

PARTIES: HOPKINS, Merle Doreen  
v  
COLLINS/ANGUS & ROBERTSON  
PUBLISHERS PTY LTD

TITLE OF COURT: SUPREME COURT OF THE  
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE  
NORTHERN TERRITORY  
EXERCISING APPELLATE  
JURISDICTION

FILE NO: LA 4 of 1997 (9202305)

DELIVERED: 21 May 1997

HEARING DATE: 21 May 1997

JUDGMENT OF: ANGEL J

APPEAL FROM: LOWNDES SM

**CATCHWORDS:**

WORK HEALTH – Appeal from the Work Health Court – settlement of appeal to the Court of Appeal – deed of settlement – validity of the deed – application by the worker seeking leave to have the claim for compensation dismissed – application refused by the Work Health Court – appeal against refusal of the Work Health Court to dismiss the claim for compensation – meaning of compensation – meaning of settlement – extinguishment of claim – claim not extinguished – appeal allowed

*Work Health Act* s 3, s 74, s 108, s 186A

*Work Health Rules* r 27

*Supreme Court Act*

*McMorrow v Airesearch Mapping Pty Ltd* (1997) 6 NTLR 62; *Wilson v Lowery* (1993) 4 NTLR 79, referred to.

**REPRESENTATION:**

*Counsel:*

Appellant:	S R Southwood
Respondent:	G Clift

*Solicitors:*

Appellant:	Cridlands
Respondent:	Ward Keller

Judgment category classification:	A
Number of pages:	9

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

BETWEEN:

**MERLE DOREEN HOPKINS**  
Appellant

AND:

**COLLINS/ANGUS & ROBERTSON  
PUBLISHERS PTY LTD**  
Respondent

CORAM: ANGEL J

EX TEMPORE REASONS FOR JUDGMENT

(Delivered 21 May 1997)

### **Introduction**

- [1] This is an appeal by Ms Hopkins, the worker, from a decision of the Work Health Court refusing the worker's application to dismiss her application to the Work Health Court which was filed on 31 January 1992.

### **History of proceedings**

- [2] Without going too deeply into the somewhat lengthy history of this matter, the matter commenced as an ordinary claim for worker's compensation, claiming compensation on the basis of total incapacity. The issues between the parties included the fact of injury, the fact of incapacity and who bore the onus of proof.

- [3] A decision of the Work Health Court constituted by Mr Lowndes SM, dated 19 August 1994, decided certain questions of onus of proof; decided that the respondent had failed to discharge the onus of proof on the question of liability to pay compensation; and found that the worker was entitled to compensation on the basis of her degenerative condition being accelerated, or alternatively aggravated, by the nature of her employment which resulted in or materially contributed to the worker's incapacity.
- [4] Having found that the respondent was liable to pay the worker compensation, the trial magistrate recorded that the worker thereafter had the onus of establishing the nature and level of her incapacity and he invited further and more detailed submissions on that issue.
- [5] There was an appeal to Thomas J on the question of onus of proof and that resulted in a decision of Thomas J on 24 November 1995. Thereafter there was an appeal lodged to the Court of Appeal.
- [6] I have been told from the Bar table that towards the middle of 1996 the parties entered into a deed of agreement recording various things and providing, amongst other things, that upon payment of a sum of money and the worker's claim being dismissed, the matter was settled. The deed is drafted such that it does not fall foul of s 186A(2) of the *Work Health Act* because the deed does not exclude or limit the application of the Act to the worker. The deed provides that the worker retains all her rights, even after

payment of the sum stipulated, but that if she wishes to exercise her rights she must pay back the agreed sum.

- [7] It seems to me that s 186A has no application to the deed of agreement entered into between the parties.
- [8] The matter came before Mr Lowndes SM, sitting as the Work Health Court, when both parties jointly approached the Work Health Court with a view to having the worker's application dismissed. A determination having been made in the proceedings, it would appear, by virtue of r 27 of the *Work Health Rules*, that leave of the Work Health Court was required either for discontinuance or dismissal of the claim.
- [9] The magistrate did not have the benefit of seeing the deed of agreement. For some reason it was withheld from him, although he was told the sum of money involved, and he declined either to dismiss the proceedings or grant leave for discontinuance. He did this principally upon a consideration of s 74, s 108 and s 186A of the *Work Health Act*.

### **Consideration**

- [10] I have already said that, in my view, s 186A of the *Work Health Act* does not apply to this deed. As I have said, the magistrate did not have the deed before him, but it is before me.
- [11] The question is whether s 108 of the *Work Health Act* prevents, or in some way requires, the exercise of discretion when granting leave to discontinue

to be exercised adversely to the worker. Counsel for the worker, Mr Southwood, went through s 108 with me and I am of the view that s 108 does not preclude either the Work Health Court or this Court properly granting leave to discontinue this proceeding in the Work Health Court.

[12] First of all, it is to be noted that s 108(1) of the *Work Health Act* relates to agreements made in respect of matters relating to compensation.

‘Compensation’ is defined in s 3 of the Act to mean: “A benefit or an amount paid or payable under the Act and includes an amount in settlement of a claim for compensation and costs payable to a worker by an employer in relation to a claim for compensation”.

[13] Section 108 of the *Work Health Act* appears to contemplate that where an agreement is made in respect of the matters defined, a memorandum of the agreement must be sent, in the manner prescribed, to the Registrar of the Work Health Court. Thereafter, the Registrar is to submit the memorandum of agreement to the Work Health Court and it is to undergo the scrutiny of the Work Health Court as provided in s 108(3)(a) of the Act. If it passes muster, the agreement is then registered pursuant to s 108(5) of the Act. The effect of that is that under s 108(6) of the Act the memorandum of agreement is then enforceable as if it were a determination of the Work Health Court.

[14] One of the arguments put to the learned magistrate, and rejected by him, was that the compromise of an appeal is not an agreement relating to

compensation covered by s 108 of the *Work Health Act*. It seems to me that the magistrate was correct in rejecting that argument because an appeal is surely part of the original claim, whether the appeal is resolved or not, and settlement of an appeal relating to a claim is, I think, settlement of a claim for the purposes of the Act. I agree with the learned magistrate on that score.

[15] So far as the requirement of s 74 of the *Work Health Act* is concerned – that is the provision relating to commutation – I agree with Mr Southwood’s submission that commutation necessarily requires, as a pre-requisite, a determination of the amount of compensation. That stage has not yet been reached in the proceedings in the Work Health Court, and there is no inconsistency with s 74 insofar as this deed is concerned.

[16] There was then the following exchange between Angel J and Mr Southwood.

ANGEL J: Mr Southwood, the definition of ‘compensation’ includes an amount paid in settlement of a claim. So this agreement does fall within section 108(1) of the *Work Health Act*, does it not?

Is the word ‘settlement’ defined?

MR SOUTHWOOD: ‘Settlement’ is not defined, but settlement of a claim would mean the extinguishment of a claim.

ANGEL J: It must mean extinguishment, does it not? And this deed does not extinguish the claim.

MR SOUTHWOOD: This deed certainly does not extinguish the worker's right to maintain a claim pursuant to the *Work Health Act*. It simply states that so far as the appeal is concerned, the worker has an option to either take this sum in settlement of any risks that may arise under the appeal, or if the worker takes the sum and then chooses to proceed with a claim the worker must repay that sum. So it leaves any entitlement, pursuant to the Act, able to be pursued.

So far as whether it is an agreement for the payment of an amount of compensation, we would submit it is not. We note your Honour's ruling in relation to our submission about the nature of an appeal, but, really, it is the payment of a sum to resolve the appeal.

ANGEL J: I am looking at the definition of 'compensation', which includes an amount paid in settlement of a claim for compensation.

MR SOUTHWOOD: Yes. What we would say is that this is not an amount which is paid in settlement of a claim for compensation. This is an amount paid pursuant to a deed which compromises an appeal, or the risks of an appeal; and, in addition to that, compromises a proceeding which has been brought in the Supreme Court separately from the proceeding in the Work Health Court. There are two proceedings which have been compromised, but the essential distinction that we would seek to make is that it is not an amount in settlement of a claim for compensation, but an amount which has been paid in settlement of the risks of being unsuccessful on an appeal.

ANGEL J: Well, I am wondering whether it is in settlement. The word 'settlement' usually has a degree of finality about it. This has not, because the rights of the worker are not extinguished. If you extinguish the rights of



the worker, you fall foul of s 186A of the *Work Health Act*.

MR SOUTHWOOD: It is difficult to phrase it, your Honour, because the words used in the definition of 'compensation' include an amount paid in settlement of a claim for compensation. But a distinction exists in this instance because the appeal to the Court of Appeal is not an appeal which is being maintained by the worker. It was an appeal brought by the respondent employer.

The appeal to the Court of Appeal was a proceeding which was being maintained by the respondent employer, not a proceeding which was being maintained by the worker. It is really a payment in consideration of the respondent employer foregoing that right of appeal. It is on that basis that we would say it is distinguishable from a settlement of a claim for compensation. It is not a settlement of a claim for compensation but the settlement of the respondent employer's entitlement to appeal pursuant to the provisions of the Supreme Court Act. As has been noted in cases such as *McMorrow v Airesearch Mapping Pty Ltd*<sup>1</sup> and *Wilson v Lowery*,<sup>2</sup> the right to appeal from the Supreme Court to the Court of Appeal is a right which arises pursuant to the provisions of the *Supreme Court Act*.

ANGEL J: Yes.

MR SOUTHWOOD: It is not picked up within s 116 of the *Work Health Act*, which provides for a right of appeal to the Supreme Court specifically, and not beyond. It is true that in *Wilson v Lowery* the Court of Appeal has held that the approach adopted by the Court of Appeal should bear in mind that it is an appeal on a question of law,

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<sup>1</sup> (1997) 6 NTLR 62.

<sup>2</sup> (1993) 4 NTLR 79.

but it does not restrict the right which is granted by the *Supreme Court Act*, in any way.

The money is paid in settlement of the respondent employer's entitlement to appeal, pursuant to the *Supreme Court Act*, and it is on that basis that we would seek to distinguish it from the settlement of a claim for compensation.

ANGEL J: Well, I am not sure that is right.

[17] Angel J then continued his reasons as follows.

[18] Even if the last submission of Mr Southwood is not right, I am of the view that the amount payable pursuant to the deed is not in settlement of a claim for compensation. The reason I am of that view is that settlement of a claim involves the extinguishment of a claim. It seems to me that is the very thing the paternalistic provision in s 108(3) of the *Work Health Act* is directed at. Where an agreement is final and binding for all purposes, and where a worker is unable to proceed with his claim, where that is involved, then the Work Health Court has the power to scrutinise the agreement to see that it is in the interests of the worker. That appears to be what s 108(3)(a) of the Act is directed at. But here, under the deed, as has already been pointed out, the worker can at any time proceed with the claim, albeit on repayment of the sum which is paid pursuant to the deed.

[19] It seems to me that an agreement struck in the form of the deed neither runs foul of s 186A of the *Work Health Act* nor requires the scrutiny of the Work Health Court pursuant to s 108 of the Act. Section 108 and s 186A are

complementary provisions. This deed runs foul of neither and I cannot see any good reason why, in the circumstances, particularly given the finely balanced nature of the case, as is evident from the original findings of the magistrate which turned, not on the acceptance of any evidence, but rather on where the onus of proof lay, and given that the appeal was the employer's, not the worker's that was compromised and sought to be resolved by this deed, there is every reason to grant leave to apply to dismiss the worker's proceeding in the Work Health Court.

[20] So for those reasons, I will allow the appeal and reverse the order of the Work Health Court and grant leave. I grant leave to the worker to apply to have her claim in the Work Health Court dismissed. Pursuant to that application, I dismiss the claim. The claim, of course, can be revived by the worker at any time on repayment of the money.

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