



HIGH COURT OF AUSTRALIA

Public Information Officer

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ALAN DAVID JOHN KLEIN v MINISTER FOR EDUCATION

The High Court of Australia today revoked its grant to former Perth security guard Mr Klein of special leave to appeal.

Mr Klein worked for Falcon Investigations and Security, which had a contract with the Minister to provide security for designated public schools in the State. On the night of 1 November 1999, while patrolling Perth schools, he was called to a primary school where a youth was smashing windows. Chasing the intruder through knee-high grass in the school grounds, Mr Klein fell. His injuries included a broken kneecap. He was unable to continue to work for Falcon.

Mr Klein brought an action against the Minister in the WA District Court under the *Occupiers' Liability Act*. The Minister argued he was a deemed employer under section 175(1) of the then *Workers' Compensation and Injury Management Act*. He relied on the 2002 decision by the Full Court of the WA Supreme Court, *Hewitt v Benale Pty Ltd*, that the deeming by section 175(1) of both principal and contractor as employers meant that the constraints on damages in the Act applied to injured workers bringing action, independently of the Act, against a person who was deemed by section 175 to be their employer. Mr Klein argued that, because section 175(3) provided that a principal contractor was not liable unless the work on which the worker was employed was directly a part or process in the principal's trade or business, the *Occupiers' Liability Act* applied.

The District Court held that provision of security services was not work which is directly a part or process in the trade or business of the Minister and the Minister had a duty as an occupier of land to protect entrants in respect of the state of the premises under the *Occupiers' Liability Act*. Mr Klein was awarded damages of \$100,187. The WA Court of Appeal allowed the Minister's appeal, holding that maintaining government schools, including securing them, was to be treated as the trade or business of the Minister and Mr Klein's work was directly a part of that trade or business. Mr Klein was then granted special leave to appeal to the High Court in relation to the construction of section 175.

The Court, by a 3-2 majority, revoked the special leave to appeal granted to Mr Klein. The minority would not have revoked special leave but would have dismissed the appeal. In 2004, the WA Parliament amended the Act to prevent section 175 curtailing the rights of workers to make claims against such persons independently of the Act. The majority held that the Parliament's reliance on the correctness of *Hewitt v Benale Pty Ltd*, coupled with the closing of the class of cases in which issues of the kind raised in this case, make it inappropriate for the High Court now to consider whether to disturb the state of the law as stated in *Hewitt*.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*