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Todoroska v) Australian Postal Corporation [2014] AATA 536 (6 August 2014)

Key Points

- The Tribunal was required to consider whether Ms Todoroska gave notice of her injury as soon as practicable after becoming aware of it.
- The Tribunal was further required to consider whether Ms Todoroska's injury arose out of, or in the course of, her employment with the Australian Postal Corporation.

Background

Ms Todoroska was employed as a support mail officer at the Australian Postal Corporation's (**Australia Post**) St Leonards depot from May 1997. For the first two years, she worked as a cleaner. She was then transferred to the loading dock area, where she folded mail bags for loading into vans which stood about one metre from where Ms Todoroska worked. She described that trucks passed her *"all the time"* at a distance of about two metres.

In 2002, Ms Todoroska was transferred to the Alexandria depot, where she worked until she ceased employment at the age of 60 in 2005.

On 7 November 2012, Ms Todoroska lodged a claim for workers' compensation under the SRC Act in respect of hearing loss sustained as a result of truck and forklift noise which she first noticed at work on 10 August 2005.

Prior to her employment at the Australian Post, Ms Todoroska worked for two years at the Camperdown Children's Hospital, the furniture manufacturer Stegbar, and two years at the Slazenger Factory making tennis balls.

By determination dated 7 December 2012, Australian Postdetermined that it was not liable to pay compensation in respect of hearing loss pursuant to section 14 of the SRC Act on the basis that Ms Todoroska failed to give notice of her injury as soon as possible and that her injury did not arise out of, or in the course of, her employment.

On 14 February 2013, the determination was affirmed by reviewable decision. Ms Todoroska sought review of the reviewable decision in the Administrative Appeals Tribunal.

The Law

Section 53(1) of the SRC Act states that "[t]*his Act does not apply in relation to an injury to an employee unless notice in writing of the injury is given to the relevant authority…as soon as practicable after the employee becomes aware of the injury*…"

Section 53(3) further states that where:

"

(a) a notice purporting to be a notice referred to in this section has been given to the relevant authority;

(b) the notice, as regards the time of giving the notice or otherwise, failed to comply with the requirements of this section; and

(c) the relevant authority would not, by reason of the failure, be prejudiced if the notice were treated as a sufficient notice, or the failure resulted from the death, or absence from Australia, of a person, from ignorance, from a mistake or from any other reasonable cause;

the notice shall be taken to have been given under this section."

In the similar matter of *Unilever Australia Ltd v Petrevska* (2013) NSWCA 373, the applicant contended that she was not aware of her injury until much later when she first received medical advice concerning her hearing loss and its cause. The Court held that awareness "*involves not only awareness of the injury as such but also of its connection to the worker's employment".*

Conclusion

Ms Todoroska gave evidence that around 2005, she noticed a constant ringing in her ears. In cross-examination she was asked "[a]*nd you, in 2005, made that connection between what you were experiencing with your ears and your perception about the noise levels in your employment, didn't you?"* To this she replied "*I connected this with noise level at the workplace. I went to the doctor. He ask me to have my head investigated, which I did and his reply was, " I can't help you"."*

Ms Todoroska stated that initially her doctor did not say anything about damage to her ears, but that *"later on"*, about a year or less after ceasing work for the respondent, he advised of damage.

Australian Post claimed that Ms Todoroska failed to give notice of her claim for more than seven years after the injury. It further argued that it was prejudiced because it was no longer able to investigate the claim properly and, in particular, it could no longer effectively investigate the possible effect of factors other than her employment.

Dr Joseph Scoppa and Dr John Seymour (Ear, Nose and Throat Specialists) gave oral evidence concurrently. They agreed that the previous workplaces were all noisy work environments with the potential to cause industrial deafness that it would prove difficult, if not possible, to obtain reliable information about noise levels in those workplaces at the times Ms Todoroska was employed.

The Tribunal accepted that the Australian Post would face difficulties in obtaining information about relevant noise level at Australia Post as well as at her other places of employment. However, the Tribunal concluded that notice of claim was taken to have been given under section 53 in light of her circumstances, and that the SRC Act applied to the Ms Todoroska's claim. Notwithstanding this, it affirmed the decision under review, stating that Ms Todoroska's evidence did not take into consideration the length of time required for noise levels to produce industrial deafness. Noting Ms Todoroska's evidence that she worked in a noisy environment for some years before working at Australia Post, the Tribunal was not convinced that her injury was caused, or contributed to, by her employment with Australia Post.

Lessons Learnt

The case reiterates that an employee must provide notice of an injury at the time that they became aware of both the injury *and* its relatedness to the workplace. It is only when an employee makes the connection between the employment and the injury that the time begins to run to give notice.

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