSC 93

PARTIES:	CLINTON DOUGLAS RUPE
	v
	BETA FROZEN PRODUCTS
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	LA7 of 2000 (9828002)
DELIVERED:	22 November 2000
HEARING DATES:	17 November 2000
JUDGMENT OF:	RILEY J

REPRESENTATION:

Counsel:

Appellant:	M. Grant
Respondent:	J. Reeves QC

Solicitors:

Appellant:	Hunt & Hunt
Respondent:	Cridlands

Judgment category classification:	B
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Rupe v Beta Frozen Products [2000] NTSC 93
No. LA7 of 2000 (9828002)

BETWEEN:

CLINTON DOUGLAS RUPE
Appellant

AND:

BETA FROZEN PRODUCTS
Respondent

CORAM: RILEY J

REASONS FOR JUDGMENT

(Delivered 22 November 2000)

[1] In this matter I delivered reasons for judgment on 6 September 2000. The parties came before me on 17 November 2000 to finalise the orders that flow from my reasons.

[2] In allowing the appeal I did so on the limited basis that the learned Chief Magistrate had failed to find that the Form 5 notice issued pursuant to s 69 of the *Work Health Act* was defective. I noted that his Worship had not addressed the issue of the counterclaim or the defence to the counterclaim. He addressed the narrow issue of the effectiveness of the notice issued pursuant to s 69 and not the wider issues raised in the balance of the pleadings. There was no cross-appeal or notice of contention filed on behalf

of the respondent raising these issues. In any event in my reasons I made the following observation:

> "It was the submission of both parties that, in the event that I reached the conclusion set out above, I should not proceed to determine the matters outstanding from the counterclaim and defence thereto as they had not been addressed by the Work Health Court. I agree."

[3] At the time of the hearing on 17 November 2000 the employer argued that I should endeavour to resolve all issues between the parties. In my opinion it is not possible to do so.

[4] In its counterclaim the employer asserted that, as and from 2 December 1998, the worker had ceased to be incapacitated for work or had only been partially incapacitated for work. In the defence to that counterclaim the worker raised a series of issues including the following claims:

(a) the employer terminated the worker's employment;

(b) the employer failed to take reasonable or any steps to provide the worker with suitable employment;

(c) the employer has failed to take reasonable or any steps to find the worker suitable employment with another employer;

(d) the employer has failed to take any steps or to participate in efforts to retrain the worker;

(e) employment as a grade 1 butcher is not reasonably available to him.

[5] The learned Chief Magistrate did not address those matters and they were not addressed in any detail before me. I do not accept the submission that

the finding by his Worship that the appellant "was capable of undertaking his employment with Beta on a full time basis" on 4 December 1998, taken in context, is sufficient to enable me to determine the issues raised in the counterclaim and the defence thereto. That finding is a relevant finding but there are other issues that are to be addressed in order to determine whether there is entitlement to compensation and as to the amount of any such entitlement. There are continuing issues of credit that need to be resolved and competing versions of events to be determined. In my view, it is not possible for me to resolve the issues that it is necessary to resolve in these proceedings.

[6] An appeal comes to this Court by operation of s 116 of the *Work Health Act*. Section 116(2) is as follows:

> "(2) The Supreme Court shall decide the matter of appeal under this section and may either dismiss the appeal or reverse or vary the decision or determination appealed against and may make such order as to the costs of the appeal or the proceeding before the Court, or both, as it thinks fit."

[7] Debate at this time has to some extent centred upon whether I have power to remit the matter to the learned Chief Magistrate to be determined according to law or to send the matter back for a new trial.

[8] The Work Health Court is a Court established by statute. It is a general rule that when a new Court is created there is no appeal from a decision of that Court unless it is conferred by statute: *Holmes v Angwin* (1906) 4 CLR 297 per Griffiths CJ at 304. Appeals are creatures of statute and the powers

conferred upon an appeal court are governed by the relevant statute: *Da Costa v Cockburn Salvage and Trading Pty Ltd* (1970) 124 CLR 192 per Windeyer J at 202.

[9] Section 116(2) of the *Work Health Act* spells out the powers of this Court when dealing with an appeal from the Work Health Court. The Court is to "either dismiss the appeal or reverse or vary the decision or determination appealed against". The power to remit is not one of the powers contained in the legislation. The power to remit is a power with which courts of appeal are often provided and one that would be of assistance in this jurisdiction. For reasons that are not readily apparent to me such a power has not been conferred by this legislation.

[10] I was referred to *McMorrow v Airesearch Mapping Pty Ltd* (1997) 137 FLR 322 as an example of a work health matter being sent back for a rehearing. However in that case the appeal had been made to the Court of Appeal from this Court and the powers of the Court of Appeal in that circumstance are set out in s 55 of the *Supreme Court Act*. Those powers include both the power to remit and the power to grant a new trial. The powers granted under s 55 are to be contrasted with those granted under s 116 of the *Work Health Act*. Given the specific legislative authority contained in s 55 of the *Supreme Court Act* that case is of little assistance in the present circumstances.

[11] I was also referred to *Alice Springs Town Council v Mpweteyerre Aboriginal Corporation* (1997) 139 FLR 236. In that case the relevant Act, the *Local*

Government Act, was silent as to the powers of the Supreme Court on appeal from a Tribunal. Mildren J, with whom Martin CJ agreed, addressed that issue and said (at 247):

> "Where, by an Act of Parliament, a right or a power is created, there must by implication carry with it the power to do everything which is indispensable for the purpose of exercising the right or power, or fairly incidental, or consequential to the power itself."

[12] That was a case where the legislation created the right of appeal but did not identify the powers of the Court on appeal. It was necessary for the Court to determine what powers were intended to be conferred. In the case of the *Work Health Act* the Legislature has spelled out the powers of the Court on appeal. It has done so omitting the powers to remit and to grant a new trial. It cannot be said that those powers (ie to remit or to grant a new trial) are fairly incidental to or consequential upon the powers specified in s 116 of the *Work Health Act*.

[13] My consideration of the *Work Health Act* has led me to draw the same conclusion as that drawn by Mildren J in *Wormald International (Aust) Pty Ltd v Aherne* (1995) 2 NTJ 818 (at 820) and *Williams v Australian Frontier Holidays Ltd* (1998) 147 FLR 157 at 163 that there is no power to remit.

[14] If I were free to do so I would remit the matter to the learned Chief Magistrate to enable him to dispose of it. That would be the preferable course. I am not able to do that. I therefore allow the appeal. I set aside the decision of the Work Health Court. The appellant has been successful

on the appeal and I order that the respondent pay the appellant's costs of the appeal. Consistent with the submission of the appellant, and given the limited success of the appellant on the issues raised below, the respondent is to pay the appellant's costs of the trial at first instance insofar as those costs relate to the challenge made by the worker to the Form 5 notice issued pursuant to s 69 of the *Work Health Act*.

[15] I invite the attention of the Legislature to the form of s 116 of the Act and recommend consideration of including express powers to remit and to grant a new trial within the powers available to the Court on appeal.

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