Normandy NFM Ltd t/as The Granites Gold Mine v Turner
[2003] NTSC 112

PARTIES:	NORMANDY NFM LIMITED t/as THE GRANITES GOLD MINE (ACN 007 688 093)
	v
	TURNER, Thomas James
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING APPELLATE JURISDICTION
FILE NO:	25 of 2003 (20111581)
DELIVERED:	24 November 2003
HEARING DATES:	5 November 2003
JUDGMENT OF:	MILDREN J

CATCHWORDS:

WORKER'S COMPENSATION

Work Health Act – appeal – whether "normal weekly earnings" limited to cash wages or not – whether food and accommodation included in "normal weekly earnings".

WORDS AND PHRASES

"remuneration".

Work Health Act 1986 (NT) s 49 and s 116

Dawson v Bankers and Traders Insurance Co Ltd [1957] VR 491 at 497, referred to.
Dothie & Ors v Robert MacAndrew & Co (1908) 1 KB 803; *Great Northern Railway v Dawson* (1905) 1 KB 33*; Murwangi Community Aboriginal Corporation v Carroll* (2002) 171 FLR 116; *Sharpe v The Midland Railway Co* (1903) 2 KB 26; *Skailes v Blue Anchor Line Ltd* [1911] 1 KB 360 at 364, followed.

REPRESENTATION:

Counsel:

Appellant:	C McDonald QC
Respondent:	J Waters QC

Solicitors:

Appellant:	Cridlands
Respondent:	Povey Stirk

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

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[2003] NTSC 112
No. 25 of 2003 (20111581)

BETWEEN:

NORMANDY NFM LIMITED t/as THE GRANITES GOLD MINE (ACN 007 688 093)
Appellant

AND:

THOMAS JAMES TURNER
Respondent

CORAM: MILDREN J

REASONS FOR JUDGMENT

(Delivered 24 November 2003)

[1] This is an appeal pursuant to s 116 of the Work Health Act from a decision of the Work Health Court.

[2] The facts are in a small compass. The respondent worker was employed by the appellant at its mine known as The Granites Gold Mine in a remote part of the Northern Territory.

[3] The terms and conditions of the employment were covered by an enterprise bargaining agreement referred to as "The Granites Gold Mine Enterprise Agreement 1994."

[4] Outside the terms of that agreement, the employer also provided the respondent worker with free meals three times a day and free accommodation at the mine site. The respondent was supposed to work two weeks on and two weeks off. He normally lived in Alice Springs. However, the learned Magistrate found that in fact the respondent worked for 35 weeks of each year.

[5] The question which arose was whether or not the value of the food and accommodation should be taken into account in the proper calculation of "normal weekly earnings" pursuant to s 49(1) of the Work Health Act.

[6] The learned Magistrate held that the respondent was entitled to have an amount representing food and accommodation included in this calculation.

[7] The grounds of the appeal to this Court are as follows:

> 1. The learned Magistrate erred in failing to distinguish the decision in *Caroll* (sic) *v Murwangi Community Aboriginal Corporation* [2002] NTCA 9 in respect of the provision of meals.
>
> 2. The learned Magistrate erred in failing to provide any or any adequate reasons for his finding that the present case was indistinguishable from *Caroll's* (sic) case in respect of meals.

3. The learned Magistrate erred in finding that the present case was indistinguishable from *Caroll's* (sic) case in respect of accommodation.

4. The learned Magistrate erred in failing to provide any or any adequate reasons for his finding that the present case was indistinguishable for *Caroll's* (sic) case in respect of accommodation.

5. The learned Magistrate erred in finding that the provision of accommodation constituted a benefit to the worker."

[8] In my opinion none of these ground are entitled to succeed.

[9] In *Murwangi Community Aboriginal Corporation v Carroll* (2002) 171 FLR 116 the Court of Appeal held that an abattoir supervisor employed at a remote location in the Northern Territory who under the terms of his employment was paid a monetary wage and also was provided with free food, accommodation and electricity was entitled to have relevantly the food and the accommodation included within the expression "normal weekly earnings" for the purposes of determining the amount of compensation payable to him. In that case their Honours said at par 9:

> "In our view there can be little doubt that the remuneration of a worker in this case is not limited to the wages paid to the worker but extends to include benefits of other kinds received by the worker in respect of services rendered for or on behalf of the employer. The identified non-monetary benefits form part of the reward for work done and services rendered and therefore comprise "remuneration … earned by the worker …".

[10] Their Honours then referred to a number of cases gathered in a decision by Mr Trigg SM at first instance in *Fox v Palumpa Station Pty Ltd* (1999)

NTMC 024 and make reference to three such cases, namely *Skailes v Blue Anchor Line Ltd* [1911] 1 KB 360, *Dawson v Bankers and Traders Insurance Co Ltd* [1957] VR 491 at 497 and *Rofin Australia Pty Ltd v Newton* (1997) 78 IR 78 at 81. On the hearing of the appeal the employer in *Carroll's* case did not argue that the benefits received by the worker by way of free rent, board and electricity ought not to be regarded as items of remuneration but rather contended that such benefits were to be excluded from "normal weekly earnings" by operation of s 49(2) of the Work Health Act. The Court held that such benefits were not "allowances" and therefore not "other allowances" as contemplated by s 49(2) but rather they were part of the remuneration of the worker simpliciter and that the non-monetary benefits were correctly included in the assessment of his normal weekly earnings.

[11] The learned Magistrate's reasons were very brief. He considered that the case was indistinguishable from *Murwangi Community Aboriginal Corporation v Carroll*, and said that he was unable to follow how the accommodation was a benefit for the employer, as surely it was a benefit for the worker. I do not consider his Worship's reasons to be inadequate. It is difficult to see on what possible basis *Murwangi Community Aboriginal Corporation v Carroll* is distinguishable from the facts of this case. First it was put that an inference should be drawn that in the circumstances of this case these benefits were not part of his remuneration because they were not included in The Granites Gold Mine Enterprise Agreement 1994. It was put that his remuneration was payment in cash on hourly rates. I do not think

that that argument can be sustained. That may have been his wages but it was not his only remuneration. Nor do I think it matters whether or not the terms of the engagement expressly provide that the employer will pay for the accommodation and food. The fact is that these items are met by the employer and it must therefore be implied that this is part and parcel of the conditions of the contract of employment: see *Skailes v Blue Anchor Line Ltd* [1911] 1 KB 360 at 364 where Cozens-Hardy MR made the distinction between voluntary gratuities and the drawing of an inference that certain sums were paid as extra wages, notwithstanding that the extra amounts were not contained within the written agreement between the employer and the employee.

[12] It has long been the case that whenever the employer provides free food, clothing or accommodation that the value of these items are treated as part of the employee's remuneration: see for example *Great Northern Railway v Dawson* (1905) 1 KB 33; *Dothie & Ors v Robert MacAndrew & Co* (1908) 1 KB 803; *Skailes v Blue Anchor Line Ltd* [1911] 1 KB 360 and *Sharpe v The Midland Railway Co* (1903) 2 KB 26. This is the same line of authority as was approved by the Court of Appeal in *Murwangi Community Aboriginal Corporation v Carroll*. I think the learned Magistrate was right when he held that the question had been decided by that case.

[13] Likewise the argument that the provision of food and lodging is for the benefit of the employer and not for the benefit of the employee simply

cannot be sustained. Reliance was placed upon an observation by Sholl J in *Dawson v Bankers and Traders Insurance Co Ltd* [1957] VR 491 at 497:

> "Board and lodging are properly including in remuneration, - at any rate where they are not provided solely for the benefit of the employer."

[14] It is difficult to imagine a circumstance under which the employer provides food and lodging for the benefit of the employer and not for the benefit also of the employee. Perhaps Sholl J was referring to cases where the food and lodging was paid, not as part of the terms of the employment, but merely because of some other arrangement or relationship which existed between the employer and the employee. It may be, for example, that the employee was the employer's son. In such a case it may be a question as to whether or not the father was meeting his son's food and accommodation expenses because of that relationship, or whether it was being provided as part of the consideration for the contract of employment. Where, however, as in this case, there is no evidence of any such relationship or other arrangement between the worker and the employer which might suggest that the employer is providing the food and accommodation gratuitously or for some reason other than that which arises out of the contract of employment, the only available inference according to the authorities is that it is part of the worker's remuneration.

[15] Another possible point of distinction that was raised is the fact that the accommodation was provided only on a two weeks on, two weeks off basis.

I do not see how that has anything to do with it. The railway guard in *Sharpe v Midland Railway Co* was paid an allowance for lodgings whenever he was away from home (an entitlement which under the circumstances he got irrespectively of whether he incurred any out-of-pocket expense or not), but it was nevertheless held to be part of his remuneration. Similarly, the food and accommodation provided to the ship's master in *Skailes v Blue Anchor Line Ltd* was held to be part of his remuneration notwithstanding that he also had a residence in his home port.

[16] Even if strictly speaking the decision *in Murwangi Community Aboriginal Corporation v Carroll* supra is distinguishable on its facts as the real ratio concerned whether or not the benefits were not allowances excluded by s 49(2) of the Work Health Act, I nevertheless consider that the conclusion which the learned Magistrate reached is perfectly correct and indeed was the only decision which he could have reached in the circumstances for the reasons I have already given.

[17] The appeal is therefore dismissed.
