Paspaley Pearling Company Pty Ltd v Anderton [2009] NTSC 3

PARTIES:	PASPALEY PEARLING COMPANY PTY LTD v ANDERTON, ALAN
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE TERRITORY EXERCISING GENERAL JURISDICTION
FILE NO:	LA 10 OF 2008 (20728162)
DELIVERED:	30 JANUARY 2009
HEARING DATES:	23 JANUARY 2009
JUDGMENT OF:	ANGEL ACJ
APPEAL FROM:	WORK HEALTH COURT

CATCHWORDS:

ESTOPPEL – Issue estoppel – Worker's compensation claim settled – Agreement to pay compensation recorded in Work Health Court – payout based on agreed normal weekly earnings – employer estopped from reducing compensation payable – Appeal dismissed.

Work Health Act (NT) ss 69, 108, 108(6)
Work Health Rules 2002 (NT) r 15.01

Blair v Curran (1939) 62 CLR 464
Dickin v NT TAB Pty Ltd [2003] NTSC 119
Kuligowski v Metrobus (2004) 220 CLR 363

REPRESENTATION:

Counsel:

Appellant:	P Barr QC
Respondent:	I Morris

Solicitors:

Appellant:	Cridlands
Respondent:	Priestleys

Judgment category classification:	B
Judgment ID Number:	Ang200901
Number of pages:	6

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Paspaley Pearling Company Pty Ltd v Anderton [2009] NTSC 3
No. LA 10 of 2008 (20728162)

BETWEEN:

PASPALEY PEARLING COMPANY PTY LTD
Appellant

AND:

ALAN ANDERTON
Respondent

CORAM: ANGEL ACJ

REASONS FOR JUDGMENT

(Delivered 30 January 2009)

[1] In 2006 the respondent worker claimed compensation in respect of injuries alleged to have been incurred in the course of his employment with the appellant employer. The claim was contested initially but eventually settled. A Memorandum of Agreement was executed between the parties incorporating the terms of settlement. On 14 May 2007 pursuant to s 108 of the Work Health Act NT (since renamed the Workers Rehabilitation and Compensation Act NT) it was duly recorded by the Registrar of the Work Health Court. On being recorded the Memorandum of Agreement became enforceable as if it were a determination of the Work Health Court: s 108(6)

Work Health Act (NT). It constituted a final determination of the worker's entitlement to compensation.

[2] In compliance with r 15.01 Work Health Rules 2002 (NT) a Statement of Particulars accompanied the filing of the Memorandum of Agreement. The sum constituting arrears of compensation payable to the worker under the Memorandum of Agreement was based on normal weekly earnings of $876.12.

[3] The employer paid the arrears payable under the Memorandum of Agreement and thereafter continued to pay $876.12 per week compensation to the worker until 3 August 2007, when it served a Notice of Decision on the worker notifying him that payments were to be reduced to $803.78. The notice was served in purported pursuance of s 69 Work Health Act (NT).

[4] It is common ground between the parties that the sum of $876.12 included superannuation payments. The parties in reaching their agreement had not taken into account the Work Health Amendment Act 2004 (NT) whereby, commencing 26 January 2005, superannuation payments were excluded from the statutory definition of "normal weekly earnings". It is also common ground that the employer does not seek to set aside the Memorandum of Agreement for common mistake or any other reason. The employer only seeks to reduce future compensation payable by utilising s 69 Work Health Act (NT).

[5] The worker brought Work Health Court proceedings to enforce the Memorandum of Agreement.

[6] The Work Health Court held that the agreed normal weekly earning figure of $876.12 as set out in the Statement of Particulars formed part of the Memorandum of Agreement approved by the Court and the employer was unable unilaterally to vary that amount as it purported to do pursuant to s 69 Work Health Act (NT). The Work Health Court held that so far as future payments of compensation were concerned the agreement between the parties comprised not only the Memorandum of Agreement itself but in addition the Statement of Particulars accompanying the memorandum and that the worker was entitled to "a future according to that agreement".

[7] The employer now appeals on three grounds: first, that the Statement of Particulars filed with the Memorandum of Agreement did not relevantly form part of the agreement between the parties; secondly, that in so far as the Memorandum of Agreement required the employer to pay "compensation in accordance with the Work Health Act (NT)" it was an obligation to pay compensation based on the worker's normal weekly earnings absent superannuation and not the incorrect amount stated in the Statement of Particulars; and thirdly that the Work Health Court failed to have regard to the principle that nothing but that which is legally indispensable is finally closed or precluded, or expressing it another way, that the employer was not precluded by estoppel from now challenging the higher payout figure.

[8] The first question was said to be does the Statement of Particulars form part of the Memorandum of Agreement? The Memorandum of Agreement on its face is an entire agreement in its own terms. It provides for payment of arrears of compensation and for future payment of compensation. So far as the arrears are concerned they are expressed as a single sum of money. The obligation to pay the arrears is contained in the agreement itself and is a stated sum. The Statement of Particulars, as explained in r 15.01, merely particularises how the arrears are calculated. The obligation to pay future compensation is also contained in the Memorandum of Agreement itself. It makes no reference to any sum of money the calculation of which called for particularity. It simply provides:

> "4. The employer to pay to the worker compensation in accordance with the Work Health Act on and from 17 April 2007."

[9] As a matter of ordinary construction the Statement of Particulars does not form part of the Memorandum of Agreement which is entire in itself. In its terms the Statement of Particulars does not purport to form part of the agreement. However that is not the question. The question, the answer to which is determinative of this appeal, is whether the employer is estopped from now alleging that the worker's normal weekly earnings was $803.78.

[10] It is common ground that the recording of the Memorandum of Agreement on 14 May 2007 constituted, in effect, a consent judgment: *Dickin v NT TAB Pty Ltd*[1].

[11] As Dixon J said in *Blair v Curran*[2]

> "A judicial determination directly involving an issue of fact or of law disposes once for all of the issue, so that it cannot afterwards be raised between the same parties or their privies. The estoppel covers only those matters which the prior judgment, decree or order necessarily established as the legal foundation or justification of its conclusion, whether that conclusion is that a money sum be recovered or that the doing of an act be commanded or be restrained or that rights be declared."

[12] In the present case the employer submitted that the normal weekly earnings figure referred to in the Statement of Particulars was merely explanatory or evidentiary and as such did not give rise to an issue estoppel. I do not agree. The employer now seeks to contest a matter necessarily determinative of the sum of compensation payable and recoverable by way of arrears. The agreed normal weekly earning figure was the legal foundation or justification for the conclusion that a particular sum of money was payable and recoverable. The normal weekly earning figure was legally indispensable to the conclusion that the stated sum by way of arrears was owing. The normal weekly earning figure of $876.12, whilst agreed and not in issue between the parties, nevertheless was the "groundwork" of the payout figure for arrears of compensation. It thus constituted an ultimate fact rather than merely an

[1] [2003] NTSC 119 at [19].
[2] (1939) 62 CLR 464 at 531–532.

evidentiary fact.[3] The employer is precluded from seeking to reduce the compensation payable whilst the Memorandum of Agreement remains on foot on the Record. I reiterate, the employer does not seek to set aside the Memorandum of Agreement for mistake or for any other reason.

[13] The appeal is dismissed with costs.

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[3] *Blair v Curran* at 532; *Kuligowski v Metrobus* (2004) 220 CLR 363 at 386 [62]