



Successful defence helps Tasmanian teacher remain on workers compensation

Date: Monday July 18, 2022

In a decision dismissing an insurer's interim dispute to cease [worker's compensation payments and medicals expenses for an injured worker in Tasmania](#), Hall Payne Lawyers successfully obtained orders dismissing the employer/insurer's case. This has ensured continued receipt of worker's compensation benefits for the worker.

Background

The worker was employed as a high school teacher with over 20 years teaching experience. Due to bullying and harassment occurring at the workplace, the teacher made a claim for worker's compensation stating they were suffering from stress and anxiety. This diagnosis was supported by the worker's general practitioner with the provision of worker's compensation medical certificates.

The employer/insurer elected to dispute liability via a referral to the Tasmanian Civil & Administrative Tribunal ('**the Tribunal**') to stop payments covering the teacher's wages and medical expenses.

The dispute was on the basis that the teacher did not give notice of the injury as soon as practicable, which is a requirement under the *Workers Rehabilitation and Compensation Act 1988* (**the Act**).

For further information about your worker's compensation entitlements and the process for claiming benefits, see our blog, ["WorkCover Tasmania - your plain English guide to workers compensation"](#).

If you need advice or representation in relation to any type of worker's compensation matter, you should seek advice as early as possible.

The law

For an employer/insurer to successfully dispute initial liability and coverage of a worker's compensation claim, they must do so within 84 days of receiving the claim from the worker and lodge reasons with the Tribunal about why they do not believe they are liable to pay. They must also advise the worker of this decision, in writing.

The employer/insurer cannot unilaterally decide not to pay a worker and must obtain the approval of the Tribunal. You should seek immediate legal advice if you have lodged a worker's compensation claim with your employer but have not received weekly payments to cover any incapacity to work and/or coverage of medical expenses.

This type of dispute is often referred to as a s81A dispute. For an employer/insurer to be successful in a s81A dispute, they only need to convince the Tribunal that there is a *reasonably arguable case* to stop worker's compensation payments.

What is a reasonably arguable case?

Ordinarily, it is not difficult for an employer/insurer to prove that a reasonably arguable case exists. This is because the case of [St Helens Oysters Pty Ltd v Coatsworth \[2007\] TASSC 90](#) is often referred to as authority on this point, which states (our emphasis added):

"...a reasonably arguable case will exist concerning the liability of an employer to pay a worker if it is reasonably arguable on the material available in relation to the claim or identified deficiencies or weaknesses in the claim that, following a contested hearing it may be rejected."

The employer/insurer's case

It's noted that the employer/insurer disputed having to pay the teacher their worker's compensation entitlements on the basis that the teacher did not comply with the requirement to give notice of the injury as soon as practicable.

The notice provisions under the Act require:

1. a worker who suffers an injury to notify their employer as soon as practicable after the occurrence of the injury; and
2. the notice to be given before the worker has voluntarily left the employment in which he suffered the injury; and
3. the notice to be given orally or in writing; and
4. the notice to be given to:
 1. the employer of the worker or, if there is more than one employer, to one of the employers of the worker; or
 2. a person under whose supervision the worker is employed; or
 3. a person designated for the purpose by the employer; or

4. a person having authority or apparently having authority to receive such a notice on behalf of the employer; and
5. the name and address of the person injured; and
6. the nature of the injury, the date on which the injury occurred, and the cause of the injury.

From the above, it is evident that there are strict requirements under the legislation when making a worker's compensation claim and understandably, they are not always met.

If you require advice or assistance about making a worker's compensation claim please obtain legal advice so that these requirements are not missed.

[For advice and assistance, FREECALL 1800 659 114](#)

The worker's submissions

We submitted evidence on behalf of the teacher and attended the hearing to make submissions in support of the teacher's case that notice of the injury was given as soon as practicable as required under s32 of the Act.

At the Tribunal hearing, some core submissions included:

1. The fact that notice of injury may be given orally or in writing does not exclude other methods by which notice of injury may be given, and potentially can include such things as physical actions and body language; and
2. There is no obligation on a worker to identify a precise cause of an injury. It is enough for a worker to identify that there was a connection between the injurious event and the workplace;
3. Reading all the statements together, by his communications with the principal and leading up to and including 29 April 2021, the teacher's words, actions, and body language conveyed to the principal that he was suffering a detriment, and that the work issues he had raised with the principal were the cause; and
4. The teacher, therefore gave proper notice of his injury on either the afternoon of 28 April 2021 or the morning of 29 April 2021 in discussions between himself and the principal (whenever occurring) that they both refer to in their statements.

Was it reasonably arguable that the worker failed to give notice as soon as practicable?

Despite the employer/insurer's reasonably 'low bar' in order to achieve a reasonably arguable case order, the Tribunal agreed with the submissions put on behalf of the worker and dismissed the employer/insurer's case.

The Tribunal agreed with our submissions and relevantly stated:

28. In this instance, the worker's words to Ms Langham when he appeared in her office cannot reasonably be seen as anything other than a continuation of his frustration and dissatisfaction with work issues, expressed to Ms Langham no more than a week earlier. Further, I consider Ms Langham's evidence about the distressed and agitated state in which the worker presented to her

does not constitute “observations made by the employer”, but rather “the totality of the words and conduct” of the worker, as per Slicer J in *Wilkins v St Giles Society*.

30. This is because the worker’s evidence is that when he ‘had a breakdown’ in Ms Langham’s office, he specifically told Ms Langham he needed time off because he was stressed and anxious because of work. He says he referred to consistent build-up of pressure from work, the run-in with his co-worker.

31. Ms Langham’s evidence about this issue, is that she “does not recall” the worker “specifically stating that he was stressed and anxious because of work”. She does not contradict the worker’s assertion about what he said. She is unable to recall.

32. Taking Ms Langham’s evidence at its highest, at a final hearing there would be no reasonable possibility that Ms Langham’s evidence could displace the worker’s assertion that he gave to her notice of both the nature and the cause of his injury.

Worker’s compensation benefits to continue

As a result of the Tribunal’s findings, the teacher was able to remain on worker’s compensation payments covering their wages and was able to continue to have medical treatment paid for by the employer/insurer.

A copy of the full decision in [The State of Tasmania \(Department of Education\) v D. \[2021\] TASCAT 6 \(23 November 2021\) can be found here.](#)

Get help from a worker's compensation lawyer

You should obtain legal advice if:

- your claim has been made and you are waiting to see whether it has been accepted; or
- your claim has been disputed either by s81A or other means.

Hall Payne Lawyers are highly skilled in advising and representing workers in the Tasmanian Civil & Administrative Tribunal/TASCAT.

If you need advice or representation in relation to any type of worker’s compensation or personal injury matter, you should seek advice as early as possible.

Contacting Hall Payne Lawyers

You can contact us by phone or email to arrange your consultation; either face-to-face at one of our offices, by telephone or by videoconference consultation.

Phone: [1800 659 114](tel:1800659114)

Email: general@hallpayne.com.au

This article relates to Australian law; either at a State or Federal level. The information contained on this site is for general guidance only. No person should act or refrain from acting on the basis of such information. Appropriate professional advice should be sought based upon your particular circumstances. For further information, please do not hesitate to contact Hall Payne Lawyers.