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Telstra win: Fed Court upholds slip & fall decision

Dring v Telstra Corporation Limited [2020] FCA 699

Key Points

- The Federal Court was required to consider whether Ms Dring sustained an injury arising out of, or in the course of, her employment with Telstra.
- The Tribunal found that Ms Dring sustained the injury in an interval of her employment with Telstra and, therefore, the injury was not compensable.
- The Federal Court dismissed Ms Dring's appeal, finding that the Tribunal's decision was correct.

Background

Ms Dring slipped and fell on wet tiles in the main foyer of a hotel on 14 April 2016. She was staying in the hotel for the purposes of attending a series of workshops conducted for Telstra. In the early evening of Wednesday 13 April 2016, Ms Dring went out socialising with friends after the workshops. They returned to the hotel at approximately 2.30am, which was when Ms Dring slipped and fell.

As a result of the fall, Ms Dring suffered bruising to her left hip. She submitted a claim for workers' compensation. Liability for the injury was denied on the basis that the injury did not arise out of, or in the course of, her employment with Telstra. Ms Dring then made an Application to the Administrative Appeals Tribunal.

The Tribunal concluded that Ms Dring's injury occurred when she was socialising with friends and this was activity that Telstra had not induced her or encouraged her to undertake. The Tribunal found that the injury did not arise out of or in the course of her employment, but between two discrete periods of work, and she was therefore not entitled to compensation. Ms Dring appealed this decision to the Federal Court.

The Law

An injury is defined under section 5A of the *Safety, Rehabilitation and Compensation Act* 1988 (**the SRC Act**) as an injury, or an aggravation of an injury, suffered by an employee arising out of, or in the course of, the employee's employment.

In *Hatzimanolis v ANI Corporation* (1992) 173 CLR 473, the High Court found that an interval or interlude in an overall period or episode of work will ordinarily be seen as being part of the course of employment if the employer expressly or impliedly induced or encouraged the employee to spend the interval or interlude at a particular place or in a particular way.

The decision in *Comcare v PVYW* (2013) 250 CLR 246 is authority for the proposition that for an injury

to have occurred in an interval in a period of work to be in the course of employment, the circumstances in which the employee is injured must have resulted from the inducement or encouragement of the employer.

Conclusion

The Federal Court accepted that there were parallels between Ms Dring's case and *Hatzimanolis*, in that Ms Dring was in Melbourne for the purposes of attending Telstra-related workshops and this could be considered an overall period or episode of work. However, merely being in Melbourne for the purposes of a work trip was not enough to convince the Federal Court that Ms Dring's injury arose out of or in the course of her employment.

The Federal Court noted that Ms Dring slipped over at 2:30am after she returned to her hotel following 8 and a half hours of socialising. Telstra had not induced or encouraged her to be in the hotel foyer at that time. The Federal Court accepted that Ms Dring's fall arose because of the activities she was engaged in, rather than the place that she was at.

The Federal Court said the circumstances that gave rise to Ms Dring's injury lacked the requisite connection with her employment. It concluded that her injury was sustained during an interval or interlude between two periods of employment and her injury did not arise out of or in the course of her employment with Telstra. The appeal was dismissed.

Lessons Learnt

In considering whether an injury arose out of or in the course of an employee's employment, it is important to carefully consider whether the injury sustained has the required connection to employment. Merely being in a place at the behest of an employer will not necessarily satisfy the test for an injury.

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