

PARTIES: AHERNE, Barry Leslie
v
WORMALD AUSTRALIA PTY LTD
TITLE OF COURT: SUPREME COURT (NT)
JURISDICTION: DARWIN
FILE NO: 154 OF 1994
DELIVERED: 11 APRIL 1995
HEARING DATES: 21 MARCH 1995
JUDGMENT OF: MARTIN CJ.

CATCHWORDS:

Appeal - Work Health Court - Appellate jurisdiction -
Distinction -

Practice and Procedure - Application for compensation -
Interim determination of entitlement - Worker in
receipt of pension - Approach.

Work Health Act (NT), ss69, 106, 107 & 116(2).

REPRESENTATION:

Counsel:

Appellant: Mr Tippett
Respondent: Ms Gieren

Solicitors:

Appellant: Mr Clift
Respondent: Mr De Silva

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

No. 154 OF 1994

BETWEEN:

BARRY LESLIE AHERNE
Appellant

AND:

WORMALD AUSTRALIA PTY LTD
Respondent

CORAM: MARTIN CJ.

REASONS FOR JUDGMENT

(Delivered 11 April 1995)

On 22 December 1994 I ruled:

1. That an appeal by the appellant, upon the ground that a Magistrate constituting the Work Health Court erred in law in finding that the respondent was justified under s69 of the *Work Health Act* ("the Act") in terminating the appellant's workers compensation payment, be allowed.
2. That the Magistrate erred in failing to convene a compulsory conference under ss106 and 107 of the Act, in relation to proceedings commenced by the appellant

by way of an amendment to the Statement of Claim by which he sought an award of compensation. An appeal by the respondent on that ground was allowed.

At that time there were proceedings on foot between the parties in the Work Health Court, being the proceedings by which the appellant sought an award of compensation. They were part heard, having been adjourned for lack of time, and subsequently stayed by this Court pending the outcome of the appeals. The appeals having been dealt with, the effect of the stay is spent.

The appellant returns to this Court to seek what his counsel terms, "consequential orders". There is no formal application on this Court's file, but I understand from counsel that the appellant seeks an order from this Court that he is entitled to be paid weekly compensation as if the notice under s69 of the *Act* had not been given. He also seeks an order as to the costs of the proceedings in this Court.

As to the payment of compensation, the position is that prior to being given the s69 notice the appellant was being paid the maximum amount payable by way of weekly compensation. The cancellation of payments pursuant to that section has been held to be invalid. It might be expected that in those circumstances the appellant would be entitled to have the full measure of weekly compensation payments restored. However, he has embarked upon an application for compensation in the

Work Health Court which is part heard. There are a number of issues raised in those proceedings which may now be resumed. In the meantime, an interim determination of the appellant's entitlement to weekly compensation has been made by that Court in the proceedings before it. That determination takes into account a pension being received by the appellant, which was apparently first disclosed during the course of those proceedings. One of the issues is whether s54 of the Act applies to that pension. It has not been, nor is it, a matter before this Court. The respondent says that the payment of that pension to the worker has the effect of reducing its liability under the Act.

Whether there is payable by the respondent to the appellant compensation as is prescribed under Part V of the Act and, if so, the quantum of that compensation depends upon the determination of issues joined between the parties in the proceedings in the Work Health Court. Should it be found that the respondent has failed to make weekly payments as required by the Act, then the consequences provided for in the Act will flow. The Work Health Court has power to vary an interim determination and it is still seized of the appellant's application. This Court has only determined that the notice cancelling payments under s69 was invalid. This Court's jurisdiction in work health matters is appellate, not original. It has discharged its function in this case and the respective rights and responsibilities of the parties are for the Work Health Court to determine in the light of this Court's decision

and the proceedings and evidence before it. The worker's appeal has been allowed and the power of this Court under s116(2) to vary the decision of the Work Health Court does not encompass the making of an order declaring the present rights and obligations of the parties as a consequence.

As to costs, the major issue before the Court on appeal was as to whether the appellant had unreasonably failed to undertake medical treatment. That occupied most of the time and on that the appellant was unsuccessful. He succeeded on the issue as to whether the respondent had to show that if he had undertaken the treatment he could be enabled to undertake more profitable employment. On that there was no evidence, the outcome depending on statutory interpretation. The respondent was successful on the cross-appeal going to the question of whether the learned Magistrate was obliged to call a conference under s106. Argument on that point took comparatively little time. However, the appellant was successful on the major point in the appellate proceedings, that is, the ruling that the s69 notice was invalid.

In all the circumstances, there will be no order as to costs of the appeals.

The appellant must pay the costs of this application.