

Ewart v Caruso [2013] WASCA 266

Key Points

- In *Ewart*, the Full Court considered the extended definition of “worker” under the Workers’ Compensation & Injury Management Act 1981 and the relevant principles for determining whether an independent contractor would be considered a “worker” and therefore able to claim workers’ compensation.

Background

Mr Godfrey Ewart was an independent contractor hired by Mr Caruso to carry out painting and related renovation work at Mr Ewart’s bed and breakfast business. Godfrey’s brother Angus Ewart managed the bookings and ran the business and he also owned some land adjoining the business. Godfrey also carried out work at his brother’s property under instructions from Mr Caruso.

Godfrey supplied all of his own materials and tools, although the tools were not of a specialist nature. He was also responsible for payment of his own income tax. He was free to work elsewhere but did not do so. Godfrey’s work was regularly reviewed and inspected by Mr Caruso.

The Arbitrator found that Godfrey was a worker, being a contractor engaged under a contract of service, i.e. an employee engaged under a contract of employment. Godfrey’s employment was of a causal nature.

On appeal to the District Court, the judge concluded that Godfrey was not a worker, but a self-employed contractor. Godfrey did not fall within the extended definition of “worker” since he was employed on a casual basis and at the time of the accident was working for his brother and not for Mr Caruso’s business.

The Law

S5

An employee engaged under a contract of service is a “worker” for the purposes of the Act. In addition, in certain circumstances, a contractor engaged under a contract for services, will be a “worker”. The extended definition under s5(1)(b) defines as a worker: “any person engaged by another person to work for the purpose of the other person’s trade or business under a contract with him for service, the remuneration by whatever means of the person so working being in substance for his personal manual labour or services.”

The Full Court appeal

The Full Court upheld the District Court judgment and found that Godfrey was a self-employed contractor, which was the only conclusion open on the evidence.

Mr Ewart did not argue on appeal that the trial judge erred in law in failing to find that he was a worker under the extended definition in 5 (b) of the Act. Therefore the Full Court did not consider this argument in any detail, although it was observed that the primary judge's findings in this regard were also correct. A detailed discussion of the step process for considering the extended definition of "worker" under s5 of the Act is set out in the decision of *Rekabe* (see our law update).

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