

Causation arising from reasonable administrative action - *Comcare v Martin* [2016] HCA 43



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BACKGROUND

The Plaintiff, Ms Martin, was employed by the Australian Broadcasting Corporation (**ABC**) as a producer of a local radio program in South Australia. Her supervisor was Mr Mellett. Ms Martin and Mr Mellett did not enjoy a positive working relationship. Ms Martin alleged that Mr Mellett subjected her to bullying and harassment.

Ms Martin attempted to transfer to another position in which she was not under Mr Mellett's supervision. In 2011, she was appointed as a cross media reporter on an interim basis. When the ABC advertised the position on a permanent basis, Ms Martin applied. In the application process, Ms Martin was required to attend an interview with a selection panel, which included Mr Mellett.

Ms Martin's application was unsuccessful with the result that she was restored to her previous position under Mr Mellett's supervision. Ms Martin developed an adjustment disorder and claimed workers compensation.

The Defendant, Comcare, declined Ms Martin's claim on the basis that Ms Martin did not suffer from a compensable injury under the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**the Commonwealth Act**). The definition of injury in the Commonwealth Act excludes diseases "*suffered as a result of reasonable administrative action taken in a reasonable manner in respect of the employee's employment*". In Comcare's view, the decision to appoint a candidate other than Ms Martin as cross media reporter was reasonable administrative action taken in a reasonable manner in respect of her employment.

Ms Martin successfully sought a review of the decision in the Administrative Appeals Tribunal. Comcare successfully appealed to the Federal Court. The Full Court of the Federal Court (**the Full Court**) upheld the Federal Court's decision. Ms Martin appealed the Full Court decision to the High Court.

A complex array of issues arose in the proceedings, however, the sole ground of appeal relied upon and maintained from the Administrative Appeals Tribunal to the High Court was whether the ABC's decision not to appoint Ms Martin as cross media reporter caused her adjustment disorder.

THE DECISION

The High Court unanimously held that the Full Court had misinterpreted the definition of injury in the Commonwealth Act. The High Court rejected the Full Court's finding that the phrase "*as a result of*" in s 5A(1) imported a "*common sense*" notion of causation into the legislation. The High Court found this approach did not properly take account of the context and purpose of the Commonwealth Act.

For a disease to arise "*as a result*" of reasonable administrative action taken in a reasonable manner in respect of the employee's employment that meant that the employee would not have developed the disease without the taking of the administrative decision.

The High Court commented that courts must interpret legislative tests of causation in light of "*statutory text*" and "*statutory context*". The definition of injury in section 5A(1) of the Commonwealth Act must be interpreted in light of section 5B(1), which defines a disease as an ailment or aggravation of an ailment that was "*contributed to, to a significant degree, by the employee's employment by the Commonwealth*". The administrative action need not be the sole cause of the disease to satisfy the test, but it must be a necessary condition for the worker's employment to contribute to a significant degree to the development of the disease. The provision's purpose to "*ensure that the wide range of legitimate human resource management actions, when undertaken in a reasonable manner, do not give rise to eligibility for workers' compensation*" reinforced this interpretation.

PRACTICAL IMPLICATIONS

- *Comcare v Martin* clarifies that the causal connection required by s.5A(1) of the *Safety Rehabilitation and Compensation Act 1988* is met where the disease would not have occurred without the employer having taken the administrative action.
- The High Court's interpretation of the phrase "*contributed to, to a significant degree*" is likely to strongly influence the interpretation of similar provisions in other legislation, such as Tasmania's *Workers Rehabilitation and Compensation Act 1988*.
- The High Court rejected the notion that s.5A(1) of the Commonwealth Act imported a "*common sense*" notion of causation. This is particularly important in the Tasmanian context where the Workers Rehabilitation and Compensation Tribunal has regularly relied on the seminal comments of Kirby P, as he then was, in *Kooragang Cement Pty Ltd v Bates* regarding a "*common sense evaluation of the causal chain*", when determining issues of causation.
- The High Court held that causation in a legal context is always purposive. Regard must be had to the purpose and objectives of the legislation.

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