

COMCARE v MARTIN (S142/2016)

Court appealed from: Full Court of the Federal Court of Australia
[2015] FCAFC 169

Date of judgment: 30 November 2015

Special leave granted: 16 May 2016

This appeal concerns the meaning of the exclusion of the words “a disease, injury or aggravation suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee’s employment” from the definition of “injury” in s 5A of the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (“the Compensation Act”).

Ms Peta Martin worked at the Australian Broadcasting Corporation (“ABC”) from January 2010 through to March 2012. Initially she worked in Renmark under the direct supervision of the Station Manager, Mr Bruce Mellett. In this period she was allegedly bullied and harassed by Mr Mellett. From August 2011 Ms Martin worked under the supervision of Ms Carol Raabus. In 2012 the position of “cross media reporter” under Ms Raabus became available. Ms Martin applied for that position and was interviewed by a selection panel which also included Mr Mellett. Upon being notified that she was unsuccessful and that she would have to return to her previous position (under Mr Mellett), Ms Martin apparently “broke down” and was subsequently diagnosed with an “adjustment disorder”. She then claimed compensation pursuant to the Compensation Act. There is no dispute between the parties that Ms Martin suffered from an adjustment disorder at the time she made her compensation claim, or that her psychological condition was contributed to, to a significant degree, by her employment with the ABC.

In December 2012 Comcare rejected any liability to pay Ms Martin compensation, but that decision was overturned by the Administrative Appeals Tribunal (“AAT”) on 11 August 2014. On 8 January 2015 Justice Griffith however allowed Comcare’s subsequent appeal and dismissed Ms Martin’s notice of contention. On the question of causation, his Honour found that the alleged bullying and harassment, and Ms Martin’s reaction to the prospect of returning to work under Mr Mellett, were linked issues. The AAT was therefore correct to proceed and consider whether the relevant exclusion applied.

The first aspect of the appeal to the Full Federal Court focused on the words “suffered as a result of” in the exclusion in s 5A(1). At issue therefore is whether the AAT erred in deciding that Ms Martin suffered her adjustment disorder “as a result” of the administrative decision not to appoint her to the permanent position of cross media reporter. The second issue however focussed on the words “taken in a reasonable manner” in the exclusion in s 5A(1). It concerns whether the AAT erred in its approach to the question of whether the administrative action surrounding the decision not to appoint Ms Martin to the cross media reporter position was in fact “taken in a reasonable manner”.

On 30 November 2011 the Full Federal Court (Siopis & Murphy JJ, Flick J dissenting) allowed Ms Martin's appeal. With respect to the first issue, the majority held that the AAT's decision was inconsistent with its factual findings, that it misconstrued s 5A(1) of the Compensation Act and that it did not take a proper approach to causation. The appeal was therefore allowed on that ground alone. With respect to the second issue however, the majority agreed with the reasoning of Justice Griffith. Justice Flick on the other hand would have dismissed the appeal, holding that Justice Griffith was correct in his construction of s 5A(1) and its application to the facts of the present case.

The grounds of appeal include:

- The majority of the Court erred in concluding that the causal connection specified in the concluding part of the s 5A(1) of the Compensation Act ("suffered as a result of") is not satisfied even where:
 - i) it is accepted that the injury in question was caused by a particular factor (in the Respondent's case, realisation that having missed out on a promotion, she would have to return to work under the supervision of a particular person); and
 - ii) that particular factor was, subjectively and objectively, a consequence of the taking of the administrative action in question (in the Respondent's case, the non-promotion).